STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 8, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everetta Clark, Mayor; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary@; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Rick, Tim and Matt Watts, 200 Broad Street, Marion, N.C. 28752; J.R. Burnett, 3743 Montford Road, Marion, N.C. 28752; James Lindsey 402 Woodlawn Street, Marion, N.C. 28752; Kyle Gardner, 344 Marion N.C. 28752; Scott Fender, Route 1, Box 158 Old Fort, N.C. 28762; Connie Martin, 109 Holly Hill, Marion, N.C. 28752; Rafall Arzeta, Marion, N.C. 28752; Richie Good Route 1, Box 559, Marion, N.C. 28752; Todd McKinney Route 2, Box 782-A Marion, N.C. 28752; Jack Shafer 303 Viewpoint Drive Marion, N.C. 28752; Steve McKinney Route 2, Box 787A Marion, N.C. 28752; Carolyn Fender, Route 1 Box 787-A Marion, N.C. 28752;Kelly Crisp Route 11, Box 633, Marion, N.C. 28752; Phillip Hyatt Route 2 Box 382 Marion, N.C. 28752; Josh Bartlett 3636 Montford Cove Road, Marion, N.C. 28752; Seth Manis 3636 Montford Cove Road, Marion, N.C. 28752 Ronnie Burgin, Marion, N.C. 28752; Mr. & Mrs. Joe S. Conley and Family, Marion, N.C. 28752.

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve the minutes of the January 18, 2000 City Council Meeting.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN MARTIN: Councilman Billy Martin selected the Citizen of the Month for February and presented the following information about February's Citizen of the Month:

JOE SEPHUS CONLEY

Councilman Martin advised that Mr. Conley retired from Coats America. He is a dedicated member of Addies Chapel United Methodist Church, which he helped to build, a member of the Men's Sunday School Class, the Gospel Choir, the U.M. Men's Club and a Board Member.

Mr. Conley has been married to wife Barbara for forty-five years and they have three sons, Joe Jr., Jeff and Gregory, all of whom were present for this honor and eleven grandchildren.

Mr. Conley is also a tremendous gospel singer and along with his family spreads the gospel by song in church, schools, prisons, rest homes and other facilities when the opportunity arises.

Mayor Clark, City Council and many friends and family members had words of praise toward Mr. Conley, including a letter from Addies Chapel Choir.

BOY SCOUT TROOP NUMBER 807: Mayor Clark introduced Boy Scout Troop Number 807 and welcomed them to the meeting.

APPLICATION FOR PLACE OF AMUSEMENT – RONNIE BURGIN: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the application for place of amusement from Mr. Ronnie Burgin.

Name of New Business: 5 Lane Games
Operator name: Mr. Marshall Wayne Silver
Location of New Business: Five Lane, adjacent to Burgins Hardware Store

CITIZEN COMPLAINT – MR. JACK SHAFER: Mr. Jack Shafer appeared before Council to discuss the dust in the City due to the sand placed on City Streets during the snow. He also had concerns regarding the priority schedule used to clean streets.

Council members advised that they had not had any calls regarding the dust or the scheduling of snow removal on City Streets.

A brief discussion followed.

REQUEST – McDOWELL COUNTY FIREMEN'S ASSOCIATION: Upon a motion by Councilman Little, Seconded by Councilman Cuthbertson, Council voted unanimously to approve the following Agreement:

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF McDOWELL

AGREEMENT
CITY OF MARION AND
McDOWELL COUNTY FIREMEN'S ASSOCIATION, INC.

This Agreement, made and entered into this the 8th day of February, 2000, by and between the CITY OF MARION, a municipal corporation of McDowell County, North Carolina, hereinafter referred to as the City of Marion and McDOWELL COUNTY FIREMEN'S ASSOCIATION, INC., a corporation, hereinafter referred to as the Association.

The City of Marion agrees to let the Association park/store the Fire Safety House a mobile training unit used to emulate a house fire, at the City of Marion's Public Works Property located on Rutherfordton Road. The Association hereby releases the City of Marion, its elected officials, and employees of any and all responsibility involving the Fire Safety House, including damages to the Fire Safety House while parked/stored at said location, and that the City is released from any and all personal injuries related to the Fire Safety House.

The association also agrees that no training of any kind will be done on the Public Works Property.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager

McDowell County Firemen's Association

PROCLAMATION – CLEAN NC 2000: Upon a motion by Councilman Owenby, seconded by Councilman Marion, Council voted to approve the following Proclamation:

PROCLAMATION
CITY OF MARION
ENDORSING THE GOVERNOR'S CLEAN NC 2000 INITIATIVE

WHEREAS, there is a need to improve the appearance of our roadsides by removing litter, and other debris that create eyesores and harm the environment: and

WHEREAS, a clean environment impacts economic development, travel and tourism and the quality of life for all citizens; and

WHEREAS, In an effort to get North Carolinians to renew their sense of pride and recommit to keeping our state clean, the Governor has announced the Clean NC 2000 initiative; and

WHEREAS, the Clean NC 2000 initiative aims to improve the appearance of North Carolina by removing litter and other debris from our roadsides, rivers, lakes, and streams; and

WHEREAS, the Clean NC 2000 aims to educate all citizens about the harmful effects of litter; and

WHEREAS, the City of Marion agrees to partner with the state to cleanup our City.

NOW, THEREFORE, BE IT PROCLAIMED by the City of Marion as follows:

1. That the Marion City Council does hereby endorse and support the Governor's Clean NC 2000 initiative.
2. That this proclamation be effective upon its adoption.

ADOPTED this the 8th day of February, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager

MOWING AGREEMENT – DOT: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously approve the following Agreement:

NORTH CAROLINA
MCDOWELL COUNTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
AND

CITY OF MARION

12/28/99
MOWING AGREEMENT

Project: 5.8771600

THIS AGREEMENT, made and entered into this the ____ day of _____ , 2000, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the CITY OF MARION, a municipal corporation hereinafter referred to as the Municipality;

WITNESSETH:

WHEREAS, the Department has requested that the Municipality perform "routine" and "clean up" mowing of approximately 20.56 miles of state system streets within the corporate limits of the Municipality.

NOW THEREFORE, the parties hereto, each in consideration of the promises and the undertaking of the other as herein provided do hereby covenant and agree, each with the other as follows:

1. The Municipality, and or its contractor, shall provide the equipment, labor, materials, and traffic controls to perform said mowing service. All work shall be performed in accordance with generally accepted horticultural practices, Departmental standards and specifications, and the attached Exhibit "A".

2. The Municipality shall complete a minimum of four (4) mowing cycles per year. This Agreement shall remain in effect for a two (2) year period, beginning January 1, 1999 through January 1, 2001.

3. The Department shall reimburse the Municipality for the actual cost for labor and equipment not to exceed $1,648.91 for four mowing cycles. Reimbursement shall made in one final payment upon completion of the mowing cycle. The Municipality shall submit an itemized invoice to the Department upon completion of the mowing cycle. Reimbursement shall be made upon approval of said invoice by the Department's 13th Division Engineer and Fiscal Branch.

4. The Municipality, and or its agent, shall maintain adequate records and documentation to support the work performed under this agreement and shall permit free access to its records by official representatives of the State of North Carolina. Furthermore, the Municipality, or its agent, shall maintain all pertinent records and documentation for a period of not less than three (3) years following the final audit by the Department.

5. The Department of the municipality reserves the right to cancel this Agreement with a thirty (30) day written notice to the opposite party.

6. At the end of the two year period, upon written mutual consent, this Agreement shall continue as written, with the understanding that the Department of the Municipality reserves the right to cancel this Agreement with a thirty (30) day written notice to the opposite party. If the Municipality desires to continue the mowing service described in this agreement, the Municipality and the Department shall re-negotiate the fee, if applicable.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

CITY OF MARION
BY: _____
TOWN MANAGER

DEPARTMENT OF TRANSPORTATION
BY: _____
STATE HIGHWAY ADMINISTRATOR

Federal Tax Identification Number
_____
City of Marion

Approved as to Form:
_____
Assistant Attorney General

TRAFFIC ORDINANCE-CAUTION LIGHT-CLAY STREET: Upon a motion by Councilman Little, seconded by Councilman Culhbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-31 (Flashing Signals) is amended by deleting the following

STREET NAME	REGULATION	REG. APPLICATION
CLAY STREET	CAUTION LIGHT	AT STATE STREET, RED ON CLAY STREET SIDE
STATE STREET	CAUTION LIGHT	AT CLAY STREET

Adopted this the 8th day of February, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

ORDINANCE #: O-00-02-08-01

STREET NAME SIGN-BRADLEY STREET: The City Manager presented Council with a memo from Sgt. Gaye Noblitt advising that Mr. Eddie Epley with the 911 Committee called and advised they were unable to locate any UN-named streets inside the City Limits. They did however find that one street has no street name sign.
The street is Bradley Street, located off the five-lane.

Sgt. Noblitt advised that the county is paying for signs on all private drives due to the 911 address changes.

A discussion followed.

Upon a motion by Councilman Culhbertson, seconded by Councilman Little, Council voted unanimously to make and install signs for private streets inside the City Limits and to bill the County or property owner.

BIDS – LANDSCAPING AND MOWING:

BIDS - LANDSCAPING SERVICE PROPOSALS: The following bids were presented to Council:

1. IEM	$429.00 Per Week
2. L.L. Moore	$460.00 Per Week
3. Hollifield's	$513.00 Per Week
4. Bailey's	$600.00 Per Week

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to accept the bid of L.L. Moore Landscaping in the amount of $460.00 per week.

BIDS-OAK GROVE CEMETERY MOWING: The following bids were presented to Council:

1. Bailey's Lawn Care and Landscaping	$800.00 Per Week
2. IEM	$809.00 Per Week
3. Kelley's Landscaping and Lawn care	$925.00 Per Week
4. Turfmaster Inc.	$1,100.00 Per Week

A discussion followed.

Upon a motion by Council Little, seconded by Councilman Martin, Council voted unanimously to accept the low bid of $800.00 per week from Bailey's Lawn Care and Landscaping.

BIDS-RIGHT-OF-WAY MOWING: The following bids were presented to Council:

1. Bailey's Lawn Care and Landscaping	$750.00
2. JFM	$1,039.00
3. Hollifield's Landscaping	$1,243.00
4. Kelley's Landscaping and Lawn Care	$1,344.00
5. Turfmaster Inc.	$1710.00

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to accept the low bid of $7850.00 from Bailey's Lawn Care and Landscaping.

DAMAGES-BASEMENT MARION COMMUNITY BUILDING: The City Manager presented Council with pictures of damages to the walls in the basement of the community building. He advised that it is his understanding that most of the damages are from use of the basement by Marion Christian Academy. According to reports by the Marion Police Department, the damages were made by basketballs being thrown through the wall by children.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to allow Marion Christian Academy to continue use of the basement until their contract runs out on February 29, 2000, at which time damages will be repaired by City Forces, and the school will be invoiced for the total cost.

REMINDER OF TOWN MEETING: The City Manager reminded Council of the Town Meeting scheduled for 7:00 P.M., Thursday, February 10, 2000 at the Marion Community Building.

DISCUSSION – PLANNING SESSION: A discussion was held about the upcoming Planning Session.

It was decided to hold the Planning Session on Saturday March 4, 2000. The meeting will begin at 7:00 A.M. over breakfast at the Countyside Bar-B-Que, then move to the Conference Room at City Hall.

ADJOURNMENT: There being no further business, upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 22, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Mayor Clark advised Council that Councilman Edwards would not present for the meeting.

OTHERS PRESENT: J. Earl Daniels, City Manager; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Will McAdams 113 Highland Drive Marion, N.C. 28752; Melissa Cooper 1396 Hwy. 221 North #13 Marion, N.C. 28752; Tillie Twitty 405 Hudgins Street, Marion, N.C. 28752; Bernice Johnson 100 Carson Street Blue Ridge Terrace Marion, N.C. 28752 Louise Murphy 122 Livingston Street Marion, N.C. 28752; Pat Smith Marion, N.C. 28752.

RESOLUTION/PROCLAMATION – READ ACROSS AMERICA: Ms. Pat Smith, Kindergarten Teacher at Pleasant Gardens School appeared before Council. Ms. Smith is also the President of McDowell County Association of Education.

She informed Council that March 2nd is the 96th birthday of Dr. Suess and the third year in a row that the National Teachers Association and the North Carolina Association of Educators is sponsoring Read Across America. Special reading events are being planned across the nation. The Mayor and Council were asked to try and make arrangements to go to a school on March 2nd and read read with children

Mayor Clark was presented with a "Cat in the Hat" hat and each Council member was presented with a sticker to wear when reading to a child.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution/Proclamation:

RESOLUTION/PROCLAMATION

WHEREAS, the citizens of Marion, North Carolina stand firmly committed to promoting reading as the catalyst for our students' future academic success, their preparation for America's jobs of the future, and their ability to compete in a global economy; and

WHEREAS, Marion, North Carolina has provided significant leadership in the area of community involvement in the education of our youth, grounded in the principle that educational investment is the key to the community's well being and long term quality of life; and

WHEREAS, "Read Across America," a national celebration of Dr. Suess's birthday on March 2nd, promotes reading and adult involvement in the education of our community's students.

THEREFORE BE IT RESOLVED that the Marion City Council calls on the citizens of Marion, North Carolina to assure that every child is in a safe place reading together with a caring adult on the evening of March 2nd, 2000;

AND BE IT FURTHER RESOLVED that this body enthusiastically endorses "Read Across America" and recommends our community to engage in programs and activities to make America's children the best readers in the world.

SIGNED THIS DAY OF OUR LORD, FEBRUARY 22, 2000 A.D.

Mayor _____ Councilman _____

Councilman _____ Councilman _____

Councilman _____ Councilman _____

RESOLUTION NUMBER. R-00-02-22-1

INTRODUCTION – NEW EXECUTIVE DIRECTOR OF MACA: Ms. Melissa Cooper was present for this meeting and was introduced to Mayor Clark and the Marion City Council by Councilman Lloyd Cuthbertson.

Ms. Cooper is the new Executive Director for the McDowell Arts and Crafts Association She reviewed with Council some of the plans she has developed to work with volunteers to teach art and music to children in the County.

She also discussed planned improvements to the MACA Building.

SEWERAGE DAMAGE COMPLAINT-MRS. ALLISON BRADLEY-303 VALE STREET: The City Manager presented a letter from Ms. Bradley requesting payment for damages to her bathroom as a result of wastewater backing up in her bath tub. A short discussion followed. Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, the City Council voted to refer the matter to the Utility Committee.

UNPAID 1999 REAL PROPERTY TAXES – REPORT FROM TAX COLLECTOR: A written report from Tax Collector Claudia Severson was presented to Council. As of February 17, 2000 the amount of unpaid 1998 real property taxes is $133,690.38. A breakdown listing the name of the taxpayer and the principal amount due is on file in the Tax Collectors' Office.

INDUSTRIAL PRETREATMENT CHARGES: EPA regulations require that industries pay the total costs for pretreatment programs. The City Manager informed Council that the city pays for pretreatment monitoring and bills each industry directly for reimbursement for their portion of the pretreatment charges. He advised that this procedure is not working due to a breakdown in communications with the city's contractor. The City Manager proposed that each industry be billed monthly on their water/sewer bill for pretreatment services. He also proposed that the monthly charges be retroactive to January 1, 2000. The statements submitted for the March billing would include pretreatment charges for January, February and March. Future bills would reflect charges for only the current month. The annual pretreatment costs would be as follows:

Industry	Annual Pretreatment Charge
Universal Furniture	$ 985.00
Unimin Corporation	$ 1,319.00
Marion Mills	$ 1,163.00
Dodge Rockwell	$ 1,409.00
Galey & Lord	$ 1,127.00
Industrial Timber	$ 985.00

The City Manager advised that other industries could be added to the list when pretreatment regulations apply. All proposed charges would be presented and approved by Council , prior to billing. The proposed charges would remain in effect until changed by Council.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to accept the City Managers' recommendations and bill the industries listed at the annual amounts proposed but on a monthly basis retroactive to January 1, 2000.

ORDINANCE-SEXUALLY ORIENTED BUSINESSES: The City Manager informed Council that both McDowell County and Old Fort had adopted an ordinance establishing a moratorium on sexually oriented businesses. He advised Council that the City has some ordinances covering that subject but that a study should be made to establish an up to date ordinance that would include activities not even considered when the older ordinances were adopted.

Upon a motion by Councilman Little, Seconded by Councilman Martin, those members of Council present voted unanimously to adopt the following ordinance:

ORDINANCE
ESTABLISHING A MORATORIUM
ON SEXUALLY ORIENTED BUSINESSES
IN THE CITY OF MARION

WHEREAS, the North Carolina General Assembly has found and determined that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties; numerous studies relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexual oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner; reasonable local government regulation of sexually oriented businesses to prevent or ameliorate adverse secondary impacts is consistent with the Federal constitutional protection afforded to non-obscene but sexually explicit speech;

WHEREAS, in addition to State laws on obscenity, indecent exposure and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from the location and operation of these businesses;

WHEREAS, the City of Marion may regulate sexually oriented businesses through zoning regulations, licensing requirements or other appropriate ordinances, pursuant to the North Carolina General Statutes 160A-181.1(c);

WHEREAS, to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, the City of Marion may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated or the expansion of any such existing businesses, pursuant to the North Carolina General Statutes 160A-181.1(d).

NOW, THEREFORE, pursuant to the North Carolina General Statutes 160A-181.1, 153A-45 and 153A-121, the City Council hereby places a moratorium on the opening, operation and expansion of sexually oriented businesses in the City of Marion for a period of one hundred eighty (180) days following adoption hereof. During the moratorium, the City shall conduct a study to determine the scope of potential regulations of said businesses. Such study shall include, but shall not be limited to, secondary impacts of said businesses, types of businesses to be regulated, how to define sexually oriented businesses and similar activities and adverse impacts of regulations. For the purposes of this ordinance, "sexually oriented businesses" shall be defined in the North General Statutes 160A-181.1 and 14-202.10.

Adopted and effective on this the 22nd day of February, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-02-22-01

YOUTH DELEGATE-NLC MEETING: Mayor Clark informed Council that NLC Board members had been encouraged to invite a Youth Delegate to attend the NLC meeting in Washington, DC. The National League of Cities will pay the registration fees and the cities would be responsible for travel, room and some meals. Mayor Clark advised Council that he would like to invite Lee Marie Ayers, daughter of Robert and Sandra Ayers. Councilman Martin advised that she was a top student at McDowell High. Mayor Clark asked if Council would agree for the City to pay her travel, room and meals not covered by the registration, and Mr. Ayers $25.00 registration fee. He informed Council that Mr. Ayers would serve as Chaperone and pay his own expenses. Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted unanimously to pay Lee Marie Ayers expenses to serve as a Youth Delegate and Mr. Robert Ayers $25.00 registration fee. Councilman Little asked that Lee Marie give a Report to Council about her trip.

COUNCIL DISCUSSIONS: The City Council discussed the need to flush from the streets, the sand placed on streets following the recent snowfall. A number of complaints have been received about the dust created by the sand. The City Manager was asked to contact Ken Putnam, Traffic Engineer with the DOT, about the timing of the traffic signal at the intersection of East Court Street and Garden Street. Long lines of traffic are backed up at certain times of the day. A number of citizens have complained about being missed on the recycling pick-ups. The City Manager informed Council that GDS has a new temporary driver that is not familiar with the routes. City personnel will pickup any residences missed until other arrangements can be made.

CLOSEO SESSION: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to go into Closed Session with City Attorney Penn Dameron, in accordance with NC General Statute 143-318.11 (a) (3), ref: the Smith/Pittman litigation.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted to go back into Regular Session.

SMITH/PITTMAN LITIGATION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted unanimously to approve the following Memorandum of Settlement:

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

WAYNE A. PITTMAN and wife, LINDA K. PITTMAN, TIMMY W. PITTMAN, FLOYD E. SMITH and wife INEZ V. SMITH, MARIE SMITH SEAGLE, WILLIAM E. SMITH, JOHN RICK SMITH, and BRENDA SMITH FRANKLIN, plaintiffs, v, CITY OF MARION, Defendant,	Civil No. 1:99CV194-T REVISED 2/22/2000

Memorandum of Settlement

The parties hereto stipulate and agree that at the Mediated Settlement Conference held on the 11th day of January, 2000, an agreement was reached. The terms of this agreement are:

1. The defendant City of Marion agrees to take the following action:

A. construct a concrete containment dike of 18 – 24 inches high around the prison pump station and manhole which abuts the Smith property.

B. construct a shadow fence between the prison pump station and the Smith property.

C. landscape around the shadow fence in a manner mutually agreeable to Floyd and Inez Smith and the City so as to screen the pump station from the view from the Smith property.

D. require the prison to enter into a pretreatment agreement to control the discharge of grease and other similar substances, or the City will undertake to retreat such grease and other similar substances at the prison pump station.

E. to have a structural analysis of the Smith bridge by a qualified engineer and to make any repairs to the bridge recommended by said engineer.

F. to regularly maintain the Smith bridge so long as it is used by the defendant.

G. to pay the plaintiffs the sum of $20,000 for legal fees and costs. ($10,000 Smith - $10,000 Pittman)

H. to put into effect a "notification" system whereby any plaintiff may immediately notify the operator in charge of the wastewater treatment plant, and if the Operator in Charge (OIC) is not available, the City Manager, of a problem with the prison pump station or Corpening Creek flowing through plaintiffs property. The City agrees to respond promptly and plaintiffs agree that City shall have a reasonable period of time to investigate and correct any problems identified. If the City correct the problem within a reasonable period, plaintiffs will take no further action with regard to that matter.

I. The City will begin a Wastewater Collection System Master Plan Study (Study) in the year 2000. The City will undertake all reasonable measures to improve the wastewater collection system infrastructure and operating procedures recommended by the Study.

J. The City shall pay the Smith family the sum of $22,500.00.

K. The City shall pay the Pittman family the sum of I$17,500.00.

2. Plaintiffs Floyd Smith, Inez Smith, Marie Seagle, William Smith, John Smith, and Brenda Franklin (hereinafter Smiths), agree as follows:

   A. Grant to and record a Conservation Easement in favor of the City of Marion preventing any development of their property within 50 feet of the top of the bank of Corpening Creek as it is presently located. This easement is intended to preserve this property in a natural state for the protection of water quality. This easement shall not impose upon the City any duty to maintain the stream banks. This easement shall be subject to reasonable rights of way for access.

   B. Grant an easement for ingress, egress and regress over and across the bridge located on the Smiths' property across Corpening Creek to gain access to the prison pump station and for the purpose of maintaining the bridge according to this agreement.

   C. Based upon the terms of this agreement, the Smiths agree to notify DENR that they withdraw their request for a public hearing on the reissuance of the NPDES permit and they no longer oppose said permit. The Smiths further agree to take no action to contest, impede, or otherwise interfere with said permit.

   D. Upon the receipt of payments described herein, the Smiths shall tender to counsel for the defendant a dismissal with prejudice of this law suit.

3. Plaintiffs Wayne Pittman, Linda Pittman and Tim Pittman (hereinafter Pittmans), agree as follows:

   A. Based upon the terms of this agreement, the Pittmans agree to notify DENR that they withdraw their request for a public hearing on the reissuance of the NPDES permit and they no longer oppose said permit. The Pittmans further agree to take no action to contest, impede, or otherwise interfere with said permit

   B. Upon the receipt the payments described herein, the Pittmans shall tender to counsel for the defendant a dismissal with prejudice of this law suit.

4. The plaintiffs and the defendant agree to each pay 50% of the mediator's fee.

5. This agreement is contingent upon approval by the Marion City Council.

6. The parties agree that the terms of this agreement shall be kept confidential by the plaintiffs, and the defendant to the extent permitted by law.

(note: Memorandum was signed by all parties)

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 7, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little was absent from this meeting due to being out of State.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Tom Milligan, Fire Chief; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Ms. Tillie Twitty Hudgins Street, Marion, N.C. 28752 Ms. Louisa Murphy Marion, N.C. 28752; Mr. Glenn Rhodes and Ms. Paula Kempton, Representatives of Isothermal Planning and Development Commission; John & Janet Reese, Vine Street, Marion, N.C. 28752; Ms. Loretta Smith, Dogwood Avenue, Marion, N.C. 28752; Billy and Faye Wright Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN CECIL OWENBY: Councilman Cecil Owenby selected the Citizen of the Month for March and presented the following information about March's Citizen of the Month:

JOHN REESE

Councilman Cecil Owenby advised that Mr. Reese has been with the N.C. Forest Service for twenty-six years. He has been a volunteer Fireman with the Marion Fire Department since 1982.

Mr. Reese is married to Janet and they have two sons, Phillip and Paul.

He has a reputation of never turning down a friend or neighbor in need and is always willing to help his fellow man, not just in the City, but the County as well as the throughout the State.

Mrs. Reese honored her husband by saying he was loyal to his family, his church and to the Lord, and that it was his honesty and kindness to others that attracted her to him.

Mayor Clark, City Council and several friends all had kind words to share about Mr. Reese.

PRESENTATION TO PUBLIC WORKS DEPARTMENT EMPLOYEES – ON BEHALF OF THE TOWN OF TARBORO: The City Manager advised that seven City Employees went to Tarboro to aid in the clean up that left many towns under water and devastated from Hurricane Floyd.

As a token of appreciation, the town of Tarboro sent each man who had assisted them, a Resolution of appreciation, t-shirt bearing their towns name and a ball cap.

The City Manager also recognized Tom Johnson's Camping Center for the Motor Home they furnished, at no cost, for City Employees to use while they were working this flood area.

PUBLIC HEARING – CLOSE OUT – CDBG SCATTERED SITE CATEGORY:
The City Manger opened the Public Hearing.

Mr. Glenn Rhodes, Representative of IPDC, reported that the public hearing was to close out a 1996 Community Development Block Grant Scattered Site Category (CDBG). The City of Marion received the CDBG grant in the amount of $487,025.00. Of this amount $357,965.78 was used to rehabilitate 19 homes, $29,000 was used to purchase one mobile home, $65,341.02 was spend on administrative activities and $5,000 was spend on clearance activities for a total of $457,306.80 in CDBG funds. Other funds committed to the project included; $18,800.00 in Rural Development funds, $28,000.00 of Single Family Housing Rehabilitation funds; $18, 584.00 in HELP funds and $13,106.30 in Weatherization funds. The balance of the CDBG funds remaining which the City will de-obligate is $29,718.20.

It was reported that one rehabilitated property is experiencing septic tank problems. Mr. Rhodes advised that he would investigate weather any of the remaining funds can be used to assist this property.

There were no citizens present to discuss the closing out of this project.

The City Manager closed the Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to close out the 1998 Scattered Site Category, Community Development Block Grant.

DISCUSSION – DEVELOPMENT OF COMMUNITY PARKS: The City Manager reported that Addies Chapel has donated approximately two acres of land for the first park to be developed by the City of Marion. At the present time the deed is being drawn by City Attorney's. The City has set aside $49,000.00 dollars this year to develop parks. Due to cost, maintenance and past experience of vandalism, City Council has opted not to place restrooms in any of the parks.

The City Manager anticipates having the first park open by summer.

Ms. Tillie Twitty was present for the meeting, and advised that the West Marion Community is willing to raise funds to place portable toilets to be maintained by volunteers in the Community.

A discussion followed.

No action was taken at this time regarding portable toilets.

CATAWBA STREET – DISCUSSION: Mr. & Mrs. Bill Wright appeared before Council requesting that Catawba Street be made a two way Street.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to allow two way traffic on Catawba Street.

Public Works Director Glen Sherlin was instructed to contact the Department of Transportation reference painting a center line, once this street is paved.

ANNEXATION – PETITION REQUESTING ANNEXATION: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to accept a petition requesting Annexation from Judith & Marvin Steve Dalton of Route 2, Box 850 Marion, N.C. 28752. Description of property can be found in Resolution Number:R-00-03-07-2.

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE: Upon a motion by Councilman by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolution:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-31

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, March 7, 2000, by the Marion City Council, and

WHEREAS, G.S. 160a-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation,

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City of Marion that:

ADOPTED this the 7th day of March, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

RESOLUTION NUMBER: R-00-03-07-1

CERTIFICATE OF SUFFICIENCY: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to accept the Certificate of Sufficiency as follows:

I, J. Earl Daniels, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 7th day of March, 2000.

J. Earl Daniels, City Manager/Clerk

RESOLUTION – FIXING DATE OF PUBLIC HEARING: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Resolution:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160-A-31

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at City Hall at 7:00 P.M. on Tuesday, March 21, 2000.

Section 2. The area proposed for annexation is described as follows:

BEGINNING on a small dogwood with black gum pointers in forks of branch, it being the Beginning corner of a tract of land described in Deed Book 149 at Page 311, and runs thence South 42 degrees West 138 feet to a marked poplar on the West side of branch; then with the line of McKinney (now Duncan) South 26 degrees West 118 feet to a marked poplar on the East side of the branch, and South 29 degrees West 200 feet to an iron stake, McKinney (now Duncan) Southwest Corner; then with the McKinney (now Duncan) line North 51 degrees 76 feet to a stake on the West side of branch; then South 47 degrees 30' West 161 feet to the center of a 14" poplar; then South 47 degrees West 136 feet to a stake at the East base of a 16" poplar in the outside line; then South 20 degrees East (variation 0 degrees 30 minutes) 731 feet to an iron stake on top of the hill in the old Bailey line; then North 40 degrees East (variation 0 degrees 30 minutes) 30 poles to a stake in the old line; then North 52 degrees East (variation 0 degrees 30 minutes) 15 4/5 poles to a stake in old line; then North 38 degrees East 8 poles to a stake in old line; then North 37 degrees East 10 poles to a stake in old line; then North 43 degrees West 38 ½ poles to the BEGINNING, containing 14 acres, more or less.

TOGETHER WITH the perpetual right and easement to ingress, egress and regress to a certain 60-foot road right-of-way heretofore reserved to grantor in Deed Book 274 at Page 189, and being more fully described in said deed.

Section 3. Notice of the Public Hearing shall be published in The McDowell News, a newspaper having general circulation in the City of Marion, at least ten (10) days prior to the date of the public hearing.

ADOPTED this the 7th day of March, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

RESOLUTION NUMBER: R-00-03-07-2

RESOLUTION IDENTIFYING THE AREA DESCRIBED AS BEING UNDER CONSIDERATION FOR ANNEXATION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolution:

RESOLUTION IDENTIFYING THE AREA DESCRIBED HEREIN AS BEING UNDER CONSIDERATION FOR ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion:

SECTION 1. That pursuant to G.S. 160A-37 (1), the following described areas are hereby identified as being under consideration for future annexation by the City of Marion under the provisions of Part 2, Article 4A of Chapter 160A of the General Statutes of North Carolina.

The description below is in reference to the map which will be certified as the actual area under consideration. This map will be placed on display in the Office of Community Development and Zoning and the City Clerk.

This Resolution of Consideration will include these described areas which are continuous to the City Limits of the City of Marion on the 7th day of March 2000.

Areas under consideration will include all properties which are either contiguous to, have access to, or are in development which are directly connected to the streets listed as boundaries. This is to be understood unless otherwise stated. This description will include all properties which lie between these listed boundaries and the area currently under consideration as noted above:

DESCRIPTION OF AREAS UNDER CONSIDERATION

BEGINNING at a point located at the intersection of U.S. Highway 70 East and the center of the bridge over Southern Railway. Thence in a straight line traveling in a Southerly direction, to the center of the bridge at the intersection of Fairview Road (SR 1741) and Interstate 40. Thence in a straight line, in a Southerly direction, to a point 2600 feet South of Interstate 40 located on N.C. Highway 226 South. Thence following a line 2600 feet South of and parallel to Interstate 40 in a Westerly direction, to a point where said line intersects with Marler Road (SR 1257). Thence following Marler Road (SR 1257) in a Northerly direction to its intersection with Zion Hill Road (SR 1137). Thence following in a straight line, in a Northerly direction, to a point on Interstate 40 located 1300 feet West of Nix Creek Road (SR 1911). Thence following a line 1300 feet West of and parallel to Nix Creek Road (SR 1311) in a Northwesterly direction to a point located 650 feet to the end of Waycaster Road (SR 1319). Thence in a straight line Northerly direction to a point located 650 feet West of the end of Clear Creek Road (SR 1422). Thence following the line 650 feet North of and parallel to Clear Creek Road (SR 1422) in a Easterly direction to a point located 650 feet West of Lake Tahoma Road (N.C. Highway 80. Then following the line 650 feet West of and parallel to Lake Tahoma Road (N.C. Highway 80) to a point 650 feet West of the intersection of Lake Tahoma Road (N.C. Highway 80) and Tom's Creek Road (SR 1434). Thence following a line 650 feet West of and parallel to Tom's Creek Road SR 1434) in a Northerly and Easterly direction to a point located on U.S. 221 North 650 feet North of the intersection of U.S. 221 North to Tom's Creek Road (SR 1434). Then in a straight line in an Easterly direction to the intersection of Cannon Road (SR 1553) and CSXT Railroad. Thence in a straight line in a Southeasterly direction to the intersection of Hankins Road (SR 1502) and Yancey Road (SR 1504). Thence in a straight line in a Southeasterly direction to the intersection of Hankins Road (SR 1501) and Yancey Road (SR 1504). Thence in a straight line in a Southeasterly direction to the point of BEGINNING.

Section 2. Owners of agricultural land, horticultural land and forestland within /the area/(s) under consideration for annexation as described in Section 1 above are hereby notified that they may have rights to a delayed effective date of annexation. G.S. 160A-49 (f1) and (f2) provides that land being taxed at present-use value qualifies for delayed annexation, and land that is eligible for present use value taxation but which has not been in actual production for the time period required by G.S. 105-277.3 may qualify for delayed annexation by making application to the McDowell County Tax Assessor for certification. For qualified tracts, the annexation will not become effective for most purposes until the last day of the month in which the tract or part thereof becomes ineligible for present use value classification under G.S. 105277.4 or no longer meets the requirements of G.S. 160A-49 (f1) and (f2). Until annexation of a tract becomes effective, the tract will not be taxed by the City and will not be entitled to services from the City.

Section 3. That a copy of this Resolution shall be filed with the Marion City Council.

ADOPTED this the 7th day of March, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

RESOLUTION NUMBER: R-00-03-07-3

SEWERAGE DAMAGE COMPLAINT – MRS. ALLISON BRADLEY – 303 VALE STREET – RECOMMENDATION FORM UTILITY COMMITTEE: Upon a motion by Councilman Edwards, seconded by Councilman Martin those members of Council present voted to reimburse Ms. Allison Bradley of 303 Vale Street the amount of $529.00 as recommended by the Utility Committee for the cost of a plumber and items listed by Ms. Bradley in her request, excluding refinishing or replacing her bath tub.

ORDINANCE – SPEED LIMIT – FINLEY ROAD: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

CITY OF MARION
NORTH CAROLINA

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-92(a) (3) is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
SR 1208 (Old US 70)	25MPH Speed Limit	from SR 1209, eastward to NC 226.
SR 1209 (Finley Road)	25 MPH Speed Limit	from city limits, a point 0.10 mile west of SR 1208, eastward to SR 1208.
SR 1209 (Finley Road)	25 MPH Speed Limit	from city limits, a point 0.01 mile west of SR 1206, eastward to SR 1206.

Adopted this the 7th day of March, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

ORDINANCE NUMBER: O-00-03-07-01

BIDS – EQUIPMENT: Upon a motion by Councilman Edwards, seconded by Councilman Owenby, those members of Council present voted to accept the bids from Everett Chevrolet and Marion Equipment as follows:

Everett Chevrolet

2 new model 15,000 4x2 pickup trucks	$29,862.66
1 new model 15,000 4x4 pickup truck	$17,449.45
1 3500 HD Utility Body	$31,050.90
1 3500 HD Dump	$32,648.26

Jim Cook Chevrolet – No Bid
Legendary Ford – No Bid
Stamey Chrysler – No Bid
Ken Wilson Ford – No Bid

Marion Equipment Co. Inc.

2 555E New Holland backhoe/Loader 2WD $69,562.00

Corriher Tractor – No Bid
Farm Equipment – No Bid
Carolina Tractor – No Bid
N.C. Equipment – No Bid

REFUND OF REFUSE CHARGE – GOLDEN RAY FOOD SERVICES: The City Manager presented Council with a memo from Ms. Claudia Severson requesting that Golden Ray Food Services, Inc. be refunded $45.54.

Golden Ray Food Services requested the City of Marion to discontinue their refuse service January 1, 2000.

Due to a clerical error, the information to stop the billing was not entered in the computer. Therefore they received and paid a bill for February 1, 2000. Their March bill has been adjusted.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to refund Golden Ray Food Services the amount of $45.54.

APPOINTMENT TO PLANNING BOARD: The City Manager presented Council with a memo from Ms. Lavina Smith, with recommendations to appoint two members to the Planning/Zoning Board.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to make the following appointments:

Reappointment of Regular Members:

Glenys Gilbert	Three Year Term	Ending	January 31, 2003
Craig Orange	Three Year Term	Ending	January 31, 2003

Mr. Dean Trakas has moved leaving a vacancy for an alternate member of the Planning/Zoning Board.

A brief discussion followed.

A report will be given to Council at the next Regular City Council with a suggestion to fill this position.

UNPAID PRIVILEGE LICENSE – DISCUSSION: The City Manager advised that Claudia Severson, who handles Privilege License for the City has informed him of several unpaid 1999 privilege licenses.

A discussion followed.

It was agreed that the Marion Police Department would handle the collection of these licenses.

PARKING TICKET COMPLAINT – EAST JUNIOR HIGH: The City Manager advised that a Citizen had received a parking citation while parked on State Street in front of East Junior High. The Citizen was not aware of the ticket. It had apparently blown away or was removed from the vehicle prior to the Citizen returning to the vehicle. The Citizen became aware of the Parking Ticket when she received a letter from the Police Department stating that she owed for the parking citation in the amount of $5.00 and a penalty for not paying it, in the amount of $25.00.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Edwards, those members of Council present voted to waive the penalty.

CITY OF MARION FIRING RANGE – HOLD HARMLESS AGREEMENT: Upon a motion by Councilman Edwards, seconded by Councilman Owenby, those members of Council present voted to adopt the following Hold Harmless Agreement:

STATE OF NORTH CAROLINA

HOLD HARMLESS AGREEMENT

COUNTY OF McDOWELL

THIS AGREEMENT, entered into by and between McDOWELL TECHNICAL COMMUNITY COLLEGE (hereinafter referred to as "the College") and the CITY OF MARION (hereinafter referred to as "the City"),

WITNESSETH

WHEREAS, the College desires to use certain real property owned by the City, specifically including the properties known as the City of Marion Firing Range and the Fire Training Grounds, for educational and training purposes; and

WHEREAS, the City is willing to accommodate the College in this regard; and

WHEREAS, the parties to this Agreement acknowledge that the City cannot be expected to provide supervision for all persons who may use these properties by the invitation, or with the knowledge and consent, of the College; and

WHEREAS, the parties agree that the City should not have to incur any expense or responsibility related to potential claims which may arise on account of the use of these City properties by the students, employees, invitees, or licensees of the College, or other persons related to the College;

THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, IT IS HEREBY AGREED THAT:

1. If, at any time after the execution of this Agreement, the City agrees to allow the use for educational or training purposes of the Firing Range and/or the Fire Training Grounds, or any other municipally-owned properties, by the College or its employees, agents, students, invitees, or licensees, or other persons who are on those premises with the express or implied invitation of the College, the College shall indemnify the City against, and hold the City harmless from, any and all liability for damages (including attorney fees) or injury to person or property arising from or out of such use.

2. The College shall be responsible for providing reasonable and adequate training, supervision, and security for all persons who may use the properties in question at the express or implied invitation of the College.

3. This Agreement shall be terminable at any time by five (5) days' written notice of either party.

This the ____ day of _____, 2000.

McDOWELL TECHNICAL COMMUNITY COLLEGE

By: _____(SEAL)

ATTESTED BY:

_____

CITY OF MARION
By: _____(SEAL)

ATTESTED BY:

CLEAN WATER BOND APPLICATION – WATER SEWER EXTENSION – SUGAR HILL ROAD:
The City Manager reported that the Rural Economic Development Center, Inc. has advised that the City will not receive any grant funds to extend water and sewer services along Sugar Hill Road to serve McDowell Family Medicine and others. This is the second time the City has been turned down on grant funds for this project.

COUNCILMAN MIKE EDWARDS: Councilman Edwards had to be excused from this meeting at 9:10 P.M. due to having to pick up a family member at the airport.

INVOLUNTARY COMMITMENT PROCEDURE – DISCUSSION: Chief of Police Tem Benware reported to Council that the police department is required by law to provide transportation of a respondent named in an involuntary commitment order to an area facility for examination by a physician or eligible psychologist if they are either (a) resident of the city or (b) taken into custody in the city limits. Additionally, if the respondent is found not to be in need of in-patient treatment officers are required to transport the respondent back home. That portion of the law is being complied with and does not present a problem.

The problem arises when the area facility (Foothills Area Program) is closed and/or a physician or eligible psychologist is not readily available. Police Officers are then having to transport the respondent to The McDowell Hospital. The current procedure is and has been that we provide protective security at the hospital or area facility until a physician or eligible psychologist can examine the respondent. This often takes ten to twelve hours. During this time an officer is tied up and unavailable for calls. Often this necessitates calling in an additional officer to work.

A discussion followed.

The Police Chief advised that he is scheduled to meet with Mr. Jeff Judd and with a representative of the Foothills facility.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to table this issue until the Police Chief meets with representatives of both these facilities.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 21, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Councilmen Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

Councilman Billy Martin was absent from this meeting due to being out of town.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News; Gail Sewell, News Reporter, WBRM Radio.

GUESTS PRESENT: Guy Rabb, Pulliam Street, Marion, N.C. 28752; Walter Street Pulliam Street, Marion, N.C. 28752; Susan Sluder Hunter Drive, Marion, N.C. 28752; Freddie Killough, Marion, N.C. 28752; Brittany Woody P.O. Box 1046 Marion, NC. 28752; Ashley Sluder 932 Hunter Drive Marion, N.C. 28752; WeDonna McSwaim Marion, N.C. 28752; Donald Bean Cresent Drive Marion, N.C. 28752; Brady Brooks 619 Montevista Drive Marion, N.C. 28752; Susan & Rebecca Miller 202 North McDowell Avenue Marion, N.C. 28752.

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to approve the minutes of the March 7, 2000 City Council Meeting.

CITIZEN COMPLAINT – DOG/CAT ORDINANCE: Mr. Donald Beam appeared before Council advising that on March 6, 2000, one of his cats disappeared. At the request of a resident near Mr. Beam, the City of Marion set a cage and caught his cat. The cat was taken to the McDowell County Animal Shelter. Mr. Beam is concerned with the conditions animals are placed in when taken to the shelter. Nine days after the disappearance of his first cat, a second cat is now missing. This animal is not at the animal shelter. Mr. Beam contends that there is no way he can train a cat to stay on his property and thinks the Ordinance should not apply to domestic house pets.

A discussion followed.

The City Manager advised that City Ordinances prohibit dogs and cats from being at large within the City. He advised that the cage is only set upon request by a citizen and is only set on the property of the citizen making the request. If the cat got inside the cage, the cat had to be off the property of the owner or as stated, "at large."

No action was taken in this matter.

REQUEST TO INSTALL PEACE POLE AT COMMUNITY BUILDING: Ms. Susan Sluder of Junior Girl Scout Troop 118, appeared before Council requesting permission to place a "Peace Pole" in the park of the Marion Community Building. The pole would be a 4"x4" pole six feet long. Two feet of the six would be cemented into the ground. Each side of the pole would have the words "May Peace Prevail on Earth" each side would be written in a different language. One side would be in English, one in Spanish, one in Tagolin and the forth one in Homng.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to allow placement of the "Peace Pole" on the Community Building Property, in a location to be determined by the City. A small sign designating Junior Girl Scout Troop 118 would be placed near the pole.

PULLIAM STREET – PARKING PROHIBITED – DISCUSSION: A discussion was held regarding the parking problems on Pulliam Street.

A motion was made by Councilman Little, seconded by Councilman Cuthbertson to refer this matter to the Street Committee.

Councilman Edwards advised that everyone was familiar with the street and that he did not feel it necessary for the Street Committee to have to meet to review the matter.

The vote was as follows:

Councilman Little	Yes
Councilman Cuthbertson	Yes
Councilman Edwards	No
Councilman Owenby	No

Due to a tie vote, Mayor Clark voted against the motion.

The City Manager was instructed to prepare an Ordinance rescinding the existing ordinance and establishing a new ordinance which provides a No Parking Zone on the east side of Pulliam Street and a No Parking Zone for an appropriate distance on the west side of the street at the southern end of the street. The present No Parking Signs taken down will not be replaced until the new ordinance is adopted.

CITIZEN COMPLAINT: Ms. WeDonna McSwain appeared before Council regarding the present charge for a water and sewer tap. She informed Council that she thought

the charges were less. She was informed that the rates were increased on November 1, 1999. She also asked if she was required to get a survey of the property before placing a mobile home in the City Limits. She was advised that it was necessary in order to insure that the mobile home was placed on the property in accordance with zoning regulations.

REQUEST FOR CITY TO INSTALL SIDEWALK ON YANCEY ROAD: A petition was presented to Council.

The undersigned residents of Oakwood Drive request the City of Marion to construct a sidewalk leading from Oakwood Drive, extending up Yancey Drive and joining the existing sidewalk on Fleming Avenue. A sidewalk would provide a well-defined, thus safer, route for school children living on Oakwood Drive who walk to and from Marion Elementary School.

The petition was signed by the following property owners:

Tabitha Bagwell	103 Oakwood Drive
Sharon Parker	102 Oakwood Drive
Jo A. Trippie	100 Oakwood Drive
Norman Guthrie	101 Oakwood Drive
James Segars	104 Oakwood Drive
Teri Goodson	99 Oakwood Drive
Joyce Zimmer	98 Oakwood Drive

A discussion followed.

The City Manager informed Council that Yancey Road is on the State Highway System and does not have curb and gutter. He stated that it would be very difficult to install a sidewalk without curb and gutter.

Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to direct the City Manager to submit a letter to DOT requesting that curb and gutter be installed on Yancey Road from Fleming Avenue to the City Limits. Council will place the request for the sidewalk on the list of pending projects for consideration.

PUBLIC HEARING – ORDINANCE TO EXTEND THE CORPORATE LIMITS: The City Manager opened the Public Hearing.

There were no citizens present to discuss this Ordinance.

The Public Hearing was closed.

The City Manager informed Council that water service is immediately available to the property but that the estimated cost to extend a gravity sewer line to serve the property could run in excess of $67,000.00. Following a short discussion, it was agreed that since the property is being annexed by petition, the City has no obligation to install, at City expense, a gravity sewer line to serve the property.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below: and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, March 21, 2000, after due notice by publication on Friday, March 10, 2000; and

WHEREAS, the City Council finds that the petition meets the requirement of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of March 31, 2000.

LEGAL DESCRIPTION of a 12.37-acre tract located in Marion Township, McDowell County and being recorded in Deed Book 320, Page 966 and located on Spaulding Road.

BEGINNING on an existing axle found in place of the eighth corner of Deed Book 320, Page 966 and the third corner of Deed Book 465, Page 771 and the second corner of Deed Book 532, Page 919, tract 1. Said point having North Carolina Geodetic Coordinates, NAD 83 a Northing of 216,507.741 meters and Easting of 334,891.766 meters, and having a combined scale factor of 0.99983010. Said axle being located North 27 degrees 50 minutes 45 seconds, West 108.69 feet from an existing one-inch iron pipe. Said iron pipe having a GPS coordinate and station ARM 1, as set by Suttles Surveying, P.A., whose coordinates are NAD 83. Northing is 216,478.447 meters, and Easting is 334.907.241 meters, having a combined scale factor of 0.99983109.

Said axle also being located North 30 degrees 16 minutes 23 seconds, East 223.68 feet from an existing concrete right-of-way marker sitting in the northern right-of-way of Spaulding Road. Also said axle being the Northeast corner of the Roger Bolick property as recorded in Deed Book 532, Page 919, and also being the Southeast corner of the Wanda H. Thomas Wood and husband, Jeffrey C. Wood, property as recorded in Deed Book 465, Page 771, and runs thence with the common eastern boundary line of the Wood tract North 21 degrees 13 minutes 53 seconds, West 99.83 feet to an existing one inch iron pipe. Said iron pipe being the Northeast corner of the Wanda H. Thomas Wood tract as recorded in Deed Book 465, Page 771, and being the Southeast corner of the Anna Lee Epley tract, as recorded in Deed Book 475, Page 844.

Thence running with the Epley eastern boundary line, North 18 degrees 28 minutes 33 seconds, West 100.30 feet to an existing two inch angle iron. Said iron being the Northeast corner of the Epley tract and being the Southeast corner of the Chester Trantham and wife, Louise Trantham, as recorded in Deed Book 291 Page 322.

Thence running with the Eastern boundary line of the Trantham tract North 20 degrees 8 minutes 33 seconds, West 194.83 feet to an existing one-half inch {½"} rebar. Said rebar being the Northeast corner of the Trantham tract and being the Southeast corner of the Cora Randolph Lamb tract as recorded in Deed Book 297, Page 393.

Thence with the Cora Randolph Lamb tract North 22 degrees 42 minutes 39 seconds, West 296.71 feet to an existing one-half inch {½"} iron pipe. Said iron pipe being the Northeast corner of the Lamb tract and being the Southeast corner of the Charles Hal Silver tract as recorded in Deed Book 527, Page 981 tract Number 3.

Thence running with the Eastern boundary line of the Silver tract, which is tract 3, North 21 degrees 16 minutes 10 seconds, West 48.37 feet to an existing ¾ inch said iron pipe in place of the seventh corner of Deed Book 320, Page 966 and the beginning corner of Deed Book 426, Page 795. Said iron pipe being located South 88 degrees 55 minutes 28 seconds, East 243.74 feet from an existing one-inch {1"} iron pipe. Said iron pipe being a GPS control point called BET 1, whose NAD coordinates are Northing 216,719.412 meters, Easting 334,736.067 meters having a combined scale factor of 0.99983320. GPS point established by Suttles Surveying, P.A.

Thence leaving the aforementioned ¾ inch iron pipe which is commonly known as the Southwest corner of the Larry David Carpenter and the Doris A. Carpenter property as recorded in Deed Book 426, Page 795. (For additional reference see unrecorded map by R.L.Greene Surveying and Mapping, dated July 14, 1991.) This with the common Southern boundary line of the Carpenter tract with the following two courses and distances: North 47 degrees 12 minutes 29 seconds, East 135.84 feet to an existing ¾" solid iron rod. Continuing North 47 degrees 42 minutes 30 seconds, East 160.87 feet to an existing ¾ inch rebar being the fifth corner of Deed Book 320, Page 966, twelfth corner of Deed Book 426, Page 795 and being located in the Southwestern line of Burl F. Branch property as recorded in Deed Book 383, Page 920 (and surveyed by R.L. Greene Surveying and Mapping, dated June 7, 1988.)

Thence crossing said branch and running with the common boundary line of the Branch property, South 50 degrees 45 minutes 11 seconds, East 77.93 feet to an existing one inch {1"} iron pipe in place of the fourth corner of Deed Book 320, Page 966, also the fourth corner of Deed Book 383, Page 920.

Thence running with the southern boundary line of the Branch property, the following three courses and distances: North 30 degrees 6 minutes 10 seconds, East 199.50 feet to a ¾ inch iron pipe set. North 27 degrees 4 minutes 47 seconds, East 117.77 feet to an existing one-half inch {½"} iron pipe.

Thence North 43 degrees 4 minutes 24 seconds, East 137.63 feet to an existing one-half inch {½"} iron pipe found in place of the beginning corner of Deed Book 320, Page 966, the third corner of Deed Book 502, Page 555 and the beginning corner of Deed Book 383, Page 920. And also being in the western boundary line of the Cristel Renee Lowery property as recorded in Deed Book 502, Page 555. (For additional reference, see an unrecorded map by R.L. Greene surveying entitled Florence Brown Lowery and dated August 25, 1995.)

Thence with the common western boundary line of the said tract, South 40 degrees 43 minutes 35 seconds, East 617.93 feet to an existing one and one-half inch {1 ½"} iron pipe in place of the twelfth corner of Deed Book 320, Page 966 also being the second corner of Deed Book 502, Page 555. Also said corner being a corner in the northern boundary line of the McDowell County property recorded in Deed Book 296, Page 933. For additional reference see an unrecorded plat by R.L. Greene Surveying and Mapping dated May 10, 1985 entitled composite map of the property belonging to the NC National Guard, McDowell Medical Park, McDowell Hospital, McDowell County Board of Education, and McDowell County and runs thence with the northern boundary line of the said McDowell County property the following courses and distances: South 36 degrees 40 minutes 07 seconds, West 164.87 feet to an existing ¾ inch iron pipe found.

Thence continuing with said McDowell County property South 37 degrees 39 minutes 28 seconds, West 132.28 feet to an existing one and one-half inch {1½"} iron pipe in place of the tenth corner of Deed Book 320, Page 966.

Thence continuing with said McDowell County property South 51 degrees 38 minutes 10 seconds, West 139.05 feet to an existing one-half {½"} iron rebar. Said rebar being the northwest corner of the McDowell County property and being the northeast corner

of the State of North Carolina National Guard property as recorded in Deed Book 359, Page 636.

Thence running with northern boundary line of the said State of North Carolina National Guard property the following two courses and distances, South 51 degrees 39 minutes 35 seconds, West 75.31 feet to a ¾ inch iron pipe set.

Thence continuing with the State of North Carolina National Guard property, South 39 degrees 37 minutes 42 seconds, West 494.45 feet to the point of BEGINNING containing 12.37 acres as shown on an unrecorded plat by Suttles Surveying P.A. and dated March 23, 2000, map file no. 12544, field book 9918 and being located in McDowell County tax office on sheet 791.20, block number 80, lot 8901, Marion township.

TOGETHER WITH the perpetual right and easement to ingress, egress and regress to a certain 60-foot road right-of-way heretofore reserved to grantor in Deed Book 274 at Page 189, and being more fully described in said deed.

Section 2. Upon and after March 31, 2000, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, and accurate map of the annexed territory, described in Section 1 above, together with a map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-268.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 21st day of March 2000.

A. Everette Clark/Mayor

Attest:

J. Earl Daniels, City Manager/Clerk

City Attorney

Ordinance Number: O-00-03-21-01

PUBLIC HEARING – ZONING – SPAULDING ROAD AREA: The City Manager opened the public hearing.

There were no citizens present to discuss the Annexation or Zoning of Spaulding Road.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted that property belonging to Judith and Steve Dalton, located on Spaulding Road and described in the annexation ordinance above, be zoned R2 General Residential District upon annexation, as recommended by the Marion Planning Board.

PUBLIC HEARING – REZONING REQUEST – 915 RUTHERFORDTON ROAD, GOFORTH SERVICES, INC. (R-2 GENERAL RESIDENTIAL TO C-2 GENERAL RESIDENTIAL DISTRICT: The City Manager opened the Public Hearing.

There were no citizens present to discuss this rezoning request.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to rezone property owned by Goforth Services, Inc., located at 915 Rutherfordton Road from R2 General Residential District to C2 General Business District as recommended by the Marion Planning Board.

PUBLIC HEARING – REZONING REQUEST – 908 BALDWIN AVENUE- McDOWELL VETERINARY CLINIC, R2 GENERAL RESIDENTIAL DISTRICT TO C2 GENERAL BUSINESS DISTRICT: The City Manager opened the Public Hearing.

There were no citizens present to discuss this rezoning request.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to rezone property owned by McDowell Veterinary Clinic, located at 908 Baldwin Avenue from R2 General Residential District to C2 General Business District as recommended by the Marion Planning Board.

PUBLIC HEARING – ZONING ORDINANCE PROPOSED AMENDMENT – ARTICLE VII. GENERAL PROVISIONS, SECTION 701. NON-CONFORMING LOTS OF RECORD: The City Manager opened the Public Hearing.

There were no citizens present to discuss this rezoning request.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to amend Article VII. General Provisions, Section 701, Nonconforming Lots of Record as recommended by the Marion Planning Board as follows:

1. Where the lot area and lot width are no more than twenty percent (20%) below the minimum specified in the ordinance, and other dimensional requirements are otherwise complied with, the administrative officer is authorized to issue a building permit; and

   Amend to read, in part, as follows: Where the lot area and lot width are no more that twenty-five (25%) below the minimum specified in the ordinance.....

2. Where the lot area and lot width are more than twenty percent (20%) below the minimum specified in the ordinance, or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

   Amend to read, in part, as follows: Where the lot area and lot width are no more than twenty-five (25%) below the minimum specified in the ordinance.....

PUBLIC HEARING – ZONING ORDINANCE PROPOSED AMENDMENT – ARTICLE VIII, USE REQUIREMENTS BY DISTRICT, SECTION 804, C-2 GENERAL BUSINESS DISTRICT – DISMANTLING VEHICLES (NORTH MAIN STREET): The City Manager opened the Public Hearing.

There were no citizens present to discuss this Amendment.

The City Manager closed the Public Hearing.

Upon a motion by Councilman Culhbertson, seconded by Councilman Owenby, those members of Council present voted to table this proposed amendment.

PUBLIC HEARING – ZONING ORDINANCE PROPOSED AMENDMENT – NEW SECTION – SEXUAL ORIENTED BUSINESSES: Council was advised that the Planning Board is still studying the proposed ordinance. No action was taken on this proposed new section to the Zoning Ordinance.

RESOLUTION ENDORSING RENOVATION OF THE MARION DEPOT AND PASSENGER RAIL SERVICE TO MARION: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolution:

CITY OF MARION
NORTH CAROLINA

RESOLUTION

ENDORSING RENOVATION OF THE MARION DEPOT AND PASSENGER SERVICE TO MARION AND McDOWELL COUNTY

WHEREAS, the State of North Carolina, Department of Transportation, Rail Division has prepared a Summary Report of the Western North Carolina Rail Passenger Study dated January 1997; and

WHEREAS, the Summary Report's Preferred Alternative provides for Rail Passenger Service to Marion and Old Fort in McDowell County; and

WHEREAS, Rail Passenger Service would be very beneficial to the Citizens of the City of Marion and McDowell County; and

WHEREAS, there already exists a Marion Depot; and

WHEREAS, this structure can be renovated and additional parking provided.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the City Council endorses the renovation of the Marion Depot and the establishment of Passenger Rail Service to Marion and Old Fort in McDowell County.

Section 2. That the City of Marion will work with North Carolina Department of Transportation, Rail Division, in any way possible in the renovation of the Marion Depot and the establishment of Passenger Rail Service to Marion.

Adopted this the 21st day of March, 2000.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, City Manager/Clark

Resolution Number: R-00-03-21-01

REQUEST TO ADVERTISE 1999 REAL PROPERTY TAXES: The City Manager presented Council with a memo from Ms. Claudia Severson, Tax Collector for the City of Marion, requesting permission to advertise 1999 Real Property Taxes in the McDowell News on Wednesday, May 3, 2000.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council presented voted to approve 1999 Real Property Taxes to be advertised in the McDowell News on May 3, 2000.

REQUEST – TIMBER HARVEST – OLD WASTE TREATMENT PLANT PROPERTY: The City Manager presented Council with a memo from the Director of Public Works advising that approximately 25 to 30 acres of a wooded area at the Old Waste Treatment Plant can be harvested and sold in order to help offset operating costs for sludge disposal. It was recommended that this be coordinated with the tree harvest at the Water Filter Plant Property used as a Firing Range by the Police Department.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to receive proposals from Tree Harvesting Professionals, to select one to oversee the Project.

REQUEST – CITY PARTICIPATE IN THE THE POTW/MOM PROGRAM SELF AUDIT (EPA): Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to participate in the POTW/MOM Self-Audit Program.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to contract with McGill Associates to provide their services on an hourly basis with an estimated cost not to exceed $9,800.00 to assist the City of Marion in completing the self-audit by September 15, 2000.

REQUEST FOR AUTHORIZATION TO PURCHASE – SEWER CLEANING AND INSPECTION EQUIPMENT: The City Manager advised that he and Public Works Director Glen Sherlin, went to the town of Rutherfordton to view their sewer cleaning and inspection equipment.

A brief discussion followed regarding the need for this equipment to better improve the City's Sewer Maintenance Program.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to authorize the purchase of this equipment using funds from this years budget. The City Manager was authorized to make necessary Budget transfers to purchase the equipment.

PROCLAMATION - ARBOR DAY: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the following Proclamation:

PROCLAMATION

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed through the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, the City of Marion has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways,

NOW THEREFORE, I, A. Everette Clark, Mayor, of the City of Marion, do hereby proclaim March 24, 2000 as

ARBOR DAY

in the City of Marion, and I urge all citizens to support efforts to protect our trees and woodlands to support our City's urban forestry program, and

Further, I urge all Citizens to plant trees to gladden the hearts and promote the well-being of present and future generations.

DATED THIS THE 24th DAY OF MARCH, 2000.

A. Everette Clark, Mayor

PROCLAMATION – LITTER SWEEP: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the following Proclamation:

APRIL CLEAN SWEEP 2000
CITY OF MARION
PROCLAMATION

WHEREAS, Marion's beautiful scenery and clean environment are a source of great pride, attracting tourists and aiding in recruiting new industries: and

WHEREAS, the McDowell Clean County System, Inc. an affiliate of the National keep America Beautiful Program, and P.R.I.D.E. are organizing a countywide cleanup to ensure clean neighborhoods and roadsides throughout the county; and

WHEREAS, a city wide campaign has been planned for the month of April, to help educate the public about the harmful effects of litter and illegal dumping on the environment and give every resident the opportunity to take responsibility for a clean county; and

NOW, THEREFORE, I A. EVERETTE CLARK, MAYOR OF THE CITY OF MARION, NC, do hereby proclaim April 2000, as "CLEAN SWEEP" in the City of Marion and urge all citizens to participate in cleaning up our neighborhoods and roadsides, and to reduce and recycle solid waste.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

APPOINTMENT TO ABC BOARD: The City Manager advised that Ms. Doris Hill's Term on the ABC Board will expire on April 18, 2000. Ms. Hill has expressed the desire not to hold this office any longer.

A discussion followed.

The present ABC Board is as follows:

ROBERT TEETER	3 YEAR TERM TO END APRIL 18, 2002
HARVEY PARKER	3 YEAR TERM TO END APRIL 18, 2001
DORIS HILL	3 YEAR TERM TO END APRIL 18, 2000

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to table this appointment until the next Regular City Council Meeting scheduled for April 4, 2000.

APPOINTMENT TO PLANNING BOARD – ALTERNATE MEMBER: It was agreed to hold this appointment until the next Regular City Council Meeting scheduled for April 4, 2000.

REQUEST – DENISE KING – SINCLAIR AVENUE RIGHT OF WAY: The City Manager advised that Ms. Denise King of Sinclair Avenue would like to acquire a strip of land in front of her residence, which is a part of City street right-of-way, to plant shrubs, flowers and do other landscaping, etc.

A discussion followed.

The City Manager advised that her neighbor's property also fronted on this strip of excess right-of-way. It was suggested that Ms. King discuss this matter with her neighbor, reach an agreement, and secure the services of an attorney, at no expense to the City, to suggest how this might legally be accomplished. The City would retain at least a forty foot (40') right-of-way.

REPORT – WASHINGTON, D.C. CONFERENCE: Mayor Clark gave a brief report regarding the Congressional City Conference 2000 he recently attended in Washington, D.C.

Councilman Edwards praised Mayor Clark and other officials willing to give up work time from their occupations and give up their weekends to attend meetings on behalf of the City of Marion.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 5, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

Councilman Marin was not present for this meeting due to being on vacation.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tim Benware, Chief of Police; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Robert & Edna Gourley, 115 Broad Street, Marion, N.C. 28752; Todd Clark, 704 Fleming Avenue, Marion, N.C. 28752.

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to approve the minutes of the March 21, 2000 City Council Meeting.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN LLOYD CUTHBERTSON:
Councilman Lloyd Cuthbertson selected the Citizen of the Month for April.

Councilman Lloyd Cuthbertson presented the following information about April's Citizen of the month:

ROBERT A. GOURLEY

Mr. Gourley was born in Greer, South Carolina and moved to Marion when he was seven year old. He attended Marion High, and Davison College. While serving his Country, Mr. Gourley was a fighter pilot in Guam. He is married to Ms. Edna Gourley.

Mr. Gourley has two sons, one daughter and eight grandchildren.

He has taught school, worked with Marion Buick for thirty two year, served on the Planning Board, is a member of the Kwani's Club, the Mystic Tie Lodge, is affiliated with M.A.C.A., the Foothills Theater and has sang in a Barber Shop Quartet and wrote a Alma Mater for a school in Valdeese.

Mayor Clark, Council Members and the City Manager all had many kind words to say about Mr. Gourley.
WATER/SEWER PROJECT – PERFORMANCE RAIL-GRAVITY SEWER LINE: Mr. Jim Jones of Martern and Craig updated Council on the Sewer Line project proposed for Performance Rail. Mayor Clark expressed his concern that existing businessess located at the intersection of I-40 and U.S. 221 would not be served by the new sewer line. He advised that it does not make sense to spend the kind of money being spent by the State and County to provide sewer service to one company, when the line being installed could be installed in such a manner as to serve several existing businesses that are or will be in need of such services.

Mr. Jones advised that the Department of Transportation indicated that it would be very difficult to get approval of a bore under I-40 at the location needed to provide for a gravity sewer line. He stated that the sewer line would have to be placed on piers at some locations. He also advised that the contractor installing the project told the engineer that to relocate and install a gravity line would increase the cost of the project by approximately $230,000.

Mayor Clark asked that the City Manager provide each of the businesses located near the I-40 and U.S. 221 intersection a letter advising that sewer service will not be available from the City, since the sewer line will be a force main sewer line.

UTILITY COMMITTEE – REGULAR MEETINGS: The City Manager advised that the Utility Committee met with representatives of the County on Tuesday, March 28, 2000. Several topics were discussed relating to Water and Sewer. This joint Committee agreed to meet the 3rd Tuesday following the 1st Monday of each month, at 8:30 AM at City Hall.

BIDS – EQUIPMENT: The City Manager presented Council with the following bids received and opened on March 31, 2000:

Trailer Mounted Sewer Jet System

Rodders & Jets Supply Co	$28,300.00 plus tax
Jet Vac Sewer Equipment and Service Center	$31,000.00 plus tax

Value-Pac Color TV Inspection Unit

Rodders & Jets Supply	$26,100.00 plus tax
Public Works Equipment and Supply Inc.	$53,095.00 plus tax

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to accept both low bids from Rodders & Jets Supply in the amount of $54,400.00 plus tax.

ORDINANCE – NO PARKING- PULLIAM STREET: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATIION
PULLIAM STREET	PARKING PROHIBITED	BOTH SIDES OF STREET

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
PULLIAM STREET	PARKING PROHIBITED	EAST SIDE, LENGTH OF STREET.
		WEST SIDE, FROM BLUE RIDGE STREET, NORTH 112 FEET.

Adopted this the 4th day of APRIL, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-04-04-01

RECYCLING PROPOSAL: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to send a letter of termination for the Residential Recycling with Garbage Disposal Services and to continue with the Commercial Recycling Program.

The estimated operating cost to the City per year will be $27,335 as indicated in the following breakdown:

Pro-rated truck cost	$ 9,000
Employee salary 24 hours per week (includes fringe benefits)	16,160
Fuel, tires, etc	2,175
Annual	$27,335

The amendment to the residential recycling contract was entered into on the 2nd day of June, 1993, by and between the City of Marion and Garbage Disposal Service, Inc.

This agreement was amended effective August 1, 1999 as follows:

The Agreement shall be for a one year (1) period beginning August 1, 1999 and ending one year thereafter. The initial term of this Agreement shall automatically be extended for successive additional three (3) year terms, unless

either party notifies the other in writing, not less than ninety (90) days prior to the expiration if the initial term or any successive term of its intentions to terminate this agreement.

The City Manager advised that if everything goes as scheduled, City Forces would begin Residential Recycling by August 1, 2000.

STREET RESURFACING PROPOSAL/2000: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to accept the following list of streets scheduled for resurfacing:

Priority	Street	Location/Section	Measurements	Total Area
1	Catawba Street	From Henderson to Hudgins	21'0" W 508' L	1,185 sq yds
2	Cresent Avenue	From N. Garden to Viewpoint	23'0" W 867' L	2,216 sq yds
3	Viewpoint Drive	From N. Main to Crescent	25'0" W 500' L	1,389 sq yds
4	Branch Street	From E. Court to Hill Street	20'6" W 920' L	2,106 sq yds
5	Short Street	From Church St to Virginia	16'0" W 252' L	448 sq yds
6	N McDowell	From Azalea St to Park	17'0" W 293' L	553 sq yds
7	Vale Street	From Lincoln to Rutherford	24'0" W 975' L	2,600 sq yds
8	E. Wilhemina St	From Oak St to dead-end	18'0" W 336'L	672 sq yds
9	City Parking Lot	Adjacent to Duke Power	56'0" W 139'L	865 sq yds
10	Greenlee Street	From Euclid Ave to City St	24'0" W 355' L	947 sq yds
11	Alabama Avenue	From Spring St to Tremont St	23'0" W 1,116' L	2,852 sq yds
			TOTAL	**15,833 sq yds**
			1.25" I-2 Resurface	
	Police Dept	Parking Area	2.00" I-2 New Pavement	**700 sq yds**

MOUNTAIN GLORY FESTIVAL – RIDES: The City Manager advised that it has been requested that the City owned Parking, at the southern end of Logan Street, be used for rides for the Mountain Glory Festival to be held the second weekend in October, 2000.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to allow the rides no earlier than Wednesday, October 11, 2000 after 5:00 P.M. and completely removed by midnight on Sunday, October 15, 2000. Reserved Parking on Henderson Street will be marked for customers visiting the merchants located in that area and tenants will be notified by mail of the Festival.

APPOINTMENT OF ONE MEMBER TO ABC BOARD: A discussion was held regarding running a statement in the Briefs section of the McDowell News stating that persons interested in serving on the ABC Board, the Planning Board and the Natural Resources Board should contact City Hall.

It was also suggested that the City Manager post this on the City's Cable Channel.

APPOINTMENT OF ONE MEMBER TO PLANNING BOARD: The City Manager was asked to contact several individuals to see if they would serve on the City Planning Board if appointed by Council.

APPOINTMENT OF ONE MEMBER TO NATURAL RESOURCES COMMITTEE: The City Manager was also asked to contact several individuals to see if they would serve on the Natural Resources Committee, if appointed by Council.

POLICE DEPARTMENT – OPERATIONAL POLICY - SECONDARY EMPLOYMENT: Those members of Council present voted to refer this item to the Police Committee. The Police Committee is scheduled to meet on Wednesday Morning April 5, 2000 at 8:30 A.M.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 18, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Calvin Philbeck 833 Ridge Street Marion, N.C. 28752; Jim Sari 849 Westover Avenue, Winston Salem; Ed & Susan Hansen, Pensacola, Florida; Glenn Rhodes, IPDC.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the minutes of the April 5, 2000 City Council Meeting.

SPAULDING WOODS APARTMENTS: Mr. & Mrs. Ed Hansen, along with Mr. Jim Sari a Representative of Landmark – Asset Services out of Winston Salem, appeared before Council requesting that the City of Marion assist them in getting grant funds to build an apartment complex on Spaulding Road.

Mr. Glenn Rhodes, representing Isothermal Planning and Development Commission, advised Council of all obligations to the City in applying for the Grant. He informed Council that, if approved, a grant would be made to the City. The grant, excluding administrative fees, would be loaned to the developer for water, sewer, storm drainage and a street to serve the apartment complex. The developer would repay the loan to the City beginning in approximately 20 years from completion of the project. The City could then use the funds paid by the developer for projects which serve at least 51% of low to moderate income persons. The City would not be permitted to invest the funds or earn interest on the funds.

A discussion followed.

Two Public Hearings were set for Tuesday, April 25, 2000, one at 12:00 Noon and the second at 12:15 P.M.

CIVIL CITATION – REQUEST TO CONTEST CITATION: Mr. Calvin Philbeck appeared before Council advising that he had received a civil citation on April 5, 2000, regarding a loose dog. Mr. Philbeck stated that he did not get a warning ticket and that the dog did not belong to him. He advised that the dog was a community dog fed by various neighbors.

Mr. Philbeck also advised that he had removed the dog from the community.

A discussion followed.

Councilman Edwards informed Council that he was opposed to rescinding a citation if police officers had followed procedures in giving a verbal warning, then a written warning and finally giving a citation if appropriate action is not taken. He stated that since the dog has been removed from the community, the problem has been solved and there may be no need to proceed further.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to rescind this Citation.

I-40 REST AREAS – REQUEST FOR WATER SERVICE: The City Manager advised that the Division of Highways has two rest areas on I-40, southwest of Marion, which currently are operating with on site water supplies.

The Division of Highways is requesting the City to conduct a preliminary engineering study to determine the cost, alternate routes, etc. for the City to extend municipal water services to the rest areas. The DOT has offered to play up to $2,500.00 for the study.

Two bids were presented to Council as follows:

Mattern & Craig	$2,500.00
McGill Associates	$1,800.00

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the low bid from McGill Associates in the amount of $1,800.00.

McGill Associates will evaluate alternate methods of providing water service to the rest areas on each side of the interstate, including an analysis of capital costs, operation and maintenance issues, and regulatory and environmental constraints.

REQUEST – POLICE DEPARTMENT – MILLENIUM CAR: The Police Chief is requesting permission to use a "millennium design" for one police car. The design chosen by department personnel would have "Policing the New Millennium" over the strip on the front fenders, in the same area which now displays, "Policing is a Partnership".

The cost would be approximately $350.00 less than what is paid to paint and strip one car.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request.

POLICE DEPARTMENT – SECONDARY EMPLOYMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the Operational Policy 0520 Secondary Employment for the Marion Police Department as follows, contingent upon a favorable review by the City Attorney.

I. PURPOSE

The purpose of this policy is to set forth regulations and procedures for sworn officers and civilians who wish to engage in secondary employment.

II. POLICY

When a member of the Marion Police Department is engaged in secondary employment, he/she is still a representative of the Department and is bound by all the rules, regulations, and orders thereof. He/she must conform to all laws and his/her conduct and actions should reflect favorably upon the Department.

A member's primary occupational responsibility is to the City of Marion, with outside employment being secondary. An employee must keep physically able to perform official duties by refraining from excessive outside employment that would tend to lessen efficiency to perform for the Department at an acceptable level.

III. DEFINITIONS

Secondary employment shall include both of the following:

A. Regular Off-Duty Employment
Any employment that is not mandated by the Department, not worked in a City of Marion uniform and will not require the use or implied use of law enforcement powers.

B. Extra-Duty Employment
Any employment that is not mandated by the Department, is worked in a City of Marion police uniform, and is conditioned on the actual or potential use of law enforcement powers by the employee.

IV. PROCEDURES

A. Securing Permission
No employee shall work at any job (police related or otherwise, business, or form of self-employment) without submitting a completed "Request for Secondary Employment" form (MPD A-6 (03/00) and receiving approval from the Chief of Police. This request shall contain the following:

1. A requirement of the employer will be to maintain workers compensation and general liability insurance coverage on the employee, and to provide a letter of indemnification for the employee, Marion Police Department, and City of Marion of all liability litigation incurred during off duty employment.

2. A requirement of the employer will be to read and agree to the limitations imposed on employees by this order.

B. Approval of Employment
The "Request for Secondary Employment" form [MPD A-6(09/00)] shall be submitted by the requesting member to the Patrol Lieutenant, who shall review the request to insure that the type of employment and place of employment are permissible under this policy. If approved, the Patrol

Lieutenant shall forward the request to the Chief of Police for approval or denial. A copy of the request shall then be returned to the employee and a copy will be maintained in a file in the Patrol Lieutenant's office. The original will be placed in the personnel file at the Department.

C. General Requirements

All requests and inquiries from outside the Department concerning secondary employment of Marion police officers shall be directed to the Patrol Lieutenant. The Lieutenant shall make opportunities available on an equitable basis.

Police Department employees wishing to engage in secondary employment shall sign a register in the Lieutenant's office. The names on the register will initially be listed on a seniority basis. Jobs shall be offered as they become available. Declining a job will drop the employee to the bottom to the list. Exceptions to this will be those employees who fall into one of the following:

1. Work schedule conflict
2. Sickness
3. Vacation or other authorized time off
4. Court
5. Special assignment

Employees who are contacted directly by a private employer shall refer that employer to the Patrol Lieutenant. Subject to this policy, such employee will be allowed to accept a position, but if the job requires more that one person, the Lieutenant, rather than the officer initially contacted, will be responsible for determining the minimum number of personnel needed and for assigning those personnel.

The Patrol Lieutenant shall document violations of departmental regulations concerning secondary employment. The Patrol Lieutenant or his designee shall investigate violations or complaints.

V. RULES

A. Secondary employment shall not create a conflict of interest. A conflict of interest, as determined by the Chief of Police, is an activity inconsistent, incompatible, or in conflict with the duties, functions, or responsibilities of employment.

B. When the City of Marion is the sponsor or co-sponsor of an event, officers may be provided at the City's expense with the approval of the Chief of Police. The Patrol Lieutenant shall recommend a minimum number of officers needed at such events

C. Events which fall into a for-profit type of enterprise or parades and demonstrations not sponsored by the City of Marion will be responsible for payment of the officers needed to cover the event. These payments shall be made directly to the police officer employee.

When working for private individuals, City workers' compensation does not apply. Employees are not agents of the City of Marion while working for private individuals until such time as they invoke their law enforcement duties.

D. Employees assigned to work a twelve-hour (12) shift sill not be allowed to work secondary employment on a duty day. Employees working an eight-hour (8) shift will be limited to working up to four hours at secondary employment.

E. An employee may not engage in secondary employment within the eight hours prior to coming on-duty.

F. An employee may not engage in more than 12 hours of secondary employment during a 48-hour workweek, 24 hours of secondary employment during a 36-hour workweek or 20 hours of secondary employment 40-hour workweek. However, if the employee is off the entire week due to shift changes, vacation, or on holiday, the employee can work up to 40 hours of secondary employment during the week. Any overtime hours worked or compensatory hours worked will be deducted from the total of secondary employment hours permitted during the week.

G. The secondary employer shall pay the employee directly.

H. Officers working secondary employment at businesses shall not enforce a company's policy. They will confine their activities strictly to enforcement of state statutes and city ordinances.

VI. PROHIBITIONS

A. Employees shall not be permitted to work secondary employment while out on paid sick leave or workers' compensation, or while on limited or restricted duty.

B. Employees shall not be permitted work extra-duty employment while on suspension or on a probationary status.

C. Employees shall not work off-duty in any capacity at a location or type of employment that may tend to reflect unfavorably on the employee, the Department, or that may place an employee in a compromising position. Some of which include:

1. Employment involving debt or account collections.
2. Employment involving the handling, while in city police officer uniform, of any packages, merchandise, etc.
3. Employment at establishments where on-site consumption of alcoholic beverages takes place
4. Employees working off-duty for any business involved in a labor/management dispute shall in no way become involved in the dispute. Officers finding themselves in such circumstances shall confine their activities strictly to enforcement of State Statutes and Municipal Ordinances
5. Employees are prohibited from soliciting extra-duty employment opportunities in direct competition with private security firms
6. No employee shall profit or attempt to profit from off-duty work of any other employee of the Department
7. No employee shall report on-duty late, or leave a regular tour of duty early to go to a secondary job without approval of the Patrol Lieutenant, or if unavailable, the on-duty Shift Commander.
8. Employees shall not work in any type of law enforcement related employment outside their jurisdiction

VII. DENIAL OR REVOCATION OF PRIVILEGE

The Chief of Police may deny or revoke the privilege of engaging in secondary employment if the denial is determined to be in the best interest of the Police Department, the City, or the public. Prior to revocation of previously expressed approval of any secondary employment, the employee adversely effected shall be given notice of the proposed revocation and an opportunity to be heard.

The Chief of Police pursuant to the City of Marion Personnel Policy shall sigh all approved secondary employment requests.

PAVING BIDS: The City Manager presented Council with a written recommendation that the bid from Fred Callahan be approved by Council.

The bids were as follows:

Fred Callahan Company, Inc., Forest City.

Asphalt:	1 INCH	PER SQ. YD.	$ 3.15
	1.25	PER SQ. YD.	3.82
	1.50	PER SQ. YD.	4.40
	2.00	PER SQ. YD.	$ 5.73

APAC – Asheville.

1	1"	OVERLAY WITH TACK COAT	SY	$ 3.22
2	1.25"	OVERLAY WITH TACK COAT	SY	3.88
3	1.50"	OVERLAY WITH TACK COAT	SY	4.56
4		ABC STONE IN PLACE, COMPACTED	TON	$14.00

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to approve the low bid submitted by Fred Callahan as listed above.

APPOINT ONE MEMBER TO PLANNING BOARD: The City Manager advised that Mr. Gary Walker had agreed to serve on the Planning Board if appointed by the City Council.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Mr. Gary Walker as an Alternate Member of the Marion Planning/Zoning Board to fill the unexpired term of Dean Trakas, said term to expire January 31, 2002.

APPOINT ONE MEMBER TO NATURAL RESOURCE COMMITTEE: The City Manager advised that Mr. Bill Greenlee had agreed to serve on the Natural Resource Committee if appointed by the Marion City Council and the McDowell County Commissioners.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Mr. Bill Greenlee as the City's Representative to the Natural Resource Committee.

APPOINT ONE MEMBER TO ABC BOARD: The City Manager advised that the following list of names are persons who contacted the City advising that they would be interested in serving on the ABC Board:

Robert Ayers Bill Smith Loretta Smith Jim Isaacs

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to appoint Mr. Jim Isaacs to the ABC Board for a term of three years, said term to expire on April 18, 2003.

P.G. SCHOOL – SEWER RATES: A discussion was held regarding charges for sewer service for P.G. School.

I t was agreed to table this matter until a later date.

CHARTER CABLEVISION – RATE INCREASE: The City Manager advised that Charter Cablevision will be increasing their rates effective July 2000.

City Council instructed the City Manager to place a statement on the City's Cable Channel that the City of Marion has no control over rates charged by cablevision.

SIGNS PLACED ON FENCE OF COMMUNITY BUILDING – MARCH OF DIMES: The City Manager advised that the March of Dimes did not have permission to place signs on the fence at the Marion Community Building and were asked to remove them.

DRAINAGE COMPLAINT – 367 MILLER AVENUE: The City Manager advised that Ms. Terry Johnson, of 367 Miller Avenue, had contacted him regarding a drainage problem she has in her back yard.

It was decided to refer this matter to the Street Committee. The Committee will meet on Thursday, April 29, 2000 at 1:00 P.M.

COMPLAINT – DILAPIDATED HOUSES: Councilman Martin inquired on the progress by the Fire Chief on the demolition and/or repairs to dilapidated houses..

The City Manager advised that he would contact Tom Milligan, Fire Chief and get a report from him for the May 16, 2000 City Council Meeting.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Special Session on Tuesday, April 25, 2000 at 12:00 P.M. in the Conference Room located at 200 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Billy Martin and Cecil Owenby.

BOARD MEMBERS ABSENT: Councilmen Lloyd Cuthbertson and Mike Edwards.

OTHERS PRESENT: J. Earl Daniels, City Manager

GUESTS PRESENT: Glenn Rhodes and David Lane representing Isothermal Planning and Development Commission; Mr. and Ms. Ed Hansen, Jim Sari representing Landmark Asset Services, and Stewart Tedford, representing Tedford & Associates, LLC Real Estate Appraising and Consulting.

PUBLIC HEARING: Mayor Clark opened the Public Hearing and asked Glenn Rhodes to explain the purpose of the hearing. Glenn Rhodes stated that the purpose of the Public Hearing was to receive comments concerning the City applying for a Community Development Block Grant under the Housing Development Category. There were no questions or comments from the public. Mayor Clark closed the Public Hearing.

PUBLIC HEARING: Mayor Clark opened the second Public Hearing and asked Glenn Rhodes to explain the purpose of the second hearing. Glenn Rhodes explained that the second Public Hearing was for the purpose of receiving comments from area residents concerning the City applying for a Community Development Block Grant under the Housing Development Category, (CDBG-HD). This based on the City considering applying for a CDBG-HD grant. If approved the funds would be used to construct water and sewer lines, build a street, and perform storm drainage work. The total project cost, including administration is estimated to be approximately $198,000. The funds would be used to serve a new apartment complex consisting of forty units which would be built on Spaulding Road at an estimated cost of $2,500,000.

Mr. Rhodes explained that, if approved, the City would receive a Grant of $198,000 which would be loaned to the developer to provide water, sewer, storm drainage and a street to serve approximately 44 apartments for persons of low to moderate income. The Developers would begin repaying the loan, without interest, at the end of twenty (20) years from the date of the Certificate of Occupancy. The annual payments for a period of ten years would be in the amount of $17,800 per year. The funds paid back to the City may be used by the City for public projects which must benefit 51% of low to moderate income. The City is not permitted to invest the funds and cannot earn interest on the funds. The apartment complex will cost approximately $2,500,000 and be completed in two (2) years. Restrictions required by the Grant will apply for thirty (30) years. The apartments will be managed by Landmark Asset Services. Mr. Hanson advised that it is anticipated that the one bed-room apartments would rent for approximately $290.00 per month, with the three bed-room apartments renting for approximately $480.00 per month. The apartments would be available to persons with annual incomes of $17,000 - $28,000. A preliminary drawing of the apartment complex was presented. Some questions were raised by Council that the proposed public street appeared more like a private parking lot. Council advised that the street would have to meet with State requirements to insure that the City can receive Powell Bill Funds for maintenance of the public street. Following the discussion, Mayor Clark asked if anyone had any questions prior to closing the Public Hearing. There being none, Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted unanimously to authorize IPDC to submit a Housing Development Grant to the NC Department of Community Assistance on behalf of the City of Marion. The funds would be used to construct water and sewer lines, storm drainage and a street to serve the proposed Spaulding Woods Apartments. The total request is for $198,000.

Upon a motion by Councilman Little, seconded by Council Owenby, those members of Council present voted unanimously to adopt the following Resolution:

RESOLUTION OF THE
MARION CITY COUNCIL

WHEREAS, the rental housing available in the Marion area is currently operating a 98% occupancy level;

WHEREAS, the City of Marion is experiencing a shortage of quality affordable housing;

WHEREAS, the Marion City Council desires to provide additional affordable housing units to address the needs of its community.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION, NORTH CAROLINA AS FOLLOWS:

1) The City agrees to apply in the Housing Development (HD) Category of North Carolina's Small Cities Community Development Block Grant (CDBG) Program by April 28, 2000 for a $198,000 grant to be used to help construct the public improvements on the proposed site, which will then be dedicated to the City.

2) When the aforementioned grant is awarded to the City of Marion, the Mayor is authorized and hereby agrees to expend $178,000 on the proposed Spaulding Woods site in accordance with the CDBG regulations; and

3) In consideration of the City of Marion's work, the ownership entity of Spaulding Woods agrees to grant the City a third mortgage for $178,000 under the following terms:

$178,000 at 0% interest. Loan to be repaid over a 10 year period, in annual installments of $17,800, beginning twenty (20) years following 90% occupancy of the housing units, but in all events beginning no later than twenty-two (22) years from issuance of Certificate of Occupancy.

Adopted April 25, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

R-00-04-25-01

ADJOURNMENT: There being no further business; upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adjourn at 12:55 P.M.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

BOARD MEMBERS ABSENT: Mayor Clark was absent from the meeting due to the Primary Elections. Mayor Clark was running for State Representative for McDowell, Yancy and a portion of Burke County..

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Steve Basney, Water Superintendent; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Red & Vivian Walker, 100 Smokerise, Marion, N.C. 28752; Nancy & Rachel Talbert, 78 Forest Hill Drive, Asheville, N.C.; Ed & Penny Moore, Amick Equipment, 81 Ashbrook Road, Statesville, N.C.; John Rutland III., 22 Hampstead Road, Asheville, N.C.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM STEVE LITTLE:
Mayor Pro Tem Steve Little selected the Citizen of the Month for May and presented the following information about May's Citizen of the Month:

JOHN B. "RED" WALKER

Mayor Pro Tem Steve Little advised that Mr. Red Walker is married to Vivian Walker. Mr. Walkers Daughter In Law, Nancy Talbert Walker, was present, along with his granddaughter Rachel, who is a Chief Marshall at Owen High School.

Mr. Walker is a member of the First Baptist Church in Marion, where, to date, he was the youngest Deacon ever to serve. He has been affiliated with the Boy Scouts of American, he began the Bear Den Campground Summer Ministry and one at Lake James.

Mr. Walker has been a member of several barbershop quartets. He has served as Trustee at Mar's Hill College. He is affiliated with the Civitan Club, has served on the Board of Directors for Habitat, and also has served as a County Commissioner.

Mr. Walker owns property in the Downtown area, is a Real Estate Developer, and has taught, with his wife Vivian, Line Dancing at the McDowell Senior Center.

The Marion City Council all had kind words to share about Mr. Walker.

RECYCLING TRUCK BIDS: The City Manager informed Council that it is recommended that Council accept the Bid submitted by Amick Equipment even though it is not the low bid. He advised that the City has canceled its contract with GDS and delivery of the new Recycling Truck is necessary in July in order not to interrupt recycling services. The other bidders cannot make delivery in July.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the bid of Amick Equipment for $91,370.00. A discussion followed.

The bids were as follows:

Adams International Trucks	Delivery - 120 days	$93,950.81
Volvo & GMC Truck Center	Delivery – 20 – 22 weeks	$91,965.00
Amick Equipment	Delivery – July 5, 2000	$91,370.00
Carolina Truck Center	Delivery 150 days	$88,994.00

TIMBER HARVEST – MR. JOHN RUTLAND: Mr. John Rutland, Consultant Forester of WNC Forestry Services, Incorporated, appeared before Council to discuss the Timber Harvest at the water filter plant property and the old wastewater treatment plant property.

In looking at both properties, Mr. Rutland recommends that the property at the water filter plant be clear-cut, since there are several areas of diseased Virginia Pines. His concern is that the Southern Pine beetle has spread beyond the obviously diseased trees into otherwise healthy-looking trees. A buffer zone will be left around the perimeter of the water filter plant property and near any waterways.

Mr. Rutland recommends that the old wastewater treatment plant property, be select-cut instead of total clear cutting. He estimated the revenues to be received by the City at approximately $30,000.

Once the trees have been harvested, new trees would be set out.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to contract with Mr. John Rutland, to prepare maps and plans, bid out the project, and over-see the timber harvest for ten (10%) of the revenues but not less than $1,000.

AUDIT CONTRACT: The City Manager presented Council with a Audit Contract. This Audit includes $1,600.00 for the year-end bookkeeping assistance, $10,750.00 for the Audit and $4,500.00 for the preparation of the financial statement.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to approve the contract with Johnson Price and Sprinkle, with Mayor Pro Tem Steve Little serving as Chairman of the Audit Committee.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening May 16, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the minutes of the May 2, 2000 City Council Meeting.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Tom Milligan, Fire Chief; Glen Sherlin, Director of Public Works; Ragan Robinson, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Jim, Nan & Megan Isaacs, Marion, N.C. 28752; Robert Teeter, 634 Fleming Avenue, Marion, N.C. 28752; Harvey Parker, Marion, N.C. 28752; Barbara Harbison, Morganton, N.C. ; Fred Coats, McDowell County Attorney, Marion, N.C. 28752; Ken McFadyen, Assistant County Manager, Marion, N.C. 28752.

ABC BOARD – OATHS OF OFFICE - ROBERT W. TEETER- HARVEY L. PARKER & JIM ISAACS: Mayor A. Everette Clark administered the Oath of Office to ABC Board Members Robert Teeter, Harvey Parker and Jim Isaacs.

LEGAL AGREEMENT RE: SEWER LINE EASEMENT – McDOWELL COUNTY: Mr. Fred Coats, County Attorney, and Mr. Ken McFadyen, Assistant County Manager gave a brief update on the progress of the sewer line easements that are required for the Performance Rail Project and discussed the Indemnification and Hold Harmless Agreement, that was prepared by City Attorneys.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the Indemnification and Hold Harmless Agreement between McDowell County and the City of Marion.

The above named Legal Agreement can be found on file in the legal documents located in the safe at City Hall: (Legal Document # 712)

REQUEST TO PLACE BROCHURE RACK IN CITY HALL – MICHAEL ROUSE: The City Manager presented Council with a memo from Mr. Michael Rouse with the McDowell County Tourism Partners.

In an effort to allow visitors more access to area information (such as accommodations, attractions, and maps), the McDowell County TDA is requesting permission to provide the City with a clear acrylic brochure rack for county visitor guides. The racks would be provided at no cost to the City.

A discussion followed.

Council determined that most walk-in traffic at City Hall is local residents paying utility bills, taxes or having other City related business. It was agreed that placing the rack with visitor guides would probably not be
beneficial but could become a source of litter.

CITIZEN REQUEST FOR PAYMENT FOR DAMAGED FLOWER PLANTER – MRS. CAROL HENSLEY: The City Manager presented Council with a memo from the Public Works Department advising that a City Employee driving a cushman accidentally destroyed a flower planter, valued at sixty dollars, at the residence of Mrs. Carol Hensley, (402 Woodlawn Street).

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to approve this request in the amount of $60.00 with a signed statement of release from Ms. Hensley.

REPORT ON CONDEMNED PROPERTIES – FIRE CHIEF TOM MILLIGAN: Council was presented with a written report from Fire Chief Tom Milligan regarding various condemned properties within the City.

Fire Chief Tom Milligan was present for this meeting.

NOTE: Mayor Pro Tem Steve Little was excused from a portion of this discussion due to a personal commitment at his daughters school. However, Mayor Pro Tem Little was present and participated in the vote as stated below.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to advertise and accept bids for the demolition and removal of structures within the City of Marion prior to the June 6, 2000 City Council Meeting.

Property owned by Viola Black Life Estate at the intersection of Parker Drive and Hudgins Street in West Marion will be the first structure looked at by Council.

REPORT – LEE MARIE AYERS – WASHINGTON, D.C.: Ms. Lee Marie Ayers, a student at McDowell High School, was chosen as a youth delegate to attend the Congressional City Conference 2000 in Washington, D.C. this past March.

Ms. Ayers presented Council with an impressive presentation consisting of slides and documentation regarding her attendance of the conference.

A discussion was held regarding several ways to involve teens within the City of Marion in Local Government.

CITY OF MARION – FIRING RANGE USE: The City Manager advised that the Agreement , allowing the use of the City's Firing Range, between McDowell Tech and the City of Marion will expire June 1, 2000.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to send a letter Dr. Virginia Mitchell, President of McDowell Tech advising that an appropriate agreement needs to be prepared which totally protects the City of a Marion from any liability and expense from the College use of the property. If no agreement is reached and approved by Council, use of the property must cease on June 1, 2000.

BUDGET DISCUSSION: A brief discussion was held regarding the Budget.

It was decided to hold a special called meeting on May 30, 2000 at 7:00 P.M. to discuss the budget.

The City Manager advised Council that he was pleased to announce that no tax rate increase is proposed.

He informed Council that he had now served as City Manager for over twenty-seven (27) years and that this being his last Budget for the City of Marion, he could announce that there has been no tax rate increase during his tenure. He announced that the tax rate had actually been decreased three times.

CITY MANAGER - RETIREMENT ANNOUNCEMENT: The City Manager announced that he tentatively plans to retire on June 30, 2000. He advised that, with Council approval, he would work for six months as an Interim Employee, while Council selects his replacement. He suggested that the position be advertised, beginning in July, with a closing date of September 29. Council could review applications, with personal interviews in October and November. Selection of the new Manager could be made in November or December with the new City Manger reporting for work in January 2001. The City Manager informed Council that he would be happy to serve as a temporary or part time employee for a period up to a maximum of six months, to work with the new City Manager for a smooth transition. The City Manager stated that under these procedures he would not receive any salary increase, nor receive any benefits (other than benefits received by retired employees), after July 1, 2000. The City Manager would be a salaried employee at his present rate of pay.

Mayor Clark stated that it was admirable that City Manager Earl Daniels was willing to go to such lengths to ensure a smooth transition for a new City Manager.

It was the consensus of the City Council to allow the City Manager to retire as out lined above.

REPORT – JOINT UTILITY COMMITTEE MEETING: The City Manager advised that a joint utility committee meeting was held this date between City and County Committee Members. A discussion was held regarding the P.G. Sewer Line project. Residents in that area are concerned that the City of Marion plans to annex the Pleasant Gardens area, if sewer service is made available. Council discussed this matter and each Councilman, individually stated that they could not see the Pleasant Gardens area being annexed in the near future.

REPORT – MAYOR A. EVERETTE CLARK: Mayor Clark gave a brief report on an NLC Conference that he recently attended in New York. The meeting was held at New York Mayor Rudolph Giuliani's residence.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn in Memory of Mr. Pat Davis.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening June 6, 2000 at 7:00 P.M. in the City Council Chamber located at 200 North Main Street.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Sweatt, Council voted unanimously to approve the minutes of the May 16, 2000 City Council Meeting.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary;Tim Benware, Police Chief; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter; WBRM Radio.

GUESTS PRESENT: Guy & Becky Gorecki 903 Hunter Drive Marion, N.C. 28752; Barbara Broadwell Route 2, Box 790 Marion, N.C. 28752; Shannon & Jacob Gorecki 107 Elaine Street Nebo N.C. 28761; Marty Smith Route 6, Box 712 Marion N.C. 28752; Susan Sluder, 932 Hunter Drive Marion, N.C. 28752; Ted & Grace Lowery 408 4th Street East Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY MAYOR A. EVERETTE CLARK: Mayor Clark selected the Citizen of the Month for June.

Mayor Clark presented the following information about June's Citizen of the Month:

BRADY BROOKS

He was married to Mary Ann Blevins in 1946 (54 year ago). They have two Children and four Grandchildren.

He graduated High School in Aberdeen, North Carolina. Entered the US Navy in 1943

The Brooks Family moved to Marion in 1962.

Mr. Brooks is a member of the First Baptist Church in Marion.

He's a past member & "Exhausted Rooster" US Junior Chamber of Commerce. Has volunteered in Brownie Scouts, 4H Club, Cub Scouts and United Way. Is a past Round Table Commissioner of Cub Scouts for Swamp Fox District. First President of the Blue Ridge Association of Life Underwriters. Is a forty-year member and past president of the Lions Club. Past president of N.C. State University agricultural extension advisory Board of McDowell County. Past member of McDowell Merchants Association. McDowell County representative to Western North Carolina Development Association when Asheville Farmers Market was built.

Served as Vice President McDowell Housing Corporation while blue Ridge Terrace Apartments was being built.

Served as Secretary to McDowell County Housing Authority, is a thirty-three year member and past president of McDowell Board of Realtors, past president of the Lady Marion Plaza Merchants Association.

Past member of American Legion & Veterans of Foreign Wars.

Served 37 years as agent for Nationwide Insurance Companies.

Is currently co-owner of Brooks and Broadwell Reality with Barbara Broadwell.

City Councilmen, family members and several friends joined Mayor Clark with many kind words about Mr. Brooks.

COMPLAINT – MR. TED LOWERY – MARION POLICE DEPARTMENT: Mr. Ted Lowery appeared before Council advising that he had contacted the Marion Police Department on several occasions and was not pleased with the service he received.

A discussion followed.

Police Chief Tim Benware was directed by Council to meet with Mr. Lowery regarding his complaints.

GIRL SCOUTS – APPROVAL OF PEACE POLE – MS. SUSAN SLUDER: Ms. Sluder appeared before Council with the finished Peace Pole for Councils approval.

The Peace Pole was a four inch by four inch, eight foot long pressure treated pole. The wording on the pole was burned into the pole. Council was not pleased with the appearance of the pole. Council did however, agree to place the pole on the Community Building Property, near Logan Street.

A plaque will be purchased by the City of Marion and displayed with the pole listing the names of the three Girl Scouts and their leaders, who helped make the Peace Pole.

ORDINANCE – PLACEMENT OF PORTABLE TOILETS: A discussion was held regarding the placement of portable toilets within the City of Marion.

Mayor Clark advised that he is repeatedly called regarding complaints about these toilets being placed by the roadside, or in front of businesses.

Mr. Marty Smith of Appalachian Outhouses was present for this meeting.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to the following Ordinance:

CITY OF MARION
NORTH CAROLINA

ORDINANCE
HEALTH AND SANITATION
MARION CITY CODE

Portable Toilets

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That a new Section 9-128 be added to the Marion City Code to read as follows.

Sec. 9-128. Location of Portable Toilets; Permit Required:

It shall be unlawful for any person, firm or corporation to locate a Portable Toilet within the Marion City Limits without first applying for and receiving a permit issued by the Public Works Director or his designee. The Public Works Director or his designee shall direct the specific location where the Portable Toilet(s) shall be located and it shall not be relocated without a new permit. Portable Toilets shall be located, where possible, out of public view, so as not to be conspicuous.

Section 2. This ordinance will be in full force and effect upon adoption.

Adopted this the 6th day of June 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance # 00-06-06-01

REQUEST – REFUND OF PRIVILEGE LICENSE – SUBWAY RESTAURANT: The City Manager presented Council with a memo from Ms. Claudia Severson, requesting a refund of Privilege License for the Subway Restaurant located in the Marion City Square Shopping Center.

Due to a clerical error, the Subway purchased two Privilege License for the same business for the July 1, 1999 – June 30, 2000 fiscal year.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to approve the refund in the amount of $57.38.

BUDGET AMENDMENT – FIRE DEPARTMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA

1999-2000 BUDGET ORDINANCE

(Third Amendment)

BE IT ORDAINED by the City Council for the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 1999-2000 as adopted by the City Council on the 22nd day of June 1999, is hereby amended as follows:

GENERAL FUND

a. **General Fund Expenditures, Fire Department, Account Number 10-530-17 – Maint. Auto – is increased from $4,000 to $12,000.**

b. **General Fund Revenues, Misc. Revenues, Account Number 10-335-00 – is increased from $15,000 to $23,000.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

ADOPTED this the 6th day of June, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance # 00-06-06-02

CONDEMNED PROPERTIES: The City Manager presented Council with a memo from Mr. Thomas Milligan, Fire Chief regarding bids from Little Man Grading Company.

The Bids were as follows:

(1) Cora C. Lee Life Estate: West Wilhemina Street		
	Land valued at	$ 4,000.00
	Structure valued at	13,550.00
	Taxes owed	716.45
Cost of removal		$ 8,000.00
(2) Devaun Charles Burnette: Ridge Street, East Marion		
	Land valued at	$ 2,720.00
	Structure valued at	16,980.00
	Taxes owed	1,305.80
Cost of removal		$ 23,392.00
(3) Blanch Foster Life Estate: West Wilhemina Street		
	Land valued at	$ 4,000.00
	Value on structure	00.00
Cost of removal		$ 4,370.00
(4) Viola Black Life Estate: Hudgins Street		
	Land Valued at	$ 2,160.00
	Structure valued at	250.00
Cost of removal		$ 3,951.00

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to proceed with the clean-up of #(4) owned by the Viola Black Life Estate in the amount of $3, 951.00.

The City Manager was instructed to discuss with Ms. Barbara Harbison, who serves as agent for the Viola Black Estate, the options she has for paying for this clean-up and to have an agreement prepared for her signature. The City Manager was also instructed to contact McDowell Tech and inquire about the possibility of burning one or more of the structures as a training exercise for fire fighters.

BIDS – FRONT END LOADER – GARBAGE PACKER TRUCK: The City Manager presented Council with the following bids:

1. Freightliner	$ 156,343.00
2. Amick Equipment	137,444.00
3. Carolina Environmental	139,548.00
1. Alternate bid:	138,610.00
4. Volvo & GMC	135,101.63
1. Alternate bid:	137,364.00
2. Alternate bid:	137,184.00
3. Alternate bid:	134,719.63
4. Alternate bid:	141,540.00
5. Cavalier Equipment	135,724.73
1. Alternate bid:	138,581.93
2. Alternate bid:	134,295.00
3. Alternate bid:	136,120.00

It is the recommendation of the Public Works Director to purchase the Volvo/GMC on their alternate bid #3 for $134,719.63. The Vehicle delivery date is July 2000, and the unit exceeds specifications in the request for bids.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the bid from Volvo/GMC in the amount of $134,719.63 as recommended by the Public Works Director.

BIDS – 8 CUBIC YARD – CONTAINERS (90): The City Manager presented Council with the following bids:

Bakers Waste Equipment, Inc.	$51,030.00
Amick Equipment	$60,750.00

It is the recommendation of the Public Works Director that the low bid of $51,030.00 from Bakers Waste Equipment Inc. be accepted.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted to approve the bid of Bakers Waste Equipment Inc. in the amount of $51,030.00 as recommended by the Public Works Director.

TRAFFIC ORDINANCE MONTEVISTA AVENUE - STOP SIGN: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-141 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
MONTEVISTA AVE.	STOP SIGN	AT FERN AVENUE

Adopted this the 6th day of JUNE, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: 00-06-06-03

TRAFFIC ORDINANCE CHURCH STREET - STOP SIGN: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION
NORTH CAROLINA

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-142 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
CHURCH STREET, (CLINCHFIELD) HEADING SOUTH	STOP SIGN	AT RIDGE ROAD

Adopted this the 6th day of JUNE, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: 00-06-06-04

DISCUSSION – CEMETERY COMMITTEE: A discussion was held regarding the need for improvements at the Oak Grove Cemetery. Mr. Warren Hobbs has several suggestions on raising money to make needed improvements to the Oak Grove Cemetery. He has suggested installing a drainage pipe between the Duke Power Sub Station and the Cemetery and installation of rock, brick or concrete steps to replace those broken on in need of repair. He has also suggested installing iron hand-rails by steps.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted to refer this matter to the Cemetery Committee. Councilman Owenby and Councilman Edwards serves on this Committee.

BUDGET DISCUSSION – 2000-2001 CITY BUDGET: A discussion was held regarding the 2000-2001 City Budget. The City Manager recommended a 2 ½ % Cost and/or Standard of Living Adjustment across the board for all City employees. He also recommended an additional 2 ½ % merit increase for selected employees. It was also suggested that each year when Cost and/or Standard of Living Adjustments are approved by City Council, that the Mayor and City Council's salary be automatically adjusted by the same Cost and/or Standard of Living Adjustment granted city employees.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson; Council voted unanimously to approve a 2 ½ % Cost and/or Standard of Living Adjustment across the board for all City employees and an additional 2 ½ % merit for those employees selected by Department Heads and approved by the City Manager, and to automatically adjust the Mayor and City Councilmen's salary, each year, at the same Cost and/or Standard of Living Adjustment approved for City employees.

The City Manager reminded Council that he would be retiring at the end of the month and his last workday, as a regular city employee, would be Friday, June 30, 2000. He informed Council that he would need to be appointed to serve as Interim City Manager/Clerk, if Council wished for him to serve in that capacity until a new City Manager/Clerk is appointed.

DISCUSSION – JAIL & BAIL – SPONSORED CRIME STOPPERS: Councilman Edwards advised that he had received several complaints from City Businesses about the Jail & Bail held on May 19, 2000.

These business owners felt pressured into participating in the event.

Councilman Edwards advised that he was concerned about City's uniformed police officers participating in the event.

Councilman Edwards stated that he appreciated what Crime Stoppers does for the public. However, he is concerned with their method of raising money.

Councilman Little also has concerns with this method of fund raising.

A discussion followed.

No action was taken regarding this issue.

ADJOURNMENT: There being no further business, upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening June 20, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

* Note * Due to the new 911 Addressing System the location address for the City of Marion (City Hall) has changed from 200 North Main, to 194 North Main.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the minutes of the June 6, 2000 City Council Meeting.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

BOARD MEMBERS ABSENT: Councilman Mike Edwards was absent for this meeting due to personal obligations in his Law Office.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Smith Gibbs, Lake Tahoma Road, Marion, N.C. 28752; David Smith, 700 South McDowell Avenue, Marion, N.C. 28752; Dr. Amy Ende, Marion, N.C. 28752.

FIRST PRESBYTERIAN CHURCH - REQUEST FOR CONTRUBUTION FOR PAVING PARKING LOT: Mr. Smith Gibbs and Mr. David Smith appeared before Council on behalf of the First Presbyterian Church advising that the parking area on the South side of the First Presbyterian Church in Marion has been available to the public for free parking for many years.

The lot is in need of repairs and resurfacing. The Church has sought multiple bids, and the lowest bid is in excess of $11,000.00.

The Board of Deacons and Session is requesting that the City of Marion contribute $3,700.00 toward this project since the parking lot is used by the people going to the recreation center, swimming pool and events in the downtown area.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to contribute $3,000.00 toward this project contingent upon receiving a letter stating that the public would be allowed to use the parking lot when it is not in use by the Church.

DR. AMY ENDE – PLAYGROUND EQUIPMENT – COMMUNITY BUILDING: Dr. Amy Ende appeared before Council with a presentation regarding the safety of the playground equipment at the Marion Community Building.

Dr. Ende presented to Council a plan for new safer playground equipment, which would cost approximately $30,000.00.

The proposed playground equipment is made by Playworld Systems. Dr. Ende is anticipating raising approximately $25,000.00 of the 30,000.00 needed to purchase the equipment.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to allow Dr. Ende to raise the funds for the playground equipment. The City will provide each contributor with a letter accepting the contribution and City Personnel will remove the existing playground equipment at the appropriate time.

ANNUAL CERTIFICATION OF FIREMEN: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to certify the roster listed below as a valid and accurate list of all eligible firemen of the Marion Fire Department.

CO.	DEPT.	LASTNAME	FIRSTNAME	MI	SSN
58	0617	ANDERSON	DONALD	R	
58	0617	COWARD	JAMES	M	
58	0617	CRESON	DURWOOD	R	
58	0617	DARK, III	R	M	
58	0617	DEPOYSTER	TERRY	L	
58	0617	DYMOND	MATTHEW	W	
58	0617	EDWARDS	BRUCE	A	
58	0617	HAMILIN	RICHARD	J	
58	0617	HARMON	BRADFORD	H	
58	0617	HOLLIFIELD	DARREN	W	
58	0617	LAUGHRIDGE, JR	JOHN	C	
58	0617	LAWS	DENNIS		
58	0617	MACE	TRAVIS	D	
58	0617	McCARTHY	BRENT	M	
58	0617	MCCARTHY	ROGER	W	
58	0617	MESSER	GARD	D	
58	0617	MILLIGAN	THOMAS	S	
58	0617	MORRIS	JIMMY	W	
58	0617	MORROW, III	JOHN	M	
58	0617	NEAL	JOSEPH	L	
58	0617	NEAL, III	JAMES	E	
58	0617	OWENBY	KEVIN	W	
58	0617	POTEAT	JERRY	W	
58	0617	POTEAT	KENNETH	W	
58	0617	POTEAT	KEVIN	W	
58	0617	PRESNELL, JR	CHARLES	L	
58	0617	RADFORD	SCOTTY	W	
58	0617	REESE	JOHN	E	
58	0617	SMITH, III	WILLIAM	R	
58	0617	TAYLOR	CAMERON	K	
58	0617	TONEY	CHAD	D	

A copy of this report can be found on file at the Marion Fire Department.

TREE COMMITTEE REQUESTS- (1) MARION BYPASS/SUGAR HILL ROAD (2) REQUEST GRANT FUNDS FOR WALKING TRAIL: This item was held until the next Regular City Council Meeting.

1999-2000 BUDGET ORDINANCE – FOURTH AMENDMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adopt the following ordinance:

CITY OF MARION, NORTH CAROLINA
1999-2000 BUDGET ORDINANCE
(Fourth Amendment)

BE IT ORDAINED by the City Council for the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 1999-2000 as adopted by the City Council on the 22nd day of June 1999, is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Transfer to Scattered Housing Project, Account Number 10-660-80 is increased from $0 to $9.

b. General Fund Expenditures, Street Department, Maintenance Equipment, Account Number 10-560-16 is increased from $6,500 to $11,500

c. General Fund Expenditures, Street Department, Maintenance Trucks, Account Number 10-560-17 is increased from $6,500 to $9,500.

d. General Fund Expenditures, Street Department, Contracted Services, Account Number 10-560-45 is increased from $44,000 to $49,500.

e. General Fund Expenditures, Street Department, Dues, Subscriptions & Permits, Account Number 10-560-53 is increased from $50 to $55.

f. General Fund Expenditures, Street Department, Miscellaneous Expense, Account Number 10-560-57 is increased from $1,500 to $2,850.

g. General Fund Expenditures, Street Department, Capital Outlay, Account Number 10-560-74 is increased from $104,000 to $115,500.

h. General Fund Revenues, Fund Balance Appropriated, Account Number 10-399-00, is increased from $658,281 to $684,645.

i. General Fund Revenues, County Vehicle Tax Collected, Account Number 10-309-94, is increased from $0 to $112,000.

j. General Fund Revenues, Current Taxes Collected, Account Number 10-309-97, is decreased from $1,268,429 to $1,156,429.

WATER/SEWER FUND

a. Water/Sewer Fund Revenues, Transfer from Habitat Project, Account Number 30-399-01, is increased from $0 to $9.

b. Water/Sewer Fund Revenues, Transfer from Designer Hardwood, Account Number 30-399-02, is increased from $0 to $3,789.

c. Water/Sewer Fund Revenues, Transfer from Prison Project, Account Number 30-399-03, is increased from $0 to $24,284.

d. Water/Sewer Fund Revenues, Sewer Service, Account Number 30-373-00, is decreased from $580,000 to $551,918.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

ADOPTED this the 20th day of June, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-06-20-1

CAPITAL PROJECT BUDGET ORDINANCE – PRISON PROJECT – THIRD AMENDMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those Council members present voted to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
CAPITAL PROJECT BUDGET ORDINANCE
PRISON PROJECT
(EDA PROJECT NO. 04-01-03869)
(Third Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Capital Project Budget Ordinance – Prison Project for the City of Marion, North Carolina as adopted by the Marion City Council on the 27th day of July, 1992 is hereby amended as follows.

EXPENDITURES

Transfer to Water/Sewer Fund is increased from -0- to $24,284.
Contingencies are decreased from $104,834 to $80,784

REVENUES

Interest Earned is increased from $6,191 to $6,425.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 20th day of June, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-06-20-2

CAPITAL PROJECT BUDGET – ORDINANCE – DESIGNER HARDWOODS PROJECT – FIRST AMENDMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
CAPITAL PROJECT BUDGET ORDINANCE
DESIGNER HARDWOODS PROJECT
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Capital Project Budget Ordinance Designer Hardwoods Project for the City of Marion, North Carolina as adopted by the Marion City Council on the 17th day of June, 1997 is hereby amended as follows:

EXPENDITURES

Engineering is increased from $6,550. To $12,496.
Construction is increased from $39,500 to $65,376.
Contingencies are decreased from $3,950 to $3,700.
Transfer to Water/Sewer Fund is increased from - 0 – to $3,789.

REVENUES

Interest earned is increased from - 0 – to $361.
Transfer from Water/Sewer Fund is increased from $12,500 to $47,500.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 20th day of June, 2000.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-06-20-3

CAPITAL PROJECT BUDGET ORDINANCE – HABITAT PROJECT – FIRST AMENDMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
CAPITAL PROJECT BUDGET ORDINANCE
HABITAT PROJECT
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Capital Project Budget Ordinance – Habitat Project for the City of Marion, North Carolina as adopted by the Marion City Council on the 5th day of September, 1995 is hereby amended as follows:

EXPENDITURES

Construction expenditures are increased from $49,480 to $49,490.
Administration expenditures are increased from $4,948 to $4,969.

Transfer to Water/Sewer Fund is increased from - 0 to $9.

REVENUES

Interest earned is increased from - 0 – to $40.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 20th day of June, 2000.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-06-20-4

CAPITAL PROJECT BUDGET ORDINANCE – CDBG SCATTERED HOUSING PROJECT – FIRST AMENDMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
CAPITAL PROJECT BUDGET ORDINANCE
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
SCATTERED HOUSING PROJECT
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Capital Project Budget Ordinance – CDBG Scattered Housing Project for the City of Marion, North Carolina as adopted by the Marion City Council on the 3rd day of December, 1996 is hereby amended as follows:

EXPENDITURES

Construction expenditures are decreased from $420,000 to $382,995.
Administration expenditures are increased from $63,525 to $73,116.
Planning/contingencies are decreased from $3,500 to -0- .

REVENUES

Interest earned is increased from - 0 – to $87.
CDBG Revenue is decreased from $487,025 to $456,015.
Transfer from General Fund is increased from -0- to $9.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 20th day of June, 2000.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-06-20-5

2000-2001 BUDGET ORDINANCE – PUBLIC HEARING: The City Manager opened the Public Hearing.

Their was no citizens present to discuss this Budget Ordinance.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adopt the following Budget Ordinance:

BUDGET ORDINANCE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the City Government and it's activities for the fiscal year beginning July 1, 2000 and ending June 30, 2001 in accordance with the chart of accounts heretofore established by the City:

Administration	$ 348,285
Purchasing and Warehousing	43,159
Inspection	136,553
Police Department	1,058,422
Fire Department	262,016
Public Works Administration	46,845
Fleet Maintenance	40,664
Street Department	689,461
Sanitation	701,190
Recreation	109,500
Cemetery	27,500
Non-Departmental	379,287
TOTAL	**3,842,882**

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2000 and ending June 30, 2001:

Prior Year's Taxes	$ 25,000
Vehicle Tax-Collected by County	120,000
Current Taxes	1,315,359
Inventory Taxes	186,000
Downtown Dev. Mun. Ser. Dist.	0
Tax Penalties & Interest	10,000
Privilege License Sales	18,500
Interest Earned	75,000
Rents and Concessions	15,000
Misc. Revenues	15,000
Utilities Franchise Tax	380,000
Intangibles Tax	35,000
Beer/Wine Revenue	21,000
Sales Tax	780,000
Sales Tax Refund	20,000
ABC Revenues	150,000
ABC Officer Revenues	6,000
Court Costs, Fees & Charges	1,000
Parking Violations	3,000
County Fire Protection	93,000
County Contribution – Recycling	26,400
Cemetery Revenues	3,000

Garbage Fees	75,000
Gas tax Refunds	7,000
Zoning Income - Inspection Fees	10 ,000
Sale of Garbage/Leaf/Recycling Bags	800
Maint. Traffic Control Devices	2,500
Cable TV Revenues	35,000
Sales of Surplus Equipment	8,000
Contribution from W/S Fund	
Law enforcement Grant	55,318
McDowell County Schools	21,947
Fund Balance	329,058
TOTAL	**$ 3,842,882**

Section 3. The following amounts are hereby appropriated in the Power Bill Fund for Street Maintenance, including curb and gutter work, sidewalk work, storm drainage and other expenses relating thereto for the fiscal year beginning July 1, 2000 and ending June 30, 2001:

Professional Services	$ 3,000
Department Supplies	60,000
Contracted Services	314,781
TOTAL	**$ 377,781**

Section 4. It is estimated that the following revenues will be available in the Powell Bill Fund for the fiscal year beginning July 1, 2000 and ending on June 30, 2001:

Interest Earned	$ 3,000
Powell Bill Allocation	178,000
Sales Tax Refund	5,000
Fund Balance - Prior Year	191,781
TOTAL	**$ 377,781**

Section 5. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2000 and ending June 30, 2001:

Reserve for future appropriations:	$ 392,191
TOTAL	**$ 392,191**

Section 6. It is estimated that the following revenues will be available in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2000 and ending June 30, 2001:

Fund Balance Appropriated	325,896
Interest on Investments	16,295
Transfer from General Fund	$ 50,000
TOTAL	**$ 392,191**

Section 7. The following amounts are hereby appropriated in the Water/Sewer Fund for operation of Water and Sewer Utilities for the fiscal year beginning July 1, 2000 and ending on June 30, 2001 in accordance with the accounts heretofore approved for the City:

Utility Line Operations	$ 1,050,038
Water Filter Plant	397,502
Waste Treatment Plant-Contracted	687,175
Non-Departmental	468,471
TOTAL	**$ 2,603,186**

Section 8. It is estimated that the following revenues will be available in the Water/Sewer Fund for the fiscal year beginning July 1, 2000 and ending
June 30, 2001:

Fund Balance	$ 502,186
Interest Earned	25,000
Misc. Income	8,000

Reimbursement – Septic	1,000
Reimbursement – Pretreatment	2,000
Water Sales	720,000
Cut on Fees/Late Penalties	43,500
Sewer Service	530,000
Water Taps	25,000
Sewer Taps	25,000
Tank Truck Charges	1,500
Cost Recovery – water	25,000
Cost Recovery – sewer	25,000
Water Service Charge	450,000
Sewer Service Charge	220,000
TOTAL	**$ 2,603,186**

Section 9. The following amounts are hereby appropriated in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2000 and ending June 30, 2001:

Reserve for future appropriations:	$	102,500
TOTAL	**$**	**102,500**

Section 10. It is estimated that the following revenues will be available in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2000 and ending June 30, 2001:

Fund Balance Appropriated		50,000
Interest on Investments		2,500
Transfer from Water/Sewer	$	50,000
TOTAL	**$**	**102,500**

Section 11. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2000 and ending June 30, 2001:

Inventory (Supplies)	$	100,000
TOTAL	**$**	**100,000**

Section 12. It is estimated that the following revenues will be available in the Internal Service Fund for the fiscal year beginning July 1, 1999 and ending June 30, 2000:

Purchase by Other Funds		90 ,000
Transfer from General Fund	$	5,000
Transfer from W/S Fund		5,000
TOTAL	**$**	**100,000**

Section 13. There is hereby levied a tax at the rate of fifty-five ($.55) per one hundred ($100) valuation of property as listed for taxes as of January 1, 2000 for the purpose of raising the revenue listed as "Current Year Property Taxes" in the General Fund in Section 2 of this Ordinance. These rates are based on estimated total valuation of property for the purpose of taxation of $ 249,120,943 and estimated rate of collection of 96%.

Section 14. The Budget Officer is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

A. He may transfer amounts between objects of expenditure within a department without limitation and without a report being required.

B. He may transfer amounts up to $1,000.00 between departments of the same fund with an official report on such transfers at the next regular meeting of the City Council.

C. He may not transfer any amounts between funds nor from any contingency appropriation within any fund.

Section 15. Copies of the Budget Ordinance shall be furnished to the Finance/Budget Officer of the City to be kept on file for direction in the disbursement of funds.

ADOPTED this the 20th day of June, 2000

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-06-20-6

ORDINANCE – DUMPSTER SOLID WASTE SERVICE: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

CITY OF MARION
NORTH CAROLINA

ORDINANCE
HEALTH AND SANITATION
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Section 9-34. "**Regulation of metal containers for businesses.**" be deleted in its entirety and a new Section 9-34 inserted in lieu thereof to read as follows:

Sec. 9-34. Regulation of metal containers (Dumpsters) for businesses.

(a) Each businesses, commercial establishment, or industry, that generates more than three (3) thirty-five gallon containers of solid waste per week, shall be required to use a metal container (dumpster).

(b) The city will provide an eight (8) cubic yard container (dumpster) for each business requesting solid waste pick-up services by the city. The city shall own and maintain the container (dumpster). The City Council shall set a monthly rental charge for use of each container. In addition, a monthly service fee, based on per container pickup, will be charged each business. The service fee shall be at such rates as may be established from time to time by the city council. Each business must enter a contract with the city or provide for removal of its own solid waste.

(c) It shall be unlawful to pile garbage or trash on or around a container. The lid to each container must remain closed at all times except when trash or garbage is being placed in the container, the container is being cleaned or repaired, or when the container is being emptied. If the establishment is producing more garbage or trash than can be adequately handled by the container the public works director or his designee can require added pickups.

(d) The public works director or his designee shall determine the location or placement of each container.

Section 11. This ordinance will be in full force and effect August 1, 2000.

Adopted this the 20th day of June, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Manager/Clerk City

Ordinance Number: O- 00-06-20-7

ORDINANCE - INDUSTRIAL/COMMERCIAL /GARBAGE/TRASH/RECYCLING COLLECTION FEES: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

CITY OF MARION
NORTH CAROLINA

ORDINANCE
GARBAGE, TRASH AND RECYCLING COLLECTION FEES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the following Garbage, Trash and Recycling Collection fees shall apply to all Industrial, Commercial, and Apartment Complexes as stated below:

PLAN "A" – INDUSTRIAL/COMMERCIAL DUMPSTER (METAL CONTAINER) SERVICE – The City will furnish an eight (8) cubic yard dumpster (metal container) to each customer requesting service. The monthly charge for service is based on the number of pick-ups and shall be as follows:

NUMBER OF PICK-UPS PER WEEK	MONTHLY CHARGE
1	$ 88.00
2	213.00
3	339.00
4	465.00
5	590.00

NUMBER OF PICK-UPS PER MONTH	MONTHLY CHARGE
1	$ 24.00
2	43.00
3	62.00

Each Customer must sign a contract designating the number of pick-ups per week or per month.

PLAN "B" – APARTMENT COMPLEXES – All Apartment Complexes having more than eight (8) apartment units will be required to have a dumpster (metal container). The monthly charge for service is based on the number of pick-ups and shall be as follows:

NUMBER OF PICK-UPS PER WEEK	MONTHLY CHARGE
1 (MINIMUM CHARGE)	$ 5.00
2	49.00
3	92.00
4	135.00
5	179.00

Each Customer must sign a contract designating the number of pick-ups per week or per month.

PLAN "C" – COMMERCIAL CAN SERVICE - $11.00 PER MONTH – MINIMUM CHARGE – Three (3) thirty-five (35) gallon cans to be picked-up one (1) time each week. This service is limited to the number and size of cans and the number of pick-ups.

PLAN "D" – COMMERCIAL RECYCLING SERVICE – Each Commercial Establishment participating will be required to purchase one key at a one time cost of three dollars ($3.00). Two dollars ($2.00) will be refunded if the establishment closes and returns the key. Keys may not be duplicated or shared with other establishments and must be returned to the City if an establishment closes. In addition, Special Blue Bags must be used for recycling aluminum cans and junk mail. The bags are available at City Hall at a cost of two dollars ($2.00) for twenty (20) bags.

ESTABLISHMENTS NOT USING PLAN "A" OR PLAN "C" MUST PAY ELEVEN DOLLARS ($11.00) PER MONTH IN ORDER TO PURCHASE A KEY AND PLACE ITEMS IN THE SPECIAL RECYCLING DUMPSTERS.

ANY CHANGE IN SERVICE REQUIRES A NEW SIGNED CONTRACT.

Section 2. All garbage, trash, and recycling service charges will be billed on the Monthly City Water Bill of the owner or occupant receiving service. Any establishment not receiving a Monthly City Water Bill may be billed separately.

Section 3. These new charges will be billed monthly, beginning with the September 2000 Water Bill for services provided in August 2000.

Section 4. Existing charges established by City Council on May 21, 1996 will remain in effect until July 31, 2000, at which time the new rates will take effect.

Adopted this the 20th day of June, 2000

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-06-20-08

CITY FINANCE OFFICER – RECOMMENDATIONS FROM CITY MANAGER: The City Manager advised that Mr. Robert Parker, Administrative Assistant, had been employed by the City since February 1, 1988. He reminded Council that the City Manager presently serves as City Manager, City Clerk and Finance Officer. He advised that this would be a good time to separate those duties.

The City Manager recommended that Mr. Robert Parker be appointed Finance Officer, in addition to his duties as Administrative Assistant.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to appoint Mr. Robert Parker as Finance Officer/Administrative Assistant with a pay increase in the amount of 5 percent. The 5 percent will be in addition to the 2 ½ percent cost of living adjustment provided all employees.

APPOINT INTERIM CITY MANAGER/CITY CLERK – ADMINISTER OATH: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to appoint J. Earl Daniels as Interim City Manager/City Clerk until a new Manager is employed.

PRELIMINARY ENGINEERING REPORT – INTERSTATE 40 REST AREAS: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to accept the Preliminary Engineering Report and selected Alternate No. 3, as recommended by the Engineer, as the most desirable route. (Note: Alternate No. 3 provides for the extension of a 12 inch diameter (DIP) water line along Sugar Hill Road from Rankin Drive to I-40 and an 8 inch diameter (DIP) (NCDOT service line Parallel to R-O-W) to the Rest Areas.

REQUEST- CITY OWNED PROPERTY – WATER FILTER PLANT – GRANT EASEMENT TO MR. DENNIS WITSON WHO OWNS PROPERTY ADJACENT TO CITY PROPERTY: Mr. Dennis Witson contacted Mayor Clark requesting that the City grant him a road easement to get to the property he owns adjacent to City owned property on Greenlee Road. The road would cross a small triangular piece of property, approximately 1,250 sq. feet, owned by the City.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to grant this easement provided Mr. Wilson pays the City Attorney to prepare the necessary legal documents.

ADVERTISEMENT – CITY MANGER/CITY CLERK POSITION: It was decided to place the following advertisement in the Southern City Paper the N.C. League Letter, the Charlotte Observer Paper, the Asheville Citizen, the Raleigh News & Observer and the Winston Salem Journal:

City Manager – Marion, North Carolina. Pop. 5,112 – The City of Marion is seeking qualified applicants for the position of city manager. The City has an operating budget of approximately $6.8 million, with 80 full-time employees. Graduation from a recognized college or university with a degree in public administration, finance, business administration, or other appropriate degree is required. In addition, applicants must have a minimum of three years experience as a City Manager. The City Manager serves at the pleasure of the Mayor and five (5) City Councilmen elected, on a non-partisan basis, for four (4) year staggered terms. Present Manager

retiring after twenty-seven plus years. Salary will be commensurate with qualifications. Please send resume, references and salary history to: City Manager, P.O. Drawer 700, Marion, NC 28752 by August 31, 2000. The City of Marion is an Equal Opportunity Employer.

DISCUSSION: Councilman Cuthbertson advised that he had several complaints about parking on Claremont Street.

The Marion Police Department will investigate this complaint.

SOLID WASTE DISCUSSION: A discussion was held regarding solid waste.

The City Manager reminded Council that McDowell County had been contributing one half the cost of the residential recycling program since the material collected did not have to be transported by the County and thus avoided transportation costs. Garbage Disposal both picked up and transported the recycling products under contract with the City.

The City is now purchasing a recycling truck and will begin picking up recycling materials at each resident beginning August 1, 2000.

The County Manager has suggested that the County may now discontinue or reduce its contribution to the City for recycling and use the funds to purchase a baler machine for McDowell County, to be used to bale recycling materials.

The City Manager was instructed to send a letter to County Manager Chuck Abernathy advising that the City of Marion will not pay for the baler and will expect the County to contribute to the recycling program at the same rate as the previous year.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening July 18, 2000 at 7:00 p.m. in the City Council Chamber located at 194 North Main Street.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the minute of the June 20, 2000 City Council Meeting.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little,. Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, the McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Loretta Smith, 107 Dogwood Lane, Marion, N.C. 28752; Myles Brooks, RR 4 Box 174 Nebo, N.C. 28761; Mack Harkleroad 400 Rock House Road, Marion, N.C. 28752; David Patnewude 641 Jacktown Road, Marion, N.C. 28752.

NEBO METHODIST CHURCH – REQUEST FOR WATER SERVICE – MILES BROOKS: Mr. Myles Brooks appeared before Council advising that when the City of Marion installed a waterline to the Nebo School, a portion of the line was installed on property owned by the Nebo Methodist Church. He advised that the Department of Transportation only controls the area they maintain for road purposes but the property is actually owned by the Church.

On behalf of the Methodist Church Board of Trustees, Mr. Brooks is requesting that the City of Marion provide, at no cost to the Church, a ¾ inch water connection for the Church and another ¾ inch water connection for their minister's residence. In return, the Church will grant an easement to the City for water lines already installed on their property.

It was decided to refer this matter to the Utility Committee.

TREE COMMITTEE – REQUEST TO FILE GRANT APPLICATION – MS. LORETTA SMITH: Ms. Loretta Smith appeared before Council requesting permission to proceed with plans to request funding through the Urban and Community Forestry Grant Program for a Tree Walk through the City of Marion. This Grant would have to be matched by the City of Marion on a dollar for dollar basis or with in-kind services. Grants are available up to $10,000. The funding would come out of next years budget, and the project would be presented to Council, in detail, prior to applying for the Grant.

The City of Marion Tree Committee is also requesting that City Officials obtain permission from the Department of Transportation to take over maintenance of the intersection at the Marion By-pass and West Henderson.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to approve both requests.

CEMETERY IMPROVEMENT – DISCUSSION: Councilman Owenby informed Council that he, representing the Cemetery Committee, had met with Mr. Warren Hobbs on proposed improvements to Oak Grove Cemetery.

Mr. Hobbs spoke to Council concerning establishing a plan for improvements over several years.

Listed below are several projects Mr. Hobbs is proposing for the Cemetery:

a. Straightening of the Head Stones
b. Removal of unsafe steps, and replacement with quality constructed steps.
c. Make improvements to the entrance from Rutherfordton Road, near the Duke Power Sub-station.
d. Install a storm drain pipe between the Cemetery and the Duke Power Sub-Station.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, Council voted unanimously to allow Mr. Hobbs to pursue choosing a Committee for this project and to return to Council with a master plan and schedule for the proposed improvements.

DISCUSSION – HORSES USED IN HOLIDAY PARADES: Mr. David Patneaude appeared before Council concerning horses in Holiday Parades.

Mr. Patneaude advised that he was president of the McDowell Saddle and Bridle Club.

Council explained about citizen complaints on horse droppings on the streets and private properties in the downtown area.

A discussion followed.

It was agreed to allow horses in Holiday Parades provided arrangements are made for a vehicle to follow the horses and persons to clean up behind the horses. All persons wishing to enter or ride horses in the parades would be required to go through the McDowell Saddle and Briddle Club.

PEACE POLE PLAQUE – COSTS – DISCUSSION: A discussion was held regarding the cost of a plaque for the Peace Pole donated to the City of Marion by the Girl Scouts.

Council directed that the City provide a plaque to be placed on the pole.

The plaque would read as follows:

"PEACE POLE"
Donated to
CITY OF MARION
By
GIRL SCOUT JUNIOR TROOP 118
Rebecca Miller
Ashley Sluder
Brittany Woody
Leaders: Susan Miller and Susan Sluder
2000

TIMBER HARVEST – CONTRACTS: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following contracts:

STATE OF NORTH CAROLINA

TIMBER DEED AND AGREEMENT

COUNTY OF McDOWELL

This timber deed and agreement made this _____ day of _____, 20__, by and between the City of Marion, North Carolina hereinafter called "Grantors", and Powel Industries Inc., hereinafter called "Grantee"

NOW THEREFORE the said Grantors for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to them paid by the said Grantee, the receipt of which is hereby acknowledged, have given, granted, bargained, sold and conveyed, and by these presents do hereby give, grant, bargain, sell and convey unto the Grantee, its assigns and successors, all of the merchantable timber as described in paragraph (f) hereinbelow, located, situate, and being in McDowell County, North Carolina, and located on the lands more particularly described as follows. As set forth in Carolina, and located on the lands more particularly described as follows: As set forth in Deed Book _____ at Page _____ of the McDowell County Registry, a map of which is attached.

THIS AGREEMENT is made expressly subject to and together with the following provisions:

(a) The purchase price for all timber cut pursuant to this Timber Deed shall be $42,578.00 payable upon execution of this Timber Deed And Agreement. In addition to the foregoing, the Grantee shall provide a performance bond in the amount of ten per cent (10%) of the purchase price to insure reasonable compliance with the terms of this Agreement. Upon proper completion of logging operations under the terms of this Agreement the Grantee shall be entitled to a return of said performance bond

(b) The Grantee will be responsible for building logging roads and such skid roads upon the respective lands as are reasonably needed to log the tract and the Grantors shall be responsible for securing the consent of any other person, including adjoining landowners, tenants, and lessees, if such is necessary of the Grantee to have reasonable and adequate access to the timber herein conveyed. If such access is not provided, this document is voidable at the option of the Grantee.

(c) In addition to the timber located on the lands, all of which are described hereinabove, the Grantors covenant with and grant to the Grantee, its assigns and successors, the full right of ingress, egress and regress from the state maintained road to and upon the premises with such employees, contractors, agents and equipment as is necessary to fell, buck, yard, load and remove said timber from the premises.

(d) The Grantee, its assigns and successors, shall have the right to use any and all existing roads on the premises and the Grantee shall construct additional roads and landings across the lands as may be necessary, incidental or convenient for the conduct of the logging operation of the Grantee, its successors and assigns, in connection with the harvesting and removal of said Timber from the lands. Location of said additional roads must be approved by Grantors or agent prior to construction. Grantee shall maintain all existing roads and bridges in the condition in which they are found, normal wear and tear expected

(e) The Grantee hereut shall smooth, grade, water bar and seed all roads at the completion of the harvesting of the said Timber. The performance bond described in paragraph (a) hereinabove may be retained until final inspection by Grantors or agent to assure establishment of an adequate stand of grass to prevent erosion.

(f) The Grantee shall have the right to cut all timber marked at DBH (diameter breast height) and base with blue paint within the area shown in blue on attached sale area map and all timber (clearcut) in area shown in red.

(g) The Grantee shall have eighteen (18) months from the date of execution of this Timber Deed to harvest and remove said Timber from the lands herein described. All Timber remaining on the premises at the expiration of said time shall revert to and revest in the original Grantors, their successors and assigns

(h) The Grantee shall conduct all logging operations in a good, workmanlike manner in accordance with the logging practices of and in conformity with any rules, regulations and statutes of the Federal Government, State of North Carolina and any other administrative agency having jurisdiction of said operations. This includes but is not limited to any environmental regulations, laws, or rulings such as the Best Management Practices of the State of North Carolina. Any expense associated with bringing the logging or road building operations of Grantee or Grantee's contractors into compliance with these regulations, laws or rulings such as the Best Management Practices of the State of North Carolina. Any expense associated with bringing the logging or road building operations of Grantee or Grantee's contractors into compliance with these regulations, laws or rulings is the sole responsibility of the Grantee.

(i) The title of the Grantors must be fee simple marketable title and the lands must be in substantially the same condition upon execution of this instrument as the lands were when inspected by the agent of the Grantee prior to the delivery of this instrument.

(j) The Grantee must remove all tree tops and brush from the running streams and from adjoining landowners. All fences which are damaged by the logging operations of the Grantee must be returned to the condition that they were prior to the damage.

(k) The Grantee shall be responsible for any damage to any adjoining landowner's property actually caused by its employees or agents Grantee further agrees to defend, indemnify and hold harmless the Grantors or their agent for any and all actions, claims, or indemnify and hold harmless the Grantors or their agent for any and all actions, claims, or demands which may arise out of the acts of the Grantee, their employees or agents. Such indemnification shall be against (a) reasonable expenses, including attorney's fee, incurred by Grantors or agent in connection with any threatened, pending, or completed civil, criminal, administrative, investigative, or arbitrative action, suit, or proceeding (and any appeal therein), and (b) reasonable payments made by Grantors or agent in satisfaction of any judgement, money decree, fine, penalty, or settlement for which Grantors or agent may have become liable in any such action, suit, or proceeding. The Grantee agrees to maintain proper and adequate workers' compensation insurance on behalf of its employees and require their independent contractors to maintain adequate liability insurance and workers' compensation insurance

TO HAVE AND TO HOLD the aforesaid Timber, and the rights hereinabove granted unto the Grantee, and its successors and assigns, to their only use and behoof, under the terms of this Timber Deed.

And the Grantors, for themselves, their successors and/or assigns, do hereby covenant with said Grantee, and its successors and assigns, that the Grantors are lawfully seized of said Timber and the lands it exists upon, and the rights and privileges hereinbefore set out in its own right in fee simple and absolutely free and clear of all encumbrances, and have full power and authority to convey the same in the manner aforesaid, which is done by this Timber Deed, and that they will forever warrant and defend the title to the same against the claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, all parties hereunto set their hands and seals.

GRANTORS:

James E. Daniels, City Manager

A. Everette Clark, Mayor

GRANTEE:

Powell Industries Inc.

By:_____

Its:_____

Attest.

****

STATE OF NORTH CAROLINA

TIMBER DEED AND AGREEMENT

COUNTY OF McDOWELL

This timber deed and agreement made this ____ day of _____, 20__, by and between the City of Marion, North Carolina hereinafter called "Grantors", and Powel Industries Inc., hereinafter called "Grantee".

NOW THEREFORE the said Grantors for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to them paid by the said Grantee, the receipt of which is hereby acknowledged, have given, granted, bargained, sold and conveyed, and by these presents do hereby give, grant, bargain, sell and convey unto the Grantee, its assigns and successors, all of the merchantable timber as described in paragraph (f) hereinbelow, located, situate, and being in McDowell County, North Carolina, and located on the lands more particularly described as follows. As set forth in Carolina, and located on the lands more particularly described as follows. As set forth in Deed Book _____ at Page _____ of the McDowell County Registry, a map of which is attached.

THIS AGREEMENT is made expressly subject to and together with the following provisions:

(a) The purchase price for all timber cut pursuant to this Timber Deed shall be $56,500.00 payable upon execution of this Timber Deed And Agreement. In addition to the foregoing, the Grantee shall provide a performance bond in the amount of ten per cent (10%) of the purchase price to insure reasonable compliance with the terms of this Agreement. Upon proper completion of logging operations under the terms of this Agreement the Grantee shall be entitled to a return of said performance bond.

(b) The Grantee will be responsible for building logging roads and such skid roads upon the respective lands as are reasonably needed to log the tract and the Grantors shall be responsible for securing the consent of any other person, including adjoining landowners, tenants, and lessees, if such is necessary for the Grantee to have reasonable and adequate access to the timber herein conveyed. If such access is not provided, this document is voidable at the option of the Grantee.

(c) In addition to the timber located on the lands, all of which are described hereinabove, the Grantors covenant with and grant to the Grantee, its assigns and successors, the full right of ingress, egress and regress from the state maintained road to and upon the premises with such employees, contractors, agents and equipment as is necessary to fell, buck, yard, load and remove said timber from the premises.

(d) The Grantee, its assigns and successors, shall have the right to use any and all existing roads on the premises and the Grantee shall construct additional roads and landings across the lands as may be necessary, incidental or convenient for the conduct of the logging operations of the Grantee, its successors and assigns, in connection with the harvesting and removal of said Timber from the lands. Location of said additional roads must be approved by Grantors or agent prior to construction. Grantee shall maintain all existing roads and bridges in the condition in which they are found, normal wear and tear expected.

(e) The Grantee herein shall smooth, grade, water bar and seed all roads at the completion of the harvesting of the said Timber. The performance bond described in paragraph (a) hereinabove may be retained until final inspection by Grantors or agent to assure establishment of an adequate stand of grass to prevent erosion.

(f) The Grantee shall have the right to cut all timber marked at DBH (diameter breast height) and base with blue paint and all yellow pine within the property boundary. A plat of property is attached.

(g) The Grantee shall have eighteen (18) months from the date of execution of this Timber Deed to harvest and remove said Timber from the lands herein described. All Timber remaining on the premises at the expiration of said time shall revert to and revest in the original Grantors, their successors and assigns.

(h) The Grantee shall conduct all logging operations in a good, workmanlike manner in accordance with the logging practices of and in conformity with any rules, regulations and statutes of the Federal Government, State of North Carolina and any other administrative agency having jurisdiction of said operations. This includes but is not limited to any environmental regulations, laws, or rulings such as the Best Management Practices of the State of North Carolina. Any expense associated with bringing the logging or road building operations of Grantee or Grantee's contractors into compliance with these regulations, laws or rulings is the sole responsibility of the Grantee.

(i) The title of the Grantors must be fee simple marketable title and the lands must be in substantially the same condition upon execution of this instrument as the lands were when inspected by the agent of the Grantee prior to the delivery of this instrument.

(j) The Grantee must remove all tree tops and brush from the running streams and from adjoining landowners. All fences which are damaged by the logging operations of the Grantee must be returned to the condition that they were prior to the damage.

(k) The Grantee shall be responsible for any damage to any adjoining landowner's property actually caused by its employees or agents. Grantee further agrees to defend, indemnify and hold harmless the Grantors or their agent for any and all actions, claims, or demands which may arise out of the acts of the Grantee, their employees or agents. Such indemnification shall be against (a) reasonable expenses, including attorney's fee, incurred by Grantors or agent in connection with any threatened, pending, or completed civil, criminal, administrative, investigative, or arbitrative action, suit, or proceeding (and any appeal thereon), and (b) reasonable payments made by Grantors or agent in satisfaction of any judgement, money decree, fine, penalty, or settlement for which Grantors or agent may have become liable in any such action, suit, or proceeding. The Grantee agrees to maintain proper and adequate workers' compensation insurance on behalf of its employees and require their independent contractors to maintain adequate liability insurance and workers' compensation insurance.

TO HAVE AND TO HOLD the aforesaid Timber, and the rights hereinabove granted unto the Grantee, and its successors and assigns, to their only use and behoof, under the terms of this Timber Deed.

And the Grantors, for themselves, their successors and/or assigns, do hereby covenant with said Grantee, and its successors and assigns, that the Grantors are lawfully seized of said Timber and the lands it exists upon, and the rights and privileges hereinbefore set out in its own right in fee simple and absolutely free and clear of all encumbrances, and have full power and authority to convey the same in the manner aforesaid, which is done by this Timber Deed, and that they will forever warrant and defend the title to the same against the claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, all parties hereunto set their hands and seals.

GRANTORS:

James F. Daniels, City Manager

A Everette Clark, Mayor

GRANTEE: Powell Industries Inc.

By:_____

Attest: Its:_____

ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION

An Ordinance Regulating

SEXUALLY ORIENTED BUSINESSES

An Ordinance setting forth the regulatory and licensing requirements for sexually oriented businesses located within the corporate limits of the City of Marion

SECTION 1. PURPOSE.

The purpose of this Ordinance shall be to set forth the regulatory and licensing requirements for adult establishments located within the City of Marion. Adult establishments, because of their very nature, are recognized as having serious objectionable operational characteristics. Studies and experiences that are relevant to North Carolina have shown that lower property values and increased crime rates tend to accompany and are brought about by adult establishments. The City Council finds that regulation of these uses is necessary to ensure that these adverse secondary effects do not contribute to the blighting of surrounding neighborhoods and to regulate acts, omissions or conditions detrimental to the health, safety or welfare and the peace and dignity of the City. Regulation to achieve these purposes can be accomplished by the procedures set forth hereinafter.

The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually, oriented entertainment to their intended market. This Ordinance represents a balancing of the legitimate ends of the community by imposing an incidental, content neutral place, time and manner regulation of sexually oriented businesses, without limiting alternative avenues of communication and at the same time, requiring the business to carry its share of financing administrative and enforcement activities.

SECTION 2. DEFINITIONS.

The following words, terms and phases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult bookstore means a bookstore:

(1) Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, which are

distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section or other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium)

(2) Having as a preponderance (Either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications, including books, greeting cards, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium, which are distinguished or characterized by their emphasis on matter depicting describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section.

Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment that on a regular, sporadic, or transient basis features:

(a) Persons who appear in a state of nudity or semi-nudity; or
(b) Live performances that are characterized by the exposure of "specified anatomical areas" or "specified sexual activities", or
(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
(d) Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

Adult establishment means an adult bookstore, adult cabaret, adult motel, adult motion picture theater, adult mini motion picture theater, escort agency, exotic car wash, exotic maid service, nude modeling studios, sexual encounter center or any other sexually oriented business that is similar in nature or intent to any other adult entertainment business as defined in this section .

Adult live entertainment means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified sexual activities or specified anatomical areas, as defined in this section.

Adult live entertainment business means any establishment or business wherein adult live entertainment is shown for observation by patrons. This shall apply whether the entertainment is presented on a regular, sporadic, or transient basis.

Adult Motel means a hotel, motel or similar commercial establishment that:

(a) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or
(b) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
(c) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.

Adult motion picture theater means an enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein. "Adult motion picture Theater" does not include any adult mini motion picture

theater as defined in this section.

Adult mini motion picture theater means an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein.

Employee means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

Enlargement of a Sexually Oriented Business means the increase in floor areas occupied by the business by more than ten (10%) percent, as the floor areas exist on July 18, 2000.

Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person and whose advertisements, promotions, or obvious intent to the public is sexual in nature.

Escort Agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration and whose advertisements, promotions, or obvious intent to the public is sexual in nature.

Entertainer means any person who provides entertainment within or at an adult establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided by that person as an employee or an independent contractor.

Erotic refers to any seductive , titillating , lustful, immodest, indecent, suggestive, passionate, or similar, reference, act , service or deed.

Establishment means and includes any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;
(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
(c) The additions of any sexually oriented business to any other existing sexually oriented business; or
(d) The relocation of any sexually oriented business.

Exotic car wash means a facility that offers a car cleaning or washing service performed by employees that are in a state of nudity or semi nudity.

Exotic maid service means any cleaning service for a residence or business where the employee is in a state of nudity or semi-nudity

Licensed Day-Care Facility means a facility licensed by the state of North Carolina whether situated within the city of not that provides care, training, education, custody, treatments or supervision for children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charge for the services it offers.

Licensee means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

Licensed Group Care Facility means a facility licensed by the state of North Carolina to provide custodial care for physically or mentally challenged individuals regardless of age.

Nude Model Studio means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

Nudity or a State of Nudity means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than fully opaque covering; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance.

Semi-Nude means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, other wearing apparel provided the areola is not exposed in whole or in part.

Sexual Encounter Center means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
(b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

Sexually oriented devices means without limitation any artificial or simulated specified anatomical area or their device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

Specified anatomical areas means:

(1) Less than completely and opaquely covered:

A. Human genitals, pubic region,

B. Buttock or

C. Female breast below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

(1) Human genitals in a state of sexual stimulation or arousal;
(2) Acts of human masturbation, sexual intercourse or sodomy, or
(3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

Sexually oriented business means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities as specified in N.C. G.S. 14-202.10. This term may be used interchangeably with adult establishment.

Transfer of Ownership or Control of a sexually oriented business means and includes any of the following:

(a) The sale, lease, or sublease of the business;
(b) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
(c) The establishment of a trust, gift, or other similar legal device that transfers the ownership of control of the business, except for the transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

City means City of Marion, North Carolina

City Clerk, as used in this ordinance, means chief administrative City official. The City Clerk is responsible for the enforcement of this Ordinance.

SECTION 3. APPLICATION FOR LICENSES.

(A) Business license

(1) It shall be unlawful for any person to operate or maintain an adult establishment in the City unless the owner or operator thereof has obtained an adult establishment license from the City. It shall also be unlawful for any person to operate such business after such license has been revoked or suspended by the City or has expired.

(2) It shall be unlawful for any entertainer to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult establishment within the City.

(3) It shall be prima facie evidence that any adult establishment that fails to have posted, in the manner required by this Ordinance, an adult establishment license, has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer who performs any service or entertainment in an adult establishment in which an adult establishment license is not posted, in the manner required by this Ordinance, had knowledge that such business was not licensed.

(B) Entertainer license It is unlawful for any person to work as an entertainer at an adult

entertainer at an adult establishment after such person's license to do so has been revoked or suspended by the City or has expired.

(C) License classification and fees

(1) The term of all licenses required under this Ordinance shall be for a period of 12 months, commencing on the date of issuance of the license. The application for a license shall be accompanied by payment in full of the fees referred to in this Ordinance and established by the City Council. Payment shall be made by certified or cashier's check or money order. No application shall be considered complete until all such fees are paid.

(2) All license shall be issued for a specific location and/or person and shall be non-refundable and nontransferable.

(3) The license fees shall be as set by the City Council from time to time and be recorded in the City Council Meeting Minutes at which they are set.

SECTION 4. APPLICATION PROCEDURES.

(A) Adult establishment business license. All persons desiring to secure a license to conduct, operate or maintain an adult establishment under the provisions of this Ordinance shall make a verified application to the City Clerk. All applications shall be submitted in the name of the person proposing to conduct, operate or maintain the adult establishment. All applications shall be submitted on a form supplied by the City Clerk and shall require the following information:

(1) The applicant's full name and any aliases or other names by which the applicant is known or which the applicant has used at any time, and the residence addresses for the past two years, the business and home telephone numbers, occupation, date and place of birth, social security number, drivers license number, and a recent photograph of the applicant.

(2) (a) The name of the adult establishment, a description of the adult entertainment to be performed on the licensed premises, the name of the owner of the premises where the adult establishment will be located, the business address and McDowell County parcel identification number on which the business resides.

(b) If the persons identified as the fee owner of the tract of land in item (a) is/are not also the owner of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document evidencing the legally enforceable right of the owners or proposed owners of the adult establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the purpose of the operation of an adult establishment;

(c) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, library, or public park or recreation area within 1,500 feet of the property to be cerfified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

(d) Any of the criteria above shall not be required for a renewal application if the applicant states that the documents previously furnisherf the City Clerk with the original

application or previous renewals thereof remain correct and current.

(3) The names, residence addresses for the past two years, social security numbers and dates of births of all partners, if the applicant is a partnership; and if the applicant is a corporation, the same information for all corporate officers, directors, and individuals having a ten (10%) percent or greater interest in the corporation.

(4) A statement from the applicant, or from each partner, or from each corporate officer, director, or ten percent shareholder that each such person has not been convicted of, released from confinement for conviction of, or diverted from prosecution on:

a. A felony criminal act within five years immediately preceding the application, or

b. A misdemeanor criminal act within two years immediately preceding the application.

Where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of North Carolina or any other comparable violation of the laws of this state or the laws of any other state.

(5) If the applicant is a corporation, a current certificate of existence issued by the North Carolina Secretary of State.

(6) A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this Ordinance regulating adult establishments.

(7) All applicants shall submit to fingerprinting by the Marion Police Department. The fingerprint cards shall be submitted to the S.B.I. for processing. Returned fingerprint cards and criminal histories shall be kept on file in the Marion Police Department.

(8) A statement signed under oath that the applicant consents to investigation of his/her background by the City to include fingerprinting and that the applicant agrees to furnish within ten days at his/her expense, a criminal history from the clerk of court of any county in which the applicant has resided during the 5 preceding years. Failure to provide the information and documentation required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

(B) Adult entertainer license. All persons desiring to secure a license under the provisions of this Ordinance to be an entertainer shall make a verified application to the City Clerk. All applications shall be made in person to the City Clerk or his designee. All applications shall be submitted on a form supplied by the City Clerk and shall require the following information:

(1) The applicant's full name and any aliases or other names by which the applicant is known or which the applicant has used at any time, and the residence addresses for the past two years, the home telephone number, date and place of birth, social security number, and any stage names or nicknames used in entertaining.

(2) The name and address of the adult establishment where the applicant intends to work as an entertainer.

(3) A statement from the applicant, that the applicant has not been convicted of, released from confinement for conviction of, or diverted from prosecution on:

(a) A felony criminal act within five years immediately preceding the application, or

(b) A misdemeanor criminal act within two years immediately preceding the application, where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of the State of North Carolina or any other comparable violation of the laws of this state or the laws of any other state.

(4) Photographs shall be taken of the applicant by the Marion Police Department. The police department shall have the photographs processed and retain the copies.

(5) All applicants shall submit to fingerprinting by the Marion Police Department. The fingerprint cards shall be submitted to the S.B.I. for processing. Returned fingerprint cards and criminal histories shall be kept on file in the Marion Police Department.

(6) The applicant shall present to the City Clerk for copying documentation that the applicant has attained the age of 21 years at the time the application is submitted. Any of the following shall be accepted as documentation of age:

(a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth.
(b) A state-issued identification card bearing the applicant's photograph and date of birth;
(c) An official and valid passport issued by the United States of America;
(d) An immigration card issued by the United States of America;
(e) Any other form of picture identification issued by a governmental entity that is deemed reliable by the City Clerk; or
(f) Any other form of identification deemed reliable by the City Clerk.

(7) A statement signed under oath that the applicant consents to investigation of his/her background by the City to include fingerprinting and that the applicant agrees to furnish within ten days at his/her expense, a criminal history from the clerk of court of any county in which the applicant has resided during the 5 preceding years. Failure to provide the information required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

(C) Application processing. Upon receipt of a complete application for an adult establishment license or for an entertainer licenses, the City Clerk shall immediately commence investigation of the application as follows:

(1) In the case of an application for a license for an adult establishment, the City Clerk shall:

(a) Transmit a copy of the application to the Code Enforcement Officer, the Board of Adjustment and to the Marion Police Department.
(b) The City Clerk, no later than 15 working days after the receipt of the application, shall determine whether or not a proposed adult establishment complies with the requirements of the zoning ordinance regarding location of the adult establishment, building, fire, health, or similar State or local codes. In the event that the City Clerk fails to make such a determination within the prescribed time period, the City Clerk shall proceed with processing the application.
(c) The Board of Adjustment shall review the application to confirm compliance with the Zoning Ordinance. If the Board confirms compliance then a special exception shall be granted and the findings transmitted to the City Clerk within 20

working days of receipt of the application.
(d) The police department shall report to the City Clerk no later than 20 working days after the receipt of the application by the police department the results of its investigation of the applicant. In the event that the police department fails to report to the City Clerk within this time period, the City Clerk shall proceed with processing the application.
(e) Upon completion of his/her investigation, payment of the applicable license fee, and upon receipt of the report of the Board of Zoning Adjustment and the police department (or upon expiration of the time periods referenced above without receiving a report), the City Clerk shall determine whether or not a license shall be issued. In no event shall the time period for determination by the City Clerk exceed 45 working days from the date the application is received by the City Clerk, unless consented to by the applicant.

(2) In the case of an application for a license for an entertainer, the City Clerk shall:

(a) Transmit a copy of the application to the Marion Police Department.
(b) The police department shall report to the City Clerk no later than 20 working days after receipt of the application the results of its investigation of the applicant. In the event that the police department fails to report to the City Clerk within this time period, the City Clerk shall proceed with processing the application.
(c) Upon completion of his/her investigation, payment of the appropriate license fee, and upon receipt of the report of the police department (or upon expiration of either or both time periods referenced above without receiving a report), the City Clerk shall determine whether or not a license shall be issued. In no event shall the time period for determination by the City Clerk exceed 60 days from the date the application is received by the City Clerk, unless consented to by the applicant.

(D) Reasons for disapproval. The City Clerk shall deny the license application for one or more of the following reasons:

(1) The license application is incomplete so as to not contain all information required by this Ordinance.

(2) The applicant (including any partners, corporate officers, directors, and shareholders where applicable), has been convicted of a crime in the local, state or federal court systems for any violations listed in this section.

(3) The applicant (including any partners, corporate officers and directors, where applicable), has made false or fraudulent statements in the application, evidence of which is disclosed by a City background investigation or by any other lawful means.

(4) The application for an adult establishment does not meet the requirements of this ordinance.

(5) The applicant for a Sexually Oriented Business has not received special exception from the Zoning Board of Adjustment.

(E) Notice of approval or disapproval.

(1) Upon a determination by the City Clerk of the disapproval or approval of the application, the City Clerk shall notify the applicant by personal delivery or certified mail, return receipt requested, to the address of the applicant as shown on the application. In the event that the application is disapproved, the notification shall state the basis for such disapproval.

(2) In the event an application is disapproved, the applicant shall have 30 days from the receipt of the notice of disapproval to appeal that determination to the Superior Court of McDowell County.

(F) Changes to application. All applicants shall notify the City Clerk of any changes to the application within five working days of the date the change occurs.

SECTION 4. PROHIBITED ACTS AND CONDUCT.

(A) No person under the age of 21 years shall be permitted on the premises of any adult establishment.

(B) No person under the age of 21 years shall be granted a license for an adult establishment business or as an entertainer.

(C) No owner, operator, manager, employee or entertainer, nor any customer or patron, shall appear "bottomless" or in a state of nudity while on the premises of the adult establishment.

(D) No owner, operator, manager, employee or entertainer, nor any customer or patron, shall perform any specified sexual activities as defined in this Ordinance, wear or use any device or covering exposed to view which simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities, as defined in this Ordinance, or participate in any act of prostitution while on the premises of the adult establishment.

(E) No owner, operator, manager, employee, entertainer, customer or patron of an adult establishment shall knowingly touch, fondle or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle or caress any specified anatomical area of his or hers, whether such specified anatomical areas are clothed, unclothed, covered or exposed, while on the premises of the adult establishment.

(F) There shall be a minimum separation of 24" between any entertainer or performer and any patron or customer.

(G) No owner ,operator, manager or employee shall mix, dispense, or serve any alcoholic beverage while in a state of nudity or semi-nudity.

(H) No owner, operator, manager or employee shall solicit, receive, or accept nor shall any customer, or patron give, offer, or provide any gratuity, tip, payment or any other form of compensation for entertainment for or while either or both is/are in a state of nudity or semi-nudity. This also pertains to the purchase of an unrelated item that includes a "free" dance, act, or service.

(I) No owner, operator, manager or other person in charge of the premises of an adult entertainment premises shall knowingly allow or permit any person under the age of 21 years of age to be in or upon the premises or knowingly allow or permit a violation of this Ordinance.

Section 6 License; Posting and display.

(A) Every person, corporation or partnership licensed under this Ordinance as an adult establishment shall post such license in a conspicuous place and manner of the adult

establishment premises.

(B) Every person holding a license as an entertainer shall post his or her license in his or her work area on the adult establishment premises so it shall be readily available for the inspection by City authorities responsible for enforcement of this Ordinance.

Section 7 Inspections

All adult establishments shall permit representatives of the Mayor and City Council, the Marion Police Department, the McDowell County Sheriff's Department, and all City or State departments or agencies acting in their official capacity, to inspect the premises as necessary to ensure that the business is complying with all applicable regulations and laws.

Section 8 Suspension of revocation of licenses

(A) The City Clerk shall conduct a hearing to determine whether or not a license should be suspended or revoked, with the hearing conducted within ten working days of his/her knowledge that:

(1) The owner or operator of an adult establishment or the holder of a license as an entertainer has violated, or knowingly allowed or permitted the violation of any of the provisions of this Ordinance; or

(2) There have been recurrent violations of provisions of this Ordinance that have occurred under such circumstances that the owner or operator of an adult establishment knew or should have known that such violations were committed; or

(3) The license was obtained through false statements in the application for such license, or renewal thereof; or

(4) The license has been materially altered or defaced or is being or was used by a person other than the license holder or at a location other than that identified on the license or for a use or type other than that for which the license was issued; or

(5) The licensee failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or

(6) The owner or operator, or any partner, or any corporate officer or director holding an adult establishment license has become disqualified from having a license by a conviction as provided in this Ordinance; or

(7) The holder of an entertainer license has become disqualified from having a license by a conviction as provided in this Ordinance.

(B) At the hearing, the licensee shall have an opportunity to be heard, to present evidence and to be represented by an attorney. Based on the evidence produced at the hearing, the City Clerk shall take, within five working days after the hearing, any of the following actions:

(1) Suspend the license for up to 90 days; or

(2) Revoke the license; or

(3) Place the license holder on administrative probation or a period of up to one year, on the condition that no further violations of this Ordinance occur during the period of probation; or

(4) Take no action

(C) The City Clerk shall provide written notice of his/her decision to the applicant by certified mail, returned receipt requested. The notice shall be sent immediately after the City Clerk determines what action to take, as described above.

(D) In the event of suspension or revocation of the license or the placement on administrative probation, the licensee shall have the right to appeal that determination to the Superior Court of McDowell County within 30 days of receipt of the notice of suspension, revocation or probation.

Section 9 License renewal

(A) A license may be renewed by making application to the City Clerk on application forms provided for that purpose. Any license issued under this Ordinance shall expire as of the end of the 12 month period from the date of its issuance, and renewal applications for such licenses shall be submitted no sooner than 45 days prior to expiration and no later than the city business day immediately preceding the date of expiration of the license.

(B) Upon timely and proper application for renewal and the payment in full of the license fee, the City Clerk shall issue to the applicant a receipt showing the date of the renewal application and granting to the applicant a temporary extension of the license for a period of 45 days or until the application for renewal is approved or disapproved. Any license issued under the provisions of this Ordinance may be renewed by issuance of a new license for an additional 12 month period. All applications for renewal of license shall be processed in the manner provided for the issuance of the initial license.

SECTION 10. Transfer of License

A licensee shall not transfer his/ her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

SECTION 11. Locational Restrictions.

Sexually oriented businesses may be permitted as a conditional use in the following zoning districts: C-1 Central Business District and C-2 General Business District provided that:

(A) The sexually oriented business may not be located or operated within 1,500 feet of:

(1) A church, synagogue, or regular place of worship;

(2) A public or private elementary or secondary school;

(3) A public library;

(4) A public park or playground;

(5) A licensed child-care facility;

(6) A licensed group-home facility,

(7) An entertainment business that is oriented primarily towards children.

(8) Another sexually oriented business.

(B) For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of any use listed in (A) above.

SECTION 12. Non-Conforming Uses.

(A) Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,500 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later-established business is non-conforming.

(B) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after a business license has expired or has been revoked.

SECTION 13. Additional Regulations for Adult Motels.

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this ordinance.

(B) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or sub-rents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(C) For purposes of subsection (B) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

SECTION 14. Additional Regulations for Escort Agencies.

(A) an escort agency shall not employ any person under the age of 21 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 21 years.

SECTION 15. Additional Regulations for Nude Model Studios.

(A) A nude model studio shall not employ any person under the age of 21 years.

(B) A person under the age of 21 years is in violation of this ordinance if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 21 years was in a restroom not open to the public view or visible by any other person.

(C) It is a violation of this ordinance if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio

premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

SECTION 16. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, and Live Performances.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other video reproduction, or live performance that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designed street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus 6 inches. The City Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) the application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City Clerk or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designed, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this

section.

(7) No viewing room may be occupied by more than on person at any time.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 5.0 foot-candle as measured at the floor level.

(9) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow an opening of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other composition board or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under subsections (1) through (14) of this section is in violation of this ordinance if he/she knowingly fails to fulfill that duty.

SECTION 17. Exterior portions of Sexually Oriented Businesses.

(A) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(B) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of the ordinance.

(C) It shall be unlawful for the owner of operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(1) The establishment is a part of a commercial multi-unit center; and

(2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(D) Nothing in this Ordinance shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(E) A violation of any provision of this Section shall constitute a violation of this ordinance.

SECTION 18. Signage.

(A) It shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than as permitted in the Zoning Ordinance for the City of Marion.

(B) Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.

SECTION 19. Massages or Baths Administered by a Person of the Opposite Sex.

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this Section shall constitute a misdemeanor.

SECTION 20. Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00)A.M. and ten o'clock (10:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and twelve o'clock (12:00) P.M. on Sundays.

SECTION 21. Exemptions.

It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school, licensed by the State of North Carolina, a college, junior college, or university supported entirely or partly by taxation;

(2) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

SECTION 22. Notices.

(A) Any notice required or permitted to be given by the City Clerk or any other city office, division, department or other agency under this ordinance to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the City Clerk. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the City Clerk or his designee shall cause it to be posted at the principal entrance to the establishment.

(B) Any notice required or permitted to be given to the City Clerk by any person under this ordinance shall not be deemed given until and unless it is received in the office of the City Clerk.

(C) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the City Clerk in writing of any change of residence or mailing address.

SECTION 23. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid business license or in violation of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

SECTION 24. Severability.

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

SECTION 25. Conflicting Ordinances Repealed.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 26. Effective Date.

This ordinance shall be enforced from and after July 18, 2000.

ADOPTED IN OPEN SESSION THIS THE 18TH DAY OF July, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

Ordinance Number: O-00-07-20-1

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to establish the following annual business license charges:

Adult Establishment Business License - $5,000 per year.
Adult Entertainer License - $1,500 per year.

PROPOSED ANNEXATIONS – DISCUSSION: The City Manager presented Council with a letter from Mr. Woody Harton, advising that the areas planned for annexation along Rutherfordton Road do not qualify based on state requirements. A portion of the area can be annexed under state regulations.

A brief discussion followed.

Council agreed to proceed with plans to annex those areas that qualify.

1999 – 2000 FISCAL YEAR TAX ADJUSTMENTS – CLAUDIA SEVERSON, TAX COLLECTOR: The City Manager presented Council with a memo from Ms. Claudia Severson,

requesting Councils permission to remove adjustments from July 1, 1999 through June 30, 2000, from the tax books.

Adjustments are as follows:

Real Property Total	$ 2,667.60
Person Property Total	1,308.81
Late Listing	163.39
Interest	199.44
Grand Total of Adjustments	$ 4,339.24

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve this request.

A copy of the itemized adjustments can be found on file at City Hall.

P.G. FIRE DEPARTMENT – DISCUSSION - COST RECOVERY CHARGES: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to bill P. G. Fire Department Sewer Cost Recovery Charges in the amount of $820.00 if the Department connects to the City Sewer System

PARKING TICKET – DISCUSSION: The City Manager presented Council with a letter from Mr. Carroll Kanipe asking Council to void a ticket he received on 7-11-00. Mr. Kanipe advised that he parked his car in a loading zone in front of his office at 20A South Main Street to "get his supplies together". Council was advised that the Police Officer reported that the car was parked in the loading zone, that no doors were open, the truck was closed, and he did not see anyone loading or unloading.

A discussion followed.

Council did not act to void the ticket.

REQUEST – INVESTIGATIVE LIEUTENANT DAVID HOGAN/MAYLAND COMMUNTIY COLLEGE: The City Manager presented Council with a memo from Mr. David Hogan of the Marion Police Department advising that the Director of the Mayland Community College Basic Law Enforcement Training program has requested to use the City of Marion's firing range the last week of July 2000. The range they normally use is not available during the time they need a range.

A discussion followed.

Mayor Clark advised that the Firing Range was developed for use by the Marion Police Department because the City had problems scheduling the use of the Firing Range developed by the City and County. McDowell Community College has been authorized the use the Firing Range but had to agree to hold the City harmless from any expenses of what ever kind because of personal injury or any other problem during their use of the property.

It was agreed that the property should only be used by McDowell Community College, under the terms of the agreement, and the City of Marion.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to deny this request. The vote was as follows:

Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Little	Yes
Councilman Martin	Yes

Councilman Owenby No

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously that all requests to use the City of Marion Firing Range must be presented to Council.

MAYOR CLARK COMMENTS: Mayor Clark advised that he would be leaving 7-19-00 for Wichita, Kansas for a Small Cities Council Steering Committee Meeting.

He also advised that a Small Cities Council Steering Committee Meeting is scheduled to be held in Marion on June 21, 22 and 23rd 2001.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITYOF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening August 8, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the minutes of the July 18, 2000 City Council Meeting.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little. Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Councilman Martin arrived for the meeting at 7:30 P.M., during Gary Stainback's report.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tim Beneware, Chief of Police; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, the McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Myles Brooks, Rural Route 4, Box 174 Nebo, N.C. 28761; Gary Stainback, Clemmons, N.C. Dan Barnes, Clemmons, N.C. Butch Justice, Marion, N.C. 28752; Bill Kehler, Marion, N.C. 28752; Hill, Kathy, Anne & Sarah Hill, Marion, N.C. 28752; Alice & Mary Little, 424 South Garden Street, Marion, N.C. 28752; Mrs. Evans, Montevista Avenue, Marion, N.C. 28752.

INTRODUCTION OF NEW POLICE OFFICERS: Chief Benware was present for this meeting with three new Police officers.

Each Officer introduced himself and told their position.

The Officers were James Harkerode, Cory Fox and Chris Marsh.

WASTEWATER PLANTS – REPORT – MR. GARY STEINBACK, HMS: Mr. Gary Stainback, Hydro Management Services Representative, presented Council with an extensive update on the Corpening Creek and Catawba River WWTP's.

Mr. Stainback wanted to reiterate once again that both Waste Water Treatment Plants owned by the City of Marion are operating in 100% Compliance.

CITIZEN OF THE MONTH: Councilman Mike Edwards selected the Citizen of the Month for August.

Councilman Mike Edwards presented the following information about the August Citizen of the Month:

ANNE EVANS

Councilman Mike Edwards advised that Ms. Anne Evans is the daughter of Hill & Cathy Evans. Anne has one younger sister Sarah. She is a member of the First Baptist Church in Marion, where she plays the hand bells and is involved with the youth ministry.

Anne is also an Honor Roll Student, at East Junior High. She has been in band, has been a cheerleader and she's a Certified Junior Life Saver.

Anne is also involved with fast pitch softball.

It hasn't been long ago that Anne's appendix ruptured while she was pitching a game and she finished the game. She spent eighteen days in the hospital.

Anne is a fine example to follow for all youth as well as adults.

Mayor Clark, Council Members and several friends and family members all had kind words to say regarding Anne Hill.

NEBO METHODIST CHURCH – REQUEST FOR TWO FREE WATER CONNECTIONS – IN EXCHANGE FOR WATERLINE EASEMETNS: The City Manager advised that the Utility Committee made the following findings:

1. The waterline installed by the City runs along the edge of the pavement of S.R. 1536, between the pavement and the ditch, and does not cross any usable property of any private property owner.
2. The private properties did not decrease in value because of the waterline being installed but probably increased in value.
3. The City Utility Department does not make a profit but all funds collected are invested back in the systems for development, maintenance and operations.
4. G.S. 1-52 (17) provides that property owners having a claim for damages as a result of City installed utilities have three years to file their claim.

Due to the above findings, to action was taken to provide free water connections as requested.

REQUEST – BOARD OF ELECTIONS – BUTCH JUSTICE: Mr. Butch Justice appeared before Council, on behalf of the Board of Elections, requesting permission to use the City Hall Building or the Marion Fire Department for three weeks beginning October 16, 2000 through November 3, 2000. This would be for the purpose of "No Fault Voting" and would be Tuesday through Saturday, 8 A.M. to 7 P.M. A voting booth would be set up for easy access for the Citizens of McDowell County.

A discussion followed.

It was suggested that the County's ground floor lobby area be used.

No action was taken on this request.

REQUEST – EXTENSION OF WATER LINE – BILL KEHLER: Mr. Bill Kehler appeared before Council requesting the extension of the Nebo water line to serve his convenient store in Nebo.

A discussion followed.

The City Manager and Public Works Director was directed to determine if the water line could be extended under existing City Policy. A report will be presented at the next City Council meeting.

REQUEST FOR STREET CLOSING – PENN. AVENUE – MR. BILL MOORE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

RESOLUTION OF MARION CITY COUNCIL
RELATIVE TO CLOSING A
PROTION OF PENNSYLVANIA AVENUE

BE IT RESOLVED THAT, pursuant to the provisions of North Carolina General Statutes 160A-299, the City Council of Marion, North Carolina, hereby declares its intent to permanently close that unopened portion of Pennsylvania Avenue as show for identification and location purposes only, on a survey of property belonging to Billy Moore as recorded in Deed Book 570, Page 951 in the Office the McDowell County Register of Deeds.

A public hearing is called to be held in the City Council Chamber in the City Hall, Marion, North Carolina at 7:00 O'clock P.M. on Tuesday, September 19, 2000, at which hearing any person may be heard on the question of determining whether or not the closing of said portion of said street would be detrimental of the public interest or the property right of any individual.

BE IT FURTHER RESOLVED that a copy of this Resolution shall be published once a week for four (4) successive weeks in The McDowell News, Marion, North Carolina, prior to the date of said public hearing and that a copy of the same shall be sent by registered or certified mail to Billy Neal Moore, and wife, Anita M. Moore, and Benjamin L. Conley, who are the owners of property adjoining said portion of said street as shown on the McDowell County tax records.

BE IT FURTHER RESOLVED THAT A Notice of the closing and public hearing shall be prominently posted in at least two (2) places along that portion of said street which is to be closed.

ADOPTED at a regular meeting held on August 8, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

Resolution Number: R- 00-08-08-00-1

REQUEST FOR SEWER SERVICE – GLENWOOD ELEMENTARY SCHOOL: The City Manager presented Council with a letter requesting that the City of Marion accept waste water from Glenwood Elementary School following school renovations.

If permission is granted, as part of the new construction, the school would construct a pump station at the edge of school property and then construct a forced main line along 221-A to connect to the City of Marion sewer system.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to accept the wastewater, contingent upon the school paying the total costs, owning and operating the pump station and deeding the sewer line, located on the road right–of-way, to the City.

MAUSOLEUM PLAQUES – RECOMMENDATIONS: The City Manager advised that when vaults are sold in the Mausoleum, the price paid includes the bronze plaque.

He advised that it might be twenty or more years before the plaque is actually ordered. At that time, the cost for a plaque alone may be nearly as great as the price paid for the vault.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to accept the City Manager's recommendation that the price of the plaque not be included in the price charged for the vault beginning January 1, 2001. The City will still furnish and install the bronze plaque, but the applicant will pay the City the actual costs.

All persons now owning an unoccupied vault in the mausoleum, will be issued a letter stating that they are entitled to a plaque, without charge, upon presentation of the letter to the City Clerk.

The City Clerk will collect the letters and destroy them when the plaque is ordered.

The deed for the vaults will need to be amended to reflect that the City will furnish the plaque "at Cost" to the individual making the request at the time needed.

POLICE DOOR CHECKS – COMMERCIAL ESTABLISHMENTS: The City Manager presented Council with a memo he had given Chief Beneware advising that it had been suggested that cards be printed and used by Officers while checking doors of Commercial establishments, after business hours.

A discussion followed.

Cards have been made, and will be left in various establishments, at various times, on various days.

REQUEST STOP SIGN – DOGWOOD LANE AND LONON AVENUE – TRAFFIC ORDINANCE: The Director of Public Works advised that there is some concern when traveling from Yancey Road on Dogwood Lane, that once you reach the Lonon Avenue intersection, traveling in a western direction, there should be a stop sign placed on Dogwood Lane.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION
NORTH CAROLINA

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows.

Section 2. Section 18-141 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
DOGWOOD LANE	STOP SIGN	AT LONON AVENUE, HEADING IN A WESTERLY DIRECTION

Adopted this the 8th day of AUGUST, 2000.

A. Evelette Clark, Mayor

ATTEST.

J. Earl Daniels, City Manager/Clerk

Ordinance Number: O-00-08-08-1

RURAL CENTER – GRANT – WATER/SEWER SERVICE – SUGAR HILL ROAD: The City Manager advised that he had received the following information from Mr. Billy Ray Hall with the Rural Center advising that the Rural Economic Development Center, Inc. has awarded a Supplemental Grant in the mount of $200,000.00 to the City of Marion.

The purpose of these funds is to assist qualified local governments with the construction of critically needed water and wastewater projects.

PRELIMINARY PROJECT COST ESTIMATE
JULY 15, 1999

McDOWELL FAMILY MEDICENE
WATER AND SEWER LINE EXTENSIONS
CITY OF MARION

SEWER LINE EXTESNION – SUGAR HILL ROAD AND RANKIN DRIVE

8-inch sewer line (normal depth) – 2230 LF @ $40/LF	$89,200
8-inch sewer line (excessive depth) – 1100 LF @ $50/LF	55,000
Sanitary manholes – 16 each @ $1,800 ea.	28,800
Bore and Jack across Sugar Hill Road – 70 LF @ $100./LF	7,000
Asphalt Road Repairs (one half of Rankin Drive)	50,000
Contractor Mobilization	7,000
SUB TOTAL	$237,000
10% Construction Contingency	23,700
TOTAL CONSTRUCTION COST	$260,700
"Soft Costs"	26,100
TOTAL COST-SEWER	**$286,800**

WATERLINE EXTENSION – FROM RANKIN DRIVE TO MEDICAL CENTER

12-inch water line – 2050 LF @ $50/LF	$102,500
Bore and Jacks – 60 LF @ $100?LF	6,000
Fire Hydrants – 2 @ $2,000 each	4,000
Minor Asphalt Repairs – 100LF @ $30/LF	3,000
SUB TOTAL	**$115,500**
10 % Construction Contingency	11,600
TOTAL CONSTRUCTION COST	**$127,100**
"Soft Costs"	12,700
TOTAL COST – WATER	**$139,800**
TOTAL PROJECT COST	**$426,600**

APPOINT COUNCILMAN TO MCDOWELL COUNTY PARTNERSHIP FOR CHILDREN: The City Manager presented Council with a letter from Rhonda McFadden,

Nominating Committees Chairman for McDowell County Partnership for Children and Families, Inc.

Ms. McFadden advised that Mr. Billy Martin served on the Board for the past three years and that his term expires August 2000.

It was agreed to hold this appointment until the August 22, 2000 City Council Meeting.

REQUEST – CITY EMPLOYEE - ACCOUNTING CLASS – McDOWELL TECH – The City Manager presented Council with a memo from Ms. Ann Searcy, Bookkeeper for the City of Marion. Ms. Searcy advises that Accounting Classes are being offered at McDowell Tech, tuition is $115.00 and the text book is $100.20. Ms. Searcy wishes to take the classes on her own time if the City of Marion will cover the costs for books and tuition.

A brief discussion followed.

The City Manager recommended approval.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the request and pay the $215.20 for books and tuition.

DISCUSSION – WALKING TRACK – EAST JUNIOR HIGH: A discussion was held regarding the walking track at East Junior High. Several Council members had received complaints about vagrants utilizing buildings on these properties.

Chief Beneware advised that this incident was reported and taken care of by Officers.

Several Councilmen advised that they felt the Citizen's who called this in, should have been notified of the outcome.

ADJOURNMENT : Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITYOF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening August 22, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the minutes of the August 8, 2000 City Council Meeting.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little. Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards was not present for this meeting due to attending a conference out of town.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tim Beneware, Chief of Police; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, the McDowell News: Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: There were no guests present for this meeting.

REQUEST-REIMBURSEMENT-SEWER CHARGES-UTILITY DEPARTMENT: The City Manager advised that the nature of this request has changed.

Initial findings of City personnel called to 241 McDowell Avenue to investigate a sewer blockage found that the sewer line from the residence was connected to a private septic system on the property, and not to the City's sewer line. Ms. Mary Owens had been paying for water and sewer service at this residence for approximately eighteen years.

At this point, property owner Mr. Clay Henline paid to the City of Marion, $2,020.00 for a sewer tap to connect the residence to the City Sewer System.

After further discussions with the property owner, Mr. Clay Henline, and additional investigation by City Sewer personnel at the residence, it was determined that this residence was indeed served by City sewer and had been the period of time Ms. Owens had lived there.

Mr. Henline had a problem with a sewer blockage and not realizing the residence was on the City Sewer System, ran a replacement line to an existing, but abandoned, septic tank.

It is recommended that Mr. Clay Henline be refunded $2,020.00 paid for a new sewer tap which is not needed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to refund Mr. Henline $2,020.00.

REQUEST BY McDOWELL COUNTY FOR CITY PERSONEL TO MOW ROADWAY LEADING TO ANTENNAS ON GRANTS MOUNTAIN: The City Manager advised that County Officials are requesting that City Personnel mow the Roadway leading to Antennas on Grants Mountain.

Director of Public Works Glen Sherlin, advised that it would cost the City approximately $250.00 per mowing.

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to approve the request and to invoice McDowell County $250.00 per mowing.

REQUEST-R-O-W MOWING–HIGHWAY 70 WEST-MAYOR CLARK: Mayor Clark advised that the shoulder of the road leading into the City of Marion on Highway 70 West is unsightly and in need of mowing. Mayor Clark ask if City Personnel could mow this area.

A brief discussion followed.

This section of Highway 70 is not inside the City Limits. The Director of Public Works, Glen Sherlin will check with the Department of Transportation about adding that section to the State Highways rights-of-ways mowed by the City.

REQUEST-CITY TO WAIVE $15.00 SIGN PERMIT-McDOWELL COUNTY DEPARTMENT OF SOCIAL SERVICES: The City Manager presented Council with a letter from Ms. Pat Burnette, Auction Coordinator for the Department of Social Services advising that they will be holding their annual auction for the Foster Children's Fund on October 14, 2000.

The sign permit for the Auction is $15.00. Ms. Burnette is requesting that Council waive the sign permit fee.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to waive the $15.00 fee.

REQUEST-PERMISSION TO DISPLAY PERSONAL ITEMS ON THE WALL OF THE COMMUNITY BUILDING: Mayor Clark presented Council with a beautiful framed memorial honoring Mr. Pat Davis. The following is inscribed on the memorial along with other memorabilia:

Pat Davis
March 10, 1911 – May 13, 2000
An Outstanding Rotarian
And A Great Community Leader

Mayor Clark was approached by a member of the Rotary Club and asked permission to display this in the City of Marion's Community Building.

There was some concern that the display might be broken or removed from the Building. There was also a concern that this would set a precedence which may prompt other organizations wanting to recognize there leaders in a similar manner.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to decline displaying this beautiful memorial.

The City Manager was instructed to send a letter explaining that the City of Marion could not be responsible for this type of display in the Community Building, due to the facility being used by the public.

Council suggested that the Memorial only be displayed on an easel during Rotary Club meetings.

REQUEST-SPENCERS HARDWARE-HUNTERS NIGHT OUT: The City Manger advised that he received a phone call from Ms. Nancy Spencer advising that she is sponsoring a

Hunters Night Out at Spencer's Hardware Store on September 1, 2000 from 6:00 P.M. until 9:00 P.M. The function will consist of expert archery demonstrations, firing of black powder guns and B.B. Guns, all of which are against City Ordinances inside the City Limits, unless approved by Council.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to approve the request allowing the demonstrations.

The vote was as follows:

Cuthbertson	Yes
Little	Yes
Martin	Yes
Owenby	No

DISCUSSION – WWTP'S SLUDGE DISPOSAL: The City Manager advised Council that the City's Surface Disposal Permit had expired and it was time to make some decisions on future sludge disposal. He informed Council that the State is really encouraging the discontinuance of sludge landfills. New Regulations will require liners be placed in pits and the leachate pumped out and treated in a wastewater treatment plant. In addition, test wells and methane gas monitors are required. The City had a Lime Stabilization/Pasteurization unit installed at the Corpening Creek Wastewater Treatment Plant to produce Class A biosolids, which could be used as a Soil conditioner, in order to discontinue use of the landfill. The City Manager advised that he was working with Ms. Caroline Edwards, (Earthwise Designs) a Licensed Soil Scientist, Certified Land Application of Residuals Operator and Certified Forest Stewardship Contractor, on marketing the Class A biosolids. Council was advised that it would be necessary to have a more efficient filter press system installed at the Corpening Creek Wastewater Treatment Plant. The City Manager recommended that the City pursue distribution of Class A biosolids as the primary method for sludge disposal and Land application as an alternative. He suggested that the City request an extension of its existing Surface Disposal Permit rather than requesting a new permit. Council agreed with the recommendations and authorized the City Manager to proceed.

DISCUSSION – NEBO WATER LINE: A discussion was held regarding the cost of extending the Nebo Water Line.

A discussion followed.

Councilman Little Called Question.

It was decided to refer this matter to the Utility Committee for further discussion. The Utility Committee is scheduled to meet August 31, 2000 at 8:30 A.M.

MAYOR CLARK COMMENTS:

DEPOT: Mayor Clark advised that according to the Monday, August 21, 2000 McDowell News Paper, the N.C. Department of transportation has designated state money to help pay for the renovation and upgrade of both the Marion and Old Fort depots as part of the passenger rail service project of western North Carolina.

CDBG FUNDS: Mayor Clark advised that the City of Marion has been awarded a $198,000., Preliminary Community Development Block Grant (CDBG) for a affordable rental housing, in the West Marion area.

Mayor Clark made mention that it was a shame that the state is contributing money for water and sewer for new housing when the Stumptown area could not get adequate funding.

OAKGROVE CEMETERY: Mayor Clark advised that Mr. Warren Hobbs has spoken with a company who restores old headstones. Mr. Hobbs is in the process of getting an estimate to restore the headstones in the Oak Grove Cemetery.

TIME CAPSULE: Mayor Clark also advised that he would like to see the Time Capsule that Council has previously discussed before the end of the year.

UNITED WAY REQUEST: Mayor Clark advised that City Employee Ann Searcy is assisting the United Way this year with City Employee Contributions. Ms. Searcy is requesting Councils blessing on holding a drawing, (winner to receive a door prize, at no cost to City or from United Way Funds) for all City Employees who contribute to United Way.

A discussion followed.

Council requested that they be informed of what the actual door prize for the drawing will be, before they approve the request.

CITY MANAGER RETIRMENT DINNER: A discussion was held regarding holding a retirement dinner for the City Manager.

It was agreed to hold the function at the Community Building on Saturday, January 13, 2001.

COUNCILMAN MARTIN COMMENTS: Councilman Martin advised that City Council still needs to appoint one person to serve on the McDowell County Partnership for Children & Families Board of Directors, and that it did not have to be a member of City Council.

This item will be placed on the September 5, 2000 Agenda.

CALIFORNIA AVENUE - Councilman Martin advised that he had received a call regarding when the sidewalks on California Avenue will be started. Director of Public Works Glen Sherlin advised that the sidewalks are on the list of projects to be completed, however it has not been prioritized at this time.

A discussion followed.

Mr. Sherlin was instructed to present Council with estimated costs at the next meeting to cover this project.

COUNCILMAN CUTHBERTSON COMMENTS: Councilman Cuthbertson advised that he had received compliments regarding City Employees while they were making repairs on a water line recently on Cresent Drive.

COMPLAINT - GRASS CLIPPINGS: Councilman Cuthbertson advised that he has received complaints regarding persons contracted by the City of Marion disposing of grass clippings behind the Buick Place.
Director of Public Works advised that he had cautioned them before. He will discuss the matter with them again.

NOISE ORDINANCE: Councilman Cuthbertson also advised that he had received complaints about loud music on Morgan Terrace.

Police Chief advised that he personally had taken care of this complaint.

COUNCILMAN OWENBY COMMENTS: Councilman Owenby advised that he had received a complaint from the Morehead area advising that the City said they would install sidewalks in this area within a year.

A discussion followed.

New Sidewalks are generally installed by petition, and there is no time limit on replacing existing sidewalks within the City of Marion.

CLOSED SESSION: Upon a motion by Councilman Martin, seconded by Councilman Little, those members of Council present voted to go into closed session in accordance with N. C. General Statute 143-318 (A) (5): Discussing the Acquisition of Real Estate.

No action was taken in Closed Session.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Little, those Members of Council present voted to go back into Regular Session.

ADJOURNMENT : Upon a motion by Councilman Martin, Seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

The September 5, 2000 Minutes were inadvertently left out of minute book. Minutes can be found beginning on page 102. DWS

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening September 19, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, Interim City Manager; Debi Sherlin, Secretary; Tim Beneware, Chief of Police; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Patti Batsel, Rt. 4, Box 870, Nebo; Gary Hart Rt. 4 Box 870, Nebo; Betty Prebor, P.O. Box 158, Nebo; Michael Lavender, MTCC 54 Universal Drive; Eleanor Linscott, 24G Carefree Drive, Nebo; Jeffrey Linscott, 24 G Carefree Drive, Nebo; Ken Harris, Rt. 4, B514, Marion; Police Officers – Janie Schutz, Mike Fox, Mike Hensley, and Jason Gardner; Jenny Phillips, 712 7th Street; Susan McElfresh, 153 Logan Street; John McDenner, Asheville: Mark Cauthen, 34 Martin Street; and Rick Maas, 15 Rockview, Barnardsville.

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the minutes of the September 5, 2000 City Council Meeting.

INTRODUCTION OF POLICE OFFICERS: Police Chief Benware introduced to Council Sgt. Janie Shutz, and Corporals Mike Fox, Mike Hensley and Jason Gardner. He advised that these officers had recently been promoted. Each of the officers, in turn, briefed Council on their education and service with the Department. Individual Council members expressed their appreciation to the officers for services rendered to city residents.

BONDS: Michael Lavender, Director of External Relations at McDowell Technical Community College provided Council with information about the upcoming bond referendum, with includes community colleges and the university system. He made a presentation and provided handouts on the benefits to McDowell Technical Community College.

PROCLAMATION – CONSTITUTION WEEK: The City Manager informed Council that Ms. Beth Silvers was supposed to be at the meeting to present the Proclamation but that she was unable to attend and asked that the Manager read a prepared statement.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following Proclamation:

PROCLAMATION
CITY OF MARION
NORTH CAROLINA

CONSTITUTION WEEK
SEPTEMBER 17-23, 2000

WHEREAS: September 17, 2000 marks the two hundred thirteenth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS: It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion, and

WHEREAS: Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17, 2000 through September 23, 2000 as Constitution Week,

NOW, THEREFORE I, A. Everette Clark, by virtue of the authority vested in me as Mayor of the City of Marion in North Carolina do hereby proclaim the week of September 17, 2000 through September 23, 2000 as

CONSTITUTION WEEK

and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Marion to be affixed this 19th day of September of the year of our Lord two thousand.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

P-00-09-19-01

CITIZEN COMPLAINT – PARKING TICKET: Ms. Betty Sue Prebor informed Council that she received a Parking Ticket for parking longer than two hours in front of the Library. She advised that the time marked on the ticket and the time on a receipt she received from a local grocery store makes it impossible for her to have been parking in the space two hours. The City Manager asked Ms. Prebor if her car was parked over two hours in the space. She advised that it was not. Upon a motion by Councilman Little, seconded by Councilman Edwards, the City Council voted to rescind the parking ticket.

CIVIL CITATION – BARKING DOG: The City Manager informed Council that Ms. Susan McElfresh of 153 Logan Street received a warning citation for a barking dog on November 30, 1999, and a civil citation for $50.00 on January 1, 2000. She did not receive any other warnings or citations until August 27, 2000 when she received a $100.00 civil citation. He advised that she stated that she was not at home to bring the dog in the house on the night in question and that she does not question the fact that the dog was barking and disturbed the community. Ms. McElfresh is asking that she be refunded the $100.00 Civil Penalty since the dog has been moved and will not be returned. Councilman Edwards informed Council that he had received a lot of complaints from neighbors about the barking dog but if the dog is gone then the problem is solved. Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to refund the $100.00 civil penalty paid by Ms. McElfresh.

CIVIL CITATION – DOG AT LARGE: The City Manager advised that Mr. Terry Randolph of 712 7th Street was issued a warning on August 8, 2000 for his dog being at large in violation of City Ordinances. He was then issued a civil citation with a $50.00 penalty on September 15, 2000. Ms. Jenny Phillips appeared before Council on behalf of Mr. Randolph. She informed Council that the dog had been put to sleep and asked that the $50.00 penalty be refunded. Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to refund the $50.00 penalty.

PLEASANT GARDENS SEWER PROJECT: Mr. Gary Hart, Mr. Jeff Linscott and others appeared before Council to express their opposition to wastewater from the Pleasant Gardens Community, particularly any industrial waste, being discharged to the Catawba River Wastewater Treatment Plant. They suggested additional grant funds be applied for to make any needed improvements at the Corpening Creek Wastewater Treatment Plant and that effluent from that plant be piped to Muddy Creek.

In addition, the wastewater from Pleasant Gardens be pumped to the Corpening Creek Wastewater Treatment Plant in order to protect Lake James from any spills, overflows, plant failures, etc. Mr. Hart presented written information to each Councilman. Professor Rick Maas of UNCA provided information and spoke on the effect of dissolved oxyen and wastewater discharges to the Lake. Mayor Clark informed the group that the city would not accept wastewater that could not be treated by the Catawba River Plant or volumes of wastewater that would be in violation of the NPDES Permit. He advised that the city has a wastewater pretreatment program that is strictly enforced and that the Catawba River Wastewater Treatment Plant was installed to protect the environment. He advised that he knew of no permit violations at the Catawba River Plant in the past five years. Following a lengthy discussion, the matter was referred to the Utility Committee for review and recommendations.

PUBLIC HEARING-ORDINANCE-STREET CLOSING-PORTION OF PENNSYLVANIA AVENUE: The City Manager opened the Public Hearing. No one was present regarding the proposed street closing. The Public Hearing was closed. Council discussed the matter and asked that a survey be provided for their review prior to formal action being taken. A survey will be presented at the next meeting.

PLANNING BOARD- APPOINT ONE MEMBER: Upon a motion by Councilman Little, seconded by Councilman Owenby, City Council unanimously voted to appoint Mr. Gary Walker to complete the unexpired term of Mr. Fred Moody, said term to expire on January 31, 2001.

NCLM 2000 ANNUAL BUSINESS MEETING-APPOINT VOTING DELEGATE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, City Council unanimously voted to appoint Mayor A. Everette Clark as voting delegate for the City of Marion.

PROCLAMATION – UNDOING RACISM DAY: Upon a motion by Councilman Little, seconded by Councilman Martin, City Council voted unanimously to approve the following proclamation:

CITY OF MARION
NORTH CAROLINA
PROCLAMATION

UNDOING RACISM DAY

Whereas, by Act of Congress of the United States dated July 2, 1964, the Civil Rights Act of 1964 was adopted banning discrimination because of a person's color, race, national origin, religion, or sex; and

Whereas, by Act of Congress of the United States dated December 6, 1865, the 13th Amendment of the Constitution of the United States was adopted abolishing slavery; and

Whereas, by Act of Congress of the United States dated July 9, 1868, the 14th Amendment of the Constitution of the United States was adopted giving all persons born or naturalized in the United States the right to due process and equal protection under the law; and

Whereas, by resolution of the National League of Cities, we declare racism unjust and advocate equal rights for all;

Now, Therefore, I A. Everette Clark, Mayor of the City of Marion, on behalf of the entire City Council, do hereby proclaim September 20, 2000 as "Undoing Racism Day" in the City of Marion and urge all citizens to join together today for the first annual

Undoing Racism Day

to affirm our commitment to ensure equality and freedom for all the people regardless of race, religion, sexual preference, or gender.

Signed this the 19th day of September, 2000:

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

P-00-09-19-02

SELECT ENGINEERING FIRM-SUGAR HILL WATER/SEWER PROJECT: The City Manager informed Council that McGill Associates prepared the preliminary engineering report for the application for funding from The Rural Center. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, City Council unanimously voted to select McGill Associates to do the necessary engineering work for the Water/Sewer Line(s) Extension Project to serve the area generally from Rankin Drive to Shady Lane along Sugar Hill Road.

AEGIS REALTY-GARBAGE REFUND: The City Manager presented a Memorandum from Claudia Severson, Tax Collector, requesting a refund in the amount of $156.00 for Aegis Realty for garbage service not provided by the City of Marion the week of July 24, 2000.

The August 1, 2000 bill of $751.41 paid by Aegis Realty was for garbage service for the full month of July 2000. Aegis Realty now has a contract with GDS. Upon a motion by Councilman Little, seconded by Councilman Owenby, City Council voted unanimously to refund $156.00 to Aegis Realty.

CITY EMPLOYEE – BLOOD DONATIONS: Councilman Owenby advised that a city employee had asked him if the City would allow employees to donate blood during working hours without docking their pay. A discussion followed. Council agreed to allow employees to donate blood, at locations inside the city, during regular working hours, without loss of pay, up to a maximum of two hours.

CLOSED SESSION – PERSONNEL & REAL ESTATE: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to go into Closed Session to discuss the possible acquisition of real estate under N.C. General Statute 143-318 (A) (5) and a personnel matter under N.C. General Statute 143-318.11 (a) (6).

Upon motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to go back into Regular Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening September 5, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the minutes of the August 22, 2000 City Council Meeting and the August 22, 2000 Closed Session Minutes.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tim Beneware, Chief of Police; Van McKinney, News Reporter, WBRM Radio; Nathan Mace, News Reporter, The McDowell News.

GUESTS PRESENT: Bonnie Goldsmith, Marion, N.C. 28752; Pansy Owenby, Marion, N.C. 28752; and Damon Birdsong, City Employee.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN BILLY MARTIN:
Councilman Billy Martin selected the Citizen of the Month for September.

Councilman Martin presented the following information about September's Citizen of the Month:

BONNIE GOLDSMITH

Ms. Goldsmith was born and raised in Marion. She was married to Mr. George Goldsmith for fifty-six years. Mr. Goldsmith passed away on June 16th of this year.

They had one daughter Jane and one grandson Chris who attends N.C. State.

Ms. Goldsmith has worked for Laughridge Furniture Store for forty seven years as Bookkeeper.

Ms. Goldsmith is also talented in the field of Needle Point and has taught needle point at McDowell Tech.

She has been involved with Meals on Wheels to home bound Senior Citizens, served on the Planning Committee of Mountain Glory and been involved in many other projects.

Councilman Martin stated that Ms. Goldsmith is a special lady with Class.

Mayor Clark, Council Members, including Mr. Owenby who is Ms. Goldsmith's brother, all had kinds words about Ms. Goldsmith.

RECOGNITION OF CITY EMPLOYEE: The City Manager advised that Mr. Damon Birdsong was selected as "Best City Employee" by readers of the McDowell News in the August 31st Special Edition of the paper.

Mayor Clark and Council congratulated Mr. Birdsong on being selected.

CITIZEN REQUEST FOR COUNCIL TO WAIVE $5.00 LATE PENALTY ON WATER/SEWER BILL: The City Manager advised that Mr. Bobby Gurley was charged a

$5.00 late penalty because his Water/Sewer Bill was not paid on time. Mr. Gurley stated that he had not received his notice in the mail and would like Council to waive the $5.00 late fee.

A brief discussion followed.

It was noted that printed in "RED" on the back of each bill is the City's policy regarding late fees and cut off procedures. Included in that Notice is the statement: "Failure to receive a bill does not alter these rules."

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to deny this request.

REQUEST FOR REIMBURSEMENT FOR $5.00 PARKING TICKET: The City Manager advised that Mr. Don Ramsey, Clerk of Court, had contacted him by phone advising that an individual serving as juror had received a parking ticket. Mr. Ramsey paid the parking ticket for the juror and is requesting that the city reimburse him.

Mr. Ramsey reported that the juror informed him that Juror Parking Lot had no vacant spaces so he had to park elsewhere.
A discussion followed.

A motion was made by Councilman Edwards, seconded by Councilman Martin to reimburse the $5.00 to Mr. Ramsey due to the circumstances.

The motion failed.

Councilmen Cuthbertson, Little and Owenby voted against this motion.

Several Council Members, Mayor Clark and the City Manager personally gave money out of their own pockets to reimburse Mr. Ramsey.

PROCLAMATION BY GOVERNOR HUNT – 2000 LITTER SWEEP – NC DOT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to endorse the proclamation by Governor Hunt regarding Litter Sweep.

2000 CONGRESS OF CITIES – APPOINT VOTING DELEGATE: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to appoint Mayor Clark as the Voting Delegate and Mayor Pro Tem Little as the Alternate Voting Member at the 2000 Congress of Cities in Boston Massachusetts.

RESOLUTION – APPROVE McDOWELL COUNTY SOLID WASTE PLAN: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

CITY OF MARION
NORTH CAROLINA

RESOLUTION
TO APPROVE THE McDOWELL COUNTY SOLID WASTE PLAN

WHEREAS, better planning for solid waste will help protect public health and the environment, provide for an improved solid waste management system, better utilize our natural resources, control the cost of solid waste management; and,

WHEREAS, NC General Statute 130A-309.09A(b) requires each unit of local government, either individually or in cooperation with other units of local government, to develop a 10 year comprehensive solid waste management plan and subsequent three-year updates; and,

WHEREAS, the City of Marion was represented on the McDowell County Planning Advisory Committee and has been actively involved in the planning process;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marion hereby approves the McDowell County comprehensive solid waste management plan.

Adopted this 5th day of September, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager

Resolution Number: R-00-09-05-1

UPPER CATAWBA RIVER LAND OWNERS ALLIANCE – APPOINT MEMBER: City Council had several questions pertaining to the Upper Catawba River Stakeholders Committee.

It was decided to table this matter.

McDOWELL COUNTY PARTNERSHIP FOR CHILDREN – APPOINT ONE MEMBER: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Councilman Owenby to serve on this Committee.

N.C. DEPARTMENT OF COMMERCE, DIVISION OF COMMUNITY ASSISTANCE CDBG GRANT AGREEMENT – HOUSING DEVELOPMENT – SPAULDING ROAD: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve and accept the following Agreement:

AGREEMENT
BETWEEN ISOTHERMAL PLANNING AND DEVELOPMENT COMMISSION
AND THE CITYOF MARION FOR THE
PROVISION OF GRANT MANAGEMENT ASSISTANCE
HOUSING DEVELOPMENT PROJECT
SEPTEMBER 5, 2000 – SEPTEMBER 5, 2001

This Agreement, made this 5th day of September, 2000 by and between the Isothermal Planning and Development Commission, hereafter called the COMMISSION and the City of Marion. McDowell County North Carolina, hereafter called the CONTRACTOR.

WHEREAS, the COMMISSION is empowered to provide planning assistance by the N.C. General Statutes. Planning assistance shall consist of the provision of grant management assistance regarding the City of Marion's CDBG Housing Development Project more fully described on Attachment A to this Agreement; and

WHEREAS, the CONTRACTOR has requested the COMMISSION to provide such grant management assistance to the CONTRACTOR; and

WHEREAS, the COMMISSION desires to cooperate with the CONTRACTOR in every way possible to the end that the proposed activities are carried out in an efficient and professional manner.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1) That during the period of this Contract, the COMMISSION will furnish the necessary trained personnel approved by the CONTRACTOR. The personnel will charge the exact number of hours worked on behalf of the CONTRACTOR on his normal time sheet of the COMMISSION monthly at a rate per hour for each of the personnel involved, which includes the salary, fringe benefits, travel, and indirect costs.

2) The CONTRACTOR will pay for expenses related to conferences, conventions, seminars, local travel, etc. of the personnel when the CONTRACTOR requests or approves travel related to the COMMISSION'S administration program, or if it is beneficial to both parties, the cost will be shared on an agreed upon ration.

3) **Compensation** – The CONTRACTOR will pay the COMMISSION an amount not to exceed $16,500 (sixteen thousand five hundred dollars) for the satisfactory performance of all services related to the administration of the project as defined in the attached Scope of Services. In addition, the CONTRACTOR will pay the COMMISSION #3,500 (three thousand five hundred dollars) for services related to development of the Housing Development Project, upon execution of this contract and receipt of State CDBG funds. It is expressly understood that total compensation shall not exceed the maximum sum specified without the prior approval of both agencies.

4) **Time of performance** – The COMMISSION shall ensure that all services required herein shall be completed and all required reports, maps, and documents submitted during the period beginning September 5, 2000 – September 5, 2001.

5) **Interest of members, Officers, or Employees of the COMMISSION Members of the CONTRACTOR, or other Public Officials** – No member, officer, or employee of the Commission, or it's agents; no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure, or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The COMMISSION shall incorporate, or cause to be incorporated, in all such contracts, a provision prohibiting such interest pursuant to the purpose of this section.

6) **Nondiscrimination Clause** – No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under the housing and Community Development Act of 1974, Section 109.

7) **Age Discrimination Act of 1975, as amended** – No qualified handicapped person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

8) **Section 504, Rehabilitation Act of 197, as amended** – No qualified

handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

9) **Access to Records and Record Retainage** – All official project records and documents must be maintained during the operation of this project and for a period of three years following close out, in compliance with 15 NCAV 13L Rule .0911, Record Keeping. The N.C. Department of Commerce, the Comptroller General of the United State, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Commission which are pertinent to the execution of this Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions in compliance with 15 NCAC 13L Rule .0911, Record Keeping.

10) **Termination of Agreement for Cause** – If, through any cause, the COMMISSION shall fail to fulfill in a timely manner it's obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, the CONRACTOR shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of the CONTRACTOR become it's property, and the COMMISSION shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in direct proportion to the extent of services actually completed.

11) **Grantee Assurances** – In the performance of this Agreement, the COMMISSION shall comply with all applicable Federal rules and procedures outlined on the attached pages as E.O. 11246 Clause and the Section 3 Clause (Attachments B and C), and the Lobbying Clause required by Section 1352, title 31, U.S. Code.

In Witness Whereof, the COMMISSION and the CONTRACTOR have executed this Agreement as of this the 5th day of September, 2000.

For the CONTRACTOR For the City of Marion	For the COMMISSION Isothermal Planning & Development Commission
By: _____	By: _____
City Manager	Executive Director
_____	_____
Mayor	**Economic Development Coordinator**

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

IPDC AGREEMENT – GRANT MANAGEMENT ASSISTANCE: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve and accept the following Agreement:

North Carolina Department of Commerce
Division of Community Assistance
Community Development Block Grant Program

Grant Agreement
Housing Development (HD)

Upon execution of this grant agreement, the North Carolina Department of Commerce (DOC) agrees to provide to the recipient Community Development Block Grant assistance under title I of the Housing and Community Development Act of 1974, (P.L. 93-383), as amended, authorized by the DOC funding approval, the North Carolina community Development Block Grant administrative rules, applicable laws and all other requirements of DOC now or hereafter in effect. The grant agreement is effective on the date the grant agreement and funding approval are signed by the recipient. The grant agreement consists of the approved application, including the certifications, maps, schedules and other submissions in the application, any subsequent amendments to the approved application and funding approval and the following general terms and conditions:

1. Definitions. Except to the extent modified or supplemented by the agreement, any term defined in the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L, shall have the same meaning when used herein.

(a) Agreement means this grant agreement, as described above, and any amendments or supplements thereto.

(b) Recipient means the entity designated as a recipient for grant Assistance in the grant agreement and funding approval.

(c) Certifications mean the certifications submitted with the grant application pursuant to the requirements of Paragraph (e) of Fule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC19L.

(d) Assistance provided under this agreement means the grant funds provided under this agreement.

(e) Program means the community development program, project, or other activities, including the administration thereof, for which assistance is being provided under this agreement.

(f) the date for receiving the grant means the date of the DCA Director's signature on the Grant Agreement and Funding Approval.

2 Obligation of the Recipient. The recipient shall perform the program as specified in the application approved by DOC. The recipient shall comply with the certification pursuant to Paragraph (e) of Rule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L. The recipient shall also comply with all other lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina and any other applicable laws and Executive Orders currently or hereafter in force.

3. Obligation of Recipient with Respect to Certain Third Party Relationships. DOC shall hold the recipient responsible for complying with provisions of this agreement even when the recipient designates a third party or parties to undertake all or any part of the program. The recipient shall comply with all lawful requirement of DOC necessary to insure that the program is carried out in accordance with the recipient's certifications including the certification of assumption of environmental responsibilities under Rule .1004 of the North Carolina Community Development Block Grant Administrative Rules. 4 NCAC 19L.

4. Conflict of Interest. None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall have any direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this agreement: employees

or agents of the recipient who exercise any function or responsibility with respect to the program, and officials of the recipient, including members of the governing body. The same prohibition shall be incorporate in all such contracts or subcontracts.

The assistance provided under this agreement shall not be used in the payment of any onus or commission for the purpose of obtaining DOC approval of the application for such assistance, or FDOC approval of applications for additional assistance, or any other approval or concurrence of DOC required under this agreement, or the North Carolina Community Development Block Grant Administrative Rules, with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not prohibited if otherwise eligible as program costs.

5. Reimbursement to DOC for Improper Expenditures. The recipient will reimburse DOC for any amount of grant assistance improperly expended.

6. Access to Records. The recipient shall provide any duly authorized representative of DOC, the federal Department of Housing and Urban Development (HUD), and the Comptroller General at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant for a period of there years following the completion of all close-out procedures.

7. Project Savings. The recipient is obligated to contribute 100 percent of its pledged cash contribution to the CDBG project even if the project experiences a savings after authorized activities are completed. Any project savings accrue to the CDBG program.

8. Method of Payment. The Department of Commerce uses the SPEPS-OUT system for CDBG payments to units of local government. Payments on requisitions will be made only by electronic funds transfer.

9. Fair Housing. For each grant year that a CDBG is active, Recipient must describe the actions it will take in the areas of enforcement, education and removal of barriers and impediments to affirmatively further fair housing. Guidance for developing a Fair Housing Plan can be found in DCA Bulletin 93-4.

10. Equal Employment and Procurement Opportunity. A recipient must describe the actions it take annually while the grant is open in the areas of enforcement, education and removal of barriers and impediments that affirmatively further equal access in employment and procurement. This includes a description of steps to be taken in the areas of advertisement, compliance and complaint tracking.

11. Local economic Benefit (Section 3 Regulation). For each year that a CDBG is active, a recipient must describe a strategy whereby opportunities in employees and procurement arising out of a CDBG assisted project are identified and made available to low-income residents within the CDBG assisted area to the greatest extent feasible. This strategy must include (1) identification of training and technical assistance resources to prepare low-income residents for employment and procurement opportunities. (2) attempts to reach the numerical targets for new hires set forth in the Section 3 regulation, which applies to recipients receiving $200,000 or more in non-administrative line items expended for construction contracts of at least $100,000 per contract, and (3) education of low-income residents within the CDBG assisted area about the components and opportunities of the program.

12. Section 504 and ADA. Recipients must complete the Section 504 Survey and Transition Plan. This plan will not satisfy all the requirements of the Americans with Disabilities Act, but it will meet the minimum requirements for a CDGB assisted project.

13. Obligation of Recipient With Regard to Vacant Units. The recipient shall ensure that all vacant units being rehabilitated will be occupied by a low or moderate income family by the time close-out occurs.

14. Utility Assessments or Fees: Assessments or fees to recover the CDBG funded portion or a utility project may be charged to properties not owned and occupied by low and moderate income persons. Such assessments are program income and, as such must be used for eligible CDBG activities that meet a CDBG activities that meet a CDBG national objective.

15. Release of Conditions and Contract Period (Not to Exceed 36 Months). The recipient must satisfy all conditions to release funds within six (6) month of receiving the grant. As noted in the application, the implementation period is 24 months, but under no circumstances must project completion exceed 36 months.

Upon execution of this agreement by DOC and the recipient, the recipient hereby accepts the assistance on the terms of this grant agreement effective on the date indicated below, and further certifies that the official signing this document has been duly authorized by the recipient's governing body to execute this Grant Agreement.

Secretary of the Department of Commerce

Date: August 29, 2000 By: _____
William A. McNeil, AICP
Director
Division of Community Assistance

DATE: September 5, 2000 _____
Name of Recipient

By: _____
Signature of Authorized Official

_____
Title

RESOLUTION – INDIVIDUALS AUTHORIZED TO SIGN REQUISITION FOR FUNDS FOR PROJECT NUMER CDBG-HD 00-C-0724: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

CITY OF MARION, NORTH CAROLINA

RESOLUTION

NORTH CAROLINA DEPARTMENT OF COMMERCE
DIVISION OF COMMUNITY ASSISTANCE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
PROJECT NUMBER CDBG-HD 00-C-0724

BE IT RESOLVED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the following individuals are authorized to sign Requisition for Funds for Project Number CDBG-HD 00-C-0724:

A. Everette Clark, Mayor
Lovina M. Smith, Grants Administrator
Robert N. Parker, Finance Director
Victoria A. Searcy, Bookkeeper

Adopted this the 5th day of September, 2000.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, Interim City Manager/Clerk

Ordinance Number – O-00-09-05-1

EQUAL EMPLOYMENT AND PROCUREMENT PLAN: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following Plan:

CITY OF MARION
NORTH CAROLINA
EQUAL EMPLOYLMENT
AND
PROCUREMENT PLAN

The City of Marion maintains that policy of providing equal employment opportunities for all persons regardless of race, color, religion, sex, national origin, handicap, age, political affiliation, or any other non-merit factor, except where religion , sex, national origin, or age are bona fide occupation qualifications for employment.

In furtherance of this policy the City prohibits any retaliatory action of any kind taken by any employee of the City against any other employee or applicant for employment because that person made a charge, testified, assisted or participated in any manner in a hearing, proceeding or investigation of employment discrimination.

The City shall strive for greater utilization of all persons by identifying previously under utilized groups in the work force, such as minorities, women, and the handicapped, and making special efforts toward their recruitment, selection, development, and upward mobility and any other term, condition, or privilege of employment.

Responsibility for implementing equal opportunities and Affirmative Action measures is hereby assigned to the town manager and/or other persons designated by the Manager or City Council to assist in the implementation of this policy statement.

The Town shall develop a self evaluation mechanism to provide for periodic examination and evaluation. Periodic reports as requested on the progress of equal Employment opportunity and Affirmative Action will be presented to the City Council by the City Manager.

The City is committed to this policy and is aware that with it implementation, the City will receive positive benefits through the greater utilization and development of all its human resources.

Adopted this the 5th day of September, 2000.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, Interim City Manager/Clerk

LOCAL ECONOMIC BENEFIT FOR LOW AND VERY LOW INCOME PERSONS PLAN 2000 CDBG PROGRAM: Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to approve the following Plan:

LOCAL ECONOMIC BENEFIT FOR LOW-AND VERY LOW INCOME PERSONS PLAN 2000 CDBG PROGRAM

To insure that to the greatest extent possible contracts for work are awarded to business concerns located or owned in substantial part by persons residing in the Section 3 covered area, as required by Section 3 of the housing and Urban Development Act of 1968, the City of Marion has developed and hereby adopts the following Plan:

1. This Section 3 plan shall apply to services and needs in connection with the grant including but not limited to businesses in the fields of planning, consulting, design, building construction/renovation, maintenance and repair, etc.

2. This Section 3 covered project area for the purpose of this grant program shall include the City of Marion and portions of immediate adjacent counties.

3. When in need of a service, the City of Marion will identify suppliers, contractors or subcontractors located in the Section 3 area. Resources for this identification shall include the Minority Business Directory published through the State Department of Commerce, local directories and Small Business Administration local offices. Word of mouth recommendations shall also be used as a source.

4. The City of Marion will include this Section 3 clause in all contracts executed under this CDBG Program. Where deemed necessary, listings from any agency noted in No. 3 above shall be included as well as sources of subcontractors and suppliers.

5. The prime contractor selected for major public works facility or public construction work will be required to submit a Section 3 Plan which will outline his/her work needs in connection with the project. Should a need exist to hire any additional personnel, the McDowell County Employment Security Commission shall be notified and referred to the contractor.

6. Each contract for housing rehabilitation under the program, as applicable, for jobs having contracts in excess of $100,000 shall be required to submit a Section 3 Plan. This Plan will be maintained on file in the grant office and shall be updated from time to time or as the grant staff may deem necessary.

7. Early in our project, prior to any contracting, major purchases or hiring, we will develop a listing of jobs, supplies and contracts likely to be utilized during the project. We will then

advertise in our local newspaper, an ad prominently located as a display ad, which will include the pertinent information regarding the project including all Section 3s required information

Adopted this the 5th day of September, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

PROJECT BUDGE ORDINANCE – HOUSING DEVELOPMENT GRANT – PROJECT NUMBER CDBG-HD-00-C-074: Upon a motion by Councilman Martin, seconded by Councilman Owenby. Council voted unanimously to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA

PROJECT BUDGET ORDINANCE
HOUSING DEVELOPMENT GRANT
PROJECT NUMBER CDBG-HD 00-C-0724

BUDGET EXPENDITURES

Water Improvements	$ 53,000
Sewer Improvements	35,000
Street Improvements	176,000
Construction Residential Buildings	1,999,700
Professional Services and Financing	723,617
Planning	3,500
Administration	16,500
Acquisition	60,000
Total	$ 3,067,317

REVENUES

CDBG HD	$ 198,000
NCHP Agency	
Conventional Bank Loan	
Tax Credit Equity	2,869,317
Landmark	
Total	**$ 3,067,317**

Adopted this the 5th day of September, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

Ordinance Number: O-00-09-05-2

FIRE DEPARTMENT – LADIES AUXILIARY – USE CITY TAX ID # - LETTER FROM ATTORNEY: The City Manager presented Council with a letter from City Attorney Penn Dameron advising that since the ladies Auxiliary is raising funds which are earmarked for use by the fire department alone it would be wise for the City to consider setting up a separate fiduciary or trust fund account to handle these funds, so as to avoid commingling them with City Funds.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted authorize the use of the City's Tax ID Number by the Ladies Auxiliary continent upon the City Manager setting up a separate account.

CURB/SIDEWALK CONTRACT FIGURES – CALIFORNIA AVENUE: The City Manager presented Council with a memo from the Public Works Director advising that in April of 1999, the following quotes was received to install new curb and gutter on California Avenue:

Valdese Concrete, Incorporated

South side only	$26,097.
North side only	$35.650.
Total	$61,747

APAC Carolina, Incorporated

South side only	$41,071
North side only	$41,649
Total	$82,720

The Director of Public Works added that material cost for drainage and sidewalk is estimated at $22,000.

A discussion followed.

It was decided to get quotes from contractors to install a monolith sidewalk on just the South side of California Avenue for Councils review.

CITY MANGER APPLICATIONS – DISCUSSION ON PROCEDURES AND/OR PROCESS FOR SELECTION: It was decided to have Mayor Clark, Mayor Pro Tem Little, Councilman Cuthbertson and City Manager Earl Daniels sort through the applications on Friday, September 8, 2000 at 9:00 A.M. and report back to the whole Board.

MARION CITY COUNCIL POSITION PAPER: Upon a motion by Councilman Martin, seconded by Councilman Edwards. Council voted unanimously to adopt the following position regarding Sewer Line Expansion to Pleasant Gardens:

Marion City Council Position Paper

Marion, North Carolina

Sewer Line Expansion To Pleasant Gardens

Adopted by Marion City Council in Session on September 5, 2000.

Introduction

Recent dialogue among the McDowell County Commission, the McDowell County Board of Education, residents of the Pleasant Gardens area, residents living on or near Lake James, and others has raised questions concerning the position of the City of Marion in regard to the proposed extension of sewer service to the Pleasant Gardens community. This position paper will serve to clarify the position of the City of Marion on this issue.

Background

Pleasant Gardens Elementary School has always used a septic tank to treat its sewage. The septic tank is no longer adequate or safe to treat the school's waste. In planning for the new school construction, the McDowell County Board of Education came to a regular meeting of the Marion City Council on August 3, 1999 and urged the City of Marion to allow the waste generated by Pleasant Gardens Elementary School to be piped to the a waste treatment facility owned by the City of Marion. The City Council discussed this in several open meetings and agreed to accept the waste water provided there was no cost to the city taxpayers or city water/sewer customers for any part of the new sewer line extension. This project was not the idea of the City ... it was the idea of the Board of Education.

The City of Marion has no obligation to accept waste water from any user outside the city limits. The City Council agreed to the request out of concern for helping the school and for wanting to cooperate with the county and school officials. The costs of treating waste water are far greater than the revenue from monthly sewer bills. It is the City's objective to break even in overall utility services, but every year the city has to subsidize the utility budget with a contribution from our general fund budget. Any statement claiming that the City of Marion will be making money off the Pleasant Gardens sewer line extension is absolutely wrong. The income to the city from sewer treatment charges from this new line will not even pay for the additional treatment costs. This income would never equal the material and labor cost of running the pipeline from Pleasant Gardens to a city-owned waste water treatment facility. The City of Marion had nothing to do with the decision to construct the new PG sewer line, and no city tax money will be spent on it.

The city owns two waste water treatment facilities: (1) the older and larger facility known as the Corpening Creek Waste Water Treatment Plant (located on Corpening Creek, adjoining N.C. Highway 226, south of Interstate 40), and (2) the newer but smaller facility known as the Catawba River Waste Water Treatment Plant (located on the Catawba River east of the river bridge near the local Ford dealership). The Catawba River WWTP is in the drainage basin that includes the Pleasant Gardens area. The Corpening Creek WWTP is in a totally different drainage basin, many miles south of the river, nowhere near Pleasant Gardens. Both of these plants have unused capacity, and both are fully capable of receiving commercial waste water. One is close to Pleasant Gardens (the sewage could flow downhill by gravity all the way from PG to the Catawba River WWT Plant) and the other is not close to Pleasant Gardens (the sewage would have to be pumped in a high-pressure "force main" line, sized based upon initial volume, to run into the Corpening Creek WWT Plant).

Position Statement

The City Council has agreed to accept the waste water from a new sewer pipeline that will run from the vicinity of Pleasant Gardens Elementary School to the City of Marion's Catawba River Waste Water Treatment Plant. A major condition of this agreement is that the project must not cost anything to the City of Marion taxpayers or utility customers. From the city's point of view, this position has not changed in spite of the many weeks and months of questions, complaints and discussions by various groups about this project.

When the request first came to the city from the McDowell County Board of Education, the only sewer line user was to be Pleasant Gardens Elementary School. For not a great deal more cost, however, it was determined by the county commissioners that the sewer line could be constructed in such a way as to provide sewer service to many businesses and homes and perhaps a couple of industries in the Pleasant Gardens area. The city's position did not change: all costs of this enlargement of the project scope would have to be paid by the county, with none of the cost being paid by the city taxpayers or utility customers. The full cost of engineering the project, obtaining the rights of way, purchasing the pipeline, and installing the pipeline would have to be paid by the Board of Education or the County. The City of Marion concluded that the waste water from these additional places could also be treated at the Catawba River WWT Plant. The city already has a "waste pre-treatment" program for industries that requires them to remove certain harmful elements from their waste water before it can enter the city sewer system, and it would not be at all difficult to implement the same pre-treatment program, if needed, for any new industrial sewer line users in Pleasant Gardens. The County Commissioners considered building a brand new waste water treatment facility that would be county-owned and county-operated. After thorough evaluation, the County Commissioners realized that this would be a money-losing operation and joined in the Board of Education's request for the City of Marion to accept the waste water from Pleasant Gardens.

The idea to expand the number of people (homes, businesses, etc.) who could use the new PG sewer line extension was not the idea of the City of Marion. Many people who live and work in PG approached the County Commissioners and asked for this expansion. Whether or not to increase the scope of this project was not a decision made by the City of Marion. Adding more users still would not cause the city to make any money off the project. Because of the projected additional volume of sewage from this expansion of the project, the City re-examined the feasibility of accepting the waste water. Once again, there is plenty of capacity at the Catawba River WWT Plant, so there was no problem in accepting the waste water for treatment. Any statement that the Catawba River WWT Plant cannot accept commercial sewage is absolutely wrong. Most of the waste water that has been treated there ever since it was built has been commercial sewage. Plus, the volume from this proposed Pleasant Gardens sewer line extension will not fill up the capacity of the Catawba River WWT Plant. Printed statements claiming that the plant would have to be immediately enlarged or replaced are simply wrong.

The routing location for the new sewer line has been widely discussed. Various city officials and staff members attended one public meeting hosted by the county commission at Pleasant Gardens school in the early summer for the dual purpose of providing information about the city sewer system and providing reassurance that the city has no plans or intention to annex Pleasant Gardens. The city has also facilitated other discussion and has provided answers and technical information. The city, however, is not involved in choosing the route of the new sewer line. The city has agreed simply to treat the waste water once the county brings the new sewer line to the Catawba River WWT Plant. All who use the new sewer line (the school, businesses, homes, etc.) will receive a monthly sewer bill from the city just like all other city utility customers. The operation of a wastewater (sewer) treatment facility is not a money-making arrangement for the city. The cost to operate the sewer utility system is far greater than the revenue received from monthly bills. Anyone who suggests otherwise has not done his homework!

The Marion City Council desires to cooperate with the County Commissioners and the County Board of Education in as many areas and on as many issues as possible. All actions by the Marion City Council in connection with the Pleasant Gardens sewer line project, and in all other matters, shall protect the interests of the city tax payers, the city utility customers (including those non-city residents who are customers of the Marion water/sewer system), and the environment.

Other Significant Points

Ownership of utility lines.

All water and sewer lines connected to the city's water or sewage system must belong to the city. The city has the personnel, equipment and expertise to maintain and repair water and sewer utility lines. City employees are not authorized by law to work on private property. The city receives no windfall or financial benefit from owning the underground sewer lines in the sewer collection system.

Excellent operation and management of facilities.

According to recent statements by state officials who monitor water quality and monitor waste treatment plants, both the Corpening Creek and the Catawba River waste treatment facilities are among the best operated and managed facilities in the state. Both waste treatment facilities are professionally managed and are operating above state standards.

Water quality of Catawba River and Lake James.

Before the Catawba River Waste Treatment Plant was built, there was raw sewage, industrial waste and other harmful material flowing into the Catawba River (and on to Lake James) through Garden Creek. The stench of raw, untreated sewage was strong along many areas of the Five Lane in the 1980s before this treatment facility was built. Adding the Catawba River WWT Plant greatly improved the condition of the Catawba River and Lake James because it stopped a lot of raw sewage from entering the Catawba River. After the raw sewage has been treated at the Catawba River WWT Plant, the water that flows back into the river is vastly cleaner than other river water and is also cleaner than rain water that enters the river after running across fields where pesticides, herbicides and livestock have been. The Catawba River WWT Plant improves the quality of water in the Catawba River and in Lake James.

The greatest factor threatening water quality in Lake James, according to the "*Catawba River Basin Natural Resources Plan,*" is that "increased development pressures, particularly along the lake shoreline, may pose a threat to the water quality and fish and wildlife habitats of Lake James." The report goes further in stating that "Development along the shoreline of the lake is threatening water quality and fish and wildlife habitats."

The Catawba River Waste Water Treatment Plant does not have a detrimental effect on the water quality of the Catawba River or Lake James. The Catawba River Waste Water Treatment Plant has never been cited by the state for violating its discharge permit and there has never been a sewage spill at the facility!

Water quality of Corpening Creek.

According to a recent draft document (June of 2000) published by the North Carolina Department of Environmental and Natural Resources and the North Carolina Wildlife Commission, the water quality of Corpening Creek is the lowest quality in McDowell County. Corpening Creek's poor water quality begins upstream, before the flow ever reaches the Corpening Creek WWT Plant south of I-40 near McDowell Tech. It is not uncommon to have discolored water and sudsy foam on the water far upstream, long before the stream ever reaches the treatment plant, The water that re-enters Corpening Creek after being treated at the plant is far cleaner than the other water in the creek.

Environmental Statement

The City of Marion is aware of the potential impact of treated waste and untreated waste on water quality in creeks, rivers, lakes and the overall environment. The City of Marion will continue to operate its waste treatment facilities in compliance with the environmental laws and regulations of the State of North Carolina and of the United States and in a manner that helps the overall environment. The City of Marion will not knowingly take any action that would

harm the environment. To accomplish this, all water and sewer treatment facilities and equipment will continue to be maintained and operated in safe condition.

COUNCILMAN EDWARDS COMMENTS: Councilman Edwards advised that the garbage dumpster located behind the Touch of Class Catering Business on North Main Street needs to be relocated. The dumpster interferes with parking.

The City Manager advised that the dumpster is not located on City property. However, the Manager will have the Public Works Director look into relocating the dumpster if possible.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manger/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Closed Session on Tuesday October 17, 2000 in the City Hall Conference Room located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, Interim City Manager/Clerk.

INTERVIEWS: The Marion City Council discussed the four- (4) applicants interviewed. Council also discussed a Memorandum of Agreement outlining the conditions of employment of a new manager.

No official action was taken by Council to appoint anyone to the position but the Interim Manager was asked to contact one of the applicants regarding the Memorandum of Agreement.

RETURN TO REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to return to Regular Session.

A. Everette Clark, Mayor

ATTEST:
J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 3, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, City Manager; Debi Sherlin, Secretary; Tom Benware; Chief of Police; Glen Sherlin, Director of Public Works; Chris Taylor, Marion Police Department; Van McKinny, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Wilton E. Carter, 250 Baldwin Avenue, Marion, NC 28752; Corey Sisk, 250 Baldwin Avenue, Marion NC 28752; Jennifer Carter P.O. Box 985 Marion, N.C. 28752; Wilton E. (Sandy) Carter, Jr. 1500 Runnynode, Charlotte NC; Brady Brooks 415 Montevista Drive, Marion, NC, 28752; Dr. Amy Ende, 600 Sugar Hill Road, Marion, NC, 28752;

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the minutes of the September 19, 2000 City Council Meeting and the September 19, 2000 Closed Session Minutes.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN CECIL OWENBY:
Councilman Cecil Owenby selected the Citizen of the Month for October:

Councilman Owenby presented the following information about October's Citizen of the Month:

WILTON E. CARTER

Mr. Carter was born in Raleigh. He moved to Marion in 1945. He attended N.C. State from 1937 – 1942. He was active in various sports while in school and played center on the football team.

Mr. Carter was a Veteran of World War II.

Mr. Carter is well known for all the things he has done for the youth in Marion through the years. His work with Carroll Baldwin Hall at East Marion is remembered by many. There was swimming, roller skating, bowling and much more. He would rent cartoon movies and play them for hundreds of children at a time.

Mr. Carter's Son Wilton Jr., daughter Jennifer and Grandson Corey were present for this Honor. Mayor Clark, Council Members and several friends all joined in with kind words about Mr. Carter.

INTRODUCTION OF POLICE OFFICER: Police Chief Benware introduced Officer Mr. Chris Taylor. Officer Taylor advised that he was a reserve officer from December of 1998 to November 1999 and has been a full time employee since that time.

Councilman Edwards commented on the professional way Officer Taylor conducts himself in a court of law.

MR. BRADY BROOKS – SECRETARY'S COMMENDATION PRESENTED TO MCDOWELL HOUSING CORPORATION: Mr. Brady Brooks appeared before Council

advising on March 24th 1982 a dream came true for McDowell County's Elderly. This was the day that the Blue Ridge Terrace Apartments were dedicated.

The apartment complex consisted of sixty, one bedroom units, a managers apartment, a dining or meeting hall, a library, a lobby and a laundry.

With much community support, the Marion Lions Club raised money and began the project. The project cost over $2,000,000.00 and was made possible by a loan from the U.S. Department of Housing and Urban Development.

The Marion Lions Club had a membership of twenty-six when the "Not for Profit" McDowell Housing Corporation was formed and the project was undertaken. The Club continues to support this project through the McDowell Housing Corporation and active management of the Lions Club.

In July 2000, the McDowell Housing Corporation received from the U.S. Department of Housing and Urban Development a "Commendation" from Andrew Cuomo, Secretary of HUD stating that the McDowell Housing Corporation is one of HUD's "Top 1,000 High performing Multifamily Properties. This was considered in that the McDowell Housing Corporation was providing decent, safe, and affordable housing and proving that multifamily housing works.

DR. AMY ENDE – PLAYGROUND EQUIPMENT: Dr. Ende appeared before Council with estimates on Playground Equipment.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to accept the quote of Play World Systems in the amount of $29,978.92.

The Playground equipment consists of the following:

1	9918 Challenger	$13,949.00
1	238-338	7,131.00
1	0310 Spring Mount With Pine Planks	1,775.00
1	UN4270 Oval Crawl Tube	524.00
1	0741 Coil Turtle	445.00
1	0745 Coil Inchworm	489.00
1	0721 Coil Duck W/Brace (Add $50.00)	495.00
1	0256 4 Bay Swing (8 swings)	1,765.00
1	0244 Accessible Swing	262.00
3	Add 3 Infant Swings	180.00
4	1411 6' Bench	680.00
	Equipment Total	$27,695.00
	Total Shipping	587.00
	Tax	1,696.92
	Grand Total	**$29,978.92**

Dr. Ende will meet at City Hall on October 4, 2000 at 2:00 P.M. with Interim City Manager J. Earl Daniels and Purchasing Agent Brenda Williams to order the Playground Equipment.

PLEASANT GARDENS SEWER PROJECT: The following Memorandum was presented to Council with their Agendas.

Memo

To: Mayor/City Council
From: J. Earl Daniels, City Manager
Date: September 29, 2000

Re: Utility Committee Meeting/Pleasant Gardens Sewer Project

Mayor A. Everette Clark, Councilman Steve Little, Councilman Lloyd Cuthbertson, and Interim City Manager J. Earl Daniels met in the Conference Room at City Hall at 8 A.M., Friday, September 29, 2000.
The Utility Committee met to review the suggestions and input supplied by Mr. Gary Hart and others at the City Council Meeting held on September 19, 2000.

Following a discussion, the Utility Committee made the following findings:

1. The Catawba River Wastewater Treatment Plant is meeting its NPDES Permit.
2. The Plant has sufficient capacity to accept wastewater from the Pleasant Gardens Area without exceeding its daily capacity.
3. The Catawba River Wastewater Treatment Plant is required to meet its permit limits, including flow limits.
4. The Plant will be monitored for compliance by the City and State.
5. Wastewater should be discharged in its own drainage area, provided adequate facilities are available.
6. To spend additional money to pump wastewater from the Pleasant Gardens Area to the Corpening Creek Wastewater Treatment Plant is not necessary. If funds are available, the funds should be spent to solve existing environmental problems, like the Stumptown area.
7. Construction of a force main sewer line to pump wastewater from Pleasant Gardens to the Corpening Creek Plant is not a one time solution. As the volume of wastewater increases the force main sewer line has to be enlarged.
8. Providing sewer service to the Pleasant Gardens Area will eliminate future problems similar to the Stumptown area.
9. Eliminating older existing package plants on the Catawba River, including providing sewer service to businesses and residents, should help improve the water quality of the Catawba River..
10. Wastewater, other than domestic, will not be accepted from industries without necessary pretreatment.
11. The City will not accept wastewater which cannot be treated.
12. The City Council is charged with protecting the environment and being good custodians of public funds. City taxpayers and utility customers demand that the City act in the best interest of the public.
13. Appropriate action will be taken by the City against any who, willfully and knowingly, violate the City's Sewer Use Ordinance or Pretreatment Program.

After careful consideration of all the facts, the Utility Committee recommends that the City Council agree to accept wastewater from the Pleasant Gardens Project at the Catawba River Wastewater Treatment Plant.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to accept the recommendations of the Utility Committee to accept wastewater from the Pleasant Gardens Project at the Catawba River Wastewater Treatment Plant.

STREET CLOSING – PENNSYLVANIA AVENUE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
CITY OF MARION
PERMANENTLY CLOSING A PORTION OF
PENNSYLVANIA AVENUE

BE IT ORDAINED by the City Council of Marion, North Carolina:

Section I. THAT, WHEREAS the City Council of Marion, North Carolina, at its regular meeting on August 8, 2000, adopted a Resolution declaring its intent to permanently close a portion of Pennsylvania Avenue, hereinafter described, and calling for public hearing on the question; and

WHEREAS, The Resolution was published and posted, and copies thereof were sent by registered mail to all owners of property adjoining that portion of the street which was described in the Resolution, as required by the provisions of North Carolina General Statutes, Section 160A-299; and

WHEREAS, a public hearing was duly held in the Council Chamber on September 19, 2000, at which no owner of property adjoining the portion of Pennsylvania Avenue intended to be closed appeared to express opposition to the closing; and

WHEREAS, After the hearing, it appears to the satisfaction of the City Council that closing the described portion of Pennsylvania Avenue, which description is attached hereto as Exhibit A, is not contrary or detrimental to the public interest or the property rights of any individual, and that no individual owning property in the vicinity thereof would thereby be deprived of a reasonable means of ingress and egress to and from the property of such owner.

Section II. IT IS, THEREFORE, ORDAINED AND ORDERED that the portion of Pennsylvania Avenue as shown on Exhibit A which is attached hereto, be, and it is hereby, permanently closed;

PROVIDED, HOWEVER, that the City of Marion reserves the permanent right and easement to maintain, repair and replace all water and sewer and utility lines of the City of Marion which are now located upon or under, or which pass through or over, the portion of Pennsylvania Avenue described herein.

Section III. IT IS FURTHER ORDERED that a certified copy of this Ordinance and Order shall be filed in the Office of the Register of Deeds for McDowell County, North Carolina, as required by the provisions of North Carolina General Statutes 160A-299.

Section IV. This Ordinance and Order shall be in full force and effect from and after the date of its adoption.

Adopted October 3, 2000.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, Interim City Manager/Clerk

Ordinance Number: O-00-10-03-1

CEMETERY – HEADSTONE REVOVATION – GAULDEN MONUMENTS, INC.: The City Manager presented Council with a report from Mr. Warren Hobbs regarding a recommendation for repairs in the Oak Grove Cemetery. The proposal submitted by Gaulden Monuments, Inc. of Rock Hill South Carolina was as follows:

Gaulden Monuments, Inc. provided a list of 137 various headstones and/or monuments, in sections 1, 2 and 3, of Oak Grove Cemetery that need a new foundation, leveling and epoxied or sealing at a cost of $6,850.00.

A brief discussion followed.

A question was raised about using public funds to make repairs to private properties. It was agreed that the funds used to pay for the project would come from the Cemetery Fund. This Fund now totals over $100,000. The funds come from the sale of lots and mausoleums crypts in the cemetery. Council agreed that many of the gravestones belong to family members that have either moved away or no longer exist.

Upon a motion by Councilman Edwards, seconded by Councilman Owenby, Council voted unanimously to approve the renovations as stated above for $6,850.00 and directed the Interim City Manager to prepare the necessary Budget Amendments to transfer the funds from the Cemetery Fund.

RESOLUTION – OPEN CHECKING ACCOUNT – SIGNATURE CARD - CDBG – SPAULDING ROAD APARTMENT PROJECT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following Resolution:

RESOLUTION

CITY OF MARION
CDBG SPAULDING ROAD
OPENING AND MAINTAINING
A DEPOSIT/CHECKING ACCOUNT

Resolved, that Bank of America, (the "Bank"), is hereby designated as a depository of the Corporation and that deposit accounts and/or time deposits (CD's) be opened and maintained in the name of this Corporation with Bank in accordance with the terms of the Bank's Deposit Agreement and Disclosures and the applicable rules and regulations for such accounts; that any one of the following officers or employees of this Corporation:

Mayor
Finance Officer
Bookkeeper
Records – Grants Administrator

Is hereby authorized, on behalf of this Corporation and in its name, to execute and to sign any application, deposit agreement, signature card and any other documentation required by Bank to open said accounts; to sign checks, drafts, notes, bills of exchange, acceptances, time deposits (CDs) or other orders for payment of money; to endorse checks, drafts, notes, bills, time deposits (CD's) or other instruments owned or held by this Corporation for deposit with Bank or for collection or discount by Bank; to accept drafts, acceptances, and other instruments

payable at Bank; to place orders with Bank for the purchase and sale of foreign currencies on behalf of this Corporation; to execute and deliver an electronic funds transfers agreement and to make transfers or withdrawals by electronic transfer on behalf of the Corporations; to obtain an access device (including but not limited to a card, code, or other means of access to the Corporation's accounts) that may be
used for the purpose of initiating electronic fund transfers [Corporation agrees and acknowledges that neither the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) nor Regulation E (12 C.F.R. Part 205) are applicable to any such access device]; to establish and maintain a night deposit
relationship: to execute and deliver a wire transfer agreement and to request, or to appoint or delegate from time to time such persons who may request, wires of funds; to enter into any agreements with the Bank for the provision by Bank of various Treasury management services to this Corporation as such officer or employee may determine, in his or her sole discretion, and to sign any and all documents and take all actions required by Bank relative to such Treasury Management services or the performance of the Corporations obligations thereunder, and that any such Treasury Management agreement(s) shall remain in full force and effect until written notice to terminate given in accordance with the terms of any such agreement shall have been received by Bank and that such termination shall not affect any action taken by the Bank prior to such termination; to rent or lease a safe deposit box from Bank, to execute the rental agreement or lease, to enter the safe deposit box and to terminate the rental agreement or lease; to take whatever other actions or enter into whatever other agreements relating to the accounts or investment of funds in such accounts with Bank, and to execute, amend, supplement and deliver to Bank such agreements on behalf of the Corporation upon such terms and conditions as such officer or employee may deem appropriate and to appoint and delegate, from time to time, such person(s) who may be authorized to enter into such agreements and take any other actions pursuant to such agreements in connections with said accounts that the officer or employee deems necessary; and to waive presentment, demand, protest, and notice of protest or dishonor of any check, note, bill, draft, or other instrument made, drawn or endorsed by this Corporation; and

Further Resolved, the Bank be and it hereby authorized to honor, receive, certify, or pay or exchange for money orders or other instruments all instruments signed in accordance with foregoing resolutions even though
such payment may create an overdraft or even though such instruments may be drawn or endorsed to the order of any officer or employee signing the same or tendered by such officer or employee or a third party for exchange or cashing, or in payment of the individual obligation of such officer or employee, or for deposit to such officer's or employee's personal account and Bank shall not be required or be under any obligation to inquire as to the
circumstances of the issuance or use of any instrument signed in accordance with the foregoing resolutions or the application or disposition of such instrument or the proceeds, thereof; and, further, that the Bank is authorized to honor any instructions regarding withdrawals, orders for payment or transfer of funds whether oral, by telephone or electronic means if such withdrawal, orders or transfer are initiated by an above authorized officer or employee; and

Further Resolved, that the Bank be and is hereby requested, authorized and directed to honor and to treat as authorized, checks, drafts or other orders for the payment of money drawn or purportedly drawn in this Corporation's name, including those payable to the individual order of any person whose name appears thereon as signer thereof, when bearing or purporting to bear the facsimile signature of an officer or employee authorized in the foregoing resolutions and Bank shall be entitled to honor, to treat as authorized, and to charge this Corporation for such checks, drafts, or other orders regardless of by whom or by what means the actual or purported facsimile signature thereon may have been affixed thereto, if such signature resembles the facsimile specimen duly certified to or filed with the Bank by the Secretary or Assistant Secretary or other officer of this Corporation or if such facsimile signature resembles any facsimile signature previously affixed to any check, draft, or other order drawn in the

Corporation's name, which check, draft, or other order was accepted and paid without timely objection by the Corporation, thereby ratifying the use of such facsimile signature; and the Corporation hereby indemnifies and holds the Bank harmless against any and all loss, cost, damage, or expense
suffered or incurred by the Bank arising out of or in way related to the misuse or unlawful or unauthorized use by a person of such facsimile signature; and

Further Resolved, the endorsements for deposit may be evidenced by the name of the Corporation being written or stamped on the check or other
instrument deposited, without designation of the party making the endorsement, and Bank is authorized to supply any endorsement on any instrument tendered for deposit or collections; and

Further Resolved, that the secretary or Assistant Secretary of this Corporation shall certify to Bank names and signatures of persons authorized to act on behalf of this Corporation under the foregoing resolutions and shall from time to time hereafter, as changes in the identity of said officers and employees are made: immediately report, furnish and certify such changes to Bank and shall submit to Bank a new account signature card reflecting such change(s) in order to make such changes effective and Bank shall be fully protected in relying on such certifications and shall be indemnified and saved harmless from any claims, demands, expenses, losses, or damages resulting from, or growing out of, honoring the signature of any officer or employee so certified, or refusing to honor any signature not so certified; and

Further Resolved, the foregoing resolutions shall remain in full force and effect and the authority herein given to all of said persons shall remain irrevocable as far as Bank is concerned until three (3) business days after Bank is notified in writing of the revocation of such authority and that receipt of such notice shall not affect any action taken by said Bank prior thereto; and

Further Resolved, that all transactions by any officer or employee of this Corporation on its behalf and in its name with Bank prior to the delivery to Bank of a certified copy of the forgoing resolutions are, in all respects, hereby ratified, confirmed, approved and adopted; and

Further Resolved, that the Secretary or Assistant Secretary be and hereby is, authorized and directed to certify these resolutions to said Bank and that the provisions hereof are in conformity with the Charter or Articles of Incorporation and Bylaws of this Corporation and that the Secretary or
Assistant Secretary be, and hereby is, authorized and directed to certify, from time to time hereafter, the names of the holders of the above authorized titles and their signatures on any signature card or other documentation required by said Bank.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of this Corporation, this 3rd day of October 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

Resolution Number: R-00-10-03-1

QUITCLAIM DEED - TRANSFER TITLES TO OLD FORT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously authorize the Mayor to sign the following Quitclaim Deed:

CITY OF MARION
NORTH CAROLINA
QUITCLAIM DEED

Mail after recording to:
This instrument was prepared by DAMERON, BURGIN & PARKER, P.A., Attorneys at Law, Marion, NC/

THIS DEED made this 3rd day of October 2000, by and between CITY OF MARION, a municipal corporation, GRANTOR and THE TOWN OF OLD FORT, a municipal corporation, GRANTEE:

The designation of Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in OLD FORT Township, McDowell County, North Carolina and more particularly described as follow:

BEING all that property described in Deed Book 276 at Page 699 dated August 18, 1978, and recorded on September 13, 1978. The Grantor herein intends to convey all of its right, title and interest to the Grantee herein without warranties.

This Deed is executed pursuant to a Resolution wherein the Old Fort – Marion – McDowell County Recreation Commission was established and wherein titles to lands acquired by the said Commission was established and
wherein titles to lands acquired by the Commission would be deeded to the municipality in which the property is located upon dissolution of the said Commission.

This Deed was prepared without a review or examination of the above described property and no opinion or representations are being made either expressly or impliedly by Dameron, Burgin & Parker, P.A.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee, his heirs and or successors and assigns, free and discharged from all right, title, claim or interest of the Grantor or anyone claiming by, through, or under him.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

CITY OF MARION

By: _____ SEAL
A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

PLANNING BOARD – APPOINT ONE ALTERNATE MEMBER: A discussion was held regarding the need to appoint an Alternate Member to the Planning Board.

It was the consensus of the Board for the City Manager to make contacts to several City Residents and to present names of persons willing to serve at the next Regular City Council Meeting.

ORDINANCE AMENDING THE CAPITAL PROJECT BUDGET ORDINANCE – INDUSTRIAL PARK PROJECT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
CAPITAL PROJECT BUDGET ORDINANCE
INDUSTRIAL PARK PROJECT
(NCDENR Project No. SBH-971)
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Capital Project Budget Ordinance – Industrial Park Project for the City of Marion, North Carolina as adopted by the Marion City Council on the 2nd day of May, 1995 is hereby amended as follows:

EXPENDITURES

Transfer to Water/Sewer Fund is increased from $-0- to $69,173.
Construction is decreased from $763,549 to $716,827.
Engineering is decreased from $97,300 to $60,365.
Administration is decreased from $22,000 to $12,209.

REVENUES

Interest Earned is increased from $-0- to $8,167.
State Clean Water Bond Revenue is decreased from $233,400 to $203,791.
McDowell County Revenue is decreased from $449,449 to $446,616.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 3rd day of October, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

Ordinance # O-00-10-03-01

BUDGET ORDINANCE – FIRST AMENDMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
2000 – 2001 BUDGET ORDINANCE
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2000 – 2001 as adopted by the Marion City Council on the 20th day of June, 2000 is hereby amended as follows:

WATER/SEWER FUND

a. **Water/Sewer Fund Revenue, Transfer from Water/Sewer Project – Industrial Park Project, Account Number 30-350-0000, is increased from $ -0- to $69,173.**

b. **Water/Sewer fund Expenses, Contracted Services, Account Number 30-810-4500, is increased from $200,000 to $269,173.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 3rd day of October, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

Ordinance # O-00-10-03-02

DECLARE ITEMS SURPLUS TO CITY NEEDS FOR ANNUAL AUCTION: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to approve the following items as declared surplus items to be sold at the annual auction:

Street Department:

1 – 1989 Chevrolet 3500 1-ton w/Utility Bed
1 – 1989 Chevrolet S-10 Pickup Truck
1 – 1989 Chevrolet S-10 Pickup Truck
1 – 1985 555B Backhoe Loader
1 – Kelly Crestwell Paint Striper
1 – Clipper 12 hp Gas-operated Concrete Floor Saw
1 – Fiberglass Aerial Bucket
1 – Aluminum Tool Box for small pickup truck
1 – Stihl Weedeater

1 – Sandspreader
40 – 5' Wooden Flag Poles

Public Works:

1 – Electrical box with meter base
3 – Metal Desks
1 – White Commode with two tanks

Recreation Department:

1 – Commercial Electric Cook Stove
2 – 36" Metal Doors, standard height
1 – Triple Stainless Steel Sink with side extensions
2 – 6' x 3' Stainless Steel Tables
2 – Bicycle Racks

Sanitation Department:

1 – 1-Ton Truck with Electric Dump Bed
1 – Utility Trailer

Fire Department:

1 – IBM Electric Typewriter
1 – TTX Computer Moniter
2 – Chicony Computer Keyboards

City of Marion Administration:

1 – Computer w/Monitor and Keyboard (no hard drive)
1 – WYSE Terminal
1 – Xerox Model 630 Typewriter
1 – CTX12" Computer Monitor
1 – TI 5660 Calculator
1 – Midwest Processor
1 – Dictaphone

Water and Sewer Fund
Water Department:

2 – 40hp 460v three-phase blowers
1 – Black and Decker Macho II Hammer Drill

City of Marion Police Department

1 RCA TV w/Remote
1 Metal Magazine Rack
1 Time Card Rack
1 HP Desk Jet 600C Printer
Duracraft Portable Electric Space Heater
1 TTX 14" SVGA Monitor
1 NCR Monitor
1 Tripod
13 Harris Business Phones

1 Harris DSS Phone Console
1 Toshiba Business Phone
1 Fax /Modem line sharing device
1 Com Share device
1 Casio SK – 1 Keyboard
1 Ritron Radio
1 12" Fan
2 Radio Shack External Speakers
5 Midland CB Transceiver
3 blankets
1 realistic CB Station
1 Box Misc. Electronic Computer Components
1 Doro Dictaphone
1 1 Orion VCR
2 Fellowes Disc Trays
1 Poloroid 1 Step Camera
2 Panasonic Dot Matrix Printer
12 Vibro-graver Metal Engravers
1 Super Nintendo W/2 game controllers
1 Prestige Cell Phone
1 Panasonic Cassette Recorder
1 1988 S10 Chevrolet Pick-up

City of Marion Police Department
(Money Goes to School Board)

1 – Zebco 808 Fishing Reel
1 – Small Wooden Handle Hatchet
1 – Pair Small Hoop Earrings (Gold Color)
1 – Pair Ball Earrings (Gold Color)
1 – John S. Battle High School 1973 Class Ring
1 – Ring W/Turquoise Stone
1 – Ring W/White Stone
1 – 14kt. Gold Wedding Band
1 – 10kt. Gold Leaf Ring
1 – Ring W/Clear Stone
1 – Heart Shaped Jewelry Box
1 – Rope Design Bracelet
1 – Pair Hoop Twisted Earrings
1 – 18" Chain with #1Mom Charm
1 – 18" Chain with Angel Charm
1 – Tennis Bracelet
1 – Small Hoop Earring
1 – Pair Wide Hoop Earrings
1 – Pair Earrings W/Triangle Charms
2 – Intelligent Plug – In Saver Chargers
1 – 12 Speed Huffy meltdown Mountain Bike
1 – 10 Speed Huffy Ultima
1 – 16" BMX Style Bike
1 – 18 Speed "Police Bike"
1 – 10 Speed Huffy Mountain Bike
1 – 10 Speed Mt. Climber
1 – Pinnacle All Terrain

CITY WAREHOUSE

6 - PAPER TOWEL DISPENSER
5 - HARD SURFACE DISINFECTANT
23 -STATIC ARREST
40 -CULTURE CARPET CLEANER
1 - UNION JACK
7 - LIQUID DUST MOP TREATMENT
40 - DEPICT MILD CLEANER
6 - FABRIC PROTECTOR

191 -GLASS CLEANER/QT.
17 - ESCORT METAL POLISH
4 - SODIUM VAPOR BULB/1000WATT
2 - LUCOLUX LAMP/400WATT
173 -CRINGE POWDER INSECTICIDE
11 - ATOMIZER REFILL - NO BUG
227 -KNIT GLOVES W/NITRILE PAL
105 -RED SAFETY LIGHTSTICK -30 MIN
10 - HAND CLEANER 4.5 OZ TUBE
7 - SOAP DISPENSER - 2500ML
15 - FRESH START PROTECT SKIN
13 - DERMA PLUS SKIN PROTECT 17 OZ
4 - DERMA PLUS DISPENSER 17 OZ
11 - DERMA PLUS SKIN PROTECT 12 OZ
7 - SNAKE BITE KIT
7 - CONE CUP 7OZ
4 - CONE CUP DISPENSER 7OZ
29 - TYPERWRITER RIBBON -MEMWRTR 630
40 - TYPERWRITER RIBBON MEMWRTR 60 SERIES
4 - CORRECTION TAPE MEMWRTR 50 SERIES
18 - TYPERWRITER RIBBON BROTHER
6 - DRY LIFT OFF TAPE 900221-6 BOX
12 - PRINTER RIBBON PANASONIC
6 - PRINTER RIBBON – CITIZEN
21 - PRINTER RIBBON KXP1123/1124/1124I
32 - MINI-DATA CARTRIDGE 4MM-D
12 - MINI-DATA CARTRIDGE DC2120 QIC
20 - DISKETTE 5.25 DSDD FORMATT
5 – DISKETTE 3.5 DSDD FORMATT
13 - DISKETTE 5.25 DSHD FORMATT
2 - DISKETTE STORAGE TRAY
2 - LABEL TAPE CASSETTE BLU/CL
1 - LABEL TAPE CASSETTE RD/CL
4 - DATA BINDER 11X8 1/2 UNB-C
20 -DATA BINDER 11X8 1/2 UNB
36 -DATA BINDER 11X14 7/8 BRST
6 - DATA BINDER 14 7/8X11 UNB-C

10 - BINDER INDEX 9 1/2X11-UNB
3 - BINDER INDEX 11X14 7/8 BR
41 - DATA BINDER 9 1/2X11-UNB C/
48 - MEMO PAD 3X5 SPIRAL
30 - SHEET PROTECTOR SIDE LOAD
4- MASKING TAPE - 1/2 IN.
4 - MASKING TAPE - 3 IN.
7 - COVER UP TAPE
5 - FILAMENT TAPE - 1/2 IN.
9 - FILAMENT TAPE - 3/4 IN.
9 - FILAMENT TAPE - 1 IN.
3 - WRIST PAD
41 - LIQUID PAPER – IVORY
22 - LIQUID PAPER – BLUE
7 - LIQUID PAPER - LEDGER GREEN
6 - LIQUID PAPER – BUFF
5 - LIQUID PAPER – GREEN
10 - LIQUID PAPER - CANARY
10 - LIQUID PAPER – GOLDENROD
4 - DRY ERASE MARKERS/4 COLOR
11 - TAPE FLAGS – GREEN

3 - TAPE FLAGS – BLUE
5 - TAPE FLAGS – YELLOW
6 - TAPE FLAGS – RED
11 -TAPE FLAGS – PURPLE
5 - FOLDER LABEL – BLUE
4 - DISKETTE LABEL - 100PK
1 - COPIER TONER/KONICA 1290
1 - WALKIE BATTERY/MAXON CA1
44 - SUSTAIN WHITE GREASE/TUBE
14 - MIRAGE POLISH
1 - DEBONDER - ADHESIVE REMOVER
24 - LUMBER CRAYON – BLUE
39 - LUMBER CRAYON – BLACK
18 - SUSTAIN/WHITE GREASE – CAN
30 - CLAD - ZINC GALVINIZER SPRAY
28 - STYLENE - STAINLESS SPRAY
23 - NON-SKID EPOXY COATING
20 - WHEEL STOP – SAFETY YELLOW
8 - WHEEL STOP – HANDICAP BLUE

PROCLAMATION – MAKE A DIFFERENCE DAY: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following Proclamation:

PROCLAMATION

MAKE A DIFFERENCE DAY

WHEREAS, serious social problems concern our nation and threaten its future; and

WHEREAS, connecting with others and working together through volunteer service can bridge the differences that separate people and help solve serious social problems; and

WHEREAS, we, the American people, have a tradition of philanthropy and volunteerism; and

WHEREAS, millions of self-sacrificing individuals touched and enhanced the lives of millions on the ninth annual day of doing good by giving where there was a need, rebuilding what had been torn down, teaching where there was a desire to learn and inspiring those who had lost hope; and

WHEREAS, USA WEEKEND magazine and its affiliate newspapers and The Points of Light Foundation and its affiliate volunteer centers have joined to promote an annual national day of doing good that celebrates and strengthens the spirit of volunteer service; and

WHEREAS, volunteer service is an investment in the future we all must share;

NOW, THEREFORE, I, A. Everette Clark, Mayor, do hereby proclaim October 28, 2000, as Make A Difference Day in Marion, North Carolina, and urge my fellow citizens to observe this day by connecting with friends, fellow employees and relatives and with religious, school and civic groups to engage in projects benefiting their community.

Signed this the 3rd day of October, 2000.

A. Everette Clark, Mayor

LEAF BAGS: A brief discussion was held regarding dispensing of leaf bags to persons living inside the City of Marion.

A limited number of free leaf bags will be given to city residents during the months of October, November and December. The leaf bags can be picked up at the Public Works Department on Shop Drive. Residents physically unable to pick up the bags may call the Public Works Department and the bags will be delivered to them. No resident may receive more than 20 free leaf bags. Bags must be used for bagging leaves from properties within the city limits.

WATER MANAGEMENT PLAN: The City Manager advised that the City of Marion is required to have a Water System Management Plan on file with the State in order to obtain any future approvals from NCDEH for water system projects. He advised that city personnel can put the plan together but that it will take a lot of time to prepare. The City Manager advised that McGill Associates has agreed to prepare the plan at a cost not to exceed $3,000.00.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to contract with McGill Associates to prepare the Water System Management Plan, for a price not to exceed $3,000.

GARDEN STREET - RAILROAD TRACKS: Councilman Little advised that the recent repairs of the railroad tracks on Garden Street have made them worse.

A brief discussion followed.

Director of Public Works Glen Sherlin was directed to contact authorities with Southern Railroad and request that this area be revisited and corrected.

MAIN STREET – GAZEBO: Councilman Cuthbertson ask the Director of Public Works to price plastic lattice to replace the wood lattice at the Gazebo located on Main Street.

Councilman Cuthbertson also advised that he had received complaints regarding the Chipper leaving saw dust and various materials when working. The Director of Public Works advised that he would caution the men to be more careful when picking up and chipping materials.

CLOSED SESSION - Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to go into closed session, in accordance with N.C General Statute 143-318 (A) (5), to discuss a possible acquisition of Real Estate and, in accordance with NC General Statute 143 – 318.11 (a) (6), to discuss a personnel matter.

REGULAR SESSION: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 17, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem, Steve Little: Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards arrived for the meeting at approximately 7:25 P.M.

Mayor Clark attended the 2000 Annual Conference in Fayetteville, North Carolina and arrived for the meeting at approximately 7:45 p.m.

OTHERS PRESENT: J. Earl Daniels, Interim City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Ms. Jonelle Daniels, daughter Lisa Davis, and grandchildren Adam and Madeleine Davis,

MAYOR PRO TEM LITTLE PRESIDED OVER THIS MEETING IN THE ABSENCE OF MAYOR CLARK.

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the minutes of the October 3, 2000 City Council Meeting.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the minutes of the October 3, 2000 Closed Session Minutes.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the minutes of the October 12, 2000 Special Session.

REQUEST – FIRE CHIEF TOM MILLIGAN: Fire Chief Tom Milligan appeared before Council advising that the City pays ten dollars per month per fireman into the Firemen's and Rescue Squad Worker's Pension Fund. At the end of twenty years the account is paid up. When a "volunteer" fireman becomes age fifty-five and has at least twenty years of service he can draw his retirement and stay on the department if he so wishes. A paid fireman may not draw his pension until he retires from the City.

Chief Milligan and Jerry Poteat both are fifty-six with more than twenty years of service to the City of Marion as paid firemen. In their opinion, they lost $146.00 per month last year and will lose $151.00 a month this year, unless they retire.

They are requesting that the City pay them $151.00 per month until they retire.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to table this request.

RESOLUTION ADOPTING LOCAL WATER SUPPLY PLAN: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolution:

CITY OF MARION, NORTH CAROLINA
RESOLUTION

2nd DRAFT 1997 LOCAL WATER SUPPLY PLAN
CITY OF MARION, McDOWELL COUNTY
PWSID #01-56-010

BE IT RESOLVED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Marion City Council adopts the 2nd Draft 1997 Local Water Supply Plan (PWSID #01-56-010).

Section 2. That three-(3) copies of the local Water Supply Plan be submitted to the North Carolina Department of Environment and Natural Resources, Division of Water Resources.

Adopted this the 17the day of October, 2000.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

RESOLUTION NUMBER: R-00-10-17-1

BID PROPOSAL – COMPUTER SYSTEM – REPLACEMENTS: The Interim City Manager presented Council with a proposal from Allen Daniel and Associates in the amount of $29,581.50 to replace the computer hardware currently being used in the tax and utility departments.

Purchasing Agent Brenda Williams advised that she had tried to contact venders through the N.C. Purchasing list and that she had searched the internet in making price comparisons on the various equipment, but could not find information for our Unix system.

She advised that unless the city wishes to change everything, including software, she would recommend accepting the proposal from Allen Daniel and Associates.

A discussion followed.

Interim City Manager Earl Daniels, advised that the hand-held computers used by the meter readers were in service when the City Hall was on Logan Street. The monitors and key boards used by the utility department were also in service at that time. He advised that since the city purchased its first computer system in about 1978, the city has not missed getting the water bills or a payroll out. He advised that it is necessary to replace the old equipment, without having to change all the software.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to accept the proposal of Allen Daniel and Associates in the amount of $29,581.50.

* Councilman Edwards arrived at 7:25 P.M.

BUDGET ORDINANCE – SECOND AMENDMENT: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA

(Second Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2000-2001 as adopted by the Marion City Council on the 20th day of June, 2000 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenue, Transfer from Cemetery Fund – Account Number 10-388-0000, is increased from $-0- to $6,850.

b. General Fund Expenses, Cemetery Department, Contracted Services, Account Number ~~30-810-4500~~, is increased from $25,000. to $31,850. 10-640-4500 DWS per Chairman

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 17th day of October, 2000.

Stephen R. Little, Mayor Pro Tem

Attest:

J. Earl Daniels, Interim City Manager/Clerk

ORDINANCE NUMBER: O-00-10-17-1

BROWN UTILITY COMPANY – REQUEST WAIVING LIQUIDATED DAMAGES:
The Interim City Manger presented Council with a letter from Mr. J. T. Brown, Jr. of Brown Utility Company advising that he would like for the Marion City Council to waive the balance of the liquidated damages for the project that upgraded the City's Influent Pump Station.

In September of 1999 the following information was sent to Mr. Brown from the City of Marion:

Total current amount of unpaid balance to Brown Utility Company is $28,152.12. The outstanding change orders for the project result in a credit to the City of $8,698.73.

In addition to the Construction change order items, McGill Associates billed $2,950. in additional inspection and contract administration costs due to the project not being completed on time and due to construction mistakes. When this amount was added to the change order it results in a total of $11,648.73 to be retained from the contract to pay for credits to the City. When this amount was deducted from the $28,152.12 in unpaid balance, the resulting figure was $16,503.39.

Article V of the Agreement between Brown Utility and the City required that Brown Utility pay the City $300.00 for each and every calendar day after the contract completion date that the work was not completed. Records indicated that the actual completion date was July 29, 1999 which was 379 calendar days past the contract completion date. This resulted in a total amount of $113,700. In liquidated damages to be paid to the City by Brown Utility Company.

The City of Marion retained the $16,503.39 as partial payment for the liquidated damages and billed Brown Utility Company for the balance of $97,196.61 on September 10, 1999.

Mr. Brown's letter requesting Council to waive this balance states that the bid forms required that a notice to proceed be given to them within 30 days of the execution of the contract. The letter stated that the notice to proceed wasn't actually given to them for over ninety days and the delay in the notice to proceed put them in one of the wettest winters in history. They would not have bid this project had they known in advance when the project would commence.

Mr. Brown also advised that the City of Marion had beneficial occupancy only days after the deadline of the project.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to send Mr. Brown a letter requesting a good faith proposal for a reasonable amount for settlement.

REQUEST TO PLACE FLOAT IN CHRISTMAS PARADE: Council was presented with a memo from the Director of Public Works requesting permission to place a float in this years Christmas Parade. The approximate cost to complete the entry would be $300.00 - $400.00.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve this request.

WATERLINE PROJECT – INTERSTATE 40 REST AREA: The Interim City Manager advised that he and the Public Works Director met with representatives from DOT on October 5 about the extension of a waterline to the DOT Rest Areas on I-40. The group reviewed the Preliminary Engineering Report provided by McGill Associates. The Interim City Manager advised the group that the city would prefer Alternate Number 3, which provides for the extension of a 12" diameter water-line along Sugar Hill Road to Interstate 40, then a service line parallel to I-40 to the Rest Areas. The estimated costs for this alternate was $778,055. The group indicated that DOT would not be interested in that alternate because it was the most expensive and the DOT would have a water line to maintain along the right-of-way of I-40. The DOT's interest is in getting water to the Rest Areas at the lowest cost possible. The Interim City Manager advised that the group seemed to favor Alternate 1, Sugar Hill Road/Shady Lane Road Extension. The engineers estimated cost for Alternate 1, is $612,065. Council was advised that this cost could be reduced by eliminating fire hydrants and eliminating service connections installed by a contractor. Since this property is outside the City Limits, fire hydrants could be installed at a later date upon request of citizens and they could pay for the hydrants. Service connections could be made by the city upon request for service. Council was advised that DOT should furnish all rights-of-way and/or easements at no cost to the City and that DOT should have an 8" diameter water-line installed under Interstate 40 which extends to the edge of their property or their fence on the south side of the Interstate. This would permit the City to install, at some time in the future, a water-line from U.S. 221 and interconnect with this line to provide a loop system for better service. The Interim City Manager advised that the engineers estimate for Alternate 1, Sugar Hill Road/Shady Lane Road Extension was $612,065. He informed Council that by eliminating costs for fire hydrants and connections, this amount could be reduced to $596,817, which includes the tap fee and cost recovery fee for a 2" water meter to serve the Rest Areas.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to direct the Interim City Manager to
advise DOT that the City will have installed the water-line along Sugar Hill Road and Shady Lane up to the Rest Area fence on the north side of I-40 and furnish the 2" water meter service, for a lump sum price of $596,817, provided the DOT provides, at no cost, the necessary rights-of-way and easements and that the DOT install an 8" diameter water-line under Interstate 40 up to the edge of the right-of-way on the south side of I-40 and allow the city to connect to the line to provide a loop system in the future.

BIRTHDAY CAKE: Mayor Clark called for a short break. Mr. Daniels Family surprised him with a birthday cake. Council Members and guests all received a slice of cake.

It was discovered that it was also Councilman Billy Martin's Birthday.

FIRST STREET – EAST MARION –SIDEWALK: Councilman Edwards advised that he had received several complaints about the sidewalk on First Street in East Marion. Mr. Edwards asked where First Street was on the priority list for sidewalk replacement.

Director of Public Works Glen Sherlin advised that he would check on the sidewalk replacement priority list.

GARDEN STREET – RAILROAD CROSSING: Councilman Little advised that he was still receiving complaints regarding the Rail Road Crossing on Garden Street. The Public Works Director advised that he would contact the Railroad Company again.

TRAFFIC LIGHTS – PROBLEMS: Councilman Owenby advised that he was still receiving complaints regarding the traffic light at the intersection of Court and Garden.

A brief discussion followed.

It was the consensus of the Board for the Interim City Manager to contact the Department of Transportation regarding the following three traffic lights:

1. Intersection of Court and Garden Street (holding to long)
2. Intersection of Court and Yancey Street (light needs to be removed)
3. Intersection of Court and Baldwin (left turn signal)

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session, in accordance with N.C. General Statute 143-318.11 (a) (6). to discuss a personnel matter.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

Steve Little. Mayor Pro Tem

Attest:

J. Earl Daniels, Interim City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Special Session on Tuesday, October 31, 2000 at 12:00 P.M. in the City Hall Conference Room located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem, Steve Little; Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards was not present for this meeting.

OTHERS PRESENT: J. Earl Daniels, Interim City Manager; Debi Sherlin, Secretary; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: No citizens were present for this meeting.

ANNOUNCEMENT/APPOINTMENT OF NEW CITY MANAGER: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted unanimously to appoint Mr. Bob Boyette as the new City Manager for the City of Marion effective January 2, 2001.

RETIREMENT GIFT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted unanimously to present J. Earl Daniels, with the chair to his desk he has used through the years as a Retirement gift.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, Interim City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, November 14, 2000 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, Interim City Manager; Debi Sherlin, Secretary; Tim Benware, Chief of Police; Tom Milligan, Fire Chief; Jerry Poteat, Marion Fire Department; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: No guests were present for the meeting.

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, Council voted unanimously to approve the minutes of the October 17, 2000 Regular and Closed Sessions and the October 31, Special Session.

REQUEST – FIRE CHIEF TOM MILLIGAN – FIREMEN'S PENSION FUND PAY:
The Interim City Manager advised that Volunteer firemen having served twenty years and reaching age fifty-five can draw a monthly check from the pension fund and continue to serve as volunteer firemen. Paid firemen cannot. Chief Milligan is asking that the City pay qualified paid firemen the same amount paid monthly to qualified volunteer firemen by the pension fund. This would presently only effect two City Employees, Tom Milligan and Jerry Poteat. The policy regarding payment from the pension fund is established by the State and the City has no control over it. The Interim City Manager advised that the monthly amount is subject to increase each year and that other paid firemen would eventually qualify. He stated that approval of the request would provide certain benefits to one group of city employees that is not provided for other city employees.

A discussion followed.
Council discussed how the payment could be made without effecting the pay plan and increasing the retirement and supplemental retirement payments by the city.

Council was advised that the present monthly payment is $151.00 to each qualified volunteer firemen.

Upon a motion by Councilman Edwards, seconded by Councilman Little. Council voted to approve this request contingent upon working out the details with the City Auditors on the best way to provide the benefit without effecting the pay plan and retirement benefits.

The vote was as follows:

Mayor Pro Tem Little	Yes
Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Martin	Yes
Councilman Owenby	No

EXPRESSION OF APPRECIATION CONTRIBUTION TO CERTAIN VOLUNTEER FIREMEN: Council was advised that some volunteer firemen with the Marion Fire Department fill in for paid firemen who are absent due to training, sickness, vacation time and/or Holidays. It was agreed that the city should make a contribution to these gentlemen for their service to the community.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the following contributions:

Donald R. Anderson	$1,170.00
Durwood R. Creson	$1,365.00
Terry L. Depoyster	$ 650.00
Bruce A. Edwards	$1,430.00
Michael Gibson	$ 195.00
James E. Neal, III	$ 130.00
Cameron K. Taylor	$ 975.00
Terry Young	$ 585.00

ORDINANCE AMENDMENT – WATER/SEWER RATES: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following ordinance:

ORDINANCE
AMENDMENT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Ordinance entitled ORDINANCE ESTABLISHING NEW WATER/SEWER RATES adopted September 29, 1999 is hereby amended as follows:

Under WATER RATES BASED ON MONTHLY CHARGES add the following under Master Meter:

	INSIDE CITY	OUTSIDE CITY
Master Meter Minimum Rate for 2,000 gallons or less (per unit served)	$7.60	$15.20

Delete the last sentence under NOTE: which reads as follows: "Minimum rates do NOT apply to residential and/or commercial units served by a Master Meter."

Under SEWER RATES FOR WATER CUSTOMERS BASED ON MONTHLY CHARGES add the following under Master Meter:

	INSIDE CITY	OUTSIDE CITY
Master Meter Minimum Rate for 2,000 gallons or less (per unit served)	$7.60	$15.20

Delete the last sentence under NOTE: which reads as follows: "Minimum rates do NOT apply to residential and/or commercial units served by a Master Meter.

Section 2. This amendment shall be effective upon adoption.

Adopted this the 14th day of November, 2000.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

ORDINANCE NUMBER: O-00-11-14-01

GARBAGE FEE REFUND – DERRICK BROOKS ELECTRIC & BIBLE BAPTIST CHURCH: The Interim City Manager presented Council with a memo from Tax Collector Claudia Severson advising that Mr. Derrick Brooks of Brooks Electric, located at 14 South Garden Street and the Bible Baptist Church located at 17 West Court Street had both received a Water/Sewer Bill for September and October 2000 that had a $11.00 refuse charge listed on them. They paid the September bill and Ms. Severson has adjusted the $11.00 off the October Bills.

Neither business is receiving refuse service from the City of Marion at this time.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to refund Brooks Electric and the Bible Baptist Church each $11.00 as requested by the Tax Collector.

TAX REFUND – CHARLES R. JR. & TERESA ABERNATHY: The Interim City Manager presented Council with a memo from Ms. Claudia Severson requesting that Mr. & Mrs. Charles Abernathy be refunded $48.87.

County Tax records show that a 1957 Ford Thunderbird was registered with the Department of Motor Vehicles in December 1999 and was double billed in 2000.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to refund $48.87 as requested by the Tax Collector.

FAIR HOUSING PLAN – IPDC – SPAULDING WOODS APARTMENTS PROJECT:
Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following Fair Housing Plan:

Recipient's Plan to Further Fair Housing

City of Marion
Recipient

P.O. Box 700 Marion, N.C. 28752-0724
Recipient's Address

Lovina Smith — (828) 652-3551/TDD – same
Contact Person — Telephone Number/TDD Number

1. Indicate if the Recipient will be affirmatively furthering fair housing for the first time or has implemented specific activities in the past.

First Time X Past Activities

II. Identify and analyze obstacles to affirmatively furthering fair housing in recipient's community. (Use additional pages as necessary)

The primary obstacles to furthering Fair Housing are economic. Historically the citizens of Marion have been dependent on low-paying textile wages or incomes too low to afford the purchase of their own home. Furthermore, very few developers are willing to construct new rental units due to high interest rates and a low return on investment. The best remedy or approach to improving housing opportunities is to improve the income of the area's citizens. The City of Marion is addressing this problem by encouraging economic development through a variety of means.

Another obstacle to Fair Housing has been the lack of information and knowledge about individual rights and responsibilities under Title VIII. Some homeowners and renters do not know the laws that prohibit discrimination due to race, sex, age, handicapped, religion or national origin. Property owners are also not always aware of the laws and regulations that cover the sale and/or rental of property.

III. Activities to affirmatively further fair housing in the City:

* Print an advertisement in the local newspaper promoting fair housing November – December, January 2001 and 2002.

* The City of Marion has its own cable station therefore they will advertise fair housing and complaint procedure. February, March, April 2001.

* Meet with local realtors to discuss housing needs of the low to moderate income changes and leave brochures on fair housing. May, June, July 2001.

* Request fair housing pamphlets and posters from NCHRC. Distribute the information to local banks, realtors, and City Hall. August, September, October 2001.

* Produce landlord tenant guides that contain information on fair housing discrimination landlord tenant rights and responsibilities. November, December, January 2001-2002.

* Provide rental counseling services through Section 8 Housing Program. February, March, April 2002.

* Develop a service directory listing the addresses, phone numbers, and contact names for the various agencies providing service in the area. May, June, July 2002.

* Provide landlord tenant guides to help residents with a variety of housing problems. August, September, October 2002.

* Contact the WNC Housing Partnership and private developers to encourage the development of affordable housing. November, December, and January 2002-2003.

* Provide application assistance for the area low income homeowner for the Rural Development 504 program. February, March, April 2001.

IV. Will the above activities apply to the total municipality or county?
Yes X No _____ If no, provide explanation.

V. Describe recipient's method of receiving and resolving housing discrimination complaints. This may be either a procedure currently being implemented or one to be implemented under this CDBG grant. Include a description of how the recipient informs the public about the complaint procedures. (Use additional pages as necessary.)

1. Any person or persons wishing to file a complaint of housing discrimination in Marion may do so by informing the City Manager of the facts and circumstances of the alleged discriminatory act or practice; and

2. Such complaints will be investigated within ten (10) calendar days of being received. All housing complaints shall be resolved at the local level, if possible. In the event a complaint is not resolved at the local level, the North Carolina Human Relations Council will be informed.

Approved By:

_____
Name of Mayor

Signature of Mayor

_____
Title

_____
Date

Adopted this __14th_ day of November 2000.

REQUEST FOR ENGINEERING QUALIFICATIONS – IPDC – SPAULDING WOODS APARTMENTS PROJECT: The Interim City Manager advised Council that no proposals were received from engineering firms following the advertisement placed by IPDC. It will be necessary to re-advertise.

504 GRIEVANCE PROCEDURE – IPDC – SPAULDING WOODS APARTMENTS PROJECT:

City of Marion
PO Drawer 700
Marion, NC 28752

504 Grievance Procedure

Complaints should be addressed to : The City Maneger.

1. A complaint should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations

2. A complaint should be filed within 5 working days after the complainant becomes aware of the alleged violation.

3. An investigation, as may be appropriate, shall follow a filing of complaint. The investigation shall be conducted by the City Manager and 2 or more of the committee members These rules contemplate informal but through investigation, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

4. A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the City Manager and 3 or more of the committee members and a copy forwarded to the complainant no later than 6 weeks after its filing.

5. The City Manager shall maintain the files and records of the Spaulding Road Project relating to the complaints filed.

6. The complainant can request a reconsideration of the case in the instances where he or she is dissatisfied with the resolution. The request for reconsideration should be made within 30 days of receiving results of grievance.

7. The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the persons pursuit or other remedies such as filing of a complaint with the responsible federal department or agency. Use of this grievance procedure is not a prerequisite to the pursuit or other remedies.

8. These rules shall be construed to protect the substantive rights of interested persons to meet appropriate due process standards and to assure that the City of Marion complies with implementing regulations.

A. Everette Clark, Mayor

SPAULDING WOODS LIMITED PARTNERSHIP AGREEMENT: The Interim City Manager advised that an agreement between the City of Marion and Spaulding Woods Limited Partnership has been submitted for Council's approval and execution by Mayor Clark.

After proofing the agreement, Interim City Manager Earl Daniels had some questions about the agreement and sent it to City Attorneys for review.

Attorney Mia Lorenz had several suggestions for changes to protect the City: however, she did not have time to complete the document before the meeting.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to authorize the Mayor and Interim City Manager to execute this agreement when changes are complete.

A copy of said agreement will be on file at City Hall.

RESOLUTION – 2000-2001 LEAD REGIONAL ORGANIZATION/STATE PLANNING FUNDS: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

RESOLUTION
by the
CITY OF MARION

WHEREAS, in North Carolina the lead Regional Organizations, as voluntary organizations serving municipal and county governments, have established productive working relationships with the cities and counties across this state: and

WHEREAS, the General Assembly recognized this need through the appropriation of $990,000 for Fiscal Year 2000-2001 to help the Lead Regional Organizations assist local governments with grant applications, economic development, community development, and to support local industrial development activities and other activities as deemed appropriate by their local governments; and

WHEREAS, in Region C funds in the amount of $55,000 will be used to assist local governments with state and federal grant applications in community and economic development, provide various support activities to industrial development in the region, develop and expand database essential to community and economic development, provide technical assistance to local governments in planning and growth management issues, assist local governments in resolving solid waste issues, provide staff and other assistance to the Region C Certified Development Corporation, and other activities as requested by local governments and authorized by the Isothermal Planning and Development Commission.

NOW, THEREFORE BE IT RESOLVED that the City of Marion requests the release of it's share of these funds ($1,029.34) to the Isothermal Planning and Development Commission at the earliest possible time in accordance with the provisions of state law.

ADOPTED this 14TH day of November, 2000 .

A. Everette Clark, Mayor

Attest:

J. Earl Daniels, Interim City Manager/Clerk

Resolution Number: R-00-11-14-1

TIRES – COLLECTION BY CITY – PROBLEMS: The Interim City Manager presented Council with a memo from Public Works Director Glen Sherlin advising that with the recent purchase of the front-loading vehicle for commercial garbage collection, the City has taken the rear-loading vehicle, previously used for commercial tire collections, out of service. The new front-loader is not designed for the type of use required in the collection of tires, and to do so creates an unsafe situation for personnel and equipment.

Five nearby municipalities have been contacted regarding commercial tire collection. Not one municipality contacted provides this service.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted to discontinue this service effective February 1, 2000. The Interim City Manager was instructed to contact these four business and to explain the City's position in this matter.

The voted was as follows:

Mayor Pro Tem Little	Yes
Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Martin	Yes
Councilman Owenby	No

CITY EMPLOYEE LONGEVITY CHECKS/TURKEYS: The Interim City Manager asked that Council approve the employee longevity checks based on City Policy. The policy provides one days pay for each year of uninterrupted, full time employment up to five years, and one dollar per month there after. Funds have been appropriated in the Budget for the longevity checks and furnishing turkeys to all employees.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted to approve the Longevity checks for City Employees and to present each full time employee with a turkey.

TOWN MEETING – SUGGESTED DATE JANUARY 25TH – ALSO NEED TO SET THE DATE FOR THE ANNUAL MEETING OF COUNCIL FOR BUDGET PLANNING: The following appointments/meetings were made and/or confirmed by Council:

November 21, 2000 – Joint Utility Committee – City Hall – 8:30 A.M.

November 23, & 24th 2000 (City Hall Closed) Thanksgiving Holiday!

November 19, 2000 – Christmas Parade – 3:00 PM

November 29, 2000 – Inmate Luncheon – Community Building – Program Begins at 11:00 AM - Meal begins @ 012:00 Noon

December 12, 2000 - City Council Meeting - 7:00 PM

December 19, 2000 – City Council Christmas Dinner - Lil' Siena 6:00 PM ($10.00 or less Gift)

December 20, 2000 – City Employee Christmas Dinner – Community Building – 12 NOON

December 29, 2000 – Retirement "Drop In" for Mr. Daniels - 9:00 - 12:00 & 2:00 – 5:00

January 13, 2001 - Interim City Manager – Retirement Dinner – 6:30 PM

January 25, 2001 – Town Meeting – Marion Community Building - 7:00 PM

Planning Session – County Side Barbecue - January 27, 2001 7:00 AM for breakfast then to City Hall for session

CALIFORNIA AVENUE SIDEWALK/CURB REPORT: The Interim City Manager recommended that the City not contract this work. The cost to contract is approximately twice the cost to do it in house. This project will be placed on the project list and will be the next sidewalk project following the work now in progress.

SIDEWALKS – 1ST & 2ND STREETS – EAST MARION: The curbs and sidewalks on both 1st and 2nd streets in East Marion have been inspected and need replacing. This work will be placed on the list of projects to complete following California Avenue.

PLAYGROUND SIGN – COMMUNITY BUILDING: The Interim City Manager presented Council with a copy of the proposed sign to be placed at the Community Building Park when the new playground equipment is installed.

Dr. Amy Ende will be ordering the sign. Council asked that the Sign be re-worded to read CITY OF MARION PLAYGROUND instead of MARION CITY PLAYGROUND.

DEPARTMENT OF TRANSPORTATION – REST AREA – I-40 UPDATE: The Interim City Manager advised that he had a conversation with County Manager Chuck Abernathy about the waterline. He informed Council that the County may be interested in enlarging the waterline from an 8 inch diameter to a 10" or 12" diameter.

COMPLAINT – WATER CUSTOMER – MS. RENA HARP: The City Manager presented Council with a request from Ms. Rena Harp requesting that late fees added to her water and sewer bill be waived.

A discussion followed.

No action was taken in this request.

COUNCILMAN MARTIN COMMENTS: Councilman Martin commented on the length of time that it has taken to begin the work on the proposed park in the West Marion Area. The Interim City Manager explained that the legal paper work has not been completed regarding the necessary easements for access to the property.

COUNCILMAN OWENBY COMMENTS: Councilman Owenby commented on the fine job Mr. Chris Marsh has been doing for the Police Department.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn in Memory of the late Ms. Geneva Blanton.

A. Everette Clark, Mayor

ATTEST: J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, December 12, 2000 at 7 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, Interim City Manager/Clerk; Tim Benware, Chief of Police and Glen Sherlin, Public Works Director.

GUESTS PRESENT: Mr. Van Harold Davis; Ms. Kathy Atkinson and Ms. Harriett Thomas, representing Johnson, Price & Sprinkle; Mr. Gary Hart; Mr. Ken Harris; Mr. Bennie Stacy; and Mr. Nathan Hall, news reporter the McDowell News.

CITY AUDIT FOR YEAR ENDING JUNE 30, 2000: Ms. Kathy Atkinson reviewed with the City Council, the City Audit for the year ending June 30, 2000. She advised that the City is in good financial condition. She informed Council that there was a decline in the current year tax levy collection rate. The collection rate, excluding motor vehicles, dropped from 96.36%, for the prior year, to 92.52% for the current year. She also advised that the total of accounts receivable in the Water & Sewer Fund contains a significant arrears component in the area of closed accounts. Council was advised that once a Water and/or Sewer Account is closed, it is removed from the normal billing process, resulting in a balance that has accumulated over several years. Collectible balances should be billed and uncollectible balances should be written off.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, the City Council unanimously voted to accept the audit as presented.

BUDGET ORDINANCE – PROPOSED THIRD AMENDMENT: The Interim City Manager informed Council that the contributions brought in by Dr. Amy Ende, for the purchase of playground equipment for the Community Building Grounds, need to be appropriated in the Budget for the purchase. He presented the following Ordinance:

CITY OF MARION, NORTH CAROLINA
2000 – 2001 BUDGET ORDINANCE
(Third Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2000 – 2001 as adopted by the Marion City Council on the 20th day of June, 2000 is hereby amended as follows:

GENERAL FUND

a. **General Fund Revenue, Contributions – Playground Equipment – Account Number 10-396-0000, is increased from $ -0- to $34,150.**

b. **General Fund Expenses, Recreation Department, Capital Outlay, Account Number 10-620-7400, is increased from $90,000. to $124,150.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 12th day of December, 2000.

A. Everette Clark, Mayor

ATTEST:
J. Earl Daniels, Interim City Manager/Clerk

Ordinance # O-00-12-12-01

Upon a motion by Councilman Little, seconded by Councilman Martin, the City Council unanimously voted to approve the Budget Amendment as presented.

CONTRACT AMENDMENT – WASTEWATER COLLECTION SYSTEM MASTER PLAN: The following amendment was presented to Council:

December 5, 2000

City of Marion
PO Drawer 700
Marion, NC 28752

Re: Contract 02-51-61
Amendment No. 1

In order to complete the activities associated with the above referenced contract for "Wastewater Collection System Master Plan", the current agreement must be amended.

It is understood and agreed by the undersigned that this letter amends the Agreement (the "Original Agreement") dated April 1, 2000 between City of Marion ("Grantee") and the Rural Economic Development Center, Inc. ("Center").

PARAGRAPH 3. Term of Agreement is amended as specified below:

DELETE:	"terminate on the 30th day of September, 2000."
ADD:	"terminate on the 30th day of January, 2001".

EXHIBIT C – Reporting Schedule is amended with additional reporting dates:

Reporting Period	Due Date
4/1/00 to 1/30/01	2/28/01 (Final Report)

If you agree with the amendment as proposed, please sign the original and the enclosed copy. You should retain the copy for your files and return the original to this office.

ACCEPTED:
City of Marion

By:_____

DATE:_____ Title:_____

ACCEPTED:
Rural Economic Development
Center, Inc.

By:_____
Susan E. Dunn

DATE: 12-5-00

Title: Vice President, Finance
& Administration

Upon a motion by Councilman Little, seconded by Councilman Owenby, the City Council voted unanimously to approve the amendment as presented.

REQUEST TO WAIVE SEWER TAP FEE: Mr. Benny Stacy submitted a request that the City waive the sewer tap fee for his property at 821 Ridge Street, in East Marion. City personnel located a sewer pipe on the property, connected to the City sewer system, indicating that at one time the lot was served by the City Sewer System. Upon a motion by Councilman Little, seconded by Councilman Edwards, the City Council voted unanimously to waive the sewer tap fee and cost recovery charges.

REQUEST TO WAIVE WATER AND SEWER TAP FEE: Mr. Van Harold Davis submitted a request that the City waive the water tap fee for his lot located next to his house at 543 Maple Avenue. He advised that Zeb Hawkins informed him that there were two houses located on the property many years ago. He advised that City employees located a water line serving the lot but did not find a water meter. Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, the City Council voted unanimously to waive the water and sewer tap fees and cost recovery charges.

SELECT ENGINEERING FIRM FOR SPAULDING WOODS APARTMENTS

PROJECT: The City Council reviewed engineering proposals for the Spaulding Woods Apartments Project submitted by Wm. James Jones, P.E. for William G. Lapsley & Associates, P.S. with an estimated engineering fee ranging from $19,000 to $23,000, and from McGill Associates with estimated engineering fees of $17,800. Upon a motion by Councilman Little, seconded by Councilman Owenby, the City Councilman unanimously voted to accept the proposal submitted by McGill Associates.

FIREMEN'S RELIEF FUND BOARD – APPOINT ONE MEMBER: Upon A motion by Councilman Cuthbertson, seconded by Councilman Owenby, the City Council unanimously voted to re-appoint Mayor Pro Tem Little to a two year term on the Firemen's Relief Fund Board of Trustees, said term to expire December 31, 2002.

SENIOR CENTER – REQUEST FROM McDOWELL COUNTY: A letter was presented from McDowell County requesting that the Senior Center be sold with the proceeds of the parcel going to the City and the proceeds of the building going to help pay for the new Senior Center. The City owns the land on which the current Senior Center is located on Crawford Street. The building was constructed with grant funds. There is a reversion clause in the deed that should the property cease to be used as a Senior Center, the property would revert to the City. Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to find out if the property is needed by some other agency, before considering the sale of the property.

COUNCILMAN LITTLE – EXCUSED: Councilman Little asked to be excused for a few minutes and left the meeting.

MARION LAKE CLUB – CERTIFICATE: Council was advised that a representative of the Marion Lake Club informed the Interim City Manager that the Marion Lake Club is issuing new Certificates. He wanted to pick up the old certificate issued to the City and replace it with the new one, representing one share of Capital Stock. Interim City Manager J. Earl Daniels informed him that the City did not have a Certificate, but that a Certificate had been purchased for and in the name of J. Earl Daniels shortly after his employment with the City. Daniels informed Council that at that time you had to have a membership to use the Lake Club Facilities. The Interim City Manager furnished each Council member with a copy of the Certificate, issued in his name. Mayor Clark advised Council that he was a member of Council when the Certificate was purchased and it was his understanding that it was purchased as a benefit for the new manager. Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present unanimously voted to authorize Mayor Clark to take the necessary action to have the document issued in the name of J. Earl Daniels to replace his certificate.

LANDSCAPING SERVICE CONTRACT: The Interim City Manager advised that Public Works Director Glen Sherlin is recommending that the City extend L. L. Moore's Landscaping Contract through December 2001 at the same rate now being paid for the service. Mr. Moore has requested that he be paid over a 12 month period instead of a 9 month period. The annual payment would be the same. The new monthly payment would be $1,380.00 per month for 12 months, instead of $1,840.00 per month for 9 months.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted unanimously to extend the contract as recommended.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Evefette Clark, Mayor

ATTEST: J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 2, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Earl Daniels, Interim City Manager/Clerk; Debi Sherlin, Secretary; Tim Benware, Chief of Police; Glen Sherlin, Director of Public Works; Gaye Noblitt, Sarah Vess, Mike Fox and Jennifer Wright, Representatives of Marion Police Department; Van McKinney, News Reporter, WBRM Radio; Mr. Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Bob & Donna Boyette, Marion, N.C. 28752; Jonelle Daniels, Marion, N.C. 28752; Jason and Stacy Daniels, Morganton, N.C.; Paul, Lisa, Adam and Madalyn Davis, Marion, N.C. 28752; Mrs. Sue Benware, Marion, N.C. 28752; Mr. Robert Ayers, Marion, N.C. 28752.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the minutes of the December 12, 2000 City Council Meeting.

CITZEN OF THE MONTH – SELECTED BY MAYOR CLARK AND ALL MEMBERS OF THE MARION CITY COUNCIL: Mayor Clark and all the Marion City Council selected the Citizen of the Month for January 2001 and presented the following information about January's Citizen of the month:

J. EARL DANIELS

Mayor Clark presented the following information about J. Earl Daniels:

Mr. Daniels was born and raised in Washington, North Carolina
And attended Local Public Schools and was a member of the Wanoca Presbyterian Church.

His education was as follows:

September 1968 to March 1969 - Municipal Administration Course-Institute of Government, Chapel Hill.....received Certificate in Municipal Administration.

September 1957 to March 1958 – Attended U.S. Navy Class A Electronics Technicians School, Great Lakes, Ill.

1954 to 1957- Attended and graduated from Washington, High School, Washington N.C.....General Diploma Conferred.

Active in Student Organizations: Vice - President of Student Council
Treasurer of Senior Class
Secretary–Treasurer of Boys' Athletic Association
Class Poet
Senior Superlatives (Most Athletic/Best All Around Student)
Played JV and Varsity Football
Track
Varsity Baseball

His work experience was as follows:
November 1969 to November 1972 City Manager, Havelock, N.C.
November 1967 to November 1969 Town Manager, Belhaven, N.C.
1965 to 1967 Building, Plumbing, and Electrical Inspector; Zoning and Subdivision Administrator, City of Washington, N.C. – Secretary to the Planning Board and Board of Adjustments.
1964 Minimum Housing Inspector, Assistant Building, Plumbing, and Electrical Inspector
1964 to1967 Attended various Schools on Planning, Zoning, Building, Plumbing and Electrical Courses.
His Military Service with the U. S. Navy was as follows:
Entered U.S. Navy Reserve December 1955
Entered Active Service June 1958 after attending Electronic Technician School
Served On Active Duty until June 1960 on the USS Robert H. McCard with an Honorable Discharge December 1961, 3rd Class Petty Officer.
Served in the US Naval Reserve as Electronics Instructor from March 1964 through March 1966.
Mr. Daniels is an active Member of the First Presbyterian Church in Marion and has served as Deacon, Elder, Sunday School Teacher of 10 years and Sunday School Superintendent for twelve years.
His wife is Jonelle Daniels of 40 years come January 27, 2001. He has three Children and six Grandchildren.
He has earned the following awards and served on these various boards:
Civitan – Citizen of the Year 1983
Served on the Waste Water Treatment Plant Operators Certification Commission 1976-91
Region C – City Manager of the Year December 8, 1994 covers (Rutherfordton, Polk, Cleveland and McDowell Counties.
Served on the N.C. League of Municipalities Board of Directors 1989-91
Served on McDowell Economic Development Association Board
Served on Isothermal Planning and Development Commission – 1973 – 2000
Served on the Regulatory Advisory Committee – NCLM.
The Marion City Council, Mr. Daniels family members, City Department Heads and several Friends all had kind words to share about Mr. Daniels.

REQUEST FOR OLD PLAYGROUND EQUIPMENT FOR MOUNTAIN GATEWAY MUSEUM – MR. WARREN HOBBS: The Interim City Manager advised that Mr. Warren Hobbs had approached him regarding placing the Old Playground equipment that was recently removed from the Marion Community Building Play Ground in the Mountain Gateway Museum.

A brief discussion followed.

This item was tabled contingent upon a letter being presented to the Marion City Council requesting this equipment be donated to the Mountain Gateway Museum and releasing the City of Marion from any liability from this equipment.

REQUEST FOR $1,000.00 CONTRIBUTION – WESTERN CAROLINA RAIL CORRIDOR COMMITTEE: The City Manager presented Council with a letter from Ms. Judith Calvert, Chairperson with the WNC Rail Corridor Committee.

Ms. Calvert advised that there is great excitement and support for the Rail Passenger Train Service across the region and that a reception is being planned for the entire membership of the North Carolina General Assembly, in Raleigh, on Wednesday, March 14th. The City Councils, County Commissioners, Chambers of Commerce Boards, etc., from each of the communities will also be invited.

To defray some of the cost, they are requesting each community to contribute $1,000.00.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to contribute $1,000.00 as requested.

REQUEST FOR REIMBURSEMENT – SEWER LINE REPAIRS – MR. DERECK POTEAT: The City Manager presented Council with a letter from Mr. Derek Poteat and a Memo from Director of Public Works Glen Sherlin requesting that the City of Marion reimburse Mr. Poteat for charges billed by Buckner Plumbing and Heating.

Mr. Derek Poteat of 6 Ridge Street, East Marion has submitted a written request for reimbursement from the City in the amount of $299.61 charged to him by Buckner Plumbing and Heating Company.

Mr. Poteat called Buckner Plumbing and Heating on December 4, 2000 due to a problem with his sewer line. Buckner Plumbing personnel had been on site for most of the day when City Personnel were called.

The main line was washed and cleaned. Several buckets of gravel and debris was removed from this line part of the debris may have come from the hole in the customer's line where some one had worked on the line before this date. The actual blockage was in the Main Sewer Line.

The Invoice from Buckner Plumbing was made out to Ms. Carrie Poteat.

Based on information received, the Public Works Director is recommending that the City make payment to the Poteats in the amount of $299.61.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request in the amount of $299.61 and to make check payable to Ms. Carrie Poteat and Buckner Plumbing.

SEWER CONNECTIONS – STUMPTOWN AREA: The Interim City Manager presented Council with a memo from Mr. Ken McFadden advising that the County can only require sewer connections for those residents with failing septic systems in the Stump Town Area and that County Officials would like affected residents to have a six month period to connect, regardless of failing septic systems.

The Interim City Manager advised that a letter was mailed to Mr. Glen Rhodes of Isothermal Planning & Development Commission and a copy to Mr. Chuck Abernathy, County Manager, on November 18, 1998, advising that the City Council had voted to accept the wastewater from the area and agreed to waive the connection fees contingent on the following:

1. Since the area is outside the city limits, the City has no authority to require connection to the water and/or sewer systems. Therefore, the City wants written assurance from the County that the County will require that all properties in the area having sewer service available be required to connect to the sewer system and discharge all wastewater to the system. In addition, the City will not provide sewer service to any property not connected to the City's water system. Therefore, all properties having water service available must be required to connect to the City's water system as well. The City will not waive the connection fees to the water system.

2. The City Council will also waive the requirement that all persons receiving sewer service, outside the city limits, be required to sign a petition requesting annexation at the time convenient to the City.

3. All persons connecting to the sewer system and/or water system will be required to pay in advance, the appropriate deposit.

4. All sewer lines, manholes, pump stations and other appurtenances must be deeded to the City at the time of installation so the City can own, maintain and operate the system. This would include any necessary rights-of-ways or easements necessary for maintenance.

5. The City will not be responsible for any costs relating to the project.

6. Sewer connection fees will only be waived for existing structures based on the numbers presented in the engineering study. All new structures will be required to pay the water and sewer connection fees at the time of construction.

7. Before formal application , IPDC need an agreement to all the conditions outlined above from McDowell County.

A discussion followed.

It was the consensus of the City Council to contact the County and advise that a contract will be necessary and advising that residents of the Stumptown area need to tie on during construction while funds are available through grant money.

It was also the consensus of the City Council that the City of Marion would require that all structures in the Stump Town Community connecting to the sewer system be connected to the water system, pursuant to the City policy that has been in effect for several years. Property owners with residences and structures not presently connected to the water system will need to pay the applicable tap fee and cost recovery charge to the City prior to connecting. The grant may also pay the connection charges, if that can be worked out, but the tap fee and cost recovery charge must be paid in any case The cost of the these connections should not amount to a tremendous amount, since 293 of the 358 structures in Stump Town (81.8%) are already connected to the City Water System. The City will charge a cost recovery charge for <u>all</u> sewer connections.

It was decided to hold the next Joint Utility Committee on January 16, 2001 at 8:00 A.M in the City Hall Conference Room located at 194 North Main Street.

<u>CAPITAL PROJECT BUDGET ORDINANCE – WATER AND SEWER IMPROVEMENTS PROJECTS – FIRST AMENDMENT TO BUDGET ORDINANCE:</u>

CITY OF MARION, NORTH CAROLINA
CAPITAL PROJECT BUDGET ORDINANCE
WATER AND SEWER IMPROVEMENTS PROJECTS
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Capital Project Budget Ordinance – Water and Sewer Improvements Projects for the City of Marion, North Carolina as adopted by the Marion City Council on the 6th day of April, 1993 is hereby amended as follows:

EXPENDITURES

Transfer to Water/Sewer Fund is increased from $-0- to $159,120.
Construction is increased from $2,447,500 to $2,690,336.
Engineering is increased from $287,800 to $381,391.
Legal/fixed costs is decreased from $19,950 to $8,214.
Contingency is decreased from $244,750 to $1,998.

REVENUES

Interest Earned is increased from $-0- to $236,159.
Proceeds Under Bank Line of Credit is increased from $3,000,000 to $300,004,900.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 2nd day of January, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

ORDINANCE # - 01-01-02-1

2000-2001 BUDGET ORDINANCE – FOURTH AMENDMENT TO BUDGET ORDINANCE:

CITY OF MARION, NORTH CAROLINA
2000-2001 BUDGET ORDINANCE
(Fourth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2000-2001 as adopted by the Marion City Council on the 20th day of June, 2000 is hereby amended as follows:

WATER/SEWER FUND

a. Water/Sewer Fund Revenue, Transfer from Capital Project Budget Ordinance – Water and Sewer Improvements Projects is increased from $-0- to $159,120.
b. Water/Sewer fund Expenses, Contracted Services, Account Number 30-810-4500, is increased from $269,173 to $428,293.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 2nd day of January, 2001.

Everette Clark, Mayor

ATTEST:

J. Earl Daniels, Interim City Manager/Clerk

ORDINANCE # - 01-01-02-2

CONTRIBUTION TO SPARKEY PARKER'S SCHOLARSHIP FUND: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously that in lieu of flowers, they would contribute $100.00 to the Sparkey Parker Scholarship Fund being sponsored by the First Baptist Church.

INTERIM CITY MANAGER'S FINAL REPORT: The Interim City Manager Earl Daniels gave a final report to Mayor Clark and the City Council.

Mr. Daniels thanked various City Employees and Board Members, past and present, for all they had done to make his job easier through the years.

He also gave a final report on the City's financial status.

UTILITIES REPORT

Customers	Water/Inside	2,612	Sewer/Inside	2,494
	Water/Outside	1,399	Sewer/Outside	82
Total	Water	4,011	Sewer	2,576

Water Filter Plant 4 MGD Capacity
1.56 MGP Daily Average

Total Finished Water Storage 5.2 MG
Corpening Creek Waste Water Treatment Plant 3 MGD Capacity
.91 MGD Daily Average

Catawba River Waste Water Treatment Plant 250,000 MGD Capacity
72,000 GPD Average

FINANCIAL REPORT

Unappropriated Fund Balance

June 30, 1972	General Fund $	70,088.63	W/S <$9,436.38>
June 30, 1973	General Fund $	63,594.10	W/S $45,254.97
June 30, 2000	General Fund	$1,633,191.00	W/S $1,009,090.00

City Hall Principal Balance Owed	$77,524.81	Pay Off (09-21-02)
Fire Station Balance Owed	$1,799,260.23	Pay Off (03-21-02)
General Fund Total Principal	$155,527.63	
Water Sewer Balance Owed	$1, 799,260.23	Pay Off (03-21-08)

TOTAL DEBT $1,954,787.86

June 30, 2000 Total Property Valuation $278,279,586.

Projects Completed

Prison Project
Water/Sewer Improvement Project
Water/Sewer Habitat Project
Water Sewer Industrial Park Project
Water Sewer Designer Project
Water Sewer Scattered Housing project

Mr. Daniels advised that the Tax Rate had not increased during his twenty-eight year tenure as City Manager, but actually reduced three times. The present rate is $.55.

OATH OF OFFICE TO NEW CITY MANAGER/CITY CLERK – MR. BOB BOYETTE:
The following Oath of Office was administered to Mr. Bob Boyette:

I, John Robert Boyette, Jr. do solemnly swear (or affirm) that I will support and maintain the Constitution and Laws of the United States and the Constitution and Laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as City Manager/Clerk for the City of Marion, North Carolina, so help me God.

John Robert Boyette, Jr.

I hereby certify that I, A. Everette Clark, Mayor of the City Of Marion, North Carolina, administered the above Oath Of Office to John Robert Boyette, Jr. this the 2nd day of January 2001.

A. Everette Clark, Mayor

ATTEST:
J. Earl Daniels, Interim City Manager/Clerk

Mr. Boyette's wife, Donna, was present and held the Bible during the Oath of Office.

ADJOURNMENT; Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn in memory of the late Harvey (Sparkey) Parker who served on the City's ABC Board.

A. Everette Clark, Mayor

Attest:
J. Earl Daniels, Interim City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 16, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Bob Barr and James Laux, Representatives of RPB Systems Inc. P.O. Box 1325, Asheville, N.C. 28802.

APPROVAL OF MINUTES: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the minutes of the January 2, 2001 City Council Meeting.

HYDRO MANAGEMENT SYSTEMS CONTRACT - DISCUSSION: The City Manager advised that HMS is demanding an immediate 22 percent increase in their contract, which will cost an additional $5,736 per month, or $68,832 per year.

The following options are available to the City:

1) Approve the increase in the HMS Contract, and extend the contract on a month to month basis, which will allow the City to seek bids. We would need until July 1st to comfortably go through the bids adequately, and to negotiate prices. Over this five month period, the contract would cost the City $28,680 more than the current amount.

2) Approve the increase in the HMS contract, and sign a new contract with HMS extending to the end of the original contract period. Over this 17 month period, the contract would cost the City $97,512 more than the current amount.

3) The City could directly reassume wastewater treatment operations. The employees of HMS who currently operate our facilities are willing to offer their services to the City. This option could be as cost effective as the increased HMS contract amount.

4) The City could declare an emergency situation and bring in another company immediately to operate the facilities on a short-term basis, without going out to bid, and then seek bids for the long-term operation.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to accept the number one option as stated above, and instructed the City Manager to see if the City could take back over the Waste Water Treatment Facilities in a cost effective manner.

Mr. Bob Barr and Mr. James Laux of RPB Systems was present for this meeting and will also be preparing the City a quote to operate the Plants.

221/226 ANNEXATION-RESOLUTION OF INTENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNG at a point on the current Corporate Limits, said point being in the center of the Southern Railroad right-of-way; thence following the center line of said railroad right-of-way in a southeasterly direction approximately 1,786.88 feet to a point, said point being on the northern boundary of Lot 7430 in Block 50 of McDowell County Tax Map 1711.04; thence following the northern boundary of said Lot 7430 in a northeasterly direction approximately 280 feet to a point, said point being the northern most corner of said Lot 7430; thence following the northeastern boundary of said Lot 7430 in a southeasterly direction approximately 859.14 feet to a point, said point being at a corner of said lot 7430; thence following the eastern boundary of said lot 7430 in a southerly direction approximately 301.08 feet to a point, said point being at a corner of said Lot 7430, said point also being in the center of the right-of-way of Southern Railroad; thence following the center of said railroad right-of-way in a southeasterly direction approximately 522.39 feet to a point in the center of SR 1737 (Jacktown Road); thence following in a straight line in a southwesterly direction approximately 100.00 feet to a point, said point being at the intersection of the southern boundary of said railroad right-of-way and the eastern boundary of S.R. 1737 (Jacktown Road), said point also being the northern most corner of Lot 8418 in Block 69 on McDowell County Tax Map 1710.02; thence following the northeastern boundary of said Lot 8418 in a southeasterly direction approximately 191.00 feet to a point, said point being at the northeast corner of said Lot 8418, said point also being on the southern margin of said railroad right-of-way; thence following in a straight line in a northeasterly direction approximately 36.00 feet to a point in the center of said railroad right-of-way, said point also being the northern most corner of Lot 3116 in Block 79 on McDowell County Tax Map 1710.02; thence following the northeastern property boundary of Lot 3116, said line also being the center of the said railroad right-of-way in a southeasterly direction approximately 884.00 feet to a point, said point being at the eastern most corner of said Lot 3116; thence following in a straight line in a southerly direction approximately 50.00 feet to a point on the southern margin of said railroad right-of-way, said point also being the northern most corner of Lot 7781 in Block 78 on McDowell County Tax Map 1710.02; thence following the north eastern boundary of said Lot 7781, said line also being the southern margin of said railroad right-of-way approximately 741.56 feet to a point, said point being at the intersection of the southern margin of said railroad right-of-way and the northern margin of the right-of- way of N.C. 226, also said point being the eastern most corner of said Lot 7781; thence following the northern margin of the right-of-way of N.C. 226 in a easterly direction approximately 2200.00 feet to a point, said point being at the intersection of said right-of-way boundary and the northern boundary of Interstate 40; thence following the northern boundary of Interstate 40 in a southwesterly direction and crossing the right of way of N. C. 226 approximately 60.00 feet to a point, said point being at the intersection of the southern boundary of the right of way of N. C. 226

and the northern boundary of the right of way of Interstate 40; thence following the southern boundary of the right of way of N. C. 226 in a westerly direction approximately 718.40 feet to a point, said point being at the northern most corner of Lot 4839 in Block 97 on McDowell County Tax Map 1710.02, said point also being on the boundary of Terry Smith and Robbin Oil Company Satellite Annexation under Ordinance No. 0-97-11-18-1; thence following said satellite annexation in a generally southerly direction approximately 1,540.00 feet to a point at the intersection of the northern boundary of the said railroad right of way and the northern boundary of the right of way of Interstate 40; thence crossing said railroad right of way in a straight line in a southwesterly direction approximately 200.64 feet to a point on the southern boundary of said railroad right of way, said point also being on the northern margin of the right of way of Interstate 40, said point also being the eastern most corner of Tract 2 of Lot 4500 in Block 97 of McDowell County Tax Map 1710.02; thence following the northern margin of the right of way of Interstate 40 in an easterly direction approximately 1,105.96 feet to a point, said point being at the southern most corner of Tract 2 of Lot 2752 in Block 86 on McDowell County Tax Map 1710.02, said point being in the boundary of Spectrum Dyed Yarns Satellite Annexation under Ordinance No. 0-98-06-16-1; Thence following satellite annexation boundary in a northeasterly direction approximately 1,178.70 feet to a point at the intersection of said satellite boundary and the southern margin of said railroad right of way; thence following said railroad right of way in a northwesterly direction approximately 935.00 feet to a point at the intersection of the said railroad right of way and the southern boundary of Lot 4140 in Block 88 on McDowell County Tax Map 1710.02, said line also being the eastern boundary of Lot 2782 in Block 86 and Lot 6224 in Block 77 both on the McDowell County Tax Map 1710.02; thence following the southern boundary of Lot 4140 in Block 88 and Lot 3949 in Block 87 both on McDowell County Tax Map 1710.02 in a southwesterly direction approximately 85.00 feet to a point in the center of Young's Fork Creek; thence following the center line of Young's Fork Creek in a northwesterly direction approximately 1,420.00 feet to a point at the eastern most corner of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02, said center line also forming the southern boundary of Lot 3949 in Block 87, Lot 0232 in Block 88 and Lot 7324 in Block 78 all on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2562 approximately 290.00 feet to a point on the northeastern boundary of Lot 1347 in Block 78 on McDowell County Tax Map 1710.02; thence following the boundary of said Lot 1347 first approximately 90.00 feet in a southeasterly direction then approximately 212.00 feet in a southeasterly direction then approximately 296.00 feet in a northwesterly direction then approximately 110.00 feet in a northeasterly direction to a point on the boundary of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02; thence following the eastern boundary of said Lot 2562 in a generally northerly direction approximately 294.00 feet to a point at the intersection of said property boundary and the southern margin of the right of way of N. C. 226, said point also being the northern most corner of said Lot 2562; thence following the southern margin of said right of way approximately 70.00 feet in a northwesterly direction to a point at the intersection of said right of way and the boundary of Lot 9820 in Block 68 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 9820 approximately 275.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of Old Highway 221 (Three Point Road); thence following the eastern boundary of said right of way approximately 320.00 feet in a southerly direction to a point; thence crossing said right of way in a westerly direction approximately 60.00 feet to a point at the intersection of said right of way and Lot 5572 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of said Lot 5572 first approximately 169.00 feet in a westerly direction and then

approximately 243.00 feet in a northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 5796 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of Lot 5796 first approximately 200.00 feet in a northwesterly direction then approximately 188.00 feet in a northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 2133 in Block 69 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2133 approximately 478.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of U.S. Highway 221; thence crossing said right of way in a straight line approximately 100.00 feet in a westerly direction to a point at the intersection of said right of way and Lot 8321 in Block 58 on McDowell County Tax Map 1710.02; thence following the eastern margin of said right of way in a northerly direction approximately 1,154.00 feet to a point at the intersection of said right of way and the southern boundary of the right of way of U.S. Highway 221 Bypass; then crossing the right of way of said U.S. Highway 221 Bypass in a straight line in a northerly direction approximately 250.00 feet to a point at the intersection of the northern boundary of said right of way and the southern boundary of Lot 1025 in Block 50 on McDowell County Tax Map 1711.04; thence following the boundary of said Lot 1025 first approximately 49.00 feet in a southwesterly direction then approximately 437.00 feet in a northwesterly direction to a point, said point being at the western most corner of said Lot 1025, said point also being on the eastern boundary of the right of way of U.S. Highway 221 Bypass; thence following said right of way approximately 817.00 feet to a point on the current Marion Corporate Limits; thence following the Marion Corporate Limits in a generally northerly direction approximately 3,340.00 feet to the point of BEGINNING.

This description includes the following parcels: 1710.02-59-6915 Mace, Ted and Betty; 1710.02-59-7877 Comer, Linda F. and Cecil E.; 1710.02-59-8496 Hollifield, Claude S. and Elle N.; 1710.02-59-9830 Lowery, John Michael and Pamela; 1710.02-68-5572 Cooper, Frank and Dovie, et al; 1710.02-68-5796 Aiken, Stanley E.; 1710.02-68-6789 McDowell County; 1710.02-68-8962 Robbins, Jack M.; 1710.02-68-9820 Poteat, Joel Aaron and Pamela; 1710.02-69-1556 Boyd, Ricky Harold; 1710.02-69-2133 Hoover Cemetery; 1710.02-69-3712 Grant, Randy Lee; 1710.02-69-4461 Dillingham, John E. and Mary P.; 1710.02-69-5621 Stevenson, Leroy; 1710.02-69-6124 Craig, Myrtle; 1710.02-69-6643 Lail, P. Beauford; 1710.02-69-7514, 8418 and 8602 Branch, Michael Van; 1710.02-77-0958 Poteat, A. Dock and Pansey; 1710.02-78-1347 McKinney, Wade B. and Pamela; 1710.02-78-2562 Condrey, Ruth (Life Estate); 1710.02-78-7324 Brooks, Rebecca Ward; 1710.02-78-7781 McCraw, S. R., et al; 1710.02-79-3116 Wall, Avery Dean; 1710.02-86-2782-1 and 2 Spectrum Dyed Yarns; 1710.02-87-3949 Adams, Ronald L. and Sherry J.; 1710.02-87-9977 Poteat, Wayne and Joyce J.; 1710.08-88-0232 Koon, Laura; 1710.02-88-4140 Parker, Doris Ann; 1710.02-88-6261 and 8005 Poteat, L. F. and Shellie; 1710.02-88-6420 Poteat, Myrtle Yount; 1710.02-97-0786 Franklin, Clifford Ray; 1710.02-97-0951 Poteat, Wayne and Joyce J.; 1710.02-97-1695 Xiong, Moua and Gad Lee; 1710.02-97-4500 Smith, Terry L. and Robin L.; 1710.02-98-0202 Morgan, Gary E.; 1710.02-98-1115 Hunter, Penn, et al; 1710.02-98-2044 Lewis, Willard M. and Lucille; 1711.04-50-1025 Quality Oil Company; 1711.04-50-3243 Simpson, Paul L. and Sue L.; 1711.04-50-4180 Grindstaff, Paul and Auta; WNC Pallets and Forestry Products; 1711.18-31-4490 McDowell Development Corporation; 1711.18-40-7419 Poteat, Paul C. and Connie; 1711-18-40-8278 Hawkins, Robert Z. and Kathy; 1711-18-41-4309 Marion Manufacturing Credit Union; and 1711.18-41-6234 Talley, Arnold K. and Kathy.

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on March 8, 2001, at which time

plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A pubic hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 3, 2001, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the pubic informational meeting. The statement of financial impact contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 16th day of January 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

REQUEST TRANSFER OF WATER/SEWER-MCDOWELL COUNTY: The City Manager presented Council with a letter from Mr. Chuck Abernathy requesting that McDowell County be allowed to transfer part of the water and sewer capacity allocation granted for the Industrial Park on Highway 221 South to other industrial sites currently being explored by the County. Boyette noted that the allocation granted for the Industrial Park several years ago was for an amount up to 500,000 gallons per day for water and sewer. He stated that the City/County Utility Committee had met earlier in the day and developed the following options for dealing with this issue:

1. Development of an agreement between the City and county, in which the County would agree to participate in the future expansion of City wastewater treatment facilities.

2. Once the County purchases land for additional industrial sites or an industrial park, the County could request satellite annexation of the property, thus allowing the City to build its tax base.

3. The County could refine the actual water and sewer allocation needed for the existing Industrial Park and future industrial sites to a lower, more realistic figure.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to table this item and discuss it further at the planning session scheduled for January 27, 2001 and to place it on the February 20, 2001 Agenda.

CONTRACT – EARTHWISE DESIGNS-PERMIT-LAND APPLICATION: The City Manager advised that Council had previously received information about the options for the disposal of Class B residuals form the Corpening Creek Plant. The State has permitted us for Pit #11 at our sludge landfill, but has stated that this will be the last pit permitted, and that they will not allow further disposal of residuals in this manner after January 1, 2002. The other two options are the uses of the lime stabilization units ($215,000 cost per year), and land application (projected cost of $110,000 per year). Under land application, the City would hire a firm to take its Class B residuals from the Corpening Creek Plant to farmers and property owners for spreading on their land. Ms. Edwards of Earthwise Designs has agreed to prepare the land application permitting package for a fee not to exceed $5,000, with associated costs not to exceed $1,000.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to allow Ms. Caroline Edwards to complete the land application permitting package to the State for a fee not to exceed $5,000.00, with associated costs not to exceed $1,000.00.

PROPOSED AMENDMENT TO MAUSOLEUM DEED: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following mausoleum deed with amendments as follows:

NORTH CAROLINA
McDOWELL COUNTY

AGREEMENT

THIS CONVEYANCE AND AGREEMENT, MADE THIS __ day of ____, ____ by and between the CITY OF MARION, a municipal corporation of the State of North Carolina, party of the first part, and _____. _ ., party of the second part;

W I T N E S S E T H:

THAT the party of the first part, for and in consideration of the sum of $_____, the receipt of which is hereby acknowledged as sold and conveyed and does hereby granted convey unto the party of the second part, their heirs and assigns Crypt No. __ . in the DOVE OF PEACE MAUSOLEUM in the Oak Grove Cemetery in Marion, McDowell County, North Carolina.

TO HAVE AND TO HOLD said crypts unto the party of the second part, their heirs and assigns forever upon the following conditions;

1. Said crypt shall be used as a place of repose for the remains of a dead human being and for no other purpose.
2. The party of the first part will provide at cost, plus ten percent (10%) a metal plate of uniform size and design on which only the name, date of birth and date of death may be engraved. No other object of any kind may be attached to said crypt.
3. Transfer of title to said crypt may be made only by a document in writing which is recorded in the public records of McDowell County, North Carolina, and no such transfer shall be

valid unless and until an authenticated copy of the document of transfer has been filed with the City of Marion.

4. The Party of the first part specifically reserves the right, from time to time to make reasonable rules and regulations concerning the use and maintenance of its mausoleum.
5. The foregoing rules and conditions shall be covenants running with the title and ownership of the crypts hereby conveyed and shall be binding upon the party of the second part and their heirs and assigns.

IN WITNESS WHEREOF, the party of the first part has caused this conveyance to be signed in its corporate name, by its Mayor, and its corporate seal to be hereto affixed, and the execution hereof to be attested by its Clerk all as ordered by its City Council, this the day and year first above written.

CITY OF MARION, NORTH CAROLINA

By: _____
Mayor

ATTEST:

_____
Clerk to the City Council of the
City of Marion, North Carolina

APPOINT ONE MEMBER TO ABC BOARD – UNEXPIRED TERM: The present ABC Board Members are as follows:

Jim Isaacs - Three year term to end April 18, 2003
Robert Teeter - Three year term to end April 18, 2002
Harvey Parker – Three year term to end April 18, 2001

Mr. Robert Ayers and Mr. Bill Smith has contacted City Officials regarding filling Mr. Harvey Parker's unexpired term.

On April 18, 2000, the following persons expressed their desire to serve on the ABC Board: Robert Ayers - Jim Isaacs - Bill Smith - Loretta Smith. Mr. Jim Isaacs was appointed.

Mayor Clark advised that Ms. Loretta Smith is supportive of her husband's desire to fill this vacancy.

Council voted by way of paper ballot to appoint Mr. Robert Ayers to finish the term of Mr. Harvey Parker. Said term to end April 18, 2001.

APPROVAL – 911 STREET CHANGES: The City Manager presented Council with following list within the City Limits Reference the new 911 Address and Street Changes.

Street Name	Maintenance
Academy Street	City of Marion
Airport Road (portion)	City of Marion
Alabama Avenue	City of Marion
Ann Street	City of Marion
Azalea Street	City of Marion
Bakersville Road	City of Marion
Baldwin Avenue	Dept of Transportation

Blue Ridge Street	City of Marion
Bradley Street	Private
Branch Street	City of Marion
Broad Street	City of Marion
Brown Drive	City of Marion
Buncombe Street	City of Marion
Burgin Street	City of Marion
California Avenue	City of Marion
Cardinal Lane	City of Marion
Carnage Station Drive	City of Marion
Carroll Street	City of Marion
Carson Street	City of Marion
Catawba Street	City of Marion
Church Street	City of Marion
Circle Street, Clinchfield	City of Marion
Circle Street, East Marion	City of Marion
Claremont Avenue	City of Marion
Clay Street	City of Marion
Clinchfield Loop	Dept of Transportation
Columbia Avenue	City of Marion
Copeland Drive	City of Marion
Crawford Street	City of Marion
Crawford Terrace	City of Marion
Crescent Drive	City of Marion
Cross Street	City of Marion
Cumer Avenue	City of Marion
Cumer Court	Private
Depot Street	City of Marion
Dogwood Lane	City of Marion
East Court Street	Dept of Transportation
East Fort Street	City of Marion
East Grayson Street	City of Marion
East Greenlee Street	City of Marion
East Henderson Street	City of Marion
East High Street	City of Marion
East Hudgins Street	City of Marion
East Medical Court	City of Marion
East Oak Street	City of Marion
East Tate Street	City of Marion
East Wilhemina Street	City of Marion
East Zeb Vance Street	City of Marion
Ellis Street	City of Marion
Euclid Avenue	City of Marion
Fern Avenue	City of Marion
Fifth Street, Clinchfield	City of Marion
Fifth Street, East Marion	City of Marion
Finley Road (portion)	City of Marion
First Street	City of Marion
Fleming Avenue	Dept of Transportation
Ford Way (portion)	City of Marion
Forest Heights Drive	City of Marion
Forest Road	City of Marion
Fourth Street, Clinchfield	City of Marion
Fourth Street, East Marion	City of Marion
Francis Street	City of Marion
Georgia Avenue	City of Marion
Gilkey Street	City of Marion
Gladden Street	City of Marion
Goodrum Drive	City of Marion
Granby Street	City of Marion
Gray Street	City of Marion
Greenlee Street	City of Marion
Greenwood Drive	City of Marion
Habitat Drive	City of Marion
Highland Drive	City of Marion

Hill Street	City of Marion
Hillcrest Drive	City of Marion
Hillside Drive	City of Marion
Holly Hill Drive	City of Marion
Howell Drive	Private
Hoyle Street	City of Marion
Hunt Street	City of Marion
Jackson Street	Private
James Drive	City of Marion
Kathleen Park Street	City of Marion
Lail Street	City of Marion
Lamar Street	City of Marion
Lincoln Avenue	City of Marion
Logan Street	Dept of Transportation
Lonon Avenue (portion)	City of Marion
Machine Shop Road	City of Marion
Main Street	City of Marion
Maple Avenue	City of Marion
Marion Street (portion)	City of Marion
Martin Street	City of Marion
McDowell High Drive	Private
Medical Park Drive	City of Marion
Miller Avenue	City of Marion
Mitchell Street	City of Marion
Montevista Avenue	City of Marion
Morehead Road	City of Marion
Morgan Street	City of Marion
Morgan Terrace	City of Marion
Murray Street	City of Marion
Nancy Tolley Street	City of Marion
New Street	City of Marion
North Garden Street	City of Marion
North Madison Street	City of Marion
North Main Street	Dept of Transportation
North McDowell Street	City of Marion
Norton Street	City of Marion
Oak Avenue	City of Marion
Oak Street	City of Marion
Oakwood Drive	City of Marion
Old Morganton Road	Dept of Transportation
Old West Henderson Street	City of Marion
Oliver Street	City of Marion
Park Avenue	City of Marion
Parker Drive West	City of Marion
Pennsylvania Avenue	City of Marion
Pine Grove Street	City of Marion
Pineview Street	City of Marion
Pinnacle Street	City of Marion
Pulliam Street	City of Marion
Railroad Street	City of Marion
Rankin Drive	Dept of Transportation
Reservoir Road (portion)	Dept of Transportation
Richard Drive	City of Marion
Ridge Road	City of Marion
Ridge Street	City of Marion
Ridgecrest Avenue	City of Marion
Ridley Street	City of Marion
Roane Street	City of Marion
Robert Street	City of Marion
Robinson Road	Dept of Transportation
Rutherford Road	Dept of Transportation
School Street	City of Marion
Second Street	City of Marion
Seventh Street	City of Marion
Shop Drive	City of Marion

Short Street	City of Marion
Sinclair Avenue	City of Marion
Sixth Street, Clinchfield	City of Marion
Sixth Street, East Marion	City of Marion
Smokerise Drive	City of Marion
Snipes Street	City of Marion
South Garden Street	City of Marion
South Grayson Street	City of Marion
South Madison Street	City of Marion
South Main Street	Dept of Transportation
South McDowell Avenue	Dept of Transportation
South Medical Court	City of Marion
Spaulding Road	Dept of Transportation
Spring Street	City of Marion
State Street	City of Marion
Stroud Street (portion)	Dept of Transportation
Summit Street	City of Marion
Teal Street	City of Marion
Tennessee Avenue	City of Marion
Third Street	City of Marion
Thole Street	City of Marion
Tremont Street	City of Marion
Turner Street	City of Marion
U.S. 221 North Business (portion)	Dept of Transportation
U.S. 70 East (portion)	Dept of Transportation
U.S. 70 West (portion)	Dept of Transportation
Vale Street	City of Marion
Valley Street (portion)	City of Marion
Victory Drive	City of Marion
Viewpoint Drive	City of Marion
Vine Street	City of Marion
Virginia Avenue	City of Marion
Virginia Road	City of Marion
Washington Street	City of Marion
Wayne Street	City of Marion
Webb Street	City of Marion
West Court Street	Dept of Transportation
West Cross Street	City of Marion
West Fort Street	City of Marion
West Fourth Street, East Marion	City of Marion
West Glenview Street	City of Marion
West Grayson Street	City of Marion
West Henderson Circle	City of Marion
West Henderson Street	Dept of Transportation
West High Street	City of Marion
West Hudgins Street	City of Marion
West Medical Court	City of Marion
West Tate Street	Dept of Transportation
West Wilhemina Street	City of Marion
West Woodlawn Street	City of Marion
West Yancey Street	City of Marion
West Zeb Vance Street	City of Marion
Westwood Chateau Drive	City of Marion
Williams Street	City of Marion
Willoughby Way	Private
Willow Street	City of Marion
Woodland Drive	City of Marion
Woodvine Drive	Private
Yancey Road	Dept of Transportation
Yancey Street	Dept of Transportation
Zion Road	City of Marion

After a review of the 911 Street Name List, it is recommended that the following exceptions be made:

1) Presently Thoyle Street starts at Hoyle Street and meets Roane Street in the middle of a loop. It is recommended that the portion of Roane Street in the loop be deleted and the entire loop be named Thoyle Street.

2) Present signage indicates Ridgecrest Avenue extends from Euclid Avenue to Miller Avenue, and Ridgecrest Drive extends from Miller Avenue to a dead end. In1956, at the request of the property owners, the Marion City Council named the street Ridgecrest Drive. The 911 Addressing Committee has listed the name as Ridgecrest Avenue for the entire length based on City maps. We recommend that the name remain Ridgecrest Drive as adopted in 1956 which is the preference of a majority of the property owners based on a telephone survey conducted by the City.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the List of Street Names as printed above and to approve the two changes as stated above.

STORM DRAIN CULVERT REPAIRS – VIRGINIA ROAD: The City Manager advised that the City took over maintenance of Virginia Road from the Department of Transportation several years ago. A section of the road has been monitored for over a year and was placed on the City's work schedule. However, recent settling has worsened the situation and justifies immediate action.

This work is too large to be completed by City Crews.

It is the recommendation of the Public Works Department that a contract be awarded to McCormick Grading & Utilities in the amount of $49,660.

Funds are available in the Powell Bill Fund to cover this work.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to award the contract to McCormick Grading & Utilities in the amount of $49,660 as recommended above.

REQUEST – STAY PROGRAM - BASEMENT OF COMMUNITY BUILDING: The City Manager presented Council with a request from the Program Director of the S.T.A.Y. After School Program requesting the use of the basement of the Community Building from June 7, 2001 through July 26, 2001, Tuesdays and Thursdays from 7:30 A.M. until 5:30 P.M. without charge.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the request contingent upon a Liability and Hold Harmless Agreement being signed.

PROPOSED MILEAGE INCREASE – IN STATE AND OUT OF STATE TRAVEL EXPENSE: The City Manager advised that he would recommend that Council increase the mileage rate for in-state and out-of-state travel from $.24 per mile to the IRS standard of $.345 per mile only in situations where private vehicle use is required.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to approve the request as recommended by the City Manager.

BID RESULTS – BACKHOE: The City Manager presented Council with bids as follows:

Farm Equipment of Asheville - No Bid

Marion Equipment - $39,220.00
Mitchell Distributing - $43,115.00
NC Equipment Co. – No Bid
Prime Equipment – No Bid
United Rentals -- No Bid

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the low bid of Marion Equipment in the amount of $39,220.00.

BID RESULTS – ONE TON UTILITY TRUCK: The City Manager presented Council with bids as follows:

Carolina Tuck Center - No Bid
Everett Chevrolet - 1st Option $30,355.16 for a new 2001 model
Everett Chevrolet - 2nd Option $28,300.00 for a new 2000 model
Fontaine Truck Co, - No Bid
Legendary Ford – No Bid
Western Carolina Freightliner - No Bid

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the low bid of Everett Chevrolet in the amount of $28,300.00.

BID RESULTS – (1) 2.5 TON DUMP TRUCK : The City Manager presented Council with bids as follows:

Carolina Truck Center – No Bid
Everett Chevrolet - $47,501.66
Fontaine Truck Co. – No Bid
Western Carolina Freightliner – No Bid

Councilman Owenby stated that all local firms should be given a chance to bid on any project in which they may have an interest.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the low bid of Everett Chevrolet in the amount of $47,501.66.

RESOLUTION – OPEN CHECKING ACCOUNT – SIGNATURE CARD- ALL CITY ACCOUNTS: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following Resolution:

RESOLUTION
CITY OF MARION
OPENING AND MAINTAINING
DEPOSIT ACCOUNTS AND SERVICES
A DEPOSIT/CHECKING ACCOUNT

Resolved, that Bank of America, (the "Bank"), is hereby designated as a depository of the Corporation and that deposit accounts and/or time deposits (CD's) be opened and maintained in the name of this Corporation with Bank in accordance with the terms of the Bank's Deposit Agreement and Disclosures and the applicable rules and regulations for such accounts; that any one of the following officers or employees of this Corporation:

Mayor
City Clerk
Finance Officer
Bookkeeper

Is hereby authorized, on behalf of this Corporation and in its name, to execute and to sign any application, deposit agreement, signature card and any other documentation required by Bank to open said accounts; to sign checks, drafts, notes, bills of exchange, acceptances, time deposits (CDs) or other orders for payment of money; to endorse checks, drafts, notes, bills, time deposits (CD's) or other instruments owned or held by this Corporation for deposit with Bank or for collection or discount by Bank; to accept drafts, acceptances, and other instruments payable at Bank; to place orders with Bank for the purchase and sale of foreign currencies on behalf of this Corporation; to execute and deliver an electronic funds transfers agreement and to make transfers or withdrawals by electronic transfer on behalf of the Corporations; to obtain an access device (including but not limited to a card, code, or other means of access to the Corporation's accounts) that may be
used for the purpose of initiating electronic fund transfers [Corporation agrees and acknowledges that neither the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) nor Regulation E (12 C.F.R. Part 205) are applicable to
any such access device]; to establish and maintain a night deposit
relationship; to execute and deliver a wire transfer agreement and to request, or to appoint or delegate from time to time such persons who may request, wires of funds; to enter into any agreements with the Bank for the provision by Bank of various Treasury management services to this Corporation as such officer or employee may determine, in his or her sole discretion, and to sign any and all documents and take all actions required by Bank relative to such Treasury Management services or the performance of the Corporations obligations thereunder, and that any such Treasury Management agreement(s) shall remain in full force and effect until written notice to terminate given in accordance with the terms of any such agreement shall have been received by Bank and that such termination shall not affect any action taken by the Bank prior to such termination; to rent or lease a safe deposit box from Bank, to execute the rental agreement or lease, to enter the safe deposit box and to terminate the rental agreement or lease; to take whatever other actions or enter into whatever other agreements relating to the accounts or investment of funds in such accounts with Bank, and to execute, amend, supplement and deliver to Bank such agreements on behalf of the Corporation upon such terms and conditions as such officer or employee may deem appropriate and to appoint and delegate, from time to time, such person(s) who may be authorized to enter into such agreements and take any other actions pursuant to such agreements in connections with said accounts that the officer or employee deems necessary; and to waive presentment, demand, protest, and notice of protest or dishonor of any check, note, bill, draft, or other instrument made, drawn or endorsed by this Corporation; and

Further Resolved, the Bank be and it hereby authorized to honor, receive, certify, or pay or exchange for money orders or other instruments all instruments signed in accordance with foregoing resolutions even though
such payment may create an overdraft or even though such instruments may be drawn or endorsed to the order of any officer or employee signing the same or tendered by such officer or employee or a third party for exchange
or cashing, or in payment of the individual obligation of such officer or employee, or for deposit to such officer's or employee's personal account and Bank shall not be required or be under any obligation to inquire as to the
circumstances of the issuance or use of any instrument signed in accordance with the foregoing resolutions or the application or disposition of such instrument or the proceeds, thereof; and, further, that the Bank is authorized to honor any instructions regarding withdrawals, orders for payment or transfer of funds whether oral, by telephone or electronic means if such withdrawal, orders or transfer are initiated by an above authorized officer or employee; and

Further Resolved, that the Bank be and is hereby requested, authorized and directed to honor and to treat as authorized, checks, drafts or other orders for the payment of money drawn or purportedly drawn in this Corporation's name, including those payable to the individual

order of any person whose name appears thereon as signer thereof, when bearing or purporting to bear the facsimile signature of an officer or employee authorized in the foregoing resolutions and Bank shall be entitled to honor, to treat as authorized, and to charge this Corporation for such checks, drafts, or other orders regardless of by whom or by what means the actual or purported facsimile signature thereon may have been affixed thereto, if such signature resembles the facsimile specimen duly certified to or filed with the Bank by the Secretary or Assistant Secretary or other officer of this Corporation or if such facsimile signature resembles any facsimile signature previously affixed to any check, draft, or other order drawn in the Corporation's name, which check, draft, or other order was accepted and paid without timely objection by the Corporation, thereby ratifying the use of such facsimile signature; and the Corporation hereby indemnifies and holds the Bank harmless against any and all loss, cost, damage, or expense
suffered or incurred by the Bank arising out of or in way related to the misuse or unlawful or unauthorized use by a person of such facsimile signature; and

Further Resolved, the endorsements for deposit may be evidenced by the name of the Corporation being written or stamped on the check or other
instrument deposited, without designation of the party making the endorsement, and Bank is authorized to supply any endorsement on any instrument tendered for deposit or collections; and

Further Resolved, that the secretary or Assistant Secretary of this Corporation shall certify to Bank names and signatures of persons authorized to act on behalf of this Corporation under the foregoing resolutions and shall from time to time hereafter, as changes in the identity of said officers and employees are made, immediately report, furnish and certify such changes to Bank and shall submit to Bank a new account signature card reflecting such change(s) in order to make such changes effective and Bank shall be fully protected in relying on such certifications and shall be indemnified and saved harmless from any claims, demands, expenses, losses, or damages resulting from, or growing out of, honoring the signature of any officer or employee so certified, or refusing to honor any signature not so certified; and

Further Resolved, the foregoing resolutions shall remain in full force and effect and the authority herein given to all of said persons shall remain irrevocable as far as Bank is concerned until three (3) business days after Bank is notified in writing of the revocation of such authority and that receipt of such notice shall not affect any action taken by said Bank prior thereto; and

Further Resolved, that all transactions by any officer or employee of this Corporation on its behalf and in its name with Bank prior to the delivery to Bank of a certified copy of the forgoing resolutions are, in all respects, hereby ratified, confirmed, approved and adopted; and

Further Resolved, that the Secretary or Assistant Secretary be and hereby is, authorized and directed to certify these resolutions to said Bank and that the provisions hereof are in conformity with the Charter or Articles of Incorporation and Bylaws of this Corporation and that the Secretary or
Assistant Secretary be, and hereby is, authorized and directed to certify,
from time to time hereafter, the names of the holders of the above authorized titles and their signatures on any signature card or other documentation required by said Bank.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of this Corporation, this 16th day of January 2001.

A. Eyerette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-01-01-16-1

APPOINTMENT TO ISOTHERMAL PLANNING & DEVELOPMENT – APPOINT CITY MANAGER: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint City Manager Bob Boyette to serve on the Isothermal Planning and Development Board.

PROPOSED WRITE OFF – UNCOLLECTABLE WATER ACCOUNTS: The City Manager advised that the City Auditors have noted a high amount of open, inactive water accounts, and that the City should write off uncollectable accounts, and seek to collect from other accounts. Staff has developed the following methodology for writing off uncollectable accounts, and is requesting that City Council authorize the write off of uncollectable accounts as follows:-

1) Accounts over five years old
2) Amount of less than $20.00
3) Accounts of closed businesses
4) Accounts of closed businesses.
5) Accounts involving known bankruptcies

A discussion followed:

Upon a motion by Councilman Owenby, seconded by Councilman Edwards, Council voted unanimously to approve this request as stated above.

MOUNTAIN GLORY FESTIVAL BANK ACCOUNT – APPROVAL OF SIGNATURE CHANGE: The City Manager advised that Council needs to authorize the signature change from J. Earl Daniels to J. Robert Boyette on the Mountain Glory Bank Account Signature Card.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve this request as recommended above.

REQUEST – CALICO PRINTING BUILDING – MR. PERRY ROBINSON: The City Manager advised that McDowell County had obtained funding to allow the extension of sewer service to the old Calico Printing Building on Highway 226 South, in which Mr. Perry Robinson intends to locate Cabinets Unlimited, with 35 to 40 employees. Mr. Robinson has determined that he can continue with the existing well and septic tank on site for repair costs of only $1,500. He has requested that the City reduce his water and sewer connection charges from the normal $5,000 to $1,500. Boyette reported that if Mr. Robinson elects not to go on City water and sewer, then the City would lose the grant funding in the amount of $35,000 plus an additional $7,000 funding from the County. He noted that since the City will soon annex this area, the sewer extension costs will have to be incurred whether the grant funds are received or not. Boyette stated that he realized such a request was contrary to the City policy on connection fees, but could be justified by avoiding the loss of $42,000 in funding.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the request to reduce the water and sewer connection fees for Mr. Robinson to $1,500, for the sole reason that otherwise the City would lose $42,000 in grant funding for sewer extensions on Highway 226 South.

COUNCILMAN EDWARDS COMMENTS: Councilman Edwards made mention of the Washington National League of Cities Conference scheduled in March.

He also commented what an honor it was for the former City Manager J. Earl Daniels to receive the honor from Governor Hunt of the Order of the Long Leaf Pine.

COUNCILMAN CUTHBERTSON COMMENTS: Councilman Cuthbertson advised that the storm drain cover on Broad Street is not staying in place. Public Works Director Glen Sherlin advised that he would have this matter corrected.

He also asked about the City Policy on going out of business in reference to Louise's Jewelry on Main Street. The City Manager advised that he would look into the policy.

COUNCILMAN OWENBY COMMENTS: Councilman Owenby advised that he was very upset and angered over the way persons contracted with Duke Power butchered the trees in various sections of the City, especially North Garden Street. It was decided to discuss this matter with Duke Power Representatives at the Town Meeting scheduled for January 25th.

CITY MANAGER COMMENTS: Mr. Boyette thanked Mayor Clark and Council Members for making former City Manager Earl Daniels available to him for consulting and advice during the transition period.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a town meeting on Thursday, January 25, 2001 at 7:00 P.M. in at the Marion Community Building located at 191 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem, Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

PRESENT: J. Robert Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; J. Earl Daniels, Consultant; Freddie Killough, Downtown Business Association Director; Buck Byrd, Water Filter Plant Operator; Aaron Adams, Street Superintendent; Steve Basney, Water Superintendent; Roger Estes, Sanitation Superintendent; Robert Parker, Administrative Assistant; Lovina Smith, Grants and Records; Tom Milligan, Fire Chief; Tim Benware, Police Chief; Jay Suttles, Building Inspector; Larry Carver, Waste Water Operator; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Myra McCurry, 28 West Henderson, Marion, N.C. 28752; Johnny Patton, Marion Police Department; Sue Benware, Nancy Tolly Street, Marion, N.C. 28752 Larry Wilson 192 Cresent Drive, Marion, N.C. 28752; 370 Mr. & Mrs. Fred Pinkul, Plantation Drive, Marion, N.C. 28752; Bob Frisbee, Hwy. 70 West Marion, N.C. 28752.

UTILITY REPRESENTATIVES:

UNITED STATES POSTAL SERVICE:
Barry Gouge

CHARTER CABLE COMPANY:
Wayne Ollis

EMERGENCY MANAGEMENT SERVICES:
No one present

DUKE ENERGY COMPANY:
Steve Swaim
Donald Hollifield

VERIZON PHONE COMPANY:
No one present

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION:
Tony Moore
McCray Coates

TOWN MEETING:

Mr. Larry Wilson of 192 Cresent Drive advised that it is his understanding that the City is going to be paving Cresent Drive and if the City has intentions of replacing the old water lines under the road prior to this paving project.

The Director of Public Works advised that the pipes do need to be replaced and the storm drain system looked at prior to resurfacing.

Ms. Myra McCurry advised that she owns 74-80 Main Street. She is concerned about what is going on at the Community Building Playground and Tennis Courts. The City Manager advised the progress of the new playground equipment and will get city personnel to look at the Tennis Courts.

Mr. Fred Pinkul asked Mr. Wayne Ollis several questions regarding Cablevision.

Mr. Bob Frisbee advised that he is very concerned about the traffic problems created by the traffic light that has been installed on Highway 70 East below his business.

Several questions were directed to Mr. Barry Gouge of the Marion Post Office regarding the mail service and the new 911 Addressing System.

Several questions were directed to Mr. Don Hollifield of Duke Energy regarding the mutilation of various trees inside the City Limits.

Several Council Members commented on the rejuvenation of the downtown area.

Mr. Woody Killough asked what could be done about the bank beside his business being so unsightly. He was advised that he would have to contact Norfolk Southern Railroad.

ADJOURNMENT: This meeting was adjourned at 8:20 P.M.

A. Everette Clark, Mayor

ATTEST:

Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 6, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Philip & Kay Tate, Post Office Box 1275 Marion, North Carolina, 28752; J. Earl Daniels, Retired City Manager.

APPROVAL OF MINUTES: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the minutes of the January 16, 2001 City Council Meeting and the January 25, 2001 Town Meeting Minutes.

CITIZEN OF THE MONTH – SELECTED BY COUNILMAN LLOYD CUTHBERTSON: Councilman Lloyd Cuthbertson selected the Citizen of the Month for February.

Councilman Cuthbertson presented the following information about February's Citizen of the month:

PHILIP TATE

Councilman Cuthbertson advised that Mr. Phil Tate was born in Atlanta, Georgia to Samuel Philip and Josephine Tate.

He moved to Marion at the age of five. He was a 1968 graduate of Marion High, played on the Tennis Team, was in the Band, President of his Senior Class and was an Eagle Scout. He graduated from the University of North Carolina.

Mr.Tate is married to Brenda, who is a teacher with the McDowell County School System and they have one daughter Karen. He is a Rotary Member and has served on the Board of Education.

Mr. Tate is a third generation Insurance Agent in a family owned Insurance Business. He is an active Member of the United Methodist Church.

Councilman Cuthbertson concluded by saying that Mr. Tate was devoted to his family and that he is a good friend.

Mayor Clark and Council Members all had kind words to say about Mr. Tate.

CONSENT AGENDA:

1. TAX REFUNDS
Betty Jean Snyder – Refund 1998 & 1999 Tax Refund in the amount of $160.69 for taxes that were billed in error.

Fuller Inc. DBA Fuller's Chimney Sweep – Refund – 2000 Taxes in

the amount of $10.86 for taxes that was billed in error.

2. GARGAGE REFUNDS
Ted Bright Insurance Agency - Refund in the amount of $11.00 for services billed in error.

First Baptist Children's Center – Refund in the amount of $22.00 for services billed in error.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Consent Agenda as stated above.

AWARD CONTRACT – CUSHMAN SCOOTER: The City Manager presented Council with an action recommendation form from the City's Purchasing Agent.

One bid was received from Carolina Industrial Equipment in the amount of $17,972.00 for one Cushman Refuse Vehicle. There was $19,000.00 budgeted in Sanitation Department (10580-7400).

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the bid from Carolina Industrial Equipment in the amount of $17,972.00 for the purchase of one Cushman Refuse Vehicle.

APPROVAL OF STREET RESURFACING LIST: The City Manager presented Council with the following List of Streets scheduled to be resurfaced in Spring 2001:

Ridley Street	from Oak Avenue to West Hudgins Street
West Hudgins Street	from Ridley Street to Parker Drive
East Grayson Street	from High Street to the end of maintenance
South Garden Street	from State Street to Railroad Crossing
Tennessee Avenue	from Rutherfordton to end of maintenance
Washington Street	from Virginia Ave. to the end of maintenance
Virginia Avenue	from Rutherfordton Road to Spring Street
Turner Street	from Robert Street to park Avenue
Clay Street	from State Street to Greenlee Street
Miller Avenue	from Alabama Avenue to Morehead Road

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the Street Resurfacing Schedule as presented.

A discussion was held regarding the need for Morehead Road to be on this list. Councilman Owenby asked that Morehead Road be added to the Street Resurfacing Program. The City Manager noted that some water line work needed to be done to Morehead Road before it was paved. It was decided to place Morehead Road on the next agenda for discussion.

REQUEST – McDOWELL COUNTY – USE OF CITY PROPERTY: The City Manager presented Council with a letter from Mr. Stan Braswell, Director of Recreation for McDowell County. This letter was a formal request that McDowell County be allowed to continue to use the parking lot adjacent to the Recreation Department located on West Court Street.

The City Manager stated that the City Council could lease property in one of three methods: a term of one year or less, a term of one to ten years, or for a term of greater than ten years.

Council agreed to lease the property to McDowell County for a period of one year, with the provisions that the County hold the City harmless for any liability resulting from the use of the

property and that the City mow and maintain the property. Council instructed the City Manager to have the County prepare a lease agreement to be submitted to Council at an upcoming Regular City Council Meeting.

AUTHORIZATION OF SALE – CITY PROPERTY: The City Manager presented Council with several methods that could be used to proceed with the sale of property owned by the City where the Senior Center is located on Crawford Street.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to direct the City Manager to contact the County Manager to express the intention of the City to sell the property, with the County receiving the portion of the sale price for the building, and the City receiving the proceeds from the sale of the land. The City will proceed with a survey of the property excluding property the City will keep in back of the Senor Center parking lot, and property the City will retain for a driveway to the back of the Police Department property, and will proceed with an appraisal, the costs of which will be deducted from the County's share of the sale proceeds. After the survey and appraisal are completed, and the County advises of its schedule to vacate the premises, the City Council will determine a method of sale for the property.

DISCUSSION – DOT TRAFFIC SIGNALS: The City Manager gave a brief update on the DOT Traffic Request regarding the light on East Court Street at Church Street near the Clinchfield Baptist Church. The Department of Transportation is re-examining the need for this light and the request by the City to place a light at the Main Street/Morgan Street/Garden Street Intersection. City Council instructed the City Manager to invite the DOT Division Traffic Engineer to a future Council meeting to discuss these issues.

APPROVAL OF ANNEXATION REPORT: The City Manager presented Council with a copy of an annexation report for the Highway 226 South area.

Council examined and discussed the report of plans for extending service to the area to be considered for annexation. A copy of the report and a map covering this area can be found on file at City Hall.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Annexation Report as presented.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

PARKING COMPLAINT: The City Manager advised that Mr. Robert Smith received a parking ticket for his vehicle parked in front of the Library on West Court Street. Mr. Smith paid the ticket under protest, stating that there was no sign prohibiting parking in this area. The City Manager stated that Mr. Smith was correct, and that no sign had been in place at the time the ticket was written. A sign has since been installed by the Public Works Department.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to refund Mr. Smith $5.00 and to direct the City Manager to send Mr. Smith a note of apology.

UTILITY DEPOSIT COMPLAINT: Councilman Owenby advised that he had been contacted by a Citizen who had been on the City's Water System for over thirty years, and had

recently purchased a house, and had to pay a $57.00 deposit to update his deposit. Mr. Owenby suggested that homeowners with a good payment record should not be required to increase their deposit just because they moved to another location in the City.

A brief discussion followed.

It was decided to refer this matter to the Utility Committee for further discussion.

UPDATE – MAYOR CLARK - NLC MEETING: Mayor Clark gave a brief update on plans for the NLC Meeting scheduled to be held in June in Marion.

CLOSED SESSION: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(6) to discuss a personnel matter

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken during the closed session.

ADJOUNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 20, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Chief of Police; Lovina Smith, Records & Grants Administrator; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Mr. & Mrs. Mike Estes 42 Robert Street, Marion, NC 28752; Doug Taylor 200 Hunter Drive, Marion, NC 28752; Mr. & Mrs. Allen Bartlett 29 Robert Street, Marion, NC 28752; Mr. & Mrs. Larry Childers P.O. Box 212 Nebo, NC 28752; Ms. Elaine Tassin 220 North McDowell Avenue, Marion, NC 28752; Don Steel 21 North Forest Drive Asheville, NC; Mr. & Mrs. Pat Glenn 231 Highland Drive, Marion, NC 28752; Matthew O'Buckley 201 Park Avenue, Marion, NC 28752; Mike & Claudia O'Buckley 201 Park Avenue, Marion, NC 28752; Melba & Roy Taylor 56 Robert Street, Marion, NC 28752; Ken & Andrew Walsh Route 3, Old Fort, NC 28761; Joel Young 216 Old Clear Creek Road Marion, NC 28752; Brandon Boone 42 Tight Run Road, Marion, NC 28752; George Boyd 78 Cemetery Road, Nebo, NC 28761; Jerry Seagle 69 Nancy Tolly Street, Marion, NC 28752; Roy Goldson, P.O. Box 885 Nebo, NC 28761; Mr. & Mrs. Mike Hollifield 330 East Court Street, Marion, N.C. 28752; Brian Kelley Route 3, Box 320AA Nebo, NC 28761; Rev. & Mrs. Robert Davis 68 Nancy Tolly Street, Marion NC 28752; Sue Benware 94 Nancy Tolly Street Marion, NC 28752; Jim Royal 385 Park Avenue, Marion NC 28752; Michael Curtis 90 Nancy Tolley Street Marion, NC 28752.

BOY SCOUT TROOP: Mayor Clark introduced and welcomed Mr. Ken Walsh, Assistant Scout Master of Troop # 818 of the Church of Jesus Christ of Latter Day Saints. Mr. Walsh introduced his son, Andrew Walsh, Joel Young and Brandon Boone who were all working toward earning a patch.

CONSENT AGENDA:

A. MINUTES OF FEBRUARY 6, 2001 CITY COUNIL MEETING

B. TAX REFUND:

GTE Leasing Corporation – Refund in the amount of $92.93 for taxes billed in error.

C. ADVERTISE 2000 REAL PROPERTY TAXES:

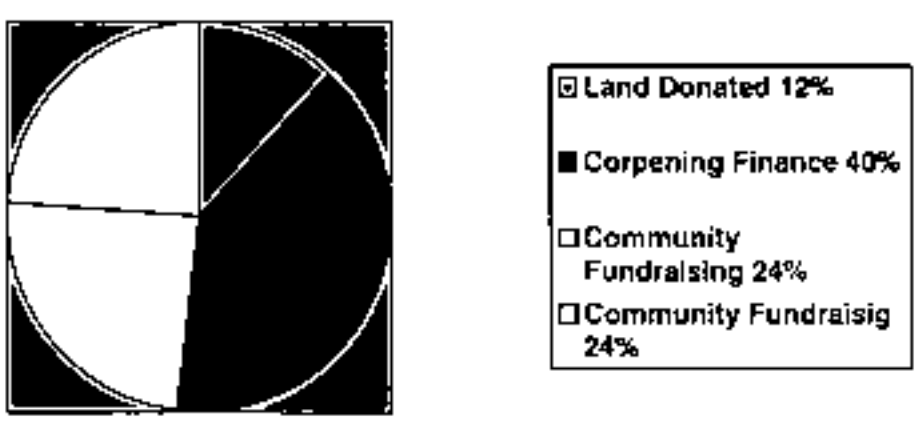
Request to Advertise 2000 Real Property Taxes in the McDowell News, Wednesday, May 9, 2000.

The current total of unpaid 2000 Real Property Taxes is $116,392.00.

REPORT – CORPENING FOUNDATION: Mr. Jed Rankin, Mr. Don Steel and Mr. David Wooten, representatives of the Maxwell M. Corpening Jr. Memorial Foundation, appeared before Council with a brief update on the status of YMCA Project. They stated that were not asking for financial support from the City of Marion at this time.

Mr. Rankin advised that an additional $1.5 million is needed to create a center that will truly fulfill the community need. This financial support must come from corporations, businesses, residents and other local foundations in order to meet this ambitious goal.

The need for community support will not end after the building is complete. The Corpening Foundation has pledged continued support for a YMCA facility, but no one group can take on the responsibility of maintaining it. Sustaining operations will require ongoing collaborative efforts by the County, the school system, local businesses, the hospital and of course, the general community.



PUBLIC HEARING – REZONING REQUESTS – MATTHEW AND FRANCIS O'BUCKLEY – NANCY TOLLY STREET: Mayor Clark opened the Public Hearing.

Councilman Steve Little advised that due to the Attorney for Mr. Matthew O'Buckley being a member of his Law Firm, he would request that he be excused from this Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to allow Councilman Little to be excused from this discussion and vote. Councilman Little then left the Council Chambers.

Ms. Pat Estes came before Council strongly opposing the rezoning of the property located on Nancy Tolly Street due to concerns regarding the increased traffic a development could bring, and the incompatibility of R-2 zoning with the existing R-1 neighborhood. A petition was presented to Council with signatures of all property owners in the area opposing the rezoning of this property.

Mr. Matthew O'Buckley came before Council requesting the rezoning of his property located on Nancy Tolly Street. He stated he had plans to construct ten townhouse units on the property, which was already partially zoned R-2. Mayor Clark noted that the Council must base its decision on all the uses allowed in the R-2 district, and could not just consider Mr. O'Buckley's proposal.

Mr. Mike O'Buckley came before Council strongly requesting the rezoning of this property.

Reverend Robert David came before Council opposing the rezoning of this property.

Roy Goldson, Attorney for the O'Buckley's came before Council strongly requesting the rezoning of this property.

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted unanimously to accept the recommendation of the Planning Board to deny the request of Mr. Matthew O'Buckley to rezone his property on Nancy Tolly Street from R-1 Single Family Residential District, to R-2 – General Residential District.

Upon a motion by Councilman Edwards, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Planning Board to deny the request of Mr. Francis O'Buckley to rezone his property on Nancy Tolly Street from R-1 Single Family Residential District, to R-2 – General Residential District

REQUEST – GEORGE BOYD – HIGHLAND DRIVE – SEWER CONNECTION FEES: The City Manager advised that it had come to his attention that a house on Highland Drive was being occupied without being connected to sewer. Several years ago it was made mandatory by Council that all properties on Highland Drive be connected to City sewer. At that time one resident choose to move instead of connecting and placed the house for sale.

The water for this property was illegally turned on and when this was found out, the water was cut off and the meter was locked.

Mr. George Boyd, who is buying this property and currently living there, came to City Hall to pay a deposit for his water account and was advised that he would also have to pay for a sewer connection. Mr. Boyd paid the $2,024.00 for the sewer tap.

Mr. Boyd appeared before Council requesting that City Council charge him the same sewer rate residents were charged several years ago, which was $625.00 and reimburse him the difference in the amount totaling $1,399.00.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to deny this request.

LOADING ZONE – WEST COURT STREET: A discussion was held regarding the Loading Zone located on West Court Street.

Mr. Doug Taylor appeared before Council advising that this loading zone is no longer necessary.

It was decided to refer this request to the Street Committee.

PARKING – OAK STREET: A discussion was held regarding the parking on Oak Street.

The City Manager reported that this issue had been raised a few months ago, and that Chief Benware had studied the parking on Oak Street.

Chief Benware reported that, due to the narrow width of the street, it was not possible for cars to park on the street, and allow cars to pass safely.

Mr. & Mrs. Mike Hollifield appeared before Council advising that they are probably the problem on Oak Street with the on street parking. They have two teenage drivers, themselves plus company all driving and trying to park vehicles right now and do not have ample parking in their driveway.

A discussion followed.

It was decided to refer this item to the Street Committee.

WATER CONNECTION – NEBO WATER LINE– REQUEST REDUCTION OF WATER RATES: Mr. & Mrs. Larry Childers appeared before Council advising that they had done a lot for the City of Marion through the years, serving with the react team and the Rescue Squad. They are now in need of a water tap for their rental property located in Nebo, and is requesting that Council reduce the water tap fees to help them.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to deny this request.

AWARD CONTRACT – RIGTH-OF-WAY MOWING: The City Manager presented Council with an action recommendation form from the City's Purchasing Agent.

The following bids were received:

1. Kelley's Landscaping - $950.00 weekly
2. Bailey's Lawn-care - $1,000.00 weekly
3. McClure Nursery - $1,800.00 weekly
4. K.B. Enterprises - $2,250.00 weekly

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the bid from Kelly's Landscaping in the amount of $950.00 for the Annual Right of Way Mowing Agreement.

APPROVAL OF ADDITION - SPRING 2001 RESURFACING LIST: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to add Georgia Avenue to the resurfacing list presented at the February 6, 2001 City Council Meeting. The list is as follows:

Ridley Street	from Oak Avenue to West Hudgins Street
West Hudgins Street	from Ridley Street to Parker Drive
East Grayson Street	from High Street to the end of maintenance
South Garden Street	from State Street to Railroad Crossing
Tennessee Avenue	from Rutherfordton to end of maintenance
Washington Street	from Virginia Ave. to the end of maintenance
Virginia Avenue	from Rutherfordton Road to Spring Street
Turner Street	from Robert Street to park Avenue
Clay Street	from State Street to Greenlee Street
Miller Avenue	from Alabama Avenue to Morehead Road
Georgia Avenue	from Rutherfordton Road to the Railroad Tracks

The City Manager noted that a water line would have to be replaced on Georgia Avenue before it could be paved, and that the line replacement would begin shortly.

REQUEST/RECOMMENDATION – TREE COMMITTEE: The City Manager advised that it is the recommendation of the Tree Committee that unsightly trees located on North Garden Street, recently pruned by Duke Power, be removed and replaced with dogwoods, the color of which to be determined by the adjacent property owners. Duke Power has agreed to purchase the new trees.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the request to replace the trees and to purchase T-shirts for fifth grade students at Marion Elementary for this years Arbor Day Celebration.

REQUEST – SIGN PLACEMENT-GOVERNOR'S AWARD AND SEAT BELT USAGE: The City Manager reported that the Police Department had in the last two years won the Governor's Award for Excellence in Community Policing and the small agency award for Excellence in Crime Prevention. Chief Benware is requesting that his Department be allowed to place these signs at four main entrances to the City to display this award.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to approve the placement of these signs.

The City Manager also reported that Chief Benware requested permission to place "Seat Belt Usage" signs at the four entrances to the City. A discussion followed. Chief Benware discussed the information to be included on the sign and that the idea was to increase awareness of seat belt usage.

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to hold this request until the next budget year.

BIDS – PICK-UP TRUCK – WWTP: The City Manager presented Council with an action recommendation form from the City's Purchasing Agent.

The following bids were received:

Jim Cooks Chevrolet = $15,767.85
Legendary Ford = $16,263.35
Everett Chevrolet = $16,760.10

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the bid from Jim Cooks Chevrolet in the amount of $15,767.85 for one (1) half-ton truck .

TERMINATION OF CONTRACT – HYDRO MANAGEMENT SERVICES: The City Manager advised that since the City has vehicles and equipment in place, and seven people ready to start work for the City of Marion, he is recommending that City Council terminate the contract with Hydro Management Services effective at 11:59 P.M. on March 31, 2001.
A brief discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to accept the recommendation of the City Manager to terminate the contract with Hydro Management.

AWARD CONTRACT – CEMETERY MOWING: The City Manager presented Council with an action recommendation form from the City's Purchasing Agent.

The following bids were received:

1. Bailey's Lawn-care - $800.00 weekly
2. Kelly's Landscaping = $875.00 weekly
5. McClure Nursery - $875.00 weekly
6. K.B. Enterprises - $2,000.00 weekly

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to accept the bid from Bailey's Lawn-care in the amount of $800.00 for the Annual Cemetery Mowing.

REQUEST FOR REIMBURSEMENT – ROTO ROOTER: The City Manager presented Council with a memo from the Director of Public Works advising that their office received a call December 18, 2000 to report a sewer blockage on Rutherfordton Road.

A City employee responded and found that Roto Rooter was on the scene and had cleaned the customer's line from the house to the curb. The Roto Rooter Man did not know that there was a clean out between the curb and the sidewalk. The City employee showed him where the clean-out was located. He removed the plug on the clean-out and let the water flow out.

It is unclear whether the clean-out was blocked before Roto-Rooter cleaned the service line, or became blocked as a result of cleaning the customers line.

At this point the City employee authorized the Roto Rooter Employee to remove the blockage, since his equipment was already on-site.

An invoice has been received from Roto Rooter requesting payment in the amount of $237.30 for removing this blockage.

The City Manager stated that the Director of Public Works recommended that the City pay at least half this invoice, but he would recommend that the entire amount be paid, since a City employee authorized the work.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to pay the invoice in full in the amount of $237.30.

SPEED LIMIT – NORTH MAIN STREET (FIVE LANE)- DISCUSSION: A discussion was held about the inconsistent speed limit on the five lane. The City Manager presented information from Chief Benware regarding the number of speed related accidents on the five-lane and suggested that it might be appropriate to request the Department of Transportation to reduce the speed limit to 35 MPH for safety and consistency. Council determined that a 35 MPH speed limit would be too slow, and more attention should be given to enforcing the existing speed limit.

It was decided to contact the Department of Transportation and request that the speed limit on U.S. 70 West be increased from 35MPH to 45MPH beginning at Wal-Mart until it reaches the current 45MPH mile zone going west.

ADDITIONS TO PAY AND CLASSIFICATION PLAN: The City Manager advised that he is recommending the approval of the revised Pay and Classification Plan, to include updates to the salary ranges for Fiscal Year 2001-02 and to include the following positions:

A. Account/Records Clerk

B. City Planner
C. Grants Administrator
D. Wastewater Plant Superintendent
E. Wastewater Plant Assistant ORC
F. Wastewater Plant Operator
G. Wastewater Plant Maintenance Technician/Operator

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the City Manager to approve these seven positions and authorize and assign them to pay grades on the Pay and Classification Plan. The only other proposed change would be to move the Building Inspector position up from Grade 13 to Grade 15, to be equal with the Grants Administrator and City Planner positions.

PRESENTATION OF SALARY ADJUSTMENT: The City Manager presented recommendations for salary adjustments, based on a survey he and Robert Parker had completed of ten similar sized cities. The survey showed inequities in a few positions, especially in the Police Department. He stated that he felt the increases, which totaled 1.32% of total payroll, could be worked into the existing departmental budgets, without requiring an increase in the overall departmental figure.

Councilman Edwards asked about what would occur when an employee reached the top of their salary range. He stated that he remembered when the League completed the Pay and Classification Plan in 1997, that the idea had been to set a cap for each position, so that they would not be eligible for additional increases. The City Manager stated that the salary ranges would need to be periodically adjusted by the City Council, to account for changes in the Consumer Price Index, and that the past few years, the ranges had been adjusted upward 2.5%, or one step, each year. He also noted that he believed the City Personnel Resolution allowed employees at the top of their range to receive the cost of living adjustment authorized by Council each year, but not to receive any merit increases.

After a brief discussion, Council directed the City Manager to work to include the adjustments in the 2001-02 budget.

DISCUSSION – CROSS WALK – RESOLUTION PACKAGING: A discussion was held regarding the need for a cross walk beside the Resolution Packaging Plant.

A discussion followed.

It was decided to have City crews paint these lines.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

_____
A. Everette Clark, Mayor

ATTEST:

_____
J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 6, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Chief of Police; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, The McDowell News.

GUESTS PRESENT: Doug Taylor, 97 West Court Street, Marion, N.C. 28752; Gary & Donna Arnold 293 East Court Street, Marion, N.C. 28752; Judith West & Mike Hollifield, 330 East Oak Street, Marion, N.C. 28752; Mark Teague, 55 Orange Street, Asheville, N.C.; Jeff Moore, 11 Old Charlotte Highway, Asheville, N.C.; Andrew Bolster & Shaeleigh Higgins, 280 North Clay Street; Joyce Setchfield, 285 Deep Woods Estate, Marion, N.C. 28752; Cheryl Mitchell, 8881 Highway 221 North, Marion, N.C. 28752; Bob Frisbee, Highway 70 East, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM: Mayor Pro Tem Little selected the Citizen of the Month for March.

The following information was presented about March's Citizen of the month:

HARVEY L. "SPARKY" PARKER

Mayor Pro Tem Little advised that Mr. Parker had been honored in 1984 with a proclamation from Governor Hunt in 1984, proclaiming Harvey L. "Sparky" Parker day throughout all of North Carolina. This is a very prestigious award that not many people receive.

Mayor Pro Tem Little also advised that Mr. Sparky Parker worked for Marion Manufacturing Company for over thirty years. He served as Personnel Director for the Plant. He died on December 28, 2000 at the age of eighty.

Mr. Parker served on the ABC Board. Was an active member of the First Baptist Church.

Mayor Clark, Council Members and the City Manager all had kinds words to speak about Mr. Parker.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as listed below:

1. APPROVAL OF MINUTES: Minutes of February 20, 2001

2. ARBOR DAY PROCLAMATION:

PROCLAMATION

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed through the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, the City of Marion has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways,

NOW THEREFORE, I, A. Everette Clark, Mayor, of the City of Marion, do hereby proclaim March 23, 2001 as

ARBOR DAY

in the City of Marion, and I urge all citizens to support efforts to protect our trees and woodlands to support our City's urban forestry program, and

Further, I urge all Citizens to plant trees to gladden the hearts and promote the well-being of present and future generations.

DATED THIS THE 6th DAY OF MARCH, 2001.

A. Everette Clark, Mayor

ORDINANCE – NO PARKING – OAK STREET: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

SECTION 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

SECTION 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
OAK STREET	PARKING PROHIBITED	BOTH SIDES OF STREET FROM CLAY STREET TO HIGHLAND DRIVE

Adopted this the 6th day of March, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette

J. Robert Boyette, City Manager/Clerk

ORDINANCE NUMBER: O-01-03-06-1

REPORT LOADING ZONE – WEST COURT STREET: The City Manager advised that it is the recommendation of the Street Committee that the loading zone on West Court Street is needed and no changes are suggested.

A discussion followed.

Mr. Doug Taylor, owner of Economy Laundromat at 109 West Court Street, asked the City Council to remove or relocate loading zone away from the front of his business.

It was decided to have the Street Committee meet and discuss this request further, to determine the most appropriate location for a loading zone in this area.

REQUEST – VOLUNTEER McDOWELL – COMMUNITY BUILDING: The City Manager presented Council with a memo from Ms. Joyce Setchfield, with Volunteer McDowell, advising that a reception is being planned to honor volunteers for their outstanding contribution to the life of residents of the City and County. The reception is scheduled to be held on May 24, 2001, at 6:30 P.M.

They are requesting that the $150.00 fee for the use of the building be waived for this event.

The City Council noted that all groups are charged for use of the Community Building, and that it would not be practice to wave the charge.

It was decided to contribute $150.00 to the Volunteer McDowell Center, which they can use to cover the cost of the Community Building.

TRAFFIC SIGNAL ISSUES – DISCUSSION/UPDATE: Mr. Mark Teague and Mr. Jeff Moore, with the Department of Transportation, appeared before Council to discuss various traffic signals throughout the City of Marion.

A lengthy discussion included following topics:

Traffic Signal on 70 West at Yancy Street.
Traffic Signal on East Court at Garden Street.
Traffic signal on the five lane at Lady Marion Plaza.
The need for a Traffic Signal at Garden and South Main Street.

It was agreed that the Department of Transportation would continue to study these intersections to improve safety. Mr. Teague offered to ride with the Police Chief to look at roads and intersections, at which multiple accidents have occurred, to determine if any safety improvements can be made.

STUMPTOWN INTERLOCAL AGREEMENT: The City Manager stated that the County, as requested, had drafted the proposed interlocal agreement for the sewer extension to the Stumptown Community. Based upon input from the community, the County was proposing referring to the community as Eastfield. The City Council felt that the name Eastfield was appropriate, since Eastfield Elementary School is located in the area. The City Manager recommended that a change be made to the agreement to set a deadline for property owners to hook on to the sewer service, and not be required to pay the usual connection fees. Mayor Clark suggested that the Council members review the agreement in more detail, and determine if any additional changes needed to be made to the agreement. The agreement will be placed on the March 20 City Council agenda for consideration.

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

EASTFIELD SEWER EXTENSION PROJECT
INTERLOCAL COOPERATION AGREEMENT

This Agreement made and entered into this 6th day of March, 2001, by and between the City of Marion and the County of McDowell, political bodies within McDowell County and the State of North Carolina, pursuant to applicable State law and the duly adopted resolutions of the respective parties as set forth more fully herein.

WITNESSTH:

WHEREAS, the conditions for an imminent hazard to the public health of the Eastfield community exist as a result of failing septic systems and in the absence of a sanitary sewage system;

WHEREAS, the Eastfield community lies within unincorporated McDowell County adjacent to the City of Marion;

WHEREAS, the Eastfield community has a population density such to warrant a sanitary sewage system;

WHEREAS, the City of Marion currently operates a wastewater treatment plant sufficient to accept and treat sewage from the Eastfield community;

WHEREAS, McDowell County has secured $1.5 million from the Clean Water Management Trust Fund and $3 million from the North Carolina Clean Water Bond grant program to provide sewage from the Eastfield community;

WHEREAS, McDowell County has contracted with a licensed engineering firm to prepare and execute plans to extend sewage infrastructure to the Eastfield community.

WHEREAS, the Eastfield community will benefit greatly form the installation and operation of a sanitary sewage system;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein undertaken, it is agreed as follows THAT:

the city of Marion and McDowell County will cooperate in the extension of a sanitary sewage system to the Eastfield community;

the City of Marion will waive the sewer tap fee for existing structures connecting to sewer under this project;

upon completion of the extension, the City of Marion will accept and treat sewage from the Eastfield community pursuant to the City's relevant operating policies;

McDowell County will require private property owners of structures shown to have failing septic systems to connect to the sewage system and will encourage private property owners of structures with property operating septic systems to connect to the sewage system so to avoid future failing systems;

McDowell County will provide the appropriate engineering plans of the extension project to the City of Marion with sufficient time for the City to examine and approve such plans prior to the project going out to bid;

McDowell County will keep the City of Marion informed of all pertinent matters concerning the extension project in a timely manner and the City will provide staff to

periodically check the progress of the extension construction to ensure that the installed lines meet the City's standards;

Pursuant to the City's ordinance establishing new water/sewer connection fees and cost recovery charges, McDowell County will direct to the City of Marion the appropriate sewer cost recovery charges from the relevant grant funds to connect the highest possible number of the 351 residences, 2 businesses and 1 church to sewer service with assistance from Isothermal Planning and Development Commission and the McDowell County Health Department;

It is understood that the City's policy will require all property owners receiving sewer service, if not previously receiving water service, and to pay the applicable connection fees.

FURTHERMORE, this Agreement shall be in force for the term of the project and until the project's completion when ownership and maintenance of the sewage lines is given in whole to the City of Marion;

this Agreement may be amended by subsequent mutual agreement of the participants hereto;

in the event that any section of this Agreement shall be found to be unlawful or invalid, the remaining sections shall not in any way be affected.

IN WITNESS THEREOF, the parties hereto have caused the due execution of this Agreement following the approval of their respective governing bodies.

ENTERED into this day, the 6th day of March, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

WATER DEPOSIT – REPORT: The City Manager advised that the Utility Committee had met on February 20, 2001 and discussed the payment of water deposits for persons moving from one residence to another in the City. The Committee determined that the $60 deposit should be charged, but that time payment of increased deposits should be allowed for individuals who have been water customers for five or more years with no late payments in the last year. The increased deposit amount could be paid in three equal installments.

Councilman Owenby stated that he believed that people who moved within the City and who have good payment records should not have to increase their deposit amount, and in essence have to pay a second deposit. He said that the City should allow them to move while keeping the deposit they already have on record, no matter what the amount is.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to adopt the following Ordinance:

ORDINANCE

ESTABLISHING NEW WATER/SEWER CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That new water/sewer connection (tap fees) fees, cost recovery charges and other miscellaneous charges are hereby established as follows:

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER	INSIDE CITY	OUTSIDE CITY

SIZE	TAP FEE	CRC CHARGE	TAP FEE	CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1 ½"	1,400	7,120	2,100	7,120
2"	1,600	11,392	2,400	11,392
3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):
The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10.00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200
4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION. IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHA
¾"	$ 1,200	$ 820	$ 1,800	$ 820
1"	1,300	2,050	1,950	2,050
1 ½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,500
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999
12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY
RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	AT COST	COST PLUS 10%
INCREASE METER SIZE	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR

	WATER/SEWER	WATER/SEWER

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

	INSIDE CITY	OUTSIDE CITY
WATER DEPOSIT	$ 30.00	$ 60.00
SEWER DEPOSIT	$ 30.00	$ 30.00

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY:

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS WILL BE THE SAME AS THE RESIDENTIAL DEPOSITS; HOWEVER, AT THE END OF SIX MONTHS OF SERVICE THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED.

OTHER MISCELLANEOUS CHARGES

RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
RETURN CHECK SERVICE CHARGE	$ 15.00	$ 15.00
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY		
¾" AND 1" METERS	$ 15.00	$ 15.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on September 21, 1999 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this ordinance. are rescinded upon the effective date of this ordinance.

Section 4. This Ordinance shall become effective April 1, 2001.

ADOPTED this the 6th day of March, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-01-03-06-2

The voted was as follows:

Mayor Pro Tem	Yes
Councilman Edwards	Yes
Councilman Martin	Yes
Councilman Owenby	No

REQUEST – SEWER SERVICE OUTSIDE CITY LIMITS: The City Manager presented Council with an application from Mr. Eugene Holland requesting sewer service at property he owns located outside the City Limits at 41 Carrie Street, and recommended the approval of the sewer service, with the condition that Mr. Holland file a petition for annexation.

Councilman Cuthbertson asked that he be allowed to be excused from this discussion and vote due to being related to the Hollands.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted to excuse Councilman Cuthbertson from this discussion and vote.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted to approve this request to allow sewer service at 41 Carrie Street, on the condition that the property is annexed.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Session to discuss a personnel matter, a legal matter and a possible acquisition of real estate in accordance with NC General Statutes 143-318.11 (a)(6), 143-318.11 (a)(3) and 143-318 (a)(5).

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 20, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, and Cecil Owenby.

Councilman Little arrived for this meeting at 7:45 P.M. during the discussion of the Loading Zone on West Court Street.

Councilman Martin chose not to attend this meeting due to the bad weather conditions, with three inches of snow on the ground.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works and Tim Benware, Chief of Police.

GUESTS PRESENT: No Citizens were present for this meeting.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as listed below:

1. APPROVAL OF MINUTES: Minutes of March 6, 2001

2. PROCLAMATION – GREAT AMERICAN CLEANUP:

PROCLAMATION
KEEP McDOWELL BEAUTIFUL, INC.
THE GREAT AMERICAN CLEANUP

WHEREAS, the City of Marion contains gorgeous country, numerous natural resources and diverse wildlife; and

WHEREAS, citizens of Marion should give an effort to keep this city environmentally pristine; and

WHEREAS, Keep America Beautiful sponsors The Great American Cleanup, which is composed of the American people making an annual effort to improve their natural surroundings; and

WHEREAS, Keep McDowell Beautiful, Inc. is a local affiliate of Keep America Beautiful and will be sponsoring environmental clean-up and environmental education programs in March through May of this year; and

WHEREAS, Residents of Marion can show pride in their community by cleaning their property, neighborhoods, schools and churches during April 21st through April 28th, which Keep McDowell Beautiful, Inc. is designating as PRIDE in the City of Marion week;

NOW THEREFORE, we the members of the Marion City Council, do hereby proclaim April 21st through April 28th as PRIDE in the City of Marion Week. Furthermore, we encourage all citizens, businesses, youth groups, government agencies and other

organizations to recognize this event and work together to preserve our community's gorgeous country, natural resources and wildlife. Wee also recommend that this magnanimous effort be maintained throughout the entire year.

ADOPTED THIS THE 20th DAY OF MARCH, 2001.

A. Everette Clark, Mayor

BIDS – SPRING PAVING PROJECT: The City Manager presented Council with an action recommendation form the City's Purchasing Agent.

The following bids were received for the 2001 Spring Paving Project:

APAC Carolina	$3.06 per sq. yd.
Deaver Paving Co.	$8.37 per sq. yd.
Fred Callahan Co.	$3.57 per sq. yd.
Johnson Paving	$3.75 per sq. yd.

All Vendors met the requirements for this project. Prices quoted are for approximately 18,000 yds. of 1 ¼" 1-2 asphalt. The majority of this project cost will come from Powell Bill/Contracted Services.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to accept the low bid from APAC Carolina in the amount of $3.06 per square yard.

RESOLUTION – NC DOT – YANCEY ROAD: The City Manager reported that the North Carolina Department of Transportation has drafted this municipal agreement regarding the addition of curb and gutter on Yancey Road from Fleming Avenue to the City Limits. As part of the agreement, the Department of Transportation will pay the City up to $90,000 to complete the project. He stated that the Public Works Director had reviewed the agreement and determined that this amount was adequate to complete the curb and gutter installation and associated drainage work. The City Manager noted that the City would seek a contractor to complete the project, and then City crews would undertake the sidewalk installation in the area. Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolution:

CITY OF MARION
RESOLUTION

WHEREAS, the North Carolina Department of Transportation and the Municipality desire improvements within the Municipality under Project 9.8131660, McDowell County, said plans consisting of the installation of curb and gutter along both sides of SR 1501, Yancey Road, from the intersection of Fleming Avenue to the Marion City Limits; and

WHEREAS, the Department of Transportation and the City of Marion propose to enter into an agreement for construction of the aforementioned highway improvement whereby the Municipality agrees to design the project plans, acquire the right of way and adjust utilities, award the construction contract, and supervise the project construction; and,

WHEREAS, said agreement provides for the City of Marion to be responsible for the costs of design and preparation of plans for the entire project, for the costs of engineering and supervision of construction of the entire project, and for administrative costs incurred in the acquisition of right of right of way of the project; and

WIIEREAS, said agreement further provides for the Department of Transportation to reimburse the City of Marion to a maximum extent of $90,000 for the actual contract construction costs of the project.

NOW, THEREFORE, BE IT RESOLVED that said Project 9.8131660, McDowell County, is hereby formally approved by the City Council of the Municipality of Marion and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the agreement with the Department of Transportation.

Adopted this the 20th day of March , 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-01-03-20-1

Council also agreed to authorize the City Manager to seek two separate bids on this project, one for curb and gutter only, and one for curb, gutter and the sidewalk.

INTER-LOCAL AGREEMENT – EASTFIELD INTERLOCAL AGREEMENT: The City Manager reported that the Interlocal Agreement between the City and County for the Eastfield Sewer Extension Project had been reviewed by Council at the last meeting, and would be recommended for approval. One provision had been added, at the direction of Council, stating that the sewer connection fees would be waived for an individual property owner up until the point that the contractor completed work on the portion of the sewer line in front of the property owned by such individual. Upon a motion by Councilman Owenby, seconded by Councilman Edwards, those members of Council present, voted to approve the following Agreement:

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

EASTFIELD SEWER EXTENSION PROJECT
INTERLOCAL COOPERATION AGREEMENT

This Agreement made and entered into this 20th day of March, 2001, by and between the City of Marion and the County of McDowell, political bodies within McDowell County and the State of North Carolina, pursuant to applicable State law and the duly adopted resolutions of the respective parties as set forth more fully herein.

WITNESSTH:

WHEREAS, the conditions for an imminent hazard to the public health of the Eastfield community exist as a result of failing septic systems and in the absence of a sanitary sewage system;

WHEREAS, the Eastfield community lies within unincorporated McDowell County adjacent to the City of Marion;

WHEREAS, the Eastfield community has a population density such to warrant a sanitary sewage system;

WHEREAS, the City of Marion currently operates a wastewater treatment plant sufficient to accept and treat sewage from the Eastfield community;

WHEREAS, McDowell County has secured $1.5 million from the Clean Water Management Trust Fund and $3 million from the North Carolina Clean Water Bond grant program to provide sewage from the Eastfield community;

WHEREAS, McDowell County has contracted with a licensed engineering firm to prepare and execute plans to extend sewage infrastructure to the Eastfield community.

WHEREAS, the Eastfield community will benefit greatly form the installation and operation of a sanitary sewage system:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein undertaken, it is agreed as follows THAT:

the city of Marion and McDowell County will cooperate in the extension of a sanitary sewage system to the Eastfield community;

the City of Marion will waive the sewer tap fee for structures existing at the date of this agreement connecting to sewer service under this project up until the time that the project contractor has completed work on the portion of the line in front of the property upon which such structure is located. Property owners wishing to connect to sewer service after the contractor has completed work on the portion of the line in front of their property must pay all applicable tap and connections fees to the City of Marion before sewer service can be provided;

upon completion of the extension, the City of Marion will accept and treat sewage from the Eastfield community pursuant to the City's relevant operating policies;

McDowell County will require private property owners of structures shown to have failing septic systems to connect to the sewage system and will encourage private property owners of structures with property operating septic systems to connect to the sewage system so to avoid future failing systems:

McDowell County will provide the appropriate engineering plans of the extension project to the City of Marion with sufficient time for the City to examine and approve such plans prior to the project going out to bid;

McDowell County will keep the City of Marion informed of all pertinent matters concerning the extension project in a timely manner and the City will provide staff to periodically check the progress of the extension construction to ensure that the installed lines meet the City's standards;

Pursuant to the City's ordinance establishing new water/sewer connection fees and cost recovery charges, McDowell County will direct to the City of Marion the appropriate sewer cost recovery charges from the relevant grant funds to connect the highest possible number of the 351 residences, 2 businesses and 1 church to sewer service with assistance from Isothermal Planning and Development Commission and the McDowell County Health Department;

It is understood that the City's policy will require all property owners receiving sewer service, if not previously receiving water service, and to pay the applicable connection fees.

FURTHERMORE, this Agreement shall be in force for the term of the project and until the project's completion when ownership and maintenance of the sewage lines is given in whole to the City of Marion;

this Agreement may be amended by subsequent mutual agreement of the participants hereto;

in the event that any section of this Agreement shall be found to be unlawful or invalid, the remaining sections shall not in any way be affected.

IN WITNESS THEREOF, the parties hereto have caused the due execution of this Agreement following the approval of their respective governing bodies.

ENTERED into this day, the 20th day of March, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

ORDINANCE - LOADING ZONE – WEST COURT STREET:

REGULAR SESSION: The City Manger reported that the Street Committee has examined the loading zone on West Court Street, near the Logan Street intersection, and had determined that there was not a good place for a loading zone in this area. Therefore, the Street Committee recommended the adoption of an ordinance to rescind the loading zone. Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
WEST COURT STREET	LOADING/ UNLOADING	SOUTH SIDE OF STREET BEGIN 81 FEET WEST OF SW CORNER OR WEST COURT AND LOGAN STREET AND CONTINUING 21 FEET WESTERLY

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 20th day of March, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

ORDINANCE # O-01-03-20-1

DECLARE PROPERTY SURPLUS AND DISPOSAL: The City Manager presented Council with a letter from Mayor Wayne Stafford of the Town of Old Fort requesting permission to obtain the discarded dumpsters the City has in its possession at the present time. These dumpsters were given to the City last year by businesses for disposal, when the City provided new dumpsters. The dumpsters are of no value to the City and are taking up space in the Public Works Department yard.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to declare the dumpsters surplus and to donate them to the Town of Old Fort, with the understanding that the Town of Old Fort pick up the dumpsters and take them all, while the City attempts to provide businesses that had donated the dumpsters to the City with a letter for tax purposes, if there are records available for which businesses donated the dumpsters.

REQUEST – PLAYGROUND EQUIPMENT – WARREN HOBBS: The City Manager presented Council with a letter from Sam Gray advising that the Carson House Board of Directors had met in full session on March 14, 2001, at which time the members voted to accept the old playground equipment which was recently removed from the Community Building Park.

The Carson House Board Members absolves the City of Marion from any responsibility in connection with this equipment.

The City Manager also noted that the Carson House had no way to transport the equipment, and that City crews would have to take the equipment to the Carson House.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to donate the playground equipment to the Carson House.

LANDSCAPING BIDS –CEMETERY: The City Manager advised that the following bids were received on February 20, 2001 and that Council accepted the low bid from Bailey for the cemetery mowing contract. The bids were as follows:

1. Bailey's Lawn-care - $800.00 weekly
2. Kelly's Landscaping - $875.00 weekly
3. McClure Nursery - $875.00 weekly
4. K.B. Enterprises - $2,000.00 weekly

Due to health reasons, Bailey's Lawn-care will not be able to honor this bid and Kelly's Landscaping already has a full schedule. Therefore, McClure Landscaping would be recommended for the cemetery mowing contract.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to accept the bid of $875.00 per week from McClure Nursery for the cemetery mowing contract for 2001.

SUGARHILL ROAD - WATER LINE EASEMENT – MR. WOESSNER: The City Manager advised that he had spoken with Mr. Woessner, owner of the mobile home park at Sugar Hill Road and Rankin Drive, and that he was willing to allow City water and sewer lines to cross his property, for the Sugar Hill Road Water and Sewer Extension Project. The City Manager stated that McDowell Family Medicine and the Head Start are anxious to receive water and sewer services from the City, but that Council needed to determine an amount to offer Mr. Woessner for the easement, so that the project could proceed. Mr. Woessner will be coming to Marion in April to sign the easement.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to authorize the City Manager to negotiate with Mr. Woessner and to allow up to $40,000.00 worth of water and sewer connection fee credits to be used in any manner he chose, and to run with the property, in exchange for the easement.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

Council authorized the City Manager to work with the County to fund the remainder of the water extension to the DOT Rest Areas on Interstate 40, since DOT will apparently only pay for a 6 inch line, and a 12 inch line is needed. The use of $400,000 in grant funds from the State, to be received over a three year period by the County, would be sought for both the City and County portion of this project.

The City Manager also noted that the State was interested in further discussing the proposed water extension up Highway 221 North to Hankins Road, to serve businesses and residences affected by contaminated wells. Council authorized the City Manager to work on this project, and to undertake the extension, as long as no City funds were used, since property owners in this area were opposed to annexation. The grant funds noted for the DOT Rest Area water extension could be used for this project as well.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 3, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Mike Edwards, Billy Martin and Cecil Owenby.

Councilman Cuthbertson was not present for this meeting due to illness.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works and Tim Benware, Chief of Police; Mike Conley, News Reporter, WBRM Radio; Van McKinney, News Reporter, The McDowell News.

GUESTS PRESENT: Roger & Carol Gouge, 45 Ridgecrest Drive, Marion, N.C. Wayne & Joyce Poteat, 116 Scott Drive, Marion, N.C., Michael & Becky Wilson, 268 Red Hill Drive, Marion, N.C., J. Bright 170 Black Berry Drive, Marion, N.C., Don & Donna Staton 283 Green Street, Marion, N.C. Claude Hollifield, 2458 NC 226 South, Marion, N.C., Dean Wall, P.O. Box 1188, Marion, N.C., Betty Mace, 2305 Rutherfordton Road, Marion, N.C., Drs. John & Amy Ende, 163 Viewpoint Drive, Marion, N.C., Andrew Lowe, 416 State Street, Marion, N.C., Rena Harp, 209 Seagle Street Marion, N.C., John Shell, 211 Gray Street, Marion, N.C.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as listed below:

1. **APPROVAL OF MINUTES:** Minutes of March 20, 2001
2. **APPROVAL OF SIDEWALK SALE:** A request was made by the Marion Downtown Business Association for approval of a sidewalk sale on Saturday, May 5, 2001.

3. **PROCLAMATION – NATIONAL SMALL CITIES:**

PROCLAMATION

National Small Cities "Investing in Communities" Day
Friday, June 22, 2001

Whereas, small cities under 50,000 population constitute the vast majority of cities across the United States; and

Whereas, small cities promote the values and provide the opportunities to allow millions of people across America to lead better lives; and

Whereas, small cities invest in their communities every day in a variety of ways, through the provision of services and programs to improve the quality of life of their citizens; and

Whereas, State and Federal Governments and the general public need to be made more aware of the contributions of small cities, the need to invest in small communities, and the consequences of not investing; and

Whereas, the Small Cities Council of the National League of Cities has declared June 22, 2001 as National Small Cities "Investing in Communities" Day; and

Whereas, the Board of Directors of the National League of Cities has endorsed this declaration; and

Whereas, the Small Cities Council of the National League of Cities has challenged each State Municipal League and all cities, towns, and villages across America to proclaim June 22, 2001 as National Small Cities "Investing in Communities" Day and to conduct activities on that day to highlight the different ways that small cities invest in their communities, through news conferences, public service announcements, and events in local schools and community centers to provide real examples of successful investment in small communities;

Now Therefore, the City Council of the City of Marion does hereby proclaim Friday, June 22, 2001 as National Small Cities "Investing in Communities" Day and encourages all citizens, businesses, government agencies, and other organizations to recognize this event, and to work together on this day and throughout the year to invest in small communities to better the lives of all citizens.

A. Everette Clark, Mayor

CITIZEN OF THE MONTH – SELECTED BY MAYOR A. EVERETTE CLARK:
Mayor A. Everette Clark selected the Citizen of the month for April.

The following information was presented about April's Citizen of the month:

DR. AMY ENDE

Mayor Clark advised that Dr. Amy Ende had done a marvelous job coordinating and raising funds to replace the playground equipment at the Marion Community Building. Dr. Ende raised $34,150.00 and was involved in the dedication ceremony for the park.

Dr. Ende earned her B.A. at the University of Chapel Hill and her M. D. at the N.C. School of Medicine. She presently serves in pediatrician at McDowell Family.

Dr. Ende is involved with Partnership for Children, the local teen pregnancy task force and is a member of Our Lady of Angels.

Her husband is Dr. John Ende, he serves Marion as a Radiologist. They have two children and a third child on the way.

Council members all had kind words to share about Dr. Ende.

PUBLIC HEARING – ANNEXATION – 226 SOUTH: Mayor Clark opened the public hearing. The City Manager discussed the proposed 226 South area annexation and gave an overview of the annexation report and plan of services for the area.

Mr. Dean Wall spoke in opposition of being annexed.

There was several other citizens present opposing the annexation.

Mayor Clark closed the Public Hearing.

Council will take action on the adoption of an Annexation Ordinance at the April 17, 2001 City Council Meeting.

COMPLAINT – MR. ROGER GOUGE –PROPOSED FENCE: Mr. & Mrs. Roger Gouge appeared before Council to discuss the Zoning Ordinance pertaining to fences. They are experiencing domestic problems with neighbors and would like to place a chain link fence, around their yard, in the right of way along the curb on Ridgecrest Drive.

The City Manager advised that this request involved a zoning matter that would require a variance or zoning text amendment.

A discussion followed.

Mr. Gouge was advised that he would need to speak with Ms. Lovina Smith to request a variance or to request an amendment to the Zoning Ordinance.

ABC BOARD – APPOINT ONE MEMBER: The City Manager advised that that term of Mr. Robert Ayers on the ABC Board expires on April 18, 2001.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to reappoint Mr. Robert Ayers to a three year term.

The terms of office for the ABC Board are as follows:

Robert Ayers - April 18, 2004
Jim Isaacs - April 18, 2003
Robert Teeter - April 18, 2002

RESOLUTION – PROCUREMENT OF PROFESSIONAL SERVICES UNDER $30,000: The City Manager noted that State law requires municipalities to engage in qualifications based contracting, unless a resolution is adopted by Council to exempt the City from these requirements. Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution:

Resolution Exempting the City of Marion from the Requirements of N.C.G.S. 143-64.32 for Procurement of Architectural, Engineering, and Surveying Services for all Projects under $30,000

WHEREAS, N.C.G.S. 143-64.31 requires units of local government to undertake qualification based contracting for procurement of architectural, engineering, and surveying services; and

WHEREAS, N.C.G.S. 143-64.32(a) authorizes units of local government to exempt projects where an estimated professional fee is an amount less than $30,000; and

WHEREAS, the City Council of the City of Marion determines that qualifications based procurement is not in the best interest of the City for projects under $30,000;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City of Marion is hereby made exempt from the qualifications based contracting requirements of N.C.G.S. 143-64.31 for procurement of architectural, engineering, and surveying services for all projects where the estimated professional fee is an amount less than $30,000.

Section 2. This resolution shall be effective upon its adoption.

Adopted this the 3rd day of April, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-01-04-03-01

RESOLUTION – PROCUREMENT OF PROFESSIONAL SERVICES - 226 SOUTH: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution:

Resolution Exempting the City of Marion from the Requirements of N.C.G.S. 143-64.32 for Procurement of Architectural, Engineering, and Surveying Services for Highway 226 South Annexation Project

WHEREAS, N.C.G.S. 143-64.31 requires units of local government to undertake qualification based contracting for procurement of architectural, engineering, and surveying services; and

WHEREAS, N.C.G.S. 143-64.32(a) authorizes units of local government to exempt any projects in writing by stating the reasons for the exemption; and

WHEREAS, the Highway 226 South Annexation project will require the use of engineering and surveying services; and

WHEREAS, the City Council of the City of Marion determines that qualifications based procurement is not in the best interest of the City for the Highway 226 South Annexation projects, since the City is familiar with the qualifications of firms who would be asked to bid on the project, and since the City needs to budget for the costs of the professional services;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City of Marion is hereby made exempt from the qualifications based contracting requirements of N.C.G.S. 143-64.31 for procurement of architectural, engineering, and surveying services for the Highway 226 South Annexation project.

Section 2. This resolution shall be effective upon its adoption.

Adopted this the 3rd day of April, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-01-04-03-02

ORDINANCE – BUDGET AMENDMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
2000-2001 BUDGET ORDINANCE
(Fifth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2000-01 as adopted by the Marion City Council on the 20th day of June, 2000 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Fire Department, Account Number 10-530-17, Auto Supplies/Maintenance, is increased from $12,000 to $30,000.
b. General Fund Expenditures, Fire Department, Account Number 10-530-74, Capital Outlay, is decreased from $28,800 to $24,000.
c. General Fund Expenditures, Fire Department, Account Number 10-530-33, Department Supplies, is decreased from $6,000 to $4,000.
d. General Fund Expenditures, Fire Department, Account Number 10-530-16, Maintenance Equipment, is decreased from $9,000 to $7,000.
e. General Fund Expenditures, Fire Department, Account Number 10-530-14, Travel and Training, is decreased from $5,000 to $4,500.
f. General Fund Expenditures, Fire Department, Account Number 10-530-09, Pension Fund, is decreased from $5,660 to $4,660.
g. General Fund Expenditures, Fire Department, Account Number 10-530-36, Uniforms, is decreased from $9,000 to $8,000.
h. General Fund Expenditures, Fire Department, Account Number 10-530-45, Contracted Services, is decreased from $2,500 to $2,000.
i. General Fund Expenditures, Fire Department, Account Number 10-530-57, Miscellaneous Expenses, is decreased from $7,000 to $6,800.
j. General Fund Expenditures, Non-Departmental, Account Number 10-660-9950, Special Projects, is decreased from $105,484 to $99,484.

WATER/SEWER FUND

a. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-02, Salaries, is increased from –0- to $48,000.
b. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-03, FICA, is increased from –0- to $3,675.
c. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-05, Retirement, is increased from –0- to $4,100.
d. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-06, Insurance, is increased from –0- to $6,000.
e. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-11, Telephone/Postage, is increased from –0- to $1,000.
f. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-14, Travel and Training, is increased from –0- to $800.
g. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-15, Maintenance Buildings and Grounds, is increased from –0- to $500.
h. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-17, Auto Supplies/Maintenance, is increased from –0- to $5,000.
i. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-34, Office Supplies, is increased from –0- to $5,925.
j. Water/Sewer Fund Expenditures, Waste Treatment Plant, Account Number 30-816-45, Contracted Services, is decreased from $350,000 to $275,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 3rd day of April, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

ORDINANCE # - O-01-04-03-1

REQUEST FOR CONTRIBUTIONS – NC CITY AND COUNTY MANAGEMENT ASSOCIATION: The City Manager presented Council with a request from the North Carolina City and County Management Association for a contribution in the amount of $500.00. This money would go toward the Civic Education Project for North Carolina.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the contribution in the amount of $500.00 to be paid over a five year period, one hundred dollars per month.

REQUEST – BUD'S GARAGE: The City Manager presented Council with a request from Bud's Garage requesting assistance from the City of Marion in making repairs to their asphalt lot. Mr. Dean Stevens, of Bud's Garage advised that there had been a continuous leak on their property for approximately three years.

Mr. Glen Sherlin, Director of Public Works, advised that on several occasions, they had received calls regarding leaks on this line. Work orders were issued and repairs made. City records do not indicate that this has been a continuous leak.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to deny this request.

RESOLUTION PACKAGING: The City Manager presented Council with a letter of thanks from Kevin McKenna of Resolution Packaging, thanking them for the prompt response in placing the pedestrian crosswalk on Burgin Street to assist their employees. He stated that Mr. McKenna still wanted a reduced speed limit and/or speed control devices on the street such as speed bumps.

Ideas were discussed on ways to slow down traffic. Councilman Edwards noted that many other streets were just as important and had as many problems as Burgin Street. A brief discussion followed. Council agreed by consensus to allow the Police Chief to park the speed trailer on Burgin Street for a period of time to determine if speeding on the street was actual or was just a matter of perception.

GENERAL ASSEMBLY – SATELLITE ANNEXATION: The City Manager advised that he had received information regarding a bill introduced for certain cities in the General Assembly that would eliminate size requirements on satellite annexations. Currently, the total of all City satellites may not exceed ten percent of the area of the primary corporate limits.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to request Senator Carter, Senator Metcalf and Representative Gillespie to add Marion to this bill.

CLEAN SWEEP: This years Clean Sweep is scheduled for April 15-28.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to waive charges for pick-up of white goods and bulky items and all garbage/junk excluding T.V.'s during this time.

REQUEST – MR. RONNIE PATEL – SUNSHINE COIN LAUNDRY: The City Manager advised that Mr. Ronnie Patel of Sunshine Coin Laundry has requested an extension on a time payment plan to pay for a water and sewer connection.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present, voted to extend Mr. Patel's Payment Plan for a total of twelve months, with a minimum payment amount of three hundred dollars pre month, with an eight percent annual interest rate assessed.

REQUEST – CHANGE OF OWNERSHIP – CUE & CUSHION: The City Manager presented Council with a request from Mr. Barton Griffin to approve a license to operate a place of amusement. Mr. Griffin has purchased the Cue and Cushion from Mr. Scott Riley. Chief Benware has conducted a criminal background check on Mr. Griffin and has found no reason to deny the license.

Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to approve this request.

DISCUSSION – ATTENDANCE POLICY: Councilman Owenby advised that he had been contacted regarding the new Attendance Policy recently approved by Council. The question had been raised regarding fairness as to employees with existing incidences, compared to those just coming under the policy due to change in the policy now being City wide.

Councilman Edwards stated that he supported the concept of all employees starting with zero absences, to let all employees know that the City was being fair in starting implementation of this new policy.

Councilman Little stated that he opposed this proposal, since it could provide a disincentive for employees who have worked and not accumulated any absences under the old policy.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Edwards, Council voted to start each city employee at zero under the new attendance policy.

The vote was as follows:

Councilman Edwards	Yes
Councilman Martin	Yes
Councilman Owenby	Yes
Councilman Little	No

DISCUSSION - REQUEST FOR TREES – EAST COURT STREET: Councilman Edwards advised that Ms. Ann Ledbetter of East Court Street has contacted him requesting that trees be placed in front of her residence in conformity with the rest of East Court Street.

A discussion followed.

The Director of Public Works will contact Mr. Lawrence Moore, the Landscape Contractor for the City, and seek to add one or more trees at this location, if there are no concerns over visibility or any other issue.

DISCUSSION – PUMP STATIONS: A discussion was held about the possible need of dykes being built around all the waste water treatment plant pump stations.

No action was taken.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to go into Closed Session to discuss a legal matter in accordance with N.C.G.S. 143-318.11(a)(6) and to discuss a personnel matter in accordance with N.C.G.S. 143-318.11(a)(3).

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to go back into Regular Session.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Edwards, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 17, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Johnny Patton, Police Lieutenant; Mike Conley, News Reporter, WBRM Radio; Van McKinney, News Reporter, The McDowell News.

GUESTS PRESENT: Mike & Pat Estes 42 Robert Street, Marion, N.C.; Wayne Owenby 104 1st Street, Marion, N.C.; Betty Mace, 2305 Rutherford Road, Marion N.C.; Connie Poteat 2196 Rutherford Road, Marion; Pat & Beverly Glen, 231 Highland Drive, Marion, N.C.; Roy Taylor 56 Robert Street, Marion, N.C.; Elaine Tassin 220 North McDowell Avenue, Marion, N.C.; Claude Hollifield 2458 NC 226 South, Marion, N.C.; Allen & Geraldine Bartlett, 29 Robert Street, Marion, N.C.; Mr. & Mrs. Matthew O'Buckley 201 Park Avenue, Marion, N.C.; Francis & Gretchen O'Buckley 268 Red Hill Drive, Marion, N.C.; Michael & Becky Wilson 268 Red Hill Drive, Marion, N.C.; Michael Curtis 90 Nancy Tolley Street, Marion, N.C.; Jerry & Lala Seagle 69 Nancy Tolly Street, Marion, N.C.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as listed below:

1. **APPROVAL OF MINUTES**: April 3, 2001

PUBLIC HEARING – O'BUCKLEY PROPERTY – REZONING: Mayor Clark opened the Public Hearing.

Councilman Owenby advised that his nephew is associated with this request and requests that he be excused from this discussion and vote.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to excuse Councilman Owenby.

The City Manager Bob Boyette advised that this request involved nine properties. Six of the parcels were being requested for rezoning by their property owners, while the neighboring property owners surrounding the properties of Matthew O'Buckley and Francis O'Buckley on Nancy Tolley Street have requested to rezone the property of the O'Buckley's from R-2 to R-1, for the stated purpose of limiting the number of allowable uses on these properties, to fit in better with the surrounding neighborhood. It is allowed for someone to request to rezone another person's property, although this is rarely done. The Planning Board met on April 13 and recommended, by a 3 to 1 vote, to rezone the following properties from R-2 to R-1:

374 Park Avenue (Francis and Gretchen O'Buckey, 1701.08-5911)
Park Avenue (Francis and Gretchen O'Buckley, 1702.20-80-4005)
376 Park Avenue (Cleo Elkins, 1702.20-80-4143)
370 Park Avenue (Elaine Lucille Hemphill, 1701.08-89-4860)
220 North McDowell Avenue (Elaine D. Tassin, 1702.20-80-4272)
23 Azalea Street (Zennie Fischer, 1701.08-89-6843)

As part of the recommendation, the Planning Board voted not to recommend the rezoning of the following properties:

218 North McDowell Avenue (Daisy Lanning, 1702.20-80-6173)

Nancy Tolly Street (Matthew O'Buckley, back portion of 1702.20-80-3236)
231 Highland Drive (Patrick and Beverly Glenn, 1702.20-80-6438)

Ms. Pat Estes appeared before Council requesting that Council approve this request to rezone Mr. O'Buckley's Property.

Mr. Matthew O'Buckley appeared before Council opposing the request that his property be rezoned.

Mr. Wayne Owenby appeared before Council in support of this request to rezone Mr. O'Buckley's Property.

Mr. Francis O'Buckley appeared before Council opposing the request that his property be rezoned.

A discussion followed.

Mayor Clark closed the Public Hearing.

Councilman Little stated that he had a problem rezoning someone's property against their objection and made a motion to modify the recommendation of the Planning Board and to rezone the following properties from R-2 to R-1: 376 Park Avenue (Cleo Elkins, 1702.20-80-4143), 370 Park Avenue (Elaine Lucille Hemphill, 1701.08-89-4860), 220 North McDowell Avenue (Elaine D. Tassin, 1702.20-80-4272) and 23 Azalea Street (Zennie Fischer, 1701.08-89-6843); while leaving the following properties zoned R-2: 374 Park Avenue (Francis and Gretchen O'Buckey, 1701.08-5911), Park Avenue (Francis and Gretchen O'Buckley, 1702.20-80-4005), 218 North McDowell Avenue (Daisy Lanning, 1702.20-80-6173), Nancy Tolly Street (Matthew O'Buckley, back portion of 1702.20-80-3236) and 231 Highland Drive (Patrick and Beverly Glenn, 1702.20-80-6438).

Councilman Martin seconded the motion.

Councilman Edwards stated that he had a problem going against the Planning Board's decision without more information on how they arrived at that recommendation. He suggested that Council request the Planning Board to meet again and provide more information on their reasoning for their recommendation.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to table this item until the May 8, 2001 Regular City Council Meeting, and to ask the Planning Board to meet again before this date to provide Council with additional information on their recommendation. This action also had the effect of tabling Councilman Little's original motion until the May 8, 2001 Regular City Council meeting.

PUBLIC HEARING – ZONING ORDINANCE AMENDMENT TO ADD COMMUNITY/RECREATION CENTERS AS A PERMITTED USE IN THE O-I DISTRICT: Mayor Clark opened the Public Hearing.

The City Manager advised that in discussions regarding the proposed YMCA/Senior Center development, staff had determined that such uses were not permitted in the O-I district. Therefore, the attached Zoning Ordinance amendment had been drafted to add community/recreation centers as a permitted use in the O-I district. He advised that the Planning Board had voted unanimously on April 13 to recommend the approval of this amendment.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Zoning Ordinance amendment to add community/recreation centers as a permitted use in the O-I district.

PUBLIC HEARING – ZONING ORDINANCE AMENDMENT – TO ADD DEFINITIONS: The City Manager advised that this request had involved adding definitions for community/recreation centers and for canopies. The Planning Board had determined that these terms were self-explanatory and did not need to be defined in the Zoning Ordinance.

No action was taken by Council.

PUBLIC HEARING – ZONING ORDINANCE AMENDMENT TO ADD OFF-STREET PARKING REQUIREMENTS AND PROVISIONS FOR GASOLINE SERVICE OR FILLING STATIONS:
Mayor Clark opened the public hearing.

The City Manager advised that the first part of this request involved establishing parking requirements for auditoriums, assembly halls, gymnasiums, community centers, recreation centers, and senior centers at 1 parking space per 3 fixed seats, plus 1 parking space per every 3 moveable seats in the largest assembly room. The second part of the request included adding provisions for gasoline service and filling station canopies, which are not currently addressed in the Zoning Ordinance, to allow the top of the canopy to extend up to the street right-of-way, or on streets where rights-of-way do not exist, to no closer than the setback established for the applicable zoning district.

Councilman Little asked how these numbers had been determined. Lovina Smith stated that the State Division of Community Assistance Planner had recommended these numbers, based on what other surrounding cities have in their Zoning Ordinances.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to approve the Zoning Ordinance amendments to add off-street parking requirements for auditoriums, assembly halls, gymnasiums, community centers, recreation centers, and senior centers, and to add provisions for gasoline service station and filling station canopies.

ORDINANCE – ANNEXATION – 226: The City Manager advised that the ordinance to annex the Highway 226 South Area could be adopted tonight, with the annexation taking effect on June 30. He noted that services such as street maintenance, solid waste collection, street lighting, police and fire protection would be extended to the area by the effective date of the annexation, with the City having up to two years to extend water and sewer service into the area to be annexed.

Mayor Clark noted that the public hearing on this annexation had been held on April 3, but asked if anyone from the audience wished to address Council concerning the annexation.

Mr. Paul Simpson spoke and expressed his opposition to the annexation, stating the property owners in the area did not need City services or higher taxes. He suggested that the City take petitions from property owners who wished to join the City.

Councilman Owenby stated that he did not feel that the City should annex this area, with people opposed to the annexation. Councilman Edwards stated he agreed and asked how Council could reconcile not being willing to rezone property against the wishes of a property owner, while being willing to annex property against a property owner's wishes.

Councilman Little made a motion to approve the ordinance to annex the Highway 226 South Area. The motion was seconded by Councilman Cuthbertson.

The vote was as follows:

Councilman Little	Yes
Councilman Cuthbertson	Yes
Councilman Martin	Yes
Councilman Owenby	No
Councilman Edwards	No

The City Manager advised that a first reading of an ordinance required a vote of a three-fourths majority of Council. With the second reading of an ordinance, only a simple majority vote of Council is required to pass an ordinance.

The Highway 226 South Annexation Ordinance will be placed on the May 8 City Council agenda for a second reading.

REQUEST – FOR DONATION OF PROPERTY – MR. JOHN REESE – FOREST SERVICE: The City Manager advised that Mr. John Reese of the North Carolina Forest Service has requested the donation of an old bar light, taken off of Chief Milligan's old car. The bar light is of no use to the City, but could be included in the annual auction.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to donate the bar light to the Forest Service.

DISCUSSION – REQUEST BY YMCA FOR FUNDING: The City Manager presented Council with a letter from Jed Rankin, Campaign Chair for the Maxwell M. Corpening, Jr. Memorial YMCA in McDowell County.

Mr. Rankin's letter advised that they are trying to raise $1.5 to $2 million dollars for this project. They are requesting that the City of Marion contribute $100,000.00

The letter also advised that through the generosity of the estate of Grace Corpening, the Maxwell M. Corpening , Jr. Foundation, and the County, close to 80 % of the money required to build the facility is in hand.

A number of gifts are being received outright. They have established the ability for individuals and corporations to pledge over a three to five year period.

A discussion followed.

Councilman Little, Councilman Edwards, and Councilman Martin all stated that they felt the request should be granted and paid over a three to four year period. Prior to speaking, Councilman Martin asked if he should be excused from voting on this matter, since he was on the YMCA Campaign Steering Committee. Council members stated that they did not feel this was a conflict of interest.

Mayor Clark noted the number of commitments the City had paid to various projects, including the train depot renovation, the establishment of mini-parks, and other street and water and sewer projects. He stated that he was not against the request, but that these commitments should be considered.

Councilman Cuthbertson and Councilman Owneby expressed concern about the ability of the YMCA to cover future operation and maintenance costs.
The City Manager asked Council that if the request were approved, would the contributions to the YMCA be in addition to, or in lieu of current funding for mini-parks in the City.

Councilman Little suggested that given the difficulty of the City finding property for mini-parks, that he would suggest that the YMCA funding be in lieu of funding for mini-parks.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to contribute $100,000.00, to be paid in four increments in the amount of $25,000,00 each, with funding for mini-parks for the next four years reduced from $50,000 per year to $25,000 per year.

REQUEST – RIGHT OF WAY MAINTENANCE – TREMONT STREET: The City Manager presented Council with a memo from the Director of Public Works, Glen Sherlin, advising the he had received a written request from Mr. Raymond Buff of 69 Tremont Street concerning trees on property adjacent to his.

These trees are located on the City right-of-way.

This request was referred to the Street Committee.

DAMAGE TO PROPERTY – GEORGIA AVENUE – ROSA HEATH ESTATE: The City Manager presented Council with a memo from the Director of Public Works, Glen Sherlin, advising the he had received a written request from Toni Hollifield of 69 Georgia Avenue concerning damage to a retaining wall on this property.

The City of Marion has had work crews in this area working on construction of the new water line; however, Utility personnel believe that they did not strike the wall with City equipment. One City employee observed the section of wall as it fell.

Disturbance to the wall from vibration of the equipment cannot be ruled out, along with the fact there had been considerable rainfall a few days earlier.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to direct the City Manager to obtain an estimate and replace the wall, not to exceed $500.00.

HANDICAP PARKING - SPRING STREET: A discussion was held regarding a request for a handicap parking space on Spring Street by St. John's Episcopal Church.

A discussion followed.

This request was referred to the Street Committee.

REQUEST – DATE TO ADVERTISE REAL PROPERTY: The City Manager advised that due to a new state law, the date to advertise real property will need to be changed from May 9, 2001 to early June.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to change the date to advertise real property taxes to early June.

REQUEST - FERN AVENUE - SIDEWALK: Councilman Little advised that he had been contacted regarding the need for a sidewalk on Fern Avenue.

A discussion followed.

This request was referred to the Street Committee.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

DEPARTMENT OF TRANSPORTATION – WATER EXTENSION – SUGAR HILL ROAD: The City Manager advised that cost estimates for various components for the Sugar Hill Road Water and Sewer Line have been presented.

If the Department of Transportation only pays for a six inch line and the City of Marion had to pay the difference to install an eight inch line, it would cost approximately $79,215. However, our share of the water and sewer extension from Rankin Drive to Shady Lane Road is $179,000 (the total project cost of $379,000 less the Rural Center grant of $200,000).

It is the recommendation of the City Manager that the City go with the project with the Department of Transportation paying for the six inch line.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the City Manager and allow the six inch water line to be installed.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 8, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Beneware, Chief of Police; Mike Conley, News Reporter, WBRM Radio; Van McKinney, News Reporter, The McDowell News.

GUESTS PRESENT: Mike & Pat Estes 42 Robert Street, Marion, N.C.; Wayne Owenby 104 1st Street, Marion, N.C.; Betty Mace, 2305 Rutherford Road, Marion N.C.; Connie Poteat 2196 Rutherford Road, Marion; Pat & Beverly Glen, 231 Highland Drive, Marion, N.C.; Roy Taylor 56 Robert Street, Marion, N.C.; Elaine Tassin 220 North McDowell Avenue, Marion, N.C.; Claude Hollifield 2458 NC 226 South, Marion, N.C.; Allen & Geraldine Bartlett, 29 Robert Street, Marion, N.C.; Mr. & Mrs. Matthew O'Buckley 201 Park Avenue, Marion, N.C.; Francis & Gretchen O'Buckley 268 Red Hill Drive, Marion, N.C.; Michael & Becky Wilson 268 Red Hill Drive, Marion, N.C.; Scott Willis, Marion, N.C. Michael Curtis 90 Nancy Tolley Street, Marion, N.C.; Jerry & Lala Seagle 69 Nancy Tolly Street, Marion, N.C. Everette Johnson 767 Marion, N.C. W. Finley 2424 Rutherfordton Road, Marion, N.C., Pauline Lail, 16 Plato Drive Marion, N.C.; Dean Wall, 1002 Richard Drive, Marion, N.C. Reverend W.C. Keller; Reverend Bill Lovelace; Randy Taylor, Marion, N.C.; Steve McCraw, Marion, N.C.; Ruby Killough, Marion, N.C.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN MIKE EDWARDS:
Councilman Mike Edwards selected the Citizen of the Month for May.

REVEREND W.C. KELLER

Councilman Edwards advised that Reverend W.C. Keller is eighty-three years young , and has been married to Ms. Helen Ann Keller for fifty-eight years.

Rev. Keller was born and raised in Rutherfordton County. He began his preaching ministry in Chesnee, South Carolina.

He was the Pastor of the West Marion Baptist Church for thirty-two years and ten months. He not only served his church, but the community as well, regardless of denomination.

Mayor and Council members all had kind words to say about Rev. Keller.

There were many friends and family members present for this special recognition.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the consent Agenda as listed below:

1. **APPROVAL OF MINUTES**: April 17, 2001

PUBLIC HEARING – O'BUCKLEY PROPERTY – REZONING: Mayor Clark advised that the actual Public Hearing was held on April 17, 2001 for this rezoning request. However, he stated that if persons wished to speak to Council with new pertinent information regarding this request, it would be allowed.

At the Public Hearing held April 17th Councilman Little made a motion to modify the recommendation of the Planning Board and to rezone only a portion of the properties being recommended. Councilman Martin had seconded the motion that date.

Councilman Edwards had made a motion at the Public Hearing to table the request until additional information could be obtained from the Planning Board Members on how they had arrived at their recommendation.

Councilman Little made a motion to remove his motion form the floor from the April 17th meeting. Councilman Martin seconded the motion. Council voted unanimously to approve this motion.
Councilman Little withdrew his motion. Councilman Martin withdrew his second.

Francis, Mike and Matthew O'Buckley were all present for this meeting and spoke once more to Council, opposing the rezoning of their properties.

Mr. Wayne Owenby appeared before Council supporting the rezoning of the O'Buckly property.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously (excluding Councilman Owenby) to adopt the recommendation of the Planning Board as follows:

The following properties are rezoned from R-2 General Residential District to R-1 Single Family Residential District:

-Park Avenue (Francis and Gretchen O'Buckley, 1702.20-80-4005)
-374 Park Avenue (Francis and Gretchen O'Buckley, 1701.08-59112
-376 Park Avenue (Cleo Elkins, 1702.20-80-4143)
-370 Park Avenue (Elaine Lucille Hemphill, 1701.08-89-4860)
-220 North McDowell Avenue (Elaine D. Tassin, 1702.20-80-4272)
-23 Azelea Street (Zennie Fischer, 1701.08-89-6843)

The following properties should remain R-2 General Residential District:

-Nancy Tolley Street (Matthew O'Buckley, back portion of 1702.20-80-3236)
-218 North McDowell Avenue (Daisy Lanning, 1702.20-80-6173)
-231 Highland Drive (Patrick and Beverly Glenn, 1702.20-80-6438)

ORDINANCE – ANNEXATION – 226: The following Ordinance was presented to Council for a second reading:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA

WHEREAS, all of the prerequisites to adoption of this ordinance prescribed in Chapter 160A, Article 4A, Part 2 of the General Statutes of North Carolina, have been met; and

WHEREAS, the City Council has taken into full consideration the statements presented at the public hearing held on April 3, 2001 on the question of the annexation; and

WHEREAS, the City Council has concluded and hereby declares that annexation of the area described herein is necessary to the orderly growth and development of the City of Marion;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion that:

Section 1. From and after the effective date of the annexation, the following territory shall be annexed to and become a part of the City of Marion, and the corporate limits of the City of Marion shall be extended to include said territory more particularly described by metes and bounds as follows:

BEGINNG at a point on the current Corporate Limits, said point being in the center of the Southern Railroad right-of-way; thence following the center line of said railroad right-of-way in a southeasterly direction approximately 1,786.88 feet to a point, said point being on the northern boundary of Lot 7430 in Block 50 of McDowell County Tax Map 1711.04; thence following the northern boundary of said Lot 7430 in a northeasterly direction approximately 280 feet to a point, said point being the northern most corner of said Lot 7430; thence following the northeastern boundary of said Lot 7430 in a southeasterly direction approximately 859.I4 feet to a point, said point being at a corner of said lot 7430; thence following the eastern boundary of said lot 7430 in a southerly direction approximately 301.08 feet to a point, said point being at a corner of said Lot 7430, said point also being in the center of the right-of-way of Southern Railroad; thence following the center of said railroad right-of-way in a southeasterly direction approximately 522.39 feet to a point in the center of SR 1737 (Jacktown Road); thence following in a straight line in a southwesterly direction approximately 100.00 feet to a point, said point being at the intersection of the southern boundary of said railroad right-of-way and the eastern boundary of S.R. 1737 (Jacktown Road), said point also being the northern most corner of Lot 84I8 in Block 69 on McDowell County Tax Map 1710.02; thence following the northeastern boundary of said Lot 84I8 in a southeasterly direction approximately 191.00 feet to a point, said point being at the northeast corner of said Lot 84I8, said point also being on the southern margin of said railroad right-of-way; thence following in a straight line in a northeasterly direction approximately 36.00 feet to a point in the center of said railroad right-of-way, said point also being the northern most corner of Lot 3116 in Block 79 on McDowell County Tax Map 1710.02; thence following the northeastern property boundary of Lot 3116, said line also being the center of the said railroad right-of-way in a southeasterly direction approximately 884.00 feet to a point, said point being at the eastern most corner of said Lot 3116; thence following in a straight line in a southerly direction approximately 50.00 feet to a point on the southern margin of said railroad right-of-way, said point also being the northern most corner of Lot 778I in Block 78 on McDowell County Tax Map 1710.02; thence following the north eastern boundary of said Lot 778I, said line also being the southern margin of said railroad right-of-way approximately 741.56 feet to a point, said point being at the intersection of the southern margin of said railroad right-of-way and the northern margin of the right-of- way of N.C. 226, also said point being the eastern most corner of said Lot 778I; thence following the northern margin of the right-of-way of N.C. 226 in a easterly direction approximately 2200.00 feet to a point, said point being at the intersection of said right-of-way boundary and the northern

boundary of Interstate 40; thence following the northern boundary of Interstate 40 in a southwesterly direction and crossing the right of way of N. C. 226 approximately 60.00 feet to a point, said point being at the intersection of the southern boundary of the right of way of N. C. 226 and the northern boundary of the right of way of Interstate 40; thence following the southern boundary of the right of way of N. C. 226 in a westerly direction approximately 718.40 feet to a point, said point being at the northern most corner of Lot 4839 in Block 97 on McDowell County Tax Map 1710.02, said point also being on the boundary of Terry Smith and Robbins Oil Company Satellite Annexation under Ordinance No. 0-97-11-18-1; thence following said satellite annexation in a generally southerly direction approximately 1,540.00 feet to a point at the intersection of the northern boundary of the said railroad right of way and the northern boundary of the right of way of Interstate 40; thence crossing said railroad right of way in a straight line in a southwesterly direction approximately 200.64 feet to a point on the southern boundary of said railroad right of way, said point also being on the northern margin of the right of way of Interstate 40, said point also being the eastern most corner of Tract 2 of Lot 4500 in Block 97 of McDowell County Tax Map 1710.02; thence following the northern margin of the right of way of Interstate 40 in an easterly direction approximately 1,105.96 feet to a point, said point being at the southern most corner of Tract 2 of Lot 2752 in Block 86 on McDowell County Tax Map 1710.02, said point being in the boundary of Spectrum Dyed Yarns Satellite Annexation under Ordinance No. 0-98-06-16-1; Thence following satellite annexation boundary in a northeasterly direction approximately 1,178.70 feet to a point at the intersection of said satellite boundary and the southern margin of said railroad right of way; thence following said railroad right of way in a northwesterly direction approximately 935.00 feet to a point at the intersection of the said railroad right of way and the southern boundary of Lot 4140 in Block 88 on McDowell County Tax Map 1710.02, said line also being the eastern boundary of Lot 2782 in Block 86 and Lot 6224 in Block 77 both on the McDowell County Tax Map 1710.02; thence following the southern boundary of Lot 4140 in Block 88 and Lot 3949 in Block 87 both on McDowell County Tax Map 1710.02 in a southwesterly direction approximately 85.00 feet to a point in the center of Young's Fork Creek; thence following the center line of Young's Fork Creek in a northwesterly direction approximately 1,420.00 feet to a point at the eastern most corner of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02, said center line also forming the southern boundary of Lot 3949 in Block 87, Lot 0232 in Block 88 and Lot 7324 in Block 78 all on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2562 approximately 290.00 feet to a point on the northeastern boundary of Lot 1347 in Block 78 on McDowell County Tax Map 1710.02; thence following the boundary of said Lot 1347 first approximately 90.00 feet in a southeasterly direction then approximately 212.00 feet in a southeasterly direction then approximately 296.00 feet in a northwesterly direction then approximately 110.00 feet in a northeasterly direction to a point on the boundary of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02; thence following the eastern boundary of said Lot 2562 in a generally northerly direction approximately 294.00 feet to a point at the intersection of said property boundary and the southern margin of the right of way of N. C. 226, said point also being the northern most corner of said Lot 2562; thence following the southern margin of said right of way approximately 70.00 feet in a northwesterly direction to a point at the intersection of said right of way and the boundary of Lot 9820 in Block 68 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 9820 approximately 275.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of Old Highway 221 (Three Point Road); thence following the eastern boundary of said right of way approximately 320.00 feet in a

southerly direction to a point; thence crossing said right of way in a westerly direction approximately 60.00 feet to a point at the intersection of said right of way and Lot 5572 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of said Lot 5572 first approximately 169.00 feet in a westerly direction and then approximately 243.00 feet in a northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 5796 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of Lot 5796 first approximately 200.00 feet in a northwesterly direction then approximately 188.00 feet in a northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 2133 in Block 69 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2133 approximately 478.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of U.S. Highway 221; thence crossing said right of way in a straight line approximately 100.00 feet in a westerly direction to a point at the intersection of said right of way and Lot 8321 in Block 58 on McDowell County Tax Map 1710.02; thence following the eastern margin of said right of way in a northerly direction approximately 1,154.00 feet to a point at the intersection of said right of way and the southern boundary of the right of way of U.S. Highway 221 Bypass; then crossing the right of way of said U.S. Highway 221 Bypass in a straight line in a northerly direction approximately 250.00 feet to a point at the intersection of the northern boundary of said right of way and the southern boundary of Lot 1025 in Block 50 on McDowell County Tax Map 1711.04; thence following the boundary of said Lot 1025 first approximately 49.00 feet in a southwesterly direction then approximately 437.00 feet in a northwesterly direction to a point, said point being at the western most corner of said Lot 1025, said point also being on the eastern boundary of the right of way of U.S. Highway 221 Bypass; thence following said right of way approximately 817.00 feet to a point on the current Marion Corporate Limits; thence following the Marion Corporate Limits in a generally northerly direction approximately 3,340.00 feet to the point of BEGINNING.

This description includes the following parcels: 1710.02-59-6915 Mace, Ted and Betty; 1710.02-59-7877 Comer, Linda F. and Cecil E.; 1710.02-59-8496 Hollifield, Claude S. and Elle N.; 1710.02-59-9830 Lowery, John Michael and Pamela; 1710.02-68-5572 Cooper, Frank and Dovie, et al; 1710.02-68-5796 Aiken, Stanley E.; 1710.02-68-6789 McDowell County; 1710.02-68-8962 Robbins, Jack M.; 1710.02-68-9820 Poteat, Joel Aaron and Pamela; 1710.02-69-1556 Boyd, Ricky Harold; 1710.02-69-2133 Hoover Cemetery; 1710.02-69-3712 Grant, Randy Lee; 1710.02-69-4461 Dillingham, John E. and Mary P.; 1710.02-69-5621 Stevenson, Leroy; 1710.02-69-6124 Craig, Myrtle; 1710.02-69-6643 Lail, P. Beauford; 1710.02-69-7514, 8418 and 8602 Branch, Michael Van; 1710.02-77-0958 Poteat, A. Dock and Pansey; 1710.02-78-1347 McKinney, Wade B. and Pamela; 1710.02-78-2562 Condrey, Ruth (Life Estate); 1710.02-78-7324 Brooks, Rebecca Ward; 1710.02-78-7781 McCraw, S. R., et al; 1710.02-79-3116 Wall, Avery Dean; 1710.02-86-2782-1 and 2 Spectrum Dyed Yarns; 1710.02-87-3949 Adams, Ronald L. and Sherry J.; 1710.02-87-9977 Poteat, Wayne and Joyce J.; 1710.08-88-0232 Koon, Laura; 1710.02-88-4140 Parker, Doris Ann; 1710.02-88-6261 and 8005 Poteat, L. F. and Shellie; 1710.02-88-6420 Poteat, Myrtle Yount; 1710.02-97-0786 Franklin, Clifford Ray; 1710.02-97-0951 Poteat, Wayne and Joyce J.; 1710.02-97-1695 Xiong, Moua and Gad Lee; 1710.02-97-4500 Smith, Terry L. and Robin L.; 1710.02-98-0202 Morgan, Gary E.; 1710.02-98-1115 Hunter, Penn, et al; 1710.02-98-2044 Lewis, Willard M. and Lucille; 1711.04-50-1025 Quality Oil Company; 1711.04-50-3243 Simpson, Paul L. and Sue L.; 1711.04-50-4180 Grindstaff, Paul and Auta; WNC Pallets and

Forestry Products; 1711.18-31-4490 McDowell Development Corporation; 1711.18-40-7419 Poteat, Paul C. and Connie; 1711-18-40-8278 Hawkins, Robert Z. and Kathy; 1711-18-41-4309 Marion Manufacturing Credit Union; and 1711.18-41-6234 Talley, Arnold K. and Kathy.

Section 2. The City Council hereby finds and declares that the above described territory meets the requirements of G.S. 160A-36, in that:

The area is adjacent and contiguous, as defined by G. S. 160A-36 as of the 16th day of January, 2001, the date upon which this annexation proceeding was begun, and as shown on the map included in the 221/226 Annexation Study marked Exhibit A.

The aggregate external boundary line of the area to be annexed is 24,637.75 feet, of which 3,340 feet (or 13.56%), coincides with the City boundary, as shown on the map included in the 221/226 Annexation Study marked Exhibit A. Therefore, at least one eighth of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality (See 221/226 Annexation Study, Exhibit B).

The area to be annexed is developed for urban purposes in that 80.39% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 66.14% of the total of residential and vacant acreage consists of lots and tracts three (3) acres or less in size, all of which is demonstrated as follows:

Total number of lots and tracts..... 51

Number of lots and tracts used for:

Residential.....	27
Commercial.....	12
Industrial.....	2
Institutional.....	0
Governmental.....	0
Total	41

Total residential and vacant acreage..... 53.72
Acreage in lots and tracts three
acres or less..... 35.55

Section 3. It is the purpose and intent of the City of Marion to provide services to the area being annexed under this ordinance, as set forth in the report of plans for services approved by the City Council on February 6, 2001 and filed in the office of the Clerk for public inspection on February 6, 2001:

City services will be provided to the area upon the effective date of annexation in accordance with the General Statutes of North Carolina as follows:

POLICE PROTECTION

The Marion Police Department presently provides police services for all areas of the City of Marion including preventative and directed patrol, criminal response

and investigation, traffic enforcement and other services such as funeral escorts, alarm response, vacation home checks, and animal running at-large. The full-time force is composed of the Chief of Police, 19 sworn officers, 4 telecommunication officers and 1 police aide. At least 1 telecommunication officer and 2 sworn officers are on duty at all times. All telephone calls are automatically tape-recorded. The telecommunication officer has direct communications capability with all City police cars as well as the McDowell County Sheriff's Office, McDowell County Rescue Squad, North Carolina Highway Patrol dispatch, City of Marion Public Works, and all law enforcement agencies in "Region C." The department is connected to NC Division of Criminal Information (DCI) which provides the department access to motor vehicle, boat, and airplane registration information, driver's license information, stolen property and wanted or misplaced persons. Through this network access is also available to the National Crime Information Center (NCIC), Interpol and out of state and Canada motor vehicle information.

Response time to the proposed area of annexation is zero (0) to ten (10) minutes, if a patrol vehicle is readily available. Every effort will be made to patrol the streets in this area three (3) times each 12 hour shift. Presently, no additional equipment or personnel are required to provide police protection to this area.

Street mileage for the proposed annexation area is approximately 1.9 miles. Assuming the area is patrolled a minimum of six (6) times a day, a 3.1 mile patrol route would require approximately 6,790 traveled miles. An estimate 2000 miles would be required to handle calls for this area. The patrol vehicles average ten (10) miles to a gallon of gas and .09 per mile in maintenance cost.

Using the figures above, the estimated addition expenses to provide police services to the proposed area of annexation would be $2,100.00 ($1,300.00 for gas and $800.00 for maintenance.) The fund will come from anticipated revenues in this area.

The City will ensure that on the effective date of annexation police protection will be provided in the area annexed on substantially the same basis and in the same manner as provided in the rest of the City.

FIRE PROTECTION

The City of Marion is served by the fire department located at the intersection of West Court Street and Logan Street. The fire department is currently protecting an area ranging up to five miles from the station including the area to be annexed. Equipment from this station can respond to the area proposed for annexation in 1 to 6 minutes depending on traffic conditions. The route to this area is easily accessible to fire fighting equipment.

The fire department has three diesel-powered pumpers. One 1,000 GPM (gallons per minute) pumper and two 1,250 GPM pumpers. The department also has a 1,000 gallon tanker with a 300 GPM pump, an 85 foot aerial platform with a 1,000 GPM pump and a four-wheel drive brush unit.

There are four paid firemen and at least one is on duty at all times. The duty fireman and 30 volunteers are dispatched by the 911 Emergency Operations Center. All firemen have pagers and many have portable hand held radios. The fire department also maintains a fire inspection department that handles fire

safety inspections of businesses and industries the city. The fire department is also involved in the field of fire education.

Because of the area's proximity to the station, and because of the area is located within the Marion Area Fire District which is already being served by this department, no additional personnel or equipment will be needed. There will be no additional cost as this area is already included in the present operating budget.

The annexation area is located in the Marion Area Fire District. The amount of Service District Tax paid by McDowell County to the City will be reduced by approximately $370.00 per year due to the annexation of this area. No other county volunteer fire departments will be affected as a result of the annexation of this area.

The level of fire protection will increase with the installation of three (3) additional fire hydrants in area.
A change in insurance rating may occur when an area is annexed into the city limits. Because of the difference in policies of insurance companies, individual property owners should check with their insurance representative to determine what effect, it any, annexation will have on their insurance rates.

The City will ensure that on the effective date of annexation fire protection will be provided in the area annexed on substantially the same basis and in the same manner as provided by the Marion Fire Department in the rest of the City.

WATER AND SEWER SERVICE

Within the proposed annexation area, seven (7) residential customers and (6) businesses are on the City's water and/or sewer system at the present time leaving twenty-eight potential new customers.

Water and sewer revenues from customers currently on the City's systems average $354.85 per month or $4,258.20 annually. These charges are being based on an "outside rates."

Once the area is annexed, these customers will be charged the "inside rate" which will reduce the revenue by approximately $137.09 per month or $1,645.08 annually.

If the remaining residents and businesses in the annexation area are connected to the water and sewer lines, approximately $486.00 per month or $5,832.00 could increase revenues annually.

Exhibits D and E of the 221/226 Annexation Study shows existing and proposed water and sewer improvements for the annexation area. Everyone in the annexation area will have access to both water and sewer service.

The City will ensure that on the effective date of annexation water and sewer service will be provided in the area annexed on substantially the same basis as provided in the rest of the City. Water and sewer improvements will be completed in accordance with the time schedule in the
General Statutes.

Funds for water and sewer service will come from anticipated revenues in this area. Funds for improvements will be a one-time expense. Money will be appropriated in the City's budget to cover this one-time expense.
Preliminary cost estimates are as follows:

Water Improvements	70,350.00
Sewer Improvements	164,150.00

A breakdown of these estimates is shown in the 221/226 Annexation Study.

STREET MAINTENANCE

All of the streets in the area proposed for annexation are paved. It is proposed that the State of North Carolina will continue maintenance on the public streets in the area.

Maintenance provided by the City will include the collection of trash (yard trimmings, boxes, and other relatively small items) once a week. The City will pick up larger items if a special pickup is arranged. It is estimated that $400.00 will cover the cost for providing this service, including vehicle maintenance, for the proposed area.

Funds for street maintenance will come from anticipated revenues in the area to be annexed.

The City will ensure that on the effective date of annexation street maintenance will be provided in the area annexed on substantially the same basis and in the same manner as provided in the rest of the City.

STREETLIGHTS

To provide streetlights in the area proposed for annexation, the City will follow the current policy of a streetlight on every other pole in a residential or commercial area.

Exhibit H in the 221/226 Annexation Study shows the location of the existing poles and proposed lights. Upon annexation the City will work closely with Duke Power Company to determine the best location for the lights.

The City will have approximately twelve 27,500 lumen, 175 watt sodium vapor streetlights installed in the area proposed for annexation. Duke Power Company will install the streetlights. The City will be charged $9.48 per month per streetlight.

The estimated cost for providing streetlights to the area proposed for annexation will be $113.76 per month or $1,365.12 annually.

The funds to provide streetlights in the annexation area will come from anticipated revenues in this area.

The City ensures that on the effective date of annexation streetlights will be provided in the area annexed on substantially the same basis and in the same manner as provided in the rest of the City.

SOLID WASTE COLLECTION AND RECYCLING

Present City policy provides for solid waste collection and recycling once a week at each residence.

For residential collection, the City is currently using a solid waste packer unit and three Cushman scooters. Each scooter is equipped with a ½ cubic yard bin for the collection of solid waste. The scooters are able to collect solid waste from approximately 15 residences before unloading into the packer unit. There are approximately 2217 residential units within the current City Limits. Each scooter will average collecting solid waste from approximately 200 residences in a six to seven hour period. There are twenty-seven (27) residential units in the area proposed for annexation. A curbside recycling truck will be used to provide recyclable pickup at each residence one each week.

No additional employees or equipment will be required to provide solid waste collection service to this area. It is estimated that $600.00 will cover fuel cost. An additional $400.00 is estimated for vehicle maintenance for a total cost of $l,000.00 to provide solid waste and recyclable collections to the residential units.

There are fourteen (14) commercial businesses and two (2) industrial units in the proposed area to be served by the container truck once per week. It is estimated that $500.00 will cover fuel cost for this service. An additional $200.00 is estimated for vehicle maintenance.

The total cost for providing residential, commercial and industrial solid waste collection in the area proposed for annexation would be $1,200.00 with service being provided by City of Marion personnel and equipment. These funds for this service will come from revenues collected in this area.

The City will attempt to contact any solid waste firm servicing the annexation area as required. If required by the General Statutes, the City will offer to contract with the solid waste firms.

The City will ensure that on the effective date of annexation solid waste collection service will be provided in the area annexed on substantially the same basis and in the same manner as provided in the rest of the City.

Section 4. The City Council hereby finds and declares that on the effective date of annexation prescribed in Section 8 hereof, the City of Marion will have sufficient funds appropriated, in the amount of $234,500.00, to finance the estimated cost of construction of water and sewer facilities found necessary in the report of plans for services to extend the basic sewer and water system of the City of Marion into the area to be annexed under this ordinance.

Section 5. From and after the effective date of this annexation, the territory annexed and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City.

Section 6. The newly annexed territory described above shall be subject to City taxes according to G.S. 160A-58.10.

Section 7. The mayor of the City of Marion shall cause an accurate map of the annexed territory described in Section 1 hereof together with a duly certified copy of

this ordinance, to be recorded in the office of the register of deeds of McDowell County, and in the office of the Secretary of State in Raleigh. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 8. This ordinance shall become effective on July 31, 2001.

As to qualified tracts of agricultural land, horticultural land and forestland, the annexation will become effective on the last day of the month in which the tract or part thereof becomes ineligible for present-use classification under G.S. 105-227.4 or no longer meets the requirements of G.S. 160A-37(f1)(2).

Section 9. Notice of adoption of this ordinance shall be published once in a newspaper having general circulation in the City of Marion.

Adopted this 8th day of May 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

The Ordinance was not adopted.

The voted was as follows:

Edwards	No
Little	No
Owenby	No
Cuthbertson	Yes
Martin	Yes

COUNCILMAN CUTHBERTSON: Councilman Cuthbertson was excused from this meeting at 8:15 P.M. due to going out of town.

ORDINANCE – TO ESTABLISH HANDICAP PARKING SPACE – SPRING STREET:
The City Manager state that the Street Committee had reviewed the request by St. John's Episcopal Church for a handicapped parking space on Spring Street, just east of the intersection with South Main Street, and had recommended the approval of the request. The City Manager noted that further review had determined an existing ordinance establishing such a handicapped space from the intersection and extending 30 feet easterly. Staff had reviewed this location, and determined it to be too close to the intersection, and therefore recommended that it moved 35 feet farther to the east on Spring Street.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
SPRING STREET	HANDICAP PARKING ONLY	NORTH SIDE, FROM S. MAIN ST. 30 FT. EASTERLY

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
SPRING STREET	HANDICAP PARKING ONLY	NORTH SIDE. BEGIN 35 FEET EAST OF THE NE CORNER OF SPRING AND S. MAIN AND CONTINUING 22 FEET EAST

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 8th day of May, 2001.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager

ORDINANCE NUMBER: O-01-05-08-1

ORDINANCE – AMEND REQUIREMENTS FOR SIDEWALK DISPLAYS: The City Manger reported that it had been observed that Carolina Choclatier's on North Main Street was leaving tables and chairs on the sidewalk at all times, in violation of Section 15-134 of the City Code, which requires such displays to be removed at the close of each business day. This ordinance had been drafted to create an exception to allow eating

and drinking establishments to leave tables and chairs on the sidewalk, subject to certain listed conditions, to promote downtown revitalization. Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 15
STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
MARION CITY CODE

BE IT ORDAINED BY THE City Council of the City of Marion, North Carolina as follows:

Section 1. That Section 15, Streets, Sidewalks and Other Public Places of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 15-134 (a) (2) is amended by deleting Section 15-134 (a) (2) in its entirety and replacing it with the following:

2. All materials, tables, racks oar other items much be removed from the sidewalk at the close of each business day, with the following exception:

   a. Tables and chairs used by a restaurant or coffee shop or other business establishment serving food or drink may remain on the sidewalk at all times, subject to the other provisions of this Section, unless the business owner is instructed to remove said tables and chairs by the City. Such tables and chairs shall be for the exclusive use of patrons of the business providing the tables and chairs, and in no case shall alcoholic beverages be served to or consumed by any persons using said tables and chairs.

Section 3. This Ordinance shall become effective upon its adoption.

Adopted this the 8th day of May, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

ORDINANCE NUMBER: O-01-05-08-2

RIGHT OF WAY MAINTENANCE – REQUEST – OFF TREMONT STREET: The City Manager advised that the Street Committee had met and discussed the removal of two poplar trees located on an unopened City street right-of-way next to the property of Mr. & Mrs. Raymond Buff on Tremont Street. The Street Committee recommended that the City remove these trees, using a contractor. The City Manager reported that an estimate of $750.00 had been received to remove the trees.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby those members of Council present voted to accept the recommendation of the Street Committee and have these two trees removed by a certified contractor in the amount of $750.00.

REQUEST - FERN AVENUE - SIDEWALK: The City Manager advised that the Street Committee examined the possibility of a sidewalk along Fern Avenue and determined that there were numerous obstructions that would make the construction of a sidewalk difficult and costly. The Street Committee does not recommend at this time pursuing this project.

No action was taken.

SCHEDULE BUDGET WORKSHOP: It was decided to hold a Budget Workshop on Tuesday, May 29, 2001 at City Hall at 7:00 P.M.

REQUEST – WARREN HOBBS – CEMETERY REPAIR WORK: The City Manager advised that Mr. Warren Hobbs has requested that he be authorized to spend an additional sum

of money in the amount of $200.00 for additional repair work to the tombstones and fencing in the cemetery, and that the City provide dirt for the lower entrance to the Cemetery on Rutherford Road. Work was recently completed to repair and straighten

many of the stones. Councilman Owenby noted that this was a worthwhile project that should be approved.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to allow the additional work to be done by Mr. Warren Hobbs and to cover the cost of $200.00 for the repairs.

BIDS – YANCEY ROAD CURB: The City Manager stated that the signed agreement had been received from the North Carolina Department of Transportation, allowing Council to award the bid for the Yancey Road curb and gutter and sidewalk project. He recommended the award of the contract to Valdese Concrete, Inc. in the amount of $66,425, which included $45,300 for curb and gutter installation to be funded by DOT, and $21,125 for sidewalk installation. to be paid using City Powell Bill Funds. Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to accept the bid from Valdese Concrete, Incorporated in the amount of $66,425 to install the curb, gutter and sidewalk on a section of Yancey Road.

$45,300 for curb/gutter
$21,125 for sidewalk

Total $66,425

COMMUNITY BUILDING RESTROOMS: The City Manager presented Council with a memo from the Director of Public Works in reference to the restrooms downstairs at the Community Building. These restrooms do not meet ADA requirement for physically handicapped persons. However, they have been utilized by the public in recent months.

The Public Works Department is receiving an increased number of requests from groups and individuals for after hours and weekend use of the restrooms. This has become a demand which they are unable to accommodate in a fair and impartial manner.

A discussion followed.

Council agreed to open the Restrooms seven days a week from 8:30 A.M. – 4:30 P.M. The Public Works Employees will open, close and maintain the Restrooms Monday through Friday. The Marion Police Department will open and close the facilities on Saturday and Sunday.

Council also directed the City Manager to develop recommendations for constructing more indestructible and ADA accessible bathrooms on the site.

DOT PAVEMENT MARKINGS: The City Manager noted that DOT was in the process of completing the requested repainting of the lane markings on Main Street. Councilman Little suggested that DOT be asked to go ahead and paint the stop bar at the South Garden Street/Rutherford Road intersection, as they had indicated they would.

EASTFIELD SEWER EXTENSION: The City Manager mentioned that he and the County Manager had discussed the sewer extension to the Eastfield community, and determined that $380,000 may be left over, using current budget projections, once the project is completed. The

City Manager stated that the County would welcome ideas for spending this additional money. The City Manager presented several options for this money, including:

-Water improvements in Eastfield
-Water and sewer extensions to the Moodytown area
-Water and sewer extensions to the Stroud Street area

Council authorized the City Manager to work with the County to pursue any combination of these projects, using surplus grant funds from the Eastfield sewer extension project.

PARK AVENUE: Mayor Clark noted that Park Avenue needed to be swept, trash removed from the street, and that the weeds growing out to the curb and street needed to be removed.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 22, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Chief of Police; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Mia Lorenz, City Attorney

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as listed below;

1. **APPROVAL OF MINUTES**: May 8, 2001

2. **ORDINANCE – SPEED LIMIT – 70 WEST:**

CERTIFICATION OF MUNICIPAL ORDINANCE DECLARING SPEED LIMIT MODIFICATIONS AND REQUEST FOR CONCURRING ORDINANCE BY DEPARTMENT OF TRANSPORTATION:

I, J. Robert Boyette, Clerk of the City of Marion, do hereby certify that the City Council for the City of Marion duly enacted on the 22nd day of May 2001 an Ordinance based upon engineering and traffic investigation pursuant to authority granted by G.S 20-141 (f) declaring the following speed limit modifications as set forth below on the following described portion of a State Highway System Street.

Speed Limit	Ordinance Number	Declare the Following Speed Limit Description
45	580200056	US 70, from a point 0.18 mile east of SR 1302, eastward to a point 0.25 mile west of US 221, in Marion

said ordinance to become effective upon adoption of the Department of Transportation of a concurring ordinance and the erection of signs giving notice of the authorized speed limit; that said ordinance is recorded in Minute Book 10.

In witness whereof, I have hereunto set my hand and the seal of the City of Marion, this the 22nd day of May, 2001.

J. Robert Boyette (Seal)
J. Robert Boyette, City Manager/Clerk

3. **TAX REFUND – TERRY & ROBIN SMITH:**

Taxes were billed to Terry L. & Robin L. Smith on property that is located outside the city limits.

The Smith's property located off Highway 226 on Craftsman Drive was annexed into the City of Marion in 1997. Two acres are inside the city limits and two outside.

The amount over paid for 1997, 1998 & 1999 is $464.25.

Based on the above information, payment to Terry L. & Robin Smith will be refunded in the amount of $308.76, (which is less the 2000 tax amount of $155.49).

RETAINING WALL – GEORGIA AVENUE: The City Manager presented Council with information from the Director of Public Works and Ms. Toni Hollifield advising that the $500.00 previously approved by Council to replace a retaining wall on Georgia Avenue will no longer be sufficient to cover the cost of replacing it.

Ms. Hollifield had originally advised that she had spoken with a mason and that the wall could be replaced for $500.00. Council approved this amount as requested at their April 24, 2001 City Council Meeting. Ms. Hollifield has subsequently determined that the mason providing the $500.00 estimate cannot complete the work, and therefore obtained the following estimates:

Alvin Rhymer - Total Job Cost $2,695.11
J.J. Laughridge - Total Job Cost $1,357.60

The City Manager noted that the value of this wall, which is on City street right-of-way, may not justify this increased cost.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to refer this matter to the Street Committee.

APPROVAL - GUIDELINES – PROPERTY TAX PAYMENTS: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following policy:

CITY OF MARION
PROPERTY TAX PAYMENT POLICY

The City of Marion will allow property owners to set up a payment plan for back real and personal property taxes, subject to the following conditions:

1. The Property owner must sign a contact, agreeing to the payment plan and the condition s listed in this policy, and acknowledging that enforcement action by the City may be taken if any payments are not made on time.
2. All current year taxes owned must be paid.
3. A minimum payment of $25.00 per month must be paid.
4. The payment schedule must allow for complete payment of all taxes owned within a period of no more than three (3) years from the date the contact is signed, even if this makes the monthly payment higher the date the contract is signed, even if this makes the monthly payment higher the $25.00 minimum payment per month.
5. Penalties and interest will continue to accrue on any unpaid balance, as required by State law.

Adopted this the 22nd day of May, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DISCUSSION – STREET/SIDEWALK PRIORITIES: A discussion was held regarding various projects and how they are prioritized to be completed. The City Manager noted that Council could direct any project to be moved higher on the list.

The City Manager presented the following list of prioritized projects as prepared by the Public Works Director for Council's review:

1. Drainage, asphalt curbing – Seventh Street, Clinchfield (drainage and widening are completed; asphalt curbing to be installed) Sixth Street, Clinchfield
2. Curb, gutter, sidewalk - California Avenue (in progress)
3. Curb and gutter – Viewpoint Drive (in conjunction with water line replacement)
4. Drainage, curb, gutter – North Garden, James Drive, New Street,
5. Curb and gutter – Gilkey Street
6. Sidewalk – State Street from McDowell Avenue to East Jr. High School entrance
7. Sidewalk – State Street from Clay Street to Rescue Squad
8. Drainage, curb, gutter – Park Avenue
9. Sidewalk – Logan Street from North Main to West Court Street
10. Drain line extension State Street near Capital Hill Apartments

In progress: Curb, gutter, sidewalk – Yancey Road, to begin soon (contracted)

Note: The following jobs, not currently prioritized, will be reviewed monthly for prioritization within the operations schedule:

Sidewalk section replacement - West Court Street
Pour Bottom in culvert – Georgia Avenue Extension
Street extension Washington Street to Miller Avenue
Sidewalk, curb and gutter – First Street, East Marion
Sidewalk, curb and gutter – Second Street, East Marion
Sidewalk replacement – Carson Street
Culvert, ditch line - Oak Grove Cemetery (contract)

Water Department
Jobs Pending / Update May 2001

Priority

1 Install new 6" water line – Marion Street recent annex area
2 Extend 12" water main – Highway 70 East (Kehler)
3 Install new 6" water line – Viewpoint Drive
4 Replace 6" asbestos cement water line Clay Street, Oak Street
5 Install new water line on Morgan Terrace
6 Replace 4" asbestos cement water line – Lail Street, Hudgins Street
7 Replace 6" Water line – State St. from Garden St. to Rescue Squad
8 Complete new 6" water line extension on Virginia Road
9 Install new 6" water line on 6th Street, Clinchfield

Note: The following jobs, not currently prioritized, will be reviewed monthly for prioritization within the operations schedule:

Relocate fire hydrant on Kehler property, Rutherford Road, to former Clevenger Mill property entrance

Increase sewer line size on Morgan Terrace

Connect water line on Roby Conley Road to 10" line with new valve at old slaughter pen

Change over houses on Old Greenlee Road to the 12" pump line and abandon the 6" lie

Connect houses on Baldwin Avenue to 12" line and abandon 3" line from former health department, behind ballfield and up to Pine Grove Street

Change over houses on Copeland Drive to new line on Morehead Road and abandon old line behind old school house

Install new service lines at Cross residence and old Bradley house, abandon approximately 400" of asbestos cement water lines and two hydrants

Install larger water line on McDowell Avenue from State Street to railroad bridge volume and pressure poor

Loop in water line at Academy Street and Fort Street

Loop in water line on Ann Street to Carol Street back to State Street

Loop in 6" water line on East Railroad to Baldwin Avenue, valve already on Baldwin

Loop in 6" line at State Street Extension to Baldwin Avenue, valve already on Baldwin

Loop in 6" line on Highland Drive to East Court Street at Byrd Electrical

Connect Lucky Street to 10" line on Old Highway 10, install fire hydrant on the end of Lucky Street, 4" line currently fed by only 1" line

Locate fire hydrant on Rutherford Road above former KFC building, water line was abandoned

Finish looping in 6" water line on School Street from Church Street to Ridge Road

Change over houses to new water line on State Street from railroad tracks to Clay Street

Change over houses to new water line on Ann Street

Change over houses to new line on Clark Street

Change over houses to new water line on Bostic Street

Change over houses to new water on Hudgins Street from upper Broyhill plant to the bypass

Change over houses to new water line on Hillcrest from Finley Avenue to top of hill

Change over houses to new water line on Matilda Avenue

Change over houses to new water line on Virginia Road from Lamar Street to Gilkey Street

Change over houses to new water line on Garden Street from East Court Street to East Henderson Street

Change over houses to new water line on Kathy Street

West Marion Area – Almost every street in West Marion has two lines. Example: on Grayson Street, there are 10 houses but only one is connected to the newer 6" line. The others are on an old 2" galvanized line.

Councilman Edwards advised that the sidewalk on First Street in East Marion is in very poor condition, and has been for years. This Street should probably be moved up on the priority list.

A discussion followed.

Council agreed to let the Street Committee examine the Street and Sidewalk Project Priority list and recommend any change in prioritization of the projects.

ORDINANCE – ONE WAY TRAFFIC ON THOLE STREET: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE

MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
ROANE STREET	ONE WAY	FROM THOLE ST. TO INTERSECTION OF ROANE AND HOYLE ST.

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
THOLE STREET	ONE WAY	LENGTH OF STREET

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 22nd day of May, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

ORDINANCE NUMBER: O-01-05-22-1

SCHEDULING OF WEST MARION PARK DEDICATION: The City Manager advised that City Crews are working toward finishing the West Marion Park.

Council agreed to hold the Dedication Ceremony at the park on Saturday, June 30, 2001.

REQUEST – SEWER SERVICE – BALDWIN AVENUE: The City Manager presented Council with a memo from Mr. Glen Sherlin, Director of Public Works advising that a request to provide City sewer service to property located at 80 Baldwin Avenue has been made.

It would cost the City approximately $24,000 to extend sewer service service to the property from Rutherfordton Road.

It is the recommendation of the Director of Public Works that the City not construct the extension of the main sewer line and to allow the property owner to use their own private septic system, provided it is approved by the County Health Department. The property owner is willing to use their private septic system.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to allow the property owner to remain on the private septic system, and to provide the owner with a free sewer tap, to redeem at such time the City Sewer is available..

ORDINANCE – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES: The City Manager noted that after Council had adopted an ordinance on May 8 to allow restaurants and eating establishments to keep tables and chairs on the sidewalk. the Building Inspector had determined that the North Carolina Building Code would not allow the tables next to the building, for safety reasons. Therefore, the tables had been relocated next to the curb, which violated a City ordinance requiring displays to be seven feet from the curbline. The City Manager recommended adoption of an ordinance to waive the seven foot setback requirement for restaurants and eating establishments. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance, with wording changes recommended by Councilman Edwards and reviewed by the City Attorney:

ORDINANCE
AMENDING SECTION 15
STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Section 15, Streets, Sidewalks and Other Public Places of the Code of Ordinances , City of Marion, North Carolina, is amended as follows:
Section 2. Section 15-134 (a) (3) is amended by deleting Section 15-134 (a) (3) in its entirety and replacing it with the following:

(3) No goods, wares, merchandise, tables, racks, or other items for sale or containing items for sale may be placed within seven (7) feet of the face of curbline in front of the building, with the following exception:

a. Tables and chairs for use by a restaurant or other business for the purpose of seating customers and serving food or beverage may be placed on the sidewalk within seven (7) feet of the face of the curbline in front of the building so long as the City Council approves the location and placement of the tables and chairs. The City Council shall, upon application, grant approval of table and chair placement for the purposes above described once it is determined and agreed upon that the tables and chairs do not pose a safety hazard or adversely impact parking areas. Furthermore, if parking patterns change or safety hazards emerge, the City Council reserves the power to withdraw permission for certain or all table(s) or chair(s) placement.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 22nd day of May, 2001

A. Everette Clark, Mayor

ATTEST:

L. Robert Boyette, City Manager/Clerk

ORDINANCE NUMBER: O-01-05-22-2

AGREEMENT – CITY OF MARION FIRING RANGE: The City Manager presented Council with an agreement identical to the agreement signed last year between the City of Marion and McDowell Technical Community College for the purpose of B.L.E.T. Firearms

Certification, Marion Police Department Firearms Recertification, D.O.C. In-Service Training and MTCC Concealed Weapons Class effective Date June 1, 2001 – May 31, 2001.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted to approve this agreement.

A copy of this agreement can be found on file in the legal documents at City Hall.

COUNCIL MEMBER COMMENTS: Councilman Martin suggested that several streets in the West Marion area be looked at to consider parking on the streets. The City Manager reported that the Police Chief had reviewed this area, and had some recommendations to allow additional on-street parking.

This item will be looked at by the Street Committee.

Councilman Owenby advised that Mr. Joe Jones, owner of McDowell Distributing has a broken drainage pipe and other damage to his property caused by City Vehicles. The City Manager stated that the Public Works Department would examine the damage and act accordingly.

Councilman Cuthbertson advised that it has come to his attention that various items belonging to the City Manager Bob Boyette will not be moved to Marion with his personal belongings due to not having space at the condominium to store them.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to lease a storage building for the City Manager's personal belongings for a period of six months.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(3) to discuss a legal matter in consultation with the City Attorney.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session. Councilman Cuthbertson made a motion, seconded by Councilman Owenby, for the City to seek bids from contractors for repairs to the Smith bridge at the Prison Pump Station on Highway 226 South, in accordance with recommendations from the DOT Bridge Structural Engineer, the terms of the City's settlement agreement with the Smith and Pittman families, and based on the advice of the City Attorney. Mayor Clark noted that completion of this item would satisfy the terms of the City's settlement agreement.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 5, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Chief of Police; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Violet Pendley, Clinchfield, N.C., Charles & Sheri Atkins, Marion, N.C., Dawn Rabon, Morgan Street, Marion, N.C., Will McAdams, Jr., Marion, N.C.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN BILLY MARTIN:
Councilman Billy Martin selected the Citizen of the month for June.

The following information was presented about June's Citizen of the month:

ELSIE HENRY LOGAN

Councilman Martin advised that Ms. Elsie Logan, in his opinion, is the Queen Bee. She is a wonderful Woman, Wife, Mother and Friend.

Ms. Elsie was married to the late Ernest Rutherford, together they shared two sons, one daughter, five grandchildren and three great grandchildren.

For the past nineteen years, she has been married to Issac Logan. They have one son.

Ms Elsie retired from Baxter Healthcare. However, she stays busy assisting with Home Health Care, Mt. Moriah Baptist Church, the local Hospitality Committee, the Historic Carson House and much more.

Mayor Clark, Council Members and many Friends and Family members all had kind words to say about Ms. Elsie Henry Logan.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

1. **APPROVAL OF MINUTES:** May 22, 2001

2. **RESOLUTION – DEAN WALKER**

Resolution Honoring Dean Walker
for 30 Years of Service with
The North Carolina Department of Corrections
and Recognizing his Upcoming Retirement

WHEREAS, Deanie Ray Walker has been employed by the North Carolina Department of Corrections since 1971, during which time he has served as a Correctional Officer, Sergeant, Lieutenant, Program Supervisor, Assistant Superintendent for Operations, and Superintendent; and

WHEREAS, Dean Walker has served as Correctional Administrator of the Marion Correction Institution since its opening in 1995; and

WHEREAS, Dean Walker has served the U.S. Army and Army Reserves with distinction since 1965, and was awarded the rank of Colonel in 1994, and was inducted into the U S. Army Officer Candidate School Hall of Fame in 1999; and

WHEREAS, Dean Walker has served the citizens of Marion, McDowell County, and North Carolina well though his leadership at the Marion Correction Institution and through his community activities; and

WHEREAS, Dean Walker has promoted rehabilitation, education, and community outreach efforts at the Marion Correction Institution; and

WHEREAS, Dean Walker will retire from the North Carolina Department of Corrections in June, 2001

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES to recognize and honor Dean Walker for his 30 years of service with the North Carolina Department of Corrections and for his outstanding military career, for his hard work to open Marion Correction Institution and to serve the local community, and to congratulate him on his upcoming retirement.

Adopted this the 5th day of June, 2001

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

INTRODUCTION OF NEW EMPLOYEES: The City Manager introduced the new Planner for the City of Marion, Ms. Suzy Davis.

The Police Chief introduced three new Police Officers, Mr. Eric Lipe, Mr. Ken Hudson and Chad Meese.

The Mayor and City Council welcomed the new employees, and stated that they hoped they would have long careers with the City.

PUBLIC HEARING – REZONING 239 SOUTH MAIN STREET: Mayor Clark opened the Public Hearing.

The City Manager advised that a request has been made by Max and Lois Hensley to rezone property at 239 South Main Street from C-2 General Business to R-2 General Residential. The Hensleys will be using the house as a residence. The property is connected to existing R-2 property on the northeastern side of South Garden Street.

It is the unanimous recommendation of the Planning Board to approve this request.

There was no one present who wished to discuss this request.

The Public Hearing was closed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to accept the recommendation of the Planning Board and to approve the request by Max and Lois Hensley to rezone property at 239 South Main Street from C-2 General Business to R-2 General Residential.

PUBLIC HEARING – RESOLUTION – VERIFIABLE PERCENTAGE GOAL – CONTRACTS TO MINORITY BUSINESSES: Mayor Clark opened the public hearing.

The City Manager reported that the North Carolina General Statutes directed cities and counties to develop a verifiable percentage goal for minority contracts, after a public hearing. The North Carolina Rural Economic Development Center has informed the City that this goal must be adopted, for the City to be considered for grant funding for the Highway 221 South sewer line extension. Mayor Clark asked if such a goal would be in conflict with statutory competitive bidding requirements. The City Manager noted that the competitive bidding statutes would still apply, and that the City would need to only make good faith efforts to notify minority owned businesses of contracting opportunities.

There was no one present who wished to discuss this resolution.

Mayor Clark closed the public hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to adopt a Resolution establishing a verifiable percentage goal of five percent for participation by minority business in the awarding of construction contracts awarded pursuant to N.C.G.S. 143.128 as follows:

CITY OF MARION
RESOLUTION TO ESTABLISH A VERIFIABLE
PERCENTAGE GOAL FOR PARTICIPATION
BY MINORITY BUSINESS IN THE
AWARDING OF CONSTRUCTION
CONTRACTS AWARDED PURSUANT TO N.C.G.S. 143.128

WHEREAS, the North Carolina General Assembly enacted Chapter 480 and Section 74.17 of Chapter 770 of the 1989 Session Laws, thereby rewriting North Carolina General Statute. 143-128; and

WHEREAS, N.C.G.S. 143-128 (c) requires each city, county or other public body to adopt, after notice and a public hearing, an appropriate verifiable percentage goal for participation by minority businesses (as defined in that statute) in the total value of work for building contracts the costs of which exceed one hundred thousand dollars ($100,000) and which are awarded pursuant to N.C.G.S. 143-128; and

WHEREAS, N.C.G.S. 143-128 (c) (3) requires an authority awarding a building contract the cost of which exceeds one hundred thousand dollars ($100,000) under a separate prime or separate specification contract system to adopt written guidelines specifying actions that will be taken by the warding authority to ensure a good faith effort in the recruitment and selection of minority businesses for building contracts awarded under the separate prime or separate specification contract systems; and

WHEREAS, N.C.G.S. 143-128 (c) (4) requires an authority awarding a building contract the cost of which exceeds one hundred thousand dollars ($100,000) under a single-prime contract system to adopt written guidelines specifying the action that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for building contracts awarded under the single prime contract system; and requires that action taken by the prime contractor must be documented in writing by the contractor to the appropriate awarding authority; and

WHEREAS, N.C.G.S. 143-128 (b) requires that a public body choosing to use a single-prime contract system must also seek bids for a building contract the cost of which exceeds one hundred thousand dollars ($100,000) under a separate prime or separate specification contract

system and must award such building contract to the lowest responsible bidder or bidders for the total project; and

WHEREAS, N.C.G.S. 143-128 (d) requires the state and its political subdivisions to award public building contracts the costs of which exceeds one hundred thousand dollars ($100,000) without regard to race, religion, color, creed, national origin. sex, age or handicapping condition; and

WHEREAS, notice of the public hearing was duly published in The McDowell News and the public hearing required by N.C.G.S. 143-128 (f) was held on June 5, 2001.

NOW THEREFORE, BE IT RESOLVED by the City of Marion:

1. That the City of Marion shall have a verifiable goal of five percent (5%) for participation by minority businesses in building construction contracts awarded pursuant to N.C.G.S. 143-128.

2. That the official, employee, or agent responsible for advertising such contracts shall compile a list of minority businesses within the bidding area, using information obtained from the North Carolina Department of Economic and Community Development, Minority Business Development Agency, or from other institutions or agencies providing such information.

   This list shall be updated on an annual basis and shall be open for inspections and shall be available so that minority businesses will have the opportunity to add their names to the list.

3. That for each such building contract put out for bids under the separate specification or the single prime contract systems, notice of the contract shall be transmitted to minority businesses on the above list.

4. That for each such building contract put out for bids under the separate specification or single prime contract systems, documents related to the contract shall be available for inspection at a convenient and accessible location of which minority businesses shall receive notice.

5. That for each such building contract put out for bids under the separate specification or single prime contract system. published notice of the contract shall include a summary of this resolution.

6. That for any such building contract put out for bids under the separate specification contract system, the contact person designated herein shall maintain records with respect to:

   (a) those contractors or subcontractor that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses.

   (b) those contractors or subcontractors awarded contracts as part of the project and the number and identity of those that are on the list of minority businesses, and

   (c) the percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this resolution.

7. That for any such building contract put out for bids under the single

prime contract system, the single prime contractor shall submit with his bids records with respect to:

(a) those subcontractors that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses, and

(b) those subcontractors awarded contracts as part of the project and the number and identity of those that are on the maintained list of minority businesses,

(c) the percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this resolution.

8. That these policies shall be a part of the request for proposals for any such contract, and noncompliance by any single prime bidder shall be grounds for declaring the bid non-responsive.

9. That this resolution shall become effective upon its adoption.

READ, APPROVED, AND ADOPTED, this 5th day of June, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

MORGAN STREET WATER LINE: The City Manager advised that the City had received complaints repeatedly from residents on Morgan Street regarding cloudy water. In the past, weekly flushing of the lines has served as a temporary fix. This procedure is no longer helping. Glen Sherlin, Director of Public Works, provided detailed descriptions of efforts by City staff to correct this problem. Mr. Sherlin stated it would be his recommendation to proceed with installation of a new 6" or 8" water line for the Morgan Street and South Main Street area, to be completed by City crews in phases, with Morgan Street being the first phase.

Ms. Dawn Rabon was present for this meeting and appears to have the worst problem, than anyone else, with her water on this section of line. The water has been tested and is safe. However, due to dinginess Ms. Rabon cannot cook or wash clothing with her water. She has been very kind and patient with City Personnel for over a year.

The City Manager noted that the water line would have to be designed by a professional engineer and permitted by the State. The City's Water and Sewer Fund budget would not be impacted if the work could be completed by City personnel. Mr. Sherlin added that these lines are some of the oldest ones still in service on the system. The City has two options, to replace the whole section in the Morgan Street area that needs replaced, or just the section on Morgan Street. The process for being able to start this project will take approximately two months. The City Manager stated that this time period would allow City crews to complete pending projects on Marion Street and on Viewpoint Drive.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to authorize City staff to proceed with the design and permitting of the installation of new water lines in the Morgan Street/South Main Street area, and then to proceed with replacement of the water lines, starting with Morgan Street.

DISCUSSION – STREET/SIDEWALKS PRIORITIES: The City Manager reported that the Street Committee had reviewed all listed street and sidewalk projects, and had developed a recommended priority list. The first four projects would remain unchanged, 6th and 7th Street Clinchfield, California Avenue, Viewpoint Drive, and James Drive/North Garden Street. The next three listed projects, Gilkey Street, Ellis Street, and Carson Street, would be recommended for contracting. The City Manager stated that bids could be obtained, and that the Powell Bill Fund had adequate funds to allow these projects to be contracted. Other projects were also listed in priority, starting with sidewalk and curb and gutter work on 1st and 2nd Street, East Marion, as follows:

Recommended Street and Sidewalk Priority List
June 2001

Priority	Project
1	Drainage, asphalt curbing – Seventh Street, Clinchfield (drainage and widening are completed; asphalt curbing to be installed) Sixth Street (Clinchfield)
2	Curb, gutter, sidewalk California Avenue (in progress)
3	Curb and gutter – Viewpoint Drive (in conjunction with water line replacement)
4	Drainage, curb, gutter – North Garden, James Drive, New Street
5	Curb and gutter - Gilkey Street – The Street Committee recommends that this project be contracted to allow for street resurfacing next spring.
6	Curb and gutter Ellis Street The Street Committee recommends that this project be contracted since it has been pending for several years.
7	Sidewalk replacement – Carson Street – The Street Committee recommends that this project be contracted since it has been pending for several years and be included in the Ellis Street project.
8	Sidewalk, curb and gutter – First Street, East Marion
9	Sidewalk, curb and gutter – Second Street, East Marion
10	Drain line extension – State Street, near Capital Hill Apartments
11	Sidewalk – State Street from McDowell Avenue to East Jr. High School entrance
12	Sidewalk repairs – Sections of State Street from Clay Street to Rescue Squad
13	Drainage, curb, gutter – Park Avenue
14	Sidewalk repairs – Sections of Logan Street from North Main Street to West Court Street
15	Sidewalk section replacement – West Court Street
16	Pour bottom in culvert – Georgia Avenue
17	Street extension – Washington Street to Miller Avenue
18	Culvert, ditch line – Oak Grove Cemetery (to be contracted)

In progress. Curb, gutter, sidewalk – Yancey Road, to begin by July (contracted)

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Street and Sidewalk Priority List as presented, and to authorize the City Manager to seek bids for contractors to complete work on Gilkey, Ellis, and Carson Streets.

RETAINING WALL – GEORGIA AVENUE: The City Manager advised that the Street Committee had looked at the retaining wall on Georgia Avenue. The Street Committee had

determined that the wall was on City right-of-way and served no functional purpose to the City. It was the recommendation of the Street Committee that the wall be removed, and City crews dress up the area where the wall is to make it look acceptable, and so as not to create a drainage problem.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to not replace the wall on Georgia Avenue and for City Crews to remove the remaining section of the wall and to complete any necessary work in the area.

WEST MARION PARKING: The City Manager advised that the Street Committee had reviewed the parking in West Marion, and would recommend to allow parking in front of private homes, on the north side of Wilhemenia Street in the block west of Oak Avenue, and along the west side of Oak Avenue between Grayson Street and Wilhemenia Street. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18.239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
OAK AVENUE	PARKING PROHIBITED	BOTH SIDES OF STREET (YELLOW CURBS)
WILHELMINA ST. (W)	PARKING PROHIBITED	NORTH SIDE. BEGINNING AT THE NW CORNER OF OAK AVE. CONTINUING 230 FT. IN A WESTERLY DIRECTION

SECTION 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
OAK AVENUE	PARKING PROHIBITED	BOTH SIDES OF STREET ENTIRE LENGTH (YELLOW CURBS
		WEST SIDE, BEGIN AT THE NW CORNER OF RIDLEY STREET AND CONTINUING TO INTERSECTION OF GRAYSON STREET AND OAK AVENUE
		WEST SIDE. BEGIN 25 FT. NORTH OF NW

		CORNER OF WILHEMENIA AVENUE AND CONTINUING TO INTERSECTION OF HIGH STREET AND OAK AVENUE
WILHEMENIA ST. (W)	PARKING PROHIBITED	SOUTH SIDE, BEGINNING AT THE SW CORNER OF OAK ST. AND WILHEMENIA ST. AND CONTINUING 230 FT. IN A WESTERLY DIRECTION

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 5th day of June, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-01-06-05-1

APPROVAL OF AUDIT CONTRACT: The City Manager presented Council with a copy of the proposed Audit Contract for Fiscal Year 2000-01 from Johnson, Price & Sprinkle. The contract includes $1,680 for year-end bookkeeping assistance, $11,295 for the Audit and $4,725 for the preparation of the financial statements, for a total cost of $17,700, which was allowed for in the proposed 2001-02 City budget.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the Audit Contract from Johnson, Price & Sprinkle as presented.

INDUSTRIAL APPRECIATION WEEK: The City Manager advised that Industrial Appreciation week is in June. The McDowell Economic Development Association will hold its first Annual Industrial Appreciation Dinner (cookout) and Reception honoring all existing industries in McDowell County on June 21, 2001. The National League of Cities Council Steering Committee members will also be present at cookout. MEDA has sent out invitations to approximately 300 to 400 people for the dinner to be held at Tom Johnson's on the evening on June 21. Mayor Clark provided details about the visit of the National League of Cities Small Cities Council Steering Committee from June 21-24 and invited Council members to participate in all activities and meetings scheduled during this time.

The City Manager reported that an employee with the McDowell News has contacted the City requesting that the City place an advertisement in the newspaper in appreciation of Industry.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to authorize the City Manager to spend approximately $200.00 to place an add in the McDowell News to honor local industry.

CITY MANAGER'S REPORT: The City Manager provided a report on current projects and activities.

The City Manager noted that Finance staff are working to complete items noted by the City's auditors in their management letter last year. These items include seeking to collect or write off old, inactive water and sewer accounts, and to set up a separate bank account for deposits received for the Community Building. The City Manager noted that people paying cash for a deposit at the Community Building would have their deposit returned in the form of a check, rather than cash, to allow for better record keeping of deposits made.

The City Manager reported that McDowell County Schools has received a permit from the State to allow the extension of sewer service to Glenwood Elementary School. He asked Council if this project would be structured like other projects the City had agreed to with other agencies in that McDowell County Schools would be responsible for all project costs, obtaining easements, and paying for easements if necessary. Council agreed that this would be the case with the Glenwood project.

The City Manager reported a concern raised by a local merchant concerning itinerant merchants and sales held by outside companies at places such as the Armory. He noted that such sales had to be allowed by the City, according to the current City Code, but that privilege licenses and proper zoning were required. Mayor Clark stated that City staff should check very carefully any time such a sale is held or an itinerant merchant is in the City to make sure that they have the proper licenses.

CLOSED SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously in accordance with N.C.G.S. 143-318.11(a)(6) to go into Closed Session to discuss a personnel issue.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session. Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to raise the salary of the City Manager by $3,000.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 19, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Mayor Pro Tem Little was not present for this meeting due to being on vacation with his Family.

Councilman Mike Edwards was not present for this meeting due to being called out of town for a legal matter.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Chief of Police; Lovina Smith, Grants Administrator; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Mr. & Mrs Mike McDaniel, Marion, N.C. 28752.

CONSENT AGENDA: Upon a motion by Councilman , seconded by Councilman , Council voted unanimously to approve the consent Agenda as follows:

1. **APPROVAL OF MINUTES:** June 5, 2001

2. **RESOLUTION – BANK OF AMERICA – APPROVE NEW BANK ACCOUNTS** All new accounts will carry a interest rate 0.2 % higher than current CD rates. Resolutions can be found on file at City Hall.

3. **ORDINANCE – BUDGET AMENDMENT:**

   The City Manager reported that final budget transfers for Fiscal Year 2000-01 had been done as transfers between line items within departments; therefore a budget ordinance amendment was not required under the provisions of the City of Marion Fiscal Year 2000-2001 Budget Ordinance.

PUBLIC HEARING – ZONING AMENDMENTS: Mayor Clark opened the Public Hearing.

The City Manager advised that Mr. & Mrs. Michael McDaniel are looking to purchase property on the corner of Pulliam and West Court Street. They are proposing to build a new home and run an insurance office as a home occupation from the residence.

The City Manager advised that Mr. McDaniel is requesting that the City of Marion add insurance offices to the list of home occupations that could have one outside employee working in the business. The Planning Board voted unanimously to recommend the approval of the request.

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin those members of Council present voted to accept the recommendation of the Planning Board and add insurance

offices to the list of home occupations allowed to have one outside employee working in the business.

The City Manager reported that Mr. McDaniel is also requesting that the maximum size of a home occupation sign be increased from two (2) square feet to six (6) square feet. The Planning Board voted unanimously to recommend the denial of the request, since they felt that six (6) square feet would be too large a sign in some residential locations.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to accept the recommendation of the Planning Board and deny this request.

PUBLIC HEARING – FISCAL YEAR 2001-02 BUDGET: Mayor Clark opened the Public Hearing. The City Manager noted that one change had been made in the budget since the May 29 budget workshop. As a result of the closing of the Doran-Westwood Dye House, water and sewer revenues in the Water and Sewer Fund had been proposed to be reduced by $30,000, and the fund balance appropriation in the Water and Sewer Fund proposed to be increased by $30,000.

There were no citizens present to discuss the budget.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adopt the following Fiscal Year 2001-02 Budget Ordinance:

BUDGET ORDINANCE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the City Government and it's activities for the fiscal year beginning July 1, 2001 and ending June 30, 2002 in accordance with the chart of accounts heretofore established by the City:

Administration		$ 325,864	Purchasing and
Warehousing	48,539		
Inspection		143,735	
Police Department		1,058,350	
Fire Department		264,268	
Public Works Administration		59,992	
Fleet Maintenance		44,502	
Street Department		746,958	
Sanitation		514,732	
Recreation		101,500	
Cemetery		27,500	
Non-Departmental		498,695	
TOTAL		**$ 3,834,635**	

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Prior Year's Taxes	$ 25,000
Vehicle Tax-Collected by County	120,000
Current Taxes	1,344,039
Inventory Taxes	186,000
Downtown Dev. Mun. Ser. Dist.	0
Tax Penalties & Interest	10,000
Privilege License Sales	18,500
Interest Earned	80,000
Rents and Concessions	16,000

Misc. Revenues	15,000
Utilities Franchise Tax	390,000
Food Stamps	2,000
Intangibles Tax	35,000
Beer/Wine Revenue	21,000
Sales Tax	815,000
Sales Tax Refund	25,000
ABC Revenues	150,000
ABC Officer Revenues	6,000
Court Costs, Fees & Charges	2,000
Parking Violations	3,500
County Fire Protection	93,000
County Contribution – Recycling	26,400
Cemetery Revenues	3,000
DOT Reimb-Grass	6,596
DOT Grant-Curb/Gutter Reimb	45,300
Garbage Fees	$60,000
Gas tax Refunds	7,000
Zoning Income - Inspection Fees	10,000
Sale of Garbage/Leaf/Recycling Bags	800
Maint. Traffic Control Devices	2,500
Cable TV Revenues	35,500
Sales of Surplus Equipment	8,000
Contribution from W/S Fund	0
Law enforcement Grant	27,500
McDowell County Schools	16,000
PD Grant-In car cameras	9,000
Fund Balance	200,000
TOTAL	**$ 3,834,635**

Section 3. The following amounts are hereby appropriated in the Powell Bill Fund for Street Maintenance, including curb and gutter work, sidewalk work, storm drainage and other expenses relating thereto for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Professional Services	$ 3,000
Department Supplies	60,000
Contracted Services	320,000
TOTAL	**$ 383,000**

Section 4. It is estimated that the following revenues will be available in the Powell Bill Fund for the fiscal year beginning July 1, 2001 and ending on June 30, 2002:

Interest Earned	$ 3,000
Powell Bill Allocation	180,000
Sales Tax Refund	5,000
Fund Balance - Prior Year	195,000
TOTAL	**$ 383,000**

Section 5. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Reserve for future appropriations:	$ 457,000
TOTAL	**$ 457,000**

Section 6. **It is estimated that the following revenues will be available in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2001 and ending June 30, 2002:**

Fund Balance Appropriated	$ 390,000
Interest on Investments	17,000
Transfer from General Fund	50,000
TOTAL	**$ 457,000**

Section 7. The following amounts are hereby appropriated in the Water/Sewer Fund for operation of Water and Sewer Utilities for the fiscal year beginning July 1, 2001 and ending on June 30, 2002 in accordance with the accounts heretofore approved for the City:

Utility Line Operation	$ 1,079,793
Water Filter Plant	429,677
Waste Treatment Plant-Contracted	870,848
Non-Departmental	439,937
TOTAL	**$ 2,820,255**

Section 8. It is estimated that the following revenues will be available in the Water/Sewer Fund for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Fund Balance	$ 695,255
Interest Earned	30,000
Misc. Income	8,000
Reimbursement – Septic	2,500
Reimbursement – Pretreatment	3,000
Water Sales	715,000
Cut on Fees/Late Penalties	45,000
Sewer Service	515,000
Water Taps	25,000
Sewer Taps	25,000
Tank Truck Charges	1,500
Cost Recovery – water	25,000
Cost Recovery – sewer	25,000
Water Service Charge	450,000
Sewer Service Charge	220,000
Contributions from McD Cty	35,000
TOTAL	**$ 2,820,255**

Section 9. The following amounts are hereby appropriated in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Reserve for future appropriations:	$ 157,500
TOTAL	**$ 157,500**

Section 10. It is estimated that the following revenues will be available in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Fund Balance Appropriated	$ 102,500
Interest on Investments	5,000
Transfer from Water/Sewer	50,000
TOTAL	**$ 157,500**

Section 11. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Inventory (Supplies)	$ 150,000
TOTAL	**$ 150,000**

Section 12. It is estimated that the following revenues will be available in the Internal Service Fund for the fiscal year beginning July 1, 2001 and ending June 30, 2002:

Purchase by Other Funds	$ 140,000
Transfer from General Fund	5,000
Transfer from W/S Fund	5,000
TOTAL	**$ 150,000**

Section 13. There is hereby levied a tax at the rate of fifty-five ($.55) per one hundred ($100) valuation of property as listed for taxes as of January 1, 2001 for the purpose of raising the revenue listed as "Current Year Property Taxes" in the General Fund in Section 2 of this Ordinance. These rates are based on estimated total valuation of property for the purpose of taxation of $ 257,233,304 and estimated rate of collection of 95%.

Section 14. The Budget Officer is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

A. He may transfer amounts between objects of expenditure within a department without limitation and without a report being required.

B. He may transfer amounts up to $1,000.00 between departments of the same fund with an official report on such transfers at the next regular meeting of the City Council.

C. He may not transfer any amounts between funds nor from any contingency appropriation within any fund.

Section 15. Copies of the Budget Ordinance shall be furnished to the Finance/Budget Officer of the City to be kept on file for direction in the disbursement of funds.

ADOPTED this the 19th day of June, 2001

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

REQUEST – WATER & SEWER SERVICE – HALDEX/MIDLAND: The City Manager advised that that Haldex/Midland has submitted an application for water and sewer service for their facility on Highway 221 South. They are requesting consideration of a time payment plan. The City Manager reported that the Utility Committee had reviewed the request and recommended the adoption of a policy to allow commercial and industrial customers to make payments on water and sewer connection fees over a 12 month period.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following policy:

CITY OF MARION, NORTH CAROLINA
POLICY ON TIME PAYMENT PLANS FOR
COMMERCIAL AND INDUSTRIAL
WATER AND/OR SEWER CONNECTIONS

It shall be the policy of the City of Marion to allow time payments for commercial and industrial water and/or sewer connections, subject to the following conditions:

1. Time payments may apply to any size water services and sewer connections.
2. The business or industry desiring such time payment plan and acknowledging that the debt incurred by the payments shall be attached to the property as a lien
3. The water and/or sewer connection cost shall be broken into 13 equal installments. The first installment shall be due when the application is approved by the City. The water and/or Sewer tap shall then be completed by the City, as soon as the City's work schedule will allow. The City will then take the total cost for the Water and/or sewer connections(s) and subtract the amount paid down, and divide the difference by the number of months selected for financing (maximum 12 months). That amount will be added to the Water/Sewer Bill each month, unless the balance is paid in full before the end of the finance period selected.

4. An interest rate of eight (8) percent annually shall be charged on the unpaid balance until the amount is paid in full. The interest due will be billed at the end of the finance period as a part of the Water/Sewer Bill.
5. Should the commercial or industrial customer fail to make the monthly time payments and/or monthly water/sewer bill payment, service to the premises shall be turned off until the necessary payments are made.
6. The unpaid balance shall attach to the property as a lien.
7. The City reserves the right to attach additional conditions on time payments, based on the individual situation.

This policy replaces the policy on time payment plans for commercial and industrial water and/or sewer connections, as adopted by City Council on June 8, 1999.

Adopted this the 19th day of June, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

P-01-06-19-01

The City Manager also advised that as far as Haldex/Midland requesting Water and Sewer, that when the City of Marion accepts the Performance Rail Pump Station, the City could easily provide them with water and sewer service.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to approve this request for water and sewer.

ADOPTION OF NEW PERSONNEL POLICY: Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to adopt the personnel policy as presented by the City Manager. A copy of the personnel policy can be found on file at City Hall. The policy will take effect on July 1.

The City Manager advised that he had spoken with Councilman Edwards and that he expressed his approval of the policy.

Councilman Little is out of State on Vacation and could not be reached by phone.

DISCUSSION – COUNTY RECYCLING CONTRIBUTION: The City Manager advised that the County has made clear its position that they decided to have the City of Marion pay for the recycling baler they purchased by withholding payment of their recycling contribution to the City.

The withheld payment total is $8,119.46. The County entered into a loan for the total cost of the baler ($46,000) in November 2000 and will make payments through November 2007. Therefore, the City will have a thirty percent (30%) decrease in the County recycling contribution until that date.

The City Manager reported that the County had brought this issue up in the Utility Committee meeting and offered to work with the City to set targets for recycling tonnage that could be tied to some or all restoration of the withheld funding, since materials recycled by the City save the County money.

A discussion followed. Council members agreed to have the City Manager pursue any restoration of the County recycling contribution that is possible.

No action was necessary with this item.

BIDS – SMITH BRIDGE REPAIRS: The City Manager presented Council with the following bids for the repairs to the Smith bridge at the Prison Pump Station on Highway 226 South, as follows:

McCormick Grading & Utilities, Inc.	$6,000.00
Hobson Construction Co., Inc.	$7,850.00

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to accept the low bid of McCormick Grading and Utilities in the amount of $6,000.00.

CITY MANAGER REPORT: The City Manager provided a report on current projects and activities.

CLOSED SESSION: Council decided to delay the closed session to discuss real estate matters until the next regular meeting, when all Council members could be present.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, July 17, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tom Milligan, Fire Chief; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: None

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

A. APPROVAL OF MINUTES: June 19, 2001

B. BUDGET ORDINANCE AMENDMENT:

CITY OF MARION, NORTH CAROLINA
2001-2002 BUDGET ORDINANCE
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenue, Miscellaneous Revenues, Account Number 10-335-0000, is increased from $15,000 to $27,367.
b. General Fund Expenditures, Police Department, Account Number 10-510-74, Capital Outlay, is increased from $62,000 to $71,850.
c. General Fund Expenditures, Fire Department, Account Number 10-530-74, Capital Outlay, is increased from $14,000 to $16,517.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 17th day of July, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-01-07-17-01

C. ANNUAL FIRE DEPARTMENT CERTIFICATION & ROSTER:

CO.	DEPT.	LASTNAME	FIRSTNAME	MI	SSN
58	0617	ANDERSON	DONALD	R	239-80-7486
58	0617	COWARD	JAMES	M	241-02-3270
58	0617	CRESON	DURWOOD	R	244-33-4498
58	0617	DARK, III	R	M	242-86-7797
58	0617	DEPOYSTER	TERRY	L	587-27-9756
58	0617	DYMOND	MATTHEW	W	241-57-8747
58	0617	EDWARDS	BRUCE	A	237-56-0350
58	0617	HARMON	BRADFORD	H	238-29-603-5
58	0617	HOLLIFIELD	DARREN	W	242-41-2588
58	0617	LAUGHRIDGE, JR.	JOHN	C	244-04-1898
58	0617	LAWS	DENNIS		237-04-1211
58	0617	MACE	TRAVIS	D	245-43-0824
58	0617	MCCARTHY	ROGER	W	241-88-7093
58	0617	MILLIGAN	THOMAS	S	244-68-1106
58	0617	MORRIS	JIMMY	W	245-08-7939
58	0617	MORROW, III.	JOHN	M	237-29-3604
58	0617	NANNEY	FREDERICK	C	242-11-1035
58	0617	NEAL	JOSEPH	L	239-98-6658
58	0617	NEAL, III	JAMES	E	245-72-9325
58	0617	OWENBY	KEVIN	W	245-27-8330
58	0617	POTEAT	JERRY	W	244-66-3485
58	0617	POTEAT	KENNETH	W	240-15-9682
58	0617	POTEAT	KEVIN	W	244-49-6470
58	0617	PRESNELL, JR.	CHARLES	L	238-82-9830
58	0617	REESE	JOHN	E	242-82-7999
58	0617	SMITH, III	WILLIAM	R	245-44-5503
58	0617	TAYLOR	CAMERON	K	241-55-2965
58	0617	TONEY	CHAD	D	242-98-9693
58	0617	WORLEY	CHAD	R	238-47-9721
58	0617	BURNETTE	CHRISTOPHER	N	142-55-7101
58	0617	DEPOYSTER	BRADLEY	W	244-61-5483
58	0617	CRISP	DOUGLAS	A	242-13-9251

A copy of this report can be found on file at the Marion Fire Department.

D. BRIDGE INSPECTIONS BY NC DOT

The Federal Surface Transportation Act requires that the Department of Transportation inspects municipal bridges and analyze them every two years.

The North Carolina Department of Transportation will employ and pay a private engineering firm for work performed and will invoice the municipality for 20 percent of the cost upon completion of the work. The municipality will be expected to reimburse the Department immediately upon receipt of the invoice. The remaining 80 percent will be paid for from Federal-aid Highway funds.

The City of Marion has three bridges requiring inspection.

PUBLIC HEARING – AMENDMENT TO PROJECT BUDGET ORDINANCE – SPAULDING ROAD: Mayor Clark opened the Public Hearing.

The City Manager reported that this budget amendment would move funds originally planned for street improvements to fund the water and sewer extension, since engineering estimates have shown that the entire $178,000 CDBG grant for the Spaulding Woods Apartments will be

used for the water and sewer extension to the site, and for payment of tap fees and the cost recovery charges.

There was no one present who wished to discuss this item.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance

CITY OF MARION, NORTH CAROLINA

PROJECT BUDGET ORDINANCE
HOUSING DEVELOPMENT GRANT
PROJECT NUMBER CDBG-HD-00-C-0724
(First Amendment)

BUDGET EXPENDITURES

	Original Budget	Revised Budget
Water Improvements	$ 53,000	23,932
Sewer Improvements	35,000	158,970
Street Improvements	176,000	0
Construction Residential Building	1,999.700	1,999.700
Professional Services and Financing	723,617	723,617
Planning	3,500	3,500
Administration	16,500	16,500
Acquisition	60,000	60,000
TOTAL	$3,067,317	$2,986,219

REVENUES

CDBG HD	198,000	198,000
NCHP Agency		
Conventional Bank Loan		
Tax Credit Equity		
Landmark	8,869,317	2,788,219
Total	$3,067,317	2,986,219

Adopted this the 17th day of July, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-01-07-19-02

CITY PARTICIPATION IN THE N.C. ONE CALL PROGRAM: The City Manager recommended that the City Council approve City participation in the N.C. One Call Program, at a cost of $300 per year, to allow for better coordination and communication with other utility companies. Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following Agreement:

THIS AGREEMENT is executed and delivered by and between THE NORTH CAROLINA ONE-CALL CENTER, INC. (a North Carolina Non-Profit Corporation, hereinafter "NORTH CAROLINA ONE-CALL", and City of Marion sometimes hereinafter designated as "CLASS TWO MEMBER", as of the 31st day of January 2001.

RECITALS

1. NORTH CAROLINA ONE-CALL is a corporation organized and existing under the Nonprofit Corporation Act of the State of North Carolina (Chapter 55A of the North Carolina General Statutes).

2. The aims and objectives of NORTH CAROLINA ON-CALL are more fully set forth in its Articles of Incorporation (as amended) and as set forth in Section 87-100 et seq. of the North Carolina General Statutes: these Articles and the Statute are incorporated herein by reference as if fully copied herein).

3. NORTH CAROLINA ONE-CALL is also governed and directed by its BY-LAWS, and more specifically the "SECOND AMENDMENT AND RESTATEMENT OF THE BY-LAWS OF THE NORTH CAROLINA ONE-CALL CENTER, INC. APPROVED BY THE BOARD OF DIRECTORS 22 JANUARY 1933". These By-Laws are incorporated herein by reference as if fully copied herein.

4. Class Two Member hereby acknowledges that Class Two member has received: copy of the Statute; copy of the By-Laws.

5. Class Two Member agreeing with the objectives of NORTH CAROLINA ONE-CALL and desiring to further these objectives has, by paying dues and affixing its signature hereto, has signified that it wishes to be a Class Two Member.

6. The Board of Directors of NORTH CAROLINA ONE-CALL have accepted the City of Marion as a Class Two Member, subject to the execution and delivery by _____ of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and of other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, NORTH CAROLINA ONE-CALL and Class Two Member do covenant and agree with each other as follows: ONE-CALL and Class Two member do covenant and agree with each other as follows:

A. Upon the execution and delivery of this Agreement, the City of Marion is fully accorded Class Two Membership in NORTH CAROLINA ONE-CALL.

B. Class Two Member agrees to be bound by the By-Laws of NORTH CAROLINA ONE-CALL in their present form and any amendments, deletions, additions, and restatements thereof and thereto, the Articles of Incorporation, and any amendments thereto, Chapter 57A of the North Carolina General Statures and any amendments, and substitutions thereto and thereof.

C. Class Two Member acknowledges that the membership are subject to change, from time to time, by action of the Board of Directors of NORTH CAROLINA ONE-CALL.

D. Class Two Member acknowledges that the membership fee is an annual membership fee based on a calendar year, and same may be pro-rated for any particular year. By way of example, if the Board of Directors have set the annual membership fee for a Class Two Member at $300.00, and the particular Class Two Member joins NORTH CAROLINA ONE-CALL on 1 June, that Class Two Member would pay for six months membership—that is to say, $150.00 for the months of June through December inclusive, Thereafter, that Class Two Member would pay membership fees based on a full calendar year.

F. Class Two Member has paid_____($_____)which gives Class Two Member Class Two Membership until 31 December 2001. From and after that date Class Two Member will be billed for dues on an annual basis.

From and after 31 December 2001, unless sooner terminated, this membership will be automatically extended for a twelve month calendar year periods, subject to such changes and conditions in Class Tow membership status as may be imposed by the Board of Directors of NORTH CAROLINA ONE-CALL.

G.1 Performance. Each party agrees to perform such acts as may be reasonably necessary to carry out the provisions of this Agreement.

G.2 Modification. This Agreement supersedes all prior agreements between the parties and constitutes the entire Agreement between the parties on the subjects herein. The provisions of this Agreement may not be amended, deleted or modified in whole or in part without the express written consent of all parties of this Agreement which shall be executed with the same formality of this Agreement.

G.3 Governing Law. This Agreement shall be subject to and governed by the laws of the State of North Carolina.

G.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and permitted assigns.

G.5 Severability. Each portion of this Agreement shall be interpreted as separate and divisible and if any provision shall be held to be void, invalid, or unenforceable, the remaining provisions of this Agreement shall continue to be in full force and effect.

G.6 Headings. The headings used in this Agreement are included only for convenience of reference, and the text shall control any conflict between such headings and the text of this Agreement.

G.7 Notices. All notices under this Agreement shall be given in accordance with the By-Laws.

G.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

G.9 Gender and Number. All references to gender herein shall be interchangeable with masculine, feminine and neuter, as applicable, and as to number, the singular with the plural where as applicable.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written, after receiving all necessary corporate, partnership, pr any authority to do so.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

TREE – WEST HUDGINS STREET: The City Manager advised that a large oak tree on the corner of West Hudgins and Woodlawn Streets is dying and could possibly be a safety hazard.

Duke Power has declined to remove the tree, however they will have their contractor take down the tree at a cost of $1,500.00.

An estimate was received to take the tree down, by a private contractor, in the amount of $3,000.

Mayor Clark noted that he had been approached by Terry Waugh, Right-of-Way Coordinator and Arborist with duke power, and that Mr. Waugh had indicated that Duke Power was concerned about this tree, and might be willing to share in the cost of its removal.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to request Duke Power to pay for one half the cost and the City of Marion to pay one half of removing the tree.

PROPERTY IMPROVEMENT UPDATE: Fire Chief, Tom Milligan appeared before Council with an update on properties which are in the process of being brought into compliance.

Blanch Foster Life Estate – East Wilhemenia Street (West Marion) It has been determined that there are no known living heirs to this estate. The cost of removal is $4,370.00.

Cora C. Lee Life Estate – West Wilhemenia Street (West Marion) There are no living heirs to this estate. A complaint and Notice of Hearing was issued to the last know address and was returned unclaimed. As per the City attorneys instructions, a Complaint and Notice of Hearing was posted on the structure and remained there for a period of thirty (30) days. No one has responded to the notice. The cost of removal is $8,800.00.

Devaun Burnette Property – Ridge Street (East Marion) A Complaint and Notice of Hearing was mailed. The hearing was held on December 9th, 1999. No one appeared for the hearing. An order to repair or demolish was mailed. No one has responded to the order therefore council may want to consider an ordinance for this property. Cost of removal is $23,392.00.

Joann A. & Floyd E. Effler Property – 519 5th Street - Clinchfield A notice of Complaint and Hearing was mailed on May 9, 2000. A hearing was scheduled for June 13, 2000. Mr. Effler responded. This structure was burned a few months ago and the site was cleared.

A discussion followed.

Council members discussed the idea of pursuing the removal of the two houses on West Wilhemenia Street, but were concerned about the cost of asbestos removal. It was suggested that the City Building Inspector look at the houses. to determine if asbestos may be present. This would not serve as an official asbestos inspection, but would give an indication if asbestos might be present, and the costs of removal might be higher. Depending on the determination, the City could then consider burning or tearing down the houses. The City Manager stated he would have the Building Inspector look at the houses, and bring information back to Council at an upcoming meeting.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to explore the removal of the two structures on West Wilhemenia Street, subject to additional information being gathered on the presence of asbestos in these houses.

AGREEMENT – DOT REST AREA WATER EXTENSION: The City Manager presented Council with a Draft Agreement as follows from the Department of transportation for the water extension project to the rest area on I-40.

NORTH CAROLINA
MCDOWELL COUNTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION **UTILITY AGREEMENT**

AND **PROJECT: K:3304**

THIS AGREEMENT, made and entered into this the **17th Day of July, 2001,** between the North Carolina Department of Transportation, and agency of the State of North Carolina, hereinafter referred to as the Department, and the CITY OF MARION, hereinafter referred to as the City.

WITNESSETH

WHEREAS, the Department and the City have proposed to made certain improvements to the City's water system to serve the Department's I-40 McDowell County eastbound land and westbound lane Rest Area, with a (6") water service.

WHEREAS, the Department and the City have agreed to assume certain responsibilities as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other as follows:

1. Water Service – Water service installation shall consist of a tie-in to the existing (12") water transmission line on SR 1001 (Sugar Hill Road) from this point extension of a water line south along Sugar Hill Road to the intersection of SR 1164 (Shady Lane Road) from this point a water line shall be installed south along Shady Lane Road approximately 9,600 linear feet to an existing department easement. From this point the water line shall be installed southwest through the easement to the north side of the Department's I-40 westbound lane Rest Area site.

   The water line shall continue south through the Department's westbound Rest Area site and extend south to the Department's Rest Area property line and terminate.

A fire hydrant shall be installed within each Rest Area site adjacent to the car parking lot, near the Rest Area building and prior to the City's 1½" water meter/backflow preventor at each Rest Area site.

2. Any oversizing of lines above (6") or additional lines other than the line and equipment specifications identified in item 1 above will be considered as betterment. All betterment cost will be the responsibility of the City, to include engineering, construction and administrative costs.

3. The City hereby agrees to indemnify and save harmless, the Department from all damages that my arise by reason of the installation and maintenance of this utility work.

4. The City or the City's consulting engineer shall design and prepare the project plans, specifications and estimate. The total contract proposal and an estimate of the project costs shall be submitted to the Department for its review and approval prior to advertising of the project for bids. The construction of the project shall be accomplished by the City awarding a contract to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed, as set forth in an appropriate solicitation for bids. Letting of Contracts for construction and purchases shall be in accordance with North Carolina General Statute 143-129. Bids received for the project shall be submitted to the Department for approval prior to the contract being awarded by the City. If the City proposed to employ the services of a consulting engineer to design and prepare plans, specifications and cost estimates and provide other engineering services for the project, the City agrees that the Department will not participate in any costs paid for such services if the costs are based on a percentage of the cost of construction and further agrees that the Department will review and approve the rates to be charged before participating in the costs involved.

5. The City shall construct, or cause to be constructed, the project in accordance with the plans and specifications of said project to be filed with and approved by the Department. The City shall administer the construction contract for said project and the procedures set out herein below shall be followed.

(A) The City shall notify the Department's Division Engineer five (5) days in advance of initiation of construction of the project.

(B) The plans, specifications, estimates, construction, engineering and supervision will be provided by the City.

(C) The Department's Division Engineer at his discretion, may assign a Resident Engineer to the project who shall have the right to inspect, sample or test, approve or reject any portion of the work being performed by the City or the City's contractor to ensure compliance with plan, specifications and the provisions of this Agreement. The Resident Engineer will be the Department's representative on the project. Prior to the final acceptance and payment by the Department, the Division Engineer and/or his representative shall make a final inspection of the completed work on behalf of the Department.

(D) During construction of the project, if any changes in the plans are necessary, such changes must be approved by the Division Engineer prior to the work being performed.

(E) All materials incorporated into the project and sportsmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications to the Department.

(F) The City will be responsible for ensuring that the contractor complies with all of the terms of the approved contract plans and project provisions.

(G) During construction of the project. The City shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformation with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.

(H) The City shall complete said work within one (1) year of execution of this agreement.

(I) The City shall also comply with the following federal and state policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; (c) title VI-Civil Rights Act of 1964; and (d) Minority/Disadvantaged Business Enterprises.

6. The City agrees to provide each Rest Area facility with 10,000 gallons of water per day with peak days of 15,000 gallons of water per day. The City further agrees to provide water for a projected twenty (20) year usage at the rate of 30,000 gallons of water per day.

7. The City agrees to charge the Department the standard established monthly water rates for like customers.

8. The City shall adjust, relocate or cause to be relocated, all existing utilities lying within the right-of-way or construction limits that conflict with construction of the project as a part of this project.

9. The City shall be responsible for the acquisition of all needed rights-of-way, easements and permits required to provide water services, described in this agreement, to the Rest Area, as part of the project and all cost shall be part of the project and all cost shall be part of the project. Acquisition of right of way shall be performed in accordance with all state and federal policies and procedures.

10. Upon satisfactory completion of the construction of the work covered in this Agreement, the City shall assume ownership and responsibility of water lines, with the exception of the water line from the meter to the building.

11. It is further agreed that the following provision shall apply regarding the City owned utilities covered in the Agreement;

(A) The City shall obligate itself to service and to maintain its facilities to be retained and installed under/over and along the highway within the Department's right-of-way limits and easements in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.

(B) The City agrees that no service taps for service to any customer other than to the highway facilities as outlined in the Agreement will be made from within the Rest Area sites or the I-40 right-or-way, without written approval from the Department.

(C) The City shall obtain a standard highway right-of-way Encroachment

Agreement for construction of water lines within the highway rights of-way including the Rest Area sites and/or crossings of highways and interstates.

(D) Any cost incurred due to betterment utility work to City owned utility lines shall be solely the responsibility of the City. The City shall be responsible for 100% of the additional utility cost.

12. Subject to compliance by the City with the provisions set forth in this Agreement, the Department shall reimburse the City one hundred percent (100%) of the actual project costs up to $513.000 – (estimate 4/18/01 for 6" water line) in accordance with this Agreement. Costs which exceed this amount or have not been stipulated in this Agreement, must have prior written approval by Department or such cost shall be borne by the City.

(A) This Agreement is contingent upon the City being able to enter into a contract(s) which would enable the work called for in this agreement to be performed for the dollar amount for which the Department has agreed to reimburse the City.

(B) The City may bill the Department on a monthly basis for actual project costs to include administrative cost incurred by the City as herein stated by submitting an itemized invoice, in quadruplicate, to the Department's 13th Division Engineer. Reimbursement to the City shall be made upon approval of each invoice by the Division Engineer and the Department's Fiscal Section. Invoices shall be based on the contract unit costs and actual quantities used to the date of each invoice, with five percent (5%) of the invoiced amount being withheld by the Department until completion of the work and the submittal of a final invoice.

(C) The City shall be responsible for adhering to applicable administrative requirement of 49 CFR Part 18 (www.fhwa.dot.gov/legsregs/legislat). If the work is performed by Municipal force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying cost in conformance with the standards for allowability of costs set forth in Office of Management and Budge (OMB) Circular A-87 (www.whitehouse.gov/wh/eop/omb). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the City. Reimbursement for rates of equipment owned by the City cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

(D) In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (www.Whitehouse.gov/wh/eop/omb), the City shall arrange for a independent financial and compliance audit of its fiscal operations. The City shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months (March 31) after the City's fiscal year ends.

(E) A final itemized invoice listing all costs shall be submitted to the Department's 13th Division Engineer upon completion of the project.

(F) The City agrees that it shall bear all construction costs for which it is

unable to substantiate actual costs.

(G) Any cost incurred by the City prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

(H) Failure on the part of the City to comply with any of these provisions will be grounds for the Department to terminate participation in the cost of the project.

(I) All invoice must be submitted within one (1) year of completion and acceptance of the project by the Department.

(J) If the City elects to procure engineering services, and if the Department is participating in these costs, the City must adhere to North Carolina Department of transportation "Rules and Regulations for Major Professional or or Specialized Services Contracts" This policy conforms to NCSS 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, part 172. Prior to entering into a third party consultant agreement, the City must submit said agreement to the Department for review and approval.

13. The City shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the City shall make such material available at its office at all reasonable times during the contract period, and of three (3) years from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section.

14. The Department reserves the right to withdraw from this Agreement at any time prior to construction of the project. The Department shall participate in the costs incurred up to the abandonment of the project subject to the terms of this Agreement. Any notice of withdrawal from this Agreement by the Department shall be in writing delivered Certified Mail to the City Manager.

The City Manager, the Public Works Director and Council all had many suggestions regarding this agreement. The Agreement is not acceptable as is. Council directed the City Manager to discuss the points of contention with Department of Transportation staff, and to bring the agreement back at a future meeting. The City Manager noted that he and the Public Works Director would meet with DOT staff on August 7.

APPOINT ONE ALTERNATE MEMBER – PLANNING BOARD: The City Manager advised that it is still necessary to appoint an alternate member to the Planning Board, due to problems with the Board having a quorum at times.

A discussion followed.

Council Members agreed to present a list of names for consideration at the August 7, 2001 City Council Meeting.

PLEASANT GARDENS/GLENWOOD SEWER EXTENSIONS – POLICY STATEMENT: The City Manager reported that the Utility Committee had reviewed and recommended a policy on sewer connections for the Pleasant Gardens and Glenwood sewer extension projects. Under the policy, the City would waive tap fees, but not cost recovery charges, for taps made by the project contractor. Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following Policy:

City of Marion
Policy Statement
Pleasant Gardens/Glenwood Sewer Extensions

Pleasant Gardens Project

The City of Marion will continue its policy of not providing sewer service without water service. Property owners affected by this requirement may make a request for waiver to the City Council. If McDowell County pays for a tap fee by having their contractor install the tap according to City specifications at no cost whatsoever to the City, the City will waive the tap fee, but still apply the cost recovery charge. The City will allow new customers to tap on, subject to these provisions, without individual Council review of applications. Applications will be required and reviewed by City staff for consistency with the City Sewer Use Ordinance and to make sure the City will not accept wastewater that could cause a problem at the Wastewater Treatment Plant. The City will notify property owners receiving a tap but not immediately wishing to receive sewer service in writing of the City regulations, and that the provision of sewer service in the future will be given by the City, if permitted by law (City Sewer Use Ordinance, State capacity limits, etc.). These property owners will have to notify the City when they wish to receive sewer service, so that they can pay the cost recovery charge, and begin paying the monthly sewer charge. Any property owner or person hooking onto a free tap without notifying the City or paying the cost recovery charge will be charged the full tap fee, cost recovery charge, back monthly charges from the date they hook on, face possible civil or criminal penalties, and pay eight percent interest on all charges.

Glenwood Project

The City of Marion acknowledges that water service is not available in the Glenwood area, and will provide sewer service without water service. If the McDowell County School Board pays for a tap fee by having their contractor install the tap according to City specifications at no cost whatsoever to the City, the City will waive the tap fee, but still apply the cost recovery charge. The City will allow new customers to tap on, subject to these provisions, without individual Council review of applications. (The only one that has expressed interest is Glenwood Baptist Church). Applications will be required and reviewed by City staff for consistency with the City Sewer Use Ordinance and to make sure the City will not accept wastewater that could cause a problem at the Wastewater Treatment Plant. The City will notify property owners receiving a tap but not immediately wishing to receive sewer service in writing of the City regulations, and that the provision of sewer service in the future will be given by the City, if permitted by law (City Sewer Use Ordinance, State capacity limits, etc.). These property owners will have to notify the City when they wish to receive sewer service, so that they can pay the cost recovery charge, and begin paying the monthly sewer charge. Any property owner or person hooking onto a free tap without notifying the City or paying the cost recovery charge will be charged the full tap fee, cost recovery charge, back monthly charges from the date they hook on, face possible civil or criminal penalties, and pay eight percent interest on all charges.

Adopted by the City of Marion City Council this the 17th day of July, 2001.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

PARKING COMPLAINT – 4TH and 7TH STREETS - CLINCHFEILD: The City Manager advised that he had received several complaints about parking on 4th and 7th Streets in the Clinchfield Area.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to refer this matter to the Utility Committee.

CITY MANAGER'S REPORT: The City Manager provided a report on current projects and activities.

CLOSED SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously in accordance with N.C.G.S. 143-318 (a)(5) to go into Closed Session to discuss the possible acquisition of real property.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 7, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Martin Crawford, 116 Jackson Street, Marion, N.C. 28752; Kathy Rabb, 281 South Garden Street, Marion, N.C. 28752; Barry Hogan 848 Goose Creek Road, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Owenby selected the Citizen of the Month for August.

The following information was presented about the August Citizen of the Month:

TOM HARRIS

Councilman Owenby advised that Mr. Tom Harris had been in the Barber business for over forty years. He not only works in his shop cutting hair for the public, but also often goes into homes, rest homes and hospitals to assist with people in need.

Mr. Harris was a volunteer Fireman for over twenty years. He is a third degree Mason and a thirty-second degree Shriner.

Mr. Harris has been married to Francis for forty-five years. Their Grandson Chris is carrying on the family tradition and is working beside his Grandfather.
Mayor Clark and Council members all had kind words to share about Mr. Harris.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

1. Approval of City Council Minutes - July 17, 2001

2. Personnel Policy Amendment:

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article V, Section 8, Pay for Part-Time Work, is deleted in its entirely and replaced with the following:

"The pay plan established by this policy is for full-time service. An employee appointed for less than full-time service shall be paid an hourly rate, determined by the department head, not to exceed the hourly rate of the position classification assigned."

Section 2. That the second paragraph in Article V, Section 9, Overtime, is deleted in its entirety and replaced with the following:

"The City Manager, following FLSA regulations, shall determine which jobs are "non-exempt" and are therefore subject to the Act in areas such as hours of work and work periods, rates of overtime compensation, and other provisions. Non –exempt employees in the general work force will be paid at a straight time rate for hours up to the FLSA established limit for their positions (usually 40 hours in a 7 day period); non-exempt sworn law enforcement officers in the police department shall be paid one and one half times their regular rate of pay for all hours worked in excess of the maximum hours for the designated work period, as established by FLSA. Non-exempted employees who qualify as firefighters under the FLSA shall be paid one and one half times their regular rate of pay for all hours worked in excess of the maximum hours for the designated work period, as established by FLSA. In determining eligibility for overtime in a work period, only hours actually worked shall be considered. Pay for time not worked such as a vacation leave and sick leave will not be counted when determining threshold hours for overtime eligibility."

Section 3. That the first paragraph in Article VI, Section 13, Travel and Expense Reimbursement, is deleted in its entirety and replaced with the following:

"Employees and elected and appointed officials will from time to time be involved in out-of-city travel to attend schools, business meetings, conferences, etc. All reasonable expenses (e.g. meals, lodging, etc.) shall be reimbursed at actual costs for elected and appointed officials, and at the amount set by the adopted Travel Expense Requisitions schedule for employees, while travel in a personal car will be reimbursed at a mileage rate consistent with prevailing IRS limits to the extent authorized by the City Council for non-taxable reimbursements authorized by the City Council.

Section 4. That the fourth paragraph in Article VI, Section 13, Travel and Expense Reimbursement, is deleted in its entirety and replaced with the following:

"Reimbursements for meal expenses shall be guided as outlined by the adopted Travel Expense Requisition schedule for employees. Meal expenses shall ordinarily be reimbursable only when incurred on out-of-City travel or when the meal itself is the occasion of a business meeting.

All travel claims must be supported by detailed documentation, usually in the form of receipts or similar vouchers."

Adopted this the 7th day of August, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Policy Number: P-01-08-07-1

KATHY RABB – DOWNTOWN BUSINESS ASSOCIATION PRESIDENT: Ms. Kathy Rabb appeared before Council and presented each of them with an invitation to this year's Downtown Business Association Membership Banquet to be held on August 23, 2001.

COMPLAINT – CIVIL CITATION – MARTIN CRAWFORD: Mr. Martin Crawford appeared before Council requesting that Council overturn a civil citation he had received for violating the City's Noise Ordinance.

Mr. Crawford advised that he did not think Officers could hear his music out in the Street. He also submitted a written statement.

The City Manager provided Council with a written statement from the officers who issued the citation, stating that the music was clearly audible from the street, and was in violation of the City Noise Ordinance. The statement indicated that officers were called to Mr. Crawford's residence at 30 Jackson Street on three separate occasions that night due to a dispute between he and his wife.

A discussion followed.

Council elected not to overturn this citation.

Council did agree to authorize the City Manager to allow Mr. Crawford the opportunity to pay this citation in several payments.

APPOINT ONE ALTERNATE MEMBER – PLANNING BOARD: The City Manager advised that an alternate member to the Planning Board still remains unfilled. The last two Board of Adjustment meetings have been canceled due to not having a quorum.

Council Members did not have a recommendation for an alternate. The idea of amending the ordinance establishing the Planning Board to allow for up to six alternate members was discussed.

It was agreed that each Council Member would bring one name back for the August 21, 2001 City Council and an appointment would be made at that time. The City Manager was directed to bring back an ordinance amendment that would allow Council to consider appointment of additional alternate members to the Planning Board.

TREE – WEST HUDGINS STREET: The City Manager advised that the Director of Public Works Glen Sherlin, contacted Mr. Terry Waugh, who is the Right-of-Way Coordinator for Duke Power, regarding the cost of removing a large tree at the corner of West Hudgins and Woodlawn Streets. Mr. Waugh advised that Duke Power would not pay for half the cost of removing the tree. Therefore, in order to remove the tree, the City would need to contract with Davey Tree Service, who will charge $1,500 to cut down the tree.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to have the tree removed by Davey Tree Service in the amount of $1,500.

PROPERTY LEASE – RUSSELL NEIGHBORS PARKING LOT: The City Manager advised that Mr. Russell Neighbors is willing to lease his 41 space parking lot at the corner of West Henderson and Logan Streets to the City for $325.00 per month. The City of Marion would maintain the lot and could use it for all-day parking, and could place signs similar to other City Parking Lots. The City would need to remove the fence on the property and take it to Mr. Neighbor's property.

A discussion followed.

Council suggested that a clause be added to the lease stating that if the City made improvements to the lot, such as resurfacing, the City would have the right to lease the lot for five years after the improvements are made, or else Mr. Neighbors would be required to reimburse the City for the costs of the improvements (with the City forgiving 20 percent of the costs of the improvements for each year the City leased the lot after the work was completed).

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to enter into a lease with Mr. Neighbors to use the Parking lot for $325.00 per month. A copy of the signed Lease Agreement will be kept on file at City Hall.

ORDINANCE – 4TH STREET, CLINCHFIELD: The City Manager reported that the Street Committee had reviewed the parking situation on 4th Street in Clinchfield and had recommended that the existing prohibition on parking on the west side of the street from 6th Street to Branch Road be deleted, and that parking should be prohibited in the curve of the road on the east side. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
FOURTH STREET (CF)	PARKING PROHIBITED	WEST SIDE, LENGTH OF STREET

Section 3. Section 18.239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
FOURTH STREET (CF)	PARKING PROHIBITED	WEST SIDE, FROM E COURT STREET TO SIXTH STREET
		EAST SIDE, BEGIN AT A POINT 144' NORTH OF THE INTERSECTION OF 4th ST. AND CONTINUING 75' NORTH

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of August, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordnance Number: O-01-08-07-1

The City Manager stated that the Street Committee had also reviewed parking on 5th, 6th and 7th Streets in Clinchfield and had recommended that staff review these streets for changes in the current parking regulations. Parking is prohibited on one or both sides of these two streets, but the streets are not signed for no parking and parking is taking place along both sides of each street.

DISCUSSION – NAMING OPPORTUNITY FOR YMCA CONTRIBUTION: The City Manager presented Council with information from Mrs. Rita Wooten with the YMCA, outlining the City's options for naming opportunities for the $100,000.00 donation to the YMCA. The only $100,000 naming opportunity remaining is the fitness center.

A discussion followed.

Council agreed to select the fitness center as the naming opportunity for the City and to direct the City Manager to work with the YMCA to pick a name for the fitness center to reflect the Citizens of Marion.

ALL AMERICA CITY AWARD: The City Manager presented information on the qualifications for applying for the All America City Award. He noted that applying for the reward would be a useful exercise for the City, but that it would involve significant time and resources.

Mayor Clark noted that while it would be nice to apply for the award, the City just had too many projects pending to have staff time taken up by the All America City Award.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously not to proceed with applying for the All America City Award.

DOG COMPLAINT – DISCUSSION: Councilman Edwards advised that he had received several complaints regarding a large rottweiler dog being walked by a teenage female. This dog is lunging at persons passing by and scaring citizens. Councilman Edwards advised that he too has witnessed this dog lunging at people and feels that something needs to be done to protect all citizens who utilize these streets and sidewalks, including possibly prohibiting or registering certain breeds of dogs that could be classified as dangerous.

A discussion followed.

The City Manager was instructed to investigate any options offered to government officials to protect citizens within the limits of the State Law against vicious dogs. He stated he would instruct the Police Department to look out for this dog or similar dogs, and to act in accordance with existing City ordinances and State law.

SENIOR CENTER PROPERTY – POLICE DEPARTMENT DRIVEWAY: The City Manager advised that he has received verbal approval from all affected property owners including Krinn Evans, Bill Howle and Marshall Dark/Jim Neal to allow the City to draw up a deed for them to donate land adjacent to the Senior Center on Crawford Street to the City for the Police Department Driveway.

If Council wishes to accept this property, the City Attorney can prepare deeds for the property donation.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously accept this property and to direct the City Manager to have the City Attorney prepare deeds for the property donation.

REQUEST – UNITED WAY: The City Manager presented Council with a letter of request from the McDowell County United Way. They are requesting that in the event the county does not sell the property where the present Senior Center is located, the City consider letting them move their offices into that site and using the space as a community service building. This move would bring higher visibility, greater communication and more office space to local health and human service agencies. David Wooten and Terri Laws of the Corpening Foundation and Melissa O'Neal of Project Challenge have expressed interest in moving their office from the County Administration Office to this facility if approved by Council.

The City Manager stated he had spoken to the County Manager and the County is still counting on the proceeds from the sale of this property to help fund a new Senior Center. The County's lease of the Senior Center property is in effect until 2031, so the City could not lease the building to the United Way without County approval.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to inform the United Way that this request needs to be directed to McDowell County, since the County still has 30 years remaining on their lease of this property.

AWARD CONTRACT – CURB AND GUTTER: The City Manager reported that bids had been received for sidewalk work on Carson Street, curb and gutter work on Gilkey Street, and curb and gutter work on Ellis Street as follows:

Carson Street

McCormick Grading & Utilities	$ 8,090.50
Buchanan & Sons	10,347.50
Valdese Concrete	15,146.63
Candler Concrete Works	19,522.09
Paving Enterprises	24,563.88

Gilkey Street

Buchanan & Sons	$24,267.00
McCormick Grading & Utilities	26,878.50
Valdese Concrete	35,052.30
Paving Enterprises	55,713.22
Candler Concrete Works	63,315.85

Ellis Street	Curb/Sidewalk	Wall	Total
McCormick Grading	$27,074.75	$30,240.00	$57,314.75
Valdese Concrete	40,411.40	17,000.00	57,411.40
Paving Enterprises	51,788.63	15,250.00	67,038.63
Buchanan & Sons	29,627.50	50,660.00	80,287.50
Candler Concrete Works	64,672.66	24,750.00	89,422.86

The City Manager recommended that contracts be awarded to the low bidders on Carson Street and Gilkey Street projects. The Public Works Director stated that he felt the estimates for the retaining wall on Ellis Street are too high, and that this project warranted further review prior to award of a contract.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to accept low bids on curb and gutter for the following projects:

Carson Street	McCormick Grading	$8,090.50
Gilkey Street	Buchanan and Sons	$24,267.00

It was decided to not take action on the Ellis Street Project until the Street Committee could review the issue involving the retaining wall.

YANCEY ROAD – CURB AND SIDEWALK PROJECT: Mayor Clark advised that the subcontractors on Yancey Road are driving all over the new sidewalk and curb with heavy equipment and trucks.

Director of Public Works Glen Sherlin advised that he would contact the owner of Valdese Concrete and advise what their subcontractors are doing and inform them that the City of Marion will not accept or be liable for damages to uncured concrete.

UPDATE – NANCY TOLLEY STREET – WATER: The City Manager advised that the Public Works Director has reviewed the water situation on Nancy Tolley Street. The Public Works Director reported that tests showed that the street had adequate pressure, but that the line was undersized. Therefore, he would recommend that the water line on Nancy Tolley Street be replaced with a six inch line. City Crews can replace the water line in between upcoming projects.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to schedule the replacement of the Nancy Tolley Street water line in between other projects already scheduled.

COMPLAINT – SPEED LIMITS - MR. BARRY HOGAN: Mr. Barry Hogan appeared before Council advising that he felt the Marion Police Department is concentrating on speeding cars too much. He advised that his wife got a speeding ticket last week on Sugar Hill Road while she was going to work. He stated he knew people in the County who drive to Black Mountain to purchase their groceries because they don't like to drive on North Main Street. Mr. Hogan stated that the Police Department should concentrate on preventing break-ins of businesses and more serious crimes.

Mayor Clark noted that the City responded to 598 accidents from July 1, 2000 to June 30, 2001, giving the City one of the highest accident rates in the State. Councilman Little asked what difference it made whether a speeder was a nurse, housewife, or criminal; if they were speeding they were breaking the law. The City Manager noted that since more aggressive traffic enforcement started earlier this year, accidents were down in the City 25 percent.

Council took no action on this matter.

REQUEST – SEWER TAP FEES – MITCHELL STREET: The City Manager advised that it has come to his attention that Ms. Mary Ann Wilkerson of 25 Mitchell Street has been paying for sewer service since 1992 and is not on City Sewer.

The total amount she had paid is $894.00.

City Sewer service was placed on Mitchell Street during a project through Isothermal Planning and Development. Property Owners had one year to hook their properties to the Sewer line at no charge. After the year the cost to connect was $1,250.00 .

Ms. Wilkerson is requesting that the $894.00 be deducted from the total of a Tap Fee, if she decides to connect to City Sewer.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve this request and to allow Ms. Wilkerson to tap on to City sewer for a cost of $356.00.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

The City Manager advised that he had notified the School Superintendent that the City could not accept maintenance of the sewer line to Glenwood Elementary School, due to its substandard six inch size, and that no taps could be made off of this line. This matter will be discussed further by the Utility Committee.

The City Manager reported that Mr. Bill Kehler had applied for ABC permits for sale of malt beverages, fortified and unfortified wine, and mixed beverages for a new restaurant to be built next to Maple Leaf Lanes off of Finley Road. He noted that the City had no control over the issuance of this permit, which would be reviewed by the North Carolina Alcoholic Beverage Control Commission. The City can only submit comments about the compliance of the site with zoning, building code, and fire code regulations, and provide comments about the applicant's criminal history and the location proposed.

COUNCILMEN COMMENTS:

Councilman Cuthbertson requested that the condition of the sidewalk on East Henderson Street near the Cobbler Shop be examined.

Councilman Edwards asked that options be investigated regarding loitering in the downtown area. The City Manager stated he would bring back information on this issue to Council.

Councilman Little reported a pothole on Highland Drive near the intersection with East Court Street.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 21, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor A. Everette Clark was not present for this meeting. He is out of State on Vacation.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Police Chief; Tom Milligan, Fire Chief; Gaye Noblitt, Scott Spratt and Johnny Patton, Marion Police Department; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Debbie Patton, 45 Lucky Street, Marion, N.C. 28752; Lois Adams, 998 East Court Street, Marion, N.C. 28752; Randy, Lynn and Brandon Freeman, Post Office Box 1677, Old Fort N.C. 28762
Kim, Savananh and Stephen Spratt, Marion, N.C. 28752; Wayne Ollis, 427 Sumey Street, Marion, N.C. 28752; Robert Elledge 503 Ellis Street, Marion, N.C. 28752.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the consent Agenda as follows:

1. Approval of City Council Minutes - August 7, 2001

RECOGNITION OF POLICE DEPARTMENT EMPLOYEES: Mayor Pro Tem Little advised that several officers with the Marion Police Department have recently achieved a high honor. The City Manager recognized Chief Tim Benware, Sgt. Gaye Noblitt, Lt. Johnny Patton and Sgt. Scott Spratt for receiving the Advance Law Enforcement Certification from the North Carolina Criminal Justice Education and Training Standards Commission, the highest certification possible for law enforcement in North Carolina. Council applauded these officers for their accomplishments and for all they do for the City of Marion.

APPEAL OF CIVIL CITATION – MS. LOIS ADAMS: The City Manager advised that Ms. Lois Adams, who owns the antique shop at 998 East Court Street, is appealing a civil citation she received for placing items for sale upon the sidewalk and the street right-of-way in front of her business.

Several complaints have been made about the appearance of Ms. Adams business. However, since the citation was issued, Ms Adams has cleaned up and removed the majority of items from the sidewalk in front of her business. Items remaining are under the awning of the business, which is technically on the Highway 70 right-of-way. The City Manager recommended that the $50 penalty be waived, since Ms. Adams had complied for the most part with the violation letter, if Council was satisfied with the progress she had made.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to waive the $50.00 Civil Penalty issued to Ms. Lois Adams for her building at 998 East Court Street with the understanding that Ms. Adams would keep the area between the awning and the curb completely clear of merchandise and debris.

BOY SCOUT TROOP: Mayor Pro Tem Little introduced and welcomed Brandon Freeman, who is a member of West Marion Troop 807. Brandon was present for this meeting to earn a merit badge. He was accompanied by his parents Randy and Lynn Freeman.

PROPERTY IMPROVEMENT UPDATE: The City Manager reported that the Building Inspector had looked at the two dilapidated houses on West Wilhemenia Street, as directed by Council in July, and determined that asbestos was present in at least one of the houses. The City Manager recommended that Council authorize staff to obtain formal asbestos inspections of both house, for a cost of a few hundred dollars, so that a determination could be made whether to burn these houses or seek bids to tear them down. He noted that information was also provided for other houses not previously discussed on High Street, Circle Street, and Hudgins Street, as well as a house on Ridge Street that was previously discussed. Fire Chief Tom Milligan was present for this meeting with an update for Council on property improvements.

Blanch Foster Life Estate – West Wilhemenia Street (West Marion)
It has been determined that there are no known living heirs to this estate. The cost of removal is $4,370.00.

Cora C. Lee Life Estate – West Wilhemenia Street (West Marion)
There are no living heirs to this estate. A complaint and Notice of Hearing was issued to the last known address and was returned unclaimed. As per the city attorney's instructions, a Complaint and Notice of Hearing was posted on the structure and remained there for a period of thirty (30) days. No one has responded to the notice. The cost of removal is $8,800.00.

Devaun Burnette Property – Ridge Street (East Marion)
A complaint and notice of Hearing was mailed. The hearing was held on December 9th, 1999. No one appeared for the hearing. An order to repair or demolish was mailed. No one has responded to the order therefore council may want to consider an ordinance for this property. Cost of removal is $23, 392.00.

Joan A. & Floyd E. Effler Property – 519 5th Street – (Clinchfield)
This Property has been burned and cleared.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted to authorize asbestos inspections for the two houses on West Wilhemenia Street, and then to have staff come back with updated prices on clearing these houses, once it was determined whether asbestos was present in each.

ORDINANCE AMENDMENT – NUMBER OF ALTERNATES SERVING PLANNING BOARD: The City Manager reported that he had prepared an ordinance, authorizing Council to appoint up to six alternates on the Planning Board, as directed by Council at the August 7 meeting. Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 13
PLANNING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Section 13, Planning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 13-26 is amended by deleting the first sentence of the section and replacing it with the following:

"The Planning and zoning board, referred to throughout this article as the board, shall consist of five (5) regular members and up to six (6) alternate members."

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of August, 2001.

Stephen R. Little, Mayor Pro Tem

Attest:

L. Robert Boyette, City Manager/Clerk

Ordinance Number: O-01-08-21-1

APPOINTMENT – PLANNING BOARD: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to appoint Ms. Connie Martin as an alternate to the Planning Board, said term to end January 31, 2003.

REPORT – LOITERING – MAIN STREET: The City Manager advised that as directed by Council, the Police Chief had prepared information on ways to control the problems with loitering and vagrants in the downtown area. Chief Benware presented the following information for Council's information as to what can be done to control loitering:

The following section of the City Ordinances/State statutes can and is being used to address the vagrant population:

1. 9-4	urinating and depositing human waste in public
2. 9-102.24-26	cursing, shouting loudly, in public
3. 11-2	public disorderliness, drunk and disruptive
4. 11-6	begging in public places without a permit
5. 11-9	sleeping in stairways, blocking sidewalks, etc. (nothing for sleeping on benches)
6. 15-86	dumping trash prohibited
7.	trespassing on city property after hours
8. GS 14-444	Drunk and disruptive
9. GS 14-159.13	2nd degree criminal trespass

Additionally officers can work with social service agencies such as DSS and the Men's Mission to place some of these individuals. Chief Benware has researched over 600 articles in an attempt to locate a specific solution that some other city may be using to address this problem but has been unsuccessful in locating one that has been very effective in controlling this problem.

VAGRANT PROBLEM RESOLUTION

1. Identify local known and unknown vagrants – with unknown vagrants find out how they got here (R.R. jumping, drop-off's, develop plans to see that they "can't get here from there")
2. Study vagrant behavior, conduct local criminal records checks
3. Identify vagrant habitats
4. Contact DBA merchants – stress immediate contact to PD when the problem is in-progress
5. Interview vagrants – why are they here, what attracts them to this location (they will tell you if you ask)
6. Advise DBA merchants to discourage customers from giving vagrants money
   a. develop flyer to hand out informing customers of the problem
   b. encourage donations to charities that serve the needy instead (identify those agencies)
7. Develop resource list of helping agencies and what they can provide
   a. DSS
   b. Men's Mission
   c. Salvation Army (?)
   d. Local churches
   e. mental health (Foothills)
   f. Physical help (medical assister [?])
8. Re-contact vagrants to identify individual problems, issue written warnings (if not done previously), make agency referrals
9. Attack vagrant habitats
   a. photograph all areas
   b. clean them up – solicit community assistance in clean-up effort **(the police department can not do this alone)**; public works, DBA, Pride, Inmates, civic groups
   c. eliminate them
   d. make them less attractive
   e. pressure land owners to comply with local ordinances and assist in this effort or fine them when they don't
10. Identify dumpster sites that attract vagrants
    a. harden access to them
    b. advise owners to place discarded food items in the bottom to make it less accessible
    c. enforce any ordinance to ensure compliance, create one if one does not exist (solicit help from city planner)
11. Contact prosecutors so they will not trivialize charges when vagrants appear in court
12. Be alert to displacement of the problem within the city
13. Continually assess the solution in-process, make necessary adjustments
14. Follow-up with community surveys

A discussion followed.

Council was in agreement that the Marion Police Officers should pursue this policy.

DISCUSSION – POLICE DEPARTMENT BUILDING: The City Manager advised that the Police Committee has reviewed sketches of the proposed expansion to the Police Department and has endorsed the general concept of the plans.

The Police Committee recommends that the City go forward with seeking requests for Qualifications from architects to design the expansion. Under State law, the most qualified architect would be chosen, and then an attempt made to negotiate a fee with that firm. If a fee could not be negotiated, the next most qualified firm could be contacted.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to proceed with seeking requests for qualifications from architectural firms for the proposed Police Department expansion.

REVISION – COMMUNITY BUILDING RULES AND REGULATIONS: The City Manager presented an Addendum to the Rules and Regulations for the use of the Marion Community Building to Council, to address concerns raised at the August 7 meeting about use of the building for information or education programs by businesses.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, Council voted unanimously to adopt the following addendum to the rules and regulations of the Marion Community Building:

MARION COMMUNITY BUILDING
RULES AND REGULATIONS
ADDENDUM TO RULES AND REGULATIONS

Item number 12 under the rules and regulations is deleted in its entirety and replaced with the following:

12. No person, organization, etc. may use the Community Building for commercial purposes. (It is the intent of this regulation to prohibit any person from using the building for financial gain). This prohibition shall include any educational or informational programs held by professionals at which no goods or services are sold, but where referrals may be received or information about a particular business may be distributed to or made available to those attending. Educational or information programs sponsored by a non-profit or governmental organization with offices located in McDowell County are permitted, provided that no information will be distributed or made available about a particular business, other than the sponsoring non-profit or governmental organization itself.

EXCEPTION: Any commercial enterprise having a business building located within the City Limits and having a City Privilege License or other necessary license or permit, may use the Community Building for no more than two (2) times per calendar year and no more than two (2) consecutive days each time for the purpose of display demonstration, and sales of materials, products and/or services which are sold and/or provided at the commercial enterprise's main building located within the City.

These new regulations shall be effective upon adoption.

Adopted this the 21st day of August, 2001.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager/Clerk

REPORT – VICIOUS DOGS: The City Manager advised that the Police Chief had researched State law to determine options for addressing vicious dogs. The Police Chief noted that State law set a definition for dangerous dogs, but that no City or State definition existed for fierce or vicious dogs, as mentioned in Section 3-5 of the City Code, which states that such dogs must be muzzled when off their owner's premises. Chief Benware stated that he had

concerns about enforcing this section, without more guidance from State law or City ordinance. The City Manager advised that he had contacted cities and counties across the State and not found any that were addressing specific breeds or types of dogs.

Councilman Edwards stated that the City did not need to define vicious or fierce dogs in order for the Police Department to enforce Section 3-5, that large dogs or known vicious dogs such as rottweilers or pit bulls would naturally fall under this provision. He stated that the vagueness of the ordinance made it better, and allowed the customary dictionary definition of these words to be used, thus allowing for discretion by police officers. He also noted that there was nothing wrong with the City of Marion paving the way in North Carolina with strict enforcement of a vicious dog ordinance. Councilman Little concurred and stated that he too believed that certain breeds of dogs known to be vicious should be targeted under this ordinance, and that City police officers should be able to use the existing ordinance to require large or obviously vicious dogs to be muzzled when off their owner's property.

By consensus, Council agreed to direct staff to enforce Section 3-5 as it is written, and for officers to require large or obviously vicious dogs to be muzzled when off their owner's property. The City Manager noted that the Police Department would need to develop internal guidelines of what officers should look for while on patrol in order to enforce Section 3-5 effectively.

ELLIS STREET CURB AND GUTTER: The City Manager reported that the Street Committee had met and reviewed the retaining wall on Ellis Street. It is the recommendation of the Street Committee that Council award the contract for the curb and gutter work on Ellis Street to McCormick Grading & Utilities in the amount of $27,074.75, and then seek to negotiate a better price (approximately $10,000 - $15,000 or less) for the retaining wall. If a price cannot be negotiated, City personnel could complete the work for the cost of materials (which would be several thousand dollars).

Bids for this project were as follows:

Ellis Street	Curb/Gutter	Wall	Total
McCormick Grading $ Utilities	$27,074.75	$30,240.00	$57,314.75
Valdese Concrete	40,411.40	17,000.00	57,411.40
Paving Enterprises	51,788.63	15,250.00	67,038.63
Buchanan & Sons	29,627.50	50,660.00	80,287.50
Candler Concrete Works	64,672.66	24,750.00	89,422.86

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Street Committee to award the contract for the curb and gutter work on Ellis Street to McCormick Grading & Utilities in the amount of $27,074.75, and then seek to negotiate a better price (approximately $10,000 - $15,000 or less) for the retaining wall. If a price cannot be negotiated, City personnel could complete the retaining wall work.

PLANNING BOARD – APPOINTMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to appoint Mr. Robert Elledge of 39 Ellis Street to serve as an alternate member of the Planning Board, said term to expire January 31, 2003.

SUGAR HILL ROAD SIDEWALK – FINANCIAL COMMITMENT: The City Manager advised that the Department of Transportation has approved the addition of a sidewalk on Sugar

Hill Road, between Horton's Store and Rankin Drive, to the widening plans for Sugar Hill Road. The City's cost would be twenty percent, or approximately $5,600.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously for the City to commit the $5,600 for this sidewalk project.

APPROVAL OF TAX COLLECTION PROCEDURES: The City Manager reported that he and the City Attorney had been discussing methods of collection to pursue for delinquent taxes. It had been determined that the City had not been approving the annual Order of Collection for Taxes, which commanded the tax collector to collect that year's taxes, using all methods allowed under State law. Therefore, an Order of Collection had been prepared for the 2001 taxes, and one for prior year taxes (1990-2000) that could still be collected. Upon a motion by Councilman Edwards, seconded by Councilman Owenby, Council voted unanimously to approve the following order of collection of taxes:

ORDER OF COLLECTION OF TAXES

STATE OF NORTH CAROLINA

CITY OF MARION

To the Tax Collector of the City of Marion:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records for the years 1990 through 2000 filed in the office of the Tax Collector and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the City of Marion, and this order shall be a full and sufficient authority to direct require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this 21st day of August, 2001.

Stephen R. Little, Mayor Pro Tem

Attest:

J. Robert Boyette
City Manager/Clerk of the City of Marion

ORDER OF COLLECTION OF TAXES

STATE OF NORTH CAROLINA

CITY OF MARION

To the Tax Collector of the City of Marion:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records for the year 2001 filed in the office of the Tax Collector and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the City of Marion, and this order shall be a full and sufficient authority to direct require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this 21st day of August, 2001.

Stephen R. Little, Mayor Pro Tem

Attest:

J. Robert Boyette, City Manager/Clerk of the City of Marion

RECYCLING BIN CHARGES – DISCUSSION: The City Manager advised that he and the Public Works Director had discussed ways to encourage residents to recycle. One idea was to eliminate the $5 charge for replacement of damaged recycling bins. The City Manager recommended that this charge not apply when a resident brought in a damaged bin, but that it continue to apply for lost bins, or for new customers, to show residents that the bin does have a value, and to not encourage removal of the bin from the premises. He also stated that he would direct the Public Works Director, unless Council objected, to make sure that apartment complexes and similar residential units, that did not originally receive recycling bins a few years ago, received the bins, so that residents of these units would have a chance to recycle, since the owners of these developments would not pay for the bins.

By consensus, Council agreed with the recommendations listed above.

Councilman Owenby suggested that the recycling information be translated into Spanish so that Hispanic residents not speaking English could know the rules for recycling. The City Manager stated that staff would seek to do this, but would need some help from the Hispanic community in distributing this information.

2000-2001 FISCAL YEAR TAX ADJUSTMENTS: The City Manager presented Council with a memo from Ms. Claudia Severson, Tax Collector, requesting permission to make adjustments on 2000-2001 Fiscal Year Taxes. He noted that most of the adjustments involved personal property moved out of the City, or properties split by the City Limits for which adjustments were necessary.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the tax adjustments totaling $5,026.77. A copy of the individual breakdown of these adjustments can be found on file with the Tax Collector.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

COUNCILMEN COMMENTS:

Councilman Martin commended City Employees and Davey Tree Service for the removal of the large oak tree in West Marion on West Hudgins Street.

Councilman Little suggested that a dying tree on Reservoir Road be looked at by City Personnel.

CLOSED SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to go into closed session to discuss a legal matter under N.C.G.S. 143-318.11(a)(3), and the acquisition of real estate under N.C.G.S. 143-318(a)(5).

REGULAR SESSION: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to go back into regular session. Mayor Pro Tem Little announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adjourn.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager

DWS

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 4, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Tom Milligan, Fire Chief; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Durwood Creson, Marion, Fire Department; Joe and Modean Frisbee, Broad Street, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN CUTHBERTSON: Councilman Cuthbertson selected the Citizens of the Month for September.

The following information was presented about September's Citizens of the month:

JOE & MODEAN FRISBEE

Councilman Cuthbertson advised that Mr. Frisbee is a native of McDowell County, and Mrs. Frisbee is from Hickory where they met and married on February 2, 1943.

Mr. Frisbee worked for Biltmore Dairies, then worked sixteen years with Smith Furniture and then retired after nineteen years with Western Auto. He served the Citizens of Marion in many ways through the years.

Mrs. Frisbee worked for forty four years with the Jack Morris Dealership. She has retired three times. She was a member of the Sunlight Girls Trio for many years singing good cheer through song over the radio. She plays for Westmoreland Funeral Home as needed and Played music for Rotary Meetings since 1958. She an honorary member of the Rotary Club.

The Frisbees love to travel and are enjoying traveling abroad.

Mayor Clark and Council Members shared wonderful sentiments regarding both Mr. & Mrs. Joe Frisbee.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the consent Agenda as follows:

1. Approval of City Council Minutes – August 21, 2001

2. Proclamation – Litter Sweep

APPEAL OF CIVIL CITATION – MR. DERRICK BROOKS: The City Manager advised that Mr. Derrick Brooks, who operates his electrician business at 14 South Garden Street, has appealed a civil citation he received in the amount of $50.00, for having a junked vehicle (storage trailer), tall weeds, and an accumulation of trash on his property behind his building, adjacent to the parking lot behind the City Barber Shop, Roseland Florist, etc. It is recommended that the $50 penalty be waived, since Mr. Brooks

has complied totally with the violation letter.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to waive the $50.00 Civil Penalty issued to Mr. Derrick Brooks with the understanding that this property remain clean.

REQUEST HOUSE BURNING: Mr. Durwood Creson, who is a certified live burn instructor, appeared before Council requesting permission to burn a house on behalf of representatives of the YMCA. This house is on Sugar Hill Road, on the YMCA property and is located across from Horton's Store. McDowell Tech will not be involved with this burn. It would be training for volunteer firemen throughout the County through the City of Marion. The property owner would have to agree to sign a waiver releasing the City of any damages or liability. The City Manager noted that the Public Works Director had reviewed the request and the use of the fire hydrant adjacent to the site, and that the burn should have no impact on the water system, if properly scheduled.

Councilman Little stated that he had spoken recently with a volunteer firefighter from a County department, and had learned how valuable these live burns were as training exercises. He stated that he would like to see Council approve the request.

Mayor Clark noted that the complaints received the last time a structure was burned on South Main Street, and state that the Fire Department would need to put the fire out, within a reasonable period of time, and not let it smolder for days. Fire Chief Tom Milligan advised that it was often difficult to completely put out a structure fire within a short period of time, but that the Fire Department could soak the structure until the fire was out. The City Manager advised that the Fire Department could make as many visits to the site as necessary to made sure the fire was out.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve this request to allow for the City to burn for training purposes the house on Sugar Hill Road, owned by the YMCA.

SEWER TAP - MITCHELL STREET: The City Manager advised that several weeks ago Council was notified that a Ms. Mary Ann Wilkerson of 25 Mitchell Street had been paying for City Sewer Service since 1992, while not being connected to sewer. Council voted at that time to allow Ms. Wilkerson to receive a sewer tap for $356, which was the difference between the sewer tap fee at that time and what she had inadvertently paid for sewer service since 1992.

The City Manager advised that Councilman Cuthbertson and the Former City Manager Earl Daniels had advised that this issue was discussed in a Utility Committee Meeting a year or two ago, and that a decision had been made to provide Ms. Wilkerson with sewer service with no tap fee charged, since the sewer tap was already in place at this property.

A discussion followed.

It was the consensus of Council that Ms. Wilkerson should be allowed the use of this tap on at no charge.

RURAL TRANSPORTATION PLANNING ORGANIZATIONS: The City Manager advised that the concept of RPO's had been authorized in legislation by the General Assembly last year.

RPO's would operate similar to Metropolitan Planning Organizations and allow for regional transportation planning and submission of joint TIP requests to the DOT. The State appears to be favoring using existing planning organizations such as COGs to serve as the RPO planning agency.

Isothermal is interested in the RPO concept, but wants to determine whether there is interest from their member cities and counties. It appears that the local match required would be low, and the $86,000 in annual State funds would be available, No commitment is required by the City at this time.

A discussion followed.

It was the consensus of Council that the City Manager should report to Isothermal that the City has some interest, but needs additional information on the responsibilities of the PRO, and the costs involved.

SELECTION OF VOTING DELEGATES FOR NLC MEETING: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to appoint Mayor Clark as Voting Delegate to represent the City of Marion At the NLC Annual Congress of Cities to be held in Atlanta in December.

GRAFFITI REMOVAL: The City Manager advised that he City has had no success in getting the graffiti removed from the retaining walls on the railroad right-of-way near Garden Street. The railroad has also instructed
the City that City personnel may not go on the railroad right-of-way to remove the graffiti. He noted that he and the Police Chief had conducted research, and found one possible option would be to have an ordinance requiring property owners to remove graffiti from their property, or else the City could remove it for them and charge the property owner the costs of the removal. The City Manager stated that such an ordinance would have the effect of penalizing a victim of graffiti, but that the City Attorney felt that classifying graffiti as a nuisance would be the only way for the City to legally go on the railroad property and have the graffiti removed. An ordinance had not been drafted, since examples had not been found from North Carolina.

A discussion followed.

Council agreed by consensus to direct the City manager to draft an ordinance requiring property owners to remove graffiti from their property, and to bring it to Council for consideration.

CAMERAS – COMMUNITY BUILDING: The City Manager advised that the camera and equipment installed at the Community Building only allows for recording, not for constant monitoring by the telecommunicators at the Police Department. The current set-up is working well, and appears to be deterring vandalism. To allow the four cameras at the Community Building to be remotely monitored at the Police Department would require the purchase of transceiver equipment costing $3,139,30. Chief Beneware noted that the City did have one transceiver, and that a test could be done with one camera, if an antenna was placed on the Community Building.

A discussion followed.

Council members felt that if the current set-up was effective in deterring crime, that there was no immediate need to purchase the four additional transceivers to install an antenna at the Community Building.

MAUSOLEUM/COLUMBRAIUM CONSTRUCTION: The City Manager advised that the mausoleum in the Oak Grove Cemetery only has approximately twenty spaces left.

The idea of constructing another mausoleum and to perhaps include a columbraium for urns was discussed. The City Manager state there were several directions the City could go with designing the structure, and noted that a proper bid advertisement would be key, since in 1985, it took four bid notices to get two bidders. He noted that he had gotten the name of about ten companies who bid in 1985.

It was decided to have the Cemetery Committee review this item and report back to Council.

LANDSCAPING - SUGAR HILL ROAD WIDENING: The City Manager advised that, at the Tree Committee Meeting of August 29th the idea of asking DOT to incorporate landscaping into the widening project on Sugar Hill Road was discussed. The City Manager presented information from DOT, which stated that the City could make a request to DOT to plant the trees, and maintain them for one year, and then the City would have to maintain the trees thereafter. The City had entered into a similar agreement with DOT for the plantings at the 221 Bypass and Sugar Hill Road in 1996.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to request that DOT plant trees along both sides of Sugar Hill Road, between the Highway 221 Bypass and the City Limits.

PLANNING BOARD ALTERNATE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Mr. Kit Alverson, of Crescent Drive as an alternate on the Planning Board.

The present Planning Board Members and Alternates are as follows:

Planning Board	**Term of Office**
Craig Orange	January 31, 2003
Gary Walker	January 31, 2003
Glenys Gilbert	January 31, 2003
Donna Hill	January 21, 2001 (recently resigned, will need replaced when written resignation is turned in).
Stephanie Shipe	January 31, 2002

Alternate Members	**Term of Office**
Della Watson	January 31, 2002
Connie Martin	January 31, 2003
Robert Elledge	January 31, 2004
Kit Alverson	January 31, 2004

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

RAILROAD STREET FIRE HYDRANT: Councilman Cuthbertson inquired about a fire hydrant with a bag over it on Railroad Street. The City Manager advised that this fire hydrant was out of service, but would be repaired or replaced within a few days.

FALSE ALARMS: Councilman Owenby state that he had received a complaint from a business owner who had received a $50.00 citation from the Police Department for having their

fourth false alarm of the year. He noted the information the City Manager had distributed to Council on various policies, including false alarms, as adopted by Council in 1994. Councilman Owenby stated he remembered that Council had discussed this matter further in 1996, but that apparently no change had been made in the policy. He said he had a problem with the policy, since it could encourage businesses to not use alarms to protect their business, and since he felt this was part of the service the City should provide to property owners. Councilman Little stated he had no problem with the policy, and that he felt not issuing a citation until the fourth false alarm in one year was reasonable.

Chief Benware noted that the Police Department had 620 false alarms in 2000, with only 2 calls being founded. Since more aggressive enforcement or the false alarm policy started last October, the number of alarms has been cut by over twenty percent. He noted that most cities now have such a policy, since false alarms tie up a great deal of officer time. The City Manager noted that information in the files showed that former Chief Pruett had made an attempt to notify some the businesses having multiple alarms in 1997.

Council Owenby said he would consider whether to bring this matter up for discussion again.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 18, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tom Milligan, Fire Chief; Johnny Patton, Marion Police Department; Glen Sherlin, Director of Public Works; Suzy Davis, City Planner; Van McKinney, News Reporter, WBRM Radio; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Beth Silver, 4178 Goose Creek Road, Marion, N.C. 28752; Grayson England, Caroll Hemphill and Fran Hemphill, Members of the McDowell Fire Commission; Brad Ledbetter, McDowell Technical Community College, 54 College Drive, Marion, N.C. 28752; Bob Anderson, P.O. Box 2202 Marion, N.C. 28752;

CONSTITUTION WEEK – PROCLAMATION: Mayor Clark advised that Ms. Beth Silvers, a representative of the Daughters of the Revolution was present and presented her with the following Proclamation.

CONSTITUTION WEEK
SEPTEMBER 17-23, 2001

WHEREAS: September 17, 2001 marks the two hundred fourteenth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS: It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion, and

WHEREAS: Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17, 2001 through September 23, 2001 as Constitution Week,

NOW, THEREFORE I, A. Everette Clark, by virtue of the authority vested in me as Mayor of the City of Marion in North Carolina do hereby proclaim the week of September 17, 2001 through September 23, 2001 as

CONSTITUTION WEEK

and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Marion to be affixed this 18th day of September of the year of our Lord two thousand and one.

A. Everette Clark, Mayor.

ATTEST:

J. Robert Boyette, City Manager/Clerk

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

1. Approval of City Council Minutes – September 4, 2001

PUBLIC HEARING – ZONING AMENDMENT: Mayor Clark opened the public hearing. The City Manager advised that a request had been received by Mr. Bill Kehler to amend the Zoning Ordinance. City Planner Suzy Davis described the amendment, and reported that the Planning Board had recommended unanimously its approval. No one was present to speak in reference to this request. Mayor Clark closed the public hearing. Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A is amended by adding the following under Article IV, Section 400, Definitions:

(32.5) Sports Complex. A sports complex consists of a combination of a bowling center, batting cages, miniature golf, sports fields and similar non-motorized activities. A sports complex may have a restaurant, snack bar, and/or concession stand to serve its patrons.

Section 3. Appendix A is amended by adding the following under Article VIII, Section 804.2, C-2 General Business District Permitted Uses:

32. Sports complexes, provided that 20 feet of undisturbed, natural buffer along the entire perimeter of the property is provided to protect surrounding property owners from noise and visual effects, and that the total requirement of off-street parking spaces shall be the sum of the off-street parking requirements of the various uses computed separately as specified in Section 702 of the Zoning Ordinance.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of September, 2001.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-01-09-18-1

REPORT – McDOWELL COUNTY FIRE COMMISSION – GRAYSON ENGLAND: Mr. Grayson England and Mr. Brad Ledbetter appeared before Council with concern over an article in the McDowell News, regarding the recent house burning on South Main Street that they felt reflected negatively on the volunteer firefighters. Concerns were also expressed about

the City not allowing use of certain fire hydrants for training purposes, during live burn exercises, and during the annual Fire College.

Mayor Clark and all members of Council all expressed their appreciation and admiration to the members of the volunteer fire departments throughout the whole county.

It was the consensus of the City Council that the City would continue to work and cooperate with the volunteer fire departments regarding the use of City fire hydrants and the water system as much as possible, while recognizing that City staff must ensure that water quality is protected and the City's water system is not put at risk. Efforts to improve communication will be put in place.

DISCUSSION – FERN AVENUE SIDEWALK: The City Manager presented Council with a memo from the Director of Public Works advising that he recommends the sidewalk be constructed on the north side of the street from Fleming Avenue to North Main Street for a distance of approximately 2,050 feet and construction of concrete curb and gutter on both sides of the street for the same distance by City Crews.

The estimated cost of materials only for the curb and gutter on both sides of the street is $28,000. Estimated cost for drainage pipe, catch basins, etc. is $5,000. Estimated cost for materials only for the four-foot sidewalk along the entire length of the project is $9,000. Estimated cost for additional asphalt for widening of the street and yard restoration, seeding, etc. is $2,000. This additional asphalt does not include any resurfacing of the street, which will probably be necessary after completion of the project.

Total estimated cost to the City for materials as listed above, and the cost for City work crews to perform the work, is $44,000. If the project is contracted out to a private contractor, the estimated cost will be approximately $140,000 to $160,000, which does not include resurfacing of the street.

The City Manager noted that if Council wished to pursue this sidewalk, the project would need to be prioritized. Councilmen Edwards and Owenby noted that the City had many projects pending and that it would be best to complete the projects already prioritized first.

A discussion followed.

It was agreed that the Street Committee will look at this project further and report back to Council.

GRAFFITI ORDINANCE: The City Manager presented a recommended ordinance that would classify graffiti as a public nuisance and require property owners to remove it within a period of time, after notice was given.
Councilman Owenby expressed concern over penalizing property owners who were victims of having graffiti placed on their buildings or property.
Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 9
HEALTH AND SANITATION
MARION CITY CODE

BE IT ORDAINED by the City Council of the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 9, Health and Sanitation, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 9 is amended by adding the following:

Article VI. Graffiti

Section 9-150. Graffiti defined.

As used in this Article, the word "graffiti" shall refer to any marks made by drawing, painting or writing one, or inscribing or otherwise defacing any real or personal property without the prior consent of the owner or person in control of the premises.

Section 9-151. Graffiti declared a public nuisance.

Graffiti on public or private property creates a condition tending to reduce the value of such property, to promote blight and deterioration, to reflect poorly on the community, and may be injurious to the general welfare. Furthermore, graffiti has been used as a forum for gang-related activities and can lead to an increase in crime in the City, which is detrimental to the health and safety of the citizens of the City. Therefore, the presence of constitute a public nuisance which may be summarily abated as such in accordance with provisions of this chapter, or any other applicable provision of law.

Section 9-152. Premises to be kept free of graffiti.

Every person, owning or occupying any premises in the city, shall keep such premises fee from graffiti.

Sec. 9-153. Notice to remove: removal; lien for cost.

If any person shall violate the provisions of Section 9-152, it shall be the duty of the chief of police to give notice to the owner or to any person in possession of such premises, directing that, within ten (10) days or sooner from the time of such notice, all graffiti shall be removed from such premises. Should any owner or any person in possession refuse, or fail to abate such nuisance, the chief of police shall proceed to remove it or have it removed. The cost of such removal shall be charged against such premises and shall become a lien upon such property, and if such cost is not paid within thirty (30) days it shall be collected in the manner as is provided for the collection of delinquent taxes. Each day on which any of the provisions of this section are violated shall constitute a separate offense which shall also be punishable in accordance with the provisions of section 1-10.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of September, 2001.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette City Manager/Clerk

ORDINANCE NUMBER: O-01-09-18-1

The Vote was as follows:

Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Little	Yes
Councilman Martin	Yes
Councilman Owenby	No

REQUEST FOR LOADING ZONE – EAST HENDERSON STREET: The City Manager presented Council with a memo from Lt. Patton advising that Street Superintendent Aaron Adams had removed a Loading Zone sign on East Henderson Street a couple of months ago. The reason for removal at that time was due to the sign being damaged and bent. It was determined that the City Code did not authorize this sign.

Businesses in this area, particularly the Helping Hands Store, are requesting that a Loading Zone be placed back. The City Manager stated that staff did not feel a loading zone could safely be placed on East Henderson Street, due to the narrowness of this road.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to decline this request.

REQUEST FOR LOADING ZONE – EAST HENDERSON/SOUTH MAIN STREET: The City Manager advised that McDowell County Schools had requested a loading zone in front of the Advanced Learning Center on South Main Street at the intersection with East Henderson Street for use by volunteers delivering meals. Because this area has yellow curbs, is marked for no parking, and is immediately adjacent to the intersection, staff could not favorably recommend the approval of the request. Lt. Patton noted that the Police Department had tried not to ticket the meals volunteers, but that the presence of a permanent loading zone would not be safe in this location.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to decline this request.

2001 TRANSPORTATION IMPROVEMENT PROGRAM PRIORITIES: The City Manager advised that the North Carolina Department of Transportation had scheduled the annual TIP public hearing for Division 13 for October 17 in Mars Hill. He presented the following list of possible projects for the City to request:

2001 TIP Priorities – City of Marion

Our TIP requests the last few years have included the following projects:

	ROUTE	PROJECT	DESCRIPTION
1.	SR-1001 (Sugar Hill Road)	R-2643	WIDEN ROADWAY TO MULTI-LANE FACILITY WITH CURB & GUTTER
2.	US-70	NOT ASSIGNED	FEASIBILITY STUDY OF A NORTHERN BYPASS WITH PROJECT FUNDED AND SCHEDULED BASED ON THE STUDY

3.	US-221	NOT ASSIGNED	WIDEN ROADWAY TO MULTI-LANE FACILITY WITH CURB & GUTTER FROM GEORGIA AVENUE TO THE HIGHWAY 221 BY-PASS

Other projects that are on the TIP or have been discussed in the past include the following:

1.	US 221	R-204, R-2596	WIDEN ROADWAY TO MULTI-LANES FROM RUTHERFORD COUNTY LINE TO THE 221 BY-PASS AND FROM HIGHWAY 221-226 BUSINESS NORTHWARD THROUGH COUNTY
2.	NC-226	NOT ASSIGNED	WIDEN ROADWAY TO MULTI-LANES FROM INTERSTATE 40 TO HIGHWAY 221 BY-PASS

The City has also noted in the past that we are interested in the relocation and renovation of the Marion Depot and passenger rail service to the City of Marion, and that we would also like to be updated on the progress of Passenger Rail Service to Western North Carolina.

A discussion followed. Council agreed by consensus for Mayor Clark to present the proposed TIP projects at the October 17 public hearing. No action was necessary.

DOWNTOWN PARKING: A discussion was held regarding the parking in the downtown area. The City Manager advised that the Downtown Business Association Board had suggested placement of signs, directing motorists to City off-street parking lots, and the idea of graduated fees for multiple parking offenses.

A discussion followed. Concerns were raised about placing additional signs, and the difficulty of keeping track of multiple parking offenses. It was suggested that more attention be given to writing multiple parking tickets daily to vehicles parked all day, as is authorized by the City Code.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to leave the parking as it is.

PARK GRANT: The City Manager advised that the 2002 Park and Recreation Trust Fund grants are due on January 31, 2002. Without having property definitely available for future mini-parks, the City could wait another year to apply. One possible alternative is to make a grant request to acquire property (specifically the Betty Stock property in Cross Mill and the East Marion Baptist Church property) if prices can be determined from property owners.

A grant application could include just property acquisition, or acquisition and development. The maximum grant award is $250,000, so this could be a way to maximize the City's investment.

A discussion followed. Council agreed by consensus to direct the City Manager to prepare a grant application for the Parks and Recreation Trust Fund program, and to bring back information on properties that could be acquired for future mini-parks.

SELECT VOTING DELEGATE & ALTERNATE: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to appoint Mayor Clark as the

voting delegate and the City Manager as the alternate voting delegate for the North Carolina League of Municipalities Conference to be held October 14-16 in Asheville.

RESCHEDULE OCTOBER 16 COUNCIL MEETING: The City Manager noted that the N.C. League of Municipalities Conference would extend into Tuesday evening, October 16, the same night as the regular City Council meeting. Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to reschedule the October 16th City Council Meeting to October 23rd.

REQUEST FOR SEWER TAP – MARION MANUFACTURING CREDIT UNION: The City Manager advised that the Marion Manufacturing Credit Union is planning to construct a new facility at 2075 Rutherfordton Road beside the Mi Pueblito Mexican Restaurant and Carolina Interiors. The Credit Union is requesting water and sewer at this location. He recommended that since the property was adjacent to the City Limits, the request be approved subject to the submission of an annexation petition.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve this request, on the condition that an annexation petition is submitted by the property owner prior to the tap being made.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

The City Manager advised that Fuller's Action Cycles was willing to provide musical entertainment on the Friday night before the Mountain Glory Festival, on the stage that will be in place in the gazebo parking lot on North Main Street. The event would be a fundraiser for a bike track. Council members expressed concerns over conflicts with the Kirksey Funeral Home, and the use of the site for fundraising. The City Manager was directed to obtain further information on this event.

The City Manager also reported that the YMCA had requested to place luminaries on downtown sidewalks one night in early November as a fundraiser. Council members discussed possible safety and visibility issues. The City Manager stated he would get more information from the YMCA, and ask them to present this request to Council at the next meeting.

PLANNING BOARD ALTERNATE: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to appoint Mr. Warren Hobbs, of Crescent Drive as an alternate on the Planning Board.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 2, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Frank & Glynda Dean, 375 South Garden Street, Marion, N.C. 28752; Lodema Scarborough, Autumn Care, Marion, N.C. 28752; Carl, Regina, Zoie & Marcie Dean 415 Maple Avenue, Old Fort, 28762; Dean Walker, Marion, N.C. 28752; Rick Moore Marion, N.C. 28752; Michelle Fowler, 139 Riverview Drive, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM STEVE LITTLE:
Mayor Pro Tem Little selected the Citizen of the Month for October.

The following information was presented about October's Citizen of the month:

FRANK DEAN

Mayor Pro Tem Little Advised that Mr. Frank Dean can best be described with one word.....OUTSTANDING!

When ask how he is, Mr. Dean always answers outstanding. He is one the most positive, upbeat persons known by Mayor Pro Tem Little.

Mr. Dean was born in 1943 in Raleigh. He received his BA at Appalachian State University and his MBA at Louisiana State University. He met Glynda of Deritter, Louisiana while he was at Fort Polk, and they married in 1968. They have three sons and three grandchildren.

Mr. Dean joined the US Army in 1966. While in the Service he served as a training officer, a commander, and an instructor. In the Gulf War, Mr. Dean was chief of a team to train 35 Kuwaiti translators in survival, command displaced civilian camp for 5,000 near Tigris River, and help those held as prisoners in Iraq return home to Kuwait. He received a Meritorious Service medal, three Army commendation medals, a Sr. Parachute badge, an Air Assault badge and was a Jump Master and much more.

Mr. Dean moved to McDowell County in the mid 1970's and worked with Baxter. He later owned and operated the McDowell Agricultural Supply. He is now a Real Estate Appraiser. He is a member of the Marion Rotary Club, where he has served as President and is currently Assistant Governor. He has won the Rotary International Presidential Citation for Service Above Self and has a Black Belt in Karate. He is a member of the First Baptist Church in Marion and was recommended to Mayor Pro Tem Little as a Citizen of the Month by the late Mr. Sparky Parker.

Mayor Clark and Council Members shared wonderful sentiments about Mr. Frank Dean.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – September 18, 2001
B. Voluntary Annexation - Carrie Street

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, October 2, 2001, by the Marion City Council, and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation,

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council the result of his investigation.

ADOPTED this the 2nd day of October, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk
Resolution Number: R-01-10-02-1

CERTIFICATE OF SUFFICIENCY

To the City Council of the City of Marion:

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 2nd day of October, 2001.

(Seal)

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at City Hall at 7:00 P.M. on Tuesday, October 23, 2001.

Section 2. The area proposed for annexation is described as follows:

BEGINNING on an iron stake in the forks of the new and old Crooked Creek roads and runs South with the old Crooked Creek Road 12 poles to a stake;
thence South 11 degrees West 13 poles with said old road to a stump, the North old corner; thence South 40 degrees East 164 feet to a stake in the new road; thence with the new road as it meanders in a Northwesterly course 659 feet to a stake in George Hawkins' line; thence with the said Hawkins' line, West 52 feet to the BEGINNING.

Section 3. Notice of the Public Hearing shall be published in The McDowell News, a newspaper having general circulation in the City of Marion, at least ten (10) days prior to the date of the public hearing.

ADOPTED this the 2nd day of October, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number – R-01-10-02-2

C. Voluntary Annexation – Rutherford Road – Marion Mfg. Credit Union:

PETITION REQUESTING ANNEXATION

DATE: September 27, 2001

TO THE CITY COUNCIL OF THE CITY OF MARION:

1. We the undersigned owners of real property respectfully request that the area described in Paragraph 2 below be annexed to the City of Marion.

2. The area to be annexed is contiguous to the City of Marion and the boundaries of such territory are as follows:

BEGINNING on an existing 5/8-inch iron rod set in the Arnold K. Talley line (Deed Book 578, Page 123), said iron pin set being located, North 80 degrees 43 minutes 30 seconds East 50.00 feet from a point in the centerline of US 221 / NC 226 which is the Westernmost corner of said Talley tract and runs thence, with the Talley line, South 50 degrees 43 minutes 30 seconds West 50.00 feet to a point in the centerline of US Hwy 221 / NC 226; thence with said centerline as follows:

North 39 degrees 16 minutes 29 seconds West 129.44 feet to a point;
North 39 degrees 16 minutes 30 seconds West 260.40 feet to an existing PK nail, said PK nail located, South 39 degrees 10 minutes 42 seconds East 68.31 feet from a point in the centerline of a 25-foot wide utility easement the said centerline of which comprises the boundary line between Lots No. and No. 5.

Thence, leaving said centerline of US Hwy 221 / NC 226 and with the flow of Young's Fork Creek the following sixteen (16) courses and distances:

North 83 degrees 02 minutes 58 seconds East 84.66 feet to a point;
North 87 degrees 40 minutes 45 seconds East 30.00 feet to a point;
South 79 degrees 56 minutes 55 seconds East 42.72 feet to a point;
North 80 degrees 27 minutes 45 seconds East 29.37 feet to a point;
South 86 degrees 38 minutes 07seconds East 23.32 feet to a point;
North 83 degrees 49 minutes 48 seconds East 19.47 feet to a point;
North 85 degrees 48 minutes 49 seconds East 19.45 feet to a point;
South 72 degrees 26 minutes 46 seconds East 22.56 feet to a point
South 59 degrees 11 minutes 08 seconds East 39.17 feet to a point;
South 78 degrees 19 minutes 03 seconds East 27.60 feet to a point;
South 83 degrees 30 minutes 31 seconds East 26.21 feet to a point;

South 69 degrees 28 minutes 45 seconds East 33.37 feet to a point;
South 67 degrees 08 minutes 06 seconds East 24.03 feet to a point;
South 72 degrees 02 minutes 18 seconds East 29.94 feet to a point;
South 59 degrees 00 minutes 31 seconds East 26.99 feet to a point;

Thence leaving the centerline of said creek and with the Talley line South 40 degrees 43 minutes 30 seconds West 266.23 feet to the BDGINNING, containing 1.63 acres.

SUBJECT TO that certain 60-foot right of way for US Hwy 221 / NC 226 in its full legal width.

All calls taken from an unrecorded plat of survey prepared by Suttles Surveying, dated October 1998, revised January 12, 2000 and Map File No. 12439A, hereby incorporated by reference if fully set out and to which

3. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested right are claimed, indicate below and attach proof.)

Name/Address	Do you declare vested rights?	Signature

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, October 2, 2001, by the Marion City Council, and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation,

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council the result of his investigation.

ADOPTED this the 2nd day of October, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number – 01-10-02-3

CERTIFICATE OF SUFFICIENCY

To the City Council of the City of Marion:

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 2nd day of October, 2001.

(Seal)

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at City Hall at 7:00 P.M. on Tuesday, October 23. 2001.

Section 2. The area proposed for annexation is described as follows:

BEGINNING on an existing 5/8-inch iron rod set in the Arnold K. Talley line (Deed Book 578, Page 123), said iron pin set being located, North 80 degrees 43 minutes 30 seconds East 50.00 feet from a point in the centerline of US 221 / NC 226 which is the Westernmost corner of said Talley tract and runs thence, with the Talley line, South 50 degrees 43 minutes 30 seconds West 50.00 feet to a point in the centerline of US Hwy 221 / NC 226; thence with said centerline as follows:

North 39 degrees 16 minutes 29 seconds West 129.44 feet to a point;
North 39 degrees 16 minutes 30 seconds West 260.40 feet to an existing PK nail, said PK nail located, South 39 degrees 10 minutes 42 seconds East 68.31 feet from a point in the centerline of a 25-foot wide utility easement the said centerline of which comprises the boundary line between Lots No. and No. 5.

Thence, leaving said centerline of US Hwy 221 / NC 226 and with the flow of Young's Fork Creek the following sixteen (16) courses and distances:

North 83 degrees 02 minutes 58 seconds East 84.66 feet to a point;
North 87 degrees 40 minutes 45 seconds East 30.00 feet to a point;
South 79 degrees 56 minutes 55 seconds East 42.72 feet to a point;
North 80 degrees 27 minutes 45 seconds East 29.37 feet to a point;
South 86 degrees 38 minutes 07seconds East 23.32 feet to a point;
North 83 degrees 49 minutes 48 seconds East 19.47 feet to a point;
North 85 degrees 48 minutes 49 seconds East 19.45 feet to a point;
South 72 degrees 26 minutes 46 seconds East 22.56 feet to a point
South 59 degrees 11 minutes 08 seconds East 39.17 feet to a point;
South 78 degrees 19 minutes 03 seconds East 27.60 feet to a point;
South 83 degrees 30 minutes 31 seconds East 26.21 feet to a point;
South 69 degrees 28 minutes 45 seconds East 33.37 feet to a point;
South 67 degrees 08 minutes 06 seconds East 24.03 feet to a point;
South 72 degrees 02 minutes 18 seconds East 29.94 feet to a point;
South 59 degrees 00 minutes 31 seconds East 26.99 feet to a point;

Thence leaving the centerline of said creek and with the Talley line South 40 degrees 43 minutes 30 seconds West 266.23 feet to the BDGINNING, containing 1.63 acres.

SUBJECT TO that certain 60-foot right of way for US Hwy 221 / NC 226 in its full legal width.

All calls taken from an unrecorded plat of survey prepared by Suttles Surveying, dated October 1998, revised January 12, 2000 and Map File No. 12439A, hereby incorporated by reference if fully set out and to which reference is hereby made.

Section 3. Notice of the Public Hearing shall be published in The McDowell News, a newspaper having general circulation in the City of Marion, at least ten (10) days prior to the date of the public hearing.

ADOPTED this the 2nd day of October, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk
Resolution Number – R-01-10-02-4

D. Approve Budget Amendment – Police Department – Bike Helmet Grant:

CITY OF MARION, NORTH CAROLINA
2001-2002 BUDGET ORDINANCE
(Second Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenue, Bike Helmet Grant, Account Number 10-398-0800, is increased from $0 to $1,000.
b. General Fund Expenditures, Police Department, Account Number 10-510-33, Department Supplies, is increased from $12,500 to $13,500.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 2nd day of October, 2001.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk
Ordinance Number: O-01-10-02-1

REQUEST – LUMINARIES DOWNTOWN-YMCA: Ms. Michelle Fowler, a representative of the YMCA, appeared before Council requesting permission to place Luminaries in the downtown area as a fund-raiser for the YMCA.

A discussion followed.

Council agreed that visibility issues due to lighting and vehicles parking on Main Street would make this area unfavorable. There were also several fire related safety issues discussed, including the fact that Main Street is designated as a Primary Fire District.

Several other locations were suggested to Ms. Fowler. The Mayor and Council informed Ms. Fowler that they were very supportive of this concept, but that the YMCA should look at locations other than Main Street.

ORDINANCE – OFF-STREET PARKING LOTS: The City Manager presented an ordinance, which would designate the newly leased parking lot at West Henderson and Logan Street as an all-day off-street parking lot.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 18
TRAFFIC
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Chapter 18, Traffic, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-256 is amended by adding the following:

(6) Lot #6, South Logan Street – Beginning at a point on the east side of South Logan Street, said point located at the intersection of the rights-of-way of South Logan and West Henderson Streets; thence north one hundred thirty-three feet (133') running parallel with South Logan Street; thence east one hundred twenty feet (120') running parallel with West Henderson Street; thence south one hundred thirty-three feet (133') running parallel with South Logan Street; thence west one hundred twenty feet (120') running parallel with West Henderson Street to the point of beginning; and including a perpetual, non-exclusive right of way and easement over a roadway which is in existence and in use, and which is approximately 15 feet in width, located immediately north of said property on South Logan Street.

Section 3. Section 18-258 is hereby amended by deleting this section in its entirety and replacing it with the following:

Sec. 18-258. All day parking lots.

The parking lots described in subsection (2) through (6) of Section 18-256 are hereby designated as all-day parking lots. No person shall park any motor vehicle and leave such vehicle parked in any of the above described all-day parking lots between the hours of 1:00 a.m. and 7:30 a.m. local time.

Section 4. This ordinance shall become effective upon its adoption.
Adopted this the 2nd day of October, 2001.

A. Everette Clark, Mayor

Attest:
J. Robert Boyette, City Manager/Clerk
Ordinance Number: O-01-10-02-2

TREE REPLANTING – WATER PLANT PROPERTY: The City Manager presented Council with information from Mr. John Rutland, who is the City's Consultant Forester, and from Mr. John Reese of the Forest Service, regarding the proposed replanting of the Water Plant site.

The City received $100,000 from the sale of the timber on this site and the Old Wastewater Treatment Plant Property, less the ten percent fee of Mr. Rutland, leaving $92,000 currently in the account.

It is recommended that the Water Plant site be replanted at a cost of $235 per acre, totaling approximately $5,000. The Old Wastewater Plant property was select cut, and is not recommended for replanting at this time.

The City Manager also advised that a citizen is requesting permission to take wood off of the Water Plant Property.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted to approve the recommendation as stated above and due to liability issues not to allow Citizens to cut and remove wood from City Property.

APPROVAL – ASBESTOS REMOVAL – TWO HOUSES: The City Manager advised that at an earlier City Council meeting, Council was informed of two properties on West Wilhemenia Street which had been condemned and appeared to have asbestos in them.

Mr. Jay Dover, of Dover Insulation, inspected both properties and will remove the asbestos from the two houses for $1,887. The asbestos will need to be removed whether the properties are torn down or burned.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to have the asbestos removed by Mr. Dover for the sum of $1,887 and to proceed with the removal of these two structures.

NEW MAUSOLEUM/COLUMBRAIUM CONSTRUCTION: The City Manager advised that the Cemetery Committee met on September 26, 2001 and reviewed ideas for a new Mausoleum/Columbarium.

It was agreed that the new Mausoleum/Columbarium should match the old Mausoleum as closely as possible, be built as separate freestanding units, and be bid separately. The Cemetery Committee recommended seeking bids immediately, since adequate funds were available in the Cemetery Fund.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to proceed with this project and take bids for a new Mausoleum and Columbarium, to match the existing Mausoleum as closely as possible.

REVIEW – MARION POLICE DEPARTMENT – EXPANSION ARCHITECTURAL PROPOSALS: The City Manager advised that the proposals for architectural services for the Police Department expansion are due on October 8. Based on phone calls received requesting more information, staff is anticipating receiving eight to ten proposals. The City Manager asked Council for direction on how to review and narrow the proposals.

A discussion followed.

It was the consensus of Council that the City Manager and the Police Committee should screen all proposals received and present the most favorable four or five to City Council for interviewing.

DOT – REST AREA WATER EXTENSION: The City Manager advised that easements from property owners on Shady Lane are technically required for the water extension to the DOT Rest Areas on I-40 since DOT owns no right-of-way on Shady Lane. However, in keeping with past practice, the Utility Committee had recommended that the City not obtain all easements, and proceed with the project, subject to signing the Utility Agreement with the North Carolina Department of Transportation.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to proceed with this project subject to signing the Utility Agreement with the North Carolina Department of Transportation.

CITY EMPLOYEE - CHRISTMAS PARTY PLANS: The City Manager advised that City Employees had inquired about ways to improve the annual Christmas Party. He said that he would recommend holding the Christmas lunch on Friday, December 21, at noon, and presenting service pins, along with departmental safety awards, and perfect attendance certificates. The room would be decorated more for the season. The City Manager advised that Glen Sherlin and other employees had recommended a nighttime event, starting at 6:00 p.m. on December 21, to which employees, the Mayor and Council and their families would be invited. This event would involve music, light refreshments, a Christmas tree and decorations, a gift exchange, and gifts for children. The total cost of these additions to the Christmas Party would be minimal.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council approved the ideas for the Christmas Party and the purchase of Turkeys for each employee.

DISCUSSION – HALLOWEEN: Mayor Clark advised that he had received a call from a concerned Citizen regarding the Halloween season. The citizen had suggested that Halloween not be held this year, due to the recent terrorist attacks.

A discussion followed. Councilman Cuthbertson stated that the Council had attempted to move Halloween dates in the past, but that the calendar should dictate when Halloween is held. Mayor Clark added that the general consensus in the country is that people should get on with their normal lives.

Council took no action on this matter.

Chief Benware reported that extra Police Officers will be on patrol Wednesday night, October 31, 2001 during the Halloween festivities.

RURAL TRANSPORTATION PLANNING ORGANIZATION: The City Manager advised that the Isothermal Planning and Development Commission has prepared a Memorandum of Understanding for consideration by all counties and municipalities in our region. It appears that they are planning to move forward with the RPO, based on the favorable response from member governments. Some RPOs are already being designated across the State. The anticipated cost for the first year to member governments is estimated to be none, due to grant availability, and additional year costs would be no more than $400 for the City of Marion, based on an estimated one third of the City's annual dues. Participating would give the City a seat on the Rural Transportation Advisory Committee.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously for the City to participate in the RPO.

FERN AVENUE SIDEWALK – DISCUSSION: The City Manager advised that the estimated cost for a sidewalk, curb and gutter work on Fern/Montevista from Fleming to North Main Street is around $44,000 and $140,000 to $160,000 if contracted. The Street Committee reviewed this project and recommended that it broken into two phases.

Phase I - Fern Avenue – From Fleming to Montevista, including concrete curb and gutter work

Phase II – Sidewalk, curb and gutter installation and Street relocation in the remaining section down to North Main Street.

The Street Committee recommended that City Crews complete the work. Because Phase I will need to be done while school is out of session, since this section of Fern is heavily used for school traffic, it was recommended that the project be re-evaluated in the spring, to see how much progress has been made on the Street and Sidewalk Priority List, to allow for Phase I to possibly be completed in Summer 2002.

A discussion followed. Council agreed by consensus to pursue this approach.

NOVEMBER ELECTION: The City Manager advised that the first meeting in November is scheduled for Election Night.

There will be no City Council Meeting that night.

DISCUSSION – BIRTH OF A CHILD LEAVE: The City Manager advised that he had been approached regarding time off given to City Employees. The City allows three days off with pay in the event of a death in an employee's family. It has been suggested an employee be given three days off with pay in the event of a birth of a child.

A discussion followed.

Councilman Owenby made a motion that City Employees be given three days off with pay in the event of a child. Councilman Little seconded the motion.

A discussion followed.

Councilman Edwards suggested that more information needed to be presented to Council about how common this type of leave was among local governments, and that Council needed more time to consider this item, since it involved the use of taxpayer money.

Councilman Owenby withdrew his motion. Councilman Little withdrew his second.

The City Manager will research this item further to determine if this type of leave is common among local governments in North Carolina and report back to Council on his findings.

DUKE ENDOWMENT: The City Manager advised that the City of Marion received notice of a Rural Community Grant program from the Duke Endowment. The Duke Endowment is making $10 million available for rural communities in North and South Carolina. The grants would be awarded for collaborative planning and problem solving, along with implementation projects, to improve the economic vitality of a rural community. The City Manager suggested that the City could partner with McDowell County, the Chamber of Commerce, McDowell Economic Development Association, and the Marion Downtown Business Association, among

other agencies, to pursue this grant. It could allow for the type of planning and "visioning" process recently discussed by the MEDA and DBA Boards. Ideas for implementation projects could include acquisition and redevelopment of existing blighted industrial sites. The grants would be funded over a three to four year period, allowing the community to go through a long planning process, and develop strategies that could be implemented to improve the economic climate of the City.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to authorize the City Manager to contact other local agencies and to seek to apply for this grant.

COUNCILMAN EDWARDS – DISCUSSION: Councilman Edwards advised that several years ago, City Council cut the amount of support given to various non-profit organizations in the City of Marion, including the McDowell Arts and Crafts Association (MACA). He advised that he has recently been made aware that MACA could qualify for some matching grant funds, with additional local funding. Councilman Edwards suggested that Council might want to consider additional funding for MACA at the Planning Session in January, as they had several years ago during MACA's Capital Campaign.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

The City Manager reported that McDowell County had recently advised of changes to the yard waste disposal program. Public Works Director Glen Sherlin reported that the County's yard waste disposal site had recently been closed by the State, due to the poor upkeep of the facility. As a result, the City was being forced to use the old Wastewater Plant property for disposal. The City was in the process of getting this site permitted as a disposal site by the State. He said he did not anticipate any service changes to customers, but that the City may have to more strictly enforce current policies regarding yard waste collection, until the County site reopens, which hopefully will be in the near future.

The City Manager reported that he had talked with the staff of Isothermal Planning and Development Commission and that a request was being made to the North Carolina Rural Economic Development Center for a two year extension to the City's $200,000 grant to run water and sewer down Sugar Hill Road to Shady Lane, since the City was having trouble getting the Utility Agreement signed with DOT and obtaining a needed easement off of Sugar Hill Road. He noted that he would work to make sure the project was completed, so that the grant funds were not lost.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 23, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; ; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Garland Franklin, 186 Spring Street, Marion, N.C. 28752; Penn Dameron P.O. Box 1049 Marion, N.C. 28752; Terry DePoyster, Marion Fire Department, Marion, N.C. 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – October 2, 2001

PUBLIC HEARING – ANNEXATION ORDINANCE – MARION MANUFACTURING CREDIT UNION: The City Manager advised that this request involved the voluntary annexation of 1.63 acres on Rutherford Road owned by Marion Manufacturing Credit Union adjacent to the current City Limits. Mayor Clark opened the Public Hearing. There was no one present to discuss this matter. Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, October 23, 2001, after due notice by publication on Friday, October 12, 2001; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of October 31, 2001.

BEGINNING on an existing 5/8-inch iron rod set in the Arnold K. Talley line (Deed Book 578, Page 123), said iron pin set being located, North 80 degrees 43 minutes 30 seconds East 50.00 feet from a point in the centerline of US 221 / NC 226 which is the Westernmost corner of said Talley tract and runs thence, with the Talley line, South 50 degrees 43 minutes 30 seconds West 50.00 feet to a point in the centerline of US Hwy 221 / NC 226; thence with said centerline as follows:

North 39 degrees 16 minutes 29 seconds West 129.44 feet to a point;
North 39 degrees 16 minutes 30 seconds West 260.40 feet to an existing PK nail, said PK nail located, South 39 degrees 10 minutes 42 seconds East 68.31 feet from a point in the centerline of a 25-foot wide utility easement the said centerline of which comprises the boundary line between Lots No. and No. 5.

Thence, leaving said centerline of US Hwy 221 / NC 226 and with the flow of Young's Fork Creek the following sixteen (16) courses and distances:

North 83 degrees 02 minutes 58 seconds East 84.66 feet to a point;
North 87 degrees 40 minutes 45 seconds East 30.00 feet to a point;
South 79 degrees 56 minutes 55 seconds East 42.72 feet to a point;
North 80 degrees 27 minutes 45 seconds East 29.37 feet to a point;
South 86 degrees 38 minutes 07seconds East 23.32 feet to a point;
North 83 degrees 49 minutes 48 seconds East 19.47 feet to a point;
North 85 degrees 48 minutes 49 seconds East 19.45 feet to a point;
South 72 degrees 26 minutes 46 seconds East 22.56 feet to a point
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South 78 degrees 19 minutes 03 seconds East 27.60 feet to a point;
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South 67 degrees 08 minutes 06 seconds East 24.03 feet to a point;
South 72 degrees 02 minutes 18 seconds East 29.94 feet to a point;
South 59 degrees 00 minutes 31 seconds East 26.99 feet to a point;

Thence leaving the centerline of said creek and with the Talley line South 40 degrees 43 minutes 30 seconds West 266.23 feet to the BDGINNING, containing 1.63 acres.

SUBJECT TO that certain 60-foot right of way for US Hwy 221 / NC 226 in its full legal width.

All calls taken from an unrecorded plat of survey prepared by Suttles Surveying, dated October 1998, revised January 12, 2000 and Map File No. 12439A, hereby incorporated by reference if fully set out and to which refer

Section 2. Upon and after October 31, 2001, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-268.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 23rd day of October, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Buyette, City Clerk

Approved As To Form:

City Attorney

Ordinance Number: O-01-10-23-1

PUBLIC HEARING – ORDINANCE –HOLLAND PROPERTY: The City Manager advised that this request involved the voluntary annexation of 0.95 acres owned by Eugene Holland on Carrie Street adjacent to the current City Limits. Mayor Clark opened the Public Hearing. There was no one present to discuss this matter. Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, October 23, 2001, after due notice by publication on Friday, October 12, 2001; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of October 31, 2001.

BEGINNING on an iron stake in the forks of the new and old Crooked Creek roads and runs South with the old Crooked Creek Road 12 poles to a stake; thence South 11 degrees West 13 poles with said old road to a stump, the Goeth old corner; thence South 40 degrees East 164 feet to a stake in the new road; thence with the new road as it meanders in a Northwesterly course 659 feet to a stake in George Hawkins' line; thence with the said Hawkins' line, West 52 feet to the BEGINNING.

Section 2. Upon and after October 31, 2001, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-268.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 23rd day of October, 2001.

A. Everette Clark, Mayor

ATTEST:

Approved As To Form:

Robert Boyette, City Clerk

City Attorney

Ordinance Number:O-01-10-23-2

CIVIL CITATION – APPEAL MS. FLORENCE FAIRCHILD: The City Manager advised that Ms. Florence Fairchild had received a civil citation for her dog not being restrained at here residence at 60 Wayne Street. The amount of the civil penalty is $50.00. He presented a report from Officer Joe Frady that indicated that the Police Department had been called to this address five times since May for complaints about a dog being loose, before the first citation was issued.

Ms. Fairchild's daughter presented Council with a letter advising that Ms. Fairchild could not afford to pay the $50.00 citation and requested that the penalty we waived. Ms. Fairchild did not dispute that the dog was loose.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to deny this request.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously allow Ms. Fairchild to pay this Citation over a 60 day period.

EASEMENT APPROVAL - CRANE RESISTOFLEX – PG SEWER PROJECT: The City Manager presented the following Agreement prepared on behalf of Crane Resistoflex for the sewer line to be constructed across their property as part of the Pleasant Gardens sewer extension. Officials with Crane Resistoflex requested that the City use the following Agreement in place of their usual agreement due to their objection of the inclusion of language granting the City with a release from any environmental conditions existing on the easement site prior to the sewer line installation.

STATE OF NORTH CAROLINA — CORPORATION EASEMENT DEED AND AGREEMENT

COUNTY OF MCDOWELL

KNOW BY ALL MEN THESE PRESENTS, that, RESISTOFLEX, a division of CRANE CO., hereinafter called "Grantor", on the 23rd day of October, 2001, for good and valuable consideration recited herein, does hereby grant unto the CITY OF MARION, NORTH CAROLINA and its successors and assigns (hereinafter called "Grantee"), the right, privilege and easement described below to go in and upon certain portions of that land of Grantor (hereinafter "premises") which land is described below in that Deed Book 369, at 140, of the McDowell County Public Registry, which description is specifically incorporated by reference as if fully set forth herein.

TEMPORARY EASEMENT

The TEMPORARY easement herein conveyed is FORTY (40) feet in width and is conveyed for the following purposes: to erect, construct, repair, and place on the premises an underground sewer pipeline system which shall serve to provide sewer service to the premises and other parcels. Further rights conveyed include, but are not limited to, the right to go upon the premises whenever necessary with motor vehicles and other repair and maintenance equipment for the purpose of constructing the utility the Grantees shall remove all surplus earth, make level the surface of the ground above the sewer lines; and interfere as little as is reasonably possible with any plants, fences, or other improvement upon the premises).

The easement granted includes all lands within twenty (20) feet on each side of the center line of the constructed sewer pipe line is described and shown on that certain unrecorded plat of survey prepared by Webb AS. Morgan and Associates, P.A., which survey is dated April 23, 2001, which survey description is hereby incorporated by reference as if fully set forth herein.

The TEMPORARY easement shall cease and shall convert to the below described permanent easement upon completion of construction of the sewer line.

PERMANENT EASEMENT

The PERMANENT EASEMENT herein conveyed is twenty (20) feet in width and is for the following purposes: to reconstruct, repair, replace, operate, and maintain on the premises an underground sewer pipe line system, which shall serve to provide sewer service to the premises and other premises. Further rights included in this conveyance include, but are not limited to, the right to go upon the premises whenever necessary for the purpose of inspecting, maintaining, and repairing the sewer line service (provided that in construction and repairing the sewer line service Grantees shall remove all surplus earth; make level the surface of the ground above the sewer line; and interfere as little as is reasonably possible with any plants, fences or other improvement upon the premises); and constructing and maintaining a sewer manhole and any above ground facilities which may be reasonably required to provide sewer service as contemplated by this Easement.

The easement granted includes all lands within ten (10) feet on each side of the center line of the constructed sewer pipe line. The easement is more particularly described and shown on a certain unrecorded plat of survey prepared by Webb A. Morgan and Associates, P.A., which survey is dated April 23, 2001, and from which survey, metes and bounds description of the boundary line of the twenty foot wide easement is taken:

AND DESCRIBED ON THE ATTACHED EXHIBIT "A"

Further the Grantor will not erect or maintain any structure within ten (10) feet of either and both sides of the constructed sewer pipe line, except upon receiving prior written consent by the Grantee, its successors and assigns. Further the Grantor shall not excavate, grade or fill any portion of the premises excavate, grade or fill any portion o the premises except in accordance with good engineering practice, and said excavation, grade or fill shall not endanger the Grantee's pipelines, structures or foundation.

GENERAL AGREEMENTS AND ACKNOWLEDGMENTS

It is understood that the Grantee may do any act or thing necessary to remove or eliminate any condition which endangers, threatens to endanger, or interferes with the operation and maintenance of said sewer line system.

The grantor covenants that it is the owner of the above described land and that the land is free and clear of encumbrances and liens of whatsoever character.

TO HAVE AND TO HOLD said right and easement to the Grantee and its successors in title and assigns forever; it being agreed that the right and easement hereby granted is appurtenant to and runs with the premises now owned by Grantor.

IN TESTIMONY WHEREOF, said Grantor and Grantee have hereunto caused this document to be signed in their corporate names by their duly authorized officers and their seals to be hereunto affixed by authority of their Board of Directors or City Council, as the case may be, the day and year first above written.

The City Manager noted that the standard easement agreement used by the City included the environmental release language and that he saw no reason to not require it in this case. Mayor Clark noted that the project would bring the sewer line well on to Crane's property, and that they should be willing to
sign any statement requested by the City, in exchange for essentially having a private service line extended on to their property and maintained for them.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to use its regular agreement and not the one above.

BIO-TERRORISM RESPONSE UPDATE: Police Chief Tim Benware gave the following report on Bio-terrorism response:

Since the September 11 terrorist attacks and subsequent biological terrorism in the country, the Police Department has been working with the County and State to prepare for incidents in Marion.

McDowell County has two Smart Kits, which can test a substance for anthrax. The City of Marion Police Department has ten more kits ordered. Each kit contains two tests. The State has recommended that local jurisdictions purchase the test kits, since the Western Response Team, located in Asheville, covers over 20 counties and may not be able to respond to a threat quickly.

Chief Benware advised that the Police Department knows what to do when presented with a biological threat and is ready to respond. They have already responded to several reports of suspicious letters and substances, all of which have proved to be false. When responding to a biological threat or suspicious package, the source is removed, teseed, and then the area would be sealed off if necessary.

The Fire Department is prepared to respond with turnout gear and self-contained breathing apparatus and latex gloves in the event of anthrax or any dangerous substance.

If the event of a positive test, at that point the City would notify the McDowell County Emergency Operations Center. The would notify Buncombe County Personnel who have contracted with the state to respond to anthrax reports or other biological substances.

DECLARE SURPLUS ITEMS - ANNUAL AUCTION: The City Manager noted that the joint City/County/Schools auction would be held November 7. Each Department had prepared a list of items to go in the auction. Two items, the 1963 dozer and 1981 case loader, might be considered for a minimum bid or private sale, to present these items going for a low price at absolute auction. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following items as declared surplus items to be sold at the annual auction, with the exception of the 1963 dozer and 1981 case loader, which would be sold through sealed bids or by setting a minimum bid for the auction:

SURPLUS EQUIPMENT (FOR 11'01 AUCTION)

	CITY #	SERIAL #
(4) WYSE TERMINALS w/ KEYBOARD:		
	B- 0081	03119H00052
	B- 0083	03119A00051
	00152	03110B00304
	B- 0084	03119A00107
PRINTER(s):		
Citizen Premiere 55	H -0375	No #
Okidata 521 Microline	00177	212A0010962
Okidata 321 Microline	E-2679	108C0335663
Panasonic KX-P1180I	00149	21MBQAF11876
Panasonic KX-P1180	B-0099	1GKARQ64712
Panasonic KX-P1180	B-0096	1GKARQ73590

MONITOR(s):

Dell 14" monitor	C-1437	2654073
CTX 14" color monitor (M# CVP-5468A; w/ filter		No #
Hyundai 15" monitor w/ mouse	00164	M1HA102208986
**to be sold as grouping		
Sony Triniton 17" monitor (LS's)	G-3595	7109914

KEYBOARD(s):

Key Tronic (M# 101) Keyboard	No #	Q001000470
Chicony Keyboard w/ mouse	No #	TCK2402055
" "	G-3646	5K78001413
Chicony Keyboard w/ mouse (LS's)	G-3596	70056700074

	CITY #	**SERIAL #**
CPU(S):		
No name (home-made)	00175	9206206015093
Panasonic (24X SCSI) CPU	home-made	No #
HSI CPU (Lovinia's)	G-3597	No #
MICROFORM READER (Vantage II)	E-2331	No #
HP Scanjet 5S Scanner	No #	MY477S21024
ATI 9600 MODUM	00181	AT 51948
Multi-Tech Multi Plexer	No tag	52653
TAB Burster w/ Stand	A-0031	10 3466
SEARS VCR (VHS)	I-1200	70217991

PUBLIC WORKS

WATER DEPARTMENT:
(1) 1989 Ford Backhoe 555C
Model DF9P1Z, Engine L1840249D13A

WASTE TREATMENT:
(2) 20 hp sludge pumps 1750 rpm
(1) 5 hp air compressor

FLEET MAINTENANCE:
(1) 150-ton shop press

STREET DEPARTMENT:
(1) Bush hog G60LT

SANITATION DEPARTMENT:
(1) 1985 Ford 8000 Diesel Garbage Packer
VIN 1FDYL80U1FVA65572

PUBLIC WORKS ADMINISTRATION
(1) Canon BJC-610 Color Bubble Jet Printer w/user manual
(1) HP Scanner C5160A Scanjet Serial # MY477S21024

POLICE DEPARTMENT

1 AT computer tower with drive Pentium 133
1 AT computer tower with 200 MHz Pentium Processor
1 AT computer tower with 233 MHz Pentium Processor
1 Word Perfect program for DOS
5 Computer Mouse
3 Telephone Ext Cords
1 CPU fan
1 EZ Card 10/100
2 AT Key Ext cord
1 Serial – Serial ext cord
1 Serial – Host ext cord
1 24x CD Rom
1 Power Supply 2
1 New Vision 2000
1 power supply cord
1 modem
1 AT-PSZ Keyboard converter cord
2 Ext. Modem Cord
1 APC UPS
1 Cord Protector
1 Power Strip
1 Flood Light fixture
1 box of misc leather gear

1 set Multimedia Computer Speakers
1 Sharp Calculator - Serial # 9B110704
1 CD Rom Drive – Serial # 205803019114
1 MVP Mini Fan
1 Radio Shack Speaker
1 Nokia Cell Phone and battery – Serial #21902381762
1 Power Supply – Serial # 196008
1 Computer empty tower
3 Computer Monitor
1 Computer Key Board – Serial # MJ1572688
1 Computer Key Board – Serial # 800188
1 HP Printer – Serial # US6961T037
1 Tri Pod
1 Dell Computer
1 Camera Canon T50 - Serial # 1762411
1 Camera Canon T50 – 1231559
1 Camera Lens Zoom Sears Model

POLICE DEPARTMENT
FOUND/SEIZED PROPERTY

1 Bell Atlantic Cell Phone with charger 12 VOC
1 Light Green Diaper bag with misc baby clothing
1 Scanner – Photo Maker
2 Pioneer Speakers
1 Tool Chest Promark with various metal tools
1 Pole climbing equipment with belt, climbers and rope
1 Air Compressor, small, Devilbiss 120 psi
1 Amplifier
Various radio equipment 2 old steros
2 Work lights
1 Metal pant tool for Air Compressor
1 Black box with tools
1 Air Conditioner
1 Mag Wheel
1 VHS Player
1 10 Channel radio scanner

1 Pink and blue blanket
1 Hunters jacket
1 Craftsman battery charger
1 Plastic helmet cover
1 Ammo box with air compressor equipment
1 Air compressor, red in color 150 psi
1 Bible
1 Pry tool
1 Hand held radio scanner
1 Chain saw (motor section) Skill
1 Wooden baseball bat
1 Car jack
3 CDM Cell Phones in box
3 Motorola Cell Phones in box

CORPENING CREEK WWTP

1963 Allis Chalmer Dozer ID # HD11E
1979 Case Loader ID # 33960

1980 Ford 2 ½ Ton Dump Truck ID# F70HVHB0812
1980 Ford 2 ½ Ton Dump Truck ID# F70HVB0811

DISCUSSION CORPENING CREEK WASTE WATER TREATMENT PLANT LABORATORY: The City Manager advised that the State is now monitoring the City for daily violations at our wastewater facilities. Staff now has concerns about the City being held responsible for lab errors, and the City facing fines for subsequent violations.

The City presently sends their lab work out for testing.

Larry Carver, Waste Water Treatment Plant Superintendent; provided the following information for Council's review:

Total costs for out side lab work.....$28,256
Total cost of Lab work done in house.....6,238
Total of savings per year.....$12,018
Total Average of Overtime each year.....$22,308
Total money saved.....$34,326
The savings listed above will include hiring
an operator to assist in the lab and also be
utilized as an operator.....Salary.....$22,880
TOTAL.....$30,430.40
Difference of the total for new hire.....3,895.60

Total amount of materials needed to start up...5,604.43
Amount of contribution from City.....$1,708.83

The City Manager recommended that the City activate the lab at the Corpening Creek Plant for in house testing, which would require the hiring of a Lab Technician/Operator and purchase of lab equipment.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin. Council voted unanimously to reactivate the Lab at the Corpening Creek Plant.

RESOLUTION – LANDSCAPING AGREEMENT: The City Manager reported that the North Carolina Department of Transportation had responded favorably to the City's request for tree planting along Sugar Hill road from the Highway 221 Bypass to Rankin Drive, as part of the planned widening of Sugar Hill Road. To pursue this tree planting, the attached municipal agreement would have to be approved by City Council, which would dictate that DOT design and plant the trees and maintain them for one year, and then the City would assume maintenance. The Tree planting would likely not occur until after the road widening was completed, sometime around 2003. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Agreement and Resolution:

NORTH CAROLINA
MCDOWELL COUNTY

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

AND

LANDSCAPE AGREEMENT

CITY OF MARION **PROJECT: E-2973M**

THIS AGREEMENT, made and entered into this the 23, day of October, 2001, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the CITY OF MARION, a municipal corporation, hereinafter referred to as the Municipality;

W I T N E S S T H:

WHEREAS, Section 1201 of the Transportation Equity Act of the 21st Century (TEA-21) requires that the Surface Transportation Program funds be available for transportation enhancement activities in their statewide transportation improvement programs; and,

WHEREAS, the municipality has requested enhancement funding for certain landscape plantings along proposed improvement project (SR 1001) Sugar Hill Road from Rankin Drive (SR 1323) to US 221 Bypass in McDowell County; and ,

WHEREAS, the Department and the Municipality have also agreed to the maintenance of said plantings as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

1. The Department shall, without expense to the Municipality.
develop the landscape design and prepare the landscape plans and specifications in accordance with the Department's standard landscaping polices and procedures for highways.

2. The Department, and/or its agent, shall, without expense to the Municipality, prepare the site and furnish and install the plantings in accordance with the approved project plans. All work shall be performed within the existing right of way and in accordance with Departmental standards, policies and procedures.

3. Upon completion of the plantings, the Department, and/or its agent, shall maintain said planting areas for a period of one (1) calendar year, at no expense to the Municipality.

4. At the end of the one (1) year establishment period, the Municipality shall assume responsibility for all maintenance and replacement of the landscape materials. Maintenance shall include, but not be limited to, the following; watering, mulching, pruning, fertilizing, weeding, pest control, mowing, and replacing plant materials. All cost of maintenance shall be borne by the Municipality.

5. Any changes, revisions, or alterations to the landscaping shall require prior review and approval by the Department's 13th Division Engineer prior to the work being initiated.

6. The Municipality agrees to continually maintain all plantings in accordance with generally accepted horticultural practices. The Department shall have the right to periodically inspect the maintenance practices being utilized by the Municipality.

7. If the Department determines that the Municipality is not properly maintaining the plantings, the Department shall notify the Municipality. If
proper maintenance is not performed by the Municipality within a reasonable time after notification, the Municipality agrees that the Department shall perform the necessary maintenance, or at the Department's option, shall return the planted area to a natural condition (i.e.seeded and mulched, etc.). If is further agreed that the costs of the restorations shall be reimbursed to the Department by the Municipality. Reimbursement to the Department shall be made in one final payment within sixty (60) days of invoicing by the Department. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147.86.23 and G.S. 105-241.1.

8. If the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipality hereby authorizes the Department to withhold so much of the municipality's share of funds allocated to said Municipality by the Department, at no expense to the Department.

9. In the event these plantings require relocation or removal for highway construction, re-construction, maintenance or safety, the Municipality shall be given the option to remove or

relocate any plantings it considers salvageable immediately upon notification by the Department, at no expense to the Department.

10. The Department shall not be responsible for any damage to the Plantings which may be done by third parties.

11. Provisions for routine mowing shall be handled under separate agreement between the Department's 13th Division Engineer and the Municipality.

12. In the event any additional right or way or construction easement is required for the plantings, the Municipality shall provide said additional right of way/or easement at no expense or liability whatsoever to the Department.

13. The Municipality, at no expense to the Department, shall be responsible for the relocation and adjustment of all utilities in conflict with the landscape planting.

14. The Municipality, at no expense to the Department, shall provide traffic control during landscape maintenance procedures as required by the latest revision of the "Manual for Uniform Traffic Control Devices."

IN WITNESS WHEREOF, this Agreement has been executed , in duplicate, this day and year heretofore set out, on the part of the Department and the Municipality by the attached certified copy of Resolution, Ordinance or Charter Provision, as the case may be.

L.S.ATTEST: CITY OF MARION

Clerk BY: Mayor

(MUNICIPAL SEAL)

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

Municipal Finance Officer

Federal Tax Identification Number

City of Marion

DEPARTMENT OF TRANSPORTATION

BY: STATE HIGHWAY ADMINISTRATION

APPROVED AS TO FORM:

ASSISTANT ATTORNEY GENERAL

RESOLUTION
CITY OF MARION

WHEREAS, the Department and the City of Marion have agreed to the installation of certain landscape plantings along Proposed improvement project (SR 1001) Sugar Hill Road from Rankin Drive (SR 1323) to US 221 Bypass in McDowell County; and ,

WHEREAS, the Department and the City of Marion have agreed that the Department shall be responsible for the preparation of the landscape plans and specifications, and providing and installing the plantings; and,

WHEREAS, the Department shall maintain said planting areas for a period of one (1) calendar year, at no expense to the Municipality; and

WHEREAS, the City of Marion has agreed to assume all maintenance and replacement plantings of the landscaped areas at the end of the one (1) year establishment period, at no expense to the Department.

NOW, THEREFORE, BE IT RESOLVED that Project E-2973 M, McDowell County, is hereby formally approved by the City Council of the City of Marion and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

WITNESS, my hand and the official seal of the City of Marion on this the 23rd day of October,.2001.

(SEAL)

_____
CLERK
CITY OF MARION
NORTH CAROLINA

Resolution Number: R-01-10-23-1

ORDINANCE – AUTHORIZING CRIMINAL HISTORY CHECK – CITY POSITIONS:
The City Manager advised that he had become aware that the City could not perform criminal history checks on prospective City employees, using the NCIC/SBI records at the Police Department. Discussions with the State, other cities, and the North Carolina League of Municipalities had indicated that the City could access North Carolina DCI/SBI criminal records for this purpose, with the passage of an ordinance by City Council authorizing such checks to be performed, and the consent of the North Carolina Attorney General's office. Councilman Edwards noted that such an ordinance would not address the use of national criminal records, and would therefore not be extremely useful, since a prospective employee could have a long criminal record in other States that would not be shown in the SBI information. Councilman Edwards asked if the North Carolina Attorney General's office had indicated whether this ordinance would allow the use of NCIC information, or whether there was any other method to access this information. Police Chief Benware sated that the Attorney General's office has indicated verbally that NCIC information could not be accessed for non law enforcement purposes. Councilman Edwards asked that the City Manager seek a written opinion on this matter from the Attorney General, so that it could be shown that the City has done everything possible to ensure that adequate criminal background checks were performed on new City employees.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to direct the City Manager to seek a written opinion from the Attorney General regarding the use of NCIC information for criminal history checks for final applicants for City positions.

Upon a motion by Councilman Little, seconded by Councilman Edwards Council voted unanimously to adopt the following Ordinance:

ORDINANCE

AUTHORIZING CRIMINAL HISTORY CHECKS ON ALL FINAL APPLICANTS APPLYING FOR POSITIONS WITH THE CITY DEFINED AS FULL AND PART TIME REGULAR EMPLOYMENT

WHEREAS, North Carolina General Statue Section 160A-164 authorizes municipal governments to establish personnel rules by ordinance or policy; and

WHEREAS, the North Carolina General Assembly has enacted various laws mandating that employers conduct criminal history checks on certain employment positions including but not limited to: N.C. Gen. Stat. Sec. 110-90.2, relating to child care developmental disabilities and Chapter 122C of the North Carolina General Statutes relating to substance abuse authorities; and

WHEREAS, the City's Personnel Department has investigated the feasibility of conducting statewide criminal history checks on all final applicants for regular full and part-time City positions; and

WHEREAS, it is in the City's best interest to adopt an ordinance authorizing state-wide criminal history checks on all final applicants for regular full and part time City positions, and

WHEREAS, a copy of the foregoing Ordinance has been provided to the North Carolina Attorney General's Office and approved by same;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARION THAT:

Section 1. That Article IV, Division 1., of Chapter 2 of the Code of ordinances of the City of Marion be amended by adding Section 2-54, to read as follows:

2-54. Criminal History Checks

In order to protect the citizens of Marion and their properties, the procedures herein are established to provide for fingerprinting and criminal history checks on all final applicants for regular full and part time positions in the Marion City Government. Subject to subsection (c) of this section, employment with the City of Marion may be denied for those persons convicted of any crime against a person, or crimes against property where intent is an element, or any drug or gambling related offense.

(a) The City Manager, or designee, shall conduct an investigation of any final candidate for a regular full or part time position with the City of Marion government and it
shall be a precondition of employment that an applicant for

such a position shall upon requests, provide fingerprints and all other necessary personal identifications including a birth certificate, social security number and driver's license, if available, so that the City's City Manager, or designee, may cause a thorough search to be made of local and state
criminal records to determine if the history of criminal convictions or the crimes enumerated above by use of the Police Information Network (PIN).
(b) The Marion Police Department, shall provide the findings
from the use of the PIN to the City manager or designee, provided that all necessary agreement s with the State
Bureau of Investigation Division of Criminal Information
have been executed.

(c) An evaluation of any crime for purposes of employment will take into account the nature and the circumstances of the offense, the time frame of the offense as it relates to the essential job functions for the position applied.
(d) No action to deny employment will be taken until the Police Department confirms the identity of the applicant's fingerprints to the State Bureau of Investigation and a certified true copy of the public document is retrieved.

Section 2. That this Ordinance shall become effective upon adoption.

Adopted this the 23rd day of October, 2001.

A. Everette Clark, Mayor

Attest:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-01-10-23-1

APPROVAL OF LONGEVITY PAY: The City Manager recommended that Council approve employee longevity checks based on City Policy.
The policy provides one days pay for each year of uninterrupted, full time employment up to five years, and one dollar per month thereafter. Funds have been appropriated in the City's 2001-02 budget for the longevity payments.
Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the longevity payments for City employees.

FIRE CHIEF SELECTION PROCESS: The City Manager reported that he was sorry to receive the notice from Fire Chief Tom Milligan of his planned retirement, effective April 1, 2002. The City Manager suggested that advertising begin immediately for this position and presented the following proposed job notice for the Fire Chief position:

Fire Chief – Marion. Pop. 5,000+. Performs responsible managerial, administrative and supervisory work in directing the activities of paid and volunteer personnel for the City's Fire Department, which covers the City and a five mile Fire District. Current chief retiring after 30 years service on April 1, 2002. Department consists of 4 paid and 30 volunteer personnel. Responsible for planning, organizing and directing a variety of department activities including fire fighting, fire inspection, training public education and fire prevention in protecting the lives and property of the citizens of the City and Fire District. In addition, the Fire Chief serves as the City's Safety Director and coordinates OSHA compliance and chairs the City's Safety Committee. Requires thorough knowledge of principles and practices of fire service management, modern fire fighting practices and methods, NFPA codes and standards, laws and ordinances pertaining to fire prevention and control. Must have the ability to communicate effectively in writing and orally, develop and manage departmental budget, to deal tactfully and firmly with the public, and to establish and maintain effective working relationships. Department head level position reporting to the City Manager. Prefer candidate with completion of advance course and seminars in fire administration and fire science and considerable supervisory experience. Marion is a growing City located on I-40 35 miles east of Asheville. Salary will be commensurate with qualifications. To apply, please send resume with cover letter, references and salary history to: City of Marion, Attn: Bob Boyette, City Manager, P.O. Drawer 700, Marion, NC 28752. Applications accepted until 5:00 P.M. on December 31, 2001. For further information, please call the City until 5:00 P.M. on December 31, 2001. For further

information, please call the City Manager at (828)652-3551. The City of Marion is an Equal Opportunity Employer.

The City Manager advised that he would recommend advertising immediately using local and regional newspapers, the League Letter and Southern City.

It was the consensus of Council to approve the City Manager's recommendation.

Mr. Terry Depoyster of the Marion Volunteer Fire Department, was present for this meeting and advised that he was willing to assist Council in any way he could with this process.

DISCUSSION – CITY PROPERTY – BLUE RIDGE STREET: The City Manager advised that the City has a small parcel of property, approximately 6,000+/- square feet in size, located on Blue Ridge Street near the intersection with West Henderson Street. This property is a residual piece that the City inherited when right of way's was acquired some years ago in this location. This property is not being used by the City. However due to citizen complaints, the City is having to clean and maintain the property The City manager advised that before a considerable amount of time and money is spent, Council may wish to consider weather they want to keep this property. He noted that the North Carolina Department of Transportation owned two lots behind the City's property.

A discussion followed.

Council suggested that the City Manager contact the North Carolina Department of Transportation regarding adjacent property they own and if they would be willing to give the City their property, in order to form a building lot that could be sold.

DISCUSSION – CITY - MINI PARK: The City Manager advised that there is no property at this time available for a mini park in East Marion or Clinchfield. He is still working with Ms. Betty Stock regarding her property on Granby Street in Cross Mill.

The City Manager advised that the City may need to request help from the communities to identify and acquire property for mini parks, and suggested that neighborhood meetings could be held.

A discussion followed.

After the first of the year, City Council Meetings will be scheduled in various communities to discuss park and recreation issues, among other matters. Council asked that a notice be placed on the City Channel, stating that the City is looking for property for mini-parks in East Marion and Clinchfield.

CITY COUNCIL - MEETING SCHEDULE: The City Manager advised that City Council will meet once in November on the 20th, and once in December on the 11th. City Council's Christmas Dinner will follow the December 11th meeting and will be held at Carolina Chocolatier's in downtown Marion.

DISTRIBUTION OF LEAF BAGS: The City Manager advised that in past years, a limited amount of free leaf bags have been given out to City residents in October, November and December. These bags are picked up at the Public Works Office.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to continue the distribution of leaf bags to City Residents.

HOLIDAY PARADE: The City Manager advised that this year's

Christmas Parade will be held on Sunday, November 18, 2001. As in year's past, Council is invited to ride in the Parade.

The City Manager also advised that, as in the past, City Employees would like to have an entry in this year's Christmas Parade. The cost should run less than $300.00.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to authorize the float entry by City Employees.

DISCUSSION – FLU SHOTS: The City Manager advised that several City Employees have asked that the City provide employees with flu shots as they have in the past, especially given recent anthrax scares. shots should be available through the Health Department within a few weeks for a cost of only a few dollars.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to purchase these shots for City Employees through the McDowell County Health Department when they are available.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

WESTERN NORTH CAROLINA ELECTED OFFICIALS CAUCUS:
Mayor Clark gave a report on an initiative he and Caldwell County Commission Chair Herb Green had been working on, to create a caucus of local elected officials in Western North Carolina, to lobby the General Assembly on matters of interest, and to push for equitable funding to the region and equitable representation on State boards and commissions in Western North Carolina. The identified target area is a 26 County area, comprising COG regions A-E, and containing 95 municipalities. Meetings have been held or will be held in all five COG regions by early November to discuss this idea The plan is to have a 52 member board, composed of one member of each County Commission, and a person representing the municipalities in each county.

Council members expressed their support for this concept.

CREPE MYRTLES: Councilman Cuthbertson noted that a crepe myrtle in front of the house burned this summer on South Main Street had been destroyed and needs to be replaced with one of similar size. The City Manager stated he would see that this work was done.

RUTHERFORD ROAD ANNEXATION: Councilman Cuthbertson suggested that the City Manager contact Bill Kehler to see if he would be willing to voluntarily annex his property on Rutherford Road between the existing City Limits and the newly annexed Marion Manufacturing Credit Union property. Council agreed by consensus to direct the City Manager to contact Mr. Kehler.

TRAFFIC SIGNALS: Councilman Owenby noted that the traffic signals at North Main and Logan Street, and at the intersection of North Main Street at Marion City Square had been flashing until at least 7:45 a.m. the past few

mornings. Police Chief Benware noted that these lights should not flash past 7:00 A.M. at the latest. Mayor Clark noted that the and the City Manager would be meeting with the DOT Division Engineer Dan Martin and the Board of Transportation member, Alan Thornburg, and could present this matter.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(3) to discuss legal matters in consultation with the City Attorney.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go back into Regular Session. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to instruct the City Attorney to file a civil action against Brown Utility Company to recover liquidated damages in the amount of $97,196.61 resulting from the influent Pump Station upgrade at the Corpening Creek Wastewater Treatment Plant in 1998-1999.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, November 20, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Harriett Thomas & April Westmoreland, Associates of Johnson, Price & Sprinkle; Patricia Tyo, 175 Spring Street, Marion, N.C. 28752; Hope Franklin, 186 Spring Street, Marion, N.C. 28752; James Lindsey, Marion, N.C. 28752; Pastor Carol Davis, Marion, N.C. 28752; Philip Tate, Marion, N.C. 28752; Mr. & Mrs. Eddie Cranford, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED MY MAYOR CLARK: Mayor A. Everette Clark selected the Citizen of the Month for November.

The following information was presented about November's Citizen of the Month:

JAMES E. LINDSEY

Mr. Lindsey has been a barber for a total of 41 years and has operated the House of James barbershop for 40 years at the same location on Sugar Hill Road.

He is married to the Reverend Carol A. Davis, who was present for this honor.

He attended Mountain View School and is a member of the Addie's Chapel United Methodist Church. He is a supporter and member of the McDowell Chamber of Commerce and has sets an example every day for persons around him, especially the youth.

Mr. Lindsey will be retiring in July, however, he will continue to work some along side his son Antoine.

Council members also had kind words to share about Mr. Lindsey.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – October 23, 2001

B. Resolution – Releasing City of Marion's share of state economic and Community Development Funding to Isothermal Planning and Development Commission

RESOLUTION
CITY OF MARION

WHEREAS, in North Carolina the Lead Regional Organizations, as voluntary organizations serving municipal and county governments, have established productive working relationships with the cities and counties across this state; and

WHEREAS, the General Assembly recognized this need through the appropriation of $935,000 for Fiscal year 2001-2002 to help the Lead Regional Organizations assist local governments with grant applications, economic development, community development, and to support local industrial development activities and other activities as deemed appropriate by their local governments; and

WHEREAS, these funds are not intended to be used for payment of member dues or assessments to a Lead Regional Organization or to supplant funds appropriated by the member governments; and

WHEREAS, in Region C funds in the amount of $55,000 will be used to assist local governments with state and federal grant applications in community and economic development, provide various support activities to industrial development in the region, develop and expand database essential to community and economic development, provide technical assistance to local governments in planning and growth management issues, assist local governments in resolving solid waste issues, provide staff and other assistance to the Region C Certified Development Corporation, and other activities as requested by local governments and authorized by the Isothermal Planning and Development Commission.

NOW, THEREFORE BE IT RESOLVED that the City of Marion requests the release of it's share of these funds ($950.22) to the Isothermal Planning and Development Commission at the earliest possible time in accordance with the provisions of state law.

ADOPTED this 20th day of November, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

Resolution #: R-01-11-20-1

C. Contributions – To the Following Volunteer Firefighters for working shifts for paid firefighters (as included in 2001-02 budget)

Donald Anderson	$1,701.00
Durwood Creson	1,568.00
Terry Depoyster	1,505.00
Bruce Edwards	1,050.00
Michael Gibson	196.00
Jim Neal	259.00
Cameron Taylor	721.00

D. Waste Water Plant – Add Wastewater Lab Technician/Operator to Pay/Plan, a position authorized by Council at October 23, 2001 meeting:

CLASS CODE 800-05

CLASS TITLE: Wastewater Plant Laboratory Technician/Operator

PURPOSE OF CLASS: Performs responsible skilled work assisting in the operation and maintenance of equipment and facilities in the wastewater treatment plants, in operating the wastewater plant laboratory and performing required testing, and in administering pretreatment program.

PRIMARY TASKS:

***Mixes chemicals in correct proportion, changes chemical cylinders and connects to chemical feed devices, orders chemicals when needed to maintain required inventory.**

***Assist plant Superintendent, ORC, or Assistant ORC as required to perform testing and analysis duties in wastewater plant laboratory.**

***Participates in regular preventive maintenance inspections such as checking and lubricating bearings, gear boxes, checking and replacing filters, replacing a wide variety of parts and other preventive maintenance activities.**

*Performs a wide variety of janitorial tasks such as cleaning floors, bathrooms, walls, windows; empties trash, changes light bulbs.

*Gathers tools and materials for use by skilled workers; keeps tools and equipment organized.

*Collects water and wastewater samples from various points in the system.

*Mows around pump stations and around plant property.

*Checks pump stations.

* Perform duties required to administer pretreatment program, including recordkeeping and inspections.

*Maintains records of maintenance work.

*Performs related duties as required.

*Operates plant when scheduled.

EQUIPMENT OPERATED: Laboratory equipment, mechanical tools, and a full range of equipment associated with wastewater treatment, and other assigned equipment as required.

REPORTING RELATIONSHIP: This position reports to the Wastewater Plant Superintendent.

WORKING CONDITIONS: **Must be able to physically perform the basic life operational functions of climbing, balancing, stooping, kneeling, crouching, crawling, standing, reaching, walking, pushing, pulling, lifting, fingering, grasping, feeling, hearing, and repetitive motions. Must be able to perform heavy work exerting up to 100 pounds of force occasionally; 50 pounds of force frequently; and 20 pounds of force constantly. Must possess the visual acuity to operate machines and equipment including close inspection of moving and small parts, using measurement devices, assembly and fabrication of parts, and keeping records.**

QUALIFICATIONS OF CLASS:

Education: **Graduation from an accredited high school.**

Experience: Some experience in wastewater treatment and in the operation of a wastewater plant laboratory, or an equivalent combination of education and experience that provides the required knowledge, skills and abilities.

Knowledge, Skills and Abilities:

Knowledge of wastewater plant laboratory procedures and operations.

Knowledge of chemistry.

Some knowledge of the maintenance of the mechanical, hydraulic, and electrical components of water and/or wastewater treatment plants and pumping stations.

Working knowledge of the occupational hazards and necessary safety precautions of the work.

Working knowledge of the tools, parts, and methods associated with diagnosing, repairing, and maintaining equipment.

Skill in the use and care of tools of the trade.

Ability to establish and maintain effective working relationships with co-workers and supervisor.

Ability to follow oral and written instructions.

Ability to keep simple records.

Special Requirements: **Certification at Grade I by the State of North Carolina for wastewater treatment within one year of initial employment. Possession of valid North Carolina driver's license. May require possession of commercial driver's license.**

Special Note: This generic class specification gives a sound overview of the job class, its essential functions (indicated by an *), and necessary job requirements. However, for each individual position assigned to this class, there is available a completed job questionnaire with a physical abilities checklist providing lengthy details about the one specific position. These documents should be reviewed before initiating a selection process. They can provide additional detailed information on which to base various personnel actions and can assist management in making legal and defensible personnel decisions.

CITY OF MARION
ALLOCATION OF POSITION CLASSES
TO SALARY GRADES

The only change approved was for the assignment of the Wastewater Plant Lab Technician/Operator to Salary Grade 10.

SALARY GRADE	SALARY RANGE	POSITION TITLE
1	$12,958-$18,304	-
2	$13,264-$19,240	-
3	$14,310-$20,218	-
4	$15,038-$21,237	General Maintenance Worker
5	$15,808-$22,318	-
6	$16,598-$23,462	General Maintenance Worker II
7	$17,430-$24,648	Administrative Secretary I Account/Records Clerk Billing and Collections Clerk Equipment Operator Police Telecommunicator Meter Reader
8	$18,304-$25,896	Warehouse Storekeeper
9	$19,240-$27,206	Administrative Secretary II Accounting Assistant Public Works Crew Leader Fleet Mechanic Wastewater Plant Operator Water Plant Operator
10	$20,218-$28,600	Tax Collector Wastewater Plant Laboratory Technician/Operator Police Officer I Fire Suppression Officer
11	$21,237-$30,035	Police Officer II Wastewater Plant Maintenance Technician/ Operator
12	$22,318-$31,554	Police Detective Police Sergeant Purchasing Agent Wastewater Plant Assistant ORC
13	$23,462-$33,155	Police Lieutenant Sanitation Supervisor Street Superintendent Chief Fleet Mechanic
14	$24,648-$34,840	-

15	$27,206-$38,459	City Planner Building Inspector Grants Administrator/ Public Information Officer
16	$27,206-$38,459	Personnel Officer Water Distribution Superintendent
17	$28,600-$40,394	-
18	$30,035-$42,453	Finance Officer Fire Chief Water Plant Superintendent Wastewater Plant Superintendent
19	$31,554-$44,595	-
20	$33,155-$46,862	-
21	$34,840-$49,234	Police Chief Public Works Director
22	$36,608-$51,730	-
23	$38,459-$54,350	-
24	$40,394-$57,096	-
25	$42,453-$59,987	-
26	$44,595-$63,024	-
27	$46,862-$66,227	-
28	$49,234-$69,597	-
29	$51,730-$73,133	-
30	$54,350-$76,835	-

PUBLIC HEARING – REZONING – STATE STREET: Mayor Clark opened the Public Hearing.

The City Manager advised that the McDowell County Rescue Squad is requesting that property behind the present Rescue Squad on State Street be rezoned from R-2 to C-2. This zoning classification would allow for their expansion, but would also allow eighty or so more uses allowed in C-1 and C-2 that are not allowed in R-2.

City Planner Suzy Davis reported that the Planning Board unanimously recommends the denial of this request, and noted that the Planning Board suggested that the addition of emergency services facilities as a special exception in the R-2 district might be a better way to handle this request, to limit the number of uses at the location.

There is significant neighborhood opposition in the form of a petition. Several citizens was present for this Public Hearing. Ms. Patricia Tyler and Hope Franklin were among those present and advised that they were not totally against the Rescue Squad's request contingent upon them complying with their plans not to clear cut this property and that their neighborhood remain as is, a residential neighborhood. The City Manager noted that conditions could not be placed on a rezoning approval.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Planning Board and deny this request.

PUBLIC HEARING – ESTABLISH ZONING – RUTHERFORD ROAD: Mayor Clark opened the Public Hearing.

The City Manager advised that a new Marion Manufacturing Credit Union is being built on Rutherford Road. This property was annexed into the city in October. The property owner is requesting that this parcel be zoned C-2.

City Planner Suzy Davis advised that the Planning Board unanimously recommended that the property zoned C-2, since it will be a commercial use, and adjacent properties on Rutherford Road are zoned R-2.

There were no citizens present opposing this request.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to accept the recommendation of the Planning Board and to zone the 1.6 acre parcel C-2 located on Rutherford Road.

PUBLIC HEARING – ESTABLISH ZONING – CARRIE STREET: Mayor Clark opened the Public Hearing.

The City Manager advised that Mr. Eugene Holland owns property located on Carrie Street, consisting of 0.95 acres and containing one house and one mobile home. This property was annexed into the city in October. The property owner is requesting that this parcel be zoned R-2.

City Planner Suzy Davis advised that the Planning Board unanimously recommended that the property zoned R-2, since it will be a commercial use, and some adjacent multifamily residential properties are zoned R-2.

There were no citizens present opposing this request.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted to accept the recommendation of the Planning Board and to zone the 0.95 acre parcel R-2 located on Carrie Street.

APPEAL OF CIVIL CITATION: The City Manager advised that Ms Linda Jones of 118 South McDowell Street received a civil citation for her dog being unrestrained in the amount of $50.00. This same dog was removed from the premises several weeks ago when it bit a Sheriff's Deputy. The dog had bit at least one person prior to the Deputy being bitten.

The dog has since been destroyed with permission of the owner.

Ms. Jones is requesting that the Citation be waived, but is not denying the facts of the case. Ms. Jones was not present at the meeting.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to deny this request.

PRESENTATION OF 2000-2001 AUDIT REPORT: Ms. Harriette Thomas and April Westmoreland reviewed with Council the City Audit for the year ending June 2001. Ms. Thomas advised that the audit was an unqualified, or clean, opinion, the best opinion possible for a governmental audit. She reported that the City of Marion is in good financial condition and that the tax collection percent is much better than last year, having reason from 92 percent collection to almost 96 percent. Ms. Thomas stressed the need for the City to continue to seek to collect or write off closed water and sewer accounts, and to continued to seek to improve the tax collection percentage. Ms. Thomas also gave an overview of the new reporting requirements that will take effect for the City in 2003-2004, as a result of directive 34 from the Governmental Accounting Standards Board.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the audit as presented.

TREE COMMITTEE RECOMMENDATIONS: Mr. Phil Tate, Chairman of the City of Marion Tree Committee was present for this meeting and presented Council with the following information and two recommendations:

At their last meeting, Tree Committee Members voted unanimously to recommend that a Dogwood Tree be planted at City Hall, in Honor of J. Earl Daniels, with a plaque commemorating his twenty eight years of dedicated service to the City of Marion. Committee Members anticipate having a ceremony similar to the one held to honor Geneva Blanton. They will need permission to proceed with planning this ceremony.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request.

Mr. Tate also advised that Tree Committee Members voted unanimously to recommend that the Bradford Pear Trees on West Henderson Street be removed and replaced with dark red single stem Crape Myrtle's.

A brief discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to remove and replace the Bradford Pear Trees on West Henderson. This project will be done in house and coordinated by the Director of Public Works.

REQUEST CITY – ASSUME OWNERSHIP PERFORMANCE RAIL: The City Manager advised that County Officials are requesting that the City assume ownership and maintenance of Performance Rail Water and Sewer Lines and Pump Stations.

A discussion followed.

The City Manager stated that pursuant to the recommendation of City Engineers, he would recommend that the City assume ownership approximately 60 days after the completion of the punch list.

The punch list is as follows:

1. Seed around pump station site.
2. Provide initial stock of CL2 - Specification Section 11251 – Paragraph 2.06 (A) (2)
3. Install vent pipe on all air release valves in accordance with supplemental drawings.
4. Reseed around I-40
5. Provide record drawings
6. Provide generator O&M manuals
7. Rework invert of manhole nearest pump station
8. Rework I-40 access fence
9. Replace dry-pep pump impellers

While the punch list was not completed until October 26, the City has not seen any problems arising from the pump station since late September, when air release valves were installed, allowing the pump station to operate at its design capacity. The Public Works Director and Wastewater Plant Superintendent are satisfied with the work done to the pump station and the way the pump station has been operating. This fact, along with the need to connect Haldex/Midland to water and sewer quickly might dictate immediate acceptance by the City.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously for the City to assume ownership of the Performance Rail Water and Sewer Lines and Pump Station immediately.

ELECTION ABSTRACT - 2001: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to accept the 2001 City Election Abstract of

Canvassing submitted by the McDowell County Board of Elections. The abstract of canvassing is filed in the legal documents at City Hall.

The votes were as follows:

Candidate	# of Votes
A. Everette Clark	200
Lloyd Cuthbertson	177
Mike Edwards	184
Steve Little	188

BARNES ROAD SEWER: The City Manager advised that McDowell County is requesting that the City extend sewer from the Spectrum site to a twelve acre site being targeted for small scale industrial development on the south side of Barnes Road. McGill's estimate to run sewer to this site, including contingencies, is just over $39,000. If $1 million of tax base is generated off this site, it would take 7.1 years for the City to realize a full return of the investment (less if the water and sewer tap fees, cost recovery charges, and revenues are factored in). The County is willing to have the property annexed if sewer is extended. Water service is currently available to the site.

No.	Description	Quan.	Unit	Unit Price	Extension
1	Mobilization for sewer system (3% Maximum)	1	LS	$1,040.25	$1,040
2	8" DIP Sanitary Sewer Line	710	LF	$25.00	$17,750
3	20" Steel Encasement, Installed by bore & Jack	100	LF	$100.00	$11,000
4	4' Dia. Precast Concrete Sewer Manhole, Complete	2	EA	$1,100.00	$3,300
5	Rock Excavation in Sewer Line Trench	25	CY	$50.00	$1,250
6	Select Backfill	50	CY	$10.00	$500
7	Washed Stone in Trench	25	TN	$15.00	$375
8	Connect Sewer to Existing Manhole	1	EA	$500.00	$500
	SUBTOTAL SEWER SYSTEM				$35,715
	10% CONTINGENCY				$3,572
	TOTAL ESTIMATE				$39,287

A discussion followed.

Council members suggested that they would be more comfortable considering this request, if an annexation petition from the County for the entire 12 acres was submitted, and there was some commitment that construction would take place. The City Manager stated he would work with the County and the prospective industry to build on the site, ALL Construction, to obtain the annexation petition and commitment of construction before the request was considered again by Council.

No action was taken.

ANNEXATION RESOLUTION OF CONSIDERATION: The City Manager reported that the City Council typically approved a Resolution of Consideration for Annexation approximately every two years, as allowed by law, to keep open the option of pursuing involuntary annexation without having to delay the effective date one year after the adoption of the annexation ordinance. He noted that the area described in the resolution was broad, but was unchanged from the last resolution of consideration. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

RESOLUTION IDENTIFYING THE AREA DESCRIBED HEREIN AS BEING UNDER CONSIDERATION FOR ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion:

SECTION 1. That pursuant to G.S. 160A-37 (1), the following described areas are hereby identified as being under consideration for future annexation by the City of Marion under the provisions of Part 2, Article 4A of Chapter 160A of the General Statutes of North Carolina.

The description below is in reference to the map which will be certified as the actual area under consideration. This map will be placed on display in the Office of the City Planner and the City Clerk.

This Resolution of Consideration will include these described areas which are continuous to the City Limits of the City of Marion on the 20th day of November 2001.

Areas under consideration will include all properties which are either contiguous to, have access to, or are in development which are directly connected to the streets listed as boundaries. This is to be understood unless otherwise stated. This description will include all properties which lie between these listed boundaries and the area currently under consideration as noted above.

DESCRIPTION OF AREAS UNDER CONSIDERATION

BEGINNING at a point located at the intersection of U.S. Highway 70 East and the center of the bridge over Southern Railway. Thence in a straight line traveling in a Southerly direction, to the center of the bridge at the intersection of Fairview Road (SR 1741) and Interstate 40. Thence in a straight line, in a Southerly direction, to a point 2600 feet South of Interstate 40 located on N.C. Highway 226 South. Thence following a line 2600 feet South of and parallel to Interstate 40 in a Westerly direction, to a point where said line intersects with Marler Road (SR 1257). Thence following Marler Road (SR 1257) in a Northerly direction to its intersection with Zion Hill Road (SR 1137). Thence following in a straight line, in a Northerly direction, to a point on Interstate 40 located 1300 feet West of Nix Creek Road (SR 1911). Thence following a line 1300 feet West of and parallel to Nix Creek Road (SR1311) in a Northwesterly direction to a point located 650 feet to the end of Waycaster Road (SR 1319). Thence in a straight line Northerly direction to a point located 650 feet West of the end of Clear Creek Road (SR 1422). Thence following the line 650 feet North of and parallel to Clear Creek Road (SR 1422) in a Easterly direction to a point located 650 feet West of Lake Tahoma Road (N.C. Highway 80. Then following the line 650 feet West of and parallel to Lake Tahoma Road (N.C. Highway 80) to a point 650 feet West of the intersection of Lake Tahoma Road (N.C. Highway 80) and Tom's Creek Road (SR 1434). Thence following a line 650 feet West of and parallel to Tom's Creek Road (SR 1434) in a Northerly and Easterly direction to a point located on U.S. 221 North 650 feet North of the intersection of U.S. 221 North to Tom's Creek Road (SR 1434). Then in a straight line in an Easterly direction to the intersection of Cannon Road (SR 1553) and CSXT Railroad. Thence in a straight line in a Southeasterly direction to the intersection of Hankins Road (SR 1502) and Yancey Road (SR 1504). Thence in a straight line in a Southeasterly direction to the intersection of Hankins Road (SR 1501) and Yancey Road (SR 1504). Thence in a straight line in a Southeasterly direction to the point of BEGINNING.

SECTION 2. Owners of agricultural land, horticultural land and forestland within /the area/(s) under consideration for annexation as described in Section 1 above are hereby notified that they may have rights to a delayed effective date of annexation. G.S. 1604A-49 (f1) and (f2) provides that land being taxed at present-use value qualifies for delayed annexation, and land that is eligible for present use value taxation but which has not been in actual production for the time period required by G.S. 105-277.3 may qualify for delayed annexation by making application to the McDowell County Tax Assessor for certification. For qualified tracts, the annexation will not become effective for most purposes until the last day of the month in which the tract or part thereof becomes ineligible for present use value

classification under G.S. 105277.4 or no longer meets the requirements of G.S. 160A-49 (f1) and (f2). Until annexation of a tract becomes effective, the tract will not be taxed by the City and will not be entitled to services from the City.

SECTION 3. That a copy of this Resolution shall be filed with the Marion City Council.

ADOPTED this the 20th day of November, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

GLENWOOD SCHOOL SEWER PROJECT: The City Manager advised that the City Engineer has completed their initial review of the Glenwood School Sewer Line and is recommending that items on the following punch list be completed:

1. Manholes 1 and 4 have minor deviations in the inverts (for purposes of this report, the manholes are numbered from the pcp of the hill to the downhill PRP pump station manhole). Four of the rings (#4, 5,6 and 9) were offset from the manhole sections and several appeared void of any grout around the rings. This needs to be corrected.
2. Two of the manholes (#8 and 9) need sealer between the manhole and ring, to prevent water from seeping into these particular manholes.
3. Four of the shallower manholes (#5, 6, 9 and 10) need steps for access into the manholes. manhole 7 had the bottom step located 180 degrees from the top two steps.
4. The manhole where the 2.5 inch force main tied in, had an inside drop. The bracket within the manhole did not appear to be stainless steel. This bracket needs to be replaced with a stainless steel bracket.
5. Near the lower end, closest to the FRP pump station tie in point, a Fernco type coupling was installed without properly butting the two pieces of pipe together, which offers an additional place where an abnormal wastewater flow could become an obstruction.

The City Engineer is also recommending that the following tests need to be performed by McDowell County Schools to further examine deficiencies noted in a video camera survey of the sewer line. When these tests are performed, City personnel need to be present.

1. A mandrel test should be performed on the line to verify the roundness of the inside diameter. The video camera survey indicated that the line appeared to be egg shaped in places.
2. A lamp test should be performed on the lien to help determine the vertical and horizontal trueness of the line segments between manholes, since some sags in the line were noted during the camera inspection.
3. After the mandrel and lamp tests, the lines segments between manholes should be pneumatically tested to determine why water is present in the line even when the school pumps are not running. This is indicative of infiltration into the sewer line.

The City Manager advised that the Utility Committee had reviewed these recommendations and felt that they should be presented to the School Board with the suggestion that these items be completed prior to further consideration of the City accepting the Glenwood sewer line.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously that items on the punch list be completed, that the tests listed on the punch list sheet be completed, at the School's expense, and that the City Manager forward the punch list and additional tests that need to be performed, to the McDowell County School Superintendent.

SELECT INTERVIEW DATE – ARCHITECT – MARION POLICE DEPARTMENT RENOVATIONS: The City Manager advised that the Police Committee met a few weeks ago and is recommending that the ten proposals for the Police Department expansion be narrowed to three, for interviews with the whole City Council. The three firms are as follows:

Stewart Cooper Newell of Gastonia
Atkinson Dyer Watson of Charlotte
Moser Mayer Phoenix of Charlotte

A discussion followed.

Council agreed to hold a special meeting to interview the above three Architect's on December 13, 2001 from 2:00 P.M. – 5:00 P.M.

REQUEST – PARKING SIGNS: The City Manager advised that the Downtown Business Association Board had voted at their meeting on November 13th to recommend that the City place directional signs on South Main and Henderson Streets to direct motorists to the City's all-day parking lots.

A discussion followed. Council members requested examples of what the sign would look like. Councilman Edwards noted that if the sign was not clear in its meaning, people would not understand it.

It was decided to hold this item until the first meeting in January. The City Manager stated he and the Public Works Director would discuss the request and come up with options for the signs, and present pictures of such signs at the first meeting in January.

REQUEST – HOUSE BURNING – WEST WILHEMENIA STREET – MARION FIRE DEPARTMENT: The City Manager advised that asbestos has been removed from two houses located on Wilhemenia Street. The Marion Fire Department is requesting that they be allowed to burn these two structures for fire training. Staff has reviewed the location and feels that the burning could be done without endangering surrounding properties or our water system. The Public Works Director advised that the house burning should not cause any problems with water lines or fire hydrants in the area. Once the houses are burned, a contractor will be lined up to clear the sites. The City Manager noted that the burning would be controlled by the City, not by McDowell Tech.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to allow these two properties to be burned for training and properly removed.

MUNICIPAL AGREEMENT – TRAIN DEPOT RENOVATION – DEPARTMENT OF TRANSPORTATION: The City Manager presented Council with an Agreement from the Department of Transportation for the renovation of the train depot. The agreement would commit the City to participate in the renovation, at a level of ten percent of the cost, or $178,300. This amount is included in the 2001-02 budget.

The City Manager advised that he has several concerns with the Agreement which he discussed with the Rail Division Staff. The agreement sets a maximum contribution from the State for the project, but if bids come in high, the City can direct that the design be changed or bids resubmitted. In no case will the City be required to spend more than $178,300 on the project, unless Council votes to do so. The State has committed to pay invoices submitted by the City within 30 days. The agreement also allows for the hiring of a project manager. The Rail Division has stated that most cities are looking at hiring someone for 5 to 10 hours a week to manage the project. Council members suggested that the City could work with surrounding cities to perhaps hire a full-time project manager.

The project will begin with the selection of a project architect. The City Manager advised that architectural proposals were due in November 15, but that the Rail Division had not yet forwarded the proposals. The Rail Division was looking for each community to select a committee to review the proposals. Council members directed the City Manager to notify the

Rail Division that the City would need the proposals and that Council would need to review them to determine how the selection process would occur. It was initially agreed that all members of City Council, Bob Boyette, City Manager, Suzy Davis, City Planner and Freddie Killough, DBA Director all be a part of the review team for the Architect.

A discussion followed.

A copy of the Agreement can be found on file in the legal documents at City Hall.

Upon a motion by Councilman Little, seconded by Cuthbertson, Council voted unanimously to approve the Agreement and to adopt the following Resolution.

COPY OF A RESOLUTION PASSED BY THE CITY COUNCIL OF THE CITY OF MARION, NORTH CAROLINA

A motion was made by Councilman Little, seconded by Councilman Cuthbertson for the adoption of the following Resolution and upon being put to a vote, was duly adopted.

WHEREAS, the North Carolina Department of Transportation has included in its Transportation Improvement Plan enhancement monies for improvements to the Marion Train Station within the Municipality; and,

WHEREAS, the Municipality has agreed to assume responsibility for all aspects of said improvements including planning, design and construction of the project subject to the review and approval of the Department and in accordance with state and federal standards; and,

WHEREAS, the Department has agreed to reimburse the Municipality ninety percent (90%) of the costs of the project subject to the conditions set forth in this Agreement.

NOW, THEREFORE, BE IT RESOLVED that Project P-4012, McDowell County and this Agreement are hereby formally approved by the City Council of the Municipality of Marion and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

WITNESS, my hand and the official seal of said Municipality on this the 20th day of November, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DEPARTMENT OF TRANSPORTATION ENHANCEMENT PROGRAM – APPLICATION: The City Manager advised that he and Mayor Clark had met with the Division Engineer Dan Martin and Board of Transportation Member Alan Thornburg. Mr. Martin suggested that if the City had any sidewalk projects, we might wish to consider an enhancement program application. To be eligible, sidewalks must be located on U.S. highways or on streets that serve as a connector form a residential area or school to a U.S. Highway.

Mayor Clark had noted that Fern Avenue could qualify under this definition. The City Manager asked for authorization to submit a proposal to the State for Enhancement Program funding for the Fern Avenue sidewalk.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to authorize the City Manager to apply for the Enhancement Program for the Fern Avenue sidewalk.

GILKEY STREET CURB AND GUTTER: The City Manager advised that Buchanan and Sons has verbally withdrawn from the Gilkey Street Curb and Gutter Project. Their bid for the project was $24,267.00. The City Attorney advised that the City Council should rescind the project award to Buchanan and Sons and award the project to the next low bidder. The City Manager reported that the next low bidder for the project was McCormick Grading and Utilities, in the amount of $26,878.50. McCormick is prepared to complete the project immediately for this price. The City Manager further noted that he and the Public Works Director had agreed that the City needed to develop a stronger contract for construction project such as this one, to provide further protection for the City. He stated he would work with the City Attorney, Public Works Director, and Purchasing Agent to develop proper contract language for future projects.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to rescind the project award to Buchanan and award the project to McCormick Grading and Utilities, in the amount of $26,878.50, a difference of $2,611.50.

TOWN MEETING AND PLANNING SESSION DATES: It was decided to hold the Town Meeting on Thursday, January 24, 2001 at the Marion Community Building and the City of Marion Planning Session on Saturday, January 26, 2001. Council members agreed to invite the same organizations as usually were invited to the Town Meeting. Councilman Edwards suggested that the public be advised that this was a forum for City residents and taxpayers to discuss City related issues, noting that over the past years, most complaints had come from people living outside the City.

FORKLIFT PURCHASE: The City Manager advised that the City's present forklift cannot handle the capacity of water/sewer pipe shipments that we receive. He along with Dan Weeks, Purchasing Agent; Tom Milligan, Fire Chief and Glen Sherlin, Director of Public Works have reviewed the situation and recommend that a new forklift be purchased. The old forklift will have to be kept as the new one will be too large for use in the Warehouse.

The low bid for a new forklift in the size needed would be $18,495.00. The City Manager advised that since the auction had netted the City $22,000 more in revenue than budgeted, the funds were available for the purchase of the forklift. Mayor Clark stated that it made sense to use auction proceeds for this purpose, since the auction involved sale of old equipment, and the forklift involved a need for new equipment.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve the purchase of a new forklift in the amount of $18,495.00.

GEORGIA AVENUE WALL: The City Manager advised that several months ago Council had authorized City Crews to remove the wall on the street right-of-way at 69 Georgia Avenue.

Since that time, the property has been sold and the new owners are asking that a portion of the wall and the stairs be left.

Mr. and Mrs. Randy Goins are the new owners. They are willing to sign a waiver releasing the City from any future liability.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted to allow the wall and stairs to remain contingent upon Mr. & Mrs. Goins signing a waiver to release the City of Marion from any liability.

REQUEST – COMMUNITY BUILDING – MARION CHRISTIAN ACADEMY: The City Manager advised that Marion Christian Academy had requested permission to rent the

basement of the Community Building again this year for use for practice by the girl's basketball team. Since the last use of the building for this purpose had resulted in damage to the walls, the City Manager stated that he felt Council should review the request. Mayor Clark noted that this request was for use by the girl's team while the previous damage had been done by boys. Councilman Cuthbertson suggested that the Marion Christian Academy be made to remove their equipment after each practice, so that the facility could be used by other renters, or else rent the basement for the entire week.

Upon a motion by Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve this request as stated above.

REQUEST – COMMUNITY BUILDING - INMATE LUNCHON – FREDDIE KILLOUGH: The City Manager advised that DBA Director Freddie Killough had informed him that the City had in the past paid for the rental of the Community Building for the annual appreciation dinner for the Marion Correctional Institution Community Inmate Work program. Council members stated that they had no problem with this request, since the City used this program frequently to complete work projects within the City.

Upon a motion by Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve this request.

CRIMINAL HISTORY CHECKS: The City Manager advised that, as directed by Council at the October 23 meeting, he had made a request to the N.C. Attorney General's Office for a written opinion on whether the City could access NCIC criminal records for criminal history checks on final applicants for City positions. He stated that he expected the opinion to come back that the City could not use this information for this purpose, and would recommend that U.S. Representative Charles Taylor and U.S. Senators Jesse Helms and John Edwards, along with the National League of Cities, be contacted and asked to propose legislation to allow use of this date for this purpose, since the Federal government was expecting local governments to be vigilant and prepared to deal with disasters, in the wake of the September 11 terrorist attacks. Council agreed by consensus for the City Manager to make these contacts. Councilman Little stated that he would raise this issue at the National League of Cities meeting in Atlanta in early December.

CITY MANAGER'S REPORT: The City Manager provided a report of current projects and activities.

LINCOLN AVANUE NO PARKING: Councilman Owenby stated that he had heard from residents of Lincoln Avenue that the street did not have enough no parking signs to inform people of the parking restrictions on this street. The City Manager stated that he would see that this situation was reviewed.

SIGN VIOLATION ENFORCEMENT: Councilman Edwards inquired about the information contained in the City Manager's report relating to violations of the Sign Ordinance. The City Manager advised that the Planning Board was reviewing some ideas for changes and improvements to the Zoning Ordinance and had determined that stricter sign regulations should be considered. As a first step, the City Manager said he had asked the City Planner to determine how many sign violations there were under current regulations. The City Planner has found over 150 violations. Council agreed that enforcement of sign violations should be pursued, in a tactful yet firm manner, giving business and property owners adequate time for compliance.

SPECIAL MEETING: The City Manager reported that the County had requested consideration from the City for assistance with requests from property owners for free taps in exchange for easements as part of the Pleasant Gardens sewer extension. The Utility Committee recommended that Council hold a special meeting to review this request.

Council decided to hold the special meeting to review the Pleasant Gardens sewer extension easements on Tuesday, November 27, at 7:00 p.m, at City Hall.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met on Tuesday evening, November 27, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary and Glen Sherlin, Director of Public Works.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go into Closed Session to discuss the acquisition of real estate under N.C.G.S. 143-318.11(a)(5).

REGULAR SESSION: Upon a motion made by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

Upon a motion made by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to waive all sewer tap fee charges for taps requested by property owners in exchange for easements as part of the Pleasant Gardens sewer project.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Session to discuss a personnel matter under N.C.G.S. 143-318.11(a)(6).

REGULAR SESSION: Upon a motion made by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

TRAIN DEPOT PROPOSALS: The City Manager noted that the architect proposals for the train depot renovation had been received by DOT and distributed to Council. He stated that DOT was asking the City of Marion to coordinate with the City of Morganton on the selection of an architect. Council agreed for Mayor Clark and the City Manager to coordinate the architect selection with the City of Morganton, and to report back to Council with the progress.

NAFTA: The City Manager reported that the City had been invited to participate in a study with approximately 12 to 15 other municipalities in the region to study the impacts of NAFTA on water and sewer debt and rate structures. He noted that the study could cost up to $12,000 and would have marginal at best benefits for the City of Marion, due to the structuring of the City's debt. The City Manager stated that he would not proceed further with the study unless he heard differently from Council.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met on Tuesday evening, November 27, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary and Glen Sherlin, Director of Public Works.

CLOSED SESSION – ACQUISITION OF REAL ESTATE: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go into Closed Session to discuss the acquisition of real estate under N.C.G.S. 143-318.11(a)(5).

The City Manager advised that the County had withdrawn their request for City Council to waive the cost recovery fees for taps to Pleasant Gardens Sewer Line, but still wished assistance in waiving tap fees in perpetuity for water and sewer taps requests in exchange for easements for the project..

The following information was presented to Council:

McDowell County is requesting consideration for the following easements:

McDowell Mechanical –	Wants the $820.00 sewer cost recovery charge paid. Water is already available. The County will pay Cost Recovery Charges.
Landon Property -	Wants two full water and sewer connections, plus plumbing paid for by County. The County will pay the Cost Recovery Charges.
Crane Resistoflex -	They will sign an easement holding the City harmless from any pre existing environmental conditions existing on the easement.
Finley Property –	Wants free water and sewer connection in the future, wants taps made and available, willing to pay cost recovery charge in future when needed. six sewer taps installed.
Miller Property –	Wants six sewer taps installed on river property, wants taps made and available, willing to pay cost recovery charge in future when needed.
Boyd Property –	Wants $30,000 in compensation from the County for providing the land for the pump station, plus a well to be provided by the County.
Jimison -	Wants four six inch sewer taps made and available, will to pay cost recovery charge in future when needed.

Either the County or the owner would be responsible for all cost recovery charges. The other ten sewer taps would be made available, the tap fee forever waived, but the cost recovery charge paid for when the service was requested. It is worth noting that these property owners would also have to pay for water tap and cost recovery fees as well for these properties, since sewer is not typically provided without water.

In all, the County would request the waiving of tap fee charges for three water and three sewer taps immediately, and the waiving of tap fee charges for eleven future sewer taps wanted by property owners.

Lost Revenues would be as follows:

Water Tap Fees	3 @ $ 900 each	$ 2,700
Sewer Tap Fees	11@ 11@ $1,800 each	$19,800

3 @ $2,400 each	$ 7,200
Total Revenue Loss	$ 29,700
Amount Already Waived By Council	$ 5,400 (for 3 sewer tap fees for immediate service)
Additional Amount of Waived Fees Requested by County	$24,300

A discussion followed. It was the feeling of Council that the sewer tap fees should be waived, but that the water tap fees should be charged, since the project is a sewer extension, and City crews will have to make the water taps.

REGULAR SESSION: Upon a motion made by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

Upon a motion made by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to waive all sewer tap fee charges for taps requested by property owners in exchange for easements as part of the Pleasant Gardens sewer project.

CLOSED SESSION – PERSONNEL MATTER: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Session to discuss a personnel matter under N.C.G.S. 143-318.11(a)(6).

Councilman Edwards stated that he had received some inquiries from prospective applicants for the Fire Chief's position, asking if the City residency requirement would remain. Councilman Edwards suggested that the policy should perhaps be reviewed, to allow for more persons to consider applying for the position, and since exceptions to the policy had been made.

The City Manager advised that the City residency requirement was found in the Personnel Policy and applied only to the City Manager, Fire Chief, Police Chief and Public Works Director. Public Works Director Glen Sherlin had been granted a waiver from the requirement by the former City Manager and now resided approximately two miles outside the City, past McDowell Memorial Park. He noted that this location did not present a problem, especially since some emergency response personnel lived farther away, in Old Fort and in Spruce Pine. Council discussed ideas for changing the policy and agreed that the waiver should be granted to Glen Sherlin. The City Manager stated he would place a letter in Glen Sherlin's file, granting the waiver from the residency requirement.

After discussion, it was agreed that the City Manager would draft an amendment to the Personnel Policy for the December 11 City Council agenda, stating that residency in the City Limits for the four positions listed above is strongly encouraged, but that these positions may request a waiver from Council from the residency requirement. If the waiver is granted, the person may not drive home a City vehicle to a residence outside the City Limits. In general, it was felt that these positions should live within a few miles, (in no case more than four or five) of the City Limits, or roughly the area of the Marion Area Fire District.

REGULAR SESSION: Upon a motion made by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, December 11, 2001 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards and Billy Martin.

Councilman Cecil Owenby was not present due to illness.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Robert Parker, Finance Officer; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Ansel Clark 78 Richard Drive, Marion, N.C. 28752; Sarah & Emily Clark 78 Richard Drive, Marion, N.C. 28752; Nancy Clark 330 Fleming Avenue, Marion, N.C. 28752; Scottie Edwards 137 Logan Street, Marion, N.C. 28752; Bonnie Edwards, Pulliam Street, Marion, N.C. 28752; Kaye Cuthbertson 201 Broad Street, Marion, N.C. 28752; Alice, Mary & Sally Little 370 South Garden Street, Marion, N.C. 28752; Charles Burgin, Penn Dameron and Mia Lorenz, City Attorneys; The Honorable Loto G. Caviness, Marion, N.C.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. **Approval of City Council Minutes** – November 20, 2001 and
November 27, 2001

B. **Budget Amendment – Special Projects – Forklift Project**

CITY OF MARION, NORTH CAROLINA
2001 - 2002 BUDGET ORDINANCE
(Third Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Sale of Surplus Equipment, Account Number 10-394-0000, is increased from $8,000 to $30,519.

b. General Fund Expenditures, Purchasing Department, Account Number 10-445-7400, Capital Outlay, is increased from $1,000 to $21,000.

c. General Fund Expenditures, Non Departmental, Account Number 10-660-9950, Special Projects, is increased from $221,297 to $223,816.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 11th day of December, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-01-12-11-01

C. Personnel Policy Amendment

CITY OF MARION
PERSONNEL POLICY AMENDMENT

The Personnel Policy of the City of Marion, as adopted on June, 19, 2001, is hereby amended as follows:

Section 1. That Article VI, Section 19, Residency, is deleted in its entirety and replaced with the following:

"The following positions are designated as emergency response sensitive positions and are encouraged to maintain a principal residence within the city limits of Marion:

City Manager
Fire Chief
Police Chief
Public Works Director

Persons in these positions wishing to reside outside the city limits may request a waiver from this requirement. City Council may grant a waiver from this requirement, if the ability to respond to emergency situations is not hampered, upon the recommendation of the City Manager. If a waiver is granted, such employee may not drive a City vehicle to their residence located outside the city limits, except in emergency situations as approved by the City Manager.

An employee falling under this requirement, who plans to change residence, must give prior notice to the City Manager."

Adopted this the 11th day of December, 2001.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

D. Request – DOT – Downtown Historic District Directional Signs

The McDowell Chamber of Commerce has requested the City to ask DOT for approval of placing brown historic downtown directional signs at various locations on major highways around Marion, to direct motorists to the Downtown area.

E. Utility Agreement – Water Line Extension – DOT Rest Area
Council removed this item from the Consent Agenda and directed the City Manager to place it on the January 8, 2002 Agenda.

OATHS OF OFFICE – MAYOR/CITY COUNCIL: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards and Steve Little all received the Oath of Office which was administered by The Honorable Loto G. Caviness.

Original Oaths of Office can be found on file at City Hall.

APPOINTMENT AND OATH OF OFFICE – CITY CLERK: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to appoint J. Robert Boyette as the Clerk for the City of Marion.

The Oath of Office was administered by The Honorable Loto G. Caviness.

Original Oath of Office can be found on file at City Hall.

APPOINTMENT AND OATH OF OFFICE – FINANCE OFFICER: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to appoint Robert Parker as the Finance Officer for the City of Marion.

The Oath of Office was administered by The Honorable Loto G. Caviness.

Original Oath of Office can be found on file at City Hall.

APPOINTMENT AND OATH OF OFFICE – CITY ATTORNEY: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to appoint Attorneys Charles Burgin, Penn Dameron and Margaret Lorenz as City Attorneys for the City of Marion.

The Oath of Office was administered to all three Attorneys by The Honorable Loto G. Caviness.

Original Oaths of Office can be found on file at City Hall.

PROCLAMATION – CITY HONORING HIGH SCHOOL HEISMAN STATE AWARD WINNER: The following Proclamation was presented to Ms. Courtney Morris, by Mayor A. Everette Clark and the Marion City Council.

PROCLAMATION
FOR
OUTSTANDING ACHIEVEMENT

WHEREAS, Miss Courtney Morris, a senior at McDowell High School, Marion, North Carolina, was selected from over 12,000 students nationwide, and was named the top female student in North Carolina; and

WHEREAS, only 102 students in the United States of America were chosen as State Winners of the 2001 High School Heisman Award; and

WHEREAS, only 12 students in the United States of America were chosen as National finalists; and

WHEREAS, Miss Courtney Morris has brought great honor to herself, her family, her school and her community through her superior dedication to the pursuit of excellence, which serves as an example to students and adults alike; and

WHEREAS, the Mayor and City Council of the City of Marion, North Carolina have recognized her accomplishments and have chosen to honor Miss Courtney Morris upon the occasion of her being a finalist for this national award of merit.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina that this Proclamation for Outstanding Achievement be presented to

MISS COURTNEY MORRIS

In recognition of her personal dedication to excellence in academics, athletics and community service and of her selection as the North Carolina Female Student State Winner and one of the National Finalists of the 2001 Wendy's High School Heisman Award.

Presented by the Mayor and City Council this 11th day of December, 2001.

The Honorable A. Everette Clark, Mayor
City of Marion, North Carolina

REAPPOINTMENT - CITY MANAGER TO IPDC BOARD: Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to Re-appoint Bob Boyette to the Isothermal Planning Development Commission Board.

ELECTION OF MAYOR PRO TEM: Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to re-appoint Steve Little as Mayor Pro Tem.

SELECTION OF COMMITTEES: Mayor Clark asked that this item be held until the January 8, 2001 Meeting.

CITY MANAGER'S REPORTS: The City Manager gave a brief report of current projects.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 8, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Robert Saulman 458 Ridge Road, Marion, NC 28752; Lloyd Burleson 100 Ridge Road, Marion, NC 28752; Diane Smith 505 West Henderson, Marion, NC 28752; Harold Simmons, 110 Lincoln Avenue, Marion, NC 28752; Chrissy Queen 105 Knollwood Drive, Marion NC 28752; Daniel Kelly 2064 Highway 70 East Marion, NC 28752; Jessica Thorne 15 Pine Drive, Marion, NC 28752; Mr. & Mrs. Eddie Kelly P.O. Box 5730 Marion, NC 28752; Harold Kelly P.O. Box 61 Marion, NC 28752; Matt Kelly Route 1 Box 5730 Marion, NC 28752; Brent Anderson 2665 Sugar Hill Road, Marion, NC 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN MIKE EDWARDS:
Councilman Edwards selected the Citizen of the Month for January.

The following information was presented about October's Citizen of the month:

HAROLD KELLY, SR.

Councilman Edwards advised that Mr. Kelly had operated his jewelry business in the City of Marion for fifty-two years. He goes to the store early and leaves late every day. He gives a high quality kind of service to his customers and friends that does not make the newspaper, and is rarely found anymore. He is a jeweler as well as clock maker.

Two of Mr. Kelly's Grandsons are working with him learning the business.

Mr. Kelly is a member of Bethel Free Will Baptist Church.

It was said during this tribute that the name Kelly means Quality. Mr. Kelly added that it also meant made in America!

Mayor Clark, Council Members, Friends and Family Members all had kinds words to share about Mr. Kelly.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows excluding discussion regarding Volunteer Firemen and Retirement:

A. **Approval of City Council Minutes** – December 11, 2001

B. ANNUAL FIRE DEPARTMENT CERTIFICATION & ROSTER:

CO	DEPT	LASTNAME	FIRSTNAME	MI	SSN	P/V/R
58	0617	ANDERSON	DONALD	R	[redacted]	V
58	0617	BECK	JOHN	W		R
58	0617	BOBO	CLYDE			R
58	0617	BROWN	FRED	T		R

58	0617	CATE	LEE	R		R
58	0617	COWARD	JAMES	M		R
58	0617	CRESON	DURWOOD	R		V
58	0617	DARK, III	R	M		V
58	0617	DARK, Jr.	R	M		R
58	0617	DEPOYSTER	TERRY	L		V
58	0617	DYMOND	MATTHEW	W		V
58	0617	EDWARDS	BRUCE	A		R
58	0617	HALL	MARVIN	E		R
58	0617	HARMON	BRADFORD	H		V
58	0617	HARRIS	TOMMY	W		R
58	0617	HOLLIFIELD	DARREN	W		V
58	0617	HOLLIFIELD	JAMES	R		R
58	0167	HOLLIFIELD	MILLARD			R
58	0167	LAUGHRIDGE	LANDIS			R
58	0167	LAUGHRIDGE JR.	JOHN	M		R
58	0617	LAUGHRIDGE, JR.	JOHN	C		V
58	0617	LAWS	DENNIS			V
58	0617	MACE	DEWITT			R
58	0617	MCCARTHY	ROGER	W		V
58	0617	MILLIGAN	THOMAS	S		P
58	0617	MORRIS	JIMMY	W		P
58	0617	MORROW, III.	JOHN	M		V
58	0617	NANNEY	FREDERICK	C		V
58	0617	NEAL	JOSEPH	L		V
58	0617	NEAL, III	JAMES	E		V
58	0617	OWENBY	KEVIN	W		V
58	0617	PARKER	JAMES	D		R
58	0617	POTEAT	BILLY	R		R
58	0617	POTEAT	JERRY	W		P
58	0617	POTEAT	KENNETH	W		V
58	0617	POTEAT	KEVIN	W		V
58	0617	PRESNELL, JR.	CHARLES	L		P
58	0617	PRICE	DENNIS			R
58	0617	RADFORD	SCOTTY	W		
58	0617	REESE	JOHN	E		V
58	0617	ROWE	EDWARD			R
58	0617	SMITH, III	WILLIAM	R		V
58	0617	STEVENS	JERRY			R
58	0617	SUTTLE	CHARLES	G		R
58	0617	TAYLOR	CAMERON	K		V
58	0617	TONEY	CHAD	D		V
58	0617	WILLIS	JAMES	D		R
58	0617	WORLEY	CHAD	R		V
58	0617	YOUNG	WILLIAM	J		R

A copy of this report can be found on file at the Marion Fire Department.

C. BUDGET AMENDMENT

CITY OF MARION, NORTH CAROLINA
2001-2001 BUDGET ORDINANCE
(Fourth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Purchasing Department, Account Number 10-445-7400, Capital Outlay, is decreased from

$21,000 to $1,000.

b. General Fund Expenditures, Streets, Account Number 10-560-7400, Capital Outlay, is increased from $67,675 to $87,675.

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues, Contributions from McDowell County, Account Number 30-376-00, is decreased from $35,000 to $0.

b. Water and Sewer Fund Revenues, Fund Balance Appropriated, Account Number 30-299-00, is increased from $695,255 to $730,255.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 8th day of January, 2002.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-01-08-01

PUBLIC HEARING – ZONING REQUEST – BRENT ANDERSON: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised Council that Mr. Anderson had proposed an amendment to the Marion Zoning Ordinance that would allow for a dwelling unit on the back forty percent of the street level of a commercial building in the C-1, Central Business District. Currently, the Ordinance only allows residential units above or below the street level. He is interested in locating his business and residence on Main Street. The building does not have a second story and he says the basement is not fit for a residential dwelling unit. The Planning Board has reviewed the application and recommends the following amendment:

803.4 Special exceptions. The following uses are permitted as special exceptions as provided for 1204.2 of this Ordinance not provided in C-2.

1. Single or multi-family residential dwellings units in existing structures provided that all units are located on floor levels above or below the adjacent street level, or a single residential owner-occupied dwelling unit located in the back forty percent (40%) of the street level when the front sixty (60%) percent is commercial and provided that there is a minimum of 400 square feet living space. There shall be no apparent evidence of residential living from within the commercial establishment, and the dwelling units shall have a separate ingress and egress. In lieu of any other parking requirements of this ordinance, each dwelling unit shall be provided one off-street parking space. Such space may be located on property separate from the dwelling unit but shall be with a reasonable walking distance of such unit.

Mr. Brent Anderson was present for this meeting.

A brief discussion followed.

There being no further discussion, Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the Planning Board as stated above.

CIVIL CITATION – FALSE ALARMS – REQUEST TO WAIVE PENALTY – DIANE SMITH: The City Manager advised that Ms. Smith is the owner of Kwik as a Wink store at 505 West Henderson Street. She received a $50.00 citation for a false alarm activation on October 27, 2001. This was only the second citation issued to this business in the past year, although there have been seventeen false alarms. The alarm has been worked on since October 27th and there have been no false alarms since that date.

Ms. Smith addressed Council and noted that she had worked hard with her alarm company to make the necessary repairs to the system, and that she did not expect more false alarms in the future. She asked for consideration of having the $50.00 penalty waived.
A brief discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to waive this $50.00 penalty.

LINCOLN AVENUE PARKING: The City Manager advised that staff had determined that the parking restrictions in the Traffic Schedule for Lincoln Avenue differed from the signs in place on the street. He noted that he understood that Council had addressed this issue several years ago and had intended to prohibit parking on the north side of Lincoln Avenue for the length of the street. Mr. Harold Simmons of Lincoln Avenue addressed Council and asked that parking on Lincoln Avenue be prohibited along the entire north side of the street, due to the street being narrow.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
LINCOLN AVENUE	PARKING PROHIBITED	NORTH SIDE, NW CORNER OF SPRING ST TO TEAL ST.
		SOUTH SIDE, FROM S. GARDEN ST. TO TEAL, ST.

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
LINCOLN AVENUE	PARKING PROHIBITED	NORTH SIDE, ENTIRE LENGTH OF STREET FROM SOUTH GARDEN STREET TO SPRING STREET

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 8th day of January, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-01-08-2

SCHOOL STREET/RIDGE ROAD INTERSECTION: The City Manager presented Council with a letter addressed to Mr. Lloyd Burleson of Ridge Road from the Department of Transportation. Mr. Burleson has concerns with the intersection of School Street and Ridge Road, especially since there have been two accidents involving children in the past few months. Mr. Burleson spoke and stated that the intersection had poor visibility. The City Manager noted that the Department of Transportation had rejected a request by Mr. Burleson to make the intersection a four way stop, but they had agreed to remove a large oak tree partially obstructing visibility. Mr. Burleson stated that the mirror at the intersection was in the wrong place, and had a screen in front of it, making it useless to motorists.

A discussion followed.

It was decided to refer this matter to the Street Committee for further recommendation. The Street Committee Members, City Manager, Police Chief and Public Works Director are scheduled to meet on Wednesday January 16, 2002 at 4:00 P.M. to review ideas to improve the intersection.

PUBLIC HEARING – ZONING REQUEST – RESCUE SQUAD: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that the McDowell County Rescue Squad and Ambulance Inc. have decided to proceed in requesting an amendment to section 802.3 of the Marion Zoning Ordinance to allow for emergency services as a special exception in the R-2, General Residential District. The Planning Board reviewed the request at their January meeting and recommends that 802.3 (5) Emergency Service Facilities provided that a twenty foot vegetative buffer is approved by they Board of Adjustment after receiving tree-planting recommendations from the City of Marion Tree Board.

A discussion followed.

Councilman Owenby asked if this request was not essentially the same one made by the Rescue Squad in November and turned down by Council, due to significant neighborhood opposition. The City Manager advised that the two requests would have accomplished the same result for the Rescue Squad, in allowing the expansion of their facility on State Street. The difference in the original rezoning request was that it would have opened the property on State Street up to over 100 new commercial uses. This request would only add one use, emergency service facilities, as a special exception in the R-2 district, but would also potentially affect the future use of any R-2 parcel in the City.

Councilman Owenby stated he would vote no, not because he opposed the Rescue Squad or their request, but to be consistent with Council's original decision on the Rescue Squad expansion on State Street.
Mayor Clark stated that the Rescue Squad also needs to inform the City about its intentions for the current City owned building and property they occupy, if they expand.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to accept the recommendation of the Planning Board as stated above.

The vote was as follows:

Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Little	Yes
Councilman Martin	Yes
Councilman Owenby	No

DISCUSSION – FIRE SPRINKLER LINE – KEN SUTTLES: The City Manager advised that Mr. Ken Suttles had contacted him and asked that this discussion be tabled until a later date.

DOWNTOWN PARKING SIGNS: The City Manager presented a sign designed in house by City Employees, to be placed in both direction at the intersection of South Main and Henderson Streets, to direct motorists to all-day free public parking lots.

Councilman Little asked that the arrow on the sign be made larger, to make it more visible.

Council approved the sign by consensus contingent upon the arrow being made larger.

COMMUNITY BUILDING FLOORS: The City Manager advised that the Community Building Floor was scratched and repaired in October. Unfortunately, the repaired places looks much better than the rest of the floor.

Mr. Isaac Logan presented a bid of $3,200.00 to redo the entire floor. Public Works Director Glen Sherlin advised that Mr. Logan's price involved cleaning and refinishing the whole floor, and that Mr. Logan was advising not sanding the floor at this time, to prevent the floor from having to be replaced in the near future.

A discussion followed.

Councilman Edwards noted that former City Manager Earl Daniels had advised when the floor was sanded a few years ago, that this was probably the last time the floor could be sanded. He stated he agreed with refinishing the floor, and not sanding it, to prolong the life of the floor a bit longer.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted to accept the bid of $3,200.00 from Mr. Logan and to have the floors repaired.

PLANNING BOARD/BOARD OF ADJUSTMENT MEMBER APPOINTMENTS: The City Manager presented Council with a memo from City Planner Suzy Davis advising that Ms. Donna Hill and Ms. Della Watson had resigned.

The terms are currently as follows:

REGULAR MEMBERS	ALTERNATE MEMBERS
Craig Orange Term Expires 1-31-03	Della Watson (Resigned) Term Expires 1-31-02
Gary Walker	Connie Martin

Term Expires 1-31-03	Term Expires 1-31-03
Glenys Gilbert Term Expires 1-31-03	Robert Elledge Term Expires 1-31-04
Donna Hill (Resigned) Term Expires 1-31-02	Kit Alverson Term Expires 1-31-04
Stephanie Shipe Term Expires 1-31-02	Warren Hobbs Term Expires 1-31-04

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to reappoint Stephanie Shipe to another three year term as a Regular Member of the Planning Board, said term to expire 1-31-05.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson Council vote unanimously to appoint Kit Alverson to a three year term as a Regular Member of the Planning Board, said term to expire 1-31-05.

It was decided that Council Members would try to have several suggestions for appointment to the unfilled Alternate Member positions on the Planning Board at the January 22, 2002 City Council Meeting.

DOT UTILITY AGREEMENT – REST AREA: The City Manager advised that as directed by Council at the December 11, the Utility Committee had reviewed the following Utility Agreement with the North Carolina Department of Transportation for the extension of water service to the rest areas on Interstate 40. The Utility Committee recommended the approval of the agreement after extensive review, despite continuing concerns about DOT's handling of payment and easement issues. It was felt that the agreement was much improved over the original agreement, and that DOT had addressed most of the issues requested by the City.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following agreement:

NORTH CAROLINA **MCDOWELL COUNTY**	**12/4/01**
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION	**UTILITY AGREEMENT**
AND	**PROJECT: K-3304**
CITY OF MARION	

THIS AGREEMENT, made and entered into this the 8th day of January, 2002, between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the Department, and the CITY OF MARION, hereinafter referred to as the City.

WITNESSETH

WHEREAS, the Department and the City have proposed to make certain improvements to the City's water system to serve the Department's I-40 McDowell County eastbound lane and westbound lane Rest Area, with a (6") water service.

WHEREAS, the Department and the City have agreed to assume certain responsibilities as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other as follows:

1. Water Service- Water service installation shall consist of a tie-in to the existing (12") water transmission line on SR 1001 (Sugar Hill Road at Rankin Drive) from this point extension of a water line south along Sugar Hill Road to the intersection of SR 1164 (Shady Lane Road) from this point a water line shall be installed south along Shady Lane Road approximately 9,600 linear feet to an existing department easement. From this point the water line shall be installed southwest through the easement to the north side of the Department's I-40 westbound lane Rest Area site.

   The water line shall continue south through the Department's westbound Rest Area site and underneath I-40 to the Department's eastbound Rest Area site and extend south to the Department's Rest Area property line and terminate.

   A fire hydrant shall be installed within each Rest Area site adjacent to the car parking lot, near the Rest Area building and prior to the City's 1 ½" water meter/backflow preventor at each Rest Area site.

   The Department shall be responsible for any and all costs associated with the abandonment of existing water system facilities located at the rest area properties.

2. Any oversizing of lines above (6") or additional lines other than the line and equipment specifications identified in item 1 above will be considered as betterment. All betterment cost will be the responsibility of the City, to include engineering, construction and administrative costs.

3. The City hereby agrees to indemnify and save harmless, the Department from all damages that may arise by reason of the installation and maintenance of this utility work.

4. The City or the City's consulting engineer shall design and prepare the project plans, specifications and estimate. The total contract proposal and an estimate of the project costs shall be submitted to the Department for its review and approval prior to advertising of the project for bids. The construction of the project shall be accomplished by the City awarding a contract to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed, as set forth in an appropriate solicitation for bids. Letting of contracts for construction and purchases shall be in accordance with North Carolina General Statute 143-129. Bids received for the project shall be submitted to the Department for approval prior to the contract being awarded by the City. If the City proposes to employ the services of a consulting engineer to design and prepare plans, specifications and cost estimates and provide other engineering services for the project, the City agrees that the Department will not participate in any costs paid for such services if the costs are based on a percentage of the cost of construction and further agrees that the Department will review and approve the rates to be charged before participating in the costs involved. (The Department shall make all reviews and respond back to the city in a timely manner).

5. The City shall construct, or cause to be constructed, the project in accordance with the plans and specifications of said project to be filed with and approved by the Department. The City shall administer the construction contract for said project and the procedures set out herein below shall be followed.

   A. The City shall notify the Department's Division Engineer five (5) days in advance of initiation of construction of the project.

B. The plans, specifications, estimates, construction, engineering and supervision will be provided by the City.

C. The Department's Division Engineer at his discretion, may assign a Resident Engineer to the project who shall have the right to inspect, sample or test, approve or reject any portion of the work being performed by the City or the City's contractor to ensure compliance with plans, specifications and the provisions of this Agreement. The Resident Engineer will be the Department's representative on the project. Prior to the final acceptance and payment by the Department, the Division Engineer and/or his representative shall make a final inspection of the completed work. The Division Engineer will be responsible for final acceptance of the completed work on behalf of the Department. Final payment to the City by the Department shall be made in a timely manner.

D. During construction of the project, if any changes in the plans are necessary, such changes must be approved by the Division Engineer prior to the work being performed.

E. All materials incorporated into the project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications to the Department.

F. The City will be responsible for ensuring that the contractor complies with all of the terms of the approved contract plans and project provisions.

G. During construction of the project. The City shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformation with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.

H. The City shall complete said work within eighteen (18) months of execution of this agreement.

I. The City shall also comply with the following federal and state policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; (c) Title VI – Civil Rights Act of 1964; and (d) Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the project. The City shall comply with the Department's policies and procedures regarding participation by DBE firms including but not limited to establishing DBE goals for construction contracts, determination of a good faith effort if goals are not met, and reporting DBE participation during construction of the project.

6. After completion and final approval of the project, and upon receipt of payment from the Department for all project invoices and other system fees and charges, the City agrees to provide each Rest Area facility with 10,000 gallons of water per day with peak days of 15,000 gallons of water per day. The City further agrees to provide water for a projected twenty (20) year usage at the rate of 30,000 gallons of water per day.

7. The City agrees to charge the Department the standard established monthly water rates and water system fees approved by the City Council for similar customers. The Department shall pay the City in accordance with the payment schedule on the monthly bill.

8. The City shall adjust, relocate or cause to be relocated, all existing utilities lying within the right-of-way or construction limits that conflict with construction of the project as a part of this project.

9. The City shall be responsible for the acquisition of all needed rights-of-

way, easements and permits required to provide water services, described in this agreement, to the Rest Area, as part of the project and all cost shall be part of the project. Acquisition of right of way shall be performed in accordance with all state and federal policies and procedures .

The Department agrees to furnish, at no cost to the City, permanent and temporary construction easements, or encroachment agreements for portions of the waterlines constructed within properties owned by the Department and within limits of right-of-way authority the Department has on these properties.

10. Upon satisfactory completion of the construction of the work covered in this Agreement, the City shall assume ownership and responsibility of water lines with the exception of the water line from the meter to the building.

11. It is further agreed that the following provision shall apply regarding the City owned utilities covered in the Agreement:

A The City shall obligate itself to service and to maintain its facilities to be retained and installed under/over and along the highway within the Department's right-of-way limits and easements in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.

B The City agrees that no service taps for service to any customer other than to the highway facilities as outlined in this Agreement will be made from within the Rest Area sites or the I-40 right-of-way, without written approval from the Department.

C The City shall obtain a standard highway right-of-way Encroachment Agreement for construction of water lines within the highway rights-of-way including the Rest Area sites and/or crossings of highways and interstates.

D Any cost incurred due to betterment utility work to City-owned utility lines shall be solely the responsibility of the City. The City shall be responsible for 100% of the additional utility cost.

12. Subject to compliance by the City with the provisions set forth in this Agreement, the Department shall reimburse the City one hundred percent (100%) of the actual project costs up to $513,000 – (estimate 4/18/01 for 6" water line) in accordance with this Agreement. Costs which exceed this amount or have not been stipulated in this Agreement, must have prior written approval by Department or such cost shall be borne by the City.

A This agreement is contingent upon the City being able to enter into a contact(s) which would enable the work called for in this agreement to be performed for the dollar amount for which the Department has agreed to reimburse the City. The Department shall make all reimbursement payments to the City in a timely manner.

B The City may bill the Department on a monthly basis for actual project costs to include administrative cost incurred by the City as herein stated by submitting an itemized invoice, in quadruplicate, to the Department's 13th Division Engineer. Reimbursement to the City shall be made upon approval of each invoice by the Division Engineer

and the Department's Fiscal Section. Invoices shall be based on the contract unit costs and actual quantities used to the date of each invoice.

C. The Municipality shall ensure that all work is properly accomplished at a just cost. If the Municipality withholds retainage from payments due to its contractor(s), the Municipality shall remit the balance of the retainage to the contractor(s) upon satisfactory completion of the work performed by the contractor(s). The Municipality shall make an inspection of the completed work prior to the release and reimbursement of contractor retainage withheld.

D. The City shall be responsible for adhering to applicable administrative requirement of 49 CFR Part 18 (**www.fhwa.dot.gov/legsregs/legislat**). If the work is performed by Municipal force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying cost in conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 (**www.whitehouse.gov/wh/eop/omb**). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the City. Reimbursement for rates of equipment owned by the City cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

E. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (**www.whitehouse.gov/OMB/circulars/a133/a13.html**), the City shall arrange for a independent financial and compliance audit of its fiscal operations. The City shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months (March 31) after the City's fiscal year ends.

F. A final itemized invoice listing all costs shall be submitted to the Department's 13th Division Engineer upon completion of the project.

G. The City agrees that it shall bear all construction costs for which it is unable to substantiate actual costs.

H. Any costs incurred by the City prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

I. The City or the Department may, upon sever (7) days written notice to the other party, elect to terminate this utility agreement for failure by the other party to comply with the conditions of this agreement. The Department shall reimburse the City for work completed in accordance with the agreement prior to receipt of termination notice.

J. All invoices must be submitted within one (1) year of completion and acceptance of the project by the Department.

K. If the City elects to procure engineering services, and if the Department is participating in these costs, the City must adhere to North Carolina Department of Transportation "Rules and Regulations for Major Professional or Specialized Services Contracts". This policy conforms to NCSS 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, part 172. Prior to entering into a third party consultant agreement, the City must submit said agreement to the Department for review and approval.

13. The City shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the City shall make such material available at its office at all reasonable times during the contract

period. and for three (3) years from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section.

14. With seven (7) days written notice to the other party, the City or the Department reserves the right to withdraw from this Agreement at any time prior to construction of the project. The Department shall participate in the costs incurred up to the abandonment of the project subject to the terms of this Agreement. Any Notice of Withdrawal from this Agreement by the Department shall be in writing delivered Certified Mail to the City Manager.

IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the City.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the City by authority duly given.

L.S. CITY OF MARION

ATTEST: BY:

Secretary Mayor

(MUNICIPAL SEAL)

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

_____
Finance Officer – City of Marion

Tax ID# _____
City of Marion

DEPARTMENT OF TRANSPORTATION
BY: _____
STATE HIGHWAY ADMINISTRATOR

APPROVED AS TO FORM
BY:_____
ASSISTANT ATTORNEY GENERAL

DOWNTOWN DIRECTIONAL SIGNS: The City Manager advised that last month Council approved a request by the Chamber to request downtown directional signs from DOT, for placement at certain locations around Marion. After talking further with DOT officials, the City Manager advised that there will be a cost for the signs, due to new DOT policy for placement of such signs.

It was decided to direct the City Manager to bring this item back to Council at a later date, once exact costs are determined.

SELECTION OF ARCHITECT – RENOVATIONS – MARION POLICE DEPARTMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to select ADW, Inc. as the most qualified Architect to do the renovations on the Police Department. The City Manager noted that State law dictated that the

Council determine the most qualified architect, and then seek to negotiate a contract. He stated he would begin to obtain pricing and contract information from ADW, Inc.

The City Manager recommended that an estimated budget be set for the project.

Projected annual payments would be as follows:

$1,000,000 facility - $125,808 annual payment - 10 year term
$750,000 facility - $94,356 annual payment - 10 year term
$500,00 facility - $62,904 annual payment - 10 year term

Construction of anything over a $750,000 facility would require the City to appropriate more debt service annually than was currently being paid for City Hall and the Fire Station combined ($95,603). It is unlikely that the North Carolina Local Government Commission will allow the City to finance the construction for more than a 10 year term, due to concerns about excessive interest being paid.

Mayor Clark noted that the $750,000 cost should include architectural and engineering services, and furnishing and equipping the building.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to set a maximum project budget in the amount of $750,000,000.

RETIREMENT INSURANCE – DISCUSSION: The City Manager advised that the City's current Personnel Policy allows the City to contribute $100.00 monthly toward insurance for retirees at age 55 and with 20 years of service, or retiring under disability at age 50 with 20 years of service.

It has been suggested that the policy be revised to also allow the insurance contribution for employees retiring with 30 years of service at any age to avoid penalizing someone for starting their career with the City at a young age, and to match the allowance of full benefits allowed under the North Carolina Local Government Employee's Retirement System.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Policy:

CITY OF MARION
PERSONNEL POLICY AMENDMENT

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article X, Section 1, Insurance benefits, is amended by deleting the third paragraph in its entirety and replacing it with the following:

"It shall be the policy of the City of Marion to pay one hundred dollars ($100.00) per month to the City's Insurance Carrier toward Medical Insurance Coverage for employees retiring from City employment after serving the City of Marion for a minimum of twenty (20) years and reaching fifty-five (55) years of age, at fifty (50) years of age retiring under disability with twenty (20) years of service, or retiring with thirty (30) years of service at any age."

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 8th day of January, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

EASTFIELD SEWER EXTENSION: The City Manager advised that the State has informed the County's Engineers. Mattern & Craig, that a pump station would be required along a 600 to 700 foot stretch beside a small stream next to the railroad tracks off of Moodytown Road, as part of the Eastfield sewer extension. The line was designed as a gravity line and should have no problems working. The City is working with the County to develop information to challenge this requirement.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go on record opposing the State' decision to require a pump station on the above discussed property.

CHAMBER OF COMMERCE – REQUEST FOR FUNDING: The City Manager presented Council with a letter from Dr. Virginia Mitchell, President of the McDowell Chamber of Commerce and Mr. Rod Birdsong, executive Director of the Chamber, requesting that the City contribute $500.00 toward the costs of the "futurist" speaker, Mr. Ed Barlow, for their annual meeting in February, which will run in excess of $5,000.00.

Councilman Edwards stated that he felt a speaker charging this amount for a short talk at a Chamber meeting was excessive, and did not meet the funding criteria established by Council for outside groups, in that it did not provide direct benefits for the citizens of the City of Marion. Councilman Martin added that this amount was not appropriate in McDowell County.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to decline this request for funding by the McDowell Chamber of Commerce, due to the request not meeting City Council criteria for funding of outside agencies.

RENEWAL OF LANDSCAPING CONTRACT: The City Manager presented Council with an Action Recommendation Form from Mr. Dan Weeks, Purchasing Agent. The City's current Landscaping Contract runs on a calendar year basis, and expired on December 31, 2001.

The contract is budgeted from the Street Department' Contracted Services line item.

Mr. Moore has agreed to honor last year's price of $1,380.00 monthly if we extend his contract for the 2002 calendar year.

The Purchasing Agent stated in his recommendation that there are currently no general statues governing service contracts, therefore, this contract can be awarded without re-biding.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to extend Mr. Moore's Contract for the 2002 calendar year in the amount of $1,380.00 monthly.

REQUEST – TO NAME PRIVATE STREET: The City Manager presented Council with a letter from Mr. Jerry Boyd, owner of the Main Street Car Wash and private drive located beside his business on North Main Street. He is requesting that this private drive be named after his granddaughter, Ginger Analise Boyd. The City Manager stated that staff had checked with the County and that this road name would not conflict with any existing road name in the County. Mr. Boyd will be required to pay the actual costs for the installation of a street sign.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to allow this private drive to be named Ginger Drive at no cost to the City.

DEMOLITION – DEBRIS LANDFILL REQUEST: The City Manager presented Council with a letter from Mr. Ken McFadyen advising that Mr. Jim McKinney has requested to establish an on-site demolition debris landfill at his Cross Mill Property. Mr. McKinney has stated that his project complies with the N.C. General Statutes and has been approved by the State. The General Statutes read that the County shall consult with the City before the Board of Commissioners may approve the proposed landfill. One condition the County Commissioners must find the request meets in order to approve the landfill is that the request complies with all applicable local laws, ordinances and policies. The City Manager advised that he and City Planner Suzy Davis had reviewed the City's Zoning Ordinance and had come to the conclusion that landfills were not permitted in the M-1 zone, in which this property is located. Therefore, the request is not in compliance with all City ordinances.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to determine that the request is not compliance with all City ordinances and to ask the County Commissioners to reject the request by Mr. Jim McKinney for the establishment of an on-site demolition debris landfill in Cross Mill.

It was decided that the City Manager would send a letter to the County Manager advising of the City's Zoning Ordinance in reference to on-site landfills.

SELECTION OF MAYOR APPOINTED COMMITTEES: Mayor Clark asked if any Council member wished to be assigned to a different committee. There being no comments, Mayor Clark stated that he would leave the various Council Committees as they are.

DISCUSSION WATER BILLS: The City Manager advised that after years of complaints about the Post Office not delivering utility bills in a timely fashion, the City has obtained new software which will place bar codes on the bills and keep them from having to go to Asheville for processing. In waiting for the bar code software to be installed, the bills did not go out until the second of this month and due to an error in the bar codes they had to go to Asheville anyway, meaning that most customers did not receive their bills before the 6th or 7th, leaving them less than 10 days to pay the bill before the due date of the 15th .

The City Manager advised that he does not usually suggest foregoing any revenues, but waiving this month's late fee, might be justified in this case in to consideration to the customers.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to waive the $5.00 late fee for the month of January.

COUNCILMAN COMMENTS:

Councilman Martin advised that he had been contacted about the need for a traffic light on West Henderson Street at Holly Hill Drive and on Sugar Hill Road at Wilhemenia Street. Council agreed to request the Department of Transportation to study the two intersections for the feasibility of installing traffic signals. The City Manager advised that he would contact the Department of Transportation and request a Traffic Study.

Mr. Martin also inquired about the schedule of re-paving California Avenue, once the curb and gutter and sidewalk work is complete. The Public Works Director stated that this street would be reviewed along with all others for the Spring Resurfacing project, and that it likely would be recommended for resurfacing.

Councilman Cuthbertson asked if anyone had heard that Galey and Lord might be closing, as has been rumored. The City Manager advised that he had checked with Galey and Lord before Christmas when the Burlington bankruptcy was announced. The plant officials had informed him the Galey and Lord was separate from Burlington and that the bankruptcy would not affect them. The City Manager stated he would seek information about the current status of Galey and Lord.

Councilman Owenby advised that Charter Cable Rates are again being increased. He suggested that a statement be placed on the City's Channel advising that the City of Marion has no control over this increase.

CITY MANAGER'S REPORT: The City Manager gave a report on current projects.

CLOSED SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to go into Closed Session to discuss a Personnel Issue in accordance with N.C.G.S. 143-318.11(a)(6).

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 22, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mike Conley, News Reporter; The McDowell News.

GUESTS PRESENT: No guests were present.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Consent Agenda as follows:

A. Approval of City Council Minutes – January 8, 2002

B. Tax Refunds

Margaret H. House in the amount of $41.25

Total value billed for 2001 was $53,780.00
Correct value should have been $46,280.00
The difference of the error was a value of $7,500.00
Tax on that amount at $0.55 per $100.00 valuation is $41.25

William B & Fay B. Wright in the amount of $77.00

Paid $77.00 for 2000 taxes on a boat.
The Wright's live on Condrey Road which is outside the City.

James E. and Josephine Crawley in the amount of $4.45

Total value billed for 2001 was $2,340.00
Correct value should have been $1430.00
The difference of the error was a value of $810.00
Tax on that amount at $0.55 per $100.00 valuation is $4.45

C. Resolution – Western North Carolina Local Government Caucus:

CITY OF MARION
RESOLUTION
WESTERN NORTH CAROLINA LOCAL GOVERNMENTS CAUCUS

WHEREAS, the county and municipal governments of Western North Carolina have become acutely aware of the opportunities that exist and recognize that there are inequities in the distribution of State and Federal appropriations; and

WHEREAS, the county and municipal governments of Western North Carolina recognize the need for qualified people in positions of influence to help attain a greater degree of equity in the appropriation process; and

WHEREAS, the twenty-six (26) counties and ninety-six (96) municipalities of Western North Carolina agree there needs to be common ground in dealing with State and Federal issues concerning parity and funding; and

WHEREAS, the five Regional Councils of Governments of Western North Carolina representing Regions A through E agree that an organization created to meet these needs will be beneficial to all; and

WHEREAS, the twenty-six (26) and the ninety-six (96) municipal governments of Western North Carolina desire to join together on a non-partisan basis for effectiveness.

NOW, THEREFORE, BE IT RESOLVED that the Marion City Council hereby endorses the creation of a regional organization known as the Western North Carolina Local Government Caucus, comprised of one county commissioner and one elected municipal official and a Treasurer, and that the fifty-two (52) delegates come together to form an appropriate organizational structure including, but not limited to the following sub-committees: Federal Funding, State Funding, Boards and Commissions, Leadership Development, and Legislative Rules and Regulations.

Adopted this 22nd day of January 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

RESOLUTION NUMBER: R-02-01-22-1

D. Resolution – Directing the Clerk to Investigate a Petition for Voluntary Annexation:

RESOLUTION
DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-58.1

WHEREAS, a petition requesting annexation of an area described in said petition was received on January 22, 2002, by the City of Marion; and

WHEREAS, 160-A58.2 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, The City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 22nd day of January, 2002.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

RESOLUTION Number: R-02-01-22-2

PETITION REQUESTING A NON-CONTIGUOUS ANNEXATION

Date: January 2, 2002

TO THE CITY COUNCIL OF THE CITY OF MARION:

1. We the undersigned owners of real property respectfully request that the area described in Paragraph 2 below be annexed to the City of Marion.

I. The area to be annexed is non-contiguous to the City Marion and the boundaries of such territory are as follows:

Tract No. 1 (McDowell County Tax PIN 1702.03-34-9212): BEGINNING at a PK nail in the center of SR 1500, corner for Hoyt George Johnson, et ux as described in that deed dated August 11, 1970, recorded in Book 211, Page 129, McDowell County Registry; thence along the centerline of SR 1500 the following courses and distances: North 45 degrees 05' 18" West 111.02 feet to a point, North 42 degrees 00' 45" West 100.71 feet to a point; North 36 degrees 08' 09" West 99.75 feet to a point; North 13 degrees 4' 22" West 99.11 feet to a point; North 10 degrees 43' 49"East 99.42 feet to a point, and North 15 degrees 24' 23" East 234.03 feet to a point; corner for Edward Lentz; thence along the Lentz line, South 81 degrees 42' 41" East 796.78 feet to an axle in the line of Troy Effler; thence along the Effler line, South 10 degrees 40' 19" West 207.24 feet to a stake, cornering; thence continuing along the Effler line South 4 degrees 04' 15" West 226.52 feet to a stake, corner for Hoyt George Johnson; thence along the Johnson line, North 85 degrees 04' 22" West 409.13 feet to a stake, cornering; thence continuing along the Johnson line, South 68 degrees 02' 16" West 170.76 feet to a stake, cornering; thence continuing along the Johnson line, South 9 degrees 38' 30" East 21.43 feet to a stake, cornering; thence along the Johnson line, South 22 degrees 36' 30" West 64.05 feet to a PK nail in the centerline of SR 1500, the point of BEGINNING, containing 8.996 acres according to Survey of Property of Autumn Corporation by Childres-Andrews Surveying Co., dated April 17, 1983.

The above described property is that property conveyed by R. J. Morris, single, et al., to Hilltop House, Inc., by deed dated June 3, 1961, and recorded in Book 163, Page 323, McDowell County Registry, together with that property conveyed by Alonzo Good and wife, Josephine Good to Hilltop House, Incorporated, by deed dated August 16, 1961, and recorded in Book 164, Page 273, McDowell County Registry. See also that agreement from Boyt George Johnson and wife, Thelma L. Johnson to Hilltop House, Inc., dated April 15, 1983, and recorded in Book 318, Page 763, McDowell County Registry.

Tract No. 2 (McDowell County Tax PIN 1702.03-33-6679): BEGINNING at a stake in the Southwestern right of way line of SR 1500 (Airport Rod) at the Eastern corner for Jennie Wee Jackson (see Deed Book 94, Page 58); thence along the Southwestern right of way line of SR 1500 the following three courses and distances: South 50 degrees 36' 57" East 229.81 feet to a stake, South 44 degrees 36' 57" East 98.52 feet to a stake and South 16 degrees 49' 25" East 66.15 feet to a stake, corner for Douglas Vaught Wood (see Deed Book 428, Page 643); thence along the Wood line South 71 degrees 54' 00" West 194.10 feet to a stake, corner for Alvin Callahan; thence along the Callahan line North 83 degrees 02' 15" West 294.15 feet to a stake, corner for Timothy K. Washburn (see Deed Book 467, Page 188) and Jennie Wee Jackson; thence along the Jackson line North 34 degrees 42' 32" East 369.70 feet to a stake in the Southwestern right of way line of SR 1500, the point of BEGINNING, containing 2.04 acres, as shown on that plat of survey prepared by R. L. Greene Surveying and Mapping, dated July 17, 1998, entitled "Boundary and Partial Topographic Survey of That Property Described in a Deed to Darrell J. Stamey and Debra K. Stamey" and being the identical property conveyed by C. F. Cook and wife, Faye C. Cook to Darrell J. Stamey and wife, Debra K. Stamey by deed dated September 20, 1988, recorded in Book 388, page 92, McDowell County Registry.

3. A map is attached showing the area proposed for annexation in relation to the primary corporate limits of the City of Marion.

4. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

NAME/ADDRESS	DO YOU DECLARE VESTED RIGHTS? (Yes or No)	SIGNATURE
1. Gerald P. Cox P.O. Box 7728 Rocky Mount, North Carolina 27804	_____	(On File)

2. Sam M. Marsh _____ (On File)
P.O. Box 7728
Rocky Mount, North Carolina 27804

PUBLIC HEARING – CROSS MILL COMMUNITY PARK: Mayor Clark opened the Public Hearing.

The City Manager advised that we are in the process of completing a grant application for the acquisition and development of a park in the Cross Mill Community.

A proposed general site plan for this park was presented to Council. The total amount of land acquisition and park development would run between $60,000 and $70,000.

A discussion followed.

Mayor Clark asked if there were any citizens present to discuss the proposed park. There were no citizens present.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to endorse this site plan.

REQUEST – PG SEWER EXTENSION PROJECT: The City Manager presented Council with a written request from Mr. Van Boyd and Mr. Joe Hall advising that McDowell County was in the process of constructing a municipal sewer line to Pleasant Gardens. County Officials have identified their property located at 1087 Highway 70 West for the location of a pump station, which the City of Marion will own and operate. This property currently uses a septic system.

Mr. Boyd and Mr. Hall are requesting that the City of Marion waive its policy requiring water service if sewer service is received. Water will not be available immediately to this property. The County wishes to pay for connection to both services up front as a part of the easement agreement with Mr. Boyd and Mr. Hall. The City Manager noted that Mr. Boyd and Mr. Hall could be presented with a certificate, entitling them to one free water connection, at such time as water service is available in the future.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to waive its policy which prohibits receipt of sewer service without water service for the property located at 1087 Highway 70 West owned by Mr. Van Boyd and Mr. Joe Hall, due to the fact that water service is not currently available at this location, to allow Mr. Boyd and Mr. Hall to receive sewer service, and to allow the County to pay for both connections up front.

The City Manager will present the property owners, at which time payment is made, a certificate for the water connection. The sewer connection will be made during the PG Project.

APPOINTMENT OF ALTERNATE PLANNING BOARD MEMBERS: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to appoint J. Earl Daniels as an Alternate Planning Board Member contingent upon him accepting.

There are two vacancies open for Alternates.

It was suggested that a brief statement be placed on the City Channel and in the Community Briefs section of the McDowell News requesting that Citizens interested in serving on this Board contact the City Manager.

LEASE APPROVAL – CITY LOT NEXT TO RECREATIONS DEPARTMENT: The City Manager presented Council with a Lease Agreement prepared by City Attorneys, regarding property owned by the City located on West Court Street adjacent to property owned by McDowell County. Property is currently being used as a parking lot adjacent to the softball fields at the McDowell County Recreation Department.

Councilman Little suggested that paragraphs in the agreement be numbered and pointed out a minor correction in the first section.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following Agreement, with the corrections listed above:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

MCDOWELL COUNTY

THIS LEASE, made and entered into this 22nd day of January, 2002, by and between the City of Marion, hereinafter referred to as "Landlord" and McDowell County, hereinafter referred to as "Tenant".

W I T N E S S E T H:

SECTION 1
LEASED PREMISES:

A. The Landlord, for and in consideration of rents, covenants, and agreements hereinafter specified to paid. kept, and performed by the Tenant, hereby leases to the Tenant, and Tenant rents from Landlord. those premises. hereinafter called the "Premises" in the Town of Marion, which Premises are located as outlines and described on Exhibit A annexed hereto and made a part hereof.

SECTION 2
USE BY TENANT:

A. Tenant shall use the Premises solely for the purpose of providing parking to the Tenant's visitors (which visitors are using the adjacent recreational facilities of Tenant) for recreational purposes. Tenant will not use or permit, or suffer the use of the Premises for any other purpose without Landlord's written approval.

SECTION 3
COMMENCEMENT OF TERM:

A. The term of this Lease shall begin on the first day shall end at 12:00 midnight on the 31st of April 2003.

SECTION 4
LENGTH OF TERM:

A. The term of this lease shall be for one year following the commencement of the term as provided in Section 3 hereof. Landlord may terminate this lease with Tenant by giving written notice of termination to the Tenant at least thirty (30 days prior to the first day of a month during the term of this lease. Tenant may terminate this lease with Landlord by giving written notice of termination to Landlord at lease thirty (30) days prior to the first day of a month during the term of this lease. The terms of the lease during the extended periods shall be the same terms and conditions as provided for in the original lease.

SECTION 5
EXCUSE OF LANDLORD'S PERFORMANCE:

A. Notwithstanding anything in this agreement to the contrary, providing such is not due to the willful act of Landlord, the Landlord shall not be deemed to be in default with respect to the performance of any of the terms, covenants or conditions of this lease and Landlord shall not be liable to Tenant in damages by abatement of rent, or otherwise, for delays in rendering the Premises ready for occupancy, for failure to furnish, or delay in furnishing or interruption of, any services to be provided by Landlord pursuant to this Lease regardless of the reason for such failure or delay; and no such failure or delay or any act or failure to act or negligence of Landlord's employees shall be an actual or constructive eviction of Tenant nor a disturbance of the Tenant's use and possession of the Premises, nor shall any such event operate to relieve Tenant from the prompt and punctual performance of each and all the covenants and obligations to be performed herein by Tenant; nor shall Landlord be liable to Tenant or Tenant's employees, agents or visitors for damage to person or property; nor damages from fire, smoke or fumes; nor shall Landlord be liable to Tenant or Tenant's employees, agents or visitors fin any matter whatsoever for the theft, mysterious disappearance or loss of any property whether from the Premises.

SECTION 6
RENT:

A. There shall be no money charged for use of the premises as described herein.

SECTION 7
ALTERATIONS OR IMPROVEMENTS:

A. Any alterations or improvements which the Tenant installs or constructs on the Premises shall be made only with Landlord's prior written approval and solely at Tenant expense. tenant shall indemnify and hold harmless Landlord against any liability or damage directly resulting from and occurring during or as a result of such renovations, improvements or alterations, unless due to the fault of negligence of the Landlord. All construction work undertaken by Tenant shall be performed in a good and workmanlike manner using quality materials, and shall conform to all applicable laws, codes or regulations.

B. All alterations, decorations, additions and improvements made by the Tenant, or made by the Landlord on the Tenant's behalf by agreement under this lease, shall remain the property of the Tenant. Upon expiration of this lease or any renewal thereof, the Tenant shall remove all such alterations, decorations, additions and improvements and restore the Premises to the condition which existed prior to Tenant's occupancy, reasonable wear and tear excepted. If not removed upon termination or expiration of this lease, or any renewal thereof, all such alterations, decorations, additions and improvements shall become the property of the Landlord, or may be removed by Landlord at the Tenant's expense, whichever Landlord chooses.

C. Tenant shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the premises, and should any such lien be made or filed, tenant shall within ten (10) days of receipt thereof give notice to Landlord of same and Tenant shall bond against or discharge the same within ten (10) days after written request by Landlord.

SECTION 8
MAINTENANCE:

A. Tenant shall at all times keep the premises in good order, conditions and repair. Tenant shall make all necessary repairs during the term of this lease or any extension thereof to the premises, If Landlord is required to make repairs by reason of tenant's acts or omission to act, Tenant shall promptly reimburse Landlord for all such costs incurred. Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's fixtures, or other property or to tenant's business by reason thereof. Landlord shall make all such repairs within a reasonable amount of time in consideration of all circumstances once notified. Tenant shall be responsible for maintaining the lawn and landscape in mowed and neat condition.

B. Notwithstanding the respective obligations set forth in this Section, Landlord shall be entitled at all times, to undertake "emergency repairs" to the premises where circumstances warrant. "Emergency repairs" shall mean repairs which are necessary to eliminate an immediate threat of damage, casualty or risk to health and safety. Reimbursement for costs and expenses expended to effect emergency repairs, which are the responsibility of the other party, shall be made within thirty (30) days after presentation of applicable bills and receipts.

C. Tenant shall be responsible for the removal and disposition of Tenant's refuse and rubbish from the Premises. Tenant agrees to abide y City codes and regulations which detail the manner in which trash is collected. The removal and disposition of Tenant's refuse and rubbish as aforementioned shall be subject to constant supervision and approval by Landlord. If at any time Landlord, in its sole discretion, determines that removal and disposition is less than satisfactory, Landlord or its agent or an independent contractor selected by landlord may contract to have removal and disposition completed to its satisfaction. Any charges under such circumstances shall be Tenant's responsibility due within ten (10) days as additional rent. Tenant shall not permit the unsightly accumulation or placing of rubbish, trash, garbage, debris, boxes, cans or other articles of any kind or description whatsoever in the Premises, or in the area immediately surrounding the Premises.

SECTION 9
HAZARDOUS SUBSTANCES

A. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101 as may be amended or supplemented) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302 as may be amended or supplemented), or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law, including asbestos or asbestos-related materials.

B. Landlord represents that there is no Hazardous material on or about the Premises or the property of which the Premises all are a part. Landlord shall be solely responsible for all costs and expense and the removal of Hazardous material and agrees to indemnify Tenant for any costs or damages resulting from contamination arising as the result of the Landlord introducing Hazardous material on the premises or occurring prior to the earlier of the Commencement Date of this Lease or the date Tenant takes possession of the Premises.

C. Tenant shall not cause or allow any Hazardous material to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors or invites. If the presence of any Hazardous material on the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to return the premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. The Tenant agrees to hold the Landlord harmless from any and all liability arising out of Tenant's intentional or negligent acts involving the termination or expiration of this lease as to any environmental costs related to or arising from Lessee's operations.

SECTION 10
SURRENDER OF PREMISES:

A. At the expiration of the tenancy hereby created, Tenant shall surrender the Premises in the same condition as the Premises were upon delivery or possession hereto under this lease, reasonable wear and tear excepted. Tenant shall remove all of its fixtures, and any alterations or improvements as provided in Section 8 hereof, before surrendering the Premises as aforesaid and shall repair any damage to the Premises caused thereby. In the event of loss or damage to the Premises, each party to this lease shall first look to any insurance in its favor for making any claim against the other party; and to the extent possible, without additional cost, each party shall

obtain for each policy of such insurance, provisions permitting waiver of any claim against the other by means of subrogation or otherwise, for loss or damage within the scope of such insurance, and each party, to such extent permitted, for itself and its insurers, waives all such insured or subrogated claims against the other party. Tenant's obligations to observe or perform this covenant shall survive the expiration or other termination of the term of this lease.

SECTION 11
LIABILITY INSURANCE:

A. Tenant shall, during the entire term hereof, keep in full force and effect a policy of public liability, contractual liability and property damage insurance and a personal injury endorsement with respect to the Premises and the business operated by Tenant and any subtenants of Tenant on the Premises in which the limits of public liability shall not be less than $500,000 per person and $1, 000.000 per accident and in which the property damage liability shall not be less than $150,000. The policy shall name Landlord, any person, firms or corporations designated by Landlord, and Tenant as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Landlord ten days prior written notice. The insurance shall be in an insurance company approved by Landlord and a copy of the policy or a certificate of insurance shall be delivered to Landlord.

SECTION 12
INDEMNIFICATION OF LANDLORD:

A. Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon, or at the Premises, or the occupancy or use by Tenant of the Premises, or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees or concessionaires or occasioned wholly or in part by any breach of covenants and conditions contained herein. In the case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord in connections with such litigation. Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in enforcing any covenants and agreements in this lease.

SECTION 13
PROPERTY INSURANCE:

A. Landlord will be responsible for insuring its property including building grounds and all appurtenant structures that it owns.

B. Tenant, shall be responsible for insuring Tenant's personal property owned and situated on the premises.

SECTION 14
UTILITY SERVICES:

A. It is the Tenant's responsibility to arrange for any and all utility service necessary for Tenant's use of the premises. Tenant shall be solely responsible for and promptly pay all charges for hear, water, gas, electricity or any other utility used or consumed in the premises. In no event shall Landlord be liable for any interruption or failure in the supply of any such utilities to the Premises.

SECTION 15
ASSIGNMENT OR SUBLETTING:

A. Tenant will not by operation of law or otherwise, assign, transfer, mortgage, or encumber this lease, or sublet or permit the Premises or any part thereof to be used by others.

SECTION 16
WASTE OR NUISANCE:

A. Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any adjacent property owner or otherwise; or which may disturb the quiet enjoyment of any adjacent property owner or otherwise; or which may disturb the quiet enjoyment of any person within five hundred feet of the boundaries of the premises.

SECTION 17
RIGHT TO RE-ENTER:

A. In the event of any failure of tenant to perform any other terms, conditions or covenants of this lease to be observed or performed by Tenant for more than fifteen (15) days after written notice of such default shall have been mailed to Tenant, then Landlord, besides and in addition to other rights or remedies it may have, shall have the immediate right to re-entry and may remove all persons and property from the Premises and such property may be removed and stored in a public warehouse or elsewhere a the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed quality of trespass or becoming liable for any loss or damage which may be occasioned thereby.

SECTION 18
RIGHT OF ENTRY:

A. Landlord or Landlord's agents shall have the right to enter the premises at all reasonable times to examine the same.

SECTION 19
LOSS AND DAMAGE:

A. Landlord shall not be liable for any damage to property of Tenant or of others located on the Premises, nor for the loss or damage to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for nay injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain or leaks from any part of the Premises. Landlord shall not be liable for any such damage caused by other tenants or persons on the Premises, occupants of adjacent property of the premises, or the public. All property of Tenant kept or stored on the Premises shall be kept or stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful or gross negligence of Landlord.

SECTION 20
NOTICE BY TENANT:

A. Tenant shall give immediate notice to Landlord in case of fire or accidents in the Premises.

SECTION 21
HOLDING OVER:

A. Any holding over after the expiration of the term hereof, with the consent of the landlord, shall be construed to be a tenancy from month to month and shall otherwise be on the terms and conditions herein specified, so far as applicable.

SECTION 22
WAIVER:

A. The waiver of Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition herein contained, unless such waiver is in writing by the Landlord. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to a waiver of any preceding breach by Tenant of any term, covenant or condition of this lease.

SECTION 23
ENTIRE AGREEMENT:

A. This lease and the exhibits, and rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions or understandings, either oral, or written, as between the Landlord and Tenant. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them, and no act by any representative or agent of Landlord other than a written agreement shall constitute an acceptance thereof.

SECTION 26
PARTIAL INVALIDITY:

A. If any term, covenant, or condition of this lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

EXECUTED THIS ____ day of _____, 2002

LANDLORD:

By: _____
Mayor

ATTEST: _____
City Clerk

EXECUTED THIS ____ day of _____, 2002

TENANT:

_____

_____

SCHOOL STREET/RIDGE ROAD INTERSECTION UPDATE: The City Manager advised that the Street Committee met on January 9 and looked at the intersection of School Street and Ridge Road. Since that time, the large oak tree at the intersection has been moved, increasing visibility by a few feet. Officials with the Department of Transportation have given ownership of the mirror at this intersection to the City of Marion. It has been placed in a more visible location. Additional speed limit signs and a "reduced speed ahead" sign will also be placed on Ridge Road.

A discussion followed.

No action was taken by Council.

RESOLUTION – AUTHORIZE CITY PARTICIPATION IN NORTH CAROLINA LOCAL GOVERNMENT DEBT SETOFF PROGRAM: The City Manager presented Council with a resolution and agreement for the City to participate in a new program offered by the State, the North Carolina Debt Setoff Program, in which the City can send in uncollected debts and potentially have State tax refunds taken to pay the debts. Eligible debts include utility bills, tax bills, lot mowing bills, along with other debts.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Resolution:

CITY OF MARION
RESOLUTION
NORTH CAROLINA
LOCAL GOVERNMENT
DEBT SETOFF PROGRAM

WHEREAS, NCGS Chapter 105A, Setoff Debt Collection Act, authorizes the North Carolina Department of Revenue to cooperate in identifying debtors who owe money to local governments and who qualify for refunds from the Department of Revenue; and

WHEREAS, the law authorizes the setting of certain debts owned to local governments against tax refunds; and

WHEREAS, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities have jointly established a clearinghouse to submit debts on behalf of the City of Marion, as provided by law;

NOW THEREFORE, BE IT RESOLVED BY THE by the Marion City Council that the City of Marion will participate in the debt setoff program and hereby designates J. Robert Boyette, City Manager as the person to hold hearings and conduct necessary proceedings.

The Mayor and City Manager are hereby authorized to execute such documents and agreements as necessary to participate in the debt setoff program.

Adopted by the Marion City Council on the 22nd day of January 22, 2002.

A Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-02-01-22-3

NAFTA/TRADE ISSUES: The City Manager advised that he had received a letter from Henry County, Virginia, urging all cities affected by the North American Free Trade Agreement (NAFTA) to consider asking their Congressman and Senators to support legislation to create Free Trade impact Zones and financial assistance for communities that have experienced plant closing and job losses. The City Manager stated that staff was compiling information on the job losses and property tax and utility revenue losses that the City has experienced from plant closings over the past several years. Once this information is compiled, Council may wish to consider forwarding this information to Congressman Taylor and Senators Helms and Edwards, along with a request to consider legislation similar to that suggested by Henry County, Virginia.

A discussion followed.

No action was taken by Council.

REQUEST – AUTUMN CARE – MAINTENANCE OF SEWER LINE: The City Manager presented Council with a letter of request from Ms. Amy Hughes, the Administrator of Autumn Care requesting that the City take over maintenance of the force main sewer line going to Autumn Care along Airport Road.

A discussion followed.

Council stated that were generally favorable to taking over the line ,but suggested that more information on the line size and exact location be obtained from Autumn Care. The City Manager will bring back more information on the line a future meeting for Council review.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager also reminded Council of the Town Meeting scheduled for Thursday, January 24, 2002 and the City Council Planning Session scheduled for February 2, 2002.

BIDS – WEST MARION PROPERTY: The City Manager advised that Fire Chief Tom Milligan had received one bid for the removal of the two burned structures on West Wilhemenia Street in the amount of $2,005.00.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the bid of $2,005.00 to remove, level and re-seed this area.

RETIRED VOLUNTEER FIREFIGHTERS: Councilman Edwards noted that the Fire Committee had recommended not to present individual plaques to retired volunteer firefighters, but noted that the Fire Department did have a plaque listing the names of retirees. He stated that a similar plaque could be considered at City Hall.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson; Council voted unanimously to go into Closed Session to discuss a Personnel Issue in accordance with N.C.G.S. 143-318.11(a)(6).

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

The City Manager gave a recommendation that Jim Neal be appointed as the new Fire Chief for the City of Marion, at a salary of $36,500, to begin no later than March 15. Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the City Manager's recommendation and appoint Jim Neal as Fire Chief.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 5, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Leo, Alice and Evette Logan, Marion, N.C. 28752; A.G. Kelly, Marion, N.C. 28752; Connie Martin, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN BILLY MARTIN:
Councilman Martin selected the Citizen of the Month for February.

The following information was presented about February's Citizen of the month:

ALICE HORNE LOGAN

Councilman Martin advised that Ms. Logan is the daughter of the late William and Rosie Horne. She graduated from Carver High School in 1963.

She has been an employee of First Citizens Bank for thirty years and received a degree from McDowell Tech in 1995.

Ms. Logan has been married to Mr. Leo Logan for thirty one years.

She is a faithful, dedicated member of Addies Chapel, where she serves as Sunday School Superintendent, Choir Member, works with the children and youth in the Church, serves as assistant Organist and much more.

Ms. Logan is active with the Red Cross, Relay for Life, the West Marion Community Watch Organization.

Mayor Clark and Council Members all had kind words to share about Ms. Logan.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. **Approval of City Council Minutes** – January 22, 2002
Approval of Town Meeting Minutes - January 24, 2002

B. **Approval of Certificate of Approval and Resolution Fixing Date of Public Hearing – Autumn Care Annexation:**

CERTIFICATE OF SUFFICIENCY

To The City Council of the City of Marion:

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160-A-58.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 5th day of February, 2002.

(SEAL)

L. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday , March 5, 2002.

Section 2. The area proposed for annexation is described as follows:

Tract No. 1 (McDowell County Tax PIN 1702.03-34-9212): BEGINNING at a PK nail in the center of SR 1500, corner for Hoyt George Johnson, et ux as described in that deed dated August 11, 1970, recorded in Book 211, Page 129, McDowell County Registry; thence along the centerline of SR 1500 the following courses and distances: North 45 degrees 05' 18" West 111.02 feet to a point, North 42 degrees 00' 45" West 100.71 feet to a point; North 36 degrees 08' 09" West 99.75 feet to a point; North 13 degrees 4' 22" West 99.11 feet to a point; North 10 degrees 43' 49"East 99.42 feet to a point, and North 15 degrees 24' 23" East 234.03 feet to a point; corner for Edward Lentz; thence along the Lentz line, South 81 degrees 42' 41" East 796.78 feet to an axle in the line of Troy Effler; thence along the Effler line, South 10 degrees 40' 19" West 207.24 feet to a stake, cornering; thence continuing along the Effler line South 4 degrees 04' 15" West 226.52 feet to a stake, corner for Hoyt George Johnson; thence along the Johnson line, North 85 degrees 04' 22" West 409.13 feet to a stake, cornering; thence continuing along the Johnson line, South 68 degrees 02' 16" West 170.76 feet to a stake, cornering; thence continuing along the Johnson line, South 9 degrees 38' 30" East 21.43 feet to a stake, cornering; thence along the Johnson line, South 22 degrees 36' 30" West 64.05 feet to a PK nail in the centerline of SR 1500, the point of BEGINNING, containing 8.996 acres according to Survey of Property of Autumn Corporation by Childres-Andrews Surveying Co., dated April 17, 1983.

The above described property is that property conveyed by R. J. Morris, single, et al., to Hilltop House, Inc., by deed dated June 3, 1961, and recorded in Book 163, Page 323, McDowell County Registry, together with that property conveyed by Alonzo Good and wife, Josephine Good to Hilltop House, Incorporated, by deed dated August 16, 1961, and recorded in Book 164, Page 273, McDowell County Registry. See also that agreement from Boyt George Johnson and wife, Thelma L. Johnson to Hilltop House, Inc., dated April 15, 1983, and recorded in Book 318, Page 763, McDowell County Registry.

Tract No. 2 (McDowell County Tax PIN 1702.03-33-6679): BEGINNING at a stake in the Southwestern right of way line of SR 1500 (Airport Rod) at the Eastern corner for Jennie Wee Jackson (see Deed Book 94, Page 58); thence along the Southwestern right of way line of SR 1500 the following three courses and distances: South 50 degrees 36' 57" East 229.81 feet to a stake, South 44 degrees 36' 57" East 98.52 feet to a stake and South 16 degrees 49' 25" East 66.15 feet to a stake, corner for Douglas Vaught Wood (see Deed Book 428, Page 643); thence along the Wood line South 71 degrees 54' 00" West 194.10 feet to a stake, corner for Alvin Callahan; thence along the Callahan line North 83 degrees 02' 15" West 294.15 feet to a stake, corner for Timothy K. Washburn (see Deed Book 467, Page 188) and Jennie Wee Jackson; thence along the Jackson line North 34 degrees 42' 32" East 369.70 feet to a stake in the Southwestern right of way line of SR 1500, the point of BEGINNING, containing 2.04 acres, as shown on that plat of survey prepared by R. L. Greene Surveying and Mapping, dated July 17, 1998, entitled "Boundary and Partial Topographic Survey of That Property Described in a Deed to Darrell J. Stamey and Debra K. Stamey" and being the identical property conveyed by C. F. Cook and wife, Faye C. Cook to Darrell J. Stamey and wife, Debra K. Stamey by deed dated September 20, 1988, recorded in Book 388, page 92, McDowell County Registry.

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 5th of February, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

REQUEST - SEWER SERVICE – POTEAT/STAMEY HEATING & AIR - RUTHERFORDTON ROAD: The City Manager advised that Mr Ronnie Stamey and Ms. Connie Poteat, are requesting that Stamey's Heating & Air, located at 2116 Rutherford Road, be approved for receipt of sewer service. Mr. Stamey has already connected to sewer without approval. Mr. Stamey and Ms. Poteat wish to continue an arrangement made with the City in 1977, in which a fre sewer tap was given to property owners in that area.

Ms. Poteat owns the property where Dreamers Café is and has one sewer tap to that location, which was granted in the 1977 Agreement. Dreamer's Café connected to water in 2001. The City Manager advised that he viewed the City's commitment in the 1997 agreement to have been satisfied by providing the sewer tap to the Dreamer's Café. He noted that current City policy would require tap and Cost Recovery Charges to be paid for water and sewer, and a petition for annexation submitted by the property owner in order for sewer service to be provided outside the City Limits.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to approve the sewer connection for Stamey's Heating and Air, on the condition that tap and Cost Recovery Charges (inside) are paid for water and sewer, that both water and sewer service is provided to the business, and that the property owner submit a petition for annexation of the property. If these conditions are not met, Mr. Stamey will be required to disconnect from City sewer.

BARNES ROAD SEWER – DRAFT AGREEMENT: The City Manager advised that the direction given at the Planning Session to authorize staff to proceed with the design and permitting of the sewer extension on Barnes Road, but not to start the consutrction of the sewer line until construction on the building for ALL Construction began was sufficient, and that further review of the draft agreement between ALL Construction and MEDA was not necessary.

PROPOSED SANITARY SEWER LINE TO SERVE BARNES SITE
FROM EXISTING SEWER AT SPECTRUM FACILITY
McDOWELL COUNTY, NORTH CAROLINA

Prepared by: McGill Associates
15-Oct-01

NO.	Description	Quantity	Unit.	Unit Price	Extension
1	Mobilization for Sewer System (3% Maximum)	1	LS	$1,040.25	$1,040
2	8" Dip. Sanitary Sewer Line	710	LF	$ 25.00	$17,750
3	20" Steel Encasement, installed by Bore & Jack	100	LF	$ 110.00	$11,000
4	4" Dia. Precast Concrete Sewer Manhole Complete	3	EA	$1,100.00	$3,300
5.	Rock Excavation in Sewer Line Trench	25	CY	$50.00	$1,250
6.	Select Backfill	50	CY	$10.00	$500
7.	Washed Stone In Trench	25	TN	$15.00	$375
8.	Connect Sewer to Existing Manhole	1	EA	$500.00	$500
	SUBTOTAL SEWER SYSTEM				**$35,715**
	10 % Contingency				$3,572
	TOTAL ESTIMATE				**$39,287**

Council took no further action on this matter.

CONTRACT APPROVAL – POLICE DEPARTMENT ARCHITECT: The City Manager presented Council with a proposed contract and proposal from ADW, Inc. for the design and construction administration of the Police Department expansion. ADW proposes to complete this work for 7.75 % of the total construction cost. ADW would provide one inspection per week during construction, which seems to be standard among architects, but will provide additional inspections for $400 per trip.

The City Manager advised that he had compared this percentage to other projects, and it seems to be in line for projects under $1 million.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the proposal from ADW, Inc. for 7.75 percent of the total construction cost.

A copy of the contract can be found on file at City Hall.

REQUEST – SEWER SERVICE – CROSS MEMORIAL BAPTIST CHURCH: The City Manager advised that representatives of Cross Memorial Baptist Church are requesting Water and Sewer Service from the City of Marion.

They are willing to annex the twenty-three acres they own which includes the Church, their Parsonage and a Cemetery.

The City of Marion can serve this property with no problem.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve this request, on the condition that an annexation petition is submitted..

NAFTA/TRADE ISSUES: The City Manager presented Council with information showing the effects that plant closings have had on City Revenues since 1990. The bulk of the City's losses were due to the Cross Mill Plant closing. However, other closings such as Marion Mills have hurt as well. The City Manager suggested that this information might be passed on to Congressman Taylor, and Senators Helms and Edwards, along with a letter asking them to support programs and funding to help communities negatively impacted by plant closings due to NAFTA.

A discussion followed.

It was the consensus of Council to direct the City Manager to send the information on plant closings and a letter asking for State and Federal support for programs and funding to help communities negatively impacted by plant closings due to NAFTA to State and Federal Officials, the North Carolina League of Municipalities, the National League of Cities, and MEDA.

ROBERT STREET SPEED LIMIT: Mayor Clark advised that he has received several complaints about speeding on Robert Street around Marion Elementary School. Robert Street has been one of the streets we have targeted since last year for speeding, and we have written many tickets on this street. However, many parents still feel that speeds are too fast on this street, especially in the mornings when children are going to school and when school lets out in the afternoon. The City Manager advised that the speed limit on Robert Street was 25 mph, but that one option might be placing flashing lights to mark a school zone.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to install flashing lights in front of the School on Robert Street to flash between the hours of 7:30 A.M. – 8:30 A.M. and 2:30 P.M. and 3:30 P.M. and to reduce the Speed Limit to twenty miles per hour during these hours. The school zone would be located between the intersection with Fleming Avenue and a point east of Richard Drive on Robert Street.

RIGHT OF WAY MOWING – AWARD CONTRACT: The City Manager presented Council with a recommendation form for Kelly's Landscaping to continue street right-of-way mowing services at the same price from last year of $1,205.00 per week.

The City Manager advised that Kelly's has provided overall good service and has responded to complaints and criticism well when we have given it to them. General Statutes do not require bids to be taken for service contracts.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the bid of Kelly's Landscaping in the amount of $1,205.00 per week.

CEMETERY MOWING – AWARD CONTRACT: The City Manager presented Council with a recommendation form for McClure's Landscaping to continue cemetery right-of-way mowing services at the same price as last year in the amount of $875.00 per week.

The City Manager advised that McClure's have also provided overall good service and has responded well when we have received complaints from residents. General Statutes do not require bids to be taken for service contracts.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to accept the bid of McClures's Landscaping in the amount of $875.00 per week.

CITY MANAGER'S REPORT: The City Manager gave a report on current projects.

PLANNING SESSION – SECOND MEETING:

Council continued with the Planning Session adjourned from Saturday, February 2. Topics discussed included: General Administration, Streets and Sidewalks, Sanitation, Fleet Maintenance, Public Works Administration, Police, Fire, Parks and Recreation, Public Buildings and Grounds, and Purchasing. Ideas for programs, policies, and the 2002-03 budget were discussed. No action was taken by Council.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 19, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Chief of Police; Suzy Davis, City Planner; Ragan Robinson, News Reporter, The McDowell News.

GUESTS PRESENT: Tommy Lytle, Marion Police Officer; Alex Hughes, 50 Greenlee Road, Marion, NC; Dan McCauley 10 Troy Terrace Marion, NC; Fred R. Gurule 264 Apache Path Marion, NC; Eli Omberg 105 Summit Street Marion, NC; Sara Harry 158 Whispering Pines Marion, NC; Stephanie Thomas 802 Veterans Drive, Marion, NC; Christopher Todd 66 East 5th Street Marion, NC; Brandon Parker 21 Oak Street Marion, NC; Rick Underwood 41 Currier Court Marion, NC 28752; Josh Wilson 1042 Wilson Valley Drive Marion, NC; and Brian Hodge.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – February 5, 2002

B. Resolution:

A RESOLUTION IN SUPPORT OF THE PRESENT SYSTEM OF ALCOHOLIC BEVERAGE CONTROL

WHEREAS, the people of Marion voted to permit the sale of spirituous liquor through the establishment of the Marion ABC Board which is a part of the State's control system for the sale of spirituous liquors; and

WHEREAS, the Marion ABC Board makes spirituous liquor available to consumers through the local ABC store while curtailing the intemperate use of alcohol through control over the distribution, sale and advertisements of spirits; and

WHEREAS, the State's ABC system is self-sufficient in that consumers of spirits pay for the costs of operating the State ABC Commission and for the distribution and sale of spirits; and

WHEREAS, the Marion ABC Board generates substantial revenue for the City of Marion and contributed in the 2000-2001 Fiscal Year $151,998 to its General Fund and contributes substantial funds for alcohol education and rehabilitation and alcohol law enforcement; and

WHEREAS, the North Carolina General Assembly recently created the Legislative Alcoholic Beverage Control Study Commission (ratified Senate Bill 1166) which is required to study and address, among other things, the benefits of a "control" system and a "license" system for spirituous liquor, including privatization of alcoholic beverage sales.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES THAT:

The City Council of the City of Marion supports the present control system for the sale and distribution of spirituous liquor and desires to retain the Marion ABC Board.

Adopted this the 19th day of February, 2002

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-02-02-19-1

C. Authorize Request – Painting of Community Building From First Union Bank:

Mr. Johnny Dillard, Manager of the local First Union Bank, has stated that the First Union bank would give to the City a painting currently hanging in their lobby depicting the Marion Community Building and the old Cross house nest to it. The painting was done by Karen Dark in 1982. He is concerned about the painting being lost or removed with the merger, and possible remodeling of the bank. To request the painting, the City needs to send a letter to Mr. Dillard.

D. Resolution – Code of Conduct:

RESOLUTION
CODE OF CONDUCT

WHEREAS, the Community Development Block Grant-U.S. Housing and Urban Development Programs of the Federal and State Governments requires Grantees (City of Marion) to maintain a written Code of Conduct for Public Officials (elected and appointed), officers, employees or agents engaged in the award or administration of contracts supported by federal funds; and

WHEREAS, no public official, employee, official, officer or agent of the Grantee shall participate in selection or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, is involved; and

WHEREAS, Attachment O-Circular No.A-102 of the Code of Federal Regulations, Section 7 entitled "Code of Conduct" defines such a conflict of interest that would involve a financial or other interest. real or apparent, is involved; and

WHEREAS, North Carolina General Statutes Chapter 14, Article 31 entitled "Misconduct in Office" provides standards, regulations and penalties for violation of state and local laws by public officials, officers and employees; and

NOW, THEREFORE, BE IT RESOLVED that North Carolina General Statutes, Chapter 14, Article 31 entitled "Misconduct in Office" shall govern the code of conduct required by the Code of Federal Regulation, Attachment O. Circular No. A-102, as set forth heretofore.

Adopted this 19th day of February, 2002.

A. Everette Clark, Mayor — Clerk to the Board

PUBLIC HEARING – ZONING AMENDMENT – TATTOO PARLORS AND BODY PIERCING: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis gave the following update from the Planing Board:

Jack Clark and Fred Gurule submitted an application for an amendment to the City of Marion Zoning Ordinance to allow for a tattoo parlor/body piercing shop in the C-2 District. Currently, a tattoo parlor is not a permitted use or a special exception in any district in the City.

The Planning Board Recommendation is as follows:

"803.4(5) To allow Tattoo and/or Body piercing shops in the C-2 General Business District provided that the business is not located or operated within one thousand feet of:

1. A church, synagogue, or regular place of worship
2. A public or private elementary or secondary school
3. A public library
4. A park or playground
5. A licensed child-care facility
6. A licensed group-home facility
7. An entertainment business that is oriented primarily towards minors

For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where tattoo and/or body piercing is conducted, to the nearest property line of the premises of any use listed above.

The following persons were present for this Public Hearing and supported the request of allowing Tattoo Parlors and Body Piercing in the City of Marion:

Stephanie Thomas
Alex Hughes
Eli Ornberg
Chris Todd
Brian Hodge
Sara Harry
Josh Wilson
Dan McCauly
Fred Gurule

A discussion followed.

Councilman Little stated that he could not support tattoo parlors or body piercing shops in the City because he felt it did not reflect well on the City and could cause such locations to become run down. He noted that this opposition did not mean that he was against anyone who had a tattoo or body piercing.

Councilman Edwards stated that he felt Mr. Gurule needed to find a location and demonstrate that he had a licensed operator prior to coming back and expecting Council to make some allowances for these types of businesses. He noted that one consideration would have to be the impact that these types of businesses would have on other businesses and in the City's business recruitment efforts, particularly in the downtown area. He suggested that the City Manager get an opinion from the City Attorney as to the ability of the City to regulate tattoo parlors and body piercing shops.

Councilman Edwards made a motion that this amendment be tabled until March 19.
Councilman Owenby seconded the motion.

Mr. Fred Gurule advised that they had already rented a space from the owner of World Link on East Court Street and is paying over eight hundred dollars a month rent. He advised that under the present recommendation of the Planning Board he would not be able to establish his business at this location and that tabling this request could cost him more money.

Councilman Owenby withdrew his second. He stated that he felt Council should make a decision on this matter tonight, since Mr. Gurule has expended funds to rent a business space.

Councilman Little seconded Councilman Edwards motion.

Mayor Clark closed the Public Hearing.

The vote to table this request was as follows:

Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Little	Yes
Councilman Martin	Yes
Councilman Owenby	No

PUBLIC HEARING – REZONING REQUEST RUTHERFORD ROAD: Mayor Clark opened the Public hearing.

City Planner Suzy Davis advised that Mr. Charles Randolph would like to rezone his property located on Rutherford Road.

A vacant lot, abutting a house belonging to Mr. Randolph, is currently zoned R-2. Mr. Randolph would like to rezone the property to C-2, general business. The C-2 zoning district abuts the property on two sides. The abutting property owners were notified and there were no objections.

There were no Citizens present to discuss this request.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to accept the recommendation of the Planning Board and to rezone this property from R-2 to C-2.

APPOINTMENTS TO DOWNTOWN ADVISORY COMMITTEE: The City Manager advised that at their last meeting, City Council voted unanimously to establish a new Downtown Advisory Committee (DAC) and had directed that names be suggested for appointment.

Mr. Mike Ornberg made several suggestions regarding appointments to this Committee:

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to appoint the following Committee Members:

A. Everette Clark, Mayor
Mike Edwards, City Council Member

Tracy Fuller, Downtown Merchant
Patti Hart, Property Owner/Downtown Merchant
Doris McCurry, Property Owner/Downtown Merchant
Mike Ornberg, Property Owner/Downtown Merchant
Bobby Young, DBA Board Member
Traci Ross, MACA Executive Director

Bob Boyette, City Manager - Ex-Officio Member
Freddie Killough, DBA Executive Director- Ex-Officio Member

Suzy Davis, City Planner – Will serve as staff to the Committee

This newly formed Committee (DAC) will serve as an advisory board to the City Council on matters involving downtown development and revitalization.

The DAC shall function as an ad hoc committee for such time as deemed necessary by City Council, or until permanent designation is given by ordinance.

ALTERNATE PLANNING BOARD APPOINTMENTS: The City Manager advised that Mr. Perry L. Smith of 240 E Hudgins Street and Ms. Virginia Williams of 140 North Garden Street are both interested in serving as Alternate Planning Board Members.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to appoint Mr. Smith and Ms. Williams as Alternate Planning Board Members.

AWARD CONTRACT – SPAULDING ROAD CDBG PROJECT SEWER EXTENSION: The City Manager advised that bids have been received on January 23, 2002, from six contractors for the Spaulding Road CDBG Sewer Extension Project.

The low bid was submitted by Trans-State Construction Company, out of Denver, N.C., in the amount of $99,525. The references for Trans-State are positive and McGill Associates advise that they believe that Trans-State can complete the job.

Since the revised project budget contains $158,000 for sewer improvements, adequate funding is available for McGill's charges for design and engineering, and construction administration.

The City Manager recommends that Trans-State Construction Company be awarded this contract.

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve this low bid to Trans-State Construction Company, out of Denver, N.C., in the amount of $99,525.

ARBOR DAY UPDATE: The City Manager advised that this years Annual Arbor day event is scheduled for Friday, March 22, 2002 at Marion Elementary School at 9:00 A.M. The actual tree planting will be held on West Henderson Street in front of the Shamrock Inn. Mayor Clark, City Council and the News Media are invited to attend. Following this event, a Tree Planting Ceremony will be held on the front lawn of City Hall to plant a Dogwood tree to honor J. Earl Daniels for his twenty-eight years of service to the City of Marion as City Manager.

No action was taken on this item.

REQUEST – JIM McKINNEY – DISPOSAL OF DEMOLITION DEBRIS – CROSS MILL: The City Manager advised that he and Mayor Clark had met with Mr. Jim McKinney regarding his request to dispose of debris from the Cross Mill site. He is in the process of removing all wood from the debris and all asbestos has already been removed from the structure.

All that would be buried on this site, if allowed, would be brick and concrete, tar paper and gravel from the roof. The debris would be buried in the existing pond and covered with dirt. Mr. McKinney plans to put a parking lot on top of the landfill site.

Mr. McKinney will accept the condition that no outside materials be allowed to be buried on the site. He is also willing to abide by all State conditions placed on him.

Mr. McKinney plans to eventually construct some small 2,000 – 5,000 square foot warehouses where the mill stood.

Mr. McKinney is also willing to provide the City a lease for a term to at least three to five years to use the parking lot at no cost. The City could make any needed improvements to the lot if so desired.

The City Manager advised that this proposal sounds much better than the sketchy details originally provided by the County. With the conditions listed above, the landfill could probably be done without harm to the area.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to allow Mr. McKinney to bury this debris contingent upon meeting all requirements as stated above. With these conditions met, Mr. McKinney's request would not violate any City Ordinances or Policies.

CONTRACT BIDS – PICK-UP TRUCK: The City Manager presented Council with a memo from the purchasing Agent Mr. Dan Weeks advising that bids had been received for the purchase of two one-half ton pickup trucks. They are budgeted from the water department Capital Outlay (30810-7400). The budgeted amount for each truck is $19,000. The low bid was received from Legendary Ford in the amount of $30,718.40 for both trucks, considerably less than the budgeted amount.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to award this contract to Legendary Ford in the amount of $30,718.40 for both trucks.

DBA UPDATE: The City Manager advised that Council had approved the payment of refurbished Christmas decorations by the City with repayment for one-half the costs by DBA over a tree year period. The City will need to proceed with this work before the end of the Fiscal Year so that we are not pushed this fall with having the decorations available. Council agreed by consensus to proceed with the immediate purchase of the decorations under this arrangement.

The City Manager also advised that the fireworks show is typically held on the Fourth of July and is paid with funds from the prior budget year. To implement Council's directive to have a longer show and have the City contribute an additional $1,000.00, this funding will come out of next year's budget. Therefore, the $2,500 budgeted for fireworks in the 2001-02 budget will not need to be spent.

BUDGET UPDATE: The City Manager gave the following update on the budget:

2001-2002 Budget Summary
Reimbursement Freeze Options

Governor Easley has frozen General Fund payments to the City of Marion that total $319,933. This amount is composed of reimbursements (inventory tax and homestead exemption- $103,784) and state collected local revenues (utility franchise tax and beer and wine tax - $216,149). The option proposed to address this revenue shortfall is by reserving the following funds included in the 2001-02 General Fund Budget:

Rail Depot Renovation/Special Projects:	$190,000
Cushman Scooter Purchase:	19,500
Mini-Park Construction	50,000
Internal Service Fund Transfer	5,000
Fireworks	2,500

Other Funds to be Unspent	64.522
Total Amount Reserved	$331.522

The City's General Fund revenues are projected to fall short of the estimated budget by $442.286, due to this reimbursement freeze, which would leave a shortfall of $110,764. However, we budgeted $2000,000 of Fund Balance this year in the General Fund. By using a little over half of this budgeted Fund Balance ($110,764,) we can balance the budget even if all $319,933 in frozen revenues are lost. If the Utility Franchise Tax and Beer and Wine Tax payments are made, the budget then will experience a surplus of $105,385 and not need any Fund Balance appropriation.

Since the City has no current vacant positions, the City Manager advised that he would not recommend a hiring freeze as it will not help the budget situation. Putting off purchase of equipment and vehicles will increase maintenance costs, and defer the budget problem to a future budget year. By reserving the funds listed above, and using a bit of Fund Balance as we had budgeted if we have to, the budget situation this year can be overcome. The City Manager advised that he would be extremely conservative in estimating revenues and expenditures in the 2002-03 budget, and would try to give a even bigger cushion than this year, assuming that the Governor will take the same action and potentially freeze $319,000+ in revenue again next year.

Council agreed by consensus to accept the recommendations of the City Manager regarding the 2001-02 budget.

WEST HENDERSON STREET TRAFFIC: The City Manager presented Council with a memo from Sgt. J. F. Schutz, advising that she had spoken with Ms. Myra McCurry, owner of the Shamrock Inn on 02-07-02. Ms. McCurry reported that vehicles are making U-turns on West Henderson Street in front of her business and feels that this is a potential hazard for the public.

The North Carolina General Statute 20-140.3 basically states that U-turns are illegal but only when speaking in terms of a controlled-access highway, otherwise U-turns are legal but only when done in a safe manner.

Under Section 18-109 it states that U-turns are prohibited but only if a sign to this effect is placed in the area where the concern is shown.

The Police Chief noted that officers had rarely observed such movements, and that no u-turns had caused accidents in this block.

A discussion followed.

Councilman Edwards noted that existing traffic laws related to left of center could address some u-turn situations. Councilman Edwards and Councilman Little both noted that there was no need to clutter downtown with unneeded signage. It was the consensus of Council that u-turns were not a problem in this block, and did not justify additional signs being placed.

No action was taken.

REQUEST – USE OF FIRING RANGE: The City Manager advised that Mr. David Ricketts and Mr. David Setzer have inquired about the possibility of forming a local shooting club and contracting with the City for use of the City's Firing Range.

They envision memberships and dues with this type club and are willing to pay the City for the use of the range.

Council members discussed the problem with setting a precedent for such use of the range, and in problems with overscheduling. Councilman Owenby noted that the reason the City had constructed its own range, was to avoid scheduling conflicts with other agencies.

A discussion followed.

It was the consensus of Council to direct the City Manager to inform Mr. Ricketts and Mr. Setzer that it might be better for them to pursue development of a private firing range, for use by private clubs. If they still were interested in use of the City range, they would need to come back with more information on the by-laws of the club, dues and membership structure, frequency of use of the range, and willingness to purchase liability insurance.

No action was taken.

DISCUSSION – WATER RATE STUDY: The City Manager advised that Mr. Dennie Martin of McGill Associates provided an estimate for a Water and Sewer Rate Study Update.

Complete study with analysis by McGill: $6,300
Barebones study with analysis by City $5,000

A discussion followed.

It was the consensus of Council that the City Manager and Finance Officer put together some kind of revenue analysis, and look at the impact of several different scenarios, and then compare our rates to that of other communities in the region.

CITY MANAGER'S REPORT: The City Manager gave a report on various current projects.

The City Manager also reported that Mr. Robert Thomas, Plant Manager of Galey and Lord, had met with him today and informed him that Galey and Lord have filed for Chapter 11 Bankruptcy. They have assured the public and their employees, in a press release, that this is a re-structuring process and will not affect the Marion Plant. No layoffs or scheduling changes are planned, and the local plant will continue to pay its bills.

THOROUGHFARE PLAN DISCUSSION: The City Manager advised that he has received a draft copy of a Thoroughfare Plan for the City of Marion. This copy contains much information such as traffic counts that is no longer current and would not serve the City.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to direct the City Manager to contact Mr. Travis Marshall and advise that City Council required a Thoroughfare Plan Study with current traffic counts, delivered to the City no later than December 31, 2002, or else the City expects the money paid for the plan refunded, with interest.

COUNCILMAN MARTIN COMMENTS: Councilman Martin requested that the Street Committee look into a drainage problem on Ridley Street. The Meeting was scheduled for Monday, February 25, 2002 at 4:00 P.M.

COUNCILMAN CUTHBERTSON COMMENTS: Councilman Cuthbertson reported that he had received complaints from employees of downtown businesses stating that the City Enforcement Officer had been telling people that employees and business owners were not allowed to park on Main Street, and that fines for parking violations were being increased from $5 to $30. Councilman Cuthbertson stated that these changes had not been approved nor discussed by Council and such statements should not be made. The City Manager advised that the Enforcement Officer was attempting to better educate downtown merchants and employees about City parking regulations and the availability of free all-day parking lots, in an effort to

reduce the number of parking tickets that have to be written daily. This effort is being made in conjunction with the parking brochures printed by the City and Downtown Business Association.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(4) to discuss a matter involving the location of industry.

REGULAR SESSION: Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met on Tuesday evening, January 22, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(4) to discuss a matter involving the location of industry.

The City Manager advised that the County Manager had related that a company was interested in purchasing the Tultex Building on Rutherford Road, but that company was expecting financial incentives from the State and Local governments. The County can leverage up to $100,000 from the Governor' Incentive Fund, but these funds must be matched locally. Under the County's incentive formula, they will provide a financial incentive equal to two times the increased property tax revenues to be received from the project.

The company in question is in the digital photography/graphic arts business and would make a $2 million investment in taxable equipment for the building. Under the County' formula, they

could provide an incentive of $26,000, and would ask the City to consider an incentive of $25,000. The City Manager noted that the City had provided $100,000 in incentives for Spectrum a few years back, and that an agreement could be made with the company, which would commit them to staying for a period of time and providing a minimum investment. Under State law, the Council may tentatively agree to a set of incentives for an industry in Closed Session, but prior to the incentive being provided, it must be approved in Regular Session after a public hearing.

After discussion, the Council members tentatively agreed to an incentive in the amount of $25,000 for a company making a $2 million investment in the Tultex Building. The City Manager will obtain more information for Council as developments occur, and will bring an agreement which would set out the commitments of all involved parties, to Council for approval if this matter progresses that far.

REGULAR SESSION: Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 5. 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards arrived at approximately 7:45 P.M. due to being in court.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware. Police Chief; Mike Conley, News Reporter, The McDowell News, Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Dale & Imogene Poole, East Court Street, Marion, N.C. 28752; Jeff and Tonia Poole; Richard Drive, Marion, North Carolina 28752; Jim Brown, Madison Street, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN CECIL OWENBY:
Councilman Owenby selected the Citizen of the Month for March.

The following information was presented about March's Citizen of the month:
IMOGENE WALKER POOLE

Councilman Owenby advised that Ms. Imogene Poole is from a family of ten children. Present with her for this honor was her husband Dale, and two of her children and her daughter-in-law.

Ms. Poole graduated from Old Fort High School as Class Valedictorian and began her nursing career at the Old Marion General Hospital in July 1958. She has changed titles many times over the past forty-three years and presently serves as Vice President of Operations at the McDowell Hospital.

Ms. Poole is the Choir Director of Cherry Springs Church. She has been a Rotarian for over ten years and has received numerous awards through the years such as Outstanding Alumnus.

Mayor Clark, Council Members and Family Members shared kind words about Ms. Poole.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. **Approval of City Council Minutes** – February 19, 2002

B. REPORT – UNPAID 2001 REAL PROPERTY TAXES:
Report from Tax Collector of Unpaid 2001 Real Property Taxes in the amount of $115,622.08. This amount is consistent with last year. The Collection percentage currently stands at 89.5 percent.

C. APPROVAL – ADVERTISEMENT OF REAL PROPERTY TAXES McDOWELL COUNTY NEWS PAPER: Set May 8, 2002 as the date to advertise 2001 unpaid real property taxes in the McDowell News.

D. GOVERNOR'S PROCLAMATION – LITTER SWEEP 2002:
Endorse Governor Easley's Proclamation of Litter Sweep 2002.

CONTRACT AWARD – 2002 SPRING PAVING PROJECT: The City Manager presented Council with an action recommendation form from Dan Weeks, Purchasing Agent recommending awarding the project to the low bidder, Fred Callahan Co. @ $3.03

per square yard.

The bids were as follows:

Fred Callahan Company	$3.03 per square yard
APAC Carolina	$3.10 per square yard
Johnson Paving	$3.40 per square yard
Burnett's Paving	$3.50 per square yard

A discussion was held regarding the need to add Morgan Street to the 2002 Spring Paving List. The City Manager noted that Council had added Morgan Street to the list at the Planning Session. However, the west side of Morgan Street is in need of curb replacement. If the street is repaved without the curb replacement, very little curb will be left, and the curb would not be able to be replaced for at least 15 years. He noted that the current Street project schedule is full and would not allow for this work to be done by City Crews in the next two years. Council discussed Morgan Street and agreed that the City should seek prices to contract out this curb work, so that the paving work could be done.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to accept the low bid of Fred Callahan Company in the amount of $3.03 per square yard and to include Morgan Street in this year's project, after having the curb replacement work contracted out and paying for it out of Powell Bill Funds.

The following streets are included on the resurfacing list for 2002:

- Washington Street - From Virginia Avenue Extension to end of pavement
- Virginia Avenue Extension – From Railroad to end of maintenance
- East Hudgins Street – Entire length of Street
- Parker Drive – Entire length of Street
- Viewpoint Drive – From North Garden Street to Crescent Avenue
- Ellis Street – Entire length of Street
- Gilkey Street – Entire length of Street
- Nancy Tolley Street – Entire length of Street
- California Avenue – From Sugar Hill Road to end of Maintenance
- Morgan Street – Entire length of Street

APPOINTMENT – DOWNTOWN ADVISORY COMMITTEE: The City Manager reported that Mike Ornberg was recommending the appointment of downtown property owner Mike Rabb to the Downtown Advisory Commission to completed the nine member committee. Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to appoint Mr. Mike Rabb to serve on the Downtown Advisory Committee, (DAC), as a Property Owner.

REQUEST – McDOWELL COUNTY – DISPOSAL OF SENIOR CENTER PROPERTY: The City Manager presented Council with a letter from County Manager, Chuck Abernathy stating that the County intends to vacate the Senior Center property, and therefore would request the sale of this property, as approved last year by Council.

The appraisal of the Senior Center Building and Property are as follows:

Mr. Brent Anderson, Appraiser

Land - $50,000.00 - 15.87% of total value
Building - $265,000.00 - 84.13% of total value

Current Tax Value on Land – $32,000.00
Current Tax Value on Building - $309,000.00

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby those members of Council present voted to authorize the disposal of this property using sealed bids, that the County be allowed to review the bids prior to Council accepting a final sale price, and that proceeds from the sale of the building be split based on the appraisal at a proportion of 84.13% County and 15.87% City.

REQUEST – McDOWELL COUNTY SCHOOLS – PLEASANT GARDENS SCHOOL SEWER: The City Manager advised that Mayor Clark had received a letter from School Superintendent Dr. Sherron Crawford requesting consideration of reducing the City's charges for accepting sewage hauled by the Schools to the City Public Works Department. The current charge is two cents per gallon plus $15.00 per load.

The Utility Committee has met and recommends that the City treat Pleasant Gardens School as a sewer customer and charge them for sewer based on their water usage, as we will do once they are actually connected.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve this request as recommended by the Utility Committee.

** Councilman Edwards arrived during the discussion of Itinerant Merchants*

ITINERANT MERCHANTS: The City Manager has mentioned, in the past year, concerns of local businesses about the City allowing itinerant merchants to set up on the side of the road and at the Armory with only the purchase of a privilege license ($100). He noted that such concerns continue and suggested one option might be stricter guidelines, such as requiring applications with fees and waiting periods prior an itinerant merchant being allowed to set up.

A discussion followed.

Mayor Clark stated that he felt that itinerant merchants unfairly competed with established, tax-paying businesses in the City and should be regulated much more strictly than they are currently.

It was decided to place this item on the March 19, 2002 Agenda and to direct the City Manager to prepare a draft ordinance for Council review at this meeting.

PUBLIC HEARING – ANNEXATION – ORDINANCE – AUTUMN CARE: Mayor Clark opened the Public Hearing.
Their was no one present to discuss this voluntary annexation of Autumn Care Property on Airport Road.

The City Manager advised that the annexation of Autumn Care would increase the City's population by 125 and that it would take effect on March 31.

A brief discussion was held regarding the force main sewer line running from this facility and the request from Autumn Care for the City to assume ownership and maintenance of this line. It was decided to discuss this line further at the March 19, 2002 City Council Meeting.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to adopt the following Ordinance:

AN ORDINANCE TO EXTEND

THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, March 5, 2002, after due notice by publication on Friday, February 22, 2002; and

WHEREAS, the City Council finds that the area described therein meets the standards of G.S. 160A-58.1(b) to wit:

a. The nearest point on the proposed satellite corporate limits is not more than thee (3) miles from the corporate limits of the City of Marion;

b. No point on the proposed satellite corporate limits is closer to another municipality than to the City of Marion;

c. The area described is so situated that the City of Marion will be able to provide the same services within the proposed satellite corporate limits that is provides within the primary corporate limits;

d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;

e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Marion (See Footnote); and

WHEREAS, the City Council further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City Council further finds that the petition is otherwise valid, and that the pubic health, safety and welfare of the City of Marion and of the area proposed for annexation will be best served by annexing the area described.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described territory is hereby annexed and made part of the City of Marion as of March 31, 2002:

Tract No. 1 (McDowell County Tax PIN 1702.03-34-9212): BEGINNING at a PK nail in the center of SR 1500, corner for Hoyt George Johnson, et ux as described in that deed dated August 11, 1970, recorded in Book 211, Page 129, McDowell County Registry; thence along the centerline of SR 1500 the following courses and distances: North 45 degrees 05' 18" West 111.02 feet to a point, North 42 degrees 00' 45" West 100.71 feet to a point; North 36 degrees 08' 09" West 99.75 feet to a point; North 13 degrees 4' 22" West 99.11 feet to a point; North 10 degrees 43' 49"East 99.42 feet to a point, and North 15 degrees 24' 23" East 234.03 feet to a point; corner for Edward Lentz; thence along the Lentz line, South 81 degrees 42' 41" East 796.78 feet to an axle in the line of Troy Effler; thence along the Effler line, South 10 degrees 40' 19" West 207.24 feet to a stake, cornering; thence continuing along the Effler line South 4 degrees 04' 15" West 226.52 feet to a stake, corner for Hoyt George Johnson; thence along the Johnson line, North 85 degrees 04' 22" West 409.13 feet to a stake, cornering; thence continuing along the Johnson line, South 68 degrees 02' 16" West 170.76 feet to a stake, cornering; thence continuing along the Johnson line, South 9 degrees 38' 30" East 21.43 feet to a stake, cornering; thence along the Johnson line, South 22 degrees 36' 30" West 64.05 feet to a PK nail in the centerline of SR 1500, the point of BEGINNING, containing 8.996 acres according to Survey of Property of Autumn

Corporation by Childres-Andrews Surveying Co., dated April 17, 1983.

The above described property is that property conveyed by R. J. Morris, single, et al., to Hilltop House, Inc., by deed dated June 3, 1961, and recorded in Book 163, Page 323, McDowell County Registry, together with that property conveyed by Alonzo Good and wife, Josephine Good to Hilltop House, Incorporated, by deed dated August 16, 1961, and recorded in Book 164, Page 273, McDowell County Registry. See also that agreement from Boyt George Johnson and wife, Thelma L. Johnson to Hilltop House, Inc., dated April 15, 1983, and recorded in Book 318, Page 763, McDowell County Registry.

Tract No. 2 (McDowell County Tax PIN 1702.03-33-6679): BEGINNING at a stake in the Southwestern right of way line of SR 1500 (Airport Rod) at the Eastern corner for Jennie Wee Jackson (see Deed Book 94, Page 58); thence along the Southwestern right of way line of SR 1500 the following three courses and distances: South 50 degrees 36' 57" East 229.81 feet to a stake, South 44 degrees 36' 57" East 98.52 feet to a stake and South 16 degrees 49' 25" East 66.15 feet to a stake, corner for Douglas Vaught Wood (see Deed Book 428, Page 643); thence along the Wood line South 71 degrees 54' 00" West 194.10 feet to a stake, corner for Alvin Callahan; thence along the Callahan line North 83 degrees 02' 15" West 294.15 feet to a stake, corner for Timothy K. Washburn (see Deed Book 467, Page 188) and Jennie Wee Jackson; thence along the Jackson line North 34 degrees 42' 32" East 369.70 feet to a stake in the Southwestern right of way line of SR 1500, the point of BEGINNING, containing 2.04 acres, as shown on that plat of survey prepared by R. L. Greene Surveying and Mapping, dated July 17, 1998, entitled "Boundary and Partial Topographic Survey of That Property Described in a Deed to Darrell J. Stamey and Debra K. Stamey" and being the identical property conveyed by C. F. Cook and wife, Faye C. Cook to Darrell J. Stamey and wife, Debra K. Stamey by deed dated September 20, 8, recorded in Book 388, page 92, McDowell County Registry.

Section 2. Upon and after March 31, 2002, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 5th day of March 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

TRAFFIC SIGNALS: The City Manager advised that he had received a letter from Mr. Mark Teague, DOT Division Traffic Engineer, advising that the traffic signal at the intersection of East Court Street/Yancey Street/ Church Street still meets warrants and cannot be removed. Mr. Teague gave three options for improving the traffic flow on U.S. 70 that has been a problem as a result of this light:

-Changing the timing of the light to provide more time for traffic on U.S. 70 and less time for traffic on Yancey and Church Street, perhaps through the installation of a vehicle

detection loop.
-Realignment of the intersection to allow Yancey and Church Streets to match up and be served by the same signal.
-Removal of Church Street from the signal entirely.

A discussion followed.

Councilman Owenby stated that reworking the timing of this signal would be a good short term solution, but that the signal would also need to be synchronized with the signal at East Court and Baldwin Streets.

Council agreed by consensus to direct the City Manager to inform the DOT Division Traffic Engineer that the City would recommend changes to the timing of the traffic signal at East Court/Yancey/Church Streets, and synchronization of this signal with the one at East Court and Baldwin Streets. As a long term solution, the City will make initial contact with property owners to discuss the realignment of the intersection, as long as DOT would eventually fund this realignment.

DOWNTOWN HISTORIC DISTRICT DIRECTIONAL SIGNS: The City Manager advised that DOT has approved the placement of six downtown historic district directional signs at U.S. 70 West and the Bypass, West Henderson Street and the Bypass, and Highway 226 and the Bypass, at no charge to the City.

No action was taken on this item.

POLICE DEPARTMENT – PURCHASE OF PISTOLS: The City Manager advised that a demonstration of the current Reuger P-95 model of pistol and the proposed Glock pistols was held at the Armory on February 27th. During this demonstration, two magazines were emptied by Chief Benware, and the Reuger misfired twice. In both cases, these rounds were then successfully fired from the Glock. In an attempt to find out similar problems from other agencies, it was found that very few agencies carry this weapon. During qualifying a few weeks ago about twenty rounds were misfired from three different weapons.

The cost of the Glocks is $422 apiece. It would cost $10,550 for twenty-five of these guns.

A discussion followed.

Mayor Clark, Councilman Cuthbertson and Councilman Owenby stated they had witnessed the demonstration and observed problems with the weapons. Councilman Edwards stated that he viewed this issue as a major safety problem, since the officers appear to have lost confidence in the Reugers.

Councilman Owenby advised that he would anticipate these guns lasting at least twenty years, and that the City should not fund the replacement of these weapons in the future just because a newer model is available.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to allow the replacement of the guns to be placed in the 2002-03 budget.

BUDGET UPDATE: The City Manager advised that the City has received our second qu payment for the months of October, November and December. It was $176,688.85, which first quarter payment and nearly $27,000 below what is needed to meet budget. This quart sales tax in the County in five years. He noted that this poor sales tax distribution meant th $110,000 deficit in the General Fund budget was increased to about $140,000, but was stil adopted budget, which included a $200,000 fund balance appropriation. The budget situat improved if the Governor releases some or all of the City's $319,000 in frozen revenues th

On the positive side, the sales tax collections in McDowell County for January were highe except one in the past year, which should bode well for the third and fourth quarter sales ta

CONTRACT AWARD – REAR LOADING REFUSE VEHICLE:
The City Manager presented Council with an action recommendation form from Dan Weeks, Purchasing Agent with bids for one (1) new model 25 yard rear loading refuse vehicle. The bids were as follows:

Amick Equipment Co. -	$89,682.00
Volvo & GMC Trucks -	$89,682.74
McNellus -	$91,426.00

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to accept the low bid of Amick Equipment Co. in the amount of $89,682.00.

DONATION – AUTOMOBILE FOR DARE VEHICLE: The City Manager presented Council with a memo from Chief Benware advising that Officer Kellie Duncan has approached him regarding the possibility of having a vehicle donated from Jim Cook Chevrolet for use as a DARE vehicle.

Steve Dirhold, owner of Jim Cook's advised that he would be glad to donate a vehicle to the DARE Program. There would be no cost to the City for the vehicle. The City would, however, be responsible for insurance, equipment, graphics (a DARE Trademark, and a small Sponsor decal) and the maintenance of the vehicle.

This vehicle would be a fully functional police vehicle, however, it would be used primarily by the SRO and DARE Officers for transportation to school duties and at special functions.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to approve this request and accept the donation of a vehicle, for the DARE Program.

SPAULDING WOODS – CDBG CITIZEN PARTICIPATION PLAN: The City Manager advise that the State monitoring visit for the Spaulding Woods CDBG Grant had been held the previous Friday. At that monitoring visit, the State Program Representative had directed that the City adopt a newer version of the Citizen Participation Plan for the project.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the following Citizen Participation Plan:

CITIZEN PARTICIPATION PLAN
CITY OF MARION

This plan describes how the City of Marion will involve citizens in the planning, implementation, and assessment of the Community Development Block Grant (CDBG) program. The CDBG program provides funds to local units of government on a competitive basis. The funds must be used for project that benefit low and moderate income persons and aid in the elimination and prevention of slum and blight. The program is intended to assist governments in understanding neighborhood improvement. The CDBG regulations give ultimate responsibility for the design and implementation of

the program to local elected officials and also require that citizens be given an opportunity to serve in a key advisory role to these elected officials.

ADVISORY COMMITTEE

To insure that residents in the City of Marion are given a full opportunity to participate in the program, a Neighborhood Area Committee has been established to function in an advisory capacity to the City of Marion City Council regarding design, implementation, and assessment. This four member committee consists of four (4) residents within the City of Marion Housing Development Project area. Members have been appointed by the City Manager. Citizens and civic organizations are urged to make recommendations for any additional appointments. The City of Marion is particularly interested in obtaining representation of low and moderate income persons, members of minority groups, the elderly, and the handicapped.

SCOPE OF CITIZEN PARTICIPATION

Citizens will be involved in all stages of the CDBG program, including program implementation, program amendments, close-outs, assessment of performance, and design of changes in the Citizen Participation Plan. There will be three (3) general mechanisms for their involvement

to serve as an advisory committee to the project:

1. to serve as an advisory committee to the project:
2. to attend or hold public meetings or community meetings;
3. to provide individual citizen efforts in the form of comments, complaints, or inquiries submitted directly to the program Administrator or designated City of Marion official (s).

The Program Administrators for the City of Marion Community Development Block Grant/Housing Development Project are – Bob Boyette, Lovina Smith, and Paula Kempton. The local contact person is Bob Boyette, City Manager.

PROGRAM IMPLEMENTATION

Citizen Participation in program implementation will occur primarily through consultation with the Advisory Committee. The Advisory Committee will be asked to review and comment on specific guidelines for approved projects. They will also meet to review any program amendments, budget revisions, and housing rehabilitation program modifications. All such changes will be discussed with the Advisory Committee and their comments considered prior to the City of Marion City Council taking action. these meetings will be held on an as-needed basis. If program amendments require approval from the North Carolina Department of Commerce, Division of Community Assistance, a public hearing shall be held specifically on the amendment. Citizens may also be involved in implementation of projects specifically requiring citizen participation, such as self help projects. Their roles will be defined as the project develops. Technical assistance will be available as needed.

PROGRAM ASSESSMENT
PUBLIC COMMENTS
"COMPLAINT PROCEDURE"

Program assessment activities by citizens will occur in a variety of ways. A performance meeting will be held thirty (30) days to sixty (60) days prior to the actual start up of the rehabilitation program. Letters will be placed in the doors of all target areas residents and forwarded to all Advisory Committee Members of notification of the meeting. The Advisory Committee will be asked to provide citizen commentary during this meeting.

As a part of the Orientation to the program offered at the public meeting, citizens will be notified of the "Complaint Procedure" in regards to all aspects of program performance

during the project. Comments should be submitted in writing to City of Marion Housing Development Project. The Grants Administrator shall respond within the (10) calendar days. If the citizen is still dissatisfied, he/she should write to North Carolina Department of Commerce, Division of Community Assistance – 4313 mail Service Center – Raleigh. NC 27699-4313 – telephone (919) 733-2850, requesting an investigation of the problem. Program staff will also be available during normal business hours to respond to any citizen inquiries or complaints.

The "CITIZEN PARTICIPATION PLAN" will be subjected to annual review and proposed revision by the City and/or the Advisory Committee, to occur in the period between the performance hearing and the first public hearing on the subsequent year's application.

TECHNICAL ASSISTANCE

Technical Assistance will be provided to citizens and groups of low and moderate income persons and to target area residents upon request to the Grants Administrator and/or by request to the City of Marion. In addition, Technical Assistance will be provided on an individual basis to household in order to assist the needs of that policy, and organize for the implementation of the program. It is expected that such assistance will be provided directly to the Advisory Committee in response to their request. Assistance could be provided in the form of local presentations. information handouts, research of a specific issue, or other short term efforts.

PUBLIC INFORMATION

Public information. The City of Marion will also undertake public information efforts to promote citizen participation. These efforts will include the following:

PUBLIC NOTICE OF ALL PUBLIC HEARINGS will be published in the no-legal section of the McDowell News at least ten (10) days before the scheduled hearing. These notices will indicate the date, time, location, and topics to be considered. The notices will also be made available in the form of press releases, as a public service announcement to local radio stations, and will be provided to churches within the target area for distribution.

ORIENTATION INFORMATION will be provided at the first public hearing. The Program Administrator(s) will make a presentation which covers: the total amount of CDBG funds available and the competitive basis for award; the range of eligible activities; the planning process and the schedule for any meetings and/or hearings; the role of citizens in the program; and a summary of other program requirements, such as the environmental policies, fair housing provisions, and contracting procedures.

A PUBLIC FILE containing program documentation will be available for review at the City of Marion's Finance Office during normal business hours. Included will be copies of the Application and the Annual Performance Report. Other program documents are also available for citizen review on request at the City of Marion's Finance Office consistent with applicable State and Local laws regarding personal privacy and obligations of confidentiality.

HANDICAP ACCESSIBILITY

During all public hearings an interpreter will be provided for all non-English speaking individuals and for the hearing impaired. The City of Marion has handicap accessibility for all individuals interested in participating in or attending meetings and public hearings.

ADOPTED, this the 5th day of March, 2002.

Mayor

ATTEST:

City Clerk

CITY MANAGER'S REPORT: The City Manager gave a report on current projects.

COUNCILMAN EDWARDS: Councilman Edwards commended Chief Benware and the Police Department as a whole, advising that he is hearing many positive comments regarding the present Department.

COUNCILMAN CUTHBERTSON: Councilman Cuthbertson advised that there is a screen on the mirror at the intersection of Willow and Railroad Streets that is impairing visibility at this intersection. The Public Works Director advised that he would check this mirror and adjust accordingly.

CITIZEN COMPLAINT – JIM BROWN: Mr. Jim Brown appeared before Council regarding the traffic signals at the intersection of East Court and Garden Streets and the one at the intersection of East Court and Church Streets.

The City Manager advised that the Department of Transportation has been contacted many times by the City regarding these two signal lights. The City has no control over these signals.

CLOSED SESSION: Upon a motion by Councilman Edwards, seconded by Councilman Owenby, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real estate.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met on Tuesday evening, March 5, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager.

CLOSED SESSION: Upon a motion by Councilman Edwards, seconded by Councilman Owenby, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real estate.

The City Manager advised that the County had discussed an easement for the Boyd family as part of the Pleasant Gardens sewer extension project. The Boyds own the campground/mudsling on Highway 70 immediately west of the Catawba River, and also a mobile home park a bit farther west. The proposed sewer line will cross both properties. The Boyds had initially requested a free sewer connection for the mobile home park and two for the campground, to eventually serve 140 campsites. These properties are not served by water, so the Utility Committee has felt that the City would face a billing and possible environmental problem if these properties were served, and if bills were not paid and service had to be disconnected. The Utility Committee had therefore recommended that the request not be approved. The County relayed this information to the Boyds, who came back with a revised request: to have one commercial connection for property on U.S. 70, for future use, and two connections for the campground, to serve no more than 14 campsites. The City Manager stated that the commercial connection request was similar to the one approved by Council a few meetings prior for the pump station site owned by Joe Hall and Van Boyd, but that the revised campground request was essentially the same as the one previously made, although it involved fewer campsites. After discussion, Council felt that the request for the commercial site was reasonable, but that there was no way the City could serve the campground site. Council agreed to allow the City Manager to work with the County on this matter, based on Council's general direction in this matter to serve the commercial site, but not the campground.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 19, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Chief of Police; Suzy Davis, City Planner; Mike Conley, News Reporter, The McDowell News, Van McKinney, WBRM.

GUESTS PRESENT: Gene Hollifield, Route 3, Box 8254 221 North, Marion, N.C.; Herman Hollifield, Marion, N.C.; Frank Williams, Marion, NC Dan McCauley 10 Troy Terrace Marion. NC; Fred R. Gurule 264 Apache Path Marion, NC; Brian Hodge; Jack Clark; Tim Owen 655 Newberry Church Road.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

Approval of City Council Minutes – March 5, 2002

B. Approval of Amendment to Personnel Policy:

CITY OF MARION
PERSONNEL POLICY AMENDMENT

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article VII, Section 4 (b), Vacation Leave-Manner of Accumulation, is amended by deleting this subsection in its entirety and replacing it with the following:

"(b) Vacation Leave-Manner of Accumulation
Each full-time regular and probationary employee shall earn vacation leave annually at a rate of the average number of hours scheduled per week multiplied by two (2). For the purposes of vacation leave accumulation, in no case shall the average number of hours for a position be less than the maximum number of hours an employee in that classification may work under the requirements of the FLSA. The amount of vacation leave earned shall be determined by dividing the annual leave total by the number of pay periods each year and this amount shall be credited to each employee each pay period."

Section 2. That Article VII, Section 5 (a), Sick Leave-Manner of Accrual, is amended by deleting this subsection in its entirety and replacing it with the following:

"(a) Sick Leave Manner of Accrual
Each full-time regular and probationary employee shall accrue sick leave annually at a rate of the average number of hours scheduled per week multiplied by one (1). For the purposes of sick leave accrual; in no case shall the average number of hours for a position be less than the maximum number of hours an employee in that classification may work under the requirements of the FLSA. The amount of sick leave accrued shall be determined by dividing the annual leave total by the number of pay periods each year and this amount shall be credited to each employee each pay period."

Section 3. This amendment shall become effective upon its adoption.

Adopted this the 19th day of March, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

C. Waiver – Bulk Collections – Litter Sweep 2002 Authorize the waiver of Charges for Bulk Collections for Litter Sweep 2002 from April 20-29.

ZONING AMENDMENT - TATTOO PARLORS/BODY PIERCING SHOPS: The City Manager gave a brief update on the proceedings by the Planning Board and City Council at the Public Hearing held by City Council on February 19, 2002.

Several members of the community in attendance at the meeting asked to speak and were recognized to provide their input and opinions on this topic, as follows:

Mr. Herman Hollifield, of Route 6, Nebo, asked Council to not allow a Tattoo Parlor or Body Piercing Shop in Marion.

Mr. Jack Clark, who would be the artist of the Tattoo Parlor, advised that there is already illegal tattooing and body piercing going on in this County. He stated that if a shop were allowed, it would be a state regulated, sterile, legitimate business. He has had schooling and training to do tattoos. He also advised that persons from all walks of life have tattoos.

Mr. Trey Barrier, of Dusty Arch Drive in Marion, presented several tattoos that he referred to as visible works of art on each of his forearms. He explained that he is proud of them, and advised Council that he was neither a whore nor a hoodlum.

Mr. Bill Poole of Marion advised that he sees nothing wrong with a tattoo.

Mr. Fred Gurule of Marion, one of the persons who plans to own the proposed tattoo/body piercing business and who petitioned for the special exception, advised that the City needs businesses with all the empty buildings in the downtown.

Mr. Brian Hodge of Marion reiterated the need for tenants in the downtown area and suggested that Council place no restrictions on such businesses as a tattoo parlor or body piercing parlor in the C-2 district.

Mr. Johnny Krause of Marion stated he knows someone with a tattoo who also has been awarded purple hearts from the military service.

Mr. Timothy Owens of Old Fort advised that tattoos done in homes are dangerous while tattoos done in a regulated parlor are safe and sterile.

Mr. Fred Gurule advised that he feels that Council's delay in taking action on this request is a personal attack against him and an attempt to drain his funds.

After hearing the comments of the citizens in attendance, members of City Council also made comments, including:

Councilman Edwards advised that the City has recently appointed a Downtown Advisory Committee to study, among other things, bringing more retail businesses to the downtown area. He added that Council must determine the impact that this proposed use would have on these retail recruitment efforts.

Councilman Little advised that while attending the annual Congressional City Conference of the National League of Cities last week in Washington, D.C., he did some research into the issue of tattoo parlors and body piercing shops in other municipalities of various sizes from all over the United States. He asked various elected officials from other cities in many other states how tattoo parlors and body piercing shops are managed in their Cities. It was a unanimous consensus from all these officials, but especially those from smaller towns and cities, that tattoo parlors and body piercing parlors are not compatible with family-oriented areas and with an atmosphere promoting good quality of life for families and visitors. Each of the persons with whom he talked whose cities had tattoo/body piercing parlors indicated their city had adopted a requirement that mandated a distance of approximately 1000 feet between such places and places that normally would draw families and especially teenagers, such as schools, churches, parks, playgrounds, libraries, etc.

Councilman Little also pointed out that North Carolina law specifically prohibits anyone under age 18 from receiving a tattoo. Since only adults can get a tattoo, a tattoo parlor by state statute would be an adult business. The City, therefore, has a legitimate interest to protect and promote the downtown and other commercial areas in the C2 zone in connection with any adult business. Councilman Little suggested that Council should go beyond the Planning Board recommendation of a one thousand (1000) foot separation requirement, and increase the separation of tattoo parlors and body piercing shops from churches, schools, parks, etc. to fifteen hundred (1500) feet.

Councilman Owenby stated that the applicants are not trying to do anything illegal and that they are just trying to make a living, but that he found the Planning Board recommendation to be reasonable.

Councilman Edwards advised that City Council is trying to revitalize a sleepy town, that is presently starting to wake up, but doubted that the correct way to do it was through bringing in a business such as a tattoo parlor.

Councilman Martin made a motion to accept the recommendation of the Planning Board to allow tattoo parlors and body piercing shops as a special exception in the C-2 General Business District, subject to a 1,000 foot separation requirement from certain uses listed in the Planning Board's recommendation. Councilman Owenby seconded the Motion.

Councilman Little suggested that preamble language be included in the Mr. Martin's motion stating that City Council determines that tattoo parlors and body piercing shops are adult businesses that are not compatible with family-oriented activities or a family-oriented quality of life and a small-town atmosphere. Also, that it is a legitimate exercise of the City's authority to restrict and limit the areas in the City where such uses can be located so as to preserve the small town atmosphere and family-oriented quality of life in Marion. Mr. Martin accepted this as part of his motion and Mr. Owenby accepted this as part of his second.

The recommendation of the Planning Board is as follows:

CITY OF MARION
ZONING AMENDMENT
SPECIAL EXCEPTION

A803.4 (5.) Tattoo and/ or Body piercing shops provided that the business is not located or operated within one thousand feet of:

1. A church, synagogue, or regular place of worship:
2. A public or private elementary or secondary school;
3. A public library;
4. A park or playground;
5. A licensed child-care facility;
6. A licensed group-home facility;
7. An entertainment business that is oriented primarily towards minors.

For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where tattoo and/ or body piercing is conducted, to the nearest property line of the premises of any use listed above.

Councilman Little made a motion that Mr. Martin's pending motion be amended to provide for a distance of 1500 feet in place of 1000 feet as the required separation between these facilities and the places listed. Councilman Edwards seconded the motion. The vote on Councilman Little's motion to amend Councilman Martin's motion was as follows:

Councilman Cuthbertson	No
Councilman Martin	No
Councilman Owenby	No
Councilman Edwards	Yes
Councilman Little	Yes

The motion failed.

Mayor Clark advised that the original motion (by Councilman Martin) was now on the floor.

The vote for Councilman Martin's motion to accept the recommendation of the Planning Board as stated above (including the preamble language) was as follows:

Councilman Edwards	No
Councilman Little	No
Councilman Cuthbertson	Yes
Councilman Martin	Yes
Councilman Owenby	Yes

The City Manager advised that on the first reading of such a recommendation, a three-quarters majority vote of Council is required, using the conservative interpretation of the City's Charter, to pass the ordinance. The ordinance will come before Council for a second reading on April 2, at which time a majority vote can adopt the ordinance. Until the vote on the second reading, the matter is still considered pending.

REQUEST – COMMUNITY BUILDING BASEMENT – AMERICAN LEGION – FRANK WILLIAMS: Mr. Frank Williams appeared before Council on behalf of the Members of the American Legion requesting that their organization be allowed to use the basement of the Community Building for the next six or eight months. They have sold their facility and are in

the process of building or buying a new one. Their meetings are usually on the fourth Tuesday of every month lasting for several hours.

A discussion followed.

It was the consensus of Council that the City Manager will coordinate with these members the availability of the basement and the cost and allow the use under present rules and regulations. Fees for the basement of the Community are scheduled to be discussed during this meeting. Policy set at that time will apply to this request.

PUBLIC HEARING - ZONING AMENDMENT – MAXIMUM FENCE HEIGHT:
Mayor Clark opened the public hearing. City Planner Suzy Davis advised that a request had been received by Mr. Andrew Grant to amend the Zoning Ordinance to increase the maximum fence height in front and side yards from five to six feet. Mr. Grant had pointed out that most types of fencing were commercially available in six foot heights, but not in five foot heights. The Planning Board had recommended unanimously the approval of this request.

Mayor Clark closed the public hearing.

Upon a motion by Councilman Little seconded by Councilman Martin, Council voted unanimously to adopt the following Amendment to the Zoning Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A. Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article X, Section 1005, fences and walls is amended, by increasing the maximum fence height by one foot in the front and/or side yard, to read as follows

Section 1005. Fences and Walls.

In any district the following regulations shall apply for any wall or fence (either natural or manmade):

(A) Fences and walls may be permitted in a rear yard adjacent to the lot line provided such fences and walls do not exceed eight (8) feet in height.
(B) Fences and walls may be permitted in a side and/or front yard adjacent to the lot line provided such fences and walls do not exceed six (6) feet in height.

(C) On a corner lot, no fence or wall located along a property line shall exceed six (6) feet in height if it is located adjacent to a front or side lot line of any adjoining property.

(D) Fences and walls used to enclose recreational areas such as swimming pools, basketball courts, handball courts and tennis courts, shall not exceed twelve (12) feet in height and may be located adjacent to a property line. However, no such fence or wall shall exceed six (6) feet in height when located in a side yard unless such fence or wall is setback at least ten (10) feet from the side yard lot line.

(E) Retaining walls built specifically to keep a bank of earth from sliding or water from flooding shall be permitted anywhere on the property as needed.

(F) No fence, wall or other obstruction shall be placed so as to obstruct vision to a public street from any public or private drive.

(G) No fence or wall shall be permitted within a publicly dedicated street right-of-way.

(H) All fences and wall heights shall become effective upon its adoption.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 19th day of March 2002.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-03-19-02

PUBLIC HEARING - ZONING AMENDMENT – REVISIONS TO SIGN ORDINANCE:

Mayor Clark opened the public hearing. The City Manager advised that Suzy Davis, City Planner, has been working with the Planning Board to draft a proposed revision to the Sign Ordinance. The revisions essentially combine our on-premise and off-premise ordinances into one ordinance. The biggest changes include phasing out spectacular (flashing arrow) signs after a period of one year, and phasing out portable signs after six months (the planning Board recommended that this time be only sic seeks.) The 160+ violations that Ms. Davis compiled last year include spectacular sighs, since none of these sighs had been permitted as required by the ordinance.

State law does allow for the phase out of such signs, as long as a reasonable time is given to business and property owners to recoup some of their investment.

Ms. Davis and the City Manager both feel that clarifying the language in the Sign Ordinance and determining what the Planning Board and City Council want to allow up front is an important first step of the enforcement effort, to prevent a situation where we talk to businesses and ask them to comply with a set of regulations, then come back in a year or two with additional regulations they have to meet. This way, businesses know up front what they have to do. These changes would encourage businesses to make more use of permanent freestanding signs and wall signs, instead of flashing arrows and portable signage advertising every type of product they have for sale.

Mayor Clark closed the public hearing.

A discussion followed.

Councilman Little suggested that this matter be tabled until the April 2 to allow for more review by Council.

Councilman Cuthbertson noted some changes that need to be made to the ordinance, including grammatical errors and the addition of a definition for "marquee sign."

Councilman Edwards stated that the ordinance should be adopted to allow the City to begin clearing up the many violations of the Sign Ordinance that exist.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to table this amendment until the next Regular City Council Meeting.

CIVIL CITATION APPEAL – ZACHARY GUY: The City Manager advised that Mr. Zachary Guy has appealed two civil citations. in the amount of $50.00 each) for false alarm calls at his house at 40 Hillcrest Drive. Records indicate that Mr. Guy has had five false alarms at his residence since January. The citations indicate the offenses took place on February 12th and 16th, although the fourth and fifth offenses took place on February 26th. Mr. Guy advised that he and his wife were out of town at the time of the activation's, and that he contacted ADT and corrected the problem upon his return.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to combine these two citations and only charge Mr. Guy $50.00.

CONSIDERATION – ITINERANT MERCHANT ORDINANCE: The City Manager presented Council with a draft itinerant merchant ordinance that would place stricter regulations on sales by itinerant merchants. Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 10
LICENSES, PERMITS AND BUSINESS REGULATIONS
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 10, Licenses, Permits and Business Regulations, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 10 is amended by adding the following:

Article VII. Itinerant Merchants

Section 10-171. License required.

It shall be unlawful for an itinerant merchant as defined in Section 10-172 to engage in such business within the City without first obtaining a license in compliance with the provisions of this article.

Section 10-172. Definitions.

For the purpose of this article, an itinerant merchant is defined as any person, firm or corporation, whether as owner, agent, consginee or employee, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the City, and whom, in furtherance of such purposes hires, leases, uses or occupies any building, structure, motor vehicle, railroad box car, public room in hotels, lodging houses, apartments, shops, or any street, alley or other place within the City for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction.

Section 10-173. Exemptions.

The definition of itinerant merchant shall not be construed to include:

(a) Any licensed auctioneer selling goods at an auction.

(b) Any person selling farm or nursery products he or she produces.

(C) A licensed automobile dealer.

(d) Any person selling Christmas trees and holiday decorations.

No person, firm, or corporation so engaged in the sale of goods, wares and merchandise shall be relieved from complying with the provisions of this chapter merely be reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

Sec. 10-174. Application for license.

An application for an itinerant merchant license must be obtained from the City Tax Collector two (2) weeks prior to the time of the sale. A nonrefundable application fee as set by City Council and on file in the City Clerk's office will be required at the time of application. The application for license will be approved or disallowed by the City Police Chief, after an investigation. The Police Chief shall consult with the City Planner, to determine if the City Zoning Ordinance allows the sale of the goods, wares and merchandise to be sold in the proposed location(s). The itinerant merchant will be notified in writing if his application has been approved or disapproved. If the application is disapproved, the itinerant merchant will not be permitted to conduct business within the City Limits of Marion. No application from an applicant previously convicted of a felony or misdemeanor involving fraud, forgery, sale of counterfeit goods, ticket scalping, violation of tax laws, or business license laws will be approved. No application will be approved that would involve the sale of goods, wares and merchandise in a location in violation of the City Zoning Ordinance. All approved itinerant merchant applicants will be required to submit a crew and vehicle registration form for purposes of information and identification. If the application is approved, the license fee set by City Council and on file in the office of the Tax Collector must be paid prior to the issuance of the itinerant merchant license.

Sec. 10-175. Bond.

Before any itinerant merchant license shall be issued under the provisions of Section 10-174, an applicant shall file with the City Tax Collector a bond running to the City in the sum of one thousand dollars ($1,000.00) executed by the applicant, as a principal, or a surety upon which service of process may be made in the state, conditioned that the applicant shall comply fully with all provisions of ordinances of the City, and the statutes of the state, regulating and concerning the sale of goods, wares and merchandise, and will pay all judgments rendered against the applicant for any violation of such ordinances and statutes, together with all judgments and costs that may be recovered against him by any person for damages arising out of any misrepresentation or deceptive practices on any person transacting such business with the applicant. Action on the bond may be brought in the name of the aggrieved person. The bond required by this section shall be posted and remain in effect for a period of one (1) year from the date a license is issued, and one (1) year from the date of any renewal, of any license issued under this article. Such bond must be reviewed and approved by the City Attorney, both as to form, and as to the responsibility of the surety, prior to the issuance of any itinerant merchant license.

Sec. 10-176. Display and possession of license and identification.

An itinerant merchant shall keep the license required by this Article conspicuously and prominently displayed so as to be visible for inspection by patrons of the itinerant merchant at the place or locations at which the goods are to be sold or offered for sale. Upon the request of any customer or City official, an itinerant merchant shall provide its name and permanent address. If the itinerant merchant is not a corporation, or is an employee of a corporation, he shall, upon the request of any customer, state or local revenue or law enforcement agent, provide a valid driver's license, a special identification card issued under G.S. 20-37.7, a military identification, or a passport bearing a physical description of the person named reasonably describing the itinerant merchant. If the itinerant merchant is a corporation, it shall, upon request of any

customer, state or local revenue or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the state secretary of state or the county register of deeds.

Sec. 10-177. Permission of property owner.

An itinerant merchant shall obtain a written statement, signed by the owner or lessee of any property upon which the itinerant merchant offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid.

Sec. 10-178. Display area.

Any itinerant merchant conducting business shall have a display area with a tent not less than ten (10) feet by ten (10) feet. No items are to be displayed on automobiles, trucks, tractors or the ground.

Sec. 10-179. Method of payment.

Payment of the license will be accepted only in the form of cash, money order, or cashier's check.

Sec. 10-180. License not transferable.

No license issued under this article shall be transferable.

Sec. 10-181. Duty of police to enforce.

It shall be the duty of the police officers of the City to enforce the provisions of this article.

Sec. 10-182. Expiration and renewal of license.

(a) All licenses issued the provisions of this Article shall expire ninety (90) days after the date of issuance unless an earlier date is stated on the license.

(b) Any license issued under the provision of this article may be renewed any number of times upon the following conditions:

(1) The applicant makes a written application for renewal stating that the person or persons managing the business are the same as those listed in the original application, that the place or places where the applicant proposes to conduct business have not changed, and a statement explaining any material change in circumstances from the information given in the original application.

(2) The applicant must show to the satisfaction of the City Attorney that the bond covering the applicant's business will be valid for at least one (1) year from the date of any renewal.

(3) A new application fee, at the amount set by the City Council, shall be paid for each renewal application.

Sec. 10-183. Appeal.

Any person aggrieved by a decision of City staff to deny an application for a license may appeal to the City Council. Such appeal shall be taken by filing with the City Manager within fourteen (14) days after notice of the decision by the City

staff has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The City Council shall set the time and place for a hearing on such appeal and notice of such hearing shall be given to such persons by first class mail. The decision of the City Council regarding the appeal shall be final.

Section 3. This ordinance shall become effective on July 1, 2002.

Adopted this the 19th day of March, 2002.

A. Everette Clark, Mayor

ATTEST:

Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-03-19-1

APPROVAL OF CONTRACT – ARCHITECTURAL SERVICES – DEPOT RENOVATION: The City Manager presented a proposed contract for the design and construction administration of the depot renovation project. Hager Smith Architects from Raleigh submitted a proposal to complete the work for a total amount of $46,640. The City's share of this project is 10 percent, so the cost for the City for Hager Smith's services will be only $4,664.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to adopt the proposed contract with Hager Smith Architects of Raleigh for the design and construction administration of the depot renovation.

The Original contract can be found in the legal documents at City Hall.

COMMUNITY BUILDING RATES: The City Manager advised that, as suggested by Councilman Cuthbertson at the Planning Session, he and the Finance Officer had discussed the Community Building rates and would recommend a $50.00 deposit for the use of the basement, since more groups are now renting the basement. Given the time that it takes to open and close the building, and to check it, the City Manager also recommended that the minimum rental charge for the basement be increased from $10.00 to $20.00. Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

CITY OF MARION, NORTH CAROLINA
ORDINANCE
COMMUNITY BUILDING RATES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following rates shall be charged for the use of the Marion Community Building effective March 20, 2002.

PER DAY, PER EVENT CHARGE: MAIN OR STREET LEVEL:

ASSEMBLY ROOM USE ONLY	$100.00
KITCHEN AND ASSEMBLY ROOM	$150.00

DEPOSIT FOR EACH USE:

A. PERSONS HAVING USED THE BUILDING IN THE

	PAST WITHOUT INCIDENT	$100.00
B.	FIRST TIME USERS/OTHERS (ALL DEPOSITS WILL BE IN CASH, NO EXCEPTIONS)	$200.00

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATIONS AUTHORIZED BY THE CITY COUNCIL TO USE THE BUILDING
ON A REGULAR SCHEDULE AND AT SPECIAL RATE:

A. PER DAY, PER EVENT CHARGE $25.00
NO DEPOSIT IS REQUIRED.

PER DAY, PER EVENT CHARGE: BASEMENT:

A. $10.00 PER HOUR OR PORTION THEREOF, WITH A MINIMUM CHARGE OF $20.00 AND A MAXIMUM CHARGE OF $100.00 PER USE, NOT TO EXCEED ONE DAY.
A CASH DEPOSIT OF $50.00 IS REQUIRED FOR EACH USE.

ADOPTED this the 19th day of March .2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert, Boyette, City Manager/Clerk

O-02-03-19-2

Councilman Cuthbertson suggested that higher rates be charged for the use of the Community Building by civic clubs, perhaps based on a rate schedule that differentiates between larger clubs and smaller clubs. It was the consensus of Council to refer this matter to the Recreation Committee for further discussion.

OAK AVENUE PARKING: The City Manager presented Council with a letter from Ms. Mamie Carson advising that persons residing at 81 and 101 Oak Avenue are requesting that the curb in front of these residences be painted back yellow to prohibit parking in this block. Last year these residents requested that parking be allowed and an ordinance was adopted by Council allowing parking on one side of the street.

A discussion followed.

This request was referred to the Street Committee.

REQUEST – AUTUMN CARE – CITY TO MAINTAIN FORCE MAIN SEWER LINE:
The City Manager presented Council with a memo from the Director of Public Works regarding responsibility for the sewer force main serving Autumn Care (formerly Hilltop House Care Center). It appears that records found indicate the line was approved by DOT for installation with the encroachments in the name of the City of Marion. He advised that this was not an unusual practice for DOT to assign encroachments to the municipality, even when the line is a private installation.

The history on this line as we know it, has been low maintenance as far as problems, repairs, etc. However, due to possible fines associated with overflows and other factors involved with force mains and lift stations, the City would inherit an additional concern for liability if ownership is assumed.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to accept the force main sewer line along the right-of-way of Airport Road, and to request that Autumn Care submit a statement in writing that they will continue to own and maintain the pump station on their private property.

AWARD CONTRACT – MORGAN STREET CURB REPLACEMENT: The City Manager presented Council with an Action Recommendation form from Mr. Dan Weeks, Purchasing Agent for the Morgan Street curb replacement project. McCormick Grading and Landscaping is willing to extend their unit price from Gilkey Street to the Morgan Street curb replacement. The total price of the project would be $45,544.21.

The City Manager advised that the total price of the project would be $45,544.21 and that we currently have $232,215 in the Powell Bill Fund.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the contract from McCormick in the amount of $45,544.21 to replace the curb on Morgan Street.

AWARD CONTRACT – PURCHASE OF ONE TON UTILITY TRUCK: The City Manger presented Council with an Action Recommendation form from Mr. Dan Weeks, Purchasing Agent for the purchase of one (1) one ton utility truck for the Utility Maintenance Division. Bids received were as follows:

Legendary Ford	$28,944.95
Everett Chevrolet	29,950.70
Jim Cook Chevrolet	30,415.66
Volvo & GMC Trucks	31,103.68

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the low bid of $28,944.95 from Legendary Ford for the purchase of one (1) one ton utility truck.

AWARD CONTRACT – PURCHASE OF BACKHOE: The City Manager presented Council with an Action Recommendation form from Mr. Dan Weeks, Purchasing Agent for the purchase of one (1) new model backhoe for the Street Division. Bids received were as follows:

Marion Equipment	$37,062.00
N.C. Prime Equipment Co.	39,432.00
Mitchell Distributing	42,107.00

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to accept the low bid of Marion Equipment in the amount of $37,062.00 for the purchase of one (1) new model backhoe.

CITY MANAGER'S REPORT: The City Manager gave a report on various current projects.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real property.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

PLEASANT GARDENS SEWER PROJECT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to authorize one sewer connection to serve approximately 14 campsites on the Devon Boyd property on U.S. 70 West and one commercial connection for property fronting on the highway, in an area not currently served by City water, contingent on the following conditions:

-The Boyds will pay the cost of installing a meter on their private well(s)
-The Boyds will sign a document agreeing not to discharge any chemical into the City's wastewater system that would be harmful to the Catawba River Wastewater Plant, agreeing to tap on to City water when it is available, and to accept primarily liability for any fines resulting from sewer spills or overflows resulting from the City disconnecting service for nonpayment or due to harmful chemicals being discharged into the City's wastewater system.
-The County Health Department will work with the City to promptly shut down the campground should disconnection of sewer service by the City be required due to nonpayment or due to harmful chemicals being discharged into the City's wastewater system.
-The County will agree to split any fines received with the City resulting from sewer spills or overflows resulting from the City disconnecting service for nonpayment or due to harmful chemicals being discharged into the City's wastewater system.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to authorize one commercial sewer connection on the Van Boyd/Joe Hall property on U.S. 70 West, in an area not currently served by City water, only if this property is the site of the pump station. If, for any reason, this property is not the location of the pump station, no sewer service will be provided by the City.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Closed Session on Tuesday evening, March 19, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real property.

The City Manager advised that the County was still negotiating for two easements as part of the Pleasant Gardens sewer project. On one easement, the Devon Boyd property, the property owner wishes to have one commercial sewer connection to serve property fronting on U.S. 70, which had previously been agreed to in principle by Council. The property owner also wishes to have one sewer connection to serve approximately 14 campsites on the property bordering U.S 70 and the Catawba River.

On another property, owned by Van Boyd and Joe Hall, for which Council had already approved a sewer connection, the property owners are asking to receive inside rates.

The Utility Committee had met on March 15 to review these requests and recommended to allow the two connections for the Devon Boyd property, with the following conditions:

-The Boyds will pay the cost of installing a meter on their private well(s)
-The Boyds will sign a document agreeing not to discharge any chemical into the City's wastewater system that would be harmful to the Catawba River Wastewater Plant, agreeing to tap on to City water when it is available, and to accept primarily liability for any fines resulting from sewer spills or overflows resulting from the City disconnecting service for nonpayment or due to harmful chemicals being discharged into the City's wastewater system.
-The County Health Department will work with the City to promptly shut down the campground should disconnection of sewer service by the City be required due to nonpayment or due to harmful chemicals being discharged into the City's wastewater system.
-The County will agree to split any fines received with the City resulting from sewer spills or overflows resulting from the City disconnecting service for nonpayment or due to harmful chemicals being discharged into the City's wastewater system.

The Utility Committee had strongly recommended not allowing inside rates to be charged for the Joe Hall/Van Boyd property, since the City had never done so for any property in the past.

Council members discussed these easements and came to a general feeling that the recommendations of the Utility Committee be accepted.

Councilman Cuthbertson suggested that the previous approval for the sewer connection for the Van Boyd/Joe Hall property be amended so that this connection would only be given if this property were the site of the pump station for the project.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Pages 415 & 416 are missing from this book. NO Minutes are missing, only the two blank pages.

Witness: Debi W. Sherlin, Secretary

Date: 4-19-02

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 2, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

Councilman Martin was not present for this meeting due to being out of town on Vacation.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Mike Conley, News Reporter, The McDowell News, Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Bobby Frisbee 154 Broad Street, Marion, NC 28752; Dixie Frisbee Marion, NC 28752; Jim & Dianne Neal 40 Hillside Drive, Marion, NC 28752; Harold Willis, Marion, NC 28752; Fred Gurule 264 Apache Path, Marion, NC 28752; Herman Hollifield Route 6, Box 801 Marion, NC 28752; Cliff Barnes and Kelly Peppers Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN LLOYD CUTHBERTSON: Councilman Cuthbertson selected the Citizen of the Month for April.

The following information was presented about April's Citizen of the month:

BOBBY LYNN FRISBEE

Councilman Cuthbertson advised that Mr. Frisbee was born in 1949 to Roy and Dixie Frisbee. He is married to Naomi McKinney Frisbee and has three children: Susan, who lives in Nebraska; Melissa, who works in the family business; and Bobby Jr., who goes to school and also works in the family business.

Mr. Frisbee went to school at Marion High School and Western Piedmont and was active in the band. In the late 60's he played in a band called Raspberry Watermelon.

He has worked as an Industrial Engineer in the early 70's. At one time he owned and operated the Nebo Stop and Shop and the Blue Ridge Mountain Tours.

Mr. Frisbee is an active member of the Rocky Pass Baptist Church. He is an Auctioneer, an Antique Dealer and enjoys Golf.

He now owns two Frisbee Grocery Stores. One in located in Old Fort and the other in Marion and has fifty employees.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. **Approval of City Council Minutes** – March 19, 2002

B. **APPROVAL OF AMENDMENT TO PAY AND CLASSIFICATION PLAN:** A revised Pay Plan was presented to Council adding position that the City currently has which are not part of the pay plan.

List of job titles to be added are as follows:
Police Aide
School Resource Officer
Police Major

Police Telecommunications Supervisor
Fire Lieutenant
Fire Captain
Assistant Fire Chief
Street Superintendent

In addition, the position of fire Inspector was added to allow this position to be authorized in the future as such time as funding is available.

C. VOLUNTARY ANNEXATION – CROSS MILL BAPTIST CHURCH:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, April 2, 2002, by the Marion City Council, and

WHEREAS, G. S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation,

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

The City Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the City Council the result of his investigation.

ADOPTED this the 2nd day of April 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-02-04-02-1

D. TAX RELEASE: Council was presented with a list of unpaid taxes on businesses for 1985, 1986, 1987, 1988, 1989, 1999 1990 1991 and 1995. These properties have either been sold or are more than ten years past due. The total amount to be released is $38,720.06.

ZONING AMENDMENT – TATTOO PARLORS/BODY PIERCING SHOPS: The City Manager advised that the following Zoning Amendment was presented to Council for a second reading.

CITY OF MARION
ZONING AMENDMENT
SPECIAL EXCEPTION

"803.4 (5.) Tattoo and/ or Body piercing shops provided that the business is not located or operated within one thousand feet of:

1. A church, synagogue, or regular place of worship:

2. A public or private elementary or secondary school;
3. A public library;
4. A park or playground;
5. A licensed child-care facility'
6. A licensed group-home facility;
7. An entertainment business that is oriented primarily towards minors.

For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where tattoo and/ or body piercing is conducted, to the nearest property line of the premises of any use listed above."

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Mayor Clark advised that in the absence of Councilman Martin, he would suggest tabling the second reading until Councilman Martin returns from vacation.

A discussion followed.

Mr. Fred Gurule, the applicant, stated that he felt that this was another effort by Council to delay the decision and to drain him of his resources.

Councilman Edwards stated that he did not appreciate Mr. Gurule's attacks in his letters to the editor in the newspaper, especially the claims that City Council was practicing discrimination against him. Councilman Edwards stated that Council had never practiced discrimination against anyone and never would do such a thing as long as he was on Council.

Councilman Little stated that Mr. Gurule could open up a chain of tattoo parlors in the County if he wanted, but was choosing to locate inside the City to create a spectacle.

Mayor Clark advised that he hated proposing to delay the decision, but felt it would be the fairest thing to do to allow the members of Council who voted on the ordinance amendment at the March 19 meeting, to do so again at the next Council meeting. He assured Mr. Gurule that Council would make a decision on the request at the next meeting, barring illness or an emergency.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to table this issue until the April 16, 2002 meeting.

ZONING AMENDMENT – REVISIONS TO SIGN ORDINANCE: The City Manager presented Council with revisions to the City's Sign Ordinance. He noted that the major changes involved clarifying the language of the Sign Ordinance to make it clear that flashing arrow or spectacular signs and portable signs were not permitted and to phase out these signs over a period of time.

A discussion followed with regards to defining how a flashing arrow sign might be made permanent. This issue will be revisited and returned to Council.

Mr. Cliff Barnes stated he was concerned about the removal of portable signs advertising cigarette products, since he receives money from the tobacco companies for posting such signs. The City Manager stated that City staff would be glad to visit Mr. Barnes' business and work with him to legally

comply with the Sign Ordinance, by attaching such signs to his main pole sign or to his building.

Councilmen Cuthbertson and Little noted that the Council did not wish to hurt small business in any way, but did want to reduce distractions to motorists to enhance public safety, and to improve the appearance of the City. Councilman Owenby stated he had received some calls from businesspeople, but he felt that the proposed regulations were reasonable since they were consistent and were simply trying to correct something that had been on the books for nearly 30 years.

Councilman Edwards suggested that Council go ahead and pass the ordinance and direct the City Manager to come back with a definition of how a spectacular sign could be made permanent.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

ORDINANCE

AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII Section 706 Signs, Billboards and other advertising structures is amended as follows.

Section 706. Signs, billboard and other advertising structures.

The purpose of this section is to regulate the erection and placement of certain advertising signs. The City Council is committed to preserving the scenic and aesthetic features of the City of Marion in order to protect and promote the development of the tourist industry and provide for the protection of the quality of life for residents and visitors. The City Council further seeks to insure the safety of the local and visiting motorist on the public roads by reducing the detracting influence of uncontrolled advertising signage. The City Council is aware of, and sensitive to, the need for local businesses to adequately identify their products and services and is committed to providing reasonable regulations while safeguarding the interest of local businesses. These regulations are established as a reasonable and impartial method of regulating advertising structures in order to insure light, air, and open space, to reduce hazard at intersections, and to protect property values of the entire community. The Marion City Council provides that any sign regulated by this ordinance may contain, in lieu of any other copy, any otherwise lawful, noncommercial messages, that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with the size, lighting, spacing, setback, and other requirements of the district in which it is located.

706.1 Definitions The following words or terms have the meaning as herein defined:

Height of signs The height of a sign shall not exceed the maximum height set forth in this Article. The height of a sign shall be measured from the existing grade level to the uppermost point of the sign or sign structure, whichever is higher.

Sign Any display of letters, words, numbers, figures, devices, emblems, pictures, logos, or any other means whereby the same are made visible for the purpose of making anything known, whether such display be on, or attached to, or as a part of a structure, surface, or any object whether natural or manmade. The word "sign" does not include the flag, pennant, or insignia of any nation, state, city, or other political unit.

Sign, area of. The smallest rectilinear figure which encompasses all lettering, wording, design or symbols, together with any background differences on which the sign is located, if such background is designed as an integral part of and related to the sign. Any cut-outs or extensions shall be included in the area of the sign, but supports and bracing which are not intended as a part of the sign shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.

Signs, Marquee- a sign with interchangeable letters attached to a marquee. A marquee is a roof-like structure, characteristically bearing a signboard, projecting over an entrance to a theatre or other building.

Signs, non-conforming. Any sign which was lawfully erected in compliance with applicable code provisions and maintained prior to the effective date of this ordinance or prior to annexation into the city, and which fails to conform to applicable standards and restrictions of this ordinance. Portable signs, temporary signs and spectacular signs as defined in this section shall not attain legal non-conforming status.

Sign, off-premises advertising. Any sign advertising a product, service, business or activity sold, located or conducted primarily elsewhere than on the premises on which the sign is located.

Sign, off-premises directional. Any sign indicating the location of or directions to a business, office, or other activity located elsewhere than on the premises on which the sign is located.

Sign, portable. **A sign that is designed or has the potential to be relocated and which is not permanently installed or permanently anchored to either the ground or a wall. For the purpose of this article, directional signs shall not be considered portable signs.**

Sign, Temporary. A sign that is used in connection with a circumstance, situation, or event that is designed, intended, or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign, or is intended to remain on the location where it is erected or placed for a period of not more than thirty (30) consecutive days. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as temporary.

Sign maintenance. For the purpose of this Article, maintenance shall include repair procedures listed in Section 706.5 of this ordinance. Work done to restore or repair a sign which is damaged or destroyed shall be considered repairs in accordance with the provision in Section 706.6, 706.8 and Section 706.9.

Spectacular sign. An "Outdoor Advertising Display Sign" advertising copy, usually constructed of metal and or poly-material with area(s) for the use of changeable letters to display a message or to advertise, these signs may or may not be wired for lights, usually referred to as "flashing arrow signs."

Value of signs. The value of a sign shall be the value for tax purposes of any sign so listed. If the tax value is not available, the value shall mean the original cost of the sign. In the absence of information as to the original cost submitted by the sign owner, the Administrative Officer shall estimate the original cost based upon the best information reasonably available.

706.2 Permits, fees, and non-conforming signs.

(1) *Permit required.* All signs maintained, erected, placed, posted, attached, painted or otherwise made visible from an adjacent property or right-of-way, except as otherwise prohibited, exempted or not requiring a permit by this Article, require a sign permit in accordance with the provisions of this section. Any sign that is erected, placed or maintained without a required permit shall be in violation of this Ordinance.

(2) *Permit application.* No sign permit shall be issued until an application has been completed for each separate sign structure and until that application has been submitted to and approved by the Administrative Officer with the required fees. Applications for a permit to maintain an existing sign and/or construct a new sign may be obtained from the City of Marion Planning and Inspections Department.

(A) *On premise permit application.* The only application that shall be required for on-premise signs is the application for the initial issuance of a permit and that initial permit shall be valid until revoked by the Administrative Officer, with the exception of section 706.11 (1)(H), spectacular signs.

On-Premise Permit fees. There shall only be one initial fee for an on-premise sign. Such fee schedules shall be determined by the City Council, with the exception of section 706.11 (1)(H), spectacular signs.

(B) *Off premise permit application.* The only application that shall be required for off-premise signs is the application for the initial issuance of a permit and that initial permit shall be valid until revoked by the Administrative Officer. The off premise sign owner shall pay an annual renewal fee for each off-premise sign. The erection of off-premise sign structures shall not commence until a permit and an emblem have been issued. The sign structure must be completely constructed and erected with the permit emblem affixed within one hundred eighty (180) days from the date of issuance of the permit. During the 180-day period, the new sign structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the appropriate rules and regulations of this Ordinance. The permit emblem, which will have an identifying permit number, shall be placed on the off-premises sign structure in such a position as to be visible from the main traveled roadway of the adjacent highway. A permit along with a permit emblem shall be issued upon sign application completion, approval and the payment of fees for lawful off-premises sign structures.

Off premise Permit fees. Off-premise initial and annual renewal fees shall be required to be paid by the owners of the off-premises sign structures for each permit requested in order to defray the cost of the administrative and inspection expenses incurred by the City of Marion in administering the permit procedures. Such fee schedules shall be determined by the City Council.

706.3 Registering existing signs.

All sign structures constructed and in place prior to the adoption of a moratorium ordinance by the City Council of the City of Marion on May 3, 1989 shall be required to obtain a permit by the procedures set forth in this Section and affix a city

permit emblem within thirty (30) days after the issuance of the permit unless exempted under Section 706.12 (1). The permit shall be obtained within a period of one hundred eighty (180) days beginning with the effective date on this Ordinance If the sign is a legal non-conforming sign, the permit shall state and be registered as such.

All existing signs that require a permit that have not been registered within the one hundred eighty (180) days shall be in violation of the provisions of this ordinance and subject to penalties provided in Section |707.14|.

If the existence of a sign prior to the passage of the moratorium ordinance is questioned, the issue will be determined by a panel made up of the Administrative Officer. City Manager, sign owner, and a designated representative from Keep McDowell County Beautiful, and use of the videotape made of the county roadways at the time of the passage of the moratorium act. It the sign is determined to be in violation of the ordinance, it shall be removed at the owner's expense.

706.4 Transfer of permit.

The transfer of ownership of a sign structure for which a permit has been lawfully issued to the original owner shall not in any way affect the validity of the permit for that specific structure, provided that the Administrative Officer is given notice of the transfer of ownership within thirty (30) days of the actual transfer.

706.5 Sign maintenance, abandoned signs, tree cutting.

Maintenance provisions. All signs, supports, braces. poles. wires and other appurtenances of signs or sign structures shall be kept in good repair, maintained in safe condition, and shall conform to the standards in this section. Maintenance carried out in accordance with this section and not the result of damage or destruction shall not require a sign permit. provided the sign is not enlarged, moved or altered in any manner which would create or increase a non-conforming condition.

(1) A sign shall be in a state of disrepair when more than twenty (20) per cent of its total surface area is absent, covered with disfigured, cracked, ripped or peeling paint or poker paper, or any combination of these conditions. Any sign in a state of disrepair shall be considered in violation of this Ordinance.

(2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which cause the sign to stand more than fifteen (15) degrees from the perpendicular.

(3) No sign or sign structure shall be allowed to have weeds, vines or other vegetation growing on it and obscuring it from the street or highway from [which] it is intended to be viewed.

(4) No neon or illuminated sign shall be allowed to stand with only partial illumination operational or partial neon operations.

Any sign that violates the maintenance provisions listed above shall be in violation of this Ordinance and shall be repaired or removed as required by the applicable sections of this Ordinance.

Lawful cutting of trees or shrubs. No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim. destroy or remove any trees. shrubs or other vegetation located within a public right-of-way of any road or highway. except where a legal permit for such has been obtained from the North Carolina Department of Transportation.

706.6 Revocation of permit. Any valid permit issued for a lawful sign structure shall be revoked by the Administrative Officer for any one (1) of the following reasons:

(1) Mistake of material facts by the issuing authority for which had the correct facts been known, the sign permit in question would not have been issued.

(2) Misrepresentation of material facts by the applicant on the application for permit for the sign.

(3) Failure to pay annual renewal fees.

(4) Failure to construct the sign structure and affix the permanent emblem within one hundred eighty (180) days from the date of issuance of the permit.

(5) Any alteration of a sign structure for which a permit has previously been issued which would cause that sign structure to fail to comply with the provisions of this Ordinance and the rules and regulations promulgated by the City Council of the City of Marion pursuant thereto.

(6) Any violation of Section 706.8.

(7) Unlawful destruction of trees or shrubs or other growth located on the right-of-way in order to increase or enhance the visibility of a sign structure.

(8) Abandonment or discontinuance of a sign.

(9) Failure to maintain a sign such that it remains blank for a period of twelve (12) consecutive months.

(10) Failure to maintain a sign such that it reaches a state of dilapidation or disrepair as determined by the Administrative Officer.

(11) Making repairs to a nonconforming sign which exceed fifty (50) per cent of the initial cost of the sign. Total repairs within any twenty-four (24) consecutive months may not exceed fifty (50) per cent of the value of the sign. To avoid liability under this clause, the advertiser should contact the Administrative Officer prior to making any repairs to discuss the scope of the proposed improvements. The scope of the improvements is limited to the following: repairing the sign or the sign structure, replacing broken glass or other work to keep the sign safe and in good repair.

706.7 Notice given for refusing to issue permit.

Should the Administrative Officer determine that a proposed sign structure would not conform to the standards of outdoor advertising as set out in this ordinance or the rules and regulations promulgated thereto by the City Council to the City of Marion the Administrative Officer shall refuse to issue a permit for that proposed sign structure.

When such noncompliance of this ordinance has been determined, the Administrative Officer shall so notify the owner of the proposed sign structure in question by first class United States mail in the form of a letter setting forth the reasons why the proposed sign structure in question does not comply, and shall also return the application and seventy-five (75) per cent of the application fee to the applicant.

706.8 Nonconforming signs.

(1) Any sign which becomes a legal nonconforming sign as herein defined may continue to exist provided that no nonconforming sign shall be:

(A) Changed or replaced with another nonconforming sign, except that copy may be changed on an existing sign.
(B) Expanded.
(C) Relocated, except in conformance with the requirements of this ordinance.
(D) Re-established after damage or destruction in excess of fifty (50) percent of the value at the time of the damage or destruction
(E) Modified in any way which increases the sign's degree of nonconformity.
(F) Re-established after the sign structure has been removed.

706.9 Reconstruction of damaged signs or sign structures.

(1) Any conforming sign or sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within thirty (30) days and completed within sixty (60) days' of such damage. However, if the sign should be declared unsafe by the Administrative Officer, the owner of the sign or the owner of the record of the real property whereon the sign is located, shall immediately correct all unsafe conditions in a manner satisfactory to the Administrative Officer.

(2) As a courtesy to the sign owner, if the Administrative Officer discovers that a sign has been damaged or is in an unsafe condition, the Administrative Officer will promptly notify the owner of the sign or the owner of record of the real property whereon the sign is located of such damage or unsafe condition. The affirmative duty and liability shall, however, at all times remain with the owner of each sign to keep each sign in a safe and undamaged condition in keeping with the terms of this Ordinance.

706.10 Administration, enforcement, appeals.

The Administrative Officer shall have the following authority:

(1) To issue a Violation Notice for any violation of the Ordinance. A Violation Notice shall be delivered by certified mail, return receipt requested, or by such other method as allowed by law, to the owner of the sign in violation of the ordinance. Whenever the owner of the sign cannot be located and notified, said notice shall be delivered to the owner of record of the real property whereon the sign is located. The time period provided herein shall commence upon receipt of such Violation Notice. The Violation Notice shall identify the sign and shall describe the nature of the violation, refer to the section of the ordinance violated, specify in detail what action must be taken to correct the violation, and specify a reasonable time limit of up to thirty (30) days within which the violation must be corrected.

(2) To issue a remove order for any sign or sign structure not corrected within the time allotted under the Violation Notice, or for a prohibited sign under the Violation Notice, or for a prohibited sign as established by this Ordinance. A Remove Order shall be delivered to the sign owner or to the owner of record of real property whereon the sign is located in the same manner as set out for a Violation Notice and shall not be effective until received. The recipient of the Remove Order shall be allowed thirty (30) days after the receipt of the Remove Order within which to remove the subject sign at his expense. The Remove Order shall identify the sign and reasons for the issuance of the Remove Order and shall refer to the section of the Ordinance violated.

(3) To remove or cause to be removed any sign or sign structure not removed in accordance with a Remove Order after thirty (30) days from receipt of such order, and to assess the receipt of such order with the cost of such removal.

(4) To issue citations for any violation of this Ordinance in accordance with Article XV.

(5) To issue an Unsafe Sign Notice should the Administrative Officer find that any sign has become insecure in imminent danger of falling or otherwise unsafe. An Unsafe Sign Notice shall be delivered to the sign owner or to the owner of the record of the real property whereon the sign is located in the same manner as set out for a Violation Notice except that the

recipient of the notice shall forthwith in the case of immediate danger and in any case within ten (10) days, of receipt, secure the sign in a manner to be approved by the Administrative Officer in conformance with the provisions of this Ordinance or remove such sign. If the notice is not complied with in ten (10) days, the administrative officer shall remove such sign at the expense of the recipient of the notice.

4-20-93;

706.11 The regulations for On-premises signs and other advertising structures are enumerated below:

(1) In any zoning district the following general regulations shall apply:

(A) No sign shall be erected or maintained where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal, or device.

(B) No sign having flashing, intermittent or animated illumination shall be permitted within three hundred (300) feet of property in any residential district unless such sign is not visible from such property.

(C) No illuminated sign shall be permitted within fifty (50) feet of property in any residential district unless the illumination of such sign is so designed that it does not shine or reflect light onto such property. Any illuminated sign that is permitted in a residential district shall not reflect light or shine onto any property in the residential district except the property on which the sign is located.

(D) No free standing on-premises sign attached to the ground shall be erected to exceed thirty (30) feet above ground level or fifty (50) feet in length. The bottom copy of such sign shall be at least three (3) feet above the ground level

(E) No part of any free standing on-premises sign shall extend into any street right-of-way. In the event a right-of-way does not exist, the sign shall be placed in conformity with the setback requirements of the district in which it is located.

(F) Signs erected and overhanging any sidewalk must be placed at least nine (9) feet above the sidewalk and may extend over the sidewalk a distance equal to two-thirds (2/3) the width of the sidewalk, but in no case exceeding ten (10) feet.

(G) Marquee signs may be attached to, or hung from a marquee, and such signs when hung from a marquee shall be at least nine (9) feet at its lowest level above the sidewalk or ground level, and further, no such sign shall extend outside the line of such marquee. Marquee signs may be attached to the sides and front of a marquee, and such sign may extend the entire length and width of said marquee, provided such sign does not extend more than six (6) feet above, nor one (1) foot below such marquee, but under no circumstance, shall a sign have a vertical dimension greater than eight (8) feet

(H) Spectacular signs may be located only in the C-1 Central Business District and the C-2 General Business District after an application has been submitted to the Inspection Department and a permit issued therefore. The permit to locate or maintain a spectacular sign shall be good for one (1) year. No more than one spectacular sign shall be permitted per property. The location of said sign shall be approved by the Planning and Inspections Department.

(I) Professional signs and signs for home occupations shall not exceed two (2) square feet in area.

(J) No sign which obstructs ingress or egress, creates an unsafe distraction for motorist, or obstructs the view of motorist entering a public road or highway shall be permitted.

(K) No signs which contain words or graphics which are obscene, as that term is defined in Chapter 15 of the North Carolina General Statutes are permitted.

(L) No signs located on or attached to the roof of a structure shall be permitted.

(M) No signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features shall be permitted.

(N) No signs located in a manner which are designated to be visible from any road, street or highway, or portion thereof, which is designated a Scenic Corridor by the City Council shall be permitted.

(2) In the Residential District, the following regulations shall apply:

(A) Nameplates indicating name, address, house number, announcements of boarders or roomers, or customary home occupations are permitted.

(B) For apartment buildings, identification signs not exceeding nine (9) square feet in area are permitted.

(C) Church, school, or public building bulletin boards or identification signs, not exceeding twenty (20) square feet in area are permitted.

(D) Flashing or intermittent illumination is prohibited.

(E) For mobile home parks, identification signs not exceeding nine (9) square feet are permitted.

(F) Bed and breakfast homes, identification signs not exceeding nine (9) square feet are permitted.

(3) In C-1 Central Business District and C-2 General Business District any sign, subject to all other requirements of this section, is permitted.

(4) In M-1 Industrial District, any sign meeting the requirements of this section and in addition pertaining to the product manufactured on the premises or the firm occupying the premises is permitted

(5) In any district the following signs shall be permitted without a sign permit:

(A) Signs for parking spaces, entrance and exit signs not exceeding two (2) square feet in area and not more than one (1) sign not more than nine (9) square feet in area identifying or designating the conditions of the use of such parking area.

(B) Non-illuminated "For Sale" or "For Rent" signs not exceeding four (4) square feet in area.

(C) One (1) sign not more than twelve (12) square feet in area giving the names of the contractors, engineers, or architect, during construction of a building. Signs must be removed before a certificate of occupancy is issued.

(D) Signs established by, or by order of, any governmental agency.

(E) For special events of public interest, one (1) sign, not over twenty-Four (24) square feet in area located upon the site of the event.

(F) One (1) sign of not more than twelve (12) square feet giving the name(s) of future tenant(s) of the building(s) under construction. These signs must be removed before a certificate of occupancy is issued.

(G) Trade names and graphics which are located on newspaper, soft drink, and similar vending devices.

(H) Decorations associated with a national or religious holiday.

(I) Sign warning of danger posted by utility or construction companies.

(J) Commemorative tablets, markers or monuments erected by or with the permission of the city council of the City of Marion.

(K) Signs with non-commercial messages.

(L) Temporary signs advertising the sale, rental or lease of property on which said sign is located are allowed provided that:

1. Such signs are non-illuminated.

2. Signs do not exceed four (4) feet in height and do not exceed four (4) square feet per face for property zoned residential.

3. Signs do not exceed eight (8) feet in height and do not exceed thirty-two (32) square feet per face for property zoned other than residential.

4. All signs shall be removed within seven (7) days after the closing of the sale, rental, or lease of property.

(Ord. of 4-20-93; Ord. of 9-21-93; Ord. of 7-22-97, § 1)

Section 706.12 The regulations for Off-premises signs, billboards and other advertising structures are enumerated below:

(1) The following signs are exempt from this Article:

(A) On-premises advertising and on-premises incidental signs.

(B) Signs of a governmental body, including traffic warning or regulatory signs and devices. These signs shall also

include other government signs including building identification, directional, information and welcome signs.

(C) Trade names and graphics which are located on newspaper, soft drink and similar vending devices.

(D) Flags or insignia of any governmental or non-profit organizations when not displayed as an advertising device

(E) Decorations associated with a national or religious holiday.

(F) Signs warning of danger posted by utility or construction companies.

(G) Commemorative tablets, markers or monuments erected by or with the permission of the City Council of the City of Marion.

(H) Signs on operational motor vehicles indicating the name of a business, when the vehicle is not intended to be used for display of signs.

(I) Sign required by law, statute or ordinance.

(J) Signs smaller than eight (8) square feet giving notice or direction for sale of real estate or personal property, such as temporary realtor's signs and yard sale signs.

(K) Signs with non-commercial messages.

(L) Portable political campaign signs, provided that they are removed no later than 7 days after Election Day.

(2) **Signs prohibited.** The following off-premises signs are prohibited within the jurisdiction of this Ordinance:

(A) No sign shall be erected or maintained where by reason of its position, wording, illumination, size, shape, or color where that it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal, or device.

(B) Signs, whether temporary or permanent, within any street or highway right-of-way, with the exception of governmental signage.

(C) Any sign which obstructs ingress or egress, creates an unsafe distraction for motorist, or obstructs the view of motorist entering a public road or highway.

(D) Signs which incorporate flashing or blinking lights or signs with moving parts or parts which simulate movement.

(E) Signs located on or attached to the roof of a structure.

(F) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(G) Signs located in a manner which are designated to be visible from any road, street or highway, or portion thereof, which is designated a Scenic Corridor by the City Council.

(H) Signs which contain words or graphics which are obscene, as that term is defined in Chapter 15 of the North Carolina General Statutes.

(I) Off-premise spectacular signs

(3) **Directional Signs.** The following off-premises signs, known as Directional Signs shall conform to the standards and provision of this Article, except Section 706.12 (4) and all of Section 706.2, but they shall not require the issuance of permits. Directional signs shall:

(A) Contain only the name and logo of a business located in McDowell County, North Carolina, an arrow or other mark to indicate the direction of the business location and the distance to the business from the sign.

(B) Not exceed eight (8) square feet in area per sign face.

(C) All non-advertising off-premises signs which meet the above definition of directions sign except for the sign face area but which do not exceed thirty-two (32) square feet in sign face area which were in place before May 3, 1988 shall be considered legal non-conforming directional signs.

(4) **Regulation of off-premises advertising signs.** Off-premises advertising signs are permitted in accordance with the following regulations:

(A) A permit is required for each off-premises advertising sign, regardless of size.

(B) Off-premises advertising signs located where designed to be visible from any U.S. or N.C. highways shall not exceed three hundred (300) square feet per sign face, shall be not closer to the right-of-way than twenty (20) feet (or no closer than thirty (30) feet from the edge of the traveled way where the right-of-way is unknown or does not exist and shall have a height no greater than thirty (30) feet. Such signs shall be at least one thousand five hundred (1,500) linear feet (measuring along both sides of the highway) from any other off-premises advertising sign; at least five hundred (500) feet from any intersection of the centerlines of any streets; at least five hundred (500) feet from any at-grade railroad crossing or any bright; and at least one thousand (1,000) feet from any dwelling unit, church or place of worship, cemetery, school, playground or park located within six hundred sixty (660) feet of the right-of-way.

(C) Off-premises advertising signs located where designed to be visible from any other road or street shall not exceed one hundred fifty (150) square feet per sign face, shall be no closer to the right-of-way than ten (10) feet (or no closer than twenty (20) feet from the edge of the traveled way where the right-of-way is unknown or does not exist and shall have a height of not greater than thirty (30) feet. Such signs shall be at least one thousand (1,000) linear feet (measuring along both sides of the highway) from any other off-premises advertising sign; at least three hundred (300) feet away from any intersection of the centerlines of any streets; at least three hundred (300) feet from any at-grade railroad crossing or any bridge, and at least five hundred (500) feet from any dwelling unit, church or place of worship, cemetery, school, playground or park located within six hundred sixty (660) feet of the right-of-way

(D) No off-premises outdoor advertising sign in any location shall be more than eight hundred (800) feet from a business, commercial or industrial enterprise located on the same side of the street, road or highway as the sign.

(E) An off-premises advertising sign structure may have one (1) sign face for each side. No structure shall have more than one (1) sign face per side or more than a total of two (2) sign faces.

(F) No off-premises advertising sign shall be attached to or painted on any building or structure.

Notwithstanding the restrictions set forth in subparts (B), (C), and (D) of Section 706.12 (4) above, an off-premises advertising sign may be constructed within one thousand (1,000) feet from any dwelling unit (for the purpose of sub-part (B) and (C) of Section 706.12 (4) or within five hundred (500) feet of a dwelling unit for purposes of sub-part (D) above) PROVIDED the placement of such off-premises advertising sign is in strict compliance with all other requirements and regulations of this Ordinance as long as each owner of any dwelling unit located within such distance executes a statement granting express permission for the placement called for by this Ordinance. Such statement shall refer to the book and page number on which the deed for the owner's property is recorded in the McDowell County Registry and said statement shall be properly notarized. A copy of said statement shall be delivered to the Planning and Inspections Department.

706.13 Amortization of Certain Signs.

Spectacular signs shall become nonconforming in all districts within one (1) year after the date of adoption of this ordinance, at which time permits will no longer be issued and all expired permits shall not be renewed. After the one-year amortization period, all spectacular signs in the City Limits shall be considered in violation of this ordinance and shall be removed. Spectacular sign shall then only be used with a temporary spectacular sign permit issued by the City of Marion and only for a two-week period. The city shall not issue a permit more than four times in a year for each property in the City Limits and such permits shall not be issued consecutively.

Portable Signs as defined in section 706.1 shall become non-conforming in all districts, unless otherwise specified, as of the date of adoption of this Ordinance and shall be removed within six (6) months after the date of adoption.

(Ord. of 6-22-93, Ord. of 4-02-02)

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of April 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-02-04-02-02

FIRE CHIEF OATH OF OFFICE – MAYOR CLARK: Mayor Clark administered the Oath of Office, as follows, to Mr. Jim Neal. His wife Dianne Neal held the Bible during the Oath.

I, James E. Neal, do solemnly swear (or affirm) that I will support and maintain the Constitution and Laws of the United States and the Constitution and Laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as Fire Chief for the City of Marion, North Carolina, so help me God.

_____
James E. Neal, III.

I hereby certify that I, A. Everette Clark, Mayor for the City of Marion, North Carolina, administered the above Oath Of Office to James E. Neal, this the 28th day of March 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

CIVIL CITATION APPEAL – BARKING DOGS: The City Manager presented Council with a request from Ms. Stephanie Stroud of State Street who had received a $50.00 civil citation for a barking dog. Ms. Stroud does not dispute the facts, but asked that consideration be given to waiving this $50.00 given that her husband has gotten rid of the dog.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to deny this request.

APPOINTMENT – RURAL TRANSPORTATION ADVISORY COMMITTEE & TRANSPORTATION TECHNICAL COMMITTEE: The City Manager advised that part of the Memorandum of Understanding Agreement the City of Marion has approved with the Rural Transportation Advisory Committee requires that each participating jurisdiction appoint one elected official to the Rural Transportation Advisory Committee and their manager or planner to the Transportation Technical Committee.

A discussion followed.

Upon a motion by Owenby, seconded by Councilman Little, those members of Council present voted to appoint Councilman Lloyd Cuthbertson to the Rural Transportation Advisory Committee and City Manager Bob Boyette to the Transportation Technical Committee.

OAK AVENUE PARKING; The City Manager advised that the Street Committee met last week and recommends that the no parking zone on Oak Avenue between Grayson and Wilhemenia Streets be reestablished due to problems with littering and noise from cars parking on the street in this areas.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
OAK AVENUE	PARKING PROHIBITED	WEST SIDE, BEGIN 25 FT. NORTH OF NW CORNER OF WILHEMENIA ST. AND OAK AVE. AND CONTINUING TO INTERSECTION OF HIGH ST. AND OAK AVE.

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
OAK AVENUE	PARKING PROHIBITED	WEST SIDE, BEGIN AT SW CORNER OF GRAYSON ST. AND OAK AVE. AND CONTINUING TO INTERSECTION OF HIGH ST. AND OAK AVE.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of April, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-04-02-1

CRIMINAL HISTORY CHECKS: The City Manager presented Council with a letter from Congressman Taylor and the FBI, outlining the procedures that need to be taken for the City to use Federal NCIC data for criminal history checks for prospective employees. Essentially, the FBI letter states that such a use of the data would be allowed if authorized by State Statute. The North Carolina General Statutes currently do not allow the NCIC information to be used for performing background checks on prospective municipal employees.

The City Manager recommends that our legislators and the North Carolina League of municipalities be contacted and ask that such a bill be introduced to allow the use of NCIC information for criminal history checks on final applicants for municipal government positions.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to authorize the City Manager to proceed with contacting local State legislators and the North Carolina League of Municipalities to proposed such legislation.

COMMUNITY BUILDING RATES: The City Manager advised that the following ordinance was approved by Council at the March 19, 2002 City Council Meeting.

CITY OF MARION, NORTH CAROLINA
ORDINANCE
COMMUNITY BUILDING RATES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following rates shall be charged for the use of the Marion Community Building effective March 20, 2002.

PER DAY, PER EVENT CHARGE: MAIN OR STREET LEVEL:

ASSEMBLY ROOM USE ONLY	$100.00
KITCHEN AND ASSEMBLY ROOM	$150.00
DEPOSIT FOR EACH USE:	
A. PERSONS HAVING USED THE BUILDING IN THE PAST WITHOUT INCIDENT	$100.00
B. FIRST TIME USERS/OTHERS (ALL DEPOSITS WILL BE IN CASH, NO EXCEPTIONS)	$200.00

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATIONS AUTHORIZED BY THE CITY COUNCIL TO USE THE BUILDING ON A REGULAR SCHEDULE AND AT SPECIAL RATE:

A. PER DAY, PER EVENT CHARGE $25.00
NO DEPOSIT IS REQUIRED.

PER DAY, PER EVENT CHARGE: BASEMENT:

A. $10.00 PER HOUR OR PORTION THEREOF, WITH A MINIMUM CHARGE OF $20.00 AND A MAXIMUM CHARGE OF $100.00 PER USE, NOT TO EXCEED ONE DAY.
A CASH DEPOSIT OF $50.00 IS REQUIRED FOR EACH USE.

ADOPTED this the 19th day of March ,2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert, Boyette, City Manager/Clerk

The City Manager advised that the Recreation Committee met last week and reviewed the Community Building rates charged to civic clubs. The Recreation Committee did not recommend any increases in the rates charged to civic clubs due to the feeling that a reasonable increase in the rates would not be worth the furor it might cause among the clubs. Councilman Little stated that now was not the right time to ask the clubs to pay more for use of the Community Building.

No action was taken on this item.

APPOINTMENT – ABC BOARD – ROBERT TEETER: The City Manager advised that Mr. Robert Teeter's term on the ABC Board expires April 18, 2002. Mr. Teeter is presently out of town and could not be reached regarding his re-appointment.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of

Council present voted to table this appointment until the next Regular scheduled City Council Meeting.

REQUEST – MOPAR CAR CLUB: The City Manager advised that he had received a request for the MORPAR Car Club to be allowed to have a car show during this years Mountain Glory Festival, and to have a car show on Saturday, June 8, from 4:00 p.m. to 8:00 p.m., at which time they would need to block a section of North Main Street between Court Street and the gazebo. The City Manager noted that he had mentioned the idea to the Downtown Advisory Committee, who thought that the event would be positive for downtown. He further noted that the City's commitment in the event would be limited to blocking off the street, and providing some minimal traffic control.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to allow the MORPAR Car Club to hold their car show on June 8, and during the Mountain Glory Festival. The City Manager was directed to inform Kirksey Funeral Home of this event.

DOWNTOWN ADVISORY COMMITTEE: The City Manager presented Council with the following proposed Roles and Responsibilities for the Downtown Advisory Committee:

City of Marion
Downtown Advisory Committee
Roles and Responsibilities

The Downtown Advisory Committee (DAC) is hereby established to serve as an advisory board to the City Council on matters involving downtown development and revitalization. The DAC shall function as an ad hoc committee for such time as deemed necessary by City Council, or until permanent designation is given by ordinance. Funding for the activities of the DAC is accomplished through appropriations to the Marion Downtown Business Association (DBA) or by the City directly. The initial duties of the DAC are to make recommendations to City Council on the following areas:

-Development of a Downtown Master Plan, to include the scope of the plan, whether the plan would be completed by an outside consultant or in-house, estimated costs, funding options, and the desired use for the plan.

-Recommendations on improvements to specific areas, including traffic flow, beautification, parking, and other topics directed by City Council, or identified by the DAC.

-Development of additional special events and concerts downtown, in conjunction with the DBA and MACA.

-Recommendations on reviving the Downtown Special Tax District, as a source of funding for downtown events and improvements.

-Recommendations on other programs, such as retail recruitment and the establishment of a Revolving Loan Fund to assist with business start-up and development.

-Encourage property owners to make needed improvements to their buildings and properties, and to seek and rent to desired types of businesses.

-To eventually explore and study redevelopment of abandoned or under utilized mill sites and brownfields in the City Limits.

The DAC shall be composed of nine voting members, as follows:

-Mayor
-One City Council Member
-DBA Board Member
-MACA director
-Three downtown merchants
-Two downtown property owners

The City Manager and DBA Executive Director shall serve as ex officio members of the DAC, and the City Planner shall be designated as the DAC City staff liaison, to coordinate information gathering from other staff and agencies and meeting scheduling and agendas.

Initial appointments shall be made for a three year term, to expire June 30, 2005. Additional appointments beyond the initial three year term shall be staggered.

DAC funding shall be routed through the DBA to ensure coordination between both groups. The DAC shall not expend any funds without the approval of the City, to ensure that funds are spent in accordance with the goals of the City Council.

Approved by City Council
This the 2nd day of April, 2002

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

The City Manager advised that the roles and responsibilities were unchanged from previous versions shown to Council, except for clarifications to the last paragraph which state that DAC funding will be routed through the DBA, but that only City approval is necessary for the DAC to expend funds.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adopt the Roles and Responsibilities for the Downtown Advisory Committee as stated above.

CITY MANAGER'S REPORT: The City Manager gave a report on current projects.

MAYOR CLARK – NAFTA: Mayor Clark gave a brief report on this recent one day trip to Washington D.C. along with four other cities to meet with Senator Helms, Congressman Ballenger, and the Department of Commerce. He noted that Senator Helms was asking for Federal appropriations for several cities in our region to assist with water and sewer capital projects, and that the City Manager had put together a request for $362,500 in Federal funding. It may be summer before the City hears whether this appropriation is approved.

COUNCILMAN EDWARDS COMMENTS: Councilman Edwards advised that he has received several complaints about persons walking large dogs downtown and allowing them to deposit large amounts of waste on the sidewalks and leaving it. Other citizens are having to walk through it or around it. He suggested that the City Manager could direct the Police Department to advise people walking their dogs to be sure to clean up after them, out of

courtesy and respect for others, and that a notice could be placed on the City channel, asking dog owners to clean up after their pets.

Council members agreed that this suggestion was a good way to handle the problem.
CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real estate.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Closed Session on Tuesday evening, January 22, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real estate.

The City Manager reported that Dr. Christopher Nevant, owner of the property adjacent to the Police Department on South Main Street, had called him two weeks prior to inform the City that he had decided not to construct a building on the property, and therefore would be willing to entertain an offer on the property from the City. The City Manager noted that Dr. Nevant had paid $90,000 for this property, and that City Council had offered $75,000 for the property to Gilbert Hollifield two years prior.

Council members discussed the merits of the property, and whether the City could afford to purchase the property with the current budget situation. Councilman Edwards suggested that it might be worthwhile for the Police Department architect to study the property and see if having the property available for the proposed Police Department expansion might save enough on the construction costs to justify the purchase of the property. Council members agreed with this suggestion, and the City Manager stated he would contact the Police Department project architect and ask him to start looking at this property, as part on the planning and design process to begin in the next two weeks.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 16, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager, Debi Sherlin, Secretary, Tim Benware, Police Chief, Mike Conley, News Reporter, The McDowell News, Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Barbara Broadwell, Marion, NC 28752; Elizabeth Whitesides, Lake Lure, NC; Perry Smith 240 E. Hudgins Street, Marion NC 28752; Virginia Woody 351 McKinney Road Marion, NC 28752; David Grant 11 Mitchell Street, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A- Approval of City Council Minutes – April 2, 2002

B- Acceptance of Highway 221 South – Wastewater Extension Grant

1 – Resolution – Designate Mayor as Signatory for Grant

Authorizing Resolution by City Council of the City of Marion Supplemental Grants Program

WHEREAS, the 1998 Critical Needs Bond Act has authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collections systems, and water supply systems, water conservation projects; and

WHEREAS, the City of Marion has need for and intends to construct or rehabilitate a publicly-owned treatmen; works or an alternate wastewater system, for wastewater collections systems or for water supply and distribution systems, project described as the extension of gravity sewer to the U.S. 221 South area; and

WHEREAS, the City of Marion intends to request grant assistance from the Supplemental Grants Program for the project;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION:

That the City of Marion will arrange financing for all remaining costs of the project, if approved for a grant.

That the City of Marion will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Mayor A. Everette Clark, and successors so titled, is hereby authorized to execute and file an application on behalf of the City of Marion with the NCREDC (Rural Center) for a grant to assist in the construction of the project described above.

That Mayor A. Everette Clark, and successors so titled, is hereby authorized and directed to furnish such information as the Rural Center may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the City of Marion has substantially complied with or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and the grants pertaining thereto.

Adopted this the 16th day of April, 2002 at Marion, North Carolina.

A. Everette Clark - Mayor

Chief Elected Official Signature

Title (Typed)

Attest:

J. Robert Boyette

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-02-04-16-1

2 – Conflict of Interest Statement

CITY OF MARION
CONFLICT OF INTEREST STATEMENT

The City of Marion, North Carolina is a municipal corporation organized and chartered under the laws of North Carolina. All City officials and employees are aware of, and in full compliance with NCGS 14-234, "Director of public trust contracting for his own benefit, participation in business transaction involving public funds; exemptions."

A. Everette Clark - Mayor

Chief Elected Official Signature

Name (Typed)

Title (Typed)

Attest:

J. Robert Boyette

City Manager/Clerk

C. Budget Amendment:

CITY OF MARION, NORTH CAROLINA
2001-2002 BUDGET ORDINANCE
(Fifth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

General Fund Revenues, Account Number 10-309-2000, Current Taxes, is decreased from $1,344.039 to $1,310.000.

General Fund Expenditures, Non Departmental, Account Number 10-660-9950, Special Projects, is decreased from $221,297 to $127,258.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 16th day of April 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-04-16-2

D. Resolution Authorizing the Sale of the Senior Center Property:

Resolution Authorizing the Advertisement for Sealed Bids for the Sale of Certain Property

WHEREAS, the City Council of the City of Marion desires to dispose of certain surplus property of the City;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Marion that:

1. The following described property is hereby declared to be surplus to the needs of the City of Marion:

BEING a parcel containing .69 of an acre, according to that certain unrecorded plat of survey prepared by R.L. Greene Surveying and which Survey is dated November 7, 2001 and which survey has a map file number of MM1-022R and which survey is entitled, Survey of a Portion of that property described in a deed to The Town of Marion, Deed Book 173, Page 215 and from which survey the following metes and bounds description is taken:

BEGINNING AT an existing concrete monument which is located North 43 degrees 32 minutes 39 seconds West 262.92 meters from N.C.G.S. Monument Main which has NAD 83 grid coordinates of N = 218059.962 meters and E = 337533.111 meters and which Monument Main is located North 62 degrees 18 minutes 17 seconds West 123.8875 meters from N.C.G.S. Monument Clair which has NAD 83 grid coordinates of N = 218002.383 meters and E = 337642.805 meters and which BEGINNING point is located at the NorthWestern corner of land now or formerly owned by the City of Marion, see Deed Book 428, Page 164, McDowell County Public Registry and which BEGINNING point is located at the Southernmost corner of property now or formerly owned by Krinn E. Evans, see Deed Book 509, Page 190, McDowell County Public Registry; thence from said BEGINNING point and with the line of lands now or formerly owned by the City of Marion, see Deed Book 173, Page 215, and Deed Book 428, Page 167, McDowell County Public Registry, South 68 degrees 08 minutes 59 seconds West 38.90 feet to an existing iron pin; thence South 68 degrees 08 minutes 59 seconds West 88.74

feet to an unmarked point in the center of the Creek, an unmarked point which is located in the line of lands now or formerly owned by Heritage Hill Associates, see Deed Book 345, Page 822, McDowell County Public Registry, thence with the creek, the following courses and distances which are all to unmarked point, North 56 degrees 36 minutes 07 seconds West 21.80 feet; North 32 degrees 51 minutes 07 seconds West 45.23 feet; North 82 degrees 01 minutes 52 seconds West 31.12 feet; South 69 degrees 48 minutes 04 seconds West 21.65 feet; thence with the culvert, North 40 degrees 24 minutes 54 seconds West 64.80 feet to a punch mark placed in a sidewalk which is identified as the BEGINNING corner of Deed Book 173, Page 215, McDowell County Public Registry; thence with Crawford Street, North 51 degrees 02 minutes 47 seconds East 179.44 feet to a pkm nail set on November 7, 2001; thence with a new line, South 68 degrees 30 minutes 36 seconds East 53.11 feet to a pkm nail set on November 7, 2001; thence with a new line, South 34 degrees 26 minutes 12 seconds East 39.43 feet to a pkm nail set on November 7, 2001; thence South 21 degrees 29 minutes 07 seconds East 117.68 feet to the point and place of BEGINNING.

Being a portion of Deed Book 173, Page 215, McDowell County Public Registry.

2. The City Manager is authorized and directed to receive in behalf of the City Council sealed bids for the purchase of the property described above.

3. Sealed bids may be submitted to the City Clerk's office to be opened on at 2:00 p.m. on Monday, June 3, 2002 at Marion City Hall.

4. The City Clerk shall cause a notice of this resolution to be published in accordance with G.S. 160A-268.

5. Bids will not be accepted unless, upon time of filing, they are accompanied by a deposit of cash, cashier's or certified check, or bid bond equal to 5% of the amount bid.

Adopted this the 16th day of April, 2002.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-02-04-16-1

LEGAL NOTICE
CITY OF MARION
SALE OF SENIOR CENTER PROPERTY BY SEALED BID

The public will take notice that the City Council of the City of Marion proposes to accept sealed bids for the purchase of the Senior Center property on Crawford Street in Marion, as described below:

BEING a parcel containing .69 of an acre, according to that certain unrecorded plat of survey prepared by R.L. Greene Surveying and which Survey is dated November 7, 2001 and which survey has a map file number of MM1-022R and which survey is entitled, Survey of a Portion of that property described in a deed to The Town of Marion, Deed Book 173, Page 215 and from which survey the following metes and bounds description is taken:

BEGINNING AT an existing concrete monument which is located North 43 degrees 32 minutes 39 seconds West 262.92 meters from N.C.G.S. Monument Main which has NAD 83 grid coordinates of N = 218059.962 meters and E = 337533.111 meters and which Monument Main

is located North 62 degrees 18 minutes 17 seconds West 123.8875 meters from N.C.G.S. Monument Clair which has NAD 83 grid coordinates of N = 218002.383 meters and E = 337642.805 meters and which BEGINNING point is located at the NorthWestern corner of land now or formerly owned by the City of Marion, see Deed Book 428, Page 164, McDowell County Public Registry and which BEGINNING point is located at the Southernmost corner of property now or formerly owned by Krinn E. Evans, see Deed Book 509, Page 190, McDowell County Public Registry; thence from said BEGINNING point and with the line of lands now or formerly owned by the City of Marion, see Deed Book 173, Page 215, and Deed Book 428, Page 167, McDowell County Public Registry, South 68 degrees 08 minutes 59 seconds West 38.90 feet to an existing iron pin; thence South 68 degrees 08 minutes 59 seconds West 88.74 feet to an unmarked point in the center of the Creek, an unmarked point which is located in the line of lands now or formerly owned by Heritage Hill Associates, see Deed Book 345, Page 822, McDowell County Public Registry, thence with the creek, the following courses and distances which are all to unmarked point, North 56 degrees 36 minutes 07 seconds West 21.80 feet: North 32 degrees 51 minutes 07 seconds West 45.23 feet; North 82 degrees 01 minutes 52 seconds West 31.12 feet; South 69 degrees 48 minutes 04 seconds West 21.65 feet; thence with the culvert, North 40 degrees 24 minutes 54 seconds West 64.80 feet to a punch mark placed in a sidewalk which is identified as the BEGINNING corner of Deed Book 173, Page 215, McDowell County Public Registry; thence with Crawford Street, North 51 degrees 02 minutes 47 seconds East 179.44 feet to a pkm nail set on November 7, 2001; thence with a new line, South 68 degrees 30 minutes 36 seconds East 53.11 feet to a pkm nail set on November 7, 2001; thence with a new line, South 34 degrees 26 minutes 12 seconds East 39.43 feet to a pkm nail set on November 7, 2001; thence South 21 degrees 29 minutes 07 seconds East 117.68 feet to the point and place of BEGINNING.

Being a portion of Deed Book 173, Page 215, McDowell County Public Registry.

Sealed bids may be submitted to the office of the City Clerk, 194 North Main Street, P.O. Drawer 700, Marion, N.C. 28752, to be opened at this location at 2:00 p.m. on Monday, June 3, 2002. All bids should be marked "Senior Center Property Bid" on the envelope. No bids shall be accepted unless upon time of filing it is accompanied by a deposit of cash, cashier or certified check, or bid bond equal to 5% of the amount bid. The City Council reserves the right to reject any or all bids.

J. Robert Boyette
City Manager/Clerk

Run: April 30
May 7
May 14
May 21
May 28

E. Cross Memorial Baptist Church Annexation

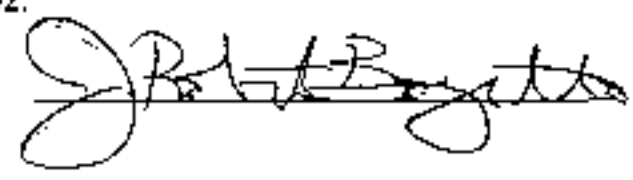
CERTIFICATE OF SUFFICIENCY

To the City Council of the City of Marion:

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 16th day of April, 2002.

(SEAL)



J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at City Hall at 7:00 P.M. on Tuesday, May 7, 2002.

Section 2. The area proposed for annexation is described as follows:

Tract No. 1 (Deed Book 182, Page 522) BEGINNING on an iron stake on the East side of Nix Creek Road, said stake being located North 36 West 7.5 feet from the center of a large black oak about 30 inches in diameter and also located South 6 East 91.2 feet from the Southwestern corner of a house owned by Cross Cotton Mills Company and occupied by Wade Miller, and runs from said beginning point North 77 East 443.7 feet to an iron stake on the East side of a small hollow: thence South 74 West 3 degrees 30 min. West 417.5 feet to an iron stake; thence South 74 West 413.5 feet to an iron stake on the East side of Franklin Avenue; thence north 3 degrees 30 min. East 331.5 feet with Franklin Avenue to a concrete monument, an old corner of Cross Cotton Mills Company property; thence North 25 West with said old line 100.4 feet to point in the Nix Creek Road; thence North 17 East 22.5 feet to the BEGINNING, containing 4.10 acres.

Tract 2 (Deed Book 436, Page 34) BEGINNING at an iron pin located in the Western line of the parcel owned by Cross Mill Baptist Church and more particularly described in Deed Book 182, Page 522 of the McDowell County Public Registry, said point being further located North 41 degrees 09 minutes 53 seconds East 396.91 feet from an iron pin located within the Southeastern right of way for State Road 1195, known as Nix Creek Road; thence running with the center of a 30-foot-wide gravel drive the following courses and distances: South 9 degrees 30 minutes 47 seconds West 246.43 feet, South 7 degrees 09 minutes 39 seconds West 343.54 feet, South 7 degrees 16 minutes 28 seconds East 48.96 feet, South 21 degrees 26 minutes 00 seconds East 42.09 feet, South 36 degrees 54 minutes 29 seconds East 175.12 feet; thence leaving the center of the 30-foot-wide gravel drive; south 36 degrees 54 minutes 29 seconds East 217.71 feet to a point in the center of the 200-foot right of way for Southern Railway; thence with the center of said right of way, North 49 degrees 25 minutes 49 seconds East 480.18 feet, North 49 degrees 30 minutes 24 seconds East 711.33 feet; thence crossing the right of way, North 50 degrees 53 minutes 56 seconds West 474.07 feet to an iron pin; thence North 72 degrees 13 minutes 19 seconds West 208.81 feet to an iron pin; thence North 55 degrees 31 minutes 22 seconds West 122.11 feet to an iron pin in the line of the tract owned by Cross Memorial Baptist Church (see Deed Book 182,

Page 522); thence with the boundary of Cross Memorial Baptist Church the following courses and distances: South 05 degrees 40 minutes 07 seconds West 300.89 feet to an existing iron pin; thence South 76 degrees 04 minutes 03 seconds West 412.45 feet to an existing iron pin located within the 30-foot-wide right of way for the gravel drive; thence with the gravel drive, North 05 degrees 41 minutes031 seconds East 179.30 feet to the point and place of BEGINNING. Containing 16.08 acres, more or less, as shown on the plat of survey prepared by R. L. Greene Surveying and Mapping, 10 South Logan Street, Marion, North Carolina, dated February 17, 1992.

Section 3. Notice of the Public Hearing shall be published in The McDowell News, a newspaper having general circulation in the City of Marion, at least ten (10) days prior to the date of the public hearing.

ADOPTED this the 16th day of April 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

F. Downtown Business Association Sidewalk Sale

Downtown Business Association Sidewalk Sale – Saturday, May 4, 2002. The sale would be done in the same manner as past events.

PUBLIC APPEARANCE – MR. PERRY SMITH & MS. VIRGINIA WOODY: Ms. Virginia Woody appeared before Council advising that she has great concern about the many safety issues in the West Marion Area. Specifically the need for Yancey Street to be re-opened so that it connects with West Henderson Street.

Ms. Woody advised that this community has been cordoned off unlike any other community. The re-routing of the 221 By Pass left the community's through-way and connector streets broken and dissected. The community feels that the closing of Yancey Street and Pennsylvania Avenue has created a dangerous and potentially deadly situation. Emergency vehicles and funeral limousines particularly have a hard time turning around.

Ms. Woody advised that the area is not being patrolled like it should be. Also, a large oak tree was recently cut down by City Crews and no notice was given to residents in the area. Work crews blocks the roads and again, an emergency situation could have been devastating.

A temporary fix may be to allow right hand turns onto and off Yancey Street from and on to West Henderson. A turning lane already exists, however, soon there will be four lanes.

Mr. Perry Smith and Ms. Elizabeth Whiteside, brother and sister of Ms. Woody, was also present for this meeting and reiterated the concern and safety of the West Marion Community. Mr. Smith stated that if Yancey Street were reconnected to West Henderson Street, a new traffic signal would be needed at the new intersection. Mr. Smith also mentioned the need for better turn arounds at the end of dead-end streets in West Marion, and for left turn arrows at traffic signals at West Henderson and Woodlawn Streets, and at West Henderson and Old West Henderson Streets.

Mayor Clark noted that when the Highway 221 Bypass was constructed several years ago, the

City worked with DOT to attempt to provide for the best turn arounds and street access possible in the West Marion neighborhood. Mayor Clark advised that DOT dictated that the Yancey Street/West Henderson Street intersection be closed, and that any such changes today would require approval, and likely funding from DOT.

Mr. David Grant was also present for this discussion, and requests that Council look at making no parking on Catawba Street, to alleviate a dangerous situation.

It was the consensus of Council to refer this item to the Street Committee.

ZONING AMENDMENT – TATTOO PARLORS/BODY PIERCING SHOPS: The City Manager presented Council with the second reading of the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. Appendix A Zoning of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A is amended by adding the following under Article VIII, Section 804, General business District:

"804.3(4.) Tattoo and/or body piercing shops. Because City Council `specifically finds that tattoo and/or body piercing shops are adult businesses, since they do not offer their services to minors, and therefore are not compatible with family oriented businesses and uses, tattoo and/or body piercing shops shall not be located or operated within 1,000 (one thousand) feet of:

1. A church, synagogue, or regular place of worship:
2. A public or private elementary or secondary school;
3. A public library;
4. A park or playground;
5. A licensed child-care facility'
6. A licensed group-home facility;
7. An entertainment business that is oriented primarily towards minors.

For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where tattoo and/ or body piercing is conducted, to the nearest property line of the premises of any use listed above."

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-04-16-2

Councilman Edwards stated that since the original applicant for this request, Mr. Gurule, has apparently found a location outside the City, there remains no need for any action by Council at this time. He suggested that Council not take action to pass the ordinance.

Councilman Little noted that the ordinance did not call for a separation between tattoo parlors/body piercing shops and residences. He suggested that residences be allowed the same separation requirement from tattoo parlors/body piercing shops as schools, churches, day cares, etc., if Council was inclined to adopt the ordinance.

Councilman Owenby stated that he felt that something should be placed on the books to allow for tattoo parlors, with restrictions, in case this issue came up again in the future.

Upon a motion by Councilman Owenby, seconded by councilman Cuthbertson, Council voted to adopt this Ordinance as stated above.

The vote was as follows.

Councilman Cuthbertson	Yes
Councilman Martin	Yes
Councilman Owenby	Yes
Councilman Edwards	No
Councilman Little	No

PUBLIC HEARING – REZONING – SPRING STREET: Mayor Clark opened the Public Hearing.

The City Manager advised that an application has been received from Nova Star Mortgage to rezone a property at 51 Spring Street from C-2 General Business to R-2 Residential. This house contains a house and appears to have always been used for residential purposes.

Ms. Barbara Broadwell of Brooks and Broadwell Reality was present for this meeting in support of the rezoning, as this property is pending sale.

The Planning Board unanimously recommends that 51 Spring Street be rezoned from C-2 General Business to R-2 Residential.

A brief discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the Planning Board as stated above to rezone the property at 51 Spring Street from C-2 General Business to R-2 Residential.

AUDIT CONTRACT: The City Manager presented Council with the proposed Audit Contract from Johnson Price & Sprinkle for fiscal year 2001-02. This Audit includes $1,730.00 for the year-end bookkeeping assistance, and $16,500.00 for the audit and preparation of the financial statement. This price represents a 3.5 percent increase over the 2000-01 Audit.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the contact with Johnson Price and Sprinkle as presented.

ABC BOARD APPOINTMENT: The City Manager advised that Mr. Robert Teeter had been contacted and would be willing to serve another three year term on the ABC Board, to expire, April 18, 2005.

CITY MANAGER'S REPORT: The City Manager gave a report on current projects.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Marion, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 7, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Police Chief; Sgt. Kelly Reeves, Marion Police Department; Suzy Davis, City Planner; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Ansel, Amy, Sara and Emily Clark, 78 Richard Drive, Marion, N.C. 28752; Bob & Sylvia Davis, 342 Forest Heights Drive, Marion, N.C. 28752; Wayne Ollis, PO Box 1290 Marion, N.C. 28752; Warren Hobbs, Marion, N.C. 28752; Perry Smith, 240 East Hudgins Street, Marion, N.C. 28752; Elizabeth Whiteside 113 Silent Forest Way, Lake Lure, NC; Virginia Woody 351 McKinney Road, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM STEVE LITTLE: Mayor Pro Tem Little selected the Citizen of the Month for May.

The following information was presented about May's Citizen of the month:

DR. ROBERT R. DAVIS

Mayor Pro Tem Little advised that Dr. Davis was born in Panama Beach Florida. He graduated High School from Fort Walton Beach, Florida and attended what was then called Howard College in Birmingham, Alabama and is now Samford University. He next attended the Southeastern Baptist Theological Seminary in the town of Wake Forest.

Dr. Davis is married to Sylvia and they have two sons.

He has served as Pastor for the First Baptist Church in Marion since 1984. Mayor Pro Tem Little advised that Dr. Davis has helped his congregation explore ways to walk the walk and not just talk the talk.

Dr. Davis is involved with Hospice and serves as a member of the Advisory Board for Family Services.

He has given of himself in many special ways through the years while performing weddings, funerals, visiting the sick, counseling and much more.

City Council Members, Family Members and Friends all shared kind words about Dr. Davis.

OATH OF OFFICE – MAYOR A. EVERETTE CLARK: Mayor Clark advised that he had recently been appointed to serve as a member of the North Carolina Community Development Council by Governor Michael F. Easley. Said term will expire on June 30, 2005.

Mayor Clark advised that his son Ansel is a local Magistrate and that with Council's blessing, he would like to ask him to administer the following oath of office and allow his Daughter-In-Law Amy and two Grand Daughters Sarah and Emily to hold the Bible:

I, Ansel Everette Clark , do solemnly swear that I will support the constitution of the United States and that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof and that I will endeavor to support, maintain and defend the constitution of North Carolina not being consistent with the constitution of the United States, and will well and truly execute the duties of my office as a member of the North Carolina Community Development Council according to the best of my skill and ability according to law so help me God.

A. Everette Clark, Mayor

INTRODUCTION – POLICE DEPARTMENT EMPLOYEE: Chief Benware introduced Sgt. Kelly Reeves as a new member of the Marion Police Department. Sgt. Reeves comes to the City with much valuable training.

Mayor Clark and Council Members welcomed Sgt. Reeves.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – **April 16, 2002**

B. **Request by MACA for Free Use of Community Basement for SOS Program:** Approved waiving the rental fees for this year's McDowell SOS Program to use the Community Building Basement as requested by Ms. Lavona Farr, Program Director for the program.

PUBLIC APPEARANCE – WAYNE OLLIS – CHARTER COMMUNICATIONS – DISCUSS CABLE SYSTEM: Mr. Wayne Ollis, Manager for Charter Cable appeared before Council and gave a brief report on the recent price increase in cable rates, and answered various questions asked by Council and citizens.

PUBLIC HEARING REZONING WEST HUDGINS STREET: Mayor Clark opened the Public Hearing.

The City Manager presented Council with a memo from Ms. Suzy Davis, City Planner, advising that Mr. Perry Smith has requested an amendment to the zoning map (rezoning) for the property located at 236 West Hudgins Drive. This property would be considered spot zoning because it is not contiguous to any other C-2 zoning.

Ms. Davis advised that spot zoning can not be done on an arbitrary or capricious basis and the planning board has to state the reasonableness of such a decision, the benefits for the owner, community, district and city while remembering that any use in C-2 would be permitted in this area.

Mr. Smith advised that he would like to open a small scale store to serve the people of his community. He said he will not sell alcohol, or been open during late night hours.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the Planning Board to rezone 236 West Hudgins Drive from R-2 to C-2.

RECEIVE RECOMMENDATION FROM STREET COMMITTEE – WEST MARION STREETS: The City Manager advised that the Street Committee met on April 22 and reviewed requests made at the April 16 City Council meeting.

The City Manager gave the following recommendations from the Street Committee:

a. The Street Committee recognizes that opening up Yancey Street to West Henderson Street would required the approval of DOT, and their help with design and engineering, since the 221 Bypass overpass bridge would block sight distance. The Committee recommends that the neighborhood request be passed on to DOT for their review and advice. The Committee also recommends that the stoplight requested at this new intersection not be mentioned in the request to DOT, as it might harm the request, given the proximity of the new proposed intersection to the stoplight at Woodlawn and West Henderson Streets.
b. The turn arounds at the end of such streets at West Hudgins, Pennsylvania, and Mitchell Streets are better than those in other parts of the City. No action was recommended on this request.
c. The need for leading left turn arrows at tow traffic signals was mention.: for northbound traffic on west Henderson turning left into Woodlawn Street, and for northbound traffic on West Henderson turning left into Old West Henderson Street at McDonald's. This request also would need to be presented to DOT.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to send a letter to DOT with the above listed requests on behalf of the Citizens of West Marion.

CIVIL CITATION APPEAL – MR. ROBERT PLAMER- PILING BRUSH IN STREET: Mr. Robert Palmer appeared before Council requesting that the Civil Citation he received for piling brush in the Street be waived. Mr. Palmer advised that he did pile the brush up and while he was away from his residence for several hours someone kicked, or placed the debris into the Street.

The City Manager stated that he would recommend the waiver of the civil citation.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to waive the $50.00 Citation.

DISCUSSION OF PROPOSED CEMETERY TRASH RECEPTACLES – WARREN HOBBS: Mr. Warren Hobbs appeared before Council requesting that trash receptacles be placed in the Oak Grove Cemetery to allow people to place trash and old flowers in. The particular type of trash receptacle being proposed would cost between $650. to $750. each. Mr. Hobbs feels that three receptacles would be adequate at this time.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to purchase these three receptacles and for Mr. Hobbs to coordinate with the Director of Public Works on placing these receptacles.

PUBLIC HEARING ANNEXATION OF CROSS MEMORIAL BAPTIST CHURCH PROPERTY ON TATE STREET: Mayor Clark opened the Public Hearing.

The City Manager advised that the Annexation of Cross Memorial Church is scheduled for the May 21st City Council Meeting. This Annexation will be for 23 acres of property on Tate Street adjacent to Highway 221 Bypass and would take effect on June 30, 2002.

There were no Citizens present to discuss this annexation proceeding.

Mayor Clark closed the Public Hearing.

No action was necessary.

PUBLIC HEARING – ESTABLISH INITIAL ZONING FOR AUTUMN CARE PROPERTY ON AIRPORT ROAD: Mayor Clark opened the Public Hearing.

The Autumn Care Property is a satellite annexation located on Airport Road and has no surrounding zoning district. The primary use around the facility is residential.

Suzy Davis, City Planner, reported that the Planning Board had voted unanimously to recommend R-2 zoning for Autumn Care. A nursing home is a permitted use in the R-2 district.

There were no citizens present to discuss this request.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Planning Board and to rezone this property R-2 General Residential Property.

PUBLIC HEARING – ESTABLISH INITIAL ZONING FOR CROSS MEMORIAL BAPTIST CHURCH PROPERTY ON TATE STREET:
Mayor Clark opened the Public Hearing.

Ms. Davis advised upon the approval of annexation at the May 21st City Council Meeting the Cross Memorial Baptist Church Property will need to be zoned. She stated that the Planning Board had voted unanimously to recommend R-2 zoning. The church and parsonage are both permitted uses in the R-2 district.

There were no citizens present to discuss this request.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the Planning Board to zone this Property R-2 Residential, which allows for both Churches and residential properties, effective June 30, 2002.

CIVIL CITATION APPEAL – MARION TIRE CENTER – FALSE ALARM ACTIVATION'S: The City Manager presented Council with a letter from Mr. Eugene Holland of Marion Tire Center requesting that City Council waive the $50.00 civil citation issued to his business on Railroad Street for excessive false alarm activation's. Mr. Holland believes that wharf rats coming form the creek behind his business are to blame for the activation's since January 1, 2002. The City Manager noted that an additional false alarm activation had occurred in the past week, which could also result in a civil citation.

A lengthy discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to waive the two $50.00 citations, however Council will not waive any future fines for false alarms.

The City Manager was directed to investigate options in helping to eliminate the problem of rats along the creek bank behind Railroad Street, through a local exterminator. The Property Owners will be asked to reduce the sensitivity of their alarm, to avoid future false alarms, and to take action to eliminate rats on their property as well.

CIVIL CITATION APPEAL – SAMIR'S #3 – FALSE ALARM ACTIVATION'S : The City Manager presented Council with a letter from Mr. Anwer Gillani requesting a waiver of three $50.00 civil citations issued to his business on the five lane for excessive false alarm activation's. New and untrained employees were the cause of these alarms. The City Manager noted that an additional false alarm activation had occurred in the past week, which could also result in a civil citation.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted to approve this request, to waive all civil citations at this location. However, future false alarm activations will not be waived.

REQUEST FOR FREE USE OF COMMUNITY BUILDING – McDOWELL VOLUNTEER CENTER: The City Manager presented Council with a letter from Ms. Cheryl Mitchell, Director of McDowell Volunteer Center advising that this year marks the 24th anniversary of the McDowell Volunteer Recognition Reception. This reception if to honor all volunteers of the City and County and to recognize those volunteers who have been nominated for the NC State Volunteer of the Year Awards.

Ms. Mitchell is requesting that the City waive the $150.00 Rental Fee for the use of the Community Building.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to pay the rental fee of $150.00 as a contribution to the McDowell Volunteer Center.

REVIEW BIDS/AWARD CONTRACT – CEMETERY MAUSOLEUM AND COLUMBARIUM: The City Manager advised that the following bids had been received for the proposed mausoleum and columbarium to be built at the Oak Grove Cemetery:

Mausoleum

Gaulden Monuments	$84,000.00
Whitmire Monument Co.	$220,264.00

Columbarium

Gaulden Monuments	$14,402.00
Whitmire Monument Co.	$15,193.00

The low bids by Gaulden for both units would be lowered by five percent, to $93,481.90, if they were awarded the contract for both units.

The City Manager also advised that a local man, Graylan Boyd presented him with a hand written bid of $90,295.00. Mr. Boyd has poured concrete with Burke Monuments, however, he has not constructed a mausoleum before. The other two bids are from qualified experienced bidders.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted unanimously to deem Gaulden Monuments as the lowest qualified bidder and to accept the low bid of Gaulden for both units in the amount of $93.481.90. This amount will be taken from the Cemetery Fund.

REVIEW RECOMMENDED ADJUSTMENTS TO WATER AND SEWER RATES: The City Manager presented Council with several proposed water and sewer rate studies which would increase revenues.
We need at least $200,000 in the new water and sewer revenue for 2002-03.

A lengthy discussion followed.

Council members discussed the need to increase revenues to compensate for rising costs and the loss of large water customers.

Councilman Edwards asked for additional information on the impact of the rate increases on residential customers, and suggested that Council make sure that adequate public input on the proposed rate increase is received prior to voting to increase rates.

No action was taken. This matter will be reviewed as part of the budget process.

REVIEW PROPOSED BUILDING AND ZONING PERMIT FEE SCHEDULE: The City Manager presented Council with a proposed Building and Zoning Permit Fee schedule of increases. He stated the basic idea of the fee increases is to make City fees consistent with the building and zoning permits of McDowell County and surrounding jurisdictions.

Council agreed to take more time to look at the proposed changes.

No action was taken. This matter will be reviewed as part of the budget process.

SCHEDULE BUDGET WORKSHOPS: It was decided to hold a budget workshop following the May 21, 2002 City Council Meeting.

DISCUSS FERN AVENUE SIDEWALK: The City Manager advised that the request for Enhancement Funding for the Fern/Montevista sidewalk is still under consideration by the North Carolina Department of Transportation. The grant money would pay for eighty percent of the project. He noted that Council had tentatively agreed last year to consider completing this project in the Summer of 2002, when Marion Elementary School was not in session. However, given that funding for the project by DOT is still possible, and that many other projects are pending. the City Manager recommended that the project be delayed until DOT decides whether funding for this project is available.

A discussion followed.

It was decided to hold this project until the money becomes available.

ADOPT ORDINANCE PROHIBIT PARKING ON CATAWBA STREET: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
CATAWBA STREET	ONE WAY STREET	FROM HUDGINS ST. TO OLD W. HENDERSON

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
CATAWBA STREET	PARKING PROHIBITED	ENTIRE LENGTH OF STREET, BOTH SIDES

Section 4. this ordinance shall become effective upon its adoption.

Adopted this the 7th day of May, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-05-07-2

REQUEST BY FOCAL POINT ADVISORY COMMITTEE FOR FUNDING FOR SENIOR CENTER: The City Manager advised that Mayor Clark has received a letter from Ms. Jewell McNeal, Chairperson for the Focal Point Advisory Committee.

Ms. McNeal advised that through the years the City of Marion has provided assistance and support when requested; by helping with maintenance of the grounds, including the striping of the parking lot, patching of the asphalt, providing city pick-up of leaves and clippings, and allowing the center to continue using the outdoor recreation area when the City purchased the current police department property.

Ms. McNeal understands that the City and the County have agreed to the sale of the senior center property and that the city will retain proceeds from the lot and county will receive proceeds from the sale of the building. Members of the Focal Point Advisory Committee requests that City Council consider contributing their portion of the proceeds from the sale to the building fund for the new Senior Center.

A discussion followed.

It was the consensus of Council to table this request, until the City is farther along in the budget process.

ADOPT RESOLUTION REQUESTING THAT MUNICIPAL REVENUE SOURCES FROM STATE BE MADE SECURE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

RESOLUTION
CITY OF MARION
REQUEST
THAT MUNICIPAL REVENUE SOURCES BE MADE SECURE

WHEREAS, the City of Marion is required by the State of North Carolina to operate and maintain a balanced budget and comply with the provisions of the Local Government Budget and Fiscal Control Act; and

WHEREAS, the City of Marion is required to maintain a sufficient fund balance to operate in a fiscally sound manner and to have adequate reserves in case of emergencies; and

WHEREAS, the municipal officials of the City of Marion have a responsibility to provide for the health, safety and well being of the citizens of this community by providing necessary services; and

WHEREAS, the ability of municipal governments to borrow for capital infrastructure needs is dependent on reliable revenue sources for repayment; and

WHEREAS, adequate municipal revenue sources are required to carry out the above mentioned responsibilities;

NOW, THEREFORE, BE IT RESOLVED, THAT The City of Marion respectfully requests that the General Assembly adopt legislation that will secure the municipal revenue sources and ensure that these revenues are distributed to local governments on a timely basis as set forth by the state's General Statutes.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

CITY MANAGER'S REPORT: The City Manager gave a report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN EDWARDS: Councilman Edwards stressed the need for stricter and more prompt enforcement of the weed and grass ordinance, noting tall weeds on such lots as at Pulliam and West Court Streets.

The City Manager stated he would work with the City Planner and Police Chief to make sure appropriate action is taken on such lots.

COUNCILMAN LITTLE: Councilman Little noted a loose wire hanging off of a power pole on Fort Street, adjacent to the First Baptist Church.

The Public Works Director stated he would contact Duke Power about this wire.

Councilman Little also noted trash and litter on a vacant lot next to 118 Maple Avenue. The City Manager stated this lot would be added to the lots needing action.

COUNCILMAN CUTHBERTSON: Councilman Cuthbertson advised that apparently due to pizza wars, off premise signs are being hung all over the City. He also noted the off premise signs for the "Tuff Man" event at the Armory.

The City Manager will have the City Planner look at the zoning compliance of these signs.

COUNCILMAN OWENBY: Councilman Owenby advised that flyers were recently placed on parked cars in the Bi-lo Shopping Center by Friedman Jewelers.

Chief Benware advised that he will check into this matter, as there is a State Law against this.

Councilman Owenby also stressed the need to check on the right of way mowing on Fern/Montevista Avenue.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 21, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Mike Edwards arrived for the meeting at 7:15 P.M.

Mayor Pro Tem Steve Little arrived for the meeting at 8:00 P.M.

OTHERS PRESENT: Bob Boyette, City Manager, Debi Sherlin, Secretary, Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: J. Earl Daniels, South Garden Street, Marion, N.C. 28752.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council Present voted to approve the consent Agenda as follows:

A. Approval of City Council Minutes – May 7, 2002

B. Ordinance – Cross Memorial Baptist Church Property

AN ORDINANCE TO EXTEND

THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, May 7, 2002, after due notice by publication on Friday, May 2, 2002; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of June 30, 2002.

Tract No. 1 (Deed Book 182, Page 522) BEGINNING on an iron stake on the East side of Nix Creek Road, said stake being located North 36 West 7.5 feet from the center of a large black oak about 30 inches in diameter and also located South 6 East 91.2 feet from the Southwestern corner of a house owned by Cross Cotton Mills Company and occupied by Wade Miller, and runs from said beginning point North 77 East 443.7 feet to an iron stake on the East side of a small hollow: thence South 74 West 3 degrees 30 min. West 417.5 feet to an iron stake; thence South 74 West 413.5 feet to an iron stake on the East side of Franklin Avenue; thence north 3 degrees 30 min. East 331.5 feet with Franklin Avenue to a concrete monument, an old corner of Cross Cotton Mills Company property; thence North 25 West with said old line 100.4 feet to point in the Nix Creek Road; thence North 17 East 22.5 feet to the BEGINNING, containing 4.10 acres.

Tract 2 (Deed Book 436, Page 34) BEGINNING at an iron pin located in the Western line of the parcel owned by Cross Mill Baptist Church and more particularly described in Deed Book 182, Page 522 of the McDowell County Public Registry, said point being further located North 41 degrees 09 minutes 53 seconds East 396.91 feet from an iron pin located within the Southeastern right of way for State Road 1195, known as Nix Creek Road; thence running with the center of a 30-foot-wide gravel drive the following courses and distances: South 9 degrees 30 minutes 47 seconds West 246.43 feet, South 7 degrees 09 minutes 39 seconds West

343.54 feet, South 7 degrees 16 minutes 28 seconds East 48.96 feet, South 21 degrees 26 minutes 00 seconds East 42.09 feet, South 36 degrees 54 minutes 29 seconds East 175.12 feet; thence leaving the center of the 30-foot-wide gravel drive; south 36 degrees 54 minutes 29 seconds East 217.71 feet to a point in the center of the 200-foot right of way for Southern Railway; thence with the center of said right of way, North 49 degrees 25 minutes 49 seconds East 480.18 feet, North 49 degrees 30 minutes 24 seconds East 711.33 feet; thence crossing the right of way, North 50 degrees 53 minutes 56 seconds West 474.07 feet to an iron pin; thence North 72 degrees 13 minutes 19 seconds West 208.81 feet to an iron pin; thence North 55 degrees 31 minutes 22 seconds West 122.11 feet to an iron pin in the line of the tract owned by Cross Memorial Baptist Church (see Deed Book 182, Page 522); thence with the boundary of Cross Memorial Baptist Church the following courses and distances: South 05 degrees 40 minutes 07 seconds West 300.89 feet to an existing iron pin; thence South 76 degrees 04 minutes 03 seconds West 412.45 feet to an existing iron pin located within the 30-foot-wide right of way for the gravel drive; thence with the gravel drive, North 05 degrees 41 minutes 31 seconds East 179.30 feet to the point and place of BEGINNING.

Containing 16.08 acres, more or less, as shown on the plat of survey prepared by R. L. Greene Surveying and Mapping, 10 South Logan Street, Marion, North Carolina, dated February 17, 1992.

Section 2. Upon and after June 30, 2002, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-268.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 21st day of May 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

C. Budget Amendment:

CITY OF MARION, NORTH CAROLINA
2001-2002 BUDGET ORDINANCE
(Sixth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues. Account Number 30-340-0000, transfer from General Fund, is increased from $0 to $175,000.

b. Water and Sewer Fund Expenditures, Non Departmental, Account Number 30-660-9700, Transfer to General Fund, is increased from $0 to $175,000.

GENERAL FUND

a. General Fund Revenues, Account Number 10-340-0000, transfer from Water and Sewer Fund, is increased from $0 to $175,000.

b. General Fund Expenditures, Non Departmental, Account Number 10-660-9200, transfer from Water and Sewer Fund, is increased from $0 to $175,000.

Section 2, Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 21st day of May, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-05-21-1

CITY MANAGER'S REPORT: The City Manager gave a brief report on Current projects.

The City Manager also advised that the trees in the West Marion Park have been stripped of limbs, possibly beyond surviving. It appears that Children may have done this damage. The City's Landscaper, Lawrence Moore, will try to salvage the trees.

COUNCILMAN COMMENTS:

Councilman Owenby advised that he has been approached regarding the need for the rest rooms at the Community Building to be left open later due to warmer and longer days. The Mayor and Council agreed that the rest rooms should be kept open longer and directed the City Manager to explore this idea.

Councilman Owenby advised that several persons are concerned about persons carrying large snakes around their necks, in the downtown area and if their was any kind of Ordinance addressing this issue. The City Manager advised that he did not think City ordinances would prohibit this activity, but that he would direct the Police Department to look out for this individual.

Councilman Owenby also advised that Mr. Guy Rabb asked that the trees on City property on Blue Ridge Street near Pulliam Street be looked at for possible cutting. The Street Committee will examine this request.

Councilman Edwards advised that he has had several phone calls regarding an Asheville Citizen Times Delivery person in the Marion Elementary School area with a loud muffler disturbing persons in the early morning hours. The Police Department will be asked to locate this vehicle.

Mayor Clark asked the City Council to check on the D.A.R.E. Programs inside the City.

Councilman Cuthbertson asked that the storm drain at Morgan and Claremont Streets be raised a bit, as part of the curb work on Morgan Street.

BUDGET WORKSHOP: The City Manager provided an overview of the recommended 2002-03 City budget. No tax increase is proposed, and the total budget is decreased 3.37% from 2001-02. Considerable discussion was held on the proposed water and sewer rate increases. The City Manager advised that the proposed rate increase was 11% for an average water and sewer customer, or $3 per month.

Councilman Edwards and Councilman Owenby stated that they did not believe that now was the right time for a rate increase, given the recession. They suggested alternate ways to balance the Water and Sewer Fund, including increased reserve appropriations or General Fund transfers.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council Present voted to adopt the following ordinance, to increase water and sewer rates. the vote was as follows:

Councilman Little	Yes
Councilman Cuthbertson	Yes
Councilman Martin	Yes
Councilman Edwards	No
Councilman Owenby	No

Because the first reading of the ordinance passed by a 3 to 2 vote, the City Manager advised that a second reading of the ordinance would be required by State law on June 4. At the June 4 meeting, the ordinance can pass by a simple majority at the second reading.

ORDINANCE

ESTABLISHING WATER/SEWER RATES, CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That new water/sewer rates, connection (tap fees) fees. cost recovery charges and other miscellaneous charges are hereby established as follows:

	INSIDE CITY	OUTSIDE CITY
Water Rates:	$1.40 per 1,000 Gallons, plus $8.00 Service Charge per month	$2.80 per 1,000 Gallons, plus $16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate	$1.40 per 1,000 Gallons, plus $6.00 Service Charge per month	$2.80 per 1,000 Gallons, plus $12.00 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.20	$16.40

	INSIDE CITY	OUTSIDE CITY
Sewer Rates:	$1.40 per 1,000 Gallons, plus $8.00 Service Charge per month	$2.80 per 1,000 Gallons, plus $16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate	$1.40 per 1,000 Gallons, plus $6.00 Service Charge per month	$2.80 per 1,000 Gallons, plus $12.00 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.20	$16.40

	INSIDE CITY	OUTSIDE CITY
Sewer Rates for		

Private Wells	$3.10 per 1,000 Gallons, plus $8.00 Service Charge per month	$4.20 per 1,000 Gallons, plus $16.00 Service Charge per month

Important Notices:

All sewer charges are based on water meter readings, unless a sewer metering device approved by the City has been installed.

When more than one unit is served by a Master Meter, such as a mobile home park, shopping center or apartment complex, the monthly service charge is $6.00 for water and $6.00 for sewer in the City, and $12.00 for water and $12.00 for sewer outside the City, whether said units are occupied or not.

A single family residence using a private well, with no water meter, shall pay a flat rate of $12.00 per month for sewer service.

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1 ½"	1,400	7,120	2,100	7,120
2"	1,600	11,392	2,400	11,392
3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):
The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10.00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200
4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION. IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER

METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 1,200	$ 820	$ 1,800	$ 820
1"	1,300	2,050	1,950	2,050
1 ½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,500
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999
12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY
RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	AT COST	COST PLUS 10%
INCREASE METER SIZE	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

	INSIDE CITY	OUTSIDE CITY
WATER DEPOSIT	$ 30.00	$ 60.00
SEWER DEPOSIT	$ 30.00	$ 30.00

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY:

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS WILL BE THE SAME AS THE RESIDENTIAL DEPOSITS; HOWEVER, AT THE END OF SIX MONTHS OF SERVICE THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED.

OTHER MISCELLANEOUS CHARGES

	INSIDE CITY	OUTSIDE CITY
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00

TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	**UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE**	
RETURN CHECK SERVICE CHARGE	**$ 25.00**	**$ 25.00**
BANK DRAFT CUSTOMER – CHARGE FOR CLOSED ACCOUNT	**$ 25.00**	**$ 25.00**
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY		
¾" AND 1" METERS	**$ 15.00**	**$ 15.00**
LARGER METERS	**AT COST**	**AT COST**
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	**AT COST**	**AT COST**

Section 2. The Ordinance adopted on March 6, 2001 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this ordinance, are rescinded upon the effective date of this ordinance.

Section 4. This Ordinance shall become effective July 1, 2002.

ADOPTED this the 21st day of May, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-02-06-04-1

The City Manager noted that the City would be dependent on McDowell County to adopt the additional one half cent sales tax by July 1, 2003, or sooner, if the General Assembly authorizes the additional tax by July 1, 2002. If this tax is not adopted, the City stands to lose $233,000 if revenue from the loss of State reimbursements, an amount equal to 9.5 cents on the property tax rate. The City Manager suggested that the County Commissioners could be urged in writing by the City to adopt the additional one half cent local option sales tax.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to direct the City Manager to send a letter to McDowell County, advising the County of the need to adopt the additional budget and to consider adoption of the budget at the June 18 Council meeting. No additional budget workshops will be held.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manger/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 4, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little was involved with a Legal Mediation in Burke County and arrived for this meeting at 9:25 P.M. during Council Members Comments.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Police Chief; Kathy Austin, Purchasing Agent; Jim Neal, Fire Chief; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Patti Hart 1040 Forest Lake Heights Drive, Nebo, N.C. 28761; Ken Suttles 40 South Main Street, Marion, N.C. 28752; Reverend & Mrs. Mike Holder and Ashleigh, 249 Fleming Avenue, Marion, N.C. 28752; Bea Whisnant 78 Elizabeth Loop, Marion, N.C. 28752; Nancy Spencer, Marion, N.C. 28752; Bobbie Young, Marion, N.C. 28752.

CITIZEN OF THE MONTH – SELECTED BY MAYOR A. EVERETTE CLARK:
Mayor A. Everette Clark selected the Citizen of the Month for June.

The following information was presented about June's Citizen of the month:

REVEREND WILLIAM MICHAEL HOLDER

Mayor Clark advised that his selection for Citizen of Month would be moving June 25th to Asheboro, North Carolina. Reverend Mike Holder is the Pastor of the Methodist Church on Robert Street and has been there for seven years. He is married to Kay and they have one daughter Ashleigh.

Reverend Holder is a Native of Waynesville. Marion is his third appointment as a Pastor.

Their works at the Methodist Church have helped many people in the Community, especially the children.

Council Members all had kind words to share about Reverend Mike Holder and his family. They will truly be missed in Marion.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of City Council Minutes – **May 21, 2002**
B. Proclamation – **National Small Cities Day**

PROCLAMATION
CITY OF MARION
NATIONAL SMALL CITIES DAY
"BUILDING QUALITY COMMUNITIES"
Friday, June 14, 2002

Whereas, small cities under 50,000 population constitute the vast majority of cities across the United States; and

Whereas, small cities provide opportunities which allow millions of people across America to lead better lives; and

Whereas, small cities build quality communities through thoughtful, comprehensive planning and cooperative efforts with neighboring cities which improve the quality of life for all citizens; and

Whereas, the federal government is a partner in building quality communities, and must be encouraged to continue to sponsor necessary programs and supportive legislation to improve communities; and

Whereas, state governments are partners in building quality communities, and must be encouraged to continue to sponsor necessary programs and supportive legislation to improve communities; and

Whereas, organizations, businesses, and citizens are partners in building quality communities, and must be encouraged to continue to support efforts that make their communities better places in which to live; and

Whereas, the Board of Directors and the Small Cities Council of the National League of Cities have declared June 14, 2002 as National Small Cities Day; and

Whereas, the Small Cities Council of the National League of Cities has challenged all cities, towns, and villages across America to proclaim June 14, 2002 as national Small Cities Day, and to conduct activities – such as news conferences, public service announcements, and events in local schools and community centers – on that day which highlight the different ways in which the federal government, state governments, organizations, businesses, and citizens partner with small cities to build quality communities and better the lives of all citizens;

Now therefore, I, A. Everette Clark, Mayor for the City of Marion, do hereby proclaims Friday, June 14, 2002 as National Small Cities Day, and encourages President Bush, Congress, state governments, organizations, businesses, and all citizens to recognize this event, and to work together on this day and throughout the year to build quality communities in small cities to better the lives of all citizens.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Marion to be affixed this 24th day of May, 2002

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

INTRODUCTION – PURCHASING AGENT: The City Manager introduced the new Purchasing Agent for the City of Marion, Ms. Kathy Austin. Kathy has served at Secretary/Dispatcher for the Public Works Facility since 1998. She will now serve as the City's Purchasing Agent.

PRESENTATION – McDOWELL CHAMBER OF COMMERCE – SMALL BUSINESS FORUM: Ms. Patti Hart and Ms. Nancy Spencer appeared before Council with a slide presentation promoting small businesses in McDowell County.

There are presently forty (40) businesses affiliated with this new forum. Their objective is to promote shopping at home and its benefits.

Mayor Clark commended Ms. Hart and Ms. Spencer for their efforts in promoting small business.

DISCUSSION – RAY REVIS/LLOYD BURLESON – BEES: Mr. Revis and Mr. Burleson could not be present for this meeting.

It was decided to table this discussion until a future meeting.

DISCUSSION – KEN SUTTLES – DRAINAGE PROBLEMS: Mr. Ken Suttles appeared before Council to discuss drainage problems at his business on Main Street. He owns the building formerly utilized by Belk's Department Store. His insurance company will not pay for damages he has incurred due to leaks from his fire service line under the South Main Street sidewalk.

Public Works Director Glen Sherlin noted that there were two points of discussion with Mr. Suttles, whether the City or Mr. Suttles was responsible for maintenance of the private fire service line to his building under the South Main Street sidewalk, and the requirement for a backflow prevention device to be installed outside of Mr. Suttles' building. Mr. Suttles' asked for whatever assistance is possible from the City.

A discussion followed.

It was the consensus of those members of Council Present to refer this matter to the Utility Committee.

DILAPIDATED HOUSING UPDATE – FIRE CHIEF JIM NEAL: Fire Chief Jim Neal updated Council on several properties as listed below that appear to be dilapidated.

Circle Street in Clinchfield – Burned structure - Owner Wanda Chrisawn. Has contacted someone to tear down. She has been told that she has a liability with this property.

15 Cross Street in East Marion – Vacant House
65 Ridge Street in East Marion – Vacant House
81 Ridge Street in East Marion – Vacant House – For Sale by Lewis Reality
East Court Street – Burned Structure - Owner Scott Berryhill has stated he intends to tear down this structure
Wilhemina Street – Could possibly be burned for training

A discussion followed.

The City Manager recommended that the following action be taken for the time being, and that further action could be taken at a later date as funds will allow:

1. That Chief Neal send a letter to Mr. Berryhill directing him to immediately tear down the recently burned house on East Court Street

2. That Chief Neal find out by the next City Council Meeting if the house on Wilhemina Street can be used for this year's Fire College. If not, the City could pass for the asbestos inspection and abatement and burn down the house.

3. That Chief Neal follow proper procedure to have the burned property on Circle Street in Clinchfield condemned.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to accept the recommendation of the City Manager as listed above.

Mayor Clark advised that there may be funds through the CDBG for clearing these type of properties.

The City Manger will contact necessary officials to inquire procedure and eligibility for such funds.

SET ITINERANT MERCHANT APPLICATION FEE: The City Manager presented Council with a copy of the Itinerant Merchant Ordinance passed by City Council on March 19, 2002. He noted that Council needed to set an application fee for the itinerant merchant license.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, those members of Council present voted to approve the following set of fees as listed below. This amount is not an attempt to raise money, but to protect the local merchants.

CITY OF MARION
INSTRUCTIONS FOR
OBTAINING AN ITINERANT MERCHANT LICENSE

Chapter 10. Article VII of the City of Marion Code requires that all itinerant merchants obtain an Itinerant Merchant License from the City prior to conducting business in the City of Marion. Listed below are the steps which must be followed when making application for this license.

1. Complete the application obtained from the Tax Collector's office as fully as possible. Be sure to provide the following:

   a. Proof of North Carolina sales tax reporting number issued by the North Carolina Department of Revenue.
   b. A written statement from the owner or lessee of the property where you propose to conduct business granting permission and specifying allowed dates, times and exact location.
   c. The zoning compliance statement of the application completed by the Planning Office (located at 194 North Main Street in the City Hall Administration Office)
   d. A $1,000 bond or surety valid for one year from the date a license is issued.
   e. A filing fee of $150.00 is required for the original application and for all renewals. The Privilege License is $100.00.

2. Return the completed application, along with other required information to the Planning Office for review.

If all City requirements have been met to the Planning Department's satisfaction, the application will be forwarded to the Chief of Police for investigation and the bond will be submitted to the City Attorney. This investigation shall be completed within 10 days. When completed, the Tax Collector will notify you of the results of this investigation and if the findings are satisfactory, an Itinerant Merchant License will be issued. Once the license is issued, it **must** be displayed in a conspicuous and prominent manner so as to be visible at all times that sales are taking place.

COUNTY WATER STUDY: The City Manager reported that the County had requested that City Council publicly endorse the County's planned purchase of land on and near Lake James for the purpose of a future water intake and water plant site. While the City does not need another water supply or water plant at the present time, if rapid growth occurs in the future, the City's current water supplies might not be adequate.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to authorize the City Manager to send a letter to the County, endorsing their purchase of land on and near Lake James for the purpose of a future water intake and water plant site.

ORDINANCE – WATER AND SEWER RATES: The City Manager advised that at the May 21, 2002 City Council Meeting the first reading of the Ordinance to establish Water and Sewer rates was as follows:

Mayor Pro Tem Little	Yes
Councilman Cuthbertson	Yes
Councilman Martin	Yes
Councilman Edwards	No
Councilman Owenby	No

A discussion followed. Councilman Owenby suggested that the City transfer money from the General Fund to the Water and Sewer Fund for the next two years to cover the $288,000 debt service payments, and then evaluate the shape of the Water and Sewer Fund. He added that he did not feel now was the time for a rate increase.

Councilman Edwards stated that he could not vote for a rate increase at this time.

Councilman Cuthbertson stated that he felt Council needed to pass the rate increase, to ensure the financial stability of the Water and Sewer Fund.

Mayor Clark added that he felt the rate increase was needed to cover many of the revenue losses the City had experienced over the years.

A motion was made to adopt the Water and Sewer Ordinance at this second reading. The vote was as follows:

Councilman Cuthbertson Yes
Councilman Martin Yes

Councilman Edwards No
Councilman Owenby No

A discussion followed.

Due to the absence of Mayor Pro Tem, Steve Little, Mayor Clark cast a vote on this motion to break the tie.

Mayor Clark voted Yes.

The Ordinance was adopted as follows:

ORDINANCE

ESTABLISHING WATER/SEWER RATES, CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Manon, North Carolina as follows:

Section 1. That new water/sewer rates, connection (tap fees) fees, cost recovery charges and other miscellaneous charges are hereby established as follows:

	INSIDE CITY	OUTSIDE CITY
Water Rates:	$1.40 per 1,000 Gallons, plus $8.00 Service Charge per month	$2.80 per 1,000 Gallons, plus $16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate Gallons, plus Gallons, plus	$1.40 per 1,000 $6.00 Service Charge per month	$2.80 per 1,000 $12.00 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.20	$16.40
	INSIDE CITY	OUTSIDE CITY
Sewer Rates:	$1.40 per 1,000 Gallons, plus	$2.80 per 1,000 Gallons, plus

	$8.00 Service Charge per month	$16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate	$1 40 per 1,000 Gallons, plus $6.00 Service Charge per month	$2.80 per 1,000 Gallons, plus $12.00 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.20	$16.40

	INSIDE CITY	OUTSIDE CITY
Sewer Rates for Private Wells	$2 10 per 1,000 Gallons, plus $8.00 Service Charge per month	$4.20 per 1,000 Gallons, plus $16.00 Service Charge per month

Important Notices:

All sewer charges are based on water meter readings, unless a sewer metering device approved by the City has been installed.

When more than one unit is served by a Master Meter, such as a mobile home park, shopping center or apartment complex, the monthly service charge is $6.00 for water and $6.00 for sewer in the City, and $12.00 for water and $12.00 for sewer outside the City, whether said units are occupied or not.

A single family residence using a private well, with no water meter, shall pay a flat rate of $12.00 per month for sewer service.

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1 ½"	1,400	7,120	2,100	7,120
2"	1,600	11,392	2,400	11,392
3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):
The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10.00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200

4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION. IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER

METER	INSIDE CITY		OUTSIDE CITY	
SIZE	TAP FEE	CRC CHARGE	TAP FEE	CRC CHARGE
¾"	$ 1,200	$ 820	$ 1,300	$ 820
1"	1,300	2,050	1,950	2,050
1½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,300
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999
12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY
RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	AT COST	COST PLUS 10%
INCREASE METER SIZE	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

	INSIDE CITY	OUTSIDE CITY
WATER DEPOSIT	$ 30.00	$ 60.00
SEWER DEPOSIT	$ 30.00	$ 30.00

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY:

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS WILL BE THE SAME AS THE RESIDENTIAL DEPOSITS; HOWEVER, AT THE END OF SIX MONTHS OF SERVICE THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL

BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED.

OTHER MISCELLANEOUS CHARGES

	INSIDE CITY	OUTSIDE CITY
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
RETURN CHECK SERVICE CHARGE	$ 25.00	$ 25.00
BANK DRAFT CUSTOMER – CHARGE FOR CLOSED ACCOUNT	$ 25.00	$ 25.00
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY		
¾" AND 1" METERS	$ 15.00	$ 15.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on March 6, 2001 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this ordinance, are rescinded upon the effective date of this ordinance.

Section 4. This Ordinance shall become effective July 1, 2002.

ADOPTED this the 4th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-02-06-04-1

AGREEMENT – McDOWELL TECH – CITY OF MARION - FIRING RANGE: The City Manager presented Council with a one year agreement to extend the use of the City firing range by McDowell Technical Community College, on the same terms as last year's agreement. Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to approve the following Agreement between the City and McDowell Tech for the use of the Firing Range:

AGREEMENT
USE OF CITY OWNED PROPERTY

Name of Facility to Be Used:	City of Marion Firing Range
Date(s) of Proposed Use:	To be coordinated with Marion Police Department
Purpose of Use:	B.L.E.T. Firearms Certification, Marion Police Department Firearms Re-certification, D.O.C. In-Service Training, MTCC Concealed Weapons Class
Number of Persons:	15-35
Effective Dates of Agreement:	June 1, 2002 – May 31, 2002

It is hereby agreed by and between the City of Marion by and through the City Manager, its duly authorized agent for the purpose of execution hereof; and the undersigned organization as follows.

1. The above facilities may be used for the above purpose on designated date(s) as agreed by the Marion Police Department It is agreed and understood that the Marion Police Department and City of Marion have priority on the scheduling of the use of the Firing Range. Should any scheduling conflict arise, McDowell Technical Community College will re-schedule their classes.

2. Use of the City of Marion Firing Range by McDowell Technical Community College will be limited to the following areas of training; Basic Law Enforcement Firearms Certification, Marion Police Firearms Re-certification, Department of Corrections In-Service Training, and MTCC Concealed Handguns Class.

3. During all training on the Firing Range there will be a minimum of two Instructors present at all times. Instructors will be Firearms Instructors certified by the N.C. Criminal Justice Standards Division. At least one of the Firearms Instructors will be a certified instructor presently employed by the Marion Police Department and will be compensated for his/her instructional time by McDowell Technical Community College.

4. A user fee of ten dollars per day will be paid to the City of Marion for each day the college uses the firing Range, with the exception of training for the Marion Police Department, in which case the user fee will be waived. Any damages to the Firing Range while being used by McDowell Technical Community College will be repaired by or replaced at the expense of the college.

5. All students participating in training at the Firing Range will have insurance coverage as required during his/her enrollment process.

6. It is agreed that the Marion City Council and its agents and employees shall not be responsible or liable for any damages resulting from damage to property or bodily injury or death arising out of the aforesaid sue, and the undersigned organization hereby agrees to indemnify and hold harmless the Marion City Council and its said agents and employees from any liability or claim of liability for the same, including, but not limited to attorney's fee incurred by said council, its agents and employees, in defending such claim.

In Witness whereof, the City and the Organization have executed this AGREEMENT as of this, the 5th day of June, 2002.

Marion City Council

By: _____ Date: June 5, 2002
Bob Boyette, City Manager
City of Marion

McDowell Technical Community College

By: _____ Date: May 22, 2002
Dr. Virginia R. Mitchell, President
McDowell Technical Community College

DISCUSSION – SALE OF SENIOR CENTER PROPERTY: The City Manager advised that as of the Monday deadline, no sealed bids were received for the sale of the Senior Center Property on located at 75 Crawford Street.

The City Manager gave the following possibilities to sell the property:

1. Re-advertise for sealed bids
2. Sell property by an upset bid procedure

3. Sell property by auction.

A discussion followed. The Mayor and Council agreed that the upset bid procedure in some form would likely be the best way to proceed. However, it was decided to seek input from County Officials about what the next step should be to sell this property.

DISCUSSION - UTILITY FRANCHISE TAX ORDINANCE: The City Manager presented Council with information that several other cities across North Carolina had adopted local utility franchise taxes, after discovering that State law allowed such a tax levy, if the State distribution of these taxes are not made.

After a brief discussion, Council directed the City Manager to attempt to find such an ordinance for Council consideration.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

MAYOR PRO TEM STEVE LITTLE arrived for this meeting during the City Manager's Report at 9:25 P.M.

COUNCILMAN COMMENTS:

COUNCILMAN OWENBY noted the need for patching work on Norton Street. The Public Works Director will check on the progress of this patching.

COUNCILMAN EDWARDS commended the good job the Street Sweeper does in the downtown area and how hard the city employee works who operates it.

COUNCILMAN CUTHBERTSON advised that he had received complaints about barking dogs on Circle Street. Chief Benware will have an Officer to check on this complaint.

Councilman Cuthbertson also inquired as to why the Street Flusher has not been in use in the past year or so.

Director of Public Works Glen Sherlin advised that State Laws on the use of the flusher truck has been an issue. However, it has been determined that State Law does not prohibit its use and it will be in service as needed.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(4) to discuss a matter involving the location of industry and in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real estate.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 18, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, and Cecil Owenby.

Councilman Billy Martin was not present for this meeting due to being on vacation.

Councilman Edwards arrived for this meeting at 7:15 P.M.

OTHERS PRESENT: Bob Boyette, City Manager, Debi Sherlin, Secretary, Glen Sherlin, Director of Public Works; Tim Benware, Chief of Police; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT:

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to approve the consent Agenda as follows:

A- Approval of City Council Minutes – June 4, 2002

B- BUDGET AMENDMENTS:

CITY OF MARION, NORTH CAROLINA
2001-2002 BUDGET ORDINANCE
(Seventh Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-399-0000, Surplus Appropriated, is increased from $200,000 to $375,000.

b. General Fund Expenditures, Non Departmental, Account Number 10-660-9200, Transfer to Water and Sewer Fund, is increased from $0 to $175,000.

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues, Account Number 30-340-0000, transfer from General Fund, is increased from $0 to $175,000.

b. Water and Sewer Fund Revenues, Fund Balance Appropriated, Account Number 30-299-0000, Transfer to General Fund, is decreased from $730,255 to $555,255.

Section 2. The previous Sixth Budget Amendment, Ordinance No. O-02-5-21-1, adopted by City Council on May 21, 2002 is hereby repealed.

Section 3. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 18th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-06-18-3

CITY OF MARION, NORTH CAROLINA
2001-2002 BUDGET ORDINANCE
(Eighth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-399-0000, Surplus Appropriated, is decreased from $375,000 to $200,000.

b. General Fund Revenues, Contribution from Water and Sewer Fund, Account Number 10-397-0000, Transfer to Water and Sewer Fund, is increased from $0 to $175,000.

WATER AND SEWER FUND

a. Water and Sewer Fund Expenditures, Account Number 30-660-9700, Transfer to General Fund, is increased from $0 to $175,000.

b. Water and Sewer Fund Expenditures, Fund Balance Appropriated, Account Number 30-299-0000, Transfer to General Fund, is increased from $555,255 to $730,255.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 18th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-06-18-4

CITY OF MARION, NORTH CAROLINA
2001-2002 BUDGET ORDINANCE
(Ninth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-399-0000, Surplus Appropriated, is increased from $200,000 to $350,500.

b. General Fund Expenditures, Account Number 10-660-9200, Non-Departmental, Transfer to Water and Sewer Fund, is increased from $175,000 to $325,500.

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues, Account Number 30-340-0000, Transfer from General Fund, is increased from $175,000 to $325,500.

b. Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated, is decreased from $730,255 to $579,755.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 18th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-06-18-5

C- Amendment – City Confined Space Entry Program

CITY OF MARION
CONFINED SPACE ENTRY PROGRAM
(February 1994)

ADDENDUM
TO PROGRAM

Section V. Permit Confined Space Program

C. Evaluating Permit Space Conditions

Permit space conditions are evaluated (tested and monitored) when entry operations are conducted as follow:

1. Testing and Monitoring

All atmospheric instruments are to be calibrated every thirty days or before if required by the manufactures recommendation.

The entry conditions in the permit space are tested to determine if acceptable entry conditions exist before entry is authorized to begin, except that, if isolation of the space is infeasible because the space is large or is part of a continuous system (such as a sewer, in

such case, pre-entry testing is performed to the extent feasible before entry and entry conditions continuously monitored in the work areas.

The tests and monitoring are conducted in permit spaces as necessary to determine if acceptable entry conditions are being maintained during the course of entry operations.

When conducting tests for atmospheric hazards, oxygen tests are conducted first, then combustible gases and vapors, and then for toxic gases and vapors. The tests are conducted in order to ensure that test instruments function properly since an oxygen deficient atmosphere may adversely affect the test results.

Adopted this the 18th day of June, 2002

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

REQUEST FOR WAIVER OF CITY CODE LIMITS ON DRIVEWAY ACCESSES: The City Manager presented Council with a memo from the Director of Public Works, Glen Sherlin, recommending that Mr. Jack Young of 361 Fleming Avenue be allowed to have two additional driveway approaches, in addition to his existing driveway. The City Code sets a limit of two driveways per residential property.

Mr. Young's wife has physical disabilities and these two additional drives would allow a circular drive that would accommodate necessary access to a vehicle from the residence, and that the existing drive would only be used as a secondary access.

Councilman Owenby noted that the Street Committee had reviewed this request and found it to be reasonable, given Mr. Young's situation.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to grant a waiver to Mr. Young and allow the two additional driveway approaches to be installed on his property at 361 Fleming Avenue.

PUBLIC HEARING – ADOPTION OF 2002-2003 BUDGET: Mayor Clark opened the Public Hearing.

The City Manager presented Council with a copy of the budget as reviewed by Council at the budget workshop on May 21st.

No one from the public was present to speak for or against the proposed budget.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Budget Ordinance:

BUDGET ORDINANCE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the City Government and it's activities for the fiscal year beginning July 1, 2002 and ending June 30, 2003 in accordance with the chart of accounts heretofore established by the City:

Administration		**$ 404,473**	**Purchasing and**
Warehousing	**49,039**		
Inspection		110,555	
Police Department		1,116,181	
Fire Department		267,811	
Public Works Administration		52,490	
Fleet Maintenance		45,231	
Street Department		664,260	
Sanitation		399,638	
Recreation		120,500	
Cemetery		27,000	
Non-Departmental		534,527	
TOTAL		$ 3,791,705	

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Prior Year's Taxes	$ 25,000
Vehicle Tax-Collected by County	130,000
Current Taxes	1,310,000
Inventory Taxes	186,000
Downtown Dev. Mun. Ser. Dist.	0
Tax Penalties & Interest	10,000
Privilege License Sales	18,500
Interest Earned	80,000
Rents and Concessions	16,000
Misc. Revenues	20,000
Utilities Franchise Tax	390,000
Food Stamps	2,100
Intangibles Tax	35,000
Beer/Wine Revenue	21,000
Sales Tax	770,709
Sales Tax Refund	25,000
ABC Revenues	150,000
ABC Officer Revenues	6,000
Court Costs, Fees & Charges	3,000
Parking Violations	3,500
County Fire Protection	93,000
County Contribution – Recycling	20,000
Cemetery Revenues	3,000
DOT Reimb-Grass	6,596
DOT Grant-Curb/Gutter Reimb	0
Garbage Fees	$ 95,000
Gas tax Refunds	7,000
Zoning Income - Inspection Fees	12,000
Sale of Garbage/Leaf/Recycling Bags	800
Maint Traffic Control Devices	2,500
Cable TV Revenues	36,000
Sales of Surplus Equipment	6,000
Contribution from W/S Fund	0
Law enforcement Grant	0
McDowell County Schools	16,000
PD Grant-In car cameras	0
Fund Balance	300,000
TOTAL	$ 3,791,705

Section 3. The following amounts are hereby appropriated in the Powell Bill Fund for Street Maintenance, including curb and gutter work, sidewalk work, storm drainage and other expenses relating thereto for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Professional Services	$ 3,000
Department Supplies	60,000
Contracted Services	214,500
TOTAL	**$ 277,500**

Section 4. It is estimated that the following revenues will be available in the Powell Bill Fund for the fiscal year beginning July 1, 2002 and ending on June 30, 2003:

Interest Earned	$	2,500
Powell Bill Allocation		170,000
Sales Tax Refund		5,000
Fund Balance - Prior Year		100,000
TOTAL	$	277,500

Section 5. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Reserve for future appropriations:	$	506,500
TOTAL	**$**	**506,500**

Section 6. It is estimated that the following revenues will be available in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Fund Balance Appropriated	$	440,000
Interest on Investments		16,500
Transfer from General Fund		50,000
TOTAL	**$**	**506,500**

Section 7. The following amounts are hereby appropriated in the Water/Sewer Fund for operation of Water and Sewer Utilities for the fiscal year beginning July 1, 2002 and ending on June 30, 2003 in accordance with the accounts heretofore approved for the City:

Utility Line Operation	$	991,773
Water Filter Plant		425,901
Waste Treatment Plant		810,411
Non-Departmental		395,187
TOTAL		**$ 2,623,272**

Section 8. It is estimated that the following revenues will be available in the Water/Sewer Fund for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Fund Balance	$	373,087
Interest Earned		26,000
Misc. Income		8,000
Reimbursement – Septic		3,000
Reimbursement – Pretreatment		3,000
Water Sales		794,365
Cut on Fees/Late Penalties		45,000
Sewer Service		499,950
Water Taps		25,000
Sewer Taps		25,000
Tank Truck Charges		1,500
Cost Recovery – water		25,000
Cost Recovery – sewer		25,000
Water Service Charge		499,950
Sewer Service Charge		244,420
Contributions from McD Cty		0
Free Water Reimb-Transfer GF		25,000
TOTAL	**$**	**2,623,272**

Section 9. The following amounts are hereby appropriated in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Reserve for future appropriations:	$	159,000
TOTAL	**$**	**159,000**

Section 10. It is estimated that the following revenues will be available in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Fund Balance Appropriated	$	154,000
Interest on Investments		5,000
Transfer from Water/Sewer		0
TOTAL	**$**	**159,000**

Section 11. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Inventory (Supplies)	$	150,000
TOTAL		**$ 150,000**

Section 12. It is estimated that the following revenues will be available in the Internal Service Fund for the fiscal year beginning July 1, 2002 and ending June 30, 2003:

Purchase by Other Funds	$	150,000
Transfer from General Fund		0
Transfer from W/S Fund		0
TOTAL	**$**	**150,000**

Section 13. There is hereby levied a tax at the rate of fifty-five ($.55) per one hundred ($100) valuation of property as listed for taxes as of January 1, 2002 for the purpose of raising the revenue listed as "Current Year Property Taxes" in the General Fund in Section 2 of this Ordinance. These rates are based on estimated total valuation of property for the purpose of taxation of $ 247,944,000.00 and estimated rate of collection of 96%.

Section 14. The Budget Officer is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

A. He may transfer amounts between objects of expenditure within a department without limitation and without a report being required.

B. He may transfer amounts up to $1,000.00 between departments of the same fund with an official report on such transfers at the next regular meeting of the City Council.

C. He may not transfer any amounts between funds nor from any contingency appropriation within any fund.

Section 15. Copies of the Budget Ordinance shall be furnished to the Finance/Budget Officer of the City to be kept on file for direction in the disbursement of funds.

ADOPTED this the 18th day of June, 2002

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

PUBLIC HEARING – ZONING AMENDMENT – SIGN ORDINANCE: Mayor Clark opened the Public Hearing.

The City Manager advised that Council, in passing the revised Sign Ordinance two months ago, had request additional clarifications in the ordinance regarding how portable and spectacular signs might be made permanent.

City Planner Suzy Davis advised that the Planning Board recommends the following amendments to the Sign Ordinance.

- To clarify that off-premise temporary signs are prohibited
- To amend the ordinance, so that temporary and portable signs may be attached to a building. With the proposed amendment, sign owners can not attach temporary or portable signs to a pole or to the ground.
- To clarify the definition of a permanent sign and an on-premise sign
- To limit the number of free standing signs per business to two (2) free-standing signs per business or three (3) free-standing signs if the business is on a corner lot.
- To require a permit for directional signs to insure that signs are not in the right-of-way and that sign owners have permission to place signs on private property. This amendment would also limit directional signs to businesses in the City Limits.
- To allowing sign owners to convert existing spectacular signs into permanent, on-premise, free-standing signs by removing the flashing arrows and mounting on single poles.

A discussion followed. Several questions and concerns were raised regarding the proposed changes, which will be worked into the proposed ordinance.

Councilman Little suggested that Council table this item until July to allow more time to consider the proposed changes. He also requested photographs showing the types of situations to be addressed by the ordinance.

The Public Hearing was closed.

It was the consensus of Council to hold this item until the July meeting.

PUBLIC HEARING – ZONING AMENDMENT – MOBILE HOMES:

Mayor Clark opened the Public Hearing.

The City Manager advised that mobile homes had become a concern of the Building Inspector and Planning Board since a request for an old mobile home was received for a lot in Clinchfield. It was realized that the City set no standards at all for mobile homes.

City Planner Suzy Davis reported that the Planning Board had voted unanimously to adopt the attached zoning amendment, which would define mobile homes as structures meeting the Federal HUD Code, and being constructed after June 15, 1976. The amendment would also require underpinning of mobile homes, and the wheels, axle and hitch to be removed. Ms. Davis pointed out that existing mobile homes would be grandfathered, and that the regulations would only apply to mobile homes moved within the City in the future.

Mayor Clark presented some information on manufactured home construction required to be considered by licensed appraisers in North Carolina.

Councilman Little suggested that the ordinance be changed to note that all references to "mobile homes" include the term "manufactured home".

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance, with the addition of a sentence in the ordinance that states that all references to mobile homes shall include manufactured homes:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article IV. Definitions and terms used in the ordinance, Section 400 (22) is amended as follows to add the following sentence to the definition of a mobile home:

All references to mobile homes in this ordinance shall include manufactured homes.

Section 3. Appendix A, Article VIII. Use Requirements by District, Section 802.2 (6) is amended as follows:
802.2 (6) One (1) mobile home per residential lot, providing that

a. It is the principal structure on that lot,
b. No other residential structure is located on that lot,
c. The mobile home has the moving hitch apparatus, wheels, axles and transporting lights removed,
d. The mobile home shall be set up in accordance with the standards established by the North Carolina Department of Insurance. In addition, continuous underpinning of a material generally accepted in the mobile home industry shall be installed under the perimeter, unpierced except for required ventilation and access,
e. The mobile home complies with all other municipal building, housing, and zoning codes. Mobile homes built before June 15, 1976 prior to HUD Code construction and safety standards are prohibited within the City Limits.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of June 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-02-06-18-08

CIVIL CITATION APPEAL – NOISE ORDINANCE VIOLATION: The City Manager presented Council with a copy of a noise citation issued to Mr. Stephen J. Long for a noise violation resulting from loud music coming from his vehicle.

Mr. Long had planned to appeal this citation. However, he could not be present and would ask that Council table this request.

It was the consensus of those members of Council present to table this request until the July meeting.

ADOPT BUILDING AND ZONING PERMIT FEE SCHEDULE: The City Manager presented Council with the new proposed building and zoning permit fee schedule, as discussed in May. He noted that the point of the new fees was to make the City competitive with the County's fee schedule and the fees of other surrounding municipalities and counties.

Councilman Little asked if the provision in Section 9 requiring permits for all renovation work over $1,000 would pertain to situations such as replacing kitchen cabinets or replacing carpet. The City Manager advised that he did not believe that it was the intent of the State Building Code to require permits in such situations, unless structural, electrical, plumbing, or mechanical work was being performed. He said he would check with the Building Inspector to verify this statement.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Building and Zoning Permit Fee schedule, with the revisions to Section 9 to not require building permits for general renovation work costing over $1,000, unless structural, electrical, plumbing, or mechanical work was being performed:

AN ORDINANCE ESTABLISHING FEES FOR THE PLANNING AND INSPECTIONS DEPARTMENT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

SECTION 1. CERTIFICATE OF OCCUPANCY/ COMPLIANCE The City of Marion shall charge a fifty dollars ($50.00) fee for a certificate of occupancy/ compliance (C.O.) for a change of use for a building, land, or structure in the City of Marion. This fee includes Zoning and Building Code review as well as an initial and final inspection. If a building permit is required, the fee for the certificate of occupancy can be credited to the building permit.

SECTION 2. SIGN PERMITS. This section shall apply to advertising signs and billboards. The size and location of signs shall be in accordance with City Ordinances.

On Premise Signs. The permit fee for an on-premise sign that is twenty-four (24) square feet or less that requires a footing and/or electrical inspection shall be fifty dollars ($50.00) plus $.50 for each additional square foot over 24 square feet. The permit fee for an on-premise sign that is twenty-four (24) square feet or less that does not require a footing and/or electrical inspection shall be twenty-five dollars ($25.00) plus $.50 for each additional square foot over 24 square feet. The fee for a temporary (2 weeks) spectacular sign permit or a directional sign permit shall be fifteen dollars ($15.00.)

Off premise Signs. The initial fee for an off-premise sign permit shall be seventy-five ($75.00) plus $1.00 for each additional square foot over one hundred square feet.. The fee includes footing and/ or an electrical inspection. An annual fee will be charged for all off-premise advertising sign. The annual off-premise sign fee will be as follows:

0-100 square feet	$20.00
101-200 square feet	$35 00
201-300 square feet	$50.00

SECTION 3. FEES FOR AMENDMENTS, VARIANCES, APPEALS AND SPECIAL EXCEPTIONS. A fee of seventy-five dollars ($75 00) will be charged for each application for an amendment, variance, appeal or special exception to the Marion Zoning Ordinance or Zoning Map

SECTION 4. CELL TOWERS. A cell tower permit application fee shall be two thousand five hundred dollars ($2,500 00)

SECTION 5. SUBDIVISION REVIEW. The fee for subdivision plat review is $20.00 per lot with a maximum fee of $500.00.

SECTION 6. GIS MAPS. The following fees shall be paid for the production of a city map:

	Black and White	Color	Aerial
8.5" x 11"		$2.00	$4.00
11" x 17"	$4.00	$6.00	$8.00
17" x 22"	$6.00	$8.00	$10.00
22" x 34"	$8.00	$10 00	$12 00
34" x 44"	$10.00	$12.00	$14.00

SECTION 7. COPIES OF ORDINANCES. A copy of the zoning ordinance shall be $5.00. A copy of the sign ordinance shall be $2.00. A copy of the Subdivision Ordinance shall be $2.00.

SECTION 8. BUILDING PERMITS. Building permit fees for all new buildings and additions to existing buildings constructed in the City of Marion will be based on the total number of square feet in the building or addition by using the Permit Chart below. There will be a minimum fee of $50.00 per trade. Dwelling units in a multi-family structure are calculated individually. Building Permit Fee includes plan review for zoning compliance.

Chart Instructions:

A = Total Gross Building Area
B = Fee Per Square Foot
A x B = Fee

Homeowners Recovery Fund: The City shall charge all licensed general contractors a $5.00 fee for the construction and/or alteration of a single family residential dwelling unit, including townhouses and condominiums. The fee will be collected for each dwelling unit and will be in addition to the City's regular building permit. The City will forward $4.00 of each fee collected to the North Carolina Licensing Board for General Contractors. (G.S. 87-15.6)

SECTION 9. RENOVATION TO EXISTING BUILDINGS. Renovation and/ or alteration permits will be required for closing in porches or carports, installing or removing structural supports. The fee will be $1.00 per $1,000.00 of estimated costs. The minimum permit fee will be $50.00. Electrical, plumbing, and mechanical will be based on Permit Chart with a Minimum fee per trade of $50.00.

SECTION 10 ELECTRICAL INSPECTIONS. Fees for electrical inspections shall be determined by the Permit Chart.

SECTION 11. PLUMBING INSPECTIONS. Fees for plumbing inspections shall be determined by the Permit Chart

SECTION 12. MECHANICAL INSPECTIONS. Fees for mechanical inspections shall be determined by the Permit Chart.

SECTION 13. MANUFACTURED HOMES. The permit fee for a manufactured home shall be seventy-five ($75.00.) The mobile home permit will include all trades. Modular home fees shall not be considered a manufactured home.

SECTION 14. MISCELLANEOUS INSPECTIONS. Fees for miscellaneous inspections will be as follows:

TYPE OF INSPECTION	FEE
Fuel Storage Tanks	$50.00
Swimming Pools	$50.00
Insulation	$50.00
Demolition	$50.00
Other Required Inspection	$50.00
Return Inspection	$50.00

PERMIT CHART

SIZE	BUILDING	ELECTRIC	PLUMBING	HEATING	A/C	INSULATION	TOTAL
Assembly							
0-10,000sf	0.068	0.0368	0.0312	0.0056	0.0056	0.0104	0.1576
10,001-50,000sf	0.06	0.0264	0.00208	0.004	0.004	0.0072	0.10368
Above 50,000sf	0.052	0.0208	0.016	0.0032	0.0032	0.00104	0.09624
Business							
0-10,000sf	0.06	0.0368	0 0264	0.0208	0.0208	0.0104	0.1752
10,001-50,000sf	0.0544	0.032	0.0232	0.0176	0.0176	0.0056	0.1504
Above 50,000sf	0.0488	0 024	0 0176	0 0056	0 0056	0.0032	0.1048
Educational							
0-10,000sf	0.068	0.0312	0.0312	0.0056	0.0056	0.0104	0.152
10,001-50,000sf	0.052	0.0208	0.0208	0.0036	0.0036	0.0072	0.108
Above 50,000sf	0.0472	0.0184	0 0184	0 0032	0 0032	0.0056	0.096
Factory/Industrial							
0-10,000sf	0.0312	0.016	0.0104	0.0056	0.0056	0.0056	0.0744
10,001-50,000sf	0.0208	0.0104	0.0056	0.0032	0.0032	0.0032	0.0464

Above 50,000sf	0.02	0.008	0.0032	0.0024	0.0024	0.00104	0.03704
Hazardous							
0-5,000sf	0.0312	0.008	0.008	0.008	0.008	0.0104	0.0736
5,001 &: Above	0.0236	0.0064	0.0064	0.0064	0.0064	0.008	0.0572
Institution							
0-10,000sf	0.104	0.0576	0.0576	0.0312	0.0312	0.0104	0.292
10,001-50,000sf	0.0728	0.0312	0.0344	0.0208	0.0208	0.004	0.184
Above 50,000sf	0.052	0.0208	0.0208	0.016	0.016	0.0032	0.1288
Mercantile							
0-10,000sf	0.0448	0 0208	0.0208	0.016	0.016	0.0104	0.1288
10,001-50,000sf	0.0416	0.0184	0.0136	0.0104	0.0104	0.0072	0.1016
Above 50,000sf	0.0312	0.0128	0.0056	0.0072	0.0072	0.0032	0.0672
Storage							
0-10,000sf	0.0312	0.0072	0.0072	0.0072	0.0072	0.004	0.064
10,001-50,000sf	0 02704	0.0056	0.0056	0.0016	0 004	0.004	0.04784
Above 50,000sf	0.0208	0.004	0.004	0.0032	0.00104	0.0016	0.03464
Residential							
	0.0624	0.0312	0.0312	0.02	0.02	0.008	0.1728

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the18th day of June 2002.

A. Everette Clark, Mayor

ATTEST:

L. Robert Boyette, City Manager/ Clerk

Ordinance number: O-06-18-02-02

REQUEST FOR HANDICAPPED PARKING SPACE – FORT STREET: The City Manager advised that the Street Committee had investigated a request by Mr. J.T. Reel for a handicapped parking space on Fort Street next to the First Baptist Church and had recommended its approval. Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adopt the following Ordnance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2: Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
FORT STREET	HANDICAP PARKING ONLY	NORTH SIDE, BEGIN 60 FEET WEST OF THE NW CORNER OF FORT AND N. MAIN

AND CONTINUING 23
FEET WEST

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-06-18-6

ORDINANCE – NO PARKING – VINE STREET: The City Manager advised that a no parking sign had recently been removed on Vine Street. When this sign removal was reported, it was discovered that the Traffic Schedule did not list parking prohibitions on Vine Street. The Street Committee had looked at this situation and recommended that parking be prohibited on Vine Street consistent with the existing signage. Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
VINE STREET	PARKING PROHIBITED	EAST SIDE OF STREET FROM INTERSECTION OF VINE STREET AND PARK AVENUE AND CONTINUING 126 FEET NORTH

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of June, 2002.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: 02-06-18-7

RESOLUTION – DECLARE PERSONAL PROPERTY OWNED BY CITY AS SURPLUS: The City Manager presented Council with a list of surplus weapons in the Police Department. These weapons are surplus due to being confiscated, or by virtue of the planned

replacement of the 9mm handguns for the Police Department. The City Manager noted that State law allows private sale of small surplus items, and recommended that Council adopt the resolution below to authorize private sale of the weapons, for he specified minimum prices.

Councilman Owenby suggested that Police Officers be given first choice on the weapons, and that sales of weapons be limited to one per person.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Resolution, with the condition that Police Officers be given first choice on the weapons, and that sales of weapons be limited to one per person:

RESOLUTION
Declaring
Certain Items of Personal Property
Owned by
the City of Marion
as Surplus and Authorizing Their Sale

WHEREAS, N.C.G.S. 160A-266(b) authorizes cities to dispose of personal property valued at less than $30,000 by private negotiation and sale; and

WHEREAS, N.C.G.S. 160A-267 requires that when a City Council proposes to dispose of property by private sale, it adopt a resolution at a regular Council meeting authorizing an appropriate City official to dispose of the property by private sale at a negotiated price; **and**

WHEREAS, the City of Marion owns twenty-seven Ruger P-95 handguns and seven other confiscated weapons that are no longer needed by the City Police Department; and

WHEREAS, limitations on the sale of handguns make private sale to authorized individuals the best course of action for the City to dispose of said personal property.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the following weapons in the Police Department to be surplus and authorizes the City Manager to dispose of said property by private sale, with the designated minimum price for each weapon:

Brand	Caliber	Model	Quantity	Minimum Price
Ruger	9MM	P-95	27	$150.00
Ruger	9MM	P-89	1	$125.00
Colt IV	.45	Series 80	1	$200.00
Smith & Wesson	9MM	59	1	$150.00
Smith & Wesson	.38	60-3	1	$100.00
Colt IV	.380	Series 80	1	$125.00
North American Arms	.22 MAG		1	$ 60.00
North American Arms	.22 LONG		1	$ 60.00
Loricin	.380	L380	1	
Davis	.380	P-380	1	
?????	.32 S&W		1	
H&R	.32	732	1	
Clerke	.32 S&W		1	
Davis	.32	D-32	1	
Davis	.32	P-32	1	
Titan	.25		1	
Galesi Brescia	25		1	
Raven Arms	.25	MP-25	1	
Raven	.25	MP-25	1	
Titan	.25		1	
Liberty	.22	21	1	

RG	.22	21	1
Freedom Arms	.22		1
Phoenix Arms	22	J-22	1
Jennings	.22	J-22	1
Jennings	.22	J-22	1
Rohm	44MAG	57	
Sporting Arms	.410 GA	Snake Charmer II	1
Tera	Unknown		1
Marlin	12 GA	Goose Gun	1

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (10) days after its publication.

Section 4. This resolution shall be effective upon its adoption.

Adopted this the 18th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-02-06-18-1

ORDINANCE – ELECTRIC FRANCHISE TAX: The City Manager advised that several cities have begun levying their own utility franchise tax, as State law seems to allow if the State fails to make its required payments to cities.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adopt the following Resolution:

AN ORDINANCE LEVYING A FRANCHISE TAX ON THE GROSS RECEIPTS OF ELECTRIC POWER COMPANIES ENGAGED IN THE BUSINESS OF FURNISHING ELECTRICITY, ELECTRIC LIGHTS, CURRENT OR POWER WITHIN THE CORPORATE LIMITS OF THE CITY OF MARION, NORTH CAROLINA

WHEREAS, N.C. Gen. Stat. § 105-116 imposes an annual franchise or privilege tax on electric power companies engaged in the business of furnishing electricity, electric lights, current or power; and,

WHEREAS, N.C. Gen. Stat. § 105-116(d), provides that part of the taxes imposed thereunder are to be distributed to cities in accordance with N.C. Gen. Stat. § 105-116.1; and,

WHEREAS, N.C. Gen. Stat. § 105-116.1(b) provides that the "Secretary [of Revenue] must distribute to the cities part of the taxes collected under this Article [N.C. Gen. Stat. Chapter 105, Article 3] on electric power companies;" and,

WHEREAS, N.C. Gen. Stat. § 105-116(e) provides that "[s]o long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the

businesses taxed under this section, than was imposed and collected on or before January 1, 1947;" and,

WHEREAS, said N.C. Gen. Stat. § 105-116.1(b) states that the distribution to cities therein provided must be made within 75 days after the end of each calendar quarter; and,

WHEREAS, the most recent distribution pursuant to said statutes was scheduled to be made on March 15, 2002 and such distribution was not made by the Secretary of Revenue because of directives issued by the Governor of the State of North Carolina; and,

WHEREAS, N.C. Gen. Stat. § 160A-211(a) provides, among other things, that a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within a city; and,

WHEREAS, by reason of the failure of the Secretary of Revenue to make the distribution as described, in order to provide revenues for the support of the functions of municipal government, consistent with N.C. Gen. Stat. Chapter 105, Article 3, and pursuant to N.C. Gen. Stat. § 160A-211, the City of Marion desires to enact this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, State of North Carolina, as follows:

Article VIII. Franchise Tax on Electric Power

Section 10-191. Citation.

This ordinance shall be known and may be cited as the City of Marion's Franchise Tax on Electric Power Ordinance, and shall be codified as Chapter 10, Article VIII.

Section 10-192. Definitions.

In addition to the common meanings of words, the following definitions shall be applicable herein:

"City" shall mean the City of Marion.

"City Franchise Tax" shall mean the franchise enacted by this Ordinance.

"State Franchise Tax" shall mean the franchise or privilege tax imposed on an electric power company engaged in the business of furnishing electricity, electric lights, current or power as provided in N.C. Gen. Stat. Chapter 105, Article 3 entitled "Franchise Tax."

"Revenue Act" shall mean Subchapter I of Chapter 105 of the General Statutes of North Carolina.

"Secretary of Revenue" shall mean the Secretary of Revenue of the State of North Carolina.

"State Franchise Tax Act" shall mean Article 3 of Chapter 105 of the General Statutes of North Carolina.

"Taxpayer(s)" shall mean any electric power company liable for the taxes imposed by this Ordinance.

"Tax collector" means the department of the [city/town/village] government or the official agency of the state designated by law and authorized by law to administer the collection of the tax herein levied.

Except as otherwise provided in this Ordinance, the definitions of words, terms and phrases as set forth and/or applied in Article 3, Chapter 105 of the North Carolina General Statutes are hereby adopted by reference and made a part hereof. Reference to any provision or provisions in the General Statutes shall include the same as may be from time to time amended, modified, supplemented, revised or superceded.

Section 10-193. Ratifications of existing permits.

All valid and subsisting permits to do business issued by the Secretary of Revenue pursuant to the Revenue Act are for the purposes of this ordinance, hereby ratified, confirmed, and adopted in lieu of any requirement for an additional City permit for the same purpose.

Section 10-194. Levy of tax.

A franchise tax is hereby levied and imposed for the period(s) designated in Section Five of this Ordinance upon the electric power companies engaged in the business of furnishing electricity, electric lights, current or power within the corporate limits of the City. The tax shall be 3.09 percent (3.09%) of the companies' taxable gross receipts from the business of furnishing electricity, electric lights, current or power within the corporate limits of the City. It is intended that taxable gross receipts hereunder shall be the same as those taxable under the State Franchise Tax Act.

Section 10-195. Period for which tax due.

When a distribution to the City as required under the State Franchise Tax Act shall not be made, the City Franchise Tax shall be levied for the periods herein described. A period for which the tax shall be due shall begin on the first day of the first calendar month following the month during which a distribution under the State Franchise Tax Act was due, but not made, to the City and shall continue from month to month until such time as a distribution as required under the State Franchise Tax Act shall be made. The City shall notify Taxpayers within a reasonable time after a required distribution is or is not made by the Secretary of Revenue.

Section 10-196. Report and payment of tax.

The tax shall be paid to the Tax Collector at the time and in the form and manner provided for the payment of sales and use taxes pursuant to and in accordance with N.C. Gen. Stat. § 105-164.16 as the same applies to a taxpayer who is consistently liable for more than one hundred dollars ($100.00) but less than ten thousand dollars ($10,000) a month. As applicable to sales and use taxes, such a taxpayer must file a return and pay the taxes due on a monthly basis. The tax shall be due and payable when a return is required to be filed.

Section 10-197. Refunds.

Upon the resumption of distributions by the Secretary of Revenue as required under the State Franchise Tax Act, a refund may be due to a Taxpayer as specified in this Section. A refund in the amount indicated herein below shall be due to a Taxpayer within thirty (30) days after presentation to the City by the Taxpayer of a written certification made by the Secretary of Revenue stating that portion of the City's percentage distribution amount of the State Franchise Tax that was paid by the Taxpayer and allocable to the calendar quarter for which the most recent distribution was made. The amount of a refund shall equal the portion of the percentage distribution amount designated by the Secretary of Revenue.

Section 10-198. Penalties and remedies.

The provisions with respect to remedies and penalties applicable to the State Franchise Tax Act as contained in Article 9, Subchapter 1, Chapter 105 of the General Statutes, shall be applicable in like manner to the tax authorized to be levied and collected under this Ordinance, to the extent that the same are not inconsistent with the provisions hereof. The City Council of the City may exercise any power the Secretary of Revenue may exercise in collecting the State Franchise Tax.

Section 10-199. Administration.

In addition to the provisions herein and to the extent that the same are not inconsistent with the provisions of this Ordinance, the levy and collection of taxes

herein imposed shall be otherwise administered in the same manner as the State Franchise Tax Act as contained in Article 9, Subchapter 1, Chapter 105 of the General Statutes.

Section 10-200. Confidentiality of records.

The confidential and privileged nature of the records and files concerning the administration of the City Franchise Tax is legislatively recognized and declared, and to protect the same the provision of Chapter 105 of the North Carolina General Statutes are adopted by reference and made fully effective and applicable to administration of the tax levied herein as if set forth in full.

Section 10-201. Ordinance as cumulative.

The provisions hereof shall be cumulative, and in addition to any and all other taxing provisions of City ordinances.

Section 10-202. Severability.

The provisions hereof are hereby declared to be severable, and if any section, paragraph, sentence, or clause of this ordinance is for any reason held invalid or inoperative by any court of competent jurisdiction, such decision shall not affect any other section, paragraph, sentence, or clause hereof.

Section 10-203. Service upon electric power companies.

The City shall serve a copy of this ordinance upon the registered agent for any electric power companies affected hereby.

Section 10-204. Effective date.

This ordinance shall become and be effective on the date and time as passed by the City Council of the City

Adopted by the City Council of the City of Marion, North Carolina on the 18th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-02-06-18-1

SET JULY COUNCIL MEETING SCHEDULE: Upon a motion by Councilman Edwards, seconded by Councilman Owenby, those members of Council present voted to hold one City Council Meeting in July, which will be July 16, 2002.

THOROUGHFARE PLAN UPDATE: The City Manager advised that the City's Thoroughfare Plan Report is complete, as DOT has included the updated traffic counts in and around the City, as required by Council.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Edwards, those members of Council present voted to accept the Thoroughfare Plan as presented. The vote was as follows:

Cuthbertson	Yes
Edwards	Yes
Owenby	Yes

Little No

MORGAN STREET CURR WORK: The City Manager advised that McCormick Grading was awarded the contract for the project on Morgan Street. To date the project has not been completed. Completion date was set for May 27,2002. The City Manager noted that the Public Works Director and Street Superintendent had attempted on numerous occasions to obtain from McCormick a completion date for the project, but had received no response. Therefore, the City Manager stated that, after consultation with the City Attorney, he would recommend that the contract with McCormick be rescinded and that staff be authorized to negotiate the completion of this project with other contractors, within the original approved budget.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to rescind the contract with Mr. Doug McCormick, and to authorize staff to negotiate the completion of this project with other contractors, within the original approved budget.

SENIOR CENTER SALE: The City Manager advised that he had spoken with the County Manager about the Senior Center sale and determined that the County is anxious to move ahead with the sale as quickly as possible. The County recommends contacting those individuals who expressed interest in the building, and try to negotiate a price, and then use the upset bid procedure.

Mayor Clark suggested that Council may wish to consider asking the County to make an offer to the City to buy out the City's interest in the property. Since a request has been made for the City to donate money to the new Senior Center, any difference between the accepted price for the sale and the appraised value of the land could be considered the City's donation to the new Senior Center.

The Joint Utility Committee will meet and further discuss this issue on July 16, 2002.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to make an offer to County Officials to purchase the City's interest in this property. The City Manager will notify the County Manager and suggest that such an offer be made.

Council will be kept informed of any proceedings regarding the sale of this property.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN EDWARDS advised that a no parking sign on Logan Street near the Library has been removed. It appears that maybe the landscapers had removed the sign and failed to put it back. The Public Works Director will have this sign returned to its proper location.

COUNCILMAN LITTLE advised that a bush near the entrance of the Harvest Drive In, on North Main Street, is obstructing view. The City Manager advised that the Police Chief had spoken with Moondoggie's about this obstruction.

COUNCILMAN CUTHBERTSON advised that he had received several complaints regarding a section of property on Hillcrest Drive, that is causing water run off and various other problems, for residents below them on Forest Road.

The City Manager advised that this matter was already being addressed.

Councilman Cuthbertson also expressed concern about a power pole leaning on Rutherford Road in front of J.J. Laughridge's house. The Public Works Director will make Duke Power aware of this situation.

MAYOR CLARK stated that he was disappointed in the lateness of the planting of the summer flowers this year, and suggested that the landscaper's performance be evaluated next year when his contract comes up for renewal.

ADDENDUM - COMMUNITY BUILDING RULES AND REGULATIONS: The City Manager reported that there had been an incident at the Community Building where the pilot lights were blown out, causing gas to escape. He recommended the passage of the following amendment to the Community Building regulations, to require persons or groups occupying the building to check the pilot lights and make sure they are still burning before leaving the building. Signs are also being placed in the building advising people to check the pilot lights, and the Police Department is keeping a closer watch on the pilot lights as well.

Mayor Clark suggested that the purchase of a gas detector in the kitchen be explored, to warn people of gas leaks.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Addendum:

CITY OF MARION, NORTH CAROLINA

MARION COMMUNITY BUILDING
RULES AND REGULATIONS

ADDENDUM
TO
RULES AND REGULATIONS

23. Any Person using the Kitchen of the Community Building is responsible for checking the pilot lights on the gas range, located in the kitchen, to make sure they are burning. In the event they are not, Please call the Marion Police Department at 828-652-3231.

These new regulations shall be effective upon adoption.

Adopted this the 18th day of June, 2002

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, July 16, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Johnny Patton, Police Major; Suzy Davis, City Planner; Mike Conley, News Reporter, The McDowell News

GUESTS PRESENT: Alvin Searcy 675 Greesy Creek Road, Marion, NC 28752; Lee Hughey and Cheryl Mitchell, Representatives of the McDowell County Literacy Council; Ken Suttles 40 South Main Street, Marion, N.C. 28752; Dean Wall, North Main Street, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – June 18, 2002
B. Approval of DBA Sidewalk Sale – August 3, 2002
C. Approval of Downtown Car Show by MOPAR Club – August 17, 2002

PRESENTATION – MS. LEE HUGHEY – LITERACY COUNCIL: Ms. Lee Hughey and Ms. Cheryl Mitchell presented Council with a brief presentation regarding the Literacy Council.

The Literacy Council of McDowell County provides free, student-centered, one-on-one instruction through trained volunteer tutors for adults who need to improve reading and life skills.

This newly formed Board of Directors are as follows:

Dr. Virginia Mitchell
Mr. Chuck Abernathy
Dr. Sherron Crawford

Ms. Lee Hughey serves as Secretary.

Anyone wishing to volunteer or who is in need of help can call the Literacy Council 828-652-0673.

Mayor Clark and Council Members commended all who are involved with this Council.

APPEAL OF PARKING TICKET – MS. SUSAN KERSEY: The City Manager advised that Ms. Susan Kersey asked to be placed on the Agenda regarding a parking ticket she had received.

Ms. Kersey was not present for this meeting.

A discussion followed.

Upon a motion by Councilman Owenby seconded by Councilman Little, Council voted unanimously to deny the appeal, given that no evidence had been presented to support overturning the ticket.

SUTTLES BUILDING DRAINAGE: The City Manager advised that the Utility Committee met on June 18, 2002 and discussed Mr. Suttles' complaints about maintenance of his private fire service line, and water seeping into his building.

Mr. Suttles owns the building formerly utilized by Belk's Department Store.

The Utility Committee recommends that City Crews install the backflow prevention device that is required for the Suttles Building, with Mr. Suttles being charged for the cost of the materials. The Committee further recommends that the City assume maintenance of the fire service line from its connection point up to the backflow prevention device, which will be located under the South Main Street sidewalk immediately outside the building, since City Policy does not allow Mr. Suttles access to this line, given its location under the sidewalk.

The City Manager advised that the Utility Committee does not feel that the City has any obligation to Mr. Suttles for water getting into his basement, since many factors, including an improper seal where the fire service line enters the building, could be responsible for water coming into the building.

A discussion followed.

Upon a motion by Councilman Little seconded by Councilman Cuthbertson, Council voted unanimously to authorize City Crews to install the backflow prevention device in front of Mr. Suttles' Building as recommended by the Utility Committee as stated above with Mr. Suttles paying for the cost of the materials.

Due to the above findings, the City will accept **no obligation** for water getting into the basement of this Property.

APPEAL OF CIVIL CITATION – NOISE VIOLATION: The City Manager presented Council with a written request for appeal of a noise violation issued to Mr. Stephen J. Long.

Mr. Long could not be present for this meeting. However, his father was present in support of his son's request.

This violation was due to loud music being played in a car.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to deny this request. The Mayor and Council Members commended Mr. Long for his son taking the time to write a thoughtful letter and go though the appeals process.

COMPLAINT – BEEHIVES – RIDGE ROAD: The City Manager advised that the complainant behind this issue chose not to appear before Council.

The bees on Ridge Road appear to be a hobby and used for educational and research purposes, and are not part of a business operation.

Upon investigation of this complaint, there appears to be no violation of any City ordinance.

Mr. Alvin Searcy was present for this meeting in support of the beehives on Ridge Road. He is a member of the local chapter of the Honey Bee Association and also keeps bee hives at his residence. Mayor Clark thanked Mr. Searcy for his appearance and informed him that the City might need to call on the Association at some point, if such issues arose in the future.

No action was taken by Council on this matter.

ZONING AMENDMENT – SIGN ORDINANCE REVISION: The City Manager advised that the Public Hearing on this zoning amendment was held on June 18, 2002. He noted that this amendment basically clarified several points addressed by Council in their original approval of the revised sign ordinance in April.

Ms. Suzy Davis, City Planner, presented the amendment and stated that the Planning Board had unanimously recommended its approval. She stated the amendment provides for definitions of spectacular and portable signs, and sets out how such signs can be made permanent and legal under the ordinance. The amendment further sets limitations on directional signs and temporary signs and banners. The amendment also sets limits on the number of freestanding signs a property may have.

Mr. Dean Wall was present for this discussion and urged Council to carefully consider their decision to approve this amendment, and to avoid overregulation of businesses in the City.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to approve the sign ordinance revisions as follows:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII Section 706 Signs, Billboards and other advertising structures is amended as follows

Section 706. Signs, billboard and other advertising structures.

The purpose of this section is to regulate the erection and placement of certain advertising signs. The City Council is committed to preserving the scenic and aesthetic features of the City of Marion in order to protect and promote the development of the tourist industry and provide for the protection of the quality of life for residents and visitors. The City Council further seeks to insure the safety of the local and visiting motorist on the public roads by reducing the detracting influence of uncontrolled advertising signage. The City Council is aware of, and sensitive to, the need for local businesses to adequately identify their products and services and is committed to providing reasonable regulations while safeguarding the interest of local businesses. These regulations are established as a reasonable and impartial method of regulating advertising structures in order to insure light, air, and open space, to reduce hazard at intersections, and to protect property values of the entire community The Marion City Council provides that any sign regulated by this ordinance may contain, in lieu of any other copy, any otherwise lawful, noncommercial messages, that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with the size, lighting, spacing, setback, and other requirements of the district in which it is located

706.1 Definitions. The following words or terms have the meaning as herein defined:

706.1 Definitions

Height of signs. The height of a sign shall not exceed the maximum height set forth in this Article. The height of a sign shall be measured from the existing grade level to the uppermost point of the sign or sign structure, whichever is higher.

Sign. Any display of letters, words, numbers, figures, devices, emblems, pictures, logos, or any other means whereby the same are made visible for the purpose of making anything known, whether such display be on, or attached to, or as a part of a structure, surface, or any object whether natural or manmade. The word "sign" does not include the flag, pennant, or insignia of any nation, state, city, or other political unit.

Sign, area of. The smallest rectilinear figure which encompasses all lettering, wording, design or symbols, together with any background differences on which the sign is located, if such background is designed as an integral part of and related to the sign Any cut-outs or extensions shall be included in the area of the sign, but supports and bracing which are not intended as a part of the sign shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.

Signs, Marquee- a sign with interchangeable letters attached to a marquee. A marquee is a roof-like structure, characteristically bearing a signboard, projecting over an entrance to a theatre or other building.

Signs, non-conforming. Any sign which was lawfully erected in compliance with applicable code provisions and maintained prior to the effective date of this ordinance or prior to annexation into the city, and which fails to conform to applicable standards and restrictions of this ordinance. Portable signs, temporary signs and spectacular signs as defined in this section shall not attain legal non-conforming status.

Sign, off-premises advertising. Any sign advertising a product, service, business or activity sold, located or conducted primarily elsewhere than on the premises on which the sign is located.

Sign, off-premises directional. Any sign indicating the location of or directions to a business, office, or other activity located elsewhere than on the premises on which the sign is located.

Sign, On-premise. A permanent sign which is located on the same lot as the business or establishment that it is advertising for.

Sign, permanent. A sign which is permanently attached or mounted to a wall or permanently attached or mounted to the ground by one or more poles. A permanent sign shall be safely and securely fastened by means of metal anchors, bolts or approved expansions screws of sufficient size and anchorage to safely support the loads applied. A spectacular sign can be converted into a permanent freestanding sign only by removing the legs, the arrow, and flashing lights and by permanently mounting on one or more poles.

Sign, portable. A sign that is designed or has the potential to be relocated and which is not permanently installed or permanently anchored to either the ground or a pole. For the purpose of this article, directional signs and temporary signs shall not be considered portable signs. Portable signs attached to the ground or a pole are prohibited within the city limits of Marion.

Sign, Temporary. An on-premise sign that is used in connection with a circumstance, situation, or event that is designed, intended, or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign, or is intended to remain on the location where it is erected or placed for a period of not more than thirty (30) consecutive days. A banner shall be considered a temporary sign. If the message on a display area of a permanent on-premise sign as defined in section 706.1 is subject to periodic changes, that sign shall not be regarded as temporary.

Sign maintenance. For the purpose of this Article, maintenance shall include repair procedures listed in Section 706.5 of this ordinance. Work done to restore or repair a sign which is damaged or destroyed shall be considered repairs in accordance with the provision in Section 706.6, 706.8 and Section 706.9.

Spectacular sign. An "Outdoor Advertising Display Sign" advertising copy, usually constructed of metal and or poly-material with area(s) for the use of changeable letters to display a message or to advertise, these signs may or may not be wired for lights, usually referred to as "flashing arrow signs."

Value of signs. The value of a sign shall be the value for tax purposes of any sign so listed. If the tax value is not available, the value shall mean the original cost of the sign. In the absence of information as to the original cost submitted by the sign owner, the Administrative Officer shall estimate the original cost based upon the best information reasonably available.

706.2 Permits, fees, and non-conforming signs.

(1) *Permit required.* All signs maintained, erected, placed, posted, attached, painted or otherwise made visible from an adjacent property or right-of-way, except as otherwise prohibited, exempted or not requiring a permit by this Article, require a sign permit in accordance with the provisions of this section. Any sign that is erected, placed or maintained without a required permit shall be in violation of this Ordinance.

(2) *Permit application.* No sign permit shall be issued until an application has been completed for each separate sign structure and until that application has been submitted to and approved by the Administrative Officer with the required fees. Applications for a permit to maintain an existing sign and/or construct a new sign may be obtained from the City of Marion Planning and Inspections Department

(A) *On premise permit application.* The only application that shall be required for on-premise signs is the application for the initial issuance of a permit and that initial permit shall be valid until revoked by the Administrative Officer, with the exception of section 706.11 (1)(H), spectacular signs.

On-Premise Permit fees. There shall only be one initial fee for an on-premise sign. Such fee schedules shall be determined by the City Council, with the exception of section 706.11 (1)(H), spectacular signs.

(B) *Off premise permit application.* The only application that shall be required for off-premise signs is the application for the initial issuance of a permit and that initial permit shall be valid until revoked by the Administrative Officer. The off-premise sign owner shall pay an annual renewal

fee for each off-premise sign. The erection of off-premise sign structures shall not commence until a permit and an emblem have been issued. The sign structure must be completely constructed and erected with the permit emblem affixed within one hundred eighty (180) days from the date of issuance of the permit. During the 180-day period, the new sign structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the appropriate rules and regulations of this Ordinance. The permit emblem, which will have an identifying permit number, shall be placed on the off-premises sign structure in such a position as to be visible from the main traveled roadway of the adjacent highway. A permit along with a permit emblem shall be issued upon sign application completion, approval and the payment of fees for lawful off-premises sign structures.

Off-premise Permit fees. Off-premise initial and annual renewal fees shall be required to be paid by the owners of the off-premises sign structures for each permit requested in order to defray the cost of the administrative and inspection expenses incurred by the City of Marion in administering the permit procedures. Such fee schedules shall be determined by the City Council.

706.3 Registering existing signs.

All sign structures constructed and in place prior to the adoption of a moratorium ordinance by the City Council of the City of Marion on May 3, 1989 shall be required to obtain a permit by the procedures set forth in this Section and affix a city permit emblem within thirty (30) days after the issuance of the permit unless exempted under Section 706.12 (1). The permit shall be obtained within a period of one hundred eighty (180) days beginning with the effective date on this Ordinance. If the sign is a legal non-conforming sign, the permit shall state and be registered as such.

All existing signs that require a permit that have not been registered within the one hundred eighty (180) days shall be in violation of the provisions of this ordinance and subject to penalties provided in Section [707.14].

If the existence of a sign prior to the passage of the moratorium ordinance is questioned, the issue will be determined by a panel made up of the Administrative Officer, City Manager, sign owner, and a designated representative from Keep McDowell County Beautiful, and use of the videotape made of the county roadways at the time of the passage of the moratorium act. If the sign is determined to be in violation of the ordinance, it shall be removed at the owner's expense.

706.4 Transfer of permit.

The transfer of ownership of a sign structure for which a permit has been lawfully issued to the original owner shall not in any way affect the validity of the permit for that specific structure, provided that the Administrative Officer is given notice of the transfer of ownership within thirty (30) days of the actual transfer.

706.5 Sign maintenance, abandoned signs, tree cutting

Maintenance provisions. All signs, supports, braces, poles, wires and other appurtenances of signs or sign structures shall be kept in good repair, maintained in safe condition, and shall conform to the standards in this section. Maintenance carried out in accordance with this section and not the result of damage or destruction shall not require a sign permit, provided the sign is not enlarged, moved or altered in any manner which would create or increase a non-conforming condition.

(1) A sign shall be in a state of disrepair when more than twenty (20) per cent of its total surface area is absent, covered with disfigured, cracked, ripped or peeling paint or poker paper, or any combination of these conditions. Any sign in a state of disrepair shall be considered in violation of this Ordinance

(2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which cause the sign to stand more than fifteen (15) degrees from the perpendicular.

(3) No sign or sign structure shall be allowed to have weeds, vines or other vegetation growing on it and obscuring it from the street or highway from [which] it is intended to be viewed.

(4) No neon or illuminated sign shall be allowed to stand with only partial illumination operational or partial neon operations.

Any sign that violates the maintenance provisions listed above shall be in violation of this Ordinance and shall be repaired or removed as required by the applicable sections of this Ordinance.

Lawful cutting of trees or shrubs. No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim, destroy or remove any trees, shrubs or other vegetation located within a public right-of-way of any road or highway, except where a legal permit for such has been obtained from the North Carolina Department of Transportation.

706.6 Revocation of permit. Any valid permit issued for a lawful sign structure shall be revoked by the Administrative Officer for any one (1) of the following reasons:

(1) Mistake of material facts by the issuing authority for which had the correct facts been known, the sign permit in question would not have been issued.

(2) Misrepresentation of material facts by the applicant on the application for permit for the sign.

(3) Failure to pay annual renewal fees.

(4) Failure to construct the sign structure and affix the permanent emblem within one hundred eighty (180) days from the date of issuance of the permit.

(5) Any alteration of a sign structure for which a permit has previously been issued which would cause that sign structure to fail to comply with the provisions of this Ordinance and the rules and regulations promulgated by the City Council of the City of Marion pursuant thereto.

(6) Any violation of Section 706 8.

(7) Unlawful destruction of trees or shrubs or other growth located on the right-of-way in order to increase or enhance the visibility of a sign structure.

(8) Abandonment or discontinuance of a sign.

(9) Failure to maintain a sign such that it remains blank for a period of twelve (12) consecutive months

(10) Failure to maintain a sign such that it reaches a state of dilapidation or disrepair as determined by the Administrative Officer.

(11) Making repairs to a nonconforming sign which exceed fifty (50) per cent of the initial cost of the sign. Total repairs within any twenty-four (24) consecutive months may not exceed fifty (50) per cent of the value of the sign. To avoid liability under this clause, the advertiser should contact the Administrative Officer prior to making any repairs to discuss the scope of the proposed improvements. The scope of the improvements is limited to the following: repairing the sign or the sign structure, replacing broken glass or other work to keep the sign safe and in good repair.

706.7 Notice given for refusing to issue permit.

Should the Administrative Officer determine that a proposed sign structure would not conform to the standards of outdoor advertising as set out in this ordinance or the rules and regulations promulgated thereto by the City Council to the City of Marion the Administrative Officer shall refuse to issue a permit for that proposed sign structure.

When such noncompliance of this ordinance has been determined, the Administrative Officer shall so notify the owner of the proposed sign structure in question by first class United States mail in the form of a letter setting forth the reasons why the proposed sign structure in question does not comply, and shall also return the application and seventy-five (75) per cent of the application fee to the applicant.

706.8 Nonconforming signs.

(1) Any sign which becomes a legal nonconforming sign as herein defined may continue to exist provided that no nonconforming sign shall be:

(A) Changed or replaced with another nonconforming sign, except that copy may be changed on an existing sign.

(B) Expanded

(C) Relocated, except in conformance with the requirements of this ordinance.

(D) Re-established after damage or destruction in excess of fifty (50) percent of the value at the time of the damage or destruction.

(E) Modified in any way which increases the sign's degree of nonconformity.

(F) Re-established after the sign structure has been removed.

706.9 Reconstruction of damaged signs or sign structures.

(1) Any conforming sign or sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within thirty (30) days and completed within sixty (60) days' of such damage. However, if the sign should be declared unsafe by the Administrative Officer, the owner of the sign or the owner of the record of the real property whereon the sign is located, shall immediately correct all unsafe conditions in a manner satisfactory to the Administrative Officer.

(2) As a courtesy to the sign owner, if the Administrative Officer discovers that a sign has been damaged or is in an unsafe condition, the Administrative Officer will promptly notify the owner of the sign or the owner of record of the real property whereon the sign is located of such damage or unsafe condition. The affirmative duty and liability shall, however, at all times remain with the owner of each sign to keep each sign in a safe and undamaged condition in keeping with the terms of this Ordinance

706.10 Administration, enforcement, appeals.

The Administrative Officer shall have the following authority:

(1) To issue a Violation Notice for any violation of the Ordinance. A Violation Notice shall be delivered by certified mail, return receipt requested, or by such other method as allowed by law, to the owner of the sign in violation of the ordinance. Whenever the owner of the sign cannot be located and notified, said notice shall be delivered to the owner of record of the real property whereon the sign is located. The time period provided herein shall commence upon receipt of such Violation Notice. The Violation Notice shall identify the sign and shall describe the nature of the violation, refer to the section of the ordinance violated, specify in detail what action must be taken to correct

the violation, and specify a reasonable t me limit of up to thirty (30) days within which the violation must be corrected.

(2) To issue a remove order for any sign or sign structure not corrected within the time allotted under the Violation Notice, or for a prohibited sign under the Violation Notice, or for a prohibited sign as established by this Ordinance. A Remove Order shall be delivered to the sign owner or to the owner of record of real property whereon the sign is located in the same manner as set out for a Violation Notice and shall not be effective until received. The recipient of the Remove Order shall be allowed thirty (30) days after the receipt of the Remove Order within which to remove the subject sign at his expense. The Remove Order shall identify the sign and reasons for the issuance of the Remove Order and shall refer to the section of the Ordinance violated.

(3) To remove or cause to be removed any sign or sign structure not removed in accordance with a Remove Order after thirty (30) days from receipt of such order, and to assess the receipt of such order with the cost of such removal.

(4) To issue citations for any violation of this Ordinance in accordance with Article XV.

(5) To issue an Unsafe Sign Notice should the Administrative Officer find that any sign has become insecure in imminent danger of falling or otherwise unsafe An Unsafe Sign Notice shall be delivered to the sign owner or to the owner of the record of the real property whereon the sign is located in the same manner as set out for a Violation Notice except that the recipient of the notice shall forthwith in the case of immediate danger and in any case within ten (10) days, of receipt, secure the sign in a manner to be approved by the Administrative Officer in conformance with the provisions of this Ordinance or remove such sign. If the notice is not complied with in ten (10) days, the administrative officer shall remove such sign at the expense of the recipient of the notice

(Ord. of 4-20-93;

706.11 The regulations for On-premises signs and other advertising structures are enumerated below:

(1) In any zoning district the following general regulations shall apply:

(A) No sign shall be erected or maintained where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal, or device

(B) No sign having flashing, intermittent or animated illumination shall be permitted within three hundred (300) feet of property in any residential district unless such sign is not visible from such property.

(C) No illuminated sign shall be permitted within fifty (50) feet of property in any residential district unless the illumination of such sign is so designed that it does not shine or reflect light onto such property. Any illuminated sign that is permitted in a residential district shall not reflect light or shine onto any property in the residential district except the property on which the sign is located.

(D) No free standing on-premises sign attached to the ground shall be erected to exceed thirty (30) feet above ground level or fifty (50) feet in length. The bottom copy of such sign shall be at least three (3) feet above the ground level.

(E) No part of any free standing on-premises sign shall extend into any street right-of-way. In the event a right-of-way does not exist, the sign shall be placed in conformity with the setback requirements of the district in which it is located.

(F) Signs erected and overhanging any sidewalk must be placed at least nine (9) feet above the sidewalk and may extend over the sidewalk a distance equal to two-thirds (2/3) the width of the sidewalk, but in no case exceeding ten (10) feet.

(G) Marquee signs may be attached to, or hung from a marquee, and such signs when hung from a marquee shall be at least nine (9) feet at its lowest level above the sidewalk or ground level, and further, no such sign shall extend outside the line of such marquee. Marquee signs may be attached to the sides and front of a marquee, and such sign may extend the entire length and width of said marquee, provided such sign does not extend more than six (6) feet above, nor one (1) foot below such marquee, but under no circumstance, shall a sign have a vertical dimension greater than eight (8) feet.

(H) Spectacular signs may be located only in the C-1 Central Business District and the C-2 General Business District after an application has been submitted to the Inspection Department and a permit issued therefore. No more than one spectacular sign shall be permitted per property. Spectacular sign shall only be used with a temporary spectacular sign permit issued by the City of Marion. The permit shall only be good for a two-week period. The city shall not issue a permit more than four times in a year for each property in the City Limits and such permits shall not be issued consecutively The location of said sign shall be approved by the Planning and Inspections Department. A spectacular sign may be converted into a permanent free-standing sign according to the definition of a permanent sign in section 706 1.

(I) Professional signs and signs for home occupations shall not exceed two (2) square feet in area.

(J) No sign which obstructs ingress or egress, creates an unsafe distraction for motorist, or obstructs the view of motorist entering a public road or highway shall be permitted.

(K) No signs which contain words or graphics which are obscene, as that term is defined in Chapter 15 of the North Carolina General Statutes are permitted.

(L) No signs located on or attached to the roof of a structure shall be permitted.

(M) No signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features shall be permitted.

(N) No signs located in a manner which are designated to be visible from any road, street or highway, or portion thereof, which is designated a Scenic Corridor by the City Council shall be permitted.

(2) In the Residential District, the following regulations shall apply:

(A) Nameplates indicating name, address, house number, announcements of boarders or roomers, or customary home occupations are permitted.

(B) For apartment buildings, identification signs not exceeding nine (9) square feet in area are permitted.

(C) Church, school, or public building bulletin boards or identification signs, not exceeding twenty (20) square feet in area are permitted.

(D) Flashing or intermittent illumination is prohibited.

(E) For mobile home parks, identification signs not exceeding nine (9) square feet are permitted.

(F) Bed and breakfast homes, identification signs not exceeding nine (9) square feet are permitted.

(3) In C-1 Central Business District and C-2 General Business District any sign, subject to all other requirements of this section, is permitted. There shall be no more than two freestanding signs permitted per property in the C-1 or C-2 District. If the property has multiple road frontages, one additional sign may be permitted for each additional road frontage.

(4) In M-1 Industrial District, any sign meeting the requirements of this section and in addition pertaining to the product manufactured on the premises or the firm occupying the premises is permitted. There shall be no more than two freestanding signs permitted per property in the M-1 District. If the property has multiple road frontages, one additional sign may be permitted for each additional road frontage.

(5) In any district the following signs shall be permitted without a sign permit:

(A) Signs for parking spaces, entrance and exit signs not exceeding two (2) square feet in area and not more than one (1) sign not more than nine (9) square feet in area identifying or designating the conditions of the use of such parking area.

(B) Non-illuminated "For Sale" or "For Rent" signs not exceeding four (4) square feet in area.

(C) One (1) sign not more than twelve (12) square feet in area giving the names of the contractors, engineers, or architect, during construction of a building. Signs must be removed before a certificate of occupancy is issued.

(D) Signs established by, or by order of, any governmental agency.

(E) For special events of public interest, one (1) sign, not over twenty-four (24) square feet in area located upon the site of the event.

(F) One (1) sign of not more than twelve (12) square feet giving the name(s) of future tenant(s) of the building(s) under construction. These signs must be removed before a certificate of occupancy is issued.

(G) Trade names and graphics which are located on newspaper, soft drink, and similar vending devices.

(H) Decorations associated with a national or religious holiday.

(I) Sign warning of danger posted by utility or construction companies.

(J) Commemorative tablets, markers or monuments erected by or with the permission of the city council of the City of Marion.

(K) Signs with non-commercial messages.

(L) Temporary signs advertising the sale, rental or lease of property on which said sign is located are allowed provided that:

1. Such signs are non-illuminated

2. Signs do not exceed four (4) feet in height and do not exceed four (4) square feet per face for property zoned residential.

3. Signs do not exceed eight (8) feet in height and do not exceed thirty-two (32) square feet per face for property zoned other than residential.

4. All signs shall be removed within seven (7) days after the closing of the sale, rental, or lease of property.

(M) Temporary sign, as defined in 706.1 of this article, provided that a temporary sign is not up longer than 30 consecutive days. Temporary signs shall only be attached to a building and shall not be attached directly to the ground or to a pole."

(Ord of 4-20-93; Ord. of 9-21-93; Ord. of 7-22-97, § 1)

Section 706.12 The regulations for Off-premises signs, billboards and other advertising structures are enumerated below:

(1) The following signs are exempt from this Article:

(A) On-premises advertising and or-premises incidental signs.

(B) Signs of a governmental body, ncluding traffic warning or regulatory signs and devices. These signs shall also include other government signs including building identification, directional, information and welcome signs.

(C) Trade names and graphics which are located on newspaper, soft drink and similar vending devices.

(D) Flags or insignia of any governmental or non-profit organizations when not displayed as an advertising device.

(E) Decorations associated with a national or religious holiday.

(F) Signs warning of danger posted by utility or construction companies.

(G) Commemorative tablets, markers or monuments erected by or with the permission of the City Council of the City of Marion.

(H) Signs on operational motor vehicles indicating the name of a business, when the vehicle is not intended to be used for display of signs.

(I) Sign required by law, statute or ordinance.

(J) Signs smaller than eight (8) square feet giving notice or direction for sale of real estate or personal property, such as temporary realtor's signs and yard sale signs.

(K) Signs with non-commercial messages.

(L) Portable political campaign signs, provided that they are removed no later than 7 days after Election Day.

(2) **Signs prohibited.** The following off-premises signs are prohibited within the jurisdiction of this Ordinance:

(A) No sign shall be erected or maintained where by reason of its position, wording, illumination, size, shape, or color where that it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal, or device.

(B) Signs, whether temporary or permanent, within any street or highway right-of-way, with the exception of governmental signage.

(C) Any sign which obstructs ingress or egress, creates an unsafe distraction for motorist, or obstructs the view of motorist entering a public road or highway.

(D) Signs which incorporate flashing or blinking lights or signs with moving parts or parts which simulate movement.

(E) Signs located on or attached to the roof of a structure

(F) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(G) Signs located in a manner which are designated to be visible from any road, street or highway, or portion thereof, which is designated a Scenic Corridor by the City Council.

(H) Signs which contain words or graphics which are obscene, as that term is defined in Chapter 15 of the North Carolina General Statutes.

(I) Off-premise spectacular signs

(J) Off-premise temporary signs

(3) **Directional Signs.** The following off-premises signs, known as Directional Signs shall conform to the standards and provision of this Article, except Section 706.12 (4) and all of Section 706.2, but they shall not require the issuance of permits. Directional signs shall:

(A) Contain only the name and logo of a business located city limits of Marion, North Carolina, an arrow or other mark to indicate the direction of the business location and the distance to the business from the sign.

(B) Not exceed eight (8) square feet in area per sign face.

(C) Directional sign shall not be located in the right-of-way and shall have written permission from the property owner in which the sign is located.

(D) All non-advertising off-premises signs which meet the above definition of directions sign except for the sign face area but which do not exceed thirty-two (32) square feet in sign face area which were in place before May 3, 1988 shall be considered legal non-conforming directional signs.
(E) All directional signs within the city limits of Marion shall obtain a directional sign permit, issued by the City of Marion for each sign in the City limits. Such permit shall only be issued if a letter is submitted from the property owner granting permission to locate a directional sign on their property.

(4) **Regulation of off-premises advertising signs.** Off-premises advertising signs are permitted in accordance with the following regulations:

(A) A permit is required for each off-premises advertising sign, regardless of size.

(B) Off-premises advertising signs located where designed to be visible from any U.S. or N.C. highways shall not exceed three hundred (300) square feet per sign face, shall be not closer to the right-of-way than twenty (20) feet (or no closer than thirty (30) feet from the edge of the traveled way where the right-of-way is unknown or does not exist and shall have a height no greater than thirty (30) feet. Such signs shall be at least one thousand five hundred (1,500) linear feet (measuring along both sides of the highway) from any other off-premises advertising sign; at least five hundred (500) feet from any intersection of the centerlines of any streets; at least five hundred (500) feet from any at-grade railroad crossing or any bright; and at least one thousand (1,000) feet from any dwelling unit, church or place of worship, cemetery, school, playground or park located within six hundred sixty (660) feet of the right-of-way.

(C) Off-premises advertising signs located where designed to be visible from any other road or street shall not exceed one hundred fifty (150) square feet per sign face, shall be no closer to the right-of-way than ten (10) feet (or no closer than twenty (20) feet from the edge of the traveled way where the right-of-way is unknown or does not exist and shall have a height of not greater than thirty (30) feet. Such signs shall be at least one thousand (1,000) linear feet (measuring along both sides of the highway) from any other off-premises advertising sign; at least three hundred (300) feet away from any intersection of the centerlines of any streets; at least three hundred (300) feet from any at-grade railroad crossing or any bridge, and at least five hundred (500) feet from any dwelling unit, church or place of worship, cemetery, school, playground or park located within six hundred sixty (660) feet of the right-of-way.

(D) No off-premises outdoor advertising sign in any location shall be more than eight hundred (800) feet from a business, commercial or industrial enterprise located on the same side of the street, road or highway as the sign.

(E) An off-premises advertising sign structure may have one (1) sign face for each side. No structure shall have more than one (1) sign face per side or more than a total of two (2) sign faces.

(F) No off-premises advertising sign shall be attached to or painted on any building or structure.

Notwithstanding the restrictions set forth in subparts (B), (C), and (D) of Section 706.12 (4) above, an off-premises advertising sign may be constructed within one thousand (1,000) feet from any dwelling unit (for the purpose of sub-part (B) and (C) of Section 706.12 (4) or within five hundred (500) feet of a dwelling unit for purposes of sub-part (D) above) PROVIDED the placement of such off-premises advertising sign is in strict compliance with all other requirements and regulations of this Ordinance as long as each owner of any dwelling unit located within such distance executes a statement granting express permission for the placement called for by this Ordinance. Such statement shall refer to the book

and page number on which the deed for the owner's property is recorded in the McDowell County Registry and said statement sha l be properly notarized. A copy of said statement shall be delivered to the Planning and Inspections Department.

706.13 Amortization of Certain Signs.

Spectacular signs shall become nonconforming in all districts within one (1) year after the date of adoption of this ordinance, at which time annual permits will expire and shall not be renewed. After the one-year amortization period, all spectacular signs in the City Limits shall be considered in violation of this ordinance and shall be removed. Spectacular sign shall then only be used with a temporary spectacular sign permit issued by the City of Marion and only for a two-week period. The city shall not issue a permit more than four times in a year for each property in the City Limits and such permits shall not be issued consecutively.

Portable Signs as defined in section 706.1 shall become non-conforming in all districts, unless otherwise specified, as of the date of adoption of this Ordinance and shall be removed within six (6) weeks after the date of adoption

(Ord. of 6-22-93, Ord. of 4-02-02, Ord of 7-16-02)

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 16th day of July 2002.

A. Eyriette Clark, Mayor

ATTEST:
J. Robert Boyette
City Manager/ Clerk

Ordinance number: O-02-06-16-01

UPDATE – HOUSING CONDEMNATION PROCESS: The City Manager presented Council with the following update on dilapidated buildings from Fire Chief Jim Neal:

1) Scott Berryhill - 645 East Court Street – Mr. Berryhill's insurance claim process is taking some time to investigate and settle.
2) Wanda Creson/Charles Israel - Circle Street in Clinchfield – Mr. Israel was under the impression that the fire department was going to burn this structure. He was informed that it could not be burned by the Fire Department. He advised that he would get the structure demolished.
3) Ridge Street – East Marion – Legal requirements are completed for condemning this property. It can not be burned by the Fire Department. 4) West Wilhemina Street – This property also cannot be burned.

The City Manager advised we are still hopeful to receive funding from the CDBG, as part of the money the County will receive this fall from the State for scattered site housing projects. The Fire Chief and Building Inspector will conduct a survey in the City and list structures, including the ones mentioned above, for possible demolition using CDBG funds.

Councilman Little advised that the Metal Structure, owned by the Browns, located on East Court Street is very unsightly and needs examining.

2002 CITY TRANSPORTATION IMPROVEMENT PROGRAM PRIORITIES: The City Manager advised that in the past, each year, Council has approved a list of TIP priorities for the City, which were then presented to DOT at a division wide meeting in the fall. With the City joining the Isothermal Rural Transportation Planning Organization this year, approval of the regional TIP priority list is now done by the RPO Transportation Advisory Committee, of which Councilman Cuthbertson is a voting member.

The City's five priorities from last year were as follows:

1) Sugar Hill Road Widening – Listed in TIP/Construction scheduled to start this fall
2) U. S. 70 Bypass Feasibility Study – Not currently listed in TIP/Recommended in Thoroughfare Plan
3) Rutherford Road Widening/Curb and Gutter (Georgia Avenue to Bypass) Not currently listed in TIP/Recommended in Thoroughfare Plan

4) U.S. 221 Widening (Bypass south to Goose Creek Road0 – Listed in TIP/Construction scheduled to begin in 2008
5) N.C. 226 Widening (Bypass to Interstate 40) – Listed in TIP as an un-funded project

Mayor Clark also suggested the need for up grades on Tate Street, near the Marion By-pass.

It was the consensus of Council to refer this item to the Street Committee. Councilman Cuthbertson will also meeting with this Committee due to being a voting member of the RPO Transportation Advisory Committee.

The news media will be informed of this meeting's date and time.

RIDLEY STREET PARKING – MR. CLARENCE BARNETT: The City Manager advised that Mr. Clarence Barnett of Ridley Street has expressed concerns about parking on the north side of Ridley Street. Specifically, he has noted concern about cars parking just before the curve where Ridley Street becomes Oak Avenue.

A discussion followed.

It was the consensus of Council to refer this matter to the Street Committee.

AUTHORIZE REQUEST FOR DOT SMALL URBAN FUNDS: The City Manager advised that Alan Thornburg is requesting a list of prioritized projects for funding under the Small Urban Discretionary Funding, for which Division 13 receives $1 million annually. The project cannot exceed $150,000, and must be within a municipality or within one mile of the City Limits.

Possible projects are:

- New pedestrian signals at East Court Street and South McDowell Avenue
- New pedestrian signals at State Street and South McDowell Avenue
- East Court Street curb and gutter replacement
- North Logan Street curb and gutter and sidewalk replacement
- Drainage improvements along Rutherford Road and in Oak Grove Cemetery ditch line next to Substation
- West Fourth Street Paving
- Signal Improvements – Garden Street/East Court Street intersection and other intersections
- Tate Street

A discussion followed.

It was the consensus of Council to refer this item to the Street Committee.

ORDINANCE – VOTING RULES: The City Manager advised that State law requires a two thirds vote of Council to pass an ordinance on the first reading. The City Charter, states that official action of the Council shall in every instance be by majority vote, provided that a quorum is present. He has tried to be conservative and go with the general law, rather than the Charter.

The City Manager spoke with Charles Burgin, the League of Municipalities, and the Institute of Government about this matter. They all three agree that we could interpret the voting rules either way, given the wording of the Charter. However, the City Manager presented an e-mail from David Lawrence with the Institute of Government, where Mr. Lawrence advised that the City Charter provisions were specific enough to take precedent in the matter of voting on

ordinances. The City Manager recommended that Council decide on which interpretation to take in the future.

Mayor Clark agreed that the City's interpretation in the past had been that the Charter took precedent and that a majority vote of Council was sufficient to pass an ordinance on the first reading.

A discussion followed. All Council Members agreed by consensus that the Charter provision would take precedent and that a majority vote of Council was sufficient to pass an ordinance on the first reading.

COUNCILMAN COMMENTS:

COUNCILMAN OWENBY advised that he had been contacted about a shrub obstructing vision on West Henderson Street coming out of Ingles. Major Patton will look into the visibility at this location.

NATIONAL NIGHT OUT: Major Patton advised that this years National Night Out is scheduled for Tuesday, July 30, 2002 at 5:00 P.M.

The City Manager congratulated Major Patton on his recent promotion and his years of service to the City.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects. The City Manager noted that the General Assembly was continuing to address its budget shortfall, which could have significant ramifications on revenues coming to the City. He also advised of continuing vandalism at the Community Building Bathrooms. The City Manager reported that the City's water supply was adequate and plentiful, despite the Governor's recent drought declaration for McDowell County, in which he urged water conservation by water systems and the public.

The City Manager also noted that he was talking to the YMCA about the wording on the naming of the fitness room for the YMCA, the naming opportunity that had been selected by Council last year. The City Manager advised that he would bring the recommended wording of the fitness room to Council for review in the next month or two.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 6, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards arrived for this meeting at 8:30 P.M. due to being in Court out of town.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Suzy Davis, City Planner; Claudia Severson, Tax Collector; Mike Conley, News Reporter, The McDowell News and Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Mr. & Mrs. Ted Lowery, 91 State Street, Marion, NC 28752 Robert; Dunn, 114 South Sterling Street, Morganton, NC; Mr. Layne Thomas and Mr. Jimmy Powell, Representatives of ADW Architects Charlotte, NC.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – July 16, 2002
B. Endorsement of Governor's Proclamation – Litter Sweep 2002
C. Revised City Respiratory Protection Policy

RESPIRATORY PROTECTION PROGRAM
CITY OF MARION

1.0 Purpose

The City of Marion has determined that employees in the Fire Department, Police Department, Water Filtration Plant, Public Works Department, and Waste Treatment Plant are exposed to respiratory hazards during routine operations. These hazards include vapors, gases, fumes, smoke, and in some cases represent Immediately Dangerous to Life or Health (IDLHL) conditions. The purpose of this program is to ensure that all City of Marion employees are protected from exposure to these respiratory hazards.

Engineering controls such as ventilation and shutoff valves are the first line of defense. However, engineering controls have not always been feasible for some of our operations, or have not always completely controlled the identified hazards. In these situations, respirators, and other protective equipment must be used. Respirators are also needed to protect employees' health during emergencies. The work process requiring respirator use at the City of Marion is outlined in Table I in the Scope and Application section of this program.

In addition, some employees may express a desire to wear respirators during certain operations that do not require respiratory protection. As a general policy the City of Marion will review each of the requests on a case by case basis. If the use of respiratory protection in a specific case will not jeopardize the health or safety of worker(s), the City of Marion will provide respirators for voluntary use. As outlined in the Scope and Application section of this program, voluntary respirator use is subject to certain requirements of this program.

2.0 Scope and Application

This program applies to all employees who are required to wear respirators during normal work operations, and during some non-routine or emergency operations such as a spill or release of a hazardous substance. This includes employees in the Fire Department, Police Department, Water Treatment Plant, and Waste Treatment Plant. All employees working in these areas and engaged in certain processes or tasks (as outlined in the table below) must be enrolled in the company's respiratory protection program.

In addition, any employee who voluntarily wears a respirator when a respirator is not required (i.e. in certain maintenance and cleaning operations) is subject to the medical evaluation, cleaning, maintenance, and storage elements of this program, and must be provided with certain information specified in this section of the program.

Employees participating in the respiratory protection program do so at no cost to them. The expense associated with training, medical evaluations and respiratory protection equipment will be borne by the City.

TABLE 1: VOLUNTARY AND REQUIRED RESPIRATOR USE AT THE CITY OF MARION

Respirator	Department/Process
Air-purifying	Police/ tear gas use Waste Treatment, Water Filtration/ changing chlorine cylinders
SCBA, pressure demand and negative demand	Fire/ fire suppression, haz-mat incidents, chemical, biological or radiological attacks Waste Treatment, Water Filtration/ safety back-up for changing out chlorine tanks.

3.0 Responsibilities

Program Administrator

The Safety Director is the over all Program Administrator for the respiratory protection program for the City of Marion. His duties are:

* To coordinate the department heads to see that the program is followed in each Department.
* Evaluating the over all program.
* Maintaining records required by the program.
* Updating the written program, as needed.

Department Heads

Department Heads are responsible for ensuring that the respiratory protection program is implemented in their respective departments. In addition to being knowledgeable about the program requirements for their own protection, department heads must also ensure that the program is understood and followed by the employees under their charge. The duties of the department heads are:

* Identifying work areas, processes or tasks that require workers to wear respirators, and evaluating hazards.

* Selection of respiratory protection options.

* Monitoring respirator use to ensure that respirators are used in accordance with their certifications.

* Arranging for and/or conducting training.

* Ensuring proper storage and maintenance of respiratory protection equipment.

* Conducting fit testing.

* Administer the medical surveillance program for employees in their departments.

* Evaluating the program as it pertains to their departments.

Supervisors

Supervisors are responsible for ensuring that the respiratory protection program is implemented in their particular areas. In addition to being knowledgeable about the program requirements for their own protection, supervisor must also ensure that the program is understood and followed by the employees under their charge. Duties of the supervisor include:

* Ensuring that employees under their supervision (including new hires) have received appropriate training, fit testing, and annual medical evaluations.
* Ensuring the availability of appropriate respirators and accessories.
* Being aware of tasks requiring the use of respiratory protection.
* Enforcing the proper use of respiratory protection.
* Ensuring that respirators are properly cleaned, maintained, and stored according to the respiratory protection plan.
* Ensuring that respirators fit well and do not cause discomfort.
* Continually monitoring work areas and operations to identify respiratory hazards.
* Coordinating with the Program Administrator and Department Heads on how to address respiratory hazards or other concerns regarding the program.

Employees

Each employee has the responsibility to wear a respirator when and where required and in the manner in which they were trained. Employees must also:

* Care for and maintain their respirator as instructed and store them in a clean, sanitary location.
* Inform their supervisor if the respirator no longer fits well and request a new one that fits properly.
* Inform their supervisor or the Program Administrator of any respiratory hazards that they feel are not adequately address in the workplace and of any other concerns that they have regarding the program.

4.0 Program Elements

Selection Procedures

The Department Heads will select respirators to be used on site, based on the hazards to which workers are exposed and in accordance with all OSHA standards. The Department Heads will conduct a hazard evaluation for each operation, process, or work area where airborne

contaminants may be present in routine or during an emergency. The hazard evaluation will include:

1) Identification and development of a list of hazardous substances used in the workplace, by department or work process.
2) Review of work processes to determine where potential exposures to these hazardous substances may occur. This review shall be conducted by surveying the workplace, reviewing process records, and talking with employees and supervisors.
3) Monitor to quantify potential hazardous exposures.

Updating the Hazards Assessment

The Program Administrator must revise and update the hazard assessment as needed (i.e. any time work process changes may potentially affect exposure). If an employee feels that respiratory protection is needed during a particular activity, he/she is to contact his or her supervisor or the Program Administrator. The Program Administrator will evaluate the potential hazard, arranging for outside assistance as necessary. The Program Administrator will then communicate the results of that assessment back to the employees. If it is determined that respiratory protection is necessary, all other elements of this program will be in effect for those tasks and this program will be updated accordingly.

NIOSH Certification

All respirators must be certified by the National Institute for Occupational Safety and Health (NIOSH) and shall be used in accordance with the terms of that certification. Also, all filters, cartridges, and canister must be labeled with the appropriate NIOSH approval label. The label must not be removed or defaced while it is in use.

Voluntary Respirator Use
The City of Marion will provide respirators at no charge to employees for voluntary use for the following work processes:

* Employees may wear air-purifying respirators designed to filter for chlorine when changing chlorine tanks at waste treatment and the water filtration plants.
* Employees who act as safety back-ups for changing chlorine tanks at waste water and water filtration must wear SCBA.
* Firemen must wear SCBA when working in areas of heavy smoke, fumes, vapors or IDLH atmospheres.

The Program Administrator will provide all employees who voluntarily choose to wear either of the above respirators with a copy of Appendix D of the standard. (Appendix D details the requirements for voluntary use of respirators by employees.)

The Program Administrator shall authorize voluntary use of respiratory protective equipment as requested by all other workers on a case-by-case basis, depending on specific workplace conditions and the results of the medical evaluations.

Medical Evaluations

Employees who are either required to wear respirators, or who choose to wear an APR voluntarily, must pass as medical exam before being permitted to wear a respirator on the job. Employees are not permitted to wear respirators until a physician has determined that they are medically able to do so. Any employee refusing the medical evaluation will not be allowed to work in an area requiring respirator use.

A licensed physician at McDowell Family Medicine, where all City medical services are provided, will provide the medical evaluations. Medical evaluations procedures are as follows:

* The medical evaluation will be conducted using the questionnaire provided in Appendix C of the respiratory protection standard. The Program Administrator will provide a copy of this questionnaire to all employees

requiring medical evaluations.

* To the extent feasible, the City will assist employees who are unable to read the questionnaire (by providing help in reading the questionnaire). When this is not possible, the employee will be sent directly to the physician for medical evaluation.
* All affected employees will be given a copy of the medical questionnaire to fill out along with a stamped and addressed envelope for mailing the questionnaire to the City physician. Employees will be permitted to fill out the questionnaire on City time.
* Follow-up medical exams will be granted to employees as required by the standard, and/or as deemed necessary by the McDowell Family Medicine physician.

* All employees will be granted the opportunity to speak with the physician about their medical evaluation, if they so request.

* The Program Administrator has provided McDowell Family Medicine with a copy of this program, a copy of the Respiratory Protection standard, the list of hazardous substances by work area, and for each employee requiring evaluation: his or her work area or job title, proposed respirator type and weight, length of time required to wear respirator, expected physical work load (light, moderate, or heavy), potential temperature and humidity extremes, and any additional protective clothing required.

* Any employee required for medical reasons to wear a positive pressure air purifying respirator will be provided with a powered air purifying respirator.

* After an employee has received clearance and begun to wear his or her respirator, additional medical evaluations will be provided under the following circumstances:

    * Employee reports sign and/or symptoms related to their ability to use a respirator, such as shortness of breath, dizziness, chest pain, or wheezing.
    * The McDowell Family Medicine physician or supervisor informs the Program Administrator that the employee needs to be reevaluated.
    * Information from this program, including observations made during fit testing and program evaluation indicates a need for reevaluation.
    * A change occurs in workplace conditions that may result in an increased physiological burden on the employee.

All examinations and questionnaires are to remain confidential between the employee and the physician.

Fit Testing

Fit testing is required for employees who wear tight-fitting supplied air respirators (SAR) for changing chlorine tanks. Employees who are required to wear tight-fitting SAR will be fit tested when there are changes in the employee's physical condition that could affect respiratory fit (e.g. obvious change in body weight, facial scaring, etc.).

Employees will be fit tested with the make, model, and size of respirator that they will actually wear. Employees will be provided with several models and sizes of respirators so that they may find an optimal fit.
The Program Administrator has determined that quantitative fit testing is not required for the respirators used under current conditions at the City of Marion. If conditions affecting respirator use change, the Program Administrator will evaluate on a case-by-case basis whether QNFT is required.

General Use Procedures

* Employees will use their respirators under conditions specified by this program and in accordance with the training they received on the use of each particular model. In addition, the respirator shall not be used in a manner for which it is not certified by NIOSH or by the manufacturer.

* All employees shall conduct user seal checks each time that they wear their respirator. Employees shall use either the positive or negative pressure check (depending on which test works best for them) specified in Appendix B-1 of the respiratory Protection Standard.
* All employees shall be permitted to leave the work area in order to maintain their respirator for the following reasons: to clean their respirator if the respirator is impeding their ability to work, change filters, cartridges, or tanks, replace parts, or to inspect respirator if it stops functioning as intended. Employees should notify their supervisor before leaving the area.
* Employees are not permitted to wear tight-fitting respirators if they have any condition, such as facial scars, facial hair, or missing dentures, that prevents them from achieving a good seal. Employees are not permitted to wear headphones, jewelry, or other articles that may interfere with the face-to-face seal.

Emergency Procedures

The following work areas have been identified as having foreseeable emergencies:

Respirator Malfunction

1. APR Respirator malfunction:

For any malfunction of an air purifying respirator (APR) (e.g. breakthrough, face piece leakage, or improperly working valve), the respirator wearer should inform his or her designated supervisor that the respirator no longer functions as intended, and go to the designated safe area to maintain the respirator. The supervisor must ensure that the employee receives the needed parts to repair the respirator or is provided with a new respirator.

2. Atmosphere-supplying Respirator Malfunction:

All workers wearing atmosphere-supplying respirators will work with a buddy. Buddies shall assist workers who experience an SAR malfunction as follows:

If a worker changing a chlorine tank experiences a malfunction of an SAR, he or she should signal to the buddy that he or she has a respirator malfunction. The buddy shall don an SAR or emergency respirator and aid the worker in immediately exiting the chlorine changing room.

IDLH Procedures

The Program Administrator has identified the following area as presenting potential for IDLH conditions:

Chlorine changing rooms at the Water Filtration and Waste Treatment Plants:

Plant workers will be periodically required to enter the chlorine rooms to change tanks and to perform scheduled or unscheduled maintenance. The Program Administrator has determined that worker entering this area shall wear APRs or pressure demand or positive pressure SCBA. In addition an appropriately trained and equipped standby person shall remain outside the chlorine room and maintain constant voice and visual communication with the worker. In the event of an emergency requiring the standby person to enter the IDLH environment, the standby person shall immediately notify the Department Head and will proceed with rescue operations in accordance with rescue procedures.

Air Quality

For supplied-air respirators only Grade D breathing shall be used in the cylinders. The Program Administrator will see that the air compressor housed at the fire department is properly maintained by a vendor certified to maintain air compressors of the same make and model as the one used by the City.

The Department Heads will maintain a minimum air supply of one fully charged replacement cylinder for each SAR unit. In addition cylinders may be recharged as necessary from the breathing air compressor located at the fire department.

Cleaning, Maintenance, Change Schedules and Storage

Respirators are to be regularly cleaned and disinfected. Respirators used by more than one person shall be cleaned after each use. Respirators used exclusively by one employee shall be cleaned as often as necessary.

Atmosphere supplying respirators are to be cleaned and disinfected after each use.

The following procedures are to be used when cleaning and disinfecting respirators:

* Disassemble respirator, removing any filter, canisters, or cartridges.
* Wash the face piece and associated parts in a mild detergent with warm water. Do not use organic solvents.
* Rinse completely in clean water.
* Wipe the respirator with disinfectant to kill germs.
* Air dry in a clean area.
* Reassemble the respirator and replace any defective parts.
* Place in a clean, dry plastic bag or other air tight container.

Maintenance

Respirators are to be properly maintained at all times in order to ensure that they function properly and adequately protect the employee. Maintenance involves a thorough visual inspection for cleanliness and defects. Worn or deteriorated parts will be replaced prior to use. No components will be replaced or repairs made beyond those recommended by the manufacture. Repairs to regulators or alarms of atmosphere-supplying respirators will be conducted by the manufacture.

The following check list will be used when inspecting respirators:

* Face piece:
  - Cracks, tears, or holes
  - Facemask distortion
  - Cracked or loose lenses/face shield

* Head Straps:
  - Breaks or tears
  - Broken buckles
* Valves:
  - Residue or dirt
  - Cracks or tears in valve material

* Filters/Cartridges:
  - Approval designation
  - Gaskets
  - Cracks or dent in housing
  - Proper cartridge for hazard

* Air Supply Systems:
  - Breathing air quality/grade
  - Condition of supply hoses
  - Hose connections
  - Settings on regulators and valves

Employees are permitted to leave their work area to perform limited maintenance on their respirator in an area that is free of respiratory hazards. Situations when this is permitted include washing their face and respirator face piece to prevent any eye or skin irritation, to replace the

filter, cartridge, or canister, and if they detect vapor or gas breakthrough or leakage in the face piece or if they detect any other damage to the respirator or it components.

Change Schedules

Employees shall change filters and/or cartridges on respirators per manufacturer's recommendations.

Storage

Respirators must be stored in a clean, dry area and in accordance with the manufacturer's recommendations. Each employee will clean and inspect their own air-purifying respirator in accordance with the provisions of this program.

SCBA respirators will be stored in their original case. The cases will be stored in an area designated by the Department Head.

Defective Respirators

Respirators that are defective or have defective parts shall be taken out of service immediately. If, during an inspection, an employee discovers a defect in a respirator, he/she is to bring the defect to the attention of his or her supervisor. Supervisors will give all defective respirators to the Department Head. The Department Head will decide whether to:

* Temporarily take the respirator out of service until it can be repaired.
* Perform a simple fix on the spot such as replacing a head strap.
* Dispose of the respirator due to an irreparable problem or defect.

When a respirator is taken out of service for an extended period of time, the respirator will be tagged out of service and the employee will be given a replacement of similar make, model and size.

Training

The Program Administrator will provide training to respirator users and their supervisors on the contents of the City of Marion Respiratory Protection Program and their responsibilities under it and on the OSHA Respiratory Protection standard. Workers will be trained prior to using a respirator in the workplace. Supervisors will also be trained prior to using a respirator in the workplace or prior to supervising employees that must wear respirators.

The training course will cover the following topics:

The City of Marion Respiratory Protection Program
The OSHA Respiratory Protection standard
Respiratory hazards encountered at the City of Marion and their health effects.
Proper selection and use of respirators.
Limitations of respirators.
Respirator donning and user seal (fit) checks.
Fit testing
Emergency use procedures
Maintenance and storage
Medical signs and symptoms limiting the effective use of respirators.

Employees must demonstrate their understanding of the topics covered in the training through hands-on exercises and a written test. Respirator training will documented by the Program Administrator and the documentation will include the type, model and size of respirator for which each employee has been trained and fit tested.

5.0 Program Evaluation

The Program Administrator will conduct periodic evaluations of the workplace to ensure that the provisions of this program are being implemented. The evaluations will include regular

consultations with employees who use respirators and their supervisors, site inspections, air monitoring and a review of records.

Problems identified will be noted in an inspection log and addressed by the Program Administrator. These findings will be reported to the City Manager and the report will list plans to correct deficiencies in the respirator program and target dates for the implementation of those corrections.

5.0 Documentation and Recordkeeping

A written copy of this program and the OSHA standard is kept in the Program Administrator's office and is available to all employees who wish to review it.

Also maintained in the Program Administrator's office are copies of training and fit test records. These records will be updated as new employees are trained and new fit tests are conducted.

The Program Administrator will also maintain copies of the medical records of all employees covered under the respirator program. The completed medical questionnaire and the physician's documentation findings are confidential and will remain at McDowell Family Medicine. The company will only retain the physician's written recommendation regarding each employee's ability to wear a respirator.

Adopted this 6th day of August, 2002.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

ZONING AMENDMENT – SIGN HEIGHT: Mayor Clark opened the Public Hearing.

The City Manager advised that a request has been made by Mr. Robet Dunn to increase the maximum sign height for properties fronting on Interstate 40.

Mr. Dunn was present for this Public Hearing and advised that persons are interested in constructing a truck stop and restaurant on a property located at the intersection of N.C. 226 and Interstate 40. He advised that the construction of this new structure would be contingent upon the sign height amendment being adopted.

Ms Suzy Davis, City Planner; advised that the Planning Board has discussed this request and recommends approving the request to allow signs on such properties to have a height no greater than 60 feet above the grade of the adjacent interstate. The current maximum sign height across the City is 30 feet.

A discussion followed.

Mayor Clark suggested that surrounding jurisdictions be surveyed to determine if properties on or near the interstate are allowed to have signs with greater height than other properties.

The Public Hearing was closed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to table this request until other jurisdictions are surveyed to determine how sign height is treated adjacent to the interstate. This information will be gathered and brought back to Council.

COMPLAINT – MR. TED LOWERY: Mr. Ted Lowery appeared before Council advising that he and his wife and grand daughter had a traffic accident on July 15th on the five lane. his wife was driving. A truck crossed the line and his wife steered off the road to prevent a collision. This action caused damage to his vehicle.

A witness followed the vehicle, got its tag number and returned to the scene and gave it to Mr. Lowery.

Mr. Lowery feels that the Marion Police Department has not sufficiently investigated this accident.

A discussion followed.

Chief Benware advised that this is an on going investigation and due to State DMV rules, he could not release information about the name and address of the other vehicle in the accident, until the accident investigation concluded.

Mr. Lowery advised that he feels he has not received justice.

The Mayor and Council members stated that all the Police Department could do is continue their investigation of the accident.

No action was taken on this item.

PRESENTATION – ADW ARCHITECTS: Mr. Lane Thomas and Mr. Jimmy Powell of ADW gave a presentation of the preliminary plans for the Police Department expansion.

Once they started working on the design, the first step was to identify current and future needs. When this was done, future needs of around 6,000+ square feet were identified.

They developed and presented five options for this expansion.

Mayor Clark, members of the Police Department Committee, the City Manager and ADW Architects have reviewed and all endorse Option 5.

Option 5 would be an impressive looking building that would also screen the existing building, while using its existing space. The additional square footage of finished space would be 4,300, with an additional 2,378 square feet in unfinished space in the basement. The projected construction costs would be around $1,000,000.

The City Manager advised that several months ago, Council had endorsed keeping debt service payments for the Police Department to no higher a level than that paid for the Fire Station and City Hall which was $95,000. per year.) Because at that time, advice from McGill Associates had been that the loan term would be approved for no more than 10 years. Therefore, a preliminary project of $750,000 had been identified.

The City Manager stated he had recently talked to the Local Government Commission and had been informed that with all the City's General Fund debt being retired this September, the LGC could approve a loan term of at least 15 years. If the loan term is extended to 15 years, the following payments would apply:

15 year loan at 4,7% interest (approximate current market rate): For an annual debt payment of $49,356, a loan of $1,010,887 could be handled
94,356 105

15 year loan at 5.00% interest: For an annual debt payment of $94,356, a loan of $994,318 cold be handled

15 year loan at 5.25% interest for an annual debt payment of $94,356, a loan of $978,134 could be handled.

The bottom line is that the proposed station would run around $1,000,000 - $1,020,000. once architectural fees are removed and unneeded items are removed from the project. A 15 year financing term would allow for Option number 5 to be pursued without impact on the annual City budget, since existing General Fund debt service would be rolled over into the Police Department building.

- COUNCILMAN EDWARDS ARRIVED DURING THE DISCUSSION OF THIS ITEM

A discussion followed.

The Mayor and Council members stated that Option Number 5 would be a beautiful, yet not ostentatious, building. No objections were given to the proposed option or to the 15 year financing option.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, Council voted unanimously to accept scheme number five (5) as recommended by the Committee.

APPROVAL OF ANNUAL TAX SETTLEMENT: Tax Collector Claudia Hill Severson presented the annual tax settlement for the 2001-02 tax year, along with proposed tax adjustments, involving taxes greater than 10 years old, or closed businesses. She suggested that people wishing to pay taxes greater than 10 years old be allowed to pay principal only. Council members agreed by consensus to allow people wishing to pay taxes greater than 10 years old be allowed to pay principal only.

The City Manager noted that 2001 tax collections were about 95.4% as of June 30, but would have been 96.1% if one large taxpayer had not paid their taxes three days into the 2002-03 Fiscal Year on July 3.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the July 1, 2001 – June 30, 2002 Tax Settlement and 2001-02 tax adjustments as stated below:

TAX SETTLEMENT

July 1, 2001 - June 30, 2002

CHARGES		**CREDITS**	
Real Property	$ 920,677.61	Tax Revenue	$ 1,298,767.56
Less Exemption	(22,342.3)	Less 1% Discount	(3,151.88)
Personal Prop.	392,377.58	Less Refunds	(45.70)
Utilities	70,243.19	Late Listing	995.86
Discoveries	3,913.59	Interest & Penalties	7,007.88
Total Tax	**$ 1,364,869.58**	**Total Revenue**	**$ 1,303,573.72**
Late Listing	1,257.40	**ADJUSTMENTS**	
Interest & Penalties	7,018.43	1% Discount	3,151.88
TOTAL	**$ 1,373,145.41**	Tax Releases	3,953.19
		Tax Refunds	45.70
		Uncollected Late List	254.35
		Uncollected - Real	47,336.16
		Uncollected - Personal	4,830.41
		TOTAL	**$1,373,145.41**

TAX COLLECTIONS APPROVAL: The City Manager advised that before 2002 tax bills could be mailed, Council must approve the order of collection of taxes. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following order of collection:

ORDER OF COLLECTION OF TAXES

STATE OF NORTH CAROLINA
CITY OF MARION
To the Tax Collector of the City of Marion:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records for the year 2002 filed in the office of the tax Collector and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth . Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the City of Marion, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand, and official seal, this 6th day of August, 2002.

(Seal)
A. Everette Clark
Mayor, City of Marion

Attest:

J. Robert Boyette, City Manager/Clerk

DOWNTOWN ADVISORY COMMITTEE: Mr. Mike Ornberg and Ms. Suzy Davis gave a presentation to Council of the status of the Downtown Advisory Committee.

The presentation included history of the committee, roles and responsibilities of the committee and its members.

They also summarized the Committee's activities, retail recruitment and designs for parking and traffic in the downtown area.

Mayor Clark and Councilman Edwards stated that they had been impressed with the work of the Committee during the meetings held over the past few months. Councilman Edwards commended the committee members and City staff for their work on this effort so far.

Other Council members stated that they appreciated the work of the DAC and looked forward to hearing more information and recommendations in the future.

ZONING AMENDMENT – LANDSCAPE ORDINANCE: Mayor Clark opened the Public Hearing. The City Manager advised that the City Planner and Planning Board had been working for several months to create a Landscape Ordinance for new and expanded commercial and multi-family developments. City Planner Suzy Davis reported that the Planning Board had unanimously recommended the approval of the Landscape Ordinance, and had worked to create a simple ordinance, with flexibility for property owners.

Mayor Clark closed the public hearing.

A discussion followed.

Councilman Cuthbertson suggested some technical changes to the ordinance.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance, with the technical changes noted by Councilman Cuthbertson:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII, Section 707 Landscaping and Buffering is added to the Ordinance as follows:

Section 707. Landscaping and buffering

707.1 General Provisions

A. Purpose and Intent. The purpose of this section is to encourage landscaping throughout the City of Marion hence protecting and enhancing public and private investments, economic and tourism opportunities while providing multiple environmental benefits. The landscaping and buffering standards for new development, as defined in part C, set forth below require landscaping along public right-of-ways, in parking lots, between residential districts and commercial or industrial districts and require screening of certain trash containers, in order to:

1. Improve the visual quality of the city and minimize potential negative impacts of developments such as noise, dust, glare of lights, parking lots, traffic, heat, overcrowding, and odor.
2. Provide environmental benefits such as climate modification, decreased energy consumption, reduced impervious surface area and storm water runoff, decreased erosion, improved water and air quality and protection of wildlife habitat.
3. Safeguard public and private property values and to protect public and private investment.

B. Definitions. The following words or terms have the meaning as herein defined:

Ground Cover: A prostrate plant growing less than two feet (2') in height at maturity that is grown for ornamental purposes. Ground Covers are used as an alternative to grasses. On slopes, Ground Covers control erosion while eliminating the maintenance of mowing on hillsides. Many Ground Covers survive in poor soils, shade and other adverse conditions.

Planting area: The area prepared for the purpose of accommodating the planting of trees, shrubs, and groundcovers.

Residential Buffer Strip: A row of plants reaching a height of at least eight feet so that property is screened visually from neighboring residential uses. Buffer strips shall be a species, or combination of species dense enough to provide visual screening from the ground level to the mature height of at least eight feet.

Shrub: A woody plant, usually multi-stemmed or well branched from the base, the branches being retained to the ground. When used for buffer plantings, shrubs must also reach a mature height between four and fifteen feet.

Street Yard: A planting area, extending from the curb towards the property and including the sidewalk, parallel to a public street designed to provide continuity of vegetation along the right-of-way and to soften the impact of development by providing a pleasing view from the road and decreasing the amount of runoff from impervious surface.

Tree, Ornamental: A small to medium tree, growing 15' to 40' in height at maturity, that is planted for aesthetic purposes such as colorful flowers, interesting bark, or fall foliage.

Tree, Shade: A large tree growing to over forty feet (40') in height at maturity, usually deciduous that is planted to provide canopy cover shade.

C. Landscape Plan Required - A landscape plan is required for:

1. Any new development in the C-1, C-2, M-1, or OI districts.
2. Any new development in the R-1 or R-2 district with the exception of single-family, or multi-family developments with less than eight (8) units.
3. Renovations in the C-2, M-1 or OI districts with a total cost exceeding fifty percent (50%) of the assessed value of the building, according to McDowell County tax records, within a twenty-four month time-period.
4. Expansions exceeding fifty percent (50%) of the pre-expansion floor area or paved surface in the C-2, M-1, or OI districts within a twenty-four (24) month time-period
5. Existing unpaved parking lots which are paved over or existing paved lots which are demolished and repaved.

D. Contents of Landscape Plan and Approval Process

1. Applicants are advised to meet with staff prior to submitting a plan in order to discuss applicable landscape requirements, other ordinance requirements, and coordination with utility plans.
2. Whenever an application for a zoning permit and/or a building permit is submitted to the Planning and Inspections Department, a landscape plan shall be submitted if required by section 707.1 (C) of this

ordinance. Such plan shall be in sufficient detail to enable staff to determine whether or not such plan, when fully implemented, will comply with these landscaping requirements. Planning staff shall review the plan and assure compliance with these requirements, and approve or deny zoning permit accordingly.

3. A landscape plan shall be drawn to scale and shall contain the location of the streets, street right-of-ways, all existing and proposed structures, utilities, dumpster (trash container), street yards, planting areas, screening, parking lots with individual spaces identified, as well as location of existing and proposed plants and associated characteristics. Plants shall be identified on plan by species (common or scientific name,) size and age. Proposed date of planting shall also be noted on plan. The dimensions of the required street yard and planting areas shall be identified. The landscape plan may be incorporated into the site plan as outlined in 1102.02. Design professionals seals required as per section 302.4 of the North Carolina State Building Code.

4. Certificate of Occupancy
The landscape shall be completely installed as indicated on approved plan prior to the issuance of a certificate of compliance/ occupancy. A conditional certificate of occupancy may be issued by the building inspector for the temporary use and occupancy of a building, structure or land for a maximum period of 180 days from the date of the issuance of such certificate whenever the landscaping requirements of this ordinance are not complied with on time. If the landscaping indicated on approved plans in not completely installed within one hundred and eighty (180) days, the conditional certificate of occupancy shall expire and further use of the property shall constitute an illegal use and occupancy of said property.

707.2 General Requirements and Conditions

A. Alternate Methods of Compliance- The landscape requirements are intended to be minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. An alternative compliance proposal may be used if it is equal or better than normal compliance in its ability to fulfill the intent of this article, and exhibits superior design quality. The Marion Planning Board shall determine whether alternate method of compliance is equal or better than normal compliance and that the intent of this ordinance has been fulfilled.

B. Safety Considerations- Landscaping shall not obstruct the view of motorists using any street, private drive, parking aisle or other approaches to street intersections so as to constitute a condition endangering the public safety upon any such street, driveway, parking aisle or street intersection

C. Landscaping to be maintained in perpetuity - All required planting and landscaped areas shall be maintained at all times in good, stable and healthy condition.

D. Large shade trees shall not be planted under overhead electrical power lines.

E. Adequate wheel stops or curbs shall be installed for the protection of required trees and plantings that are within five feet of a vehicular parking/ display area or driveway. Wheel stops or curbs shall be a minimum of six inches in height and shall be anchored to the ground, and may be concrete, rot-resistant heavy timber or other effective materials.

F. In most cases, the applicant shall avoid removing existing vegetation and shall incorporate such vegetation as much as possible in proposed plan.

707.3 Specific landscaping requirements.

A. **Street-yards**- A Street yard consists of a planting area parallel to a public street designed to provide continuity of vegetation along the right-of-way and to soften the impact of development by providing a pleasing view from the road, while still allowing the identification of buildings and land use.

1. All land uses to which these landscaping requirements apply with the exception of properties in the C-1, Central Business District, shall provide a street yard along the property being developed. Street yards shall be a minimum of twenty (20) feet wide.
2. Impervious surfaces, such as driveways, within a street yard shall not exceed 25 percent of the required street yard, except that not more than two 25-foot drives may be permitted for any lot having a street frontage of less than 200 feet in length.
3. Landscaping on street yards shall consist of a creative variation of groundcover, shrubs and trees.
4. Parking, merchandise display and off-street loading are prohibited in the street yard
5. Signs are permitted in accordance with Section 706 of this ordinance, provided that no portion of any sign is located within a street right-of-way.

B. Vehicular Parking Areas and Display Areas

1. All new parking lots with 12 or more spaces or parking lots expanded to add 12 or more spaces shall be required to obtain a zoning permit and to comply with this section of the landscape ordinance
2. If an existing parking lot (paved or unpaved) is expanded or improved to add 12 or more spaces within twenty-four (24) months, it shall comply with the parking lot requirements of the landscape ordinance within the expanded or improved portion.
3. In new or expanded parking lots with 12 or more spaces; trees shall be planted at a rate of one shade tree or two ornamental trees for every 12 spaces.

4. Required trees shall be located within or adjacent to parking lots as tree islands, medians, at the end of parking bays, traffic delineators, or between rows or parking spaces in a manner such that no parking space is located more than sixty (60) feet from a parking lot tree.

C. **Buffers and screening**

1. Any use required to submit a landscape plan as outlined in this article abutting a residentially zoned district must provide a residential buffer strip of ten (10) feet between the proposed development and the existing residential district.

D. **Trash container (i.e. Dumpsters) screens and/or buffers.**

1. It is the intent of this section to provide for a visual screen and/ or buffers between trash container and dumpster location and all street right-of-ways and adjoining properties.

2. Trash containers and dumpsters shall not be located in the front yard of any property and shall be screened from view on all side, except for one opening not greater than ten feet in width to allow for service access. If access is difficult, the public works director and the city planner shall determine the acceptable location of the dumpster. Screening may consist of evergreen vegetation growing to over ten feet at maturity or a solid wood fence. Existing vegetation may be used as an alternative method of compliance as set forth in section 707.2 (A.)

(Ord. of 8-06-02)

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of August 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance number: O-02-08-06-01

CIVIL CITATION APPEAL – FALSE ALARM ACTIVATION- SPENCER'S HARDWARE: The City Manager presented Council with a letter from Ms. Nancy Spencer appealing a civil citation received in July for excessive false alarm activations at Spencer's Hardware on Rutherford Road. Ms. Spencer advised that she is doing everything possible to fix the problem with her alarm system and with the alarm system company. She stated that she has instructed the security service not to call the police when this particular sensor goes off.

A discussion followed.

Mayor Clark stated that Ms. Spencer should call the Police Department if the alarm went off, since Council can always later deal with a citation appeal.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to waive the civil citation issued to Ms. Spencer for excessive false alarm activations.

Chief Benware stated he would speak to Ms. Spencer and ask her to always call if the alarm sounded at her business.

APPOINTMENT TO McDOWELL COUNTY PARTNERSHIP FOR CHILDREN AND FAMILIES BOARD: The City Manager advised that Councilman Owenby's term on the Partnership for Children Board expired on July 31. Councilman Owenby stated he had served two terms and would prefer not to be reappointed, since the meeting schedule often conflicted with his work schedule.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to appoint Councilman Martin to serve on the Board of Directors of the McDowell County Partnership for Children and Families.

RIDLEY STREET PARKING: The City Manager advised that the Street Committee recommended no changes in parking on Ridley Street, as had been requested by a resident of the street.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to take no action on this item.

CITY TRANSPORTATION IMPROVEMENT PROGRAM PRIORITIES: The City Manager advised that the Street Committee and Councilman Cuthbertson met to review the proposed priorities for the 2002 TIP Project.

A discussion followed.

Upon a motion by Councilman Little, seconded Councilman Martin, Council voted unanimously to accept the recommendation of the Street Committee as follows:

1. Widening of N.C. 226 from the Bypass southward to Old Glenwood Road (Prison)

2. Feasibility study for U.S. 70 Bypass, to include a study for a connector road between U.S. 70 and Rutherford Road, as was suggested by the Thoroughfare Plan

3. Widening of Rutherford Road between Georgia Avenue and the Bypass

DOT SMALL URBAN FUND DISCRETIONARY PROJECTS: The City Manager advised that the Street Committee and Councilman Cuthbertson reviewed the possible projects for DOT Small Urban Funds.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to recommend the following projects for this years DOT Small Urban Funds as prioritized:

1. East Court Street Curb and Gutter
2. Drainage improvements along Rutherford Road and in Oak Grove Cemetery ditch line next to Substation.
3. New pedestrian signals at State Street and South McDowell Avenue
4. New pedestrian signals at East Court Street and South McDowell Avenue
5. Signal improvements at Garden Street/East Court Street location and synchronization of lights on Court Street and Main Street in the downtown area

DISCUSSION OF POSSIBLE SEPTEMBER 11 MEMORIAL EVENT: The City Manager advised that a possible September 11 Memorial Event has been suggested.

There are several events being planed throughout the City and County that Mayor Clark and City Council members have been invited to, including a major event being planned by McDowell County Emergency Services on Sunday, September 15, involving the City Fire and Police Departments.

Council agreed by consensus to support this event in whatever way possible and not to hold a conflicting event.

Councilman Owenby noted that the American Legion was interested in helping out however possible, and suggested that this interest be forwarded to the County Emergency Services Director.

HIGHWAY 221 SOUTH SEWER PROJECT: The City Manager advised that he has received good responses from many property owners in the Highway 221 South area regarding hooking on to sewer and being annexed.

The City Manager suggested that, since this project will be done by a private contractor who can install connections as part of the project, the tap fees, but not cost recovery charges be waived for properties wishing to immediately connect to water and sewer, as part of the project, as had been agreed to for the Eastfield and Pleasant Gardens sewer projects.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to waive the tap fees, but not cost recovery charges, for this project, contingent upon immediate connection by property owners as part of the extension project.

APPOINTMENT TO LOCAL EMERGENCY PLANNING COMMITTEE TRANSPORTATION SUBCOMMITTEE: The City Manager advised that Mr. Dean Wall, Chairman of the County Local Emergency Planning Committee Transportation Subcommittee, has asked for a City Council member to serve on this newly formed subcommittee.

He advised that the purpose of the subcommittee is to review transportation safety issues and to make recommendations to the County. They would like to address safety problems inside the City as well, mainly involving needed DOT improvements, and therefore involve the City Council.

Members of the subcommittee include Dean Wall, Jim Neal, Tim Benware, Old Fort Police Chief Tone Moore, Lonnie Watkins of DOT, the School Transportation Director, the PG Fire Chief, a Lieutenant with DMV and Sergeant Johnson of the Highway Patrol.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to appoint Councilman Cuthbertson to serve as the City Representative of this Committee.

DISCUSSION - GLENWOOD SEWER: The City Manager advised that the Glenwood School System is apparently proceeding with making repairs to the Glenwood sewer line that failed the mandrel test last month.

Glenwood Baptist Church remains interested in hooking on to sewer.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to allow Glenwood Baptist Church to connect to this sewer line. The Church must pay for cost recovery charges, install or pay for a meter on their private well and be informed that at this time McDowell County Schools is still responsible for maintenance of the sewer line, not the City of Marion. Tap fees will be waived for the Church tap if City crews do not have to physically make the connection.

REQUEST – SURPLUS PROPERTY: The City Manager advised that there are still a few guns left at the Police Department listed as surplus property.

City Council voted previously to allow officers and/or citizens to purchase the guns allowing one per person.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to sell these guns, even to persons who had already purchased one.

ABC REVENUES:

The City Manager advised that ABC Board Chairman Robert Teeter had relayed information concerning a proposal by the State House to fund the Division of Alcohol Law Enforcement Budget through local ABC revenues. Such a change would cost the City around $8,100 per year.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to authorize the City Manager to send letters to State Legislators, opposing this proposal.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Cuthbertson advised that a no parking sign at the intersection of Claremont and Morgan Street is on the ground.

Councilman Cuthbertson also advised that the Rocky Pass Church is interested in connecting to the City's Water Supply. Councilman Little stated that this matter could be examined, but that he would not support sending City crews outside the City to complete a water extension, when there are many pending projects inside the City.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into closed session.

OPEN SESSION: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to go back into Open Session. Mayor Clark announced that no action was taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 20, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson. Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Police Chief; Jim Neal, Fire Chief; Mike Conley, News Reporter, The McDowell News and Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Robert Dunn, 114 South Sterling Street, Morganton, NC; John Creegan, Asheville, N.C.; Gary Clardy, 3041 Hwy. 70E, Burns, TN 37029; Tom & Kay Clyburn, 55 Crescent Drive, Marion, N.C.; Kevin Urouhart, Charlotte, N.C.; Margaret Anderson 10 Fern Avenue, Marion, N.C.; Herman Hollifield, 220 Amelia Drive, Marion, N.C.; Sherman Davis 7475 Hwy 221 South Marion, N.C.; Steve Sawyer, 109 Main Street, Old Fort, N.C.; Buster Arrowhead, 50 Thomas Acres, Marion, N.C.; Jeff Seagle, 75 1st Street Marion, N.C.; Mr. & Mrs. Pete Gibbs, Marion, N.C.; Ronnie Burgin, Marion, N.C.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson. Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes – August 6, 2002

CITIZEN OF THE MONTH SELECTED BY COUNCILMAN MIKE EDWARDS FOR AUGUST: Councilman Mike Edwards selected the Citizen of the month for August.

The following information was presented about August's Citizen of the Month:

DR. ARCHIE McINTOSH

Councilman Edwards advised that Dr. Archie was born in Old Fort in 1920 and grew up in Marion. He was married to Estelle from 1944 until her passing in 1995. They shared three sons and two daughters.

Dr. Archie is a member of the Missionary Alliance Church. He has been affiliated with the Civitan Club, the Gideons and with Lay Ministries.

Dr. Archie served as a Medical Officer in the Military in the late forties. He also served for over forty-six years with the McDowell Hospital, the former Marion General Hospital and the hospital utilized prior to Marion General.

Councilman Edwards advised that Dr. Archie is an accomplished writer and has many more credentials.

Mayor Clark, Council Members, and many friends and family members of Dr. Archie shared kind words about him. Dr. Archie was described as an honest, committed Christian Man with a lot of Class.

ZONING AMENDMENT – SIGN ORDINANCE: The City Manager advised that City Planner Suzy Davis had surveyed other cities to determine how sign heights are treated on or near Interstate. The results showed that about half of the surveyed jurisdictions made allowances for taller signs for properties on or near the interstate, although most set up an Interstate Overlay, that applied to properties within a certain number of feet of the Interstate.

A discussion followed.

Councilman Martin made a motion that Mr. Dunn's request be approved.

Councilman Little stated he still had concerns about allowing signs along the Interstate that are 60 feet tall or higher. He also noted that surveys of other jurisdictions should include cities and counties in the immediate area.

Councilman Edwards also expressed concern about the request and allowing taller signs along the Interstate than in the rest of the City.

Mayor Clark inquired to Mr. Dunn as to the property owner's timetable. Mr. Dunn noted that no firm timetable had been set, but that the allowance of a sign as requested was one of the conditions of the purchase of the land and the development of the property.

Councilman Owenby and Councilman Edwards suggested alternatives to the zoning amendment presented, including options for allowing taller signs as a special exception, or with additional conditions. The City Manager noted that the special exception criteria found in the Zoning Ordinance might be difficult to apply to signs, since they were more use oriented.

A discussion followed.

Councilman Martin withdrew his motion.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to seek further clarification of surrounding jurisdictions on various sign heights adjacent to Interstates.

REQUEST FOR CONSTRUCTION PERMIT DURING NIGHT HOURS-MARION CITY SQUARE: The City Manager advised that the Building Inspector for the City of Marion had issued a temporary permit to the contractor completing roof repairs to Marion City Square, as authorized by the City's Noise Ordinance. The contractor has been working on the Bilo's end of the shopping center for the past several weeks.

Councilman Owenby stated that, since he worked at Bi Lo's, he would not participate in this issue if Council felt it was a conflict of interest. Council Members noted that the request was coming from Marion City Square, not Bi Lo's, and that Councilman Owenby had no financial interest in this matter, so therefore he should be allowed to participate in the discussion.

Noise complaints escalated from various citizens living nearby. Therefore, the City Manager instructed the Building Inspector to not issue any further permits for working at night.

Mr. Gary Clardy, Construction Manager, with Stiles Williams Construction Company appeared before Council.

Mr. Clardy advised that due to OSHA Regulations, danger to customers, and several other issues, it is necessary for them to perform the work done on the roof during night hours when the businesses are closed.

Mr. Clardy presented Council with letters from tenants and the owners of the Marion City Square requesting that they be allowed to pursue this work at night.

Tenants include, the McDowell Hospital, Nationwide Insurance, Western and Southern Life, Vision Financial, Radio Shack, American General, Man Power, State Farm, Verizon, Dollar General, Domino's Pizza, Dragon's Lair, Charter, Bilo's and the Subway.

A discussion followed.

Councilman Little asked if it was not the property owner's responsibility to accommodate its tenants.

A lengthy discussion followed.

Several citizens were present opposing the re-issuance of this permit. Ms. Margaret Anderson advised that she keeps her grandchildren who are school age and cannot sleep due to this noise. She does not wish the City to allow this construction at night any further.

Several other citizens were also present and advised that the noise does not bother them, but that it has bothered some of the neighbors.

Councilman Edwards stated he had heard from several people in the surrounding neighborhood, who do not want the nighttime work to continue, including a doctor who has had to see patients on two hours sleep.

Councilman Owenby suggested that some allowances be given to the contractor to allow the work to continue, since businesses would be affected.

Councilman Little called for the question.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to deny this request. Mayor Clark did suggest that the contractor contact the neighbors and try to work out a compromise, which could then be brought back to Council for consideration.

APPEAL OF CIVIL CITATION – BARKING DOG: Mr. Jeff Seagle of First Street in East Marion appeared before Council appealing a civil citation he had received for a barking dog. The City Manager noted that Mr. Seagle had received a verbal warning on August 7 from the Ordinance Enforcement Officer, and had received a $50 citation early the next morning from Officer Watts. Both visits to Mr. Seagle's residence were in response to complaints from neighbors.

Mr. Seagle advised that he was not given sufficient time to comply with the warning he received and that within fourteen hours (14) he was issued a citation.

Mr. Seagle has owned dogs for many years. He had been given a new dog with was the problem. He has removed this dog from his property.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to waive the $50 penalty for this citation.

WRECKER ROTATION POLICY: The City Manager advised that the policy on wrecker rotation has generated quite a bit of controversy since it was determined that wrecker companies outside the City Limits were not eligible to be on the list, unless they had a storage lot for towed cars inside the City.

The policy is approximately twenty years old.

A discussion followed.

Several wrecker drivers and companies from outside the City were represented and asked Council to allow them to stay on the wrecker rotation. Several asked if the City wanted junked cars brought inside the City.

Mayor Clark stated that the City does not want junked cars in the City but is instead trying to remove them from the City.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to revise the City's Wrecker Rotation Policy Section III. B to read as follows:

Provide for safe storage of vehicles inside McDowell County and secure contents to prevent further damage by weather, vandals, or other elements.

Wrecker company owners present for this meeting were advised by the City Manager that they would be placed back on the wrecker rotation list immediately.

REVIEW PRIORITY LIST OF DILAPIDATED HOUSES: The City Manager gave a brief update on dilapidated houses, and presented a list of 13 houses to guide staff efforts to condemn and tear down housing in the City, and to present to the County for grant purposes. The list had been compiled during a survey of the City by the City Manager, Fire Chief and Building Inspector.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following prioritized list to be forwarded to the County for inclusion in their CDBG Scattered Site Housing Grant for next year.

1. 45 Circle Street, Clinchfield – House is mostly burned and is generating many complaints.
2. 115 Wilhemenia Street – House is in very poor condition and is completely covered by Kudzu.
3. 830 Ridge Street, East Marion – House if falling in and one wall may be a hazard to an adjoining house. Due to space constraints, house would have to be taken down by hand.
4. 201 Morehead road – House is open, in poor condition, and is serving a s a hangout for drug activity.
5. 326 Tate Street – House is in visible location in poor condition.
6. Corner of 4th and Morehead – House is off the street some distance, but is deteriorated.
7. 207 Grayson Street – House is off the street some distance. but is deteriorated.
8. Mitchell Street – House if boarded up, but may not be habitable.
9. High Street - House is boarded up, has been occupied in past few years.
10. 238 Park Avenue – House is boarded up, partially burned and in a deteriorated state.
11. 222 Park Avenue – House if open, and in a deteriorated state.
12. 228 Park Avenue – House has been occupied in recent past.
13. 234 Park Avenue – House is boarded up, and may still be habitable.

CONSIDER PURCHASE OF REAL PROPERTY: The City Manager advised that Dr. Christopher Nevant has agreed to sell his property, located adjacent to the Marion Police Department, for $75,000.00. The property can be worked into the Police Department expansion plans and be used as parking for the Police Department and for the entire South Main Street area as well.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to purchase property on South Main Street adjacent to the Marion Police Department from Dr. Christopher Nevant for a price of $75,000.00 and to allow the Police Department architects to include the property in their plans for the expansion of the Police Department facility.

REQUEST FOR NO PARKING – CARROLL STREET: The City Manager advised that a request has been received to designate one or more sides of Carroll Street. located off of State Street, as no parking.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to refer this request to the Street Committee.

GLENWOOD SEWER: The City Manager presented Council with a letter from Mr. Danny Bridges, of McGill Associates, advising that the Glenwood sewer line passed the mandrel test, showing that no sags exist in the line. An inspection was held with City staff, School maintenance personnel, and McGill on August 13 and showed that requested repairs to the line had been made, except for a few minor manhole issues.

The City Manager presented Council with an agreement revised by Mayor Pro Tem Steve Little. The agreement would be between the School Board and City and set conditions for the City acceptance of the sewer line. It was the consensus of Council to send the school board members a copy of the following agreement:

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

AGREEMENT REGARDING
GLENWOOD ELEMENTARY SCHOOL SEWER LINE

The City of Marion, (referred to below sometimes as "City") and the McDowell County Board of Education, (referred to below sometimes as "School Board") enter into this agreement this the _____ day of _____, 2002 regarding ownership and maintenance of the six-inch gravity sewer line and force main located between Glenwood Elementary School and the Performance Rail Pump Station (referred to below sometimes as "Glenwood school sewer line").

RECITALS:

1. McDowell County Board of Education in 2000 recognized a need to provide sewage service to Glenwood Elementary School, several miles south of the Marion city limits, in the Glenwood section of McDowell County, North Carolina. The Glenwood School was experiencing waste disposal problems that could not be resolved adequately by ground absorption disposal systems. The School Board obtained the consent from the City for the City to accept the waste from Glenwood Elementary School if the School Board would comply with certain conditions, including without limitation paying all the costs of engineering and construction of a gravity sewer line that would connect the school with the sewer pump station referred to as the Performance Rail Pump Station. The City also agreed in theory to accept the ownership and maintenance of the Glenwood school sewer line if certain conditions were met.

2. Even though all the conditions were not met, a six inch gravity sewer line was constructed to Glenwood Elementary School by the School Board. A six-inch line is below the minimum design criteria for a public gravity sewer line, and is therefore classified as a substandard line. The City has received a letter from the Division of Water Quality of the North Carolina Department of Environment and Natural Resources authorizing the City to accept ownership and maintenance of the line, but the City has serious concerns about problems that could be caused by the Glenwood school sewer line being smaller than the eight-inch size that is required by law for a public gravity sewer line.

3. The City has already begun accepting and treating the waste carried by the Glenwood school sewer line. Certain modifications to the installed sewer line have been made to the satisfaction of the City. The parties now desire to come to an agreement to allow the City to accept ownership and maintenance of the subject Glenwood school sewer line. This document is designed for the purpose of putting the ownership and maintenance agreement in written form.

NOW THEREFORE, in consideration of the benefits recited herein, the City and the School Board agree as follows:

1. As of the _____ day of _____, 2002, the City will accept ownership and maintenance of the Glenwood school sewer line and force main located along Old U.S. Highway 221, from the Performance Rail Pump Station to the property line of Glenwood Elementary School The acceptance of ownership and maintenance by the City is made strictly conditional and dependent upon each and every one of the remaining provisions set out below being followed.

2. The School Board agrees to pay the entire costs, including labor, materials and engineering fees, for any and all repairs, corrections, modifications and all non-routine maintenance to the Glenwood sewer line. The City shall perform routine inspections and minor routine maintenance of the line at its own cost. For the purposes of this agreement, all "non-routine repairs, corrections, modifications and all non-routine maintenance" shall include all repairs required to be made to the Glenwood School sewer line and force main, as determined by the City Public Works Director, by the City's engineer, or by other governmental regulatory officials that relate to the function and purpose of the line and shall also include all work necessary to unclog the line, clean the line, or to inspect the line based on an observed or reported problem.

3. The School Board agrees promptly to reimburse the City for all fines levied by any governmental agency as a result of an overflow on the Glenwood school sewer line, or as a result of any other violation related to said line, particularly since the line is smaller than the City had initially agree to accept..

4. The School Board agrees to pay for all costs, including without limitation labor, materials and engineering, associated with increasing the size of the Glenwood School sewer line from six inches in diameter to eight inches in diameter at such time as such increase in size may be required due to the line's capacity, or when the line needs to be extended, as determined by the City. The City agrees that notice of not less than one (1) year shall be given to the School Board prior to any such upgrade or extension of the line.

5. The City agrees to provide sewer taps to existing structures that can connect to the Glenwood School Sewer line, or through the Glenwood Elementary School, if authorized by the School Board, at the current tap fee and cost recovery charge schedule in effect at the time such requests for taps are made. For connections to the subject sewer line by customers who do not have city water connections, a meter must be installed to measure well water consumption for purposes of calculating the monthly sewer bill to the City. The meter must be installed in accord with City policies and regulations. It is acknowledged, however, that the shallow depth of the subject sewer line might prevent gravity connections from the gravity connection to the subject sewer line. The City makes no commitment to provide future sewer connections to the Glenwood school sewer line to any currently underdeveloped property.

6. The City will not maintain any portion of the Glenwood school sewer line located on School Board property or any pump station located on School Board property.

IN WITNESS WHEREOF, this agreement is signed by the representatives of the City of Marion and the McDowell County Board of Education, after proper and legal authorization has been granted in open public meetings as set forth in the minutes of each entity.

THE CITY OF MARION, NORTH CAROLINA

BY: _____
A. Everette Clark, Mayor

ATTEST: _____ (Official Seal)
J. Robert Boyette, City Manager/Clerk

MCDOWELL COUNTY BOARD OF EDUCATION

BY: _____
Chairman

ATTEST: (Official Seal)

_____
Secretary/Clerk to the School Board

The City Manager will present the agreement to the School Superintendent for review by the School Board and bring the agreement back to Council at a future meeting with School Board comments and/or approval.

AUTHORIZATION OF LAW PUBLICATIONS TO PROVIDE CRIME PREVENTION MATERIALS TO POLICE DEPARTMENT: Chief Benware was present for this meeting and advised that a company called L.A.W. Publications is willing to provide literature on crime prevention, including coloring books for kids and other publications, at no cost. In exchange, they wish to solicit businesses for ads in a community directory. The company has worked with other municipalities and asks for a letter of introduction, stating that they are a reputable

company and will provide materials for the Police Department. This Company has been endorsed by the NC Chiefs of Police Association.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to accept this publication from L.A.W. Publications and to allow them to solicit businesses for advertisements.

DISCUSSION OF CITY HALL NOTE BURNING : The City Manager noted that Debi Sherlin had prepared the following proposed itinerary for the City Hall Note Burning Ceremony:

City Hall Note Burning Ceremony

City of Marion
Administrative Office's
194 North Main Street

Tuesday, September 17, 2002
7.00 P.M.

I. **Welcome by Mayor A. Everette Clark**
II. Recognition of City Council, former Councilmen and City Officials
III. Background by Mayor A. Everette Clark
  (A) A Red Letter Day in the History of the City of Marion – 1844
  (B) Main Street Fire
  (C) Marion's First City Hall
  (D) City of Marion – Progresses
  (E) New Central Fire Station
  (F) Purchased South Main Street Property
  (G) Purchased North Main Street Property (New City Hall)

IV. Note Burning Ceremony
  (A) Mayor and City Councilmen

Invitations will go out to Councilmen serving at the time City Hall was purchased (Mr. Stronach, Mr. Ayers and Mr. Cross) and to J. Earl Daniels.

Please advise any other persons Council wishes to recognize!

A discussion followed.

It was decided to hold the Note Burning Ceremony on October 8, 2002 at 7:00 P.M., since that date will be after the final payment on City Hall is made no September 21, 2002. Council agreed that former Mayors and Councilmen and the former City Manager would be invited to attend.

REQUEST TO REMOVE TREE: The City Manager advised that Mr. Orea Goode has requested the City to remove a tree off of the alleyway between West Henderson Loop and Hudgins Street.

Upon a motion by Councilman Martin, seconded by Councilman Little, council voted unanimously to refer this request to the Street Committee.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager noted that McDowell County had adopted their annual budget the week before, and did not include the recycling contribution to the City. This contribution had been included in the City's 2002-03 budget in the amount of $20,000. The City Manager noted that several surrounding towns, including Fletcher, Brevard, Spruce Pine, and Black Mountain, had eliminated their curbside recycling programs, and that he would do the same if desired by Council. The City Manager stated that the County Manager had advised that it is the intention of the County to restore the recycling contribution for Fiscal Year 2003-04. It was the consensus of the Mayor and Council to keep all services going for the time being, to see how the State budget affected the City's revenue base, and to try to weather the storm as much as possible this Fiscal Year, to avoid service disruptions to citizens.

The City Manager also stated that despite the hiring freeze he had imposed as part of some emergency budget measures that he would propose to fill a vacancy for the Ordinance Enforcement Officer position in the Police Department, since the elimination of this position would hurt the City's ability to write parking tickets, address animal complaints, and to respond to violations of Nuisance Ordinances, such as tall weeds and grass and junked vehicles. The Mayor and Council agreed by consensus that the position should be filled.

COUNCILMAN COMMENTS:

Councilman Edwards advised that a manhole cover has been removed on State Street.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into closed session.

OPEN SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin , Council voted unanimously to go back into Open Session. Mayor Clark announced that no action had been taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 3, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Tim Benware, Police Chief; Major Johnny Patton, Police Department; Suzy Davis, City Planner; Mike Conley, News Reporter, The McDowell News and Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Robert Dunn, 114 South Sterling Street, Morganton, NC; Judith Fraiser, 89 Walnut Street, Waynesville, NC; Roger Estes, Tommy Wilson, Aaron Adams, Claudia Severson, City Employees; John Creegan, Asheville, N.C.; Gary Clardy, 3041 Hwy. 70E, Burns, TN 37029; Carl Walker, 342 East Oak Street, Marion, NC; James Long, 318 East Oak Street, Marion, NC; Ronya Banks 377 Woods Road, Mars Hill, NC; Walt Bagwell, 250 Forest Road, Marion, NC; Jackie Duplas 500 North Main Street, Marion, NC; Diana Hensley 25 Clark Street Marion, NC; Boyd Hoyle, Boy Scout Troop # 805; Shane Poteat, Billy Hoyle, Graylin Martin, Kyle Bailey, Zac Carrigan, Darren Bailey, Boy Scouts; Kevin Crouhart, Charlotte, NC.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - August 20, 2002

B. Budget Presentation - Approved a budget ordinance amendment clarification for Fiscal year 2001-2002 Budget Amendment #8 as follows:

CITY OF MARION, NORTH CAROLINA
2001 – 2002 BUDGET ORDINANCE
(Eighth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2001-02 as adopted by the Marion City Council on the 19th day of June, 2001 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-399-0000, Surplus Appropriated, is decreased from $375,000 to $200,000.

b. General Fund Revenues, Contribution from Water and sewer Fund, Account Number 10-397-000, Transfer to Water and Sewer Fund, is increased from $0 to $175,000.

WATER AND SEWER FUND

a. Water and Sewer Fund Expenditures, Account Number 30-660-9700, Transfer to General Fund, is increased from $0 to $175,000.

b. Water and Sewer Fund Revenues, Fund Balance Appropriated, Account Number 30-299-000, Transfer to General Fund, is increased from $555,255 to $730,255.

Section 2. Copies of this budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 18th day of June, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

The City auditors had requested Council to confirm that the intent of the budget ordinance amendment listed above was to pay back $175,000 that was transferred from the General Fund to the Water and Sewer Fund during Fiscal Year 2001-02.

BOY SCOUT TROOP: Mayor Clark recognized and welcomed Mr. Boyd Hoyle, Assistant Scout Master and members of Boy Scout Troop 805 of the Pleasant Gardens Community.

RECOGNITION OF NATIONAL NIGHT OUT SPONSORS: Mayor Clark again recognized and thanked sponsors of this Year's National Night Out. The following persons were instrumental in making this year's event a success:

Jim Cook's Chevrolet – Steve Dirhold
Countryside BBQ – Lynetta Byrd
Golden Fried Chicken – Todd
Frisbee's – Bob Frisbee
Ingles - Robert Puett
Bantam Chef – Tony Panou
Pepsi – Carl Beatty
National Guard Armory – James Davis
Walmart – Rob Cobb
Skywatch Satellite – Jim Holtzclaw
City Tire – Randy Parker
Spencer's Hardware – Nancy Spencer
Marion Tire and Muffler – Max Holland
Sonny's – Sonny Carter
King Cole Auto Detail – John Cole
Dreamer's Café – Daren Stevens
Mike's Hitch Shop – Mike Cline
Marion Travel Plaza – Andrew Wilmout
McDonalds – John Karas
CJ'S – Cliff Barnes
Woodmen Lodge – Hank Taylor
Spring Creek RV – Craig Morgan
Pizza Place – Lester Linton
Women of the Moose – Carolyn Reel
Marion Auto Sales – Howard Patton

RECOGNITION OF HARRY PHILLIPS RETIREMENT: Mayor Clark, Council Members, the City Manager, Co-workers, Friends and Family Members all joined together to pay tribute to the retirement of Mr. Harry Phillips. Refreshments were served, and Mayor Clark presented Harry with a thirty year pin and a plaque that read as follows:

City of Marion, North Carolina
Presented To
HARRY PHILLIPS
For
Over Thirty Years of Loyal and Dedicated

Service to the Citizens of Marion
and the Public Works Department
March 2, 1972
to
August 1, 2002
By
Marion City Council
Mayor A. Everette Clark
September 3, 2002

COMPLAINT – SEWER ODOR – MCDOWELL STREET: Mr. Jim Long and Mr. Carl Walker appeared before Council regarding the sewer odor near their residences on Oak Street.

The Director of Public Works Glen Sherlin advised that humidity and atmospheric pressures play a large role in this odor problem.

The City Manager noted that Wastewater Treatment Department staff were aware of the problem and were working to set up a regular cleaning schedule for the line and to feed chemicals into the line to mask the odor.

A discussion followed.

City Employees will monitor this line more closely and determine if any additional actions need to be taken.

PUBLIC APPEARANCE – MR. JOHN EPPLEY – BOW SHOOTING IN CITY: The City Manager advised that Mr. John Eppley wanted to appear before Council requesting permission to shoot bows in a residential area of the City. The City Manager noted that bow shooting in the City was not permitted under the City Code.

Mr. Eppley was not present for this meeting. No action was taken.

ZONING AMENDMENT – SIGN HEIGHT: City Planner Suzy Davis presented Council with a survey of from other nearby cities and counties to determine how sign height is treated on or near interstate highways. She also discussed options for additional conditions to be placed on the zoning amendment to allow taller signs on or near the interstate, including a minimum lot size, a maximum size for the sign, a radius from an interchange inside which these regulations would apply, separation requirements from other signs taller than 30 feet, restricting signs to restaurants, gas stations, and hotels/motels, and restricting the signs to situations where DOT logo signs would not be available for businesses to use.

A discussion followed.

Councilman Edwards and Councilman Little stated their opposition to allowing signs taller than 30 feet, unless the zoning amendment allowed signs up to 50 feet above the grade of the adjacent interstate only in situations where a business could provide proof that the North Carolina Department of Transportation could not provide space on a DOT highway business sign. Councilman Edwards stated that allowing taller signs would open the door to further concessions and would harm the aesthetic quality of Marion, that Council had worked hard to improve.

A motion was made by Councilman Edwards, seconded by Councilman Little to table this item.

The vote to table this item was as follows:

Councilmen Edwards and Little	Yes

Councilmen Cuthbertson, Martin and Owenby No

A lengthy discussion followed. Mayor Clark went through the zoning amendment in detail, and obtained Council's consensus on each condition listed. Councilmen Cuthbertson, Martin and Owenby stated that they felt the request should be approved, without the provision involving the applicant providing proof that NCDOT could not provide space on a DOT highway business sign. It was suggested that a condition be added that taller signs would only be allowed in C-2 zoning districts.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows;

Section 2. Appendix A, Article VII, Section 706.11 (1) is amended to allow an increase in the maximum sign height of certain signs near Interstate 40, and to read as follows:

(E) Free-standing on-premise signs attached to the ground may exceed the maximum sign height provided the following conditions are met:
1. The property in which the sign is located shall be zoned C-2 and shall be no less than 2 acres in size.
2. The sign shall be within a one thousand (1000) foot radius of the center point of the I-40 interchange.
3. The sign height shall be no greater than fifty (50) feet above the street grade of the adjacent interstate.
4. The area of the sign shall not exceed eight hundred and fifty (850) square feet.
5. The sign shall be used only for advertising restaurants, lodging, and/or gas stations.
6. The sign shall not be located within four hundred (400) feet of another sign that is greater than 30 feet in height.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 3rd day of September 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-09-03-1

PUBLIC APPEARANCE – MARION CITY SQUARE CONSTRUCTION WORKERS:
Several owners and managers of businesses in Marion City Square appeared before Council and expressed their concern about having to close their businesses for several days, to accommodate the roof work on the Shopping Center, given that the City Code only permitted construction 7:00 a.m. to 6:00 p.m. Monday through Friday.

The City Manager noted that Council had directed the contractor to contact surrounding neighbors and to bring back a compromise proposal. The City Manager stated that, to his knowledge, this had not been done.

The project contractor, Gary Clardy, stated he had talked to some neighbors, but had not been able to contact all the concerned residents in the area.

A discussion followed.

Mayor Clark noted that Council had been put in a tough position by having to weigh the concerns of businesses who wish to remain open versus the concerns of neighbors who cannot sleep at night.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to authorize the City Manager and Building Inspector to work out a compromise to the construction hours, as long as quiet hours were guaranteed each night between 12:00 Midnight and 7:00 a.m.

DISCUSSION OF POLICE CHIEF SELECTION PROCESS: The City Manager advised that Police Chief Tim Benware has submitted his resignation, effective September 27, and has accepted a position as Police Chief with the City of Dunn.

The City Manager presented a proposed job ad and selection process overview.

Councilman Edwards suggested that the supervisory experience requirement be made "preferred" rather than "required" to potentially attract more local applicants.

Council agreed by consensus to the job notice and selection process, as follows.

Police Chief – Marion. Pop. 5,100. The City of Marion is seeking qualified applicants for the position of Police Chief. Position performs responsible managerial, administrative and supervisory work in directing the activities of the City's Police Department. Department consists of 20 full time sworn, 5 full time civilian and 10 reserve personnel. Responsible for planning, organizing and directing a variety of department activities, maintaining effective working relationships with other law enforcement agencies, other City departments and the public. Requires a thorough knowledge of principles and practices of law enforcement administration, community policing, crime prevention and use of technology in a law enforcement setting. Must have the ability to communicate effectively in writing and orally, to write grant applications, to develop and manage departmental budget and to deal tactfully and firmly with the public. Department head level position reporting to the City Manager. Position requires a degree in police science, criminal justice or other related field. A minimum of 5 years experience in a supervisory capacity or 3 years experience as a police chief is preferred. All applicants must possess a valid North Carolina Driver's License and North Carolina law enforcement certification. Marion is a growing City located on I-40 35 miles east of Asheville. Salary will be commensurate with qualification. Send resume with minimum acceptable salary requirements to: City of Marion, Attn: Bob Boyette, City Manager, P.O. Drawer 700, Marion, NC 28752, no later than 5:00 p.m. on November 1, 2002. For further information, please call the City Manager at (828)652-3551. The City of Marion is an Equal Opportunity Employer.

The City Manager stated that ads should begin running in mid-September.

SET MEETING SCHEDULE FOR NOVEMBER AND DECEMBER: Council agreed to set the Regular City Council meetings for November and December are as follows: November 5th & 19th and December 10th

ADOPTION OF RESOLUTION OF INTENT TO ANNEX – HIGHWAY 226 SOUTH AREA: The City Manager advised that, as discussed in the January Council Planning Session, a smaller version of the Highway 226 South Annexation Area was being presented, focusing on properties that front on 226 South between the existing City Limits on Rutherford Road and Interstate 40 or which are already served by City water and sewer. This change will reduce the City's water and sewer capital costs from $234,000 to just a few thousand dollars.

The Resolution of Intent is the first step in the annexation process. Approval of the annexation report and plan of services for the area will follow on September 17.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNG at a point on the current Marion Corporate Limits, said point being in the center of the Southern Railroad right-of-way; thence following the center line of said railroad right-of-way in a southeasterly direction approximately 1,786.88 feet to a point, said point being on the northern boundary of Lot 7430 in Block 50 of McDowell County Tax Map 1711.04; thence following the northern boundary of said Lot 7430 in a northeasterly direction approximately 280 feet to a point, said point being the northern most corner of said Lot 7430; thence following the northeastern boundary of said Lot 7430 in a southeasterly direction approximately 859.14 feet to a point, said point being at a corner of said lot 7430; thence following the eastern boundary of said lot 7430 in a southerly direction approximately 301.08 feet to a point, said point being at a corner of said Lot 7430, said point also being in the center of the right-of-way of Southern Railroad; thence following the center of said railroad right-of-way in a southeasterly direction approximately 522.39 feet to a point in the center of SR 1737 (Jacktown Road); thence following in a straight line in a southwesterly direction approximately 100.00 feet to a point, said point being at the intersection of the southern boundary of said railroad right-of-way and the eastern boundary of S.R. 1737 (Jacktown Road), said point also being the northern most corner of Lot 8418 in Block 69 on McDowell County Tax Map 1710.02; thence following the northern boundary of said lot 8418 and lot 6643 in Block 69 on McDowell County Tax 1710.02 in a westerly direction approximately 235 feet to a point, said point being the northwest corner of said lot 6643, said line also being the southern boundary of the right-of-way of SR 1737; thence following the western boundary of said lot 6643 and the southern boundary of lots 7514, 8602 and 8418, all being in Block 69 on McDowell County Tax Map 1710.02 approximately 635 feet in a southeasterly direction to a point, said point being the southeastern corner of said lot 8418; thence following the eastern boundary of said lot 8418 in a northerly direction approximately 350 feet to a point, said point being at the northeast corner of said Lot 8418, said point also being on the southern margin of said railroad right-of-way; thence following in a straight line in a northeasterly direction approximately 36.00 feet to a point in the center of said railroad right-of-way, said point also being the northern most corner of Lot 3116 in Block 79 on McDowell County Tax Map 1710.02; thence following the northeastern property boundary of Lot 3116, said line also being the center of the said railroad right-of-way in a southeasterly direction approximately 884.00 feet to a point, said point being at the eastern most corner of said Lot 3116; thence following in a straight line in a southerly direction approximately 50.00 feet to a point on the southern margin of said railroad right-of-way, said point also being the northern most corner of Lot 7781 in Block 78 on McDowell County Tax Map 1710.02; thence following the north eastern boundary of said Lot 7781, said line also being the southern margin of said railroad right-of-way approximately 741.56 feet to a point, said point being at the intersection of the southern margin of said railroad right-of-way and the northern margin

of the right-of- way of N.C. 226, also said point being the eastern most corner of said Lot 7781; thence following the northern margin of the right-of-way of N.C. 226 in a easterly direction approximately 2200.00 feet to a point, said point being at the intersection of said right-of-way boundary and the northern boundary of Interstate 40; thence following the northern boundary of Interstate 40 in a southwesterly direction and crossing the right of way of N. C. 226 approximately 60.00 feet to a point, said point being at the intersection of the southern boundary of the right of way of N. C. 226 and the northern boundary of the right of way of Interstate 40; thence following the southern boundary of the right of way of N. C. 226 in a westerly direction approximately 718.40 feet to a point, said point being at the northern most corner of Lot 4839 in Block 97 on McDowell County Tax Map 1710.02, said point also being on the boundary of Terry Smith and Robbins Oil Company Satellite Annexation under Ordinance No. 0-97-11-18-1; thence following the northwestern boundary of said lot 4839 in a southwesterly direction approximately 285 feet to a point, said point being at the western most corner of said lot 4839, said point also being on the northeastern boundary of the right-of-way of SR 1742 (Scott Road); thence crossing said right-of-way in a straight line in a southwesterly direction approximately 38 feet to a point, said point being at the northern most corner of lot 0786 in Block 97 on McDowell County Tax Map 171.02 thence following the northeastern boundary of said lot 0786 and lots 0951in Block 97 on McDowell County Tax Map 1710.02, lot 9977 in Block 87 on McDowell County Tax Map 1710.02 and lots 8005 and 6261 in Block 88 on McDowell County Tax Map 1710.02 approximately 562 feet in a northwesterly direction to a point, said point being the northern most corner of said lot 6261; thence following the northwestern boundary of said lot 6261 approximately 146 feet in a southwesterly direction to a point, said point being the western most corner of said lot 6261, said point also being on the northeastern boundary of the right-of-way of the Southern Railway; thence crossing said railroad right-of-way in a straight line in a northwesterly direction approximately 235 feet to a point, said point being on the southwestern margin a said railroad right-of-way, said point also being the northern most corner of lot 4140 in Block 88 on McDowell County Tax Map 1710.02; thence following the northwestern boundary of said lot 4140 and lot 3949 in Block 87 on McDowell County Tax Map 1710.02 approximately 432 in a southwesterly direction to a point, said point being the southwestern corner of said lot 3949, said point also being in the centerline of Young's Fork Creek, thence following the center line of Young's Fork Creek in a northwesterly direction approximately 1,000.00 feet to a point at the eastern most corner of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02, said center line also forming the southern boundary of Lot 3949 in Block 87, Lot 0232 in Block 88 and Lot 7324 in Block 78 all on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2562 approximately 290.00 feet to a point on the northeastern boundary of Lot 1347 in Block 78 on McDowell County Tax Map 1710.02; thence following the boundary of said Lot 1347 first approximately 90.00 feet in a southeasterly direction then approximately 212.00 feet in a southeasterly direction then approximately 296.00 feet in a northwesterly direction then approximately 110.00 feet in a northeasterly direction to a point on the boundary of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02; thence following the eastern boundary of said Lot 2562 in a generally northerly direction approximately 294.00 feet to a point at the intersection of said property boundary and the southern margin of the right of way of N. C. 226, said point also being the northern most corner of said Lot 2562; thence following the southern margin of said right of way approximately 70.00 feet in a northwesterly direction to a point at the intersection of said right of way and the boundary of Lot 9820 in Block 68 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 9820 approximately 275.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of Old Highway 221 (Three Point Road); thence following the eastern boundary of said right of way approximately 320.00 feet in a southerly direction to a point; thence crossing said right of way in a westerly direction approximately 60.00 feet to a point at the intersection of said right of way and Lot 5572 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of said Lot 5572 first approximately 169.00 feet in a westerly direction and then approximately 243.00 feet in a

northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 5796 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of Lot 5796 first approximately 200.00 feet in a northwesterly direction then approximately 188.00 feet in a northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 2133 in Block 69 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2133 approximately 478.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of U.S. Highway 221; thence crossing said right of way in a straight line approximately 100.00 feet in a westerly direction to a point at the intersection of said right of way and Lot 8321 in Block 58 on McDowell County Tax Map 1710.02; thence following the eastern margin of said right of way in a northerly direction approximately 1,154.00 feet to a point at the intersection of said right of way and the southern boundary of the right of way of U.S. Highway 221 Bypass; then crossing the right of way of said U.S. Highway 221 Bypass in a straight line in a northerly direction approximately 250.00 feet to a point at the intersection of the northern boundary of said right of way and the southern boundary of Lot 1025 in Block 50 on McDowell County Tax Map 1711.04; thence following the boundary of said Lot 1025 first approximately 49.00 feet in a southwesterly direction then approximately 437.00 feet in a northwesterly direction to a point, said point being at the western most corner of said Lot 1025, said point also being on the eastern boundary of the right of way of U.S. Highway 221 Bypass; thence following said right of way approximately 817.00 feet to a point on the current Marion Corporate Limits; thence following the Marion Corporate Limits in a generally northerly direction approximately 3,640.00 feet to the point of BEGINNING.

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on October 24, 2002, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A pubic hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on November 5, 2002, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the pubic informational meeting. The statement of financial impact contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 3rd day of September 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

R-02-09-03-I

ADOPTION OF RESOLUTION OF INTENT TO ANNEX – SUGAR HILL ROAD AREA: The City Manager advised that, as discussed in the January Council Planning Session, the Sugar Hill Road Annexation Area was being presented, focusing on properties that front on Sugar Hill Road between Rankin Drive and Shady Lane which will be served by the upcoming water and sewer extension to the area.

The Resolution of Intent is the first step in the annexation process. Approval of the annexation report and plan of services for the area will follow on September 17.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNING at a point in the current Marion Corporate Limits, said point being at the northern most corner of Lot 1757 in Block 19 on McDowell County Tax Map 1700.05; thence following the northeastern boundary of said Lot 1757 and Lots 2760, 3690 and 550 in Block 19 on McDowell County Tax Map 1700.05 in a southeasterly direction approximately 623.9 feet to a point, said point being at the eastern most corner of said Lot 5500; said point also being the northern most corner of Lot 5246 in Block 19 on McDowell County Tax Map 1700.05; thence following the western and southern boundaries of said Lot 5246 first in a southwesterly direction and then a southeasterly direction approximately 618.00 feet to a point, said point being at the southern most corner of said Lot 5246, said point also being on the western boundary of the right-of-way of Sugar Hill Road, said point also being on the northern boundary of the right-of-way of SR 1342; thence crossing the right-of-way of SR 1342 in a straight line in a southerly direction approximately 70 feet to a point, said point being at the northeastern corner of Lot 4844 in Block 18 on McDowell County Tax Map 1700.05, said point also being on the western boundary of the right-of-way of Sugar Hill Road; thence following the boundary of said Lot 4844 in a generally westerly and southerly direction approximately 793.1 feet to a point, said point being at the intersection of the southern boundary of the said Lot 4844 and the northwestern boundary of Lot 4649 in Block 18 on McDowell County Tax Map 1700.05; thence following the western boundary of said Lot 4649 in a southerly direction approximately 105 feet to a point, said point being at the intersection of the southwestern boundary of said Lot 4649 and the northern boundary of the right-of-way of an unnamed road; thence crossing said unnamed right-of-way in a straight line in a southwesterly direction approximately 32 feet to a point on the southern boundary of said right-of-way, said point also being on the northern boundary of Lot 2564 in Block 18 on McDowell County Tax Map 1700.05; thence following the northern boundary of said Lot 2453 in a westerly direction approximately 240 feet to a point, said point being at the northwestern corner of said Lot 2564; thence following the western boundary and the southern boundary of said Lot 2564 in a southerly and then an easterly direction approximately 399 feet to a point, said point being at the intersection of the

southern boundary of said Lot 2564 and the northwestern corner of Lot 3316 in Block 18 on McDowell County Tax Map 1700.05; thence following the western boundary of said Lot 3316 in a southerly direction approximately 100 feet to a point, said point being at the intersection of the western most corner of said Lot 3316 and the right-of-way of an unnamed road; thence crossing the right-of-way of said unnamed road in a straight line in a southwesterly direction approximately 30 feet to a point, said point being at the intersection of the northern most corner of Lot 2213 in Block 18 on McDowell County Tax Map 1700.05 and the southern boundary of the said right-of-way; thence following the northwestern boundary of said Lot 2213 and the northwestern and southwestern boundaries of Lot 1176 in Block 18 on McDowell County Tax Map 1700.05 approximately 506 feet in a southwesterly and then southeasterly direction to a point, said point being at the intersection of the southern most corner of said Lot 1176 and the western boundary of the right-of-way of Sugar Hill Road; thence crossing said right-of-way in an easterly direction in a straight line approximately 65 feet to a point at the intersection of the eastern boundary of the right-of-way of SR 1001 (Sugar Hill Road) and the southern boundary of the right-of-way of SR 1164 (Shady Lane); thence following the eastern boundary of the right-of-way of SR 1001 (Sugar Hill Road) in a southerly direction approximately 1161 feet to a point, said point being at the intersection of the eastern boundary of said right-of -way and the northern boundary of the right-of-way of SR 1169 (Steppe Street); thence following the northern boundary of the right- of-way of SR 1169 (Steppe Street) in an easterly direction approximately 632 feet to a point, said point being at the intersection of the northern boundary of said right-of-way and the southeaster corner of Lot 2361 in Block 17 on McDowell County Tax Map 1700.09; thence following the eastern boundary of said Lot 2361 and the eastern boundary of Lot 0375 in Block 17 on McDowell County Tax Map 1700.09 approximately 769 feet in a northerly direction to a point, said point being at the intersection of the northeastern corner of Lot 0375 and the western boundary of the right-of-way of SR 1164 (Shady Lane); thence crossing said right-of-way in a northerly direction approximately 132 feet in a straight line to a point, said point being at the intersection of the eastern boundary of said right-of-way and the western most corner of Lot 6884 in Block 17 on McDowell County Tax Map 1700.05, said point also being on the southern boundary of Lot 5101 in Block 18 on McDowell County Tax Map 1700.05; thence following the southern and eastern boundaries of said Lot 5101 approximately 67 feet in a easterly direction and then approximately 166 feet in a northerly direction to a point, said point being at the eastern most corner of said Lot 5101, said point also being on the southern boundary of Lot 6230 in Block 18 on McDowell County Tax Map 1770.05; thence following the southern and northern boundaries of said Lot 6230, first approximately 185 feet in a easterly direction and then approximately 340 feet in a westerly direction to a point, said point being at the intersection of the northern most corner of said Lot 6230 and the eastern boundary of the right-of-way of SR 1001 (Sugar Hill Road); thence following the eastern boundary of said right-of-way in a northerly direction approximately 167 feet to a point, said point being at the intersection of the eastern boundary of said right-of-way and the southwestern corner of Lot 6498 in Block 18 on McDowell County Tax Map 1700.05; thence following the southern boundary of said Lot 6498 and the southern and eastern boundaries of Lot 7597 and the eastern boundary of Lot 9873 in Block 18 on McDowell County Tax Map 1700.05, first approximately 330 feet in an easterly direction, then approximately 520 feet in a northerly direction to a point, said point being at the eastern most corner of said Lot 9873; thence following the northeastern and the northwestern boundaries of said Lot 9873, first approximately 116 feet in northwesterly direction, then approximately 110 feet in a southwesterly direction to a point, said point being at the western most corner of Lot 9873, said point also being the eastern most corner of Lot 8813 in Block 18 on McDowell County Tax Map 1700.05; thence following the south eastern and the southwestern boundaries of said Lot 8813, first approximately 60 feet in a southwesterly direction, then approximately 140 feet in a northwesterly direction to a point, said point being at the intersection of the western most corner of said Lot 8813 and the eastern boundary of the right-of-way of SR 1183 (Stroud Street); thence crossing said right-of-way in a northerly direction in a straight line approximately 125 feet to a point, said point being at the intersection of the western boundary of said right-of-way and the

eastern most corner of Lot 7924 in Block 18 on McDowell County Tax Map 1700.05; thence following the western boundary of said right-of-way in a northeasterly direction approximately 448 feet to a point, said point being at the intersection of the western boundary of said right-of-way and the southern most corner of Lot 1321 in Block 29 on McDowell County Tax Map 1700.05; thence following the southwestern boundary of said Lot 1321 and Lot 0359 in Block 29 on McDowell County Tax Map 1700.05 and Lot 9476 in Block 19 on McDowell County Tax Map 1700.05 in a northwesterly direction approximately 328.03 to a point, said point being at the western most corner of said Lot 9476; thence following the northwestern boundary of said Lot 9476 in a northeasterly direction approximately 123.9 feet to a point, said point being at the intersection of the northern most corner of said Lot 9476 and the southwestern boundary of the right-of-way of an unnamed road; thence crossing said right-of-way in a northeasterly direction in a straight line approximately 30 feet to a point, said point being at the intersection of the northeastern boundary of said right-of-way and the western most corner of Lot 0583 in Block 29 on McDowell County Tax Map 1700.05; thence following the northwestern boundary of said Lot 0583 and the northeastern boundaries of said Lot 0583 and Lots 1445 and 2309 in Bloc 29 on McDowell County Tax Map 1700.05, first approximately 100 feet in a northeasterly direction and approximately 290 feet in a southeasterly direction to a point, said point being at the intersection of the eastern most corner of Lot 2309 and the western boundary of the right-of-way of SR 1183 (Stroud Street), said point also being the southern most corner of Lot 1741 in Block 29 on McDowell County Tax Map 1700.05; thence following the eastern and northern boundaries of said Lot 1741, first approximately 229 feet in a northeasterly direction, then approximately 344 feet in a northwesterly direction, then approximately 160.7 feet in a northeasterly direction, then approximately 58 feet in a southeasterly direction, then approximately 136.2 feet in a northeasterly direction to a point, said point being at the northeastern corner of said Lot 1741, said point also being on the southern boundary of an unnamed right-of-way; thence following the southern boundary of said unnamed right of way approximately 10 feet in a northwesterly direction to a point, said point being the southern most corner of Lot 3115 in Block 20 on McDowell County Tax Map 1701.17; thence following the southeastern boundary of said Lot 3115 in a northeasterly direction approximately 75 feet to a point, said point being at the eastern most corner of said Lot 3115, said point also being at the southeast corner of Lot 1327 in Block 20 on McDowell County Tax Map 1701.17; thence following the southeastern boundary of said Lot 1327 in a generally northeast direction approximately 346 feet to a point, said point being at the eastern most corner of said Lot 1327, said point also being the southern most corner of Lot 6459 in Block 20 on McDowell County Tax Map 1701.18; thence following the southeastern boundary of said Lot 6459 and the southeastern boundary of Lot 6583 in Block 20 on McDowell County Tax Map 1701.18 in a northeasterly direction approximately 121 feet to a point, said point being the northeastern corner of said Lot 6583, said point also being on the Marion Corporate Limits; thence following the Marion Corporation Limits in a generally westerly and southerly direction approximately 1830 feet to the point

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on October 24, 2002, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A pubic hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on November 5, 2002, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the pubic informational meeting. The statement of financial impact

contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 3rd day of September 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

R-02-09-03-2

APPOINT VOTING DELEGATE TO NC LEAGUE OF MUNICIPALITIES CONFERENCE: The City Manager advised that a voting delegate is needed for the N.C. League of Municipalities Conference scheduled for October 20, 2002.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to appoint Mayor Clark as voting delegate.

APPROVE REVISED DILAPIDATED HOUSING PRIORITY LIST: The City Manager presented Council with the following revised dilapidated Housing priority list, which included two additional houses on California Avenue as suggested by Councilman Martin:

CITY OF MARION
DILAPIDATED HOUSING PRIORITY LIST

The following priority list is presented in rank order and would be requested for inclusion in McDowell County's Community Development Block Grant Scattered Site Housing Program.

The house at 45 Circle Street, Clinchfield, previously listed as priority number one, was demolished by the property owner on September 2.

1. 115 Wilhemenia Street – House is in very poor condition and is completely covered by Kudzu.
2. 830 Ridge Street, East Marion -- House if falling in and one wall may be a hazard to an adjoining house. Due to space constraints, house would have to be taken down by hand.
3. 201 Morehead road – House is open, in poor condition, and is serving a s a hangout for drug activity.
4. California Avenue (large house on Sugar Hill Road) – Roof is caving in, house is in very poor condition.
5. 326 Tate Street – House is in visible location in poor condition.
6. Corner of 4th and Morehead – House is off the street some distance, but is deteriorated.
7. 207 Grayson Street – House is off the street some distance, but is deteriorated.
8. Mitchell Street – House if boarded up, but may not be habitable.
9. California Avenue (small house near Winningham Village/California Arms) – House is in a deteriorated state and is vacant.

10. High Street – House is boarded up, has been occupied in past few years.
11. 238 Park Avenue – House is boarded up, partially burned and in a deteriorated state.
12. 222 Park Avenue – House if open, and in a deteriorated state.
13. 228 Park Avenue – House has been occupied in recent past.
14. 234 Park Avenue – House is boarded up, and may still be habitable.

APPOINTMENT TO MCDOWELL ECONOMIC DEVELOPMENT ASSOCIATION BOARD: The City Manager advised that Mayor Clark had served two terms on the MEDA Board and was not eligible for reappointment, under MEDA by-laws.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to appoint Councilman Cuthbertson to a three year term on the MEDA Board..

DISCUSS CITY OPEN HOUSE: The City Manager advised that he had discussed the idea of a City Open House with Department Heads, in which all our facilities would be open for tours to the general public, especially the school system.

A discussion followed.

Mayor Clark suggested that the Schools be involved in the Open House, to guarantee participation in the event. Mayor Clark suggested that one grade from each Elementary School in the County be invited to the Open House and that the City provide lunch for the children.

The City Manager was directed to contact the School Superintendent to discuss the idea and to set a possible date for the event.

COMMUNITY BUILDING BATHROOMS: Vandalism continues in the lower bathrooms at the Community Building. The City Manager recommended returning the bathrooms to the approximate 8:00 a.m. to 4:30 p.m opening schedule seven days a week that was in effect prior to Memorial Day. The City Manager also noted that prices were being obtained for a possible permanent concrete bathroom structure at the Community Building. Public Works Director Glen Sherlin gave a report on ideas for permanent bathrooms. Specific ideas and costs will be presented to Council at a future meeting.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to accept the recommendation of the City Manager as stated above.

DISCUSS WATER EXTENSION TO OLD UNIVERSAL FURNITURE PLANT: The City Manager advised that a company that is looking at the old Universal Furniture Plant on Universal Road has asked the City to consider extending the water line to the site in exchange for having the property annexed. The County has estimated the tax value of the building and property, after the planned improvements, to be about 5 million, which would generate about $27,500 per year in taxes. The cost for materials, engineering and permits would be about $27,550, and the contracted price would be about $51,550. The cost of the water extension, if done by City crews, would therefore be paid back by one year's property tax revenues.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to authorize the extension of the water line to the old Universal Furniture building contingent upon the presentation of an annexation petition by the new owners of the Universal Furniture building and property.

ADOPT ORDINANCE – NO PARKING ON CARROLL STREET: The City Manager reported that the Street Committee had reviewed the request for parking restrictions on Carroll

Street and had recommended that parking be restricted on the east side of the street. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
CARROLL STREET	PARKING PROHIBITED	EAST SIDE OF STREET ENTIRE LENGTH OF STREET

Section 3. This Ordinance shall become effective upon its adoption.

Adopted this the 17th day of September, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-09-17-1

SECOND STREET - EAST MARION - RIGHT OF WAY/ROCK WALL: The City Manager presented Council with a memo from the Director of Public Works advising that there is a concern about a rock wall adjacent to the street, possibly collapsing during construction of the replacement of curb and gutter on Second Street.

This wall belongs to the owners of Marion Mills and is located approximately five feet inside the street right of way. The wall serves no purpose for the streets integrity and since it is constructed of smooth face river rock, does not have a great strength value.

The Public Works Director has spoken with Mr. Norman Guthrie, caretaker of this property, and recommends that the owners of Marion Mills allow the City to remove the wall and make the necessary backfill slop which would relieve any concerns about future problems with the wall or the street.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to request owners of Marion Mills for permission for City crews to remove the wall off of the Second Street East Marion right of way.

WEST HENDERSON LOOP TREE REMOVAL: The City Manager advised that the Street Committee had reviewed a request to remove a tree off of a City alley off of West Henderson Loop. Prices had been obtained and the difference between toping the tree and removing it entirely is only about $300.00.

Removal of Tree.....$800.00
Topping of Tree.....$500.00

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to authorize the removal of the tree at a cost of $800.00

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

MAYOR CLARK: Mayor Clark commented on the urgent need for the sewer line in the Eastfield Area to be constructed. He noted that, while this project was being coordinated by the County, he had met with several residents in the area, and viewed a videotape, showing the horrible conditions in which neighborhood residents were living. Mayor Clark urged the City to do whatever it took to help the County complete this project, since the Eastfield area needs services very badly.

COUNCILMAN COMMENTS: Councilman Cuthbertson noted a storm drain that is well below grade on East Court Street. This storm drain will be reported to DOT.

Councilman Cuthbertson also inquired as to the reason for the posted hours on the City gazebos on Main Street. Mayor Clark noted that vandalism had occurred at these locations, so 7:00 a.m. to 7:00 p.m. hours were set for the gazebo.

CLOSED SESSION: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to go into closed session in accordance with Closed Session under N.C.G.S. 143-318,11(a)(6) to discuss a matter involving personnel.

OPEN SESSION: Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to go back into Open Session. Mayor Clark announced that no action had been taken in Closed Session.

INTERIM POLICE CHIEF APPOINTMENT: The City Manager made a recommendation that Major Johnny Patton be appointed as Interim Police Chief, to take effect on September 27, 2002, the date Chief Tim Benware's resignation will take effect.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to accept the City Manager's recommendation to appoint Major Johnny Patton as Interim Police Chief, to take effect on September 27, 2002.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 17, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Mayor A. Everette Clark arrived for this meeting at 7:35 P.M., due to attending a school function involving his granddaughters.

Mayor Pro Tem Steve Little presided over this meeting until Mayor Clark arrived at 7:35 P.M. during the discussion of Hwy. 226 South - Annexation Report.

Councilman Mike Edwards was not present for this meeting due to being on Vacation.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Tim Benware, Police Chief; Major Johnny Patton, Police Department; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Mary Katherine Walker, B.M., Shirley and Teddy Mack Walker, Marion, NC; Connie Martin, Holly Hill, Marion, NC 28752; Debbie Patton and Mark Cate, Woodmen of the World Representatives; Sgt. Tommy Lytle, Marion Police Department.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN BILLY MARTIN:
Councilman Billy Martin selected the Citizen of the Month for September:

MARY KATHERINE WALKER

Councilman Martin advised that Ms. Mary Katherine Williams Walker was married to the late Mr. B. M. Walker for thirty-four years. She is a loving, dedicated mother to one daughter and two sons.

Ms. Walker is an active Member of Addies Chapel Baptist Church. She serves as Treasurer with the UMW, the Camp McCall Committee, a member of the Choir and much more.

Ms. Walker has done domestic work for various families in the Community for over thirty-five years. She has also taken over a position cooking at the Marion Community Building for clubs, weddings, reunions, Christian Women's meetings and much more.

Councilman Martin advised that besides all the above, Ms. Walker is a very motivated member of her Community, and is greatly responsible for the clean up and positive integrity of the Community.

Mayor Pro Tem Steve Little, City Council, Family Members and Friends all shared kind words to honor Ms. Walker.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the consent Agenda as follows, with the additional of a 1993 Chevrolet Caprice to the auction list, as recommended by the City Manager:

A. Approval of City Council Minutes - September 3, 2002

B. Budget Amendment – Mausoleum/Columbarium

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Fund Balance Appropriated, Account Number 10-399-0000, is increased from $300,000 to $470,732.
b. General Fund Revenues, Cross Mill Park, Account Number 10-390-000, is increased from $0 to $50,542.
c. General Fund Expenditures, Police Department, Account Number 10-510-74, Capital Outlay, is increased from $58,183 to $133,183.
d. General Fund Expenditures, Recreation Department, Account Number 10-620-74, Capital Outlay, is increased from $67,000 to $117,542.
e. General Fund Expenditures, Cemetery Department, Account Number 10-640-74, Capital Outlay, is increased from $0 to $95,732.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 17th day of September, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-09-17-1

C. Resolution – Declare City Property Surplus and Authorize Sale by Auction:

Resolution Declaring Certain items of Personal Property Owned by the City of Marion as Surplus and Authorizing Their Sale

WHEREAS, N.C.G.S. 160A-270 authorizes cities to dispose of personal property by auction; and

WHEREAS, N.C.G.S. 160A-270 requires that when a City Council proposes to dispose of property by auction, it adopt a resolution at a regular Council meeting authorizing an appropriate City official to dispose of the property by auction; and

WHEREAS, the City of Marion owns many items of personal property, as shown on the attached sheets, that are no longer needed by the City; and

WHEREAS, the City of Marion, McDowell County, and the McDowell County School Board have traditionally held an annual auction for surplus items during the month of November.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the personal property owned by the City and listed on the attached sheets to be surplus and authorizes the City Manager or his designee to dispose of said property by auction, with the designated minimum price where listed.

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (10) days after its publication.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 17th day of September, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

RESOLUTION NUMBER: R-02-09-17-1

Approval of Leaf Bags: Leaf Bags will be distributed to City Residents as in previous years.

PRESENTATION – WOODMEN OF THE WORLD: Mr. Mark Cate, Representative of Woodmen of the World, appeared before Council to present a Flag Pole and New Flag. This pole and flag are being designated to be placed on the City of Marion's Police Department property following the completion of renovations to the Police Department.

Mr. Cate stated that there are many American heroes, men and women right here in our community, whom the Woodmen wished to take a moment to recognize. They include the police officers, firefighters and paramedics, who stand ready, each and every day, to keep us from harm's way, the teachers, doctors, nurses and community volunteers, who give so much of themselves so that our community might be a better place in which to live, and the active members and veterans of our armed services, who have answered our nation's call in order in order to protect the freedoms we enjoy today.

Woodmen members are proud to be a part of this community and able to contribute to the welfare of the community by way of presenting this flag.

DISCUSSION – CARROLL STREET PARKING: No one was present to discuss this issue. No action taken.

DISCUSSION – PRICING OF NEW MAUSOLEUM AND COLUMBARIUM VAULTS: The City Manager advised that the pricing of the new mausoleum and columbarium vaults need to be established.

The current 64 crypt mausoleum cost $29,250. to construct in 1985. The sale of all 64 spaces will yield $76,000 or 2.6 times the construction cost. A similar formula for the new mausoleum which will run $79,800 and have 64 crypts, would result in prices of $2,600 to $3,900, which could be a bit high.

A discussion followed.

The City Manger will research other cities prices, for mausoleum and columbarium crypts and report back at a later date.

DISCUSSION – SIDEWALK ORDINANCE: The City Manager advised that the City's present Ordinance restricting bicycles and skateboards from downtown sidewalks had been

incorrectly interpreted by City staff and did not include restrictions on roller blading or roller skating on sidewalks. He stated he wished to bring this matter before Council to see if any corrections should be made to existing ordinances.

A discussion followed.

Council members agreed that the current ordinance was satisfactory, and that no additional restrictions were needed for roller blades or roller skates on downtown sidewalks. No action was taken.

APPROVAL – ANNEXATION REPORT – HWY. 226 SOUTH: The City Manager gave a brief overview of the annexation report for Hwy. 226 South. Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to approve the annexation report of Highway 226 South. A copy of this report can be found on file in the City Managers Office located at City Hall.

APPROVAL – ANNEXATION REPORT – SUGAR HILL ROAD: The City Manager gave a brief overview of the annexation report for Sugar Hill Road. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the annexation report as presented to Council of Sugar Hill Road. A copy of this report can be found on file in the City Manager's Office located at City Hall.

DISCUSSION – CITY WATER SUPPLY: The City Manager advised that the City's water supply had approached a dangerous level in the past week. Clear Creek has been dry virtually all summer, Mackey Creek and Buck Creek have been holding fairly steady. Both creeks dropped somewhat a few weeks ago. Recent rains maintained them to an adequate level until September 10th and 11th at which time Mackey Creek began to drop considerably. Buck Creek is also a bit lower. The rains over the past weekend helped to replenish the creeks somewhat, which should buy the City an extra week or two worth of water. The City Manager stated the City may approach a situation in a few weeks where air could enter our intake. We then would have to shut the creek off entirely. Given these concerns, the City manager requested permission to announce voluntary water conservation measures, when warranted by creek levels, and to begin working with the City engineer to draft a Water Shortage Response Plan, to include provisions for different levels of water emergencies, and to study alternate sources of water for the City.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to authorize the City Manager to announce voluntary water conservation measures, when warranted by creek levels, and to begin working with the City engineer to draft a Water Shortage Response Plan, to include provisions for different levels of water emergencies, and to study alternate sources of water for the City.

Mayor Clark suggested that the City study the possibility of withdrawing water directly from the Catawba River.

REVIEW CITY PYROTECHNICS ORDINANCE: The City Manager advised that there are differences between the City Code and State law regarding what type of fireworks are legal. The current City Code on pyrotechnics predates changes made under State law a few years back to allow more fireworks to be legally sold and possessed.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to authorize the City Manager to draft an Ordinance equaling that of the State Law to eliminate any possible confusion on the part of citizens, businesses and our officers regarding legal pyrotechnics and to bring it to Council at its next Regular Scheduled Meeting.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager also took the opportunity to thank Police Chief Tim Benware for the job he has done for the City of Marion. Mayor Clark and Council Members also thanked Chief Benware. Chief Benware's last day with the City is September 27.

COUNCILMAN COMMENTS:

COUNCILMAN LITTLE questioned what all the orange paint on the sidewalks is that looks almost like graffiti. The City Manager noted that Verizon had been observed placing excessive markings to locate their lines for other utility companies on at least two occasions. Councilman Little also noted the displeasure of many citizens over the recent closing of Verizon's payment office, and the fact that customers now must pay $1.50 at the Duke Power payment office on South Main Street to pay their bill in person. Council directed the City Manager to draft a letter to Verizon, expressing concern regarding these two issues.

COUNCILMAN CUTHBERTSON advised that there is a pothole on Fort Street by Kehler's Store.

He also advised that Ms. Cheryl Mitchell, with the McDowell County Volunteer Center, did a great job organizing the program for the 9-11 events held on the Court House Lawn.

A letter of appreciation will be sent to Ms. Mitchell.

COUNCILMAN OWENBY advised that he had received several complaints regarding a tree blocking the vision at the intersection of Virginia Road and Lamar Street.

It was decided that the Street Committee will meet September 19, 2002 at 5:00 PM to visit this site.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 8, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Johnny Patton, Interim Police Chief; Suzy Davis, City Planner; Kim Davis, Police Officer; Mike Conley, News Reporter, The McDowell News and Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Debbie Patton, Marion, NC 28752, Kim Davis, Marion, NC 28752; G. Chapman Marion, NC 28752; Paul Hill, Marion, NC 28752; Rick Bowman Marion, NC 28752; Bill Johnson, Rocky Pass Church, Marion, NC 28752; Bobby Porch Marion, NC 28752; Lisa Tanner Marion, NC 28752; Angus Stronach, Marion, NC 28752;J. Earl Daniels, Garden Street, Marion, NC 28752; David Setzer, New Street, Marion, NC 28752; Greg Elkin, 51 Spring Street, Marion, NC 28752; A.D. Poteat, Virginia Road Marion, NC 28752.

CITY HALL NOTE BURNING CEREMONY: Mayor Clark presented the following information:

City of Marion was Founded and Chartered March 14, 1844.
On November 25, 1894 - A fire swept through the City destroying early documentation and records of the Town of Marion.

A Called Meeting on September 2, 1935, gave approval to build a new City Hall on Logan Street - A new 2 Story – 4420 square ft. per floor City Hall, Fire Department and Police Department combination was built. In 1991, 260 South Main Street was purchased. In 1992, 194 North Main Street was purchased.

All former Council Members, Mayors and City Managers were invited to this ceremony.

Fire Chief Jim Neil was present to light and over see the note burning for the City Hall building, which was paid off in September, 2002. Mayor Clark held the burning note, while present and former Council Members and various other guests witnessed the event and commented on their appreciation for the wisdom of the Mayor, and former City Councilmen and City Manager to purchase the current City Hall.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. **Approval of City Council Minutes** - September 17, 2002
B. Resolution – Directing Clerk to Investigate a Petition for Voluntary Annexation and Resolution Setting date of Public Hearing on Annexation

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160a-58.1

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, October 8, 2002, by the City of Marion; and

WHEREAS, 160A-58.2 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Marion that:

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 8th day of October 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Resolution Setting Date of Public Hearing on Annexation:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160-58-2

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, October 22, 2002.

Section 2. The area proposed for annexation is described as follows:

BEGINNING on a five-eights inch iron pin set, set iron pin being located North 82 degrees 22 minutes 12 seconds West 814.98 feet from NCGS Monument "Rail", N=215554.163 metes, E=341140213 meters, NAD 83, and runs thence with the edge of a sixty foot right-of-way granted to Spectrum Textured Yarns, Inc. (see Deed Book 606 at Page 490), South 67 degrees 46 minutes 10 seconds East 66.89 feet to a point in the edge of said right-of-way, then running with a curve to the right on said right-of-way, said curve having a delta of 01 degree 07 52 seconds, a radius of 1,005.59, an arc of 19.85, a chord of 19.85, a tangent of 9.93, and a chord bearing of South 67 degrees 12 minutes 30 seconds East to a point; thence running with another curve to the right having a delta of 13 degrees 21 minutes 11 seconds, a radius of 1,005.59, an arc of 234.36, a chord of 233.83, a tangent of 117.71, and a chord bearing of South 59 degrees 57 minutes 46 seconds East to a pin set in the edge of said right-of-way; thence leaving said right-of-way and running South 24 degrees 48 minutes 21 seconds West 177.00 feet to an iron pin set; thence South 64 degrees 36 minutes 14 seconds West 426.59 foot to an iron pin set; thence running with the Edith Flack GoForth line (see Deed Book 325 at Page 84), North 31 degrees 13 minutes 50 seconds West 262.98 feet to an iron pipe; thence North 31 degrees 123 minutes 50 seconds West 262.98 feet to an iron pipe; thence North 31 degrees 13 minutes 50 seconds West 135.98 feet to an existing iron pin; thence south 70 degrees 43 minutes 42 seconds West 38384 feet to an existing angle iron; thence South 18 degrees 58 minutes 31 seconds East132.06 feet to an existing angle iron; thence North 65 degrees 10 minutes 37

seconds East 120.26 feet to an existing angle iron; thence North 18 degrees 23 minutes 46 seconds West 52.82 feet to a point in the centerline of a twenty foot right-of-way as described in McDowell County Deed Book 573 at Page 10; thence North 18 degrees 23 minutes 46 seconds West 67.62 feet to an existing angle iron, thence North 66 degrees 49 minutes 18 degrees 46 seconds West 67.62 feet to an existing angle iron; thence North 66 degre49 minutes 08 seconds East 253.57 feet to the BEGINNING, and containing 4.00 acres, and being parcels A and B as designated on that certain plat of survey by R. L. Greene and Surveying and Mapping, Registered Land Surveyors, Marion, North Carolina, dated October 22, 2001, bearing Map Number MMI-174, from which plat of survey all calls used in this description were taken.

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 8th day of October 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

B. Resolution – Directing Clerk to Investigate a Petition for Voluntary Annexation:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160a-58.1

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, October 8, 2002, by the City of Marion; and

WHEREAS, 160A-58.2 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Marion that:

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 8th day of October 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Resolution Setting date of Public Hearing on Annexation:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58-2

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, October 22, 2002.

Section 2. The area proposed for annexation is described as follows:

BEGINNING on a point located in the centerline of Barnes Road (SR 1825), said point being located the following three (3) bearings and distances from N. C. G. S. Monument (Rail) (Coordinates N = 215,554.163 meters, E = 341,140.213 Meters, NAD 83) to wit: Beginning on NCGS Monument "Rail" and running North 76 degrees, 00 minutes, 43 seconds West 2408.54 feet to an existing iron pin, the 11th corner of the McDowell County property, DEED BOOK 544, Page 15, Tract 2, thence South 66 degrees, 49 minutes, 38 seconds West 419.66 feet to an iron pin set in the centerline of SR 1825, thence with said centerline of SR 1825 South 67 degrees, 46 minutes, 14 seconds East 119.94 feet to the Point of Beginning; thence from the Point of Beginning and with the centerline of said SR 1825 (Barnes Road) South 67 degrees, 46 minutes, 14 seconds East 37.38 feet to a point, the PC of a curve to the right said curve having a central angle of 39 degrees, 48 minutes, 43 seconds, a radius of 1035.59 feet, an arc length of 719.58 feet and tangent of 375.00 feet; thende from said PC along the arc of said curve for a chord bearing and distance of South 47 degrees, 51 minutes, 52 seconds East 705.19 feet to a point, the PT of said curve; thence continuing with said SR 1825, South 27 degrees, 57 minutes, 30 seconds East 15.76 feet to a point; thence leaving said SR 1825 and running with the line of Spectrum Ded Yarns, Inc. South 66 dgrees, 22 minutes, 48 seconds West 39.31 feet to an iron pipe set, and South 31 degrees, 24 minutes, 48 seconds West 512.06 feet to an existing iron pipe; thence with the lines of the J. E. Kanipe Heirs, North 64 degrees, 41 minutes, 43 seconds West 314.04 feet to an existing iron pipe and North 66 degrees, 04 minutes, 13 seconds West 9.23 feet to an iron pipe set, a common corner of W. B. Rumfelt (DEED BOOK 185, Page 393), Billy Gene Thomas, et ux (DEED BOOK 205, Page 960) and McDowell County (DEED BOOK 544, Page 15, Track 2); thence with the line of Rumfelt and Thomas W. Goforth, North 31 degrees, 13 minutes, 50 seconds West 756.47 feet to an iron pipe set; thence with the line of Arthur Dean Poteat, North 70 degrees, 43 minutes, 42 seconds East38.84 feet to an existing iron pipe, thence with the line of Ward and Rumfelt, South 18 degrees, 58minutes, 31 seconds East 132.06 feet to an existing iron pipe, North 65 degrees, 10 minutes, 37 seconds East 120.26 feet to an existing iron pipe and North 18 degrees, 23 minutes, 37 seconds West 120.44 feet to an existing iron pipe in the line of Arthur Dean Poteat; thence with said Poteat line, North 66 degrees, 48 minutes, 08 seconds East (passing an iron pipe set at 253.57 feet) a total distance of 295.67 feet to the BEGINNING, containing 11.67 acres by coordinates computation. An being all that property described in a deed to All Mechanical and Construction Company, Inc. (DEED BOOK 684, Page 344) and a portion of the property described in a deed to McDowell County, A Municipal; Corporation (DEED BOOK 544, Page 15, Track 2).

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 8th day of October 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Budget Amendment:

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(Second Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-2003 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

a. Water and Sewer Fund Revenues, Reimbursement DOT – Sugar Hill Road Water, Account Number 30-376-0000, is increased from $0 to $200,000.
b. Water and Sewer Fund Revenues, N.C. Rural Center a Grant – Sugar Hill Road Sewer Account Number 30-377-0000, is increased from $0 to $200,000.
c. Water and Sewer Fund Expenditures, Utility Lines Maintenance Department, Account Number 30-810-45, Contracted Services, is increased from $150,000 to $863,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 8th day of October, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

DISCUSSION – MR. A. D. POTEAT: Mr. A.D. Poteat appeared before Council advising that he had a twenty-five year old agreement with the City of Marion for an easement across his property on Highway 226 South that had never been recorded.

Former City Manager Earl Daniels was present for this meeting and advised that there was a problem recording the agreement with the former Register of Deeds, however, the agreement has since been recorded.

The City Manager advised that he would get Mr. Poteat a copy of the recorded Agreement, and would reissue Mr. Poteat his water and sewer connection certificates, as set out in the easement.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to honor the Agreement as it is written.

PUBLIC APPEARANCE – ROCKY PASS CHURCH: Mr. Paul Hill, Chairman of the Deacon Board of the Rocky Pass Church on N.C. 226 South appeared before Council requesting assistance from the City, with a water situation they have at their Church. They are in need of hooking to the City's Water System.

A discussion followed.

The City Manager advised that a joint Utility Committee Meeting will be held on Tuesday, October 15, 2002 with both City and County Officials present and invited Mr. Hill to attend this meeting to further discuss options available for water to the Church Property.

REQUEST FOR REIMBURSEMENT – PARK AVENUE: Mr. Gerald Chapman appeared before Council on behalf of Ms. Vernie Stewart of 184 Park Avenue. He advised that a leak in the City's Service Line had a leak and repairs were made to the line. Water went into the basement of Ms. Stewart damaging the following itemized list:

Oscillating Fan	$20.00
Quilt Material	40.00
Hush Puppy Fur Lined Boots	50.00
Dinning Table Set	30.00
Type Writer	50.00
Box - Coats American Thread (80 Cones)	100.00
Kerosene Heater wick	20.00
Carpet & Pad	30.00
Cotton Material	25.00
42" Ceiling Fan	20.00
Electrolux Vacuum cleaner	50.00
7.5 lb. Miracle Grow	6.00
House Shoes	5.00
Living room Drapes – 2 pair	28.00
TOTAL.....	**$474.00**

The City Manager presented a memo from Public Works Director Glen Sherlin advising that the water leak did cause water to enter Ms. Stewart's basement.

A discussion followed.

Upon a motion by Councilman Little, Seconded by Councilman Martin, Council voted unanimously to reimburse Ms. Stewart for damage to her basement in the amount of $474.00.

PUBLIC HEARING ZONING AMENDMENT: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that the proposed amendment to the Zoning Ordinance would expand the penalties available for violations of the Zoning Ordinance. It would authorize all enforcement remedies for Zoning Ordinance violations (criminal prosecution, civil penalties, revocation of permits, court injunctions, court orders of abatement, denial of permits) allowed under State law. It would also allow us to proceed with enforcement of our new sign regulations without setting up a multi-layered appeals process. The amendment would clearly state that appeals of zoning violations and civil citations issued for zoning violations would go to the Board of Adjustment instead of City Council.

The Planning Board reviewed this amendment and unanimously recommended its approval.

A discussion followed.

Several Council members suggested that City Council retain as much involvement in the appeal process as could be allowed under State law.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to table this item, and to direct the City Manager to revise the amendment accordingly, after consultation with the City Attorney.

AMENDMENT TO CHAPTER 1 OF CITY CODE – CIVIL PENALITIES FOR ORDINANCE VIOLATIONS: The City Manager noted that this item was associated with the previous item on the agenda.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to table this item.

AGREEMENT – GLENWOOD SCHOOL SEWER LINE: The City Manager advised that, as directed by City Council at the September 17 meeting, the Utility Committee had rewritten the Glenwood School Sewer Agreement, to take out all conditions on the acceptance of the line. The agreement had been forwarded to the School Superintendent, who had reported that the School Board had verbally agreed with the wording of the new document.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following agreement:

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

AGREEMENT REGARDING
GLENWOOD ELEMENTARY SCHOOL SEWER LINE

The City of Marion, (referred to below sometimes as "City") and the McDowell County Board of Education, (referred to below sometimes as "School Board") enter into this agreement this the _____ day of _____, 2002 regarding ownership and maintenance of the six-inch gravity sewer line and force main located between Glenwood Elementary School and the Performance Rail Pump Station (referred to below sometimes as "Glenwood school sewer line").

NOW THEREFORE, in consideration of the benefits recited herein, the City and the School Board agree as follows:

1. The City will accept ownership and maintenance of the Glenwood school sewer line and force main located along Old U.S. Highway 221, from the Performance Rail Pump Station to the property line of Glenwood Elementary School

2. The City will not maintain any portion of the Glenwood school sewer line located on School Board property or any pump station located on School Board property. Any fines levied by the State of Federal governments as a result of a sanitary sewer overflow from the pump station on the School property will be the responsibility of the Board of Education. To reduce the likelihood of overflows or clogging of the sewer line, the Board of Education agrees to follow standard City policies regarding pretreatment of wastewater and grease control.

IN WITNESS WHEREOF, this agreement is signed by the representatives of the City of Marion and the McDowell County Board of Education, after proper and legal authorization has been granted in open public meetings as set forth in the minutes of each entity.

This agreement shall become effective upon its adoption by the Marion City Council and the McDowell County School Board.

THE CITY OF MARION, NORTH CAROLINA

BY: _____
A. Everette Clark, Mayor

ATTEST: (Official Seal)

J. Robert Boyette, City Manager/Clerk

MCDOWELL COUNTY BOARD OF EDUCATION

BY:_____ _____
Chairman

ATTEST: (Official Seal)

_____
Secretary/Clerk to the School Board

CONSIDERATION OF BID FOR SENIOR CENTER PROPERTY: The City Manager advised that a bid for the Senior Center, in the amount of $175,000, has been received from the Mental Health Association in North Carolina.

If accepted by the County, official acceptance of this bid will be at the October 22, 2002 City Council Meeting.

A brief discussion followed.

City Council members agreed that they would likely follow the recommendation of the County regarding acceptance of the bid. Mayor Clark noted that the City had received a request from the Focal Point Advisory Group, requesting that the City donate part or all of its share of the proceeds from the sale of the property for the furnishings for the new Senior Center. Mayor Clark asked Council members to think about how much of the City's share could be given as a donation, so that a decision could perhaps be reached at the next meeting.

LAWSUIT DISCUSSION AGAINST STATE WITHHELD FUNDS: The City Manager presented Council with information received from a law firm in Raleigh, Boyce & Isley, regarding the lawsuit filed against the State on behalf of many cities and counties, regarding withheld reimbursements and State collected local taxes, along with a letter sent out from a County Commissioner in Cabarrus County regarding this lawsuit.

The City Attorneys have advised that the City should watch this case closely, but they feel that is not necessary or advisable for the City to join the lawsuit at this time.

Council members agreed to accept the advice of the City Attorney at this time.

No action was necessary.

APPEAL CIVIL CITATION – BI-LO: The City Manager advised that Bi-lo has received their fourth false alarm of the year on September 7. The Store Manager, Kevin Ebert, has submitted a written appeal.

A discussion followed.

Councilman Owenby suggested that the penalty for Bi-lo be waived, as Council had previously done in several instances.

Councilman Little stated that alarm calls in the daytime, as all four Bi-lo alarms had been, must be considered to be more serious, since they could indicate an armed robbery.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted to deny this request.

The vote was as follows:

Councilman Little	Yes
Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Martin	Yes
Councilman Owenby	No

EASEMENT – RAILROAD DEPOT: The City Manager advised that Norfolk Southern wishes to provide a permanent easement to the City for the land surrounding the railroad depot, rather than sell the land to the City. An easement had been forwarded from Norfolk Southern to DOT, and then sent to the City for review and comments.

The City Attorney has reviewed the document and has concern that the easement is not in the City's name, that an adequate description of the easement has not been provided so that a title search can be done and to make sure that the railroad must make repairs to any damages done to improvements on the easement.

Council agreed with the concept of the easement and directed the City Manager by consensus to forward these comments on the easement to DOT. A copy of the agreement can be found in the City Manager's Office.

ARCHITECTURAL PROPOSAL – RAILROAD DEPOT: The City Manager advised that the original contract with Hager Smith architects for the depot renovation was for $46,640,00. With the depot not having to be moved, about half of the original contract funds will not have to be spent.

Hager Smith is proposing to use the left over funds to proceed with the next phase which is Schematic Design. The overall contract which includes items already completed plus Schematic Design, Design Development, Construction Documents, Bid Administration, Construction Administration, and Consultant Service comes to $135,969, including the $22,000 that could be carried over from the original contract.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to approve the request by Hager Smith Architects to use the left over funds from the original contract for the depot design to proceed with the next phase, Schematic Design, and allow the project to move forward.

DISCUSSION – MASTER METER WATER AND SEWER CHARGES: The City Manager advised that Section 20-29.5 of the City Code sets a formula for calculating unit charges for master meters. The formula is set at 80 percent of the amount charged each individual customer having a separate water meter. When the new water and sewer rates were adopted in June he inadvertently included a $6.00 per month service charge for water and sewer mater meter accounts per unit, which is now only 75 percent of the amount charges each individual customer having a separate water meter ($8.00 per month). The City Manager proposed adjusting the ordinance setting the formula to 75 percent, or to state an amount set by the Rate Schedule, or to adjust the Rate Schedule to reflect the previously adopted 80 percent formula.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to change the rate schedule as follows:

ORDINANCE

ESTABLISHING WATER/SEWER RATES, CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That new water/sewer rates, connection (tap fees) fees, cost recovery charges and other miscellaneous charges are hereby established as follows:

	INSIDE CITY	OUTSIDE CITY
Water Rates:	**$1.40 per 1,000 Gallons, plus $8.00 Service Charge per month**	**$2.80 per 1,000 Gallons, plus $16.00 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.00**	**$20.00**
Master Meter Rate	**$1.40 per 1,000 Gallons, plus $6.40 Service Charge per month**	**$2.80 per 1,000 Gallons, plus $12.80 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.40**	**$16.80**

	INSIDE CITY	OUTSIDE CITY
Sewer Rates:	**$1.40 per 1,000 Gallons, plus $8.00 Service Charge per month**	**$2.80 per 1,000 Gallons, plus $16.00 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.00**	**$20.00**
Master Meter Rate	**$1.40 per 1,000 Gallons, plus $6.40 Service Charge per month**	**$2.80 per 1,000 Gallons, plus $12.80 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.40**	**$16.80**

	INSIDE CITY	OUTSIDE CITY
Sewer Rates for Private Wells	**$2.10 per 1,000 Gallons, plus $8.00 Service Charge per month**	**$4.20 per 1,000 Gallons, plus $16.00 Service Charge per month**

Important Notices:

All sewer charges are based on water meter readings, unless a sewer metering device approved by the City has been installed.

When more than one unit is served by a Master Meter, such as a mobile home park, shopping center or apartment complex, the monthly service charge is $6.40 for water and $6.40 for sewer in the City, and $12.80 for water and $12.80 for sewer outside the City, whether said units are occupied or not.

A single family residence using a private well, with no water meter, shall pay a flat rate of $12.00 per month for sewer service.

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1 ½"	1,400	7,120	2,100	7,120
2"	1,600	11,392	2,400	11,392

3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):
The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10.00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200
4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION. IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER

METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 1,200	$ 820	$ 1,800	$ 820
1"	1,300	2,050	1,950	2,050
1 ½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,500
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999
12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY
RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	AT COST	COST PLUS 10%
INCREASE METER SIZE	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

INSIDE CITY	OUTSIDE CITY

WATER DEPOSIT	$ 30.00	$ 60.00
SEWER DEPOSIT	$ 30.00	$ 30.00

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY:

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS WILL BE THE SAME AS THE RESIDENTIAL DEPOSITS; HOWEVER, AT THE END OF SIX MONTHS OF SERVICE THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED.

OTHER MISCELLANEOUS CHARGES

	INSIDE CITY	OUTSIDE CITY
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
RETURN CHECK SERVICE CHARGE	$ 25.00	$ 25.00
BANK DRAFT CUSTOMER CHARGE FOR CLOSED ACCOUNT	$ 25.00	$ 25.00
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY ¾" AND 1" METERS	$ 15.00	$ 15.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on June 4, 2002 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this ordinance, are rescinded upon the effective date of this ordinance.

Section 4. This Ordinance shall become effective upon its adoption

ADOPTED this the 8th day of October, 2002.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number O-02-10-08-1

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following amendment to Chapter 20 of the City Code to state that the charges for master meters would be as established in the Rate Schedule:

ORDINANCE

AMENDING CHAPTER 20
WATER AND SEWERAGE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 20, Water and Sewerage, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 20-29.5 is amended by deleting subsection (a) in its entirety and replacing it with the following:

(a) Effective November 1, 1999, master water meters will be allowed for all shopping centers, mobile home parks, apartments and other multi-use buildings on single or adjoining lots, under single ownership and/or management (includes companies, corporations and entities). Each separate business, mobile home, apartment or other unit (having separate restroom facilities), shall be considered as a separate unit for water and/or sewer service charges, whether said unit is occupied or not. A monthly service charge for water for each unit served by the master meter shall be as set in the ordinance adopted by City Council setting water and sewer rates, connection fees, cost recovery charges and other miscellaneous charges. A monthly service charge for sewer for each unit served by the master meter shall be as set in the ordinance adopted by City Council setting water and sewer rates, connection fees, cost recovery charges and other miscellaneous charges.

Section 2. This ordinance shall become effective upon its adoption.

Adopted this the 8th day of October, 2002.

ATTEST: J. Robert Boyette, City Manager/Clerk

J. Everette Clark, Mayor

Ordinance Number: O-02-10-08-2

REVISED – CITY PYROTECHNICS ORDINANCE: The City Manager advised that, as directed by Council at the September 17 meeting, a revised City Fireworks Ordinance had been drafted, to make the City ordinance consistent with State law in regards to the types of fireworks that could legally be sold and possessed within the City.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDMEING CHAPTER 7
FIRE PREVENTION AND PROTECTION
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 7, Fire Prevention and Protection, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 7-58 is amended by deleting Section 7-58 in its entirety and replacing it with the following:

Sec. 7-58. Pyrotechnics defined; exceptions.

The term "pyrotechnics" whenever used in this article shall be deemed to be and include and all kinds of fireworks and explosives, which are used for exhibitions or amusement section shall prevent the manufacture, purchase, sale, transportation, and use of explosives or signaling flares used in the course of ordinary business or industry, or shells or cartridges used as ammunition in firearms. This section shall not apply to the sale, use, or possession of the following:

(1) Explosive caps designed to be fired in toy cap pistols, provided that the explosive mixture of such explosive caps shall not exceed twenty-five hundredths (0.25) of a gram for each cap.
(2) Snake devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
(3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
(4) Trick noisemakers which produce a small report designed to surprise the user and which include:

a. A party popper, which is a small plastic or paper item containing not in excess of 16 milligrams of explosive mixture. A string protruding from the device is pulled to ignite the device, expelling paper streamers and producing a small report.

b. A string popper, which is a small tube containing not in excess of 16 milligrams of explosive mixture with string protruding from both ends. The strings are pulled to ignite the friction – sensitive mixture, producing a small report.

c. A snapper or drop pop, which is a small, paper wrapped item containing no more than 16 milligrams of explosive mixture coated on snuall bits of sand. When dropped, the device produces a small report.

(5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed 100 grams of mixture per item.
(6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, do not spin, are hand-held or ground-based, cannot propel themselves through the air, and contain not more than 200 grams if multiple tubes are used.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 8th day of October, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

COMMUNITY BUILDING RESTROOMS: The City Manager advised that one quote has been received in the amount of $17,535.68 to construct a permanent restroom behind the Community Building. The City Manager and Public Works Director feel this price is a bit high, and would like to continue exploring other options, including other contractors, inmate labor, or work using City forces.

A brief discussion followed.

Council members agreed that permanent bathrooms behind the Community Building should be explored to fullest extent, to see if the construction and costs is feasible.

The City Manager will continue to explore options for this type project.

CONSIDER ACCEPTANCE OF GRANT FROM GOVERNOR'S HIGHWAY SAFETY PROGRAM: The City Manager stated that former Police Chief Tim Benware had submitted a grant application to the Governor's Highway Safety Program, to allow the hiring of an additional officer and purchase of a vehicle and equipment. The officer would fill the role of a traffic safety officer. The grant would be for $56,775, with the grant paying for 100 percent of personnel costs the first year, 75 percent the second year and 50 percent the third year. The grant would pick up 75 percent of equipment costs, so the City's first year costs would only run $6,663 for equipment. The City Manager advised the Interim Chief Johnny Patton had researched the grant and determined that the City had the following options:

1. If the grant is accepted, and the City annexes Eastfield, and needs the use of this additional officer, the grant can be extended for two years, and the City would partially fulfill its service responsibilities for Eastfield.

2. The grant could be accepted, and if the City does not annex Eastfield, the City could decline extending the grant, in which case the City would have to pay the State back for equipment purchased, which would run about $18,000. The City Manager noted that if this was the case, the City would be no worse off, since it would own needed equipment such as a Police car, camera, radar, etc.

3. The grant could be denied and the City could reapply next year, with no guarantee that State funds would be available.

Interim Chief Patton noted that the grant requires an additional officer to be hired, but he plans to designated Officer Kim Davis as Traffic Safety Officer. Interim Chief Patton and Officer Davis went over some of the goals of the grant and the Traffic Safety Officer position.

Councilman Little stated he saw no downside to the grant.

Councilman Owenby stated that he thought the grant was a good idea, and had thought that former Chief Benware had done a good job in presenting the details of the grant previously, but stated he had thought the grant was for one year, and could be declined after that with no risk to the City. Interim Chief Patton noted that there had been some confusion with the grant extension process, but that it was now clear that if it was the City's decision not to extend the grant past the first year, that the State's share of the equipment purchase must be repaid.

Mayor Clark inquired about the process to request seat belt use signs as are found in other cities, and their effects on increasing seat belt use. Interim Chief Patton stated that other cities found the signs to be a good deterrent against people not wearing seat belts, and that the signs were easy to obtain.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following resolution, accepting the grant from the Governor's Highway Safety Program:

NORTH COARLINA
GOVERNOR'S HIGHWAY SAFETY PROGRAM
LOCAL GOVERNMENTAL RESOLUTION
FORM GHSP-02-A

WHEREAS, the City of Marion has completed and application contract entitled Marion Highway Safety Initiative and that the City Council has thoroughly consider the problem identified and has reviewed the project as described in the contract;

THEREFORE, NOW BE IT RESOLVED BY the City Council in open meeting assembled in the City of Marion, North Carolina this 8th day of October, 2002, as follows:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Johnny Patton, Interim Police Chief, be authorized to file, on behalf of the Governing Body, an application contract in the form prescribed by the Governor's Highway Safety Program for feceral funding in the amount of $50,112.00 to be made to the Governing Body to assist in defraying the cost of the project described in the contract application; and
3. That the Governing Body has formally appropriated the cash contribution of $6,663.00 as required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, date, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract reference above; and
6. That this resolution shall take effect immediately upon its adoption.

Adopted this the 8th day of October 2002.

A. Everette Clark, Mayor

ATTEST:

Robert Boyette, City Manager/Clerk

BUDGET UPDATE: The City Manager gave a brief budget update. He noted that the North Carolina General Assembly had passed a bill authorizing counties to adopt an additional one half cent local option sales tax on December 1, 2002. This revenue will partially replace the reimbursements for previously repealed local taxes, including the inventory tax and intangibles tax, that had been removed from the State budget. With the State making the first quarter Utility Franchise Tax payment, and being expected to make the second quarter Utility Franchise Tax payment on December 15, and the State making the annual Powell Bill payment, the worst case revenue loss for the City for Fiscal Year 2002-03 had decreased from $838,060 to $372,740. The City Manager presented proposed cuts in capital spending and projects for Fiscal Year totaling $376,600. He noted that if the State budget were truly balanced and the Governor did not have to freeze any local payments during the year, the City's revenue loss would be down to about $176,000, which could be addressed through delaying the depot renovation and not purchasing vehicles this year.

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUCNILMAN EDWARDS discussed a letter given to City Employees by the City Manager endorsing this years United Way. He feels that there is many worthy causes to contribute to in the County and that the City should not promote one charity over another. The City Manager noted that the letter had in no way been intended to pressure employees to give to the United Way.

COUNCILMAN OWENBY advised that he had been contacted regarding moving the Handicapped parking space in the City Parking Lot beside the gazebo on North Main Street. The Street Committee will review this request and provide a recommendation to Council.

The Street Committee agreed to meet Thursday evening at 4:00 P.M. to look at this request.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session to discuss a Personnel Matter in accordance with N.C.G.S. 143-318.11 (a)(6).

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in Closed Session.

ADJORNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 22, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Due to a death in the Family, Mayor Pro Tem arrived for this meeting then excused himself.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Glen Sherlin, Director of Public Works; Johnny Patton, Interim Police Chief.

GUESTS PRESENT: None

MEMORY OF WARREN HOBBS: Mayor Clark opened the meeting with a moment of silence, in memory of Mr. Warren Hobbs, who passed away October 17, 2002.

CONSENT AGENDA: Upon a motion by Councilman Martin, seconded by Councilman Owenby those members of Council present voted to approve the consent Agenda as follows:

A. **Approval of City Council Minutes** - October 8, 2002
B. Reauthorization of Police Department Mutual Aid Agreements/Approval of New Agreements:

Council reauthorized mutual aid agreements with surrounding agencies and jurisdictions, including Forest City, McDowell County, Morganton, Old Fort, Rutherfordton, Spindale, and Hickory, and approved the following new agreement:

NORTH CAROLINA LAW ENFORCEMENT ASSISTANCE
McDOWELL COUNTY AGREEMENT

This agreement, made and entered into this the 3rd day of October 2002, by and between the Monreat Police Department (hereinafter referred to as "Requesting Agency") and the Marion Police (hereinafter referred to as "Assisting Agency"), shall remain in effect for a period of one year, commencing on October 3, 2003.

WITNESSETH THAT:

This agreement is entered into and between the Requesting Agency and the Assisting Agency pursuant to the provisions of G.S. 160A-288, which allows mutual assistance and cooperation between law enforcement agencies.

Both parties acknowledge mutual benefit in the form of enhance law enforcement capabilities and efficiency within the jurisdiction of both agencies, which insures benefits to both.

The terms and conditions of this agreement are as follows:

I. The Assisting Agency agrees to temporarily provide assistance to the Requesting Agency in enforcing the laws of the State of North Carolina.
This assistance shall include:

   A. Allowing law enforcement officers of the Assisting Agency to work temporarily with law enforcement officers of the Requesting Agency.

B. Temporary lending of equipment.
C. Temporary lending of supplies.

II. While on duty with the Requesting Agency, a law enforcement Officers provided by the Assisting Agency (hereinafter referred to as a "Loaned Officer") shall have the same jurisdiction, powers, rights, privileges and immunities as the officers of the Requesting Agency in addition to those which he normally possesses.

III. While on duty with the Requesting Agency, a Loaned Officer shall be subject to the lawful operational commands of his superior law enforcement officers in the Requesting Agency. The Loaned Officer's superior officer in the Requesting Agency shall be solely responsible for the direction and guidance of the loaned Officer. However, for personnel and administrative purposes (including for purposes of pay), the Loaned Officer shall remain under the control of the Assisting Agency and shall be entitled to Workmen's Compensation and the same extent as though he were functioning within the normal scope of his duties with the Assisting Agency.

IV. The department heads of participating law enforcement agencies certify the execution of this Agreement that their duly elected governing body has adopted an appropriate resolution or ordinance authorizing said department head to enter into this Agreement pursuant to North Carolina General Statutes Sections 160A-288 and 90-95.2, a copy of which resolution or ordinance is attached hereto.

V. The jurisdiction or authority of State Law enforcement officers is in no way reduced by this agreement.

In testimony whereof, the parties hereto have executed this agreement in duplicate, one of which is retained by each of the parties.

The "Montreat Police Department" has liability insurance to cover any and all officers working under the Mutual Aid Agreement.

This Law Enforcement Assistance Agreement executed this 3rd day of October, 2002.

REQUESTING AGENCY: Montreat Police Department
Name and Title: Scott Adams, Chief of Police

Signature: _____

ASSISTING AGENCY: Marion Police Department
Name and Title: Johnny Patton, Interim Chief of Police

Signature: _____

C. Amendment to Personnel Policy – Sick Leave

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article VII, Section 5, Sick Leave, is amended by deleting the fourth paragraph in its entirely and replacing it with the following:
"Notification of the desire to take sick leave shall be submitted to the employee's supervisor as early as possible, but in no case later than two hours after the beginning of the scheduled workday. Employees who resign or are dismissed from City employment shall lose all sick leave credits. Employees who retire with the City may apply sick leave credits toward retirement, subject to the rules of the North Carolina Local Government Employee's Retirement System. An employee may not transfer sick leave from another governmental agency."

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 22rd day of October, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Authorize Additional Vehicle for City Auction

Council authorized the following additional Police Department vehicles for the November 6 City/County auction:

1991 Ford Crown Victoria
S10 Chevrolet Truck
1993 Chevrolet Caprice

PUBLIC HEARING – ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION – A.L.L. MECHANICAL PROPERTY - BARNES ROAD: Mayor Clark opened the Public Hearing. No Citizens were present for this discussion.

The City Manager advised that this item involved the voluntary annexation of a four acre tract on Barnes Road. The effective date of the annexation ordinance is December 31, 2002.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adopt the following Ordinance:

**AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA**

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, October 22, 2002, after due notice by publication on Friday, October 11, 2002; and

WHEREAS, the City Council finds that the area described therein meets the standards of G.S. 160A-58.1(b) to wit:

a. The nearest point on the proposed satellite corporate limits is not more than thee (3) miles from the corporate limits of the City of Marion;

b. No point on the proposed satellite corporate limits is closer to another municipality than to the City of Marion;

c. The area described is so situated that the City of Marion will be able to provide the same services within the proposed satellite corporate limits that is provides within the primary corporate limits;

d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;

e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Marion (Exempt by General Assembly of North Carolina, Session 2001, Session Law 2001-37, House Bill 77); and

WHEREAS, the City Council further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City Council further finds that the petition is otherwise valid, and that the pubic health, safety and welfare of the City of Marion and of the area proposed for annexation will be best served by annexing the area described.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described territory is hereby annexed and made part of the City of Marion as of December 31, 2002.

BEGINNING on a five-eights inch iron pin set, set iron pin being located North 82 degrees 22 minutes 12 seconds West 814.98 feet from NCGS Monument "Rail", N=215554.163 metes, E=341140213 meters, NAD 83, and runs thence with the edge of a sixty foot right-of-way granted to Spectrum Textured Yarns, Inc. (see Deed Book 606 at Page 490), South 67 degrees 46 minutes 10 seconds East 66.89 feet to a point in the edge of said right-of-way, then running with a curve to the right on said right-of-way, said curve having a delta of 01 degree 07 52 seconds, a radius of 1,005.59, an arc of 19.85, a chord of 19.85, a tangent of 9.93, and a chord bearing of South 67 degrees 12 minutes 30 seconds East to a point; thence running with another curve to the right having a delta of 13 degrees 21 minutes 11 seconds, a radius of 1,005.59, an arc of 234.36, a chord of 233.83, a tangent of 117.71, and a chord bearing of South 59 degrees 57 minutes 46 seconds East to a pin set in the edge of said right-of-way; thence leaving said right-of-way and running South 24 degrees 48 minutes 21 seconds West 177.00 feet to an iron pin set; thence South 64 degrees 36 minutes 14 seconds West 426.59 fool to an iron pin set; thence running with the Edith Flack GoForth line (see Deed Book 325 at Page 84), North 31 degrees 13 minutes 50 seconds West 262.98 feet to an iron pipe; thence North 31 degrees 123 minutes 50 seconds West 262.98 feet to an iron pipe; thence North 31 degrees 13 minutes 50 seconds West 135.98 feet to an existing iron pin; thence south 70 degrees 43 minutes 42 seconds West 38384 feet to an existing angle iron; thence South 18 degrees 58 minutes 31 seconds East132.06 feet to an existing angle iron; thence North 65 degrees 10 minutes 37 seconds East 120.26 feet to an existing angle iron; thence North 18 degrees 23 minutes 46 seconds West 52.82 feet to a point in the centerline of a twenty foot right-of-way as described in McDowell County Deed Book 573 at Page 10; thence North 18 degrees 23 minutes 46 seconds West 67.62 feet to an existing angle iron, thence North 66 degrees 49 minutes 18 degrees 46 seconds West 67.62 feet to an existing angle iron; thence North 66 degre49 minutes 08 seconds East 253.57 feet to the BEGINNING, and containing 4.00 acres, and being parcels A and B as designated on that certain plat of survey by R. L. Greene and Surveying and Mapping, Registered Land Surveyors, Marion, North Carolina, dated October 22, 2001, bearing Map Number MMI-174, from which plat of survey a

Section 2. Upon and after December 31, 2002, the above described territoty and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 22nd day of October 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

PUBLIC HEARING – ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION – MCDOWELL COUNTY PROEPRTY – BARNES ROAD: Mayor Clark opened the Public Hearing. No Citizens were present for this discussion.

The City Manager advised that this item involved the voluntary annexation of an eight acre tract on Barnes Road. The effective date of the annexation is December 31, 2002.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, October 22, 2002, after due notice by publication on Friday, October 11, 2002; and

WHEREAS, the City Council finds that the area described therein meets the standards of G.S. 160A-58.1(b) to wit:

f. The nearest point on the proposed satellite corporate limits is not more than thee (3) miles from the corporate limits of the City of Marion;

g. No point on the proposed satellite corporate limits is closer to another municipality than to the City of Marion;

h. The area described is so situated that the City of Marion will be able to provide the same services within the proposed satellite corporate limits that is provides within the primary corporate limits;

i. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;

j. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Marion (Exempt by General Assembly of North Carolina, Session 2001, Session Law 2001-37, House Bill 77); and

WHEREAS, the City Council further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the City of Marion and of the area proposed for annexation will be best served by annexing the area described.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described territory is hereby annexed and made part of the City of Marion as of December 31, 2002:

BEGINNING on a point located in the centerline of Barnes Road (SR 1825), said point being located the following three (3) bearings and distances from N. C. G. S. Monument (Rail) (Coordinates N = 215,554.163 meters, E = 341,140.213 Meters, NAD 83) to wit: Beginning on NCGS Monument "Rail" and running North 76 degrees, 00 minutes, 43 seconds West 2408.54 feet to an existing iron pin, the 11th corner of the McDowell County property, Deed Book 544, Page 15, Tract 2, thence South 66 degrees, 49 minutes, 38 seconds West 419.66 feet to an iron pin set in the centerline of SR 1825, thence with said centerline of SR 1825 South 67 degrees, 46 minutes, 14 seconds East 119.94 feet to the Point of Beginning; thence from the Point of Beginning and with the centerline of said SR 1825 (Barnes Road) South 67 degrees, 46 minutes, 14 seconds East 37.38 feet to a point, the PC of a curve to the right said curve having a central angle of 39 degrees, 48 minutes, 43 seconds, a radius of 1035.59 feet, an arc length of 719.58 feet and tangent of 375.00 feet; thence from said PC along the arc of said curve for a chord bearing and distance of South 47 degrees, 51 minutes, 52 seconds East 705.19 feet to a point, the PT of said curve; thence continuing with said SR 1825, South 27 degrees, 57 minutes, 30 seconds East 15.76 feet to a point; thence leaving said SR 1825 and running with the line of Spectrum Deed Yarns, Inc. South 86 degrees, 22 minutes, 48 seconds West 39.31 feet to an iron pipe set, and South 31 degrees, 24 minutes, 48 seconds West 512.06 feet to an existing iron pipe; thence with the lines of the J. E. Kanipe Heirs, North 64 degrees, 41 minutes, 43 seconds West 314.04 feet to an existing iron pipe and North 66 degrees, 04 minutes, 13 seconds West 9.23 feet to an iron pipe set, a common corner of W. B. Rumfelt (Deed Book 185, Page 393),

Billy Gene Thomas, et ux (Deed Book 205, Page 950) and McDowell County (Deed Book 544, Page 15, Track 2); thence with the line of Rumfelt and Thomas W. Goforth, North 31 degrees, 13 minutes, 50 seconds West 756.47 feet to an iron pipe set; thence with the line of Arthur Dean Poteat, North 70 degrees, 43 minutes, 42 seconds East38.84 feet to an existing iron pipe, thence with the line of Ward and Rumfelt, South 18 degrees, 58minutes, 31 seconds East 132.06 feet to an existing iron pipe, North 65 degrees, 10 minutes, 37 seconds East 120.26 feet to an existing iron pipe and North 18 degrees, 23 minutes, 37 seconds West 120.44 feet to an existing iron pipe in the line of Arthur Dean Poteat; thence with said Poteat line, North 65 degrees, 48 minutes, 08 seconds East (passing an iron pipe set at 253.57 feet) a total distance of 295.67 feet to the BEGINNING, containing 11.67 acres by coordinates computation. An being all that property described in a Deed to All Mechanical and Construction Company, Inc. (Deed Book 684, Page 344) and a portion of the property described in a Deed to McDowell County, A Municipal; Corporation (Deed Book 544, Page 15, Track 2)

Section 2. Upon and after December 31, 2002, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 22nd day of October 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

AMENDMENTS TO MAUSOLEUM/COLUMBARIUM CONSTRUCTION CONTRACT: The City Manager advised that Gaulden Monuments is making good progress on the construction of the mausoleum and columbarium and should have all work completed by early December.

There is a need for additional work beyond the scope of the original contract. This work includes additional sidewalk work, repairs to the existing sidewalks around the mausoleum, some drainage work, the installation of marble veneer, and repairs to the existing mausoleum. The total amount of all work comes to $4,386, and can be funded out of the Cemetery account. In addition, maintenance work on the existing mausoleum and purchase of additional door panels for the columbarium will be explored with the contractor.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council voted unanimously to approve a contract for Gaulden Monuments to perform additional sidewalk, drainage, and marble veneer work in the amount of $4,386 around the new mausoleum and columbarium in Oak Grove Cemetery.

REQUEST – HANDICAPPED PARKING SPACE – GAZEBO PARKING LOT – NORTH MAIN STREET: The City Manager advised that a request has been made, by Kirksey Funeral Home, for an additional handicapped parking space in the gazebo parking lot on Main Street. The space would be the first one on the right in the parking lot next to Kirksey Funeral Home.

The Street Committee has reviewed this request and recommends approval.

A brief discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Owenby, those members of Council present voted to approve this request.

DISCUSSION – CITY COUNCIL MEETING SCHEDULE: The City Manager advised that Councilman Little had requested this item be placed on the agenda for Council to consider going to a first and third Tuesday meeting schedule every month. He noted that such a change would require an ordinance, since the current meeting schedule was contained in the City Code. Past concerns had been expressed with the bi-monthly meetings of the Isothermal Planning and Development Commission, but the City Manager noted that IPDC Director Paul Hughes had stated that the City's meeting schedule could be accommodated in scheduling IPDC Board meetings.

Councilman Edwards stated he was sorry that Councilman Little could not be here to make the motion. He suggested that it be codified that Council does not meet on the first Tuesday of July or the third Tuesday of December.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 2
ADMINISTRATION
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 2, Administration, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 2-26 is amended by deleting subsection (a) in its entirety and replacing it with the following:

> (a) *Regular meetings*. There shall be regular meetings of the city council members at City Hall or at such other place as may be designated, on the first and third Tuesdays of each month at 7:00 p.m., unless otherwise specified in which case each member of the council shall be so notified. No regular meetings of City Council shall be held on the first Tuesday of July or the third Tuesday in December.

Section 3. This ordinance shall become effective on January 1, 2003.

Adopted this the 22nd day of October, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-10-22-1

RESOLUTION AUTHORIZING SALE OF SENIOR CENTER PROPERTY:

The City Manager presented a bid submitted by the Mental Health Association in North Carolina to purchase the Senior Center property on Crawford Street for $170,000. A resolution endorsing this bid was presented from the McDowell County Board of Commissioners. Both the County and Mental Health Association suggested that the City entertain making a direct sale

to the Association, as authorized by G.S. 160A-279. The City Manager reported that the City Attorney had recommended against a direct sale, since G.S. 160A-279 allows a direct sale of land to a non-profit agency only if the city is authorized to give money to the non-profit agency. Because, under State law, the City is not authorized to give money for mental health purposes, a negotiated offer and upset bid procedure would be recommended.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution:

Resolution Authorizing the Sale of Certain Property Owned by the City of Marion by Negotiated Offer and Upset Bid

WHEREAS, the City Council of the City of Marion desires to dispose of certain surplus property of the City; and

WHEREAS, N.C.G.S. 160A-269 authorizes a city to convey by negotiated offer and upset bid any real or personal property; and

WHEREAS, the Mental Health Association in North Carolina, a nonprofit agency, has submitted a bid in the amount of $170,000 for the Senior Center property, as described below:

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Marion that:

1. The following described property is hereby declared to be surplus to the needs of the City of Marion:

BEING a parcel containing .69 of an acre, according to that certain unrecorded plat of survey prepared by R.L. Greene Surveying and which Survey is dated November 7, 2001 and which survey has a map file number of MM1-022R and which survey is entitled, Survey of a Portion of that property described in a deed to The Town of Marion, Deed Book 173, Page 215 and from which survey the following metes and bounds description is taken.

BEGINNING AT an existing concrete monument which is located North 43 degrees 32 minutes 39 seconds West 262.92 meters from N.C.G.S. Monument Main which has NAD 83 grid coordinates of N = 218059.962 meters and E = 337533.111 meters and which Monument Main is located North 62 degrees 18 minutes 17 seconds West 123.8875 meters from N.C.G.S. Monument Clair which has NAD 83 grid coordinates of N = 218002.383 meters and E = 337642.805 meters and which BEGINNING point is located at the North Western corner of land now or formerly owned by the City of Marion, see Deed Book 428, Page 164, McDowell County Public Registry and which BEGINNING point is located at the Southernmost corner of property now or formerly owned by Kriun E. Evans, see Deed Book 509, Page 190, McDowell County Public Registry; thence from said BEGINNING point and with the line of lands now or formerly owned by the City of Marion, see Deed Book 173, Page 215, and Deed Book 428, Page 167, McDowell County Public Registry, South 68 degrees 08 minutes 59 seconds West 38.90 feet to an existing iron pin; thence South 68 degrees 08 minutes 59 seconds West 88.74 feet to an unmarked point in the center of the Creek, an unmarked point which is located in the line of lands now or formerly owned by Heritage Hill Associates, see Deed Book 345, Page 822, McDowell County Public Registry, thence with the creek, the following courses and distances which are all to unmarked point, North 56 degrees 36 minutes 07 seconds West 21.80 feet; North 32 degrees 51 minutes 07 seconds West 45.23 feet; North 82 degrees 01 minutes 52 seconds West 31.12 feet, South 69 degrees 48 minutes 04 seconds West 21.65 feet; thence with the culvert, North 40 degrees 24 minutes 54 seconds West 64.80 feet to a punch mark placed in a sidewalk which is identified as the BEGINNING corner of Deed Book 173, Page 215, McDowell County Public Registry; thence with Crawford Street, North 51 degrees 02 minutes 47 seconds East 179.44 feet to a pkm nail set on November 7, 2001; thence with a new line, South 68 degrees 30 minutes 36 seconds East 53.11 feet to a pkm nail set on November 7, 2001; thence with a new line, South 34 degrees 26 minutes 12 seconds East 39.43 feet to a pkm nail set on November 7, 2001, thence South 21 degrees 29 minutes 07 seconds East 117.68 feet to the point and place of BEGINNING.

Being a portion of Deed Book 173, Page 215, McDowell County Public Registry.

2. The City Council accepts the offer of the Mental Health Association in North Carolina to purchase the above described property for $170,000, subject to the upset bid process being followed as required by N.C.G.S. 160A-269.

3. The City Clerk shall notify the Mental Health Association in North Carolina of the acceptance of this offer, receive a five percent bid deposit from the bidder, and cause a notice of this resolution to be published in accordance with G.S. 160A-269. Such notice shall state that prospective bidders have ten days from the date the notice is published to offer an upset bid, pursuant to G.S. 160A-269

4. Once the upset bid process is completed, in accordance with G.S. 160A-269, the City Manager is designated to dispose of the above described property to the bidder selected by City Council, for a minimum price of $170,000. The effective date of the sale shall be coordinated with McDowell County to coincide with the moving of the Senior Center to the new location on Spaulding Road.

Adopted this the 22nd day of October, 2002.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-02-10-22-1

DONATION OF FUNDS TO SENIOR CENTER: Mayor Clark recommended that Council consider donating some or all of the City's share of the proceeds from the Senior Center to the County for the purpose of furnishing the new Senior Center. The City Manager presented an estimate from Public Works Director Glen Sherlin stating that the proposed street next to the old Senior Center could be constructed with curb and gutter for $15,640. Council members agreed that the street should be constructed, but agreed by consensus to budget Powell Bill funds in the future for such purpose. Councilman Cuthbertson suggested that Council agree with the concept of donating the bulk of the City's proceeds from the Senior Center sale to the new Senior Center, but wait to see when the funds could best be used, since the need to provide local matching funds for a grant may be forthcoming in the near future.

REQUEST – HANDICAPP PARKING CITATION: The City Manager advised that Ms. Katherine Brown received a parking citation for not having a visible handicap placard on her vehicle while parked in a handicap space.

She advised that she had placed the placard on her rear view mirror. However, due to wear and tear of the placard, it had slipped off and fallen on the floor of the vehicle and was not visible to the officer.

She is requesting that the citation be forgiven.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to forgive the citation.

DISCUSSION – WATER/SEWER – HIGHWAY 221 SOUTH: The City Manager advised that he had spoken with Mr. Ronnie Patel, owner of the Super 8 Motel on U.S. 221 South, about connecting to water and sewer and being annexed. In order for the Super 8 Motel ($900,000 tax base) to be annexed, the owner, Mr. Patel, wants a longer term financing of his cost recovery charges, which would run $17,952-$33,660, depending on whether he needs a 2 or 3 inch service (the City will try to have him get by with a 2 inch meter). Mr. Patel would like a payment term of three to five years. Since Mr. Patel's business will generate nearly $5,000 per year in taxes, and be a good water and sewer customer, generating about $300 per month in water and sewer bills, it might not be out of the question to consider longer payback terms only in situations where a property is being annexed and the taxes generated in a certain period of time (perhaps four or five years) would equal or exceed the connection fees for water and sewer.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to allow a three year time payment for businesses agreeing to be annexed as part of the Highway 221 South sewer extension project, in order to encourage connections.

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUCNILMAN EDWARDS advised that the Marion Fire Department has accepted the application of its first female volunteer firefighter, Mandy Edwards. Councilman Edwards advised that it was sort of ironic that her maiden name is Edwards.

MAYOR CLARK advised that Duke Power is in the process of down sizing, and that he, the City Manager, and Glen Sherlin had met with representatives from Duke Power the previous week to discuss tree trimming issues. Mayor Clark advised that Marion has the second highest reliability rate on Duke Power's system, which is much improved from a few years prior, due to the push given by the Mayor and Council to direct Duke Power to improve its tree trimming in the City, so that City residents and businesses could have more reliable power.

ADJORNMENT: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, November 5, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Lovina Smith, Grants Administrator; Johnny Patton, Interim Police Chief.

GUESTS PRESENT: James Haynes PO Box 207 Forest City, NC 28043; Dean Wall PO Box 1188 Marion, NC 28752; Bruce & Doris Frisbee 2031 Sugar Hill Road, Marion, NC 28752; Daniel & Joy Shuford 109 Padgett Drive, Marion, NC 28752; Ronnie Smith, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - October 22, 2002
B. Approval of Annual Longevity Pay for City Employees
C. Approval of Flu Shots for City Employees - to be paid for by City for employees only

PUBLIC HEARING – HIGHWAY 226 SOUTH ANNEXATION AREA: Mayor Clark opened the Public Hearing.

Mr. Dean Wall was present for this discussion and requested that his 2.6 acres of property on N.C. 226 South be excluded from this annexation.

Mr. Paul Simpson was present for this discussion and also requested that his property be excluded from this annexation.

All other persons present for this discussion spoke in favor of being included in this annexation, including Mr. James Haynes and Mr. Claude Hollifield.

The City Manager noted that many property owners have expressed verbal support for the annexation.

The Public Hearing was closed.

The City Manager advised that the adoption of the annexation ordinance is set for November 19, 2002, with the annexation taking effect on June 30, 2003.

A discussion followed.

The City Manager will have two ordinances prepared for the next City Council Meeting. One will include Mr. Wall's property and the other will exclude his property

PUBLIC HEARING – SUGAR HILL ROAD ANNEXATION AREA: Mayor Clark opened the Public Hearing.

Mr. Bruce Frisbee from the Sugar Hill Road area spoke in favor of the annexation.

Ms. Joy Shuford, Representative of Foothills Industries on Lukin Street, was also present for this Public Hearing The Foothills Industry is not being considered in this annexation. Ms. Shuford requests any assistance she can get from Council to be annexed and receive water and sewer service as soon as possible.

The City Manager presented letters of support for the annexation signed by property owners including McDowell County Schools, Paul Woessner, and McDowell Family Medicine.

A discussion followed.

The Public Hearing was closed.

The City Manager will present the Ordinance for adoption on this area at the November 19, 2002 City Council Meeting, with the annexation taking effect on June 30, 2003.

DISCUSSION - HOLIDAY SCHEDULE/EVENTS: It was the consensus of Council to approve the following:

a. Holiday Parade – Set for November 24, 2002 at 3:00 P.M.
b. Turkey's - City Employees - To be given out at Thanksgiving
c. City Council Christmas Party – Set for December 10, 2002 at 7:30 p.m. at Carolina Chocolatier's
d. Holiday & Christmas Schedules - The City Manager noted the City holidays for Thanksgiving and Christmas
e. Christmas Luncheon – Set for City Employees – December 20, 2002 at Noon, with an evening event scheduled for 6:00 p.m. at the Community Building
f. Holiday Parade Street Vendors will be cleared through the Police Department and the DBA. The City Manager advised that the Police Department is getting a handle on Street Vendors, for purposes of control and revenue for the Downtown Business Association this year.

ANNUAL TOWN MEETING & COUNCIL PLANNING SESSION: A discussion was held regarding the next Annual Town Meeting and City Council Planning Session.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to set the next Town Meeting for January 23, 2003, at 7:00 p.m., with January 30 set as a back up date in case of bad weather.

The next City Council Planning Session was set for February 8, 2002 at 7:00 A.M.

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS: None

ADJORNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

_____
A. Everette Clark, Mayor

ATTEST:

_____
J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, November 19, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Johnny Patton, Interim Police Chief.

GUESTS PRESENT: Dean Wall PO Box 1188 Marion, NC 28752; Claude Hollifield; 2458 226 South, Marion, NC 28752; Jennifer Jackson, City Attorney, 26 West Court Street, Marion, NC 28752; Harriett Thomas and April Westmoreland, City Auditors, Johnson Price & Sprinkle.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - November 5, 2002
B. Budget Amendment

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(Third Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002--03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Miscellaneous Revenues, Account Number 10-335-0000, is increased from $20,000 to $22,463.

b. General Fund Revenues, Hazardous Materials grant, Account Number 10-389-0000, is increased from $0 to $2,740.

c. . General Fund Expenditures, Police Department, Account Number 10-510-74, Capital Outlay, is increased from $133,183 to $135,646.

d. General Fund Expenditures, Fire Department, Account Number 10-530-45, Contracted Services, is increased from $3,000 to $5,740.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be dept on file for direction in the disbursement of funds.

Adopted this the 19th day of November,. 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-02-11-19-1

C. Approval - Agreement with N.C. Administrative Office of the Courts

NORTH CAROLINA
WAKE COUNTY

AGREEMENT

This agreement is made and entered into by and between the Marion Police Department hereinafter referred to as "AGENCY". And the North Carolina Administrative Office of the Courts (AOC) to provide access to AOC data.

I. PERFORMANCE

A. AGENCY AGREES THAT IT SHALL

(1) Observe the Policy for Access to AOC Systems.

(2) Use Form AOC-A-151 to request access for each user.

(3) Observe AOC information protection policy and procedures and consult with designated AOC personnel regarding any issues related to these policies and procedures.

(4) Observe all applicable federal and state laws and administrative rules for the use and protection of data provided under this agreement.

(5) Ensure that date accessed from the AOC shall be for official use by authorized AGENCY officials, employees, agents, contractors and subcontractors only.

(6) Provide in writing to the AOC the names of primary and secondary points-of-contact. These will be the only AGENCY personnel allowed to contact the AOC help desk under this agreement.

(7) Notify AOC within seven days of termination of employment of authorized Agency personnel so that AOC can terminate their access rights.

B. AOC AGREES THAT IT SHALL

(1) Allow AGENCY access to data as specified in Form AOC-A-151 Security File Approval for Automated Systems.

(2) Provide written user instruction for access to AOC data.

II. REIMBURSEMENT

A. Agency Connection Fee There is a one-time agency connection fee of $130.00. This fee will be waived if the AOC is currently accessing systems provided by the requesting agency at no charge. This fee will be waived if the requested access is to provide data entry into AOC systems.

B. User-id Setup Fee

1. For inquiry access. There is a one-time set-up fee for each user-id of $70.00. AOC reserves the right to limit the number of user-ids. This charge will be waived if the AOC is currently accessing systems provided by requesting agency at no charge. AOC will charge the user-id setup fee for reinstatement if a user-id was deleted due to 90 day-days inactivity.

2. For update access. There is a one-time set-up fee for each user-id of $70.00. This fee will be waived if the requested access is to provide data entry into AOC systems. Written certification will be required stating that all requested users will receive training for the requested systems within 30 days of the request. AOC will charge the user-id setup fee for reinstatement if a user-id is deleted due to 990-days inactivity.

C. On going connectivity Charge. There is no charge for ongoing connectivity. It is assumed that all government agencies and private law enforcement and security personnel will connect to the AOC through the NC Office of Information Technology Services (ITS), through the Criminal justice Information network (CJIN) Mobile Data Network or through their local Internet provider. AOC reserves the right to charge for on-going connectivity in the future.

D. Transaction Charge. There is no transaction charge for government use. The AOC reserves the right to charge a transaction fee in the future.

E. If client software is needed:

(1) Workstation. The AGENCY agrees to be responsible for providing and maintaining the client workstations.

(2) Software License. If software licenses are required, AGENCY is responsible for the cost of the software license and software maintenance fees. For Magistrate System access, there will be no charge for client software at this time. AOC reserves the r right to charge for magistrate System client software and maintenance based on future demands to support this access. For eCitation access, copies of the eCitation client software and maintenance will be provided at no charge. The State of North Carolina, through the Criminal Justice Information Network, has filed for a trademark for "eCitations" which application is pending before the United States Patent and Trademark Office.

(3) Installation and Support. There will be a charge for service for each on-site visit by AOC technical support staff at the ITS rate (see www.its.state.nc.us). If external contract staff of the AOC is used,. Their actual rate will be charged. Travel and subsistence will also be charged at the State per diem for AOC staff time, and at the contract rate for any external contract staff's time.

(4) Firewall. If a firewall is required, the requesting agency is responsible for the equipment and software cost of the firewall. The AOC will install the firewall and maintain ownership, security and control of the firewall. The AOC will install the firewall and maintain ownership, security and control of the firewall. If maintenance of the firewall is required, there will be a charge for service by AOC technical support staff at the ITS rate (see www.its state.nc.us) if we use external contract staff, their actual rate will be charged. Travel and subsistence will also be charged at the State per diem for AOC staff time, and at the contract rate for any external contract rate for any external contract staff's time.

III. MODIFICATION AND TERMINATION

A. This AGREEMENT may only be modified by a written agreement between the parties unless otherwise provided in this agreement or in the Policy for Access to AOC Systems.

B. Any change in the specific scope and/or terms of the performances of the parties hereto without prior written approval will constitute grounds for the termination of this AGREEMENT.

C. Either party many, with or without cause, terminate this AGREEMENT by giving a thirty (30) day written notice of its intent to do so.

IV. LIMITS OF THIS AGREEMENT

A. AOC may change its screens and formats or delivery methods to accomplish its needs.

B. The AOC provides no warranties, express or implied, that the information or data accessed is accurate, correct or complete.

C. The AOC provides no other warranties of any kind or nature, express or implied, in connection with this service.

D. The AOC shall not be liable for any demand or claim regardless of form of action, for any damages arising from causes beyond the control and without the fault or negligence of the AOC.

E. The AOC shall not be liable for any demand or claim, regardless of form of action, for any damages arising from incorrect or incomplete information or data accessed from this service. It is expressly understood by the parties that it is the AGENCY"S responsibility to verify information or data obtained through this agreement with the official information reposing at the court of record.

V. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous discussions and agreements.

VI. CORRESPONDENCE AND NOTICES

Any correspondence or notice required or permitted to be given under this Agreement shall be effective if and only if it is in writing. Notice must be given by personal delivery or sent by United States mail.

Mail to the LICENSEE must be sent to:

Scott Spratt

Marion Police Department
270 South Main Street
Marion, NC 28752

Mail to the AOC must be sent to:

Cliff Layman, Deputy Director
North Carolina Administrative Office of the Courts
Technology services Division
PO Box 2448
Raleigh, NC 27602

Or to such other address as each party has notified the other in writing.

VI. BILLING INFORMATION:

To insure reimbursement for costs associated with access, the following information is required:

Fiscal Officer:_____ Signature:_____

For Department:_____

Division:_____

Section:_____

When the organizational structure Department/Division/Section does not apply, then substitute - the equivalent organizational structure.

VII. SIGNATURES:

The undersigned states that he or she is authorized to execute this agreement and bind the agency, county or city.

_____ _____

Authorized signature for AGENCY DATE

_____ _____

Typed or printed authorized signature NAME for Agency Title of Name

_____ _____

Cliff Layman, Deputy Director DATE
NC Administrative Office of the Courts

D. Approval - Annual Contributions for Firemen:

NAME	Hours Worked	Amount
Donald Anderson	103	$1,381.00
Marty Coward	64	858.00
Durwood Creson	112	1,501.00
Terry Depoyster	168	2,252.00
Mike Gibson	40	536.00
Jim Neal	32	429.00
Cameron Taylor	32	429.00
Craig Walker	16	214.00
Total	567	$7,600.00

E. Amendment to Personnel Policy:

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopt on June 19, 2001, is hereby amended as follows:
Section 1. That Article VII, Section 5, Sick Leave, is amended by deleting the third paragraph under the Incentives section in its entirety and replacing it with the following:

" An employee who completes one calendar year of perfect attendance without using any sick leave shall therefore receive sixteen (16) hours of personal leave and shall be presented with a certificate honoring this achievement. Personal leave awarded in accordance with this section will be treated as vacation time, its use approved in advance by the supervisor, with the same requirements for notice as are in place for use of vacation time."

Section 2. This amendment shall become effective upon its adoption.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

F. Boot Reimbursement Policy:

City of Marion
Boot Reimbursement Policy

Upon completion of one (1) year of service with the City of Marion, an employee may purchase a pair of boots at the City's expense and will be allowed to do so on each anniversary date of hire thereafter. The City will pay a maximum of $75.00 toward the purchase price. If the price of the boots exceeds $75.00, it will be the responsibility of the employee to pay the difference in the cost.

The department head must authorize for a purchase order to be issued by the purchasing agent for a pair of boots. The purchasing agent is to make the retail business aware that the City will pay a maximum of $75.00 toward the cost. If cost exceeds the $75.00 limit, the business is responsible for collecting the difference at the time of purchase. The difference shall not be charged to the City or payroll deducted.

The employee must be classified as a regular employee with full-time status.
Adopted this the 19th day of November, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

PUBLIC HEARING – ZONING AMENDMENT - PENALTIES & ENFORCEMENT:
Mayor Clark opened the Public Hearing.

Ms. Jennifer Jackson, City Attorney; was present for this meeting and updated Council on the primary roles of the City Council in exercising their zoning powers. The City Council is to provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts are to be determined, established and enforced. Council has done so through its enactment of a Zoning Ordinance that is found in the Appendix of the City Code. The Council's authority to enact such legislation is governed by North Carolina law (NCGS 160A-381 et seq.).

In order to exercise zoning powers the City is required to appoint a planning agency and board of adjustment. which they have done.

Ms. Jackson stated she understood that Council wished to have some role in hearing appeals regarding zoning violations but, under State law, the Council is limited to delegating this responsibility to the Board of Adjustment or appointing itself as the Board of Adjustment.

City Planner Suzy Davis noted that the attached zoning amendment would continue the practice of the Board of Adjustment hearing zoning appeals, and would make available to the City all enforcement remedies allowed under State law.

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance as recommended by City Planner, Suzy Davis:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2 Appendix A, Article XV, Section 1500 is amended to read as follows:

Section 1500. Penalties and Enforcement.

Enforcement Procedures.

(A) Notice of Violation. When the administrator of this ordinance, or his/ her designee finds a violation of this Ordinance, it shall be his/ her duty to give the owner or occupant of the property in violation written notice by certified or registered mail to his last know address, by personal service of the notice, or by posting the notice conspicuously on the property. The following information shall be included in the notice of violation:

(1) that the land, building, structures, sign, or use is in violation of the Zoning Ordinance of the City of Marion;
(2) the nature of the violation(s), and citation of the section(s) of the Ordinance violated;
(3) the measures necessary to remedy the violations; and
(4) the time period in which the violation must be corrected.

If applicable a stop work order may be issued at this time.

(B) Appeal. Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the administrator of this ordinance or his/ her designee to the Board of Adjustment within thirty (30) days following the date of the receipt of the Notice of Violation The Board of Adjustment shall hear the appeal within sixty days, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal the decision of the zoning administrator or his/ her designee shall be final.

(C) Failure to comply with the notice of violations If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taking, or a final decision of the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by State or by section 1500.1 Enforcement Methods.

Section 1500.1 Enforcement Methods. Enforcement may be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

(1) Injunctions- Enforcement may be achieved by injunction. When a violation occurs the City may either before or after the institution of any other authorized action or proceeding, apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction commanding the defendant, or in the case of counterclaims the plaintiff, to correct the unlawful condition or cease the unlawful use of the property.

(2) Order of Abatements- The City may apply for and the court may enter an order of abatement. An order of abatement may direct that buildings and other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this ordinance Whenever the party is cited for contempt by

the court and the City executed the order of abatement, the City shall have a lien on the property for the cost of executing the order of abatement.

(3) Criminal Penalties- Any violation to this Ordinance shall be a misdemeanor or infraction as provided by N.C.G.S. 14-4.

(4) Denial of Permit or Certificates- The Planning and Inspections Department shall withhold or deny any permit, certificate, or other authorization on any land, building, structure, sign, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

(5) Revocation of Permits or Certificates. The Planning and Inspections Department may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocations. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State of local laws; or the false statements or misrepresentations made in securing the permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked.

(6) Civil Penalties- Any act constituting a violation shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt or as otherwise provided herein if the offended fails to pay the penalty with 15 days.

a. Responsible parties. The owner or occupant of any land, building, structure, sign, use of land, or part thereof, any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and other remedies provided herein.
b. Issuance of citations. No civil penalty shall be assessed under this section until the person alleged to be in violation has been notified in accordance with section 1500 (A) Notice of Violations If after receiving a Notice of Violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation Such citation shall be in writing; shall be delivered by certified or registered mail to the last know address of the responsible party or by personal service; shall state the civil penalty to be imposed upon the violator; and shall direct the violator to pay the civil penalty within fifteen (15) calendar days of the date of the citation.
c. Continuing Violation. For each day the violation is not corrected, the violator will be guilty of an additional separate offense and subject to additional civil penalties.
d Penalties. Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty in the amount of fifty dollars ($50.00) per violation, per day. The penalty would begin after the expiration of the thirty day appeal period for the notice of violation as described in 1500 (B) or after an appeal from a notice of violation is denied.
e. Nonpayment If payment is not received or equitable settlement reached within thirty (30) days, the matter shall be referred to the city attorney to institute a civil action for recovery of the civil penalty.

Section 1500 2 Repeat Violations. If the violator of this ordinasce repeats the violation within a three (3) year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies. An additional notice of violation shall not be necessary.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 19th day of November 2002.

A. Everette Clark, Mayor

ATTEST:

Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-11-19-1

AMENDMENT – CHAPTER 1 OF CITY CODE – CIVIL PENALTIES: The City Manager advised that this amendment would state that appeals from zoning ordinance violations would be handled as stated in the Zoning Ordinance, based on the amendment approved with the preceding item. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 1
GENERAL PROVISIONS
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 1 of the Code of Ordinances, City of Marion, North Carolina, is amended as follows

Section Section 1-16, Civil citations--Penalties for violations, is amended to add the following section:

(d) All violations to appendix A, Zoning shall be handled according to section 1500 of the City of Marion Zoning Ordinance.

Section 3. Section 1-20, Same—Appeal, is amended to read as follows:

A person notified of a violation may appeal such determination to the city council, with the exception of a violation of any section of Appendix A, Zoning. Appeals for a violation of the Zoning Ordinance shall be determined by the Board of Adjustment as stated in section 1500 of the Zoning Ordinance. All other appeals must be filed in writing with the city not later than ten (10) days after the receipt of the first notice issued pursuant to section 1-16. Failure to timely file an appeal shall constitute acceptance of the determination that a violation exists, and waiver of the right to appeal. If an appeal is timely filed, further action by the code enforcement officer shall be suspended until a ruling is issued by the city council. If the city council finds that a violation exists, enforcement under this chapter shall continue despite any further appeals by the violator. The fact that an appeal pending under this chapter shall not prevent the city from pursuing other enforcement remedies allowed by law, and a finding by the city council that a violation does exist shall not be binding in any other separate enforcement proceeding brought by the city with regard to the same violation that the city council ruled upon.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 19th day of November 2002.

A. Eugene Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-02-11-19-3

PRESENTATION OF 2001-2002 AUDIT REPORT: Ms. Harriett Thomas appeared before Council and presented the Audit Report for 2001-2002. Johnson Price & Sprinkle gave the City an unqualified, or clean, opinion for 2001-02 and complimented the Mayor, Council and staff for dealing with the State budget crisis in the preceding year.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to accept the Audit prepared by Johnson, Price and Sprinkle for 2001-2002.

AMEND ANNEXATION ORDINANCE – HIGHWAY 226 SOUTH AREA: The City Manager advised that the Highway 226 South annexation report needed to be amended to make technical changes to property descriptions and annexation calculations, based on recent land transfers not originally discovered using the County's tax records, and also to exclude property owned by Mr. Dean Wall.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to approve the amended Annexation Report to make technical changes to property descriptions and annexation calculations, based on recent land transfers not originally discovered using the County's tax records, and also to exclude property owned by Mr. Dean Wall.

ADOPTION OF ANNEXATION ORDINANCE - HIGHWAY 226 SOUTH AREA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICDLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA

WHEREAS, all of the prerequisites to adoption of this ordinance prescribed in Chapter 160A, Article 4A, Part 2 of the General Statutes of North Carolina, have been met; and

WHEREAS, the City Council has taken into full consideration of statements presented at the public hearing held on November 5, 2002 on the question of this annexation; and

WHEREAS, the City Council has concluded and hereby declares that annexation of the area described herein is necessary to the orderly growth and development of the City of Marion;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion that:

Section 1. From and after the effective date of this annexation, the following territory shall be annexed to and become a part of the City of Marion, and the corporate limits of the City of Marion shall be extended to include said territory more particularly described by metes and bounds as follows:

BEGINNG at a point on the current Corporate Limits, said point being in the center of the Southern Railroad right-of-way; thence following the center line of said railroad right-of-way in a southeasterly direction approximately 1,786.88 feet to a point, said point being on the northern boundary of Lot 7430 in Block 50 of McDowell County Tax Map 1711.04; thence following the northern boundary of said Lot 7430 in a northeasterly direction approximately 280 feet to a point, said point being the northern most corner of said Lot 7430; thence following the northeastern boundary of said Lot 7430 in a southeasterly direction approximately 859.l4 feet to a point, said point being at a corner of said lot 7430; thence following the eastern boundary of said lot 7430 in a southerly direction approximately 301.08 feet to a point, said point being at a corner of said Lot 7430, said point also being in the center of the right-of-way of Southern Railroad; thence following the center of said railroad right-of-way in a southeasterly direction approximately 522.39 feet to a point in the center of SR 1737 (Jacktown Road); thence following in a straight line in a southwesterly direction approximately 100.00 feet to a point, said point being at the intersection of the southern boundary of said railroad right-of-way and the eastern boundary of S.R. 1737 (Jacktown Road), said point also being the northern most corner of Lot 8418 in Block 69 on McDowell County Tax Map 1710.02; thence following the northern boundary of said lot 8418 and lot 6643 in Block 69 on McDowell County Tax 1710.02 in a westerly direction approximately 235 feet to a point, said point being the northwest corner of said lot 6643, said line also being the southern boundary of the right-of-way of SR 1737; thence following the western boundary of said lot 6643 and the southern boundary of lots 7514, 8602 and 8418, all being in Block 69 on McDowell County Tax Map 1710.02 approximately 635 feet in a southeasterly direction to a point, said point being the southeastern corner of said lot 8418; thence following the eastern boundary of said lot 8418 in a northerly direction approximately 350 feet to a point, said point being at the northeast corner of said Lot 8418, said point also being on the southern margin of said railroad right-of-way; thence following in a straight line in a northeasterly direction approximately 36.00 feet to a point in the center of said railroad right-of-way, said point also being the northern most corner of Lot 3116 in Block 79 on McDowell County Tax Map 1710.02; thence following the northeastern property boundary of Lot 3116, said line also being the center of the said railroad right-of-way in a southeasterly direction approximately 734.77 feet to a point, said point being at the northern most corner of Lot 5803 in Block 79 on McDowell County Tax Map 1710.02, said point also being in the center of said railroad right of way; thence following the northwestern boundary of said Lot 5803 approximately 354.04 feet in a southerly direction to a point, said point being at the western most corner of said Lot 5803; thence following the southwestern boundary of said Lot 5803 approximately 400.72 feet in a southeasterly direction to a point, said point being at the intersection of the southwestern boundary of said Lot 5803 and

the northern boundary of the right of way of N.C. Highway 226; thence following the northern boundary of said right of way in a easterly direction approximately 57.46 feet to a point, said point being at the intersection of the northern boundary of said right of way and the southeastern corner of said Lot 5803; thence following the eastern boundary of said Lot 5803 approximately 532.18 feet in a notherly direction to a point, said point being at the intersection of theeastern boundary of said Lot 5803 and the southeastern boundary of the Southern Railroad right of way, said point also being at the northern most corner of Lot 7781 in Block 78 on McDowell County Tax Map 1710.02; thence following the northeastern boundary of said Lot 7781, said line also being the southern margin of said railroad right-of-way approximately 741.56 feet to a point, said point being at the intersection of the southern margin of said railroad right-of-way and the northern margin of the right-of- way of N.C. 226, also said point being the eastern most corner of said Lot 7781; thence following the northern margin of the right-of-way of N.C. 226 in a easterly direction approximately 2200.00 feet to a point, said point being at the intersection of said right-of-way boundary and the northern boundary of Interstate 40; thence following the northern boundary of Interstate 40 in a southwesterly direction and crossing the right of way of N. C. 226 approximately 60.00 feet to a point, said point being at the intersection of the southern boundary of the right of way of N. C. 226 and the northern boundary of the right of way of Interstate 40; thence following the southern boundary of the right of way of N. C. 226 in a westerly direction approximately 718.40 feet to a point, said point being at the northern most corner of Lot 4839 in Block 97 on McDowell County Tax Map 1710.02, said point also being on the boundary of Terry Smith and Robbin Oil Company Satellite Annexation under Ordinance No. 0-97-11-18-1; thence following the northwestern boundary of said lot 4839 in a southwesterly direction approximately 285 feet to a point, said point being at the western most corner of said lot 4839, said point also being on the northeastern boundary of the right-of-way of SR 1742 (Scott Road); thence crossing said right-of-way in a staight line in a southwesterly direction approximately 38 feet to a point, said point being at the northern most corner of lot 0786 in Block 97 on McDowell County Tax Map 171.02 thence following the northeastern boundary of said lot 0786 and lots 0951in Block 97 on McDowell County Tax Map 1710.02, lot 9977 in Block 87 on McDowell County Tax Map 1710.02 and lots 8005 and 6261 in Block 88 on McDowell County Tax Map 1710.02 approximately 562 feet in a northwesterly direction to a point, said point being the northern most corner of said lot 6261; thence following the northwestern boundary of said lot 6261 approximately 146 feet in a southwesterly direction to a point, said point being the western most corner of said lot 6261, said point also being on the northeastern boundary of the right-of-way of the Southern Railway; thence crossing said railroad right-of-way in a straight line in a northwesterly direction approximately 235 feet to a point, said point being on the southwestern margin a said railroad right-of-way, said point also being the northern most corner of lot 4140 in Block 88 on McDowell County Tax Map 1710.02; thence following the northwestern boundary of said lot 4140 and tot 3949 in Block 87 on McDowell County Tax Map 1710.02 approximately 432 in a southwesterly direction to a point, said point being the southwestern corner of said lot 3949, said point also being in the cenerline of Young's Fork Creek, thence following the center line of Young's Fork Creek in a northwesterly direction approximately 1,000.00 feet to a point at the eastern most corner of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02, said center line also forming the southern boundary of Lot 3949 in Block 87, Lot 0232 in Block 88 and Lot 7324 in Block 78 all on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2562 approximately 290.00 feet to a point on the northeastern boundary of Lot 1347 in Block 78 on McDowell County Tax Map 1710.02; thence following the boundary of said Lot 1347 first approximately 90.00 feet in a southeasterly direction then approximately 212.00 feet in a southeasterly direction then approximately 296.00 feet in a northwesterly direction then approximately 110.00 feet in a northeasterly

direction to a point on the boundary of Lot 2562 in Block 78 on McDowell County Tax Map 1710.02; thence following the eastern boundary of said Lot 2562 in a generally northerly direction approximately 294.00 feet to a point at the intersection of said property boundary and the southern margin of the right of way of N. C. 226, said point also being the northern most corner of said Lot 2562; thence following the southern margin of said right of way approximately 70.00 feet in a northwesterly direction to a point at the intersection of said right of way and the boundary of Lot 9820 in Block 68 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 9820 approximately 275.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of Old Highway 221 (Three Point Road); thence following the eastern boundary of said right of way approximately 320.00 feet in a southerly direction to a point; thence crossing said right of way in a westerly direction approximately 60.00 feet to a point at the intersection of said right of way and Lot 5572 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of said Lot 5572 first approximately 169.00 feet in a westerly direction and then approximately 243.00 feet in a northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 5796 in Block 68 on McDowell County Tax Map 1710.02; thence following the property boundary of Lot 5796 first approximately 200.00 feet in a northwesterly direction then approximately 188.00 feet in a northeasterly direction to a point at the intersection of said property boundary and the southern boundary of Lot 2133 in Block 69 on McDowell County Tax Map 1710.02; thence following the southern boundary of said Lot 2133 approximately 478.00 feet in a westerly direction to a point at the intersection of said property boundary and the eastern boundary of the right of way of U.S. Highway 221; thence crossing said right of way in a straight line approximately 100.00 feet in a westerly direction to a point at the intersection of said right of way and Lot 8321 in Block 58 on McDowell County Tax Map 1710.02; thence following the eastern margin of said right of way in a northerly direction approximately 1,154.00 feet to a point at the intersection of said right of way and the southern boundary of the right of way of U.S. Highway 221 Bypass; then crossing the right of way of said U.S. Highway 221 Bypass in a straight line in a northerly direction approximately 250.00 feet to a point at the intersection of the northern boundary of said right of way and the southern boundary of Lot 1025 in Block 50 on McDowell County Tax Map 1711.04; thence following the boundary of said Lot 1025 first approximately 49.00 feet in a southwesterly direction then approximately 437.00 feet in a northwesterly direction to a point, said point being at the western most corner of said Lot 1025, said point also being on the eastern boundary of the right of way of U.S. Highway 221 Bypass; thence following said right of way approximately 817.00 feet to a point on the current Marion Corporate Limits; thence following the Marion Corporate Limits in a generally northerly direction approximately 3,640.00 feet to the point of BEGINNING.

Section 2. The City Council hereby finds and declares that the above described territory meets the requirements of G.S. 160A-36, in that:

The area is adjacent and contiguous, as defined by G.S. 160A-41(1) as of the 3rd day of September 2002, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 20,986.62 feet, of which 3,640.00 feet (17.34%) coincides with the City boundary. Therefore, at least one eight (or 12.5%) of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality.

The area to be annexed is developed for urban purposes in that 86.11% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 61.15% of the total residential and vacant acreage consists of lots and tracts three (3) or less in size.

Section 3. It is the purpose and intent of the City of Marion to provide services to the area being annexed under this ordinance, as set forth in the report of plans for services approved by the City Council on September 17, 2002 and filed in the office of the Clerk for public inspection on September 17, 2002.

Section 4. The City Council hereby finds and declares that, on the effective date of annexation prescribed in Section 8 hereof, the City of Marion will have sufficient funds approved, in the amount of $74,000.00, to finance the estimated cost of construction of water and sewer facilities found necessary in the report of plans for services to extend the basic sewer and water system of the City of Marion into the area to be annexed under this ordinance.

Section 5. From and after the effective date of this annexation, the territory annexed and its citizen and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City.

Section 6. The newly annexed territory described above shall be subject to City taxes according to G.S 160A-58.10.

Section 7. The mayor the City of Marion shall cause an accurate map of the annexed territory described in Section 1 hereof, together with a duly certified copy of the ordinance, to be recorded in the office of the register of deeds of McDowell County, and to the office of the Secretary of State in Raleigh. Suck a map shall also be delivered to the McDowell County Boards of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2003.

As to qualified tracts of agricultural land, horticultural land and forestland, the annexation will become effective on the last day of the month in which the tract or part thereof becomes ineligible for present-use classification under G.S 105-227.4 or no longer meets the requirements of G.S 160A-37(f1)(2).

Adopted this 19th day of November 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

AMEND ANNEXATION REPORT - SUGAR HILL ROAD AREA:

The City Manager advised that the Sugar Hill Road annexation report needed to be amended to make technical changes to property descriptions and annexation calculations, based on recent land transfers not originally discovered using the County's tax records.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to amend the Annexation Report for Sugar Hill Road to make technical changes to property descriptions and annexation calculations, based on recent land transfers not originally discovered using the County's tax records.

ADOPTION OF ANNEXATION ORDINANCE – SUGAR HILL ROAD AREA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICDLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA

WHEREAS, all of the prerequisites to adoption of this ordinance prescribed in Chapter 160A, Article 4A, Part 2 of the General Statutes of North Carolina, have been met; and

WHEREAS, the City Council has taken into full consideration of statements presented at the public hearing held on November 5, 2002 on the question of this annexation; and

WHEREAS, the City Council has concluded and hereby declares that annexation of the area described herein is necessary to the orderly growth and development of the City of Marion;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion that:

Section 1. From and after the effective date of this annexation, the following territory shall be annexed to and become a part of the City of Marion, and the corporate limits of the City of Marion shall be extended to include said territory more particularly described by metes and bounds as follows:

BEGINNING at a point in the current Marion Corporate Limits, said point being at the northern most corner of Lot 1757 in Block 19 on McDowell County Tax Map 1700.05; thence following the northeastern boundary of said Lot 1757 and Lots 2760, 3690 and 550 in Block 19 on McDowell County Tax Map 1700.05 in a southeasterly direction approximately 623.9 feet to a point, said point being at the eastern most corner of said Lot 5500; said point also being the northern most corner of Lot 5246 in Block 19 on McDowell County Tax Map 1700.05; thence following the western and southern boundaries of said Lot 5246 first in a southwesterly direction and then a southeasterly direction approximately 618.00 feet to a point, said point being at the southern most corner of said Lot 5246, said point also being on the western boundary of the right-of-way of Sugar Hill Road, said point also being on the northern boundary of the right-of-way of SR 1342; thence crossing the right-of-way of SR 1342 in a straight line in a southerly direction approximately 70 feet to a point, said point being at the northeastern corner of Lot 4844 in Block 18 on McDowell County Tax Map 1700.05, said point also being on the western boundary of the right-of-way of Sugar Hill Road; thence following the boundary of said Lot 4844 in a generally westerly and southerly direction approximately 793.1 feet to a point, said point being at the intersection of the southern boundary of the said Lot 4844 and the northwestern boundary of Lot 4649 in Block 18 on McDowell County Tax Map 1700.05; thence following the western boundary of said Lot 4649 in a southerly direction approximately 105 feet to a point, said point being at the intersection of the southwestern boundary of said Lot 4649 and the northern boundary of the right-of-way of an unnamed road; thence crossing said unnamed right-of-way in a straight line in a southwesterly direction approximately 32 feet to a point on the southern boundary of said right-of-way, said point also being on the northern boundary of Lot

2564 in Block 18 on McDowell County Tax Map 1700.05; thence following the northern boundary of said Lot 2453 in a westerly direction approximately 240 feet to a point, said point being at the northwestern corner of said Lot 2564; thence following the western boundary and the southern boundary of said Lot 2564 in a southerly and then an easterly direction approximately 399 feet to a point, said point being at the intersection of the southern boundary of said Lot 2564 and the northwestern corner of Lot 3316 in Block 18 on McDowell County Tax Map 1700.05; thence following the western boundary of said Lot 3316 in a southerly direction approximately 100 feet to a point, said point being at the intersection of the western most corner of said Lot 3316 and the right-of-way of an unnamed road; thence crossing the right-of-way of said unnamed road in a straight line in a southwesterly direction approximately 30 feet to a point, said point being at the intersection of the northern most corner of Lot 2213 in Block 18 on McDowell County Tax Map 1700.05 and the southern boundary of the said right-of-way; thence following the northwestern boundary of said Lot 2213 and the northwestern and southwestern boundaries of Lot 1176 in Block 18 on McDowell County Tax Map 1700.05 approximately 506 feet in a southwesterly and then southeasterly direction to a point, said point being at the intersection of the southern most corner of said Lot 1176 and the western boundary of the right-of-way of Sugar Hill Road; thence crossing said right-of-way in an easterly direction in a straight line approximately 65 feet to a point at the intersection of the eastern boundary of the right-of-way of SR 1001 (Sugar Hill Road) and the southern boundary of the right-of-way of SR 1164 (Shady Lane); thence following the eastern boundary of the right-of-way of SR 1001 (Sugar Hill Road) in a southerly direction approximately 1161 feet to a point, said point being at the intersection of the eastern boundary of said right-of -way and the northern boundary of the right-of-way of SR 1169 (Steppe Street); thence following the northern boundary of the right- of-way of SR 1169 (Steppe Street) in an easterly direction approximately 632 feet to a point, said point being at the intersection of the northern boundary of said right-of-way and the southwestern corner of Lot 7204 in Block 17 on McDowell County Tax Map 1700.09; thence following the western boundary of said Lot 7204 and the eastern boundary of Lot 0375 in Block 17 on McDowell County Tax Map 1700.09 approximately 840 feet in a northerly direction to a point, said point being at the intersection of the northeastern corner of Lot 0375 and the western boundary of the right-of-way of SR 1164 (Shady Lane); thence crossing said right-of-way in a northerly direction approximately 132 feet in a straight line to a point, said point being at the intersection of the eastern boundary of said right-of-way and the western most corner of Lot 6884 in Block 17 on McDowell County Tax Map 1700.05, said point also being on the southern boundary of Lot 5101 in Block 18 on McDowell County Tax Map 1700.05; thence following the southern and eastern boundaries of said Lot 5101 approximately 67 feet in a easterly direction and then approximately 166 feet in a northerly direction to a point, said point being at the eastern most corner of said Lot 5101, said point also being on the southern boundary of Lot 6230 in Block 18 on McDowell County Tax Map 1770.05; thence following the southern and northern boundaries of said Lot 6230, first approximately 185 feet in a easterly direction and then approximately 340 feet in a westerly direction to a point, said point being at the intersection of the northern most corner of said Lot 6230 and the eastern boundary of the right-of-way of SR 1001 (Sugar Hill Road); thence following the eastern boundary of said right-of-way in a northerly direction approximately 167 feet to a point, said point being at the intersection of the eastern boundary of said right-of-way and the southwestern corner of Lot 6498 in Block 18 on McDowell County Tax Map 1700.05; thence following the southern boundary of said Lot 6498 and the southern and eastern boundaries of Lot 7597 and the eastern boundary of Lot 9873 in Block 18 on McDowell County Tax Map 1700.05, first approximately 330 feet in an easterly direction, then approximately 520 feet in a northerly direction to a point, said point being at the eastern most corner of said Lot 9873; thence following the northeastern and the northwestern boundaries of said Lot 9873, first approximately 116 feet in northwesterly direction, then approximately 110 feet in a southwesterly direction to a point, said point being at the western most corner of Lot 9873, said point also being the eastern most corner of Lot 8813 in Block 18 on McDowell County Tax Map 1700.05; thence following the south eastern and the southwestern boundaries of said Lot 8813, first approximately 60 feet in a

southwesterly direction, then approximately 140 feet in a northwesterly direction to a point, said point being at the intersection of the western most corner of said Lot 8813 and the eastern boundary of the right-of-way of SR 1183 (Stroud Street); thence crossing said right-of-way in a northerly direction in a straight line approximately 125 feet to a point, said point being at the intersection of the western boundary of said right-of-way and the eastern most corner of Lot 7924 in Block 18 on McDowell County Tax Map 1700.05; thence following the western boundary of said right-of-way in a northeasterly direction approximately 448 feet to a point, said point being at the intersection of the western boundary of said right-of-way and the southern most corner of Lot 1321 in Block 29 on McDowell County Tax Map 1700.05; thence following the southwestern boundary of said Lot 1321 and Lot 0359 in Block 29 on McDowell County Tax Map 1700.05 and Lot 9476 in Block 19 on McDowell County Tax Map 1700.05 in a northwesterly direction approximately 328.03 to a point, said point being at the western most corner of said Lot 9476; thence following the northwestern boundary of said Lot 9476 in a northeasterly direction approximately 123.9 feet to a point, said point being at the intersection of the northern most corner of said Lot 9476 and the southwestern boundary of the right-of-way of an unnamed road; thence crossing said right-of-way in a northeasterly direction in a straight line approximately 30 feet to a point, said point being at the intersection of the northeastern boundary of said right-of-way and the western most corner of Lot 0583 in Block 29 on McDowell County Tax Map 1700.05; thence following the northwestern boundary of said Lot 0583 and the northeastern boundaries of said Lot 0583 and Lots 1445 and 2309 in Bloc 29 on McDowell County Tax Map 1700.05, first approximately 100 feet in a northeasterly direction and approximately 290 feet in a southeasterly direction to a point, said point being at the intersection of the eastern most corner of Lot 2309 and the western boundary of the right-of-way of SR 1183 (Stroud Street), said point also being the southern most corner of Lot 1741 in Block 29 on McDowell County Tax Map 1700.05; thence following the eastern and northern boundaries of said Lot 1741, first approximately 229 feet in a northeasterly direction, then approximately 344 feet in a northwesterly direction, then approximately 160.7 feet in a northeasterly direction, then approximately 58 feet in a southeasterly direction, then approximately 136.2 feet in a northeasterly direction to a point, said point being at the northeastern corner of said Lot 1741, said point also being on the southern boundary of an unnamed right-of-way; thence following the southern boundary of said unnamed right of way approximately 10 feet in a northwesterly direction to a point, said point being the southern most corner of Lot 3115 in Block 20 on McDowell County Tax Map 1701.17; thence following the southeastern boundary of said Lot 3115 in a northeasterly direction approximately 75 feet to a point, said point being at the eastern most corner of said Lot 3115, said point also being at the southeast corner of Lot 1327 in Block 20 on McDowell County Tax Map 1701.17; thence following the southeastern boundary of said Lot 1327 in a generally northeast direction approximately 346 feet to a point, said point being at the eastern most corner of said Lot 1327, said point also being the southern most corner of Lot 6459 in Block 20 on McDowell County Tax Map 1701.18; thence following the southeastern boundary of said Lot 6459 and the southeastern boundary of Lot 6583 in Block 20 on McDowell County Tax Map 1701.18 in a northeasterly direction approximately 121 feet to a point, said point being the northeastern corner of said Lot 6583, said point also being on the Marion Corporate Limits; thence following the Marion Corporation Limits in a generally westerly and southerly direction approximately 1830 feet to the point of BEGINNING.

Section 2. The City Council hereby finds and declares that the above described territory meets the requirements of G.S. 160A-36, in that:

The area is adjacent and contiguous, as defined by G.S. 160A-41(1) as of the 3rd day of September 2002, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 13,302.83 feet, of which 1,830.00 feet (13.76%) coincides with the City boundary.

Therefore, at least one eight (or 12.5%) of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality.

The area to be annexed is developed for urban purposes in that 83.33% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 72.93% of the total residential and vacant acreage consists of lots and tracts three (3) or less in size.

Section 3. It is the purpose and intent of the City of Marion to provide services to the area being annexed under this ordinance, as set forth in the report of plans for services approved by the City Council on September 17, 2002 and filed in the office of the Clerk for public inspection on September 17, 2002.

Section 4. The City Council hereby finds and declares that, on the effective date of annexation prescribed in Section 8 hereof, the City of Marion will have sufficient funds approved, in the amount of $19,000.00, to finance the estimated cost of construction of water and sewer facilities found necessary in the report of plans for services to extend the basic sewer and water system of the City of Marion into the area to be annexed under this ordinance.

Section 5. From and after the effective date of this annexation, the territory annexed and its citizen and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City.

Section 6. The newly annexed territory described above shall be subject to City taxes according to G.S 160A-58.10.

Section 7. The mayor the City of Marion shall cause an accurate map of the annexed territory described in Section 1 hereof, together with a duly certified copy of the ordinance, to be recorded in the office of the register of deeds of McDowell County, and to the office of the Secretary of State in Raleigh. Suck a map shall also be delivered to the McDowell County Boards of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2003.

As to qualified tracts of agricultural land, horticultural land and forestland, the annexation will become effective on the last day of the month in which the tract or part thereof becomes ineligible for present-use classification under G.S 105-227.4 or no longer meets the requirements of G.S 160A-37(f1)(2).

Adopted this 19th day of November 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

PUBLIC HEARING – ZONING AMENDMENT – AUTOMOTIVE REPAIR SHOPS:
Mayor Clark opened the Public Hearing. No citizens were present to discuss this amendment.

The City Manager noted that the City had received complaints for years about the appearance of automotive repair shops. The Planning Board had therefore looked at the attached ordinance as a way to at least require repair shops to screen junked vehicles on the premises.

City Planner Suzy Davis gave an overview of the ordinance and stated that the Planning Board had unanimously recommended the approval of the ordinance.

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2 Appendix A, Article IV, Section 400, *Definitions* is amended by adding the following definitions

Section 400 Definitions

Automobile repair shop: Any establishment or place of business which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles.

Inoperable vehicle means a vehicle and other machinery that cannot be self propelled or moved in the manner in which it originally was intended to move and that

(1) Is partially dismantled or wrecked; or
(2) Is more than five years old and appears to be worth less than one hundred dollars ($100.00); or
(3) Does not display a current license plate.

Section 3. Appendix A, Article VII, Section 708 is amended to read as follows.

Section 708. Automobile repair shops and/ or automobile sales and services.
The following regulations shall apply to all automobile repair shops and/ or automobile sales and services

1.) An auto repair shop may store as many as six (6) inoperable motor vehicles, within view of the public road way at one time, regardless of the length of time that individual motor vehicles are stored or kept at such property. If the auto repair shop is greater than two acres, six (6) additional inoperable motor vehicles as described herein may be allowed exposed to the public road way. This means they can either have 6 or 12 inoperable vehicles in view of the public road way at any one time. If there are more, they shall be kept behind a screened, fenced area out of sight of the public road ways.
2.) On-site traffic areas shall be provided and arranged in a manner to provide clearly identified ingress and egress and adequate areas to prevent backward movement onto the public road ways.
3.) Inoperable motor vehicles shall not be stored in the customer parking spaces required per Section 702 Off street parking requirements.
4.) All auto repair shops and/ or auto sales and services within the city limits of Marion not in compliance with this ordinance within six months after the adoption of said ordinance shall be in violation.

Section 3. This ordinance shall become effective upon its adoption

Adopted this the 19th day of November 2002.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-02-11-19-4

PUBLIC HEARING - ESTABLISH ZONING - BARNES ROAD ANNEXED PROPERTY: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis stated that the Planning Board had unanimously recommended to zone the recently annexed property on Barnes road as M-1, to be consistent with the adjacent Spectrum Dyed Yarns property.

There were no citizens present to discuss this item.

The public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Planning Board to zone the property M-1 Industrial.

DISCUSSION – WATER FLUORIDATION: The City Manager presented Council with preliminary cost estimates for a Fluoride System from McGill Associates and various other information on fluoridation. The costs of designing and installing fluoridation equipment are over $44,000, and the City Manager presented options for going forward with design and paperwork in 2002-03, or waiting until the 2003-04 budget to begin any work on this project.

Councilman Little and Edwards both stated the need to begin immediately with this project, to at least get the paperwork completed.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted unanimously to proceed with design work immediately and seek to install equipment by Summer 2003. Purchase and installation of fluoridation equipment will be considered as part of the 2003-04 budget.

RESCHEDULE COUNCIL PLANNING SESSION: It was the consensus of Council Member to reschedule the Planning Session for February 15, 2003.

PARKING/LOADING ZONES – NORTH LOGAN STREET: The City Manager advised that he had received complaints about the way parking spaces and loading zones on North Logan Street are marked.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to refer this item to the Street Committee. The Street Committee will meet next Thursday at 2:00 P.M.

SET MAUSOLEUM AND COLUMBARIUM PRICES: The City Manager advised that he had attempted to survey other cities to obtain ideas for prices for the new mausoleum vaults and columbarium niches.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to set the following fees for the mausoleum and columbarium:

Mausoleum

Top Row: $1,500.00
Second Row: $2,000.00
Third Row: $1,750.00
Bottom Row: $1,500.00

Columbarium

All niches $750.00

CONSIDER AMENDMENTS TO CEMETERY ORDINANCE: The City Manager presented Council with a memo containing proposed changes and additions to the current Cemetery Ordinance that would provide guidelines for the cemetery, mausoleum and columbarium.

It was the consensus of Council that the City Manager would prepare a new Ordinance incorporating these changes and additions and present it to Council at a later date.

Councilman Edwards suggested being careful with language concerning removal of floral arrangements not in keeping with the overall appearance of the cemetery.

Councilman Edwards also suggested that Council consider ways to light the mausoleum area as a deterrent to recent incidents of flowers being taken.

SUGAR HILL ROAD TRAFFIC SIGNALS: The City Manager advised that he and Glen Sherlin had met with DOT' s Traffic Engineer Mr. Jeff Moore, to discuss the color for the metal traffic signal poles and mast arms on Sugar Hill Road.

A discussion followed.

It was the consensus of Council that the traffic signals should match what the City already has downtown with decorative street lights. Therefore, the color chosen is Black.

SUGAR HILL ROAD SIDEWALK: The City Manager advised that the City may still have time to request that the DOT add a sidewalk from Rankin Drive down to the end of the annexation area, around Shady Lane, as part of the Sugar Hill Road widening project. The City's share of the costs would be 20 percent, if approved by DOT. With the passage of the annexation ordinance for Sugar Hill Road tonight by Council, the City Manager stated that DOT would likely be receptive to this request, since the Coty could then maintain the sidewalk upon its construction.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to request DOT to extend a sidewalk from Rankin Drive to the end of the annexation area at Shady Lane, as part of the Sugar Hill Road widening project.

DISCUSS DEBT REFINANCING/ISSUANCE: The City Manager presented Council with information on possible debt refinancing and issuance in the Spring to take advantage of low interest rates, which Mr. Dennie Martin is projecting to be about 3.5 percent.

Given the low interest rate, now may be the time to act to take advantage of the cost savings.

The three debt related items would be:

The Police Department Expansion -$1,050.000.00 – 15 year financing
The automated Water Meters - $850,000.00 – 10 year financing
The Water and Sewer refinanced debt - $1,266,641.26 – 5 year financing

The net savings on these three projects would be $29,543.90.

The City Manager gave an overview of each project.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to proceed with this debt refinancing and to lock in at 3.50% Interest Rate, subject to further Council review of bank bids and contract bids for the Police Department and water meters.

Mayor Clark suggested that a new spreadsheet be prepared to show the impact of a 10 year financing term for the Police Department.

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

DISCUSSION – SALE OF SENIOR CENTER – DONATION: Councilman Cuthbertson made a motion to earmark $20,000.00 of the City's portion of the sale of the Senior Center to the Senior Center contingent upon sale of the property.

A discussion followed.

Council members suggested that this item be considered at such time as the City has cash in hand, or at least an accepted bid, for the sale of the Senior Center. The City Manager advised that a new bid would hopefully be forthcoming from the Mental Health Association of North Carolina in a few weeks.

Councilman Cuthbertson withdrew his motion.

COUNCILMAN COMMENTS:

Councilman Little commented on the time table being used to set the new Traffic Light at the intersection of Garden and East Court Streets. The City Manager advised that DOT had stated the project would be completed within a week or two, but that the work had dragged on for several weeks.

Councilman Cuthbertson advised that he had seen employees working on South Garden Street at Rutherford Road in a trench. He emphasized the importance of using the confined space policy used by the City.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to go into Closed Session to discuss a personnel matter under N.C.G.S. 143-318.11 (a)(6), to discuss a matter involving the acquisition of real estate under N.C.G.S. 143-318.11 (a)(5), and to discuss a legal matter under N.C.G.S. 143-318.11 (a)(3).

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session.

PURCHASE OF PROPERTY FOR CROSS MILL PARK

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to purchase 3 to 3.5 acres of property owned by Ms. Betty Stock located on Granby Street for the tax value of $4,600 per acre, for the purpose of a site for the new Cross Mill Community Park. The park project is 50 percent funded by a grant from the North Carolina Parks and Recreation Trust Fund.

ADJORNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLIN
COUNTY OF MCDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, December 10, 2002 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little could not be present for this meeting due to a legal case out of town.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Johnny Patton, Interim Police Chief.

GUESTS PRESENT:

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda, excluding item C., as follows:

A. Approval of City Council Minutes - November 19, 2002

B. Approval – Privilege License - Refunds:
Refund - Privilege License – Kelly Services - $100.00
Refund – Privilege License La Chiquita - $28.75

C. Request to McDowell County for EMS Vehicle - HOLD UNTIL February 15, 2003 Planning Session

D. Approval Applications for North Carolina Development Zone Designation:
Designation Request - West Marion and Cross Mill, Drexel and Broyhill sites and other properties along West Henderson Street and Sugar Hill Road.

E. Approval – Amendment to Cemetery Ordinance:

ORDINANCE
AMENDING CHAPTER 5
CEMETERIES
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 5, Cemeteries, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 5 is amended by adding the following:

Sec. 5-12. General rules for Oak Grove Cemetery.

The following general rules shall apply within Oak Grove Cemetery and shall be enforced by the City Manager or his designee:

(a) No interment of any body, or the cremated remains of any body, other than that of a human being, shall be permitted in the Oak Grove Cemetery.

(b) Floral arrangements for mausoleum crypts or columbarium units are permitted only in approved memorial vases. The City reserves the right to remove any floral arrangements, as well as items which the City Manager or his designee deems to detract from the uniform appearance of the mausoleum or columbarium.

(c) Payment of any and all indebtedness due the City of Marion from the purchase of a mausoleum vault, columbarium niche, or gravesite must be received in full before interment will be allowed.

(d) Remains that are not cremated must be in a suitable casket and of such sufficient durable construction as approved by the funeral director.

(e) The City of Marion shall in no way be held liable for any delay in the disposition of a body, or for delay in the fulfillment of any of its contract or legal obligations, including but not limited to maintenance, care, memorial work or construction, which may arise from causes beyond the City's reasonable control and especially from delays caused by the elements, an act of God, equipment breakdown, common enemy, thieves, vandals, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, or order of any military or civil authority.

(f) The City does not provide and is not responsible for temporary storage of caskets or urns.

(g) All funerals and burials shall be under the direction of the Public Works Director or designee upon entering the City Cemetery.

(h) No more than one body or cremated remains of a body may be placed in any single gravesite, mausoleum vault, or columbarium niche. Cremated remains to be placed in a columbarium niche must be in an approved container designed for the sole purpose of holding human ashes.

(i) The cost of a mausoleum vault or columbarium niche does not include any cost for a plaque. After payment for the plaque is made, in the amount set by City Council, the City will approve, order and install the appropriate plaque at the request of family.

(j) The City is not responsible for any unauthorized cremated remains or ashes deposited on the grounds of the City Cemetery.

(k) The opening and closing of a mausoleum vault or columbarium niche to place or remove a body or the cremated remains of a body shall be performed only by City personnel after payment of a predetermined charge, as set by City Council.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 10th day of December, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-12-10-2

F. Approval – Ordinance – Two Hour Parking – North Logan Street:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
LOGAN STREET	LOADING ZONE	EAST SIDE, BEGINNING

64 FT. N. OF THE NE CORNER OF BROWN DR.
CONTINUING 123 FT. NORTHERLY

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
LOGAN STREET	LOADING ZONE	EAST SIDE, BEGINNING 64 FT. NORTH OF THE NE CORNER OF BROWN DR. AND CONTINUING 44 FT. NORTHERLY
LOGAN STREET	2 HR. PARKING	EAST SIDE, BEGINNING 10 FT. NORTH OF THE NE CORNER OF BROWN DR. AND CONTINUING 22 FT. NORTHERLY EAST SIDE, BEGINNING 44 FT. SOUTH OF THE SE CORNER OF LOGAN ST. AND FORT ST. AND CONTINUING 60 FT. SOUTHERLY

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 10th day of December, 2002

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-02-12-10-1

APPROVAL – RESOLUTION AUTHORIZING REQUEST FOR DEBT FINANCING:
The City Manager advised that the first step toward receiving approval from the Local Government Commission for the refinancing of the City's existing water and sewer debt and the financing of the new Police Department expansion and new automated water meters was the adoption of this resolution, authorizing bank bids and contractor/vendor bids to be received for further review by City Council. Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution:

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL
CITY OF MARION

CITY OF MARION
RESOLUTION

AUTHORIZING THE FILING OF AN APPLICATION
FOR APPROVAL OF A FINANCING AGREEMENT
AUTHORIZED BY NORTH CAROLINA GENERAL STATUTES 160A-20

WHEREAS, the City of Marion desires to finance water meter and police building improvements; and

WHEREAS, the City of Marion desires to finance these improvements by the use of an installment contract or revenue bonds authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, Findings of Fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its Findings of Fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina, meeting in regular session on December 10, 2002, that the said Council makes the following FINDINGS OF FACT:

1. The proposed contract is for the purpose of financing $1,200,000, for police department building improvements and $900,000 for a meter replacement program by the City of Marion
2. The proposed contract is preferable to a bond issue because: 1) the total costs of the financing are not sufficient to warrant the expenses involved in a General Obligation Bond issue; 2) the proposed project is too expensive to be funded through current revenues and/or fund, thus the installment contract method of financing proves to be the best alternative for the City of Marion; and 3) the desired term of the police department building financing is fifteen years, thereby making bonds a less desirable alternative.
3. The sum to fall due under the contract will be adequate and not excessive for the proposed purpose and the rate of interest will be approximately the same or lower than that of a general obligation bond issue, when considering total costs involved in a referendum, legal expenses, insurance etc.
4. The City of Marion's debt management procedures and policies are acceptable. The City adheres to its Budget Ordinance, has a history of timely debt obligation payments, and maintains an acceptable level of unappropriated fund balance. The City Manager and Finance Officer constantly monitor the City's fiscal structure and periodically report the financial condition to the City Council.
5. The City of Marion is not in default in meeting its debt service obligations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Manager is hereby authorized to act on behalf of the City of Marion in filing an application with the North Carolina Local Government Commission for approval of the Financing and other actions not inconsistent with this resolution.

BE IT FURTHER RESOVLED that a Public Hearing be held to hear public input on the financing of existing debt by the use of an installment financing contract as allowed for under N.C.G.S. 160A-20 for the said financing on February 18 at 7:00 PM in the City Hall of Marion, North Carolina, and that the Clerk to the Board is hereby authorized and directed to cause to be published, a notice of the said meeting as by law required.

This Resolution if effective upon its adoption this 10th day of December, 2002.

The motion to adopt this resolution was made by Councilman _____, seconded by Councilman _____, and passed unanimously by the City Council of Marion, North Carolina.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

APPROVAL – WATER AND SEWER SERVICE – STORY MEMORIAL PRESBYTERIAN CHURCH: The City Manager presented Council with a request from Story Memorial Presbyterian Church on Shady Lane for water and sewer service. The City Manager noted that water and sewer service may not be available until early 2004, until such time as the Department of Transportation completes the water and sewer extension on Sugar Hill Road. The City Manager presented three options for service, as prepared by Public

Utilities/Projects Director Glen Sherlin, which include the City installing a pump station and gravity sewer lines (estimated cost of $300,000+), allowing the church to connect to the City sewer by crossing the Head Start property (no cost to City), or by allowing the church to install a pump station on their property and force main along Shady Lane to connect to the City sewer line at Sugar Hill Road and Shady Lane (no cost to the City). Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to provide service to Story Memorial Presbyterian Church, contingent upon annexation, and in any manner that does not involve upfront cost to the City.

REQUEST – REIMBURSEMENT – MS. ANN HUNT: The City Manager advised that Ms. Ann Hunt has submitted a written request for reimbursement in the amount of $480.00 for water damage to property she owns on Oak Circle in the Pleasant Gardens area. She advised that a City Employee had turned the water service on and then left. A spigot inside the residence was on and overflowed onto the carpet. The City Manager stated that the City Employee had turned on the water and left the premises when he observed two people standing in the yard. The people in the yard apparently did not gone into the house for a considerable length of time, causing the water damage. The City Manager advised that he felt the City Employee had done all he was supposed to, and that the City had no responsibility for the damage.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to deny this request.

APPROVAL – RESOLUTION – SENIOR CENTER SALE: The City Manager presented a revised offer to purchase for the Senior Center property on Crawford Street from the Mental Health Association in North Carolina. The offer included a corrected legal description, a revised closing date of March 31, 2003, as requested by McDowell County, and was for an amount of $170,000. Procedurally, the City Manager reported that, upon acceptance of this offer, a bid deposit of $8,500 would have to be submitted by the bidder, then the City would publish notice of the sale. If no upset bids were received within 10 days after publication, the sale would become final.

Councilman Little noted that the names of the buyer and seller on the Offer to Purchase were reversed and needed to be changed. Upon a motion by Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution:

Notice of Adoption of Resolution Authorizing the Sale of Certain Property Owned by the City of Marion by Negotiated Offer and Upset Bid

WHEREAS, the City Council of the City of Marion desires to dispose of certain surplus property of the City; and

WHEREAS, N.C.G.S. 160A-269 authorizes a city to convey by negotiated offer and upset bid any real or personal property; and

WHEREAS, the Mental Health Association in North Carolina, a nonprofit agency, has submitted a bid in the amount of $170,000 for the Senior Center property, as described below;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Marion that:

1. The following described property is hereby declared to be surplus to the needs of the City of Marion:

BEING a parcel containing .69 of an acre, according to that certain unrecorded plat of survey prepared by R.L. Greene Surveying and which Survey is dated November 7, 2001 and which survey has a map file number of MM1-022R and which survey is entitled, Survey of a Portion of that property described in a deed to The Town of Marion, Deed Book 173, Page 215 and from which survey the following metes and bounds description is taken:

BEGINNING AT an existing concrete monument which is located North 43 degrees 32 minutes 39 seconds West 262.92 meters from N.C.G.S. Monument Main which has NAD 83 grid coordinates of N = 218059.962

meters and E = 337533.111 meters and which Monument Main is located North 62 degrees 18 minutes 17 seconds West 123.8875 meters from N.C.G.S. Monument Clair which has NAD 83 grid coordinates of N = 218002.383 meters and E = 337642.805 meters and which BEGINNING point is located at the NorthWestern corner of land now or formerly owned by the City of Marion, see Deed Book 428, Page 164, McDowell County Public Registry and which BEGINNING point is located at the Southernmost corner of property now or formerly owned by Krinn E. Evans, see Deed Book 509, Page 190, McDowell County Public Registry; thence from said BEGINNING point and with the line of lands now or formerly owned by the City of Marion, see Deed Book 173, Page 215, and Deed Book 428, Page 167, McDowell County Public Registry, South 68 degrees 08 minutes 59 seconds West 38.90 feet to an existing iron pin; thence South 68 degrees 08 minutes 59 seconds West 88.74 feet to an unmarked point in the center of the Creek, an unmarked point which is located in the line of lands now or formerly owned by Heritage Hill Associates, see Deed Book 345, Page 822, McDowell County Public Registry, thence with the creek, the following courses and distances which are all to unmarked point, North 56 degrees 36 minutes 07 seconds West 21.80 feet; North 32 degrees 51 minutes 07 seconds West 45.23 feet; North 82 degrees 01 minutes 52 seconds West 31.12 feet; South 69 degrees 48 minutes 04 seconds West 21.65 feet; thence with the culvert, North 40 degrees 24 minutes 54 seconds West 64.80 feet to a punch mark placed in a sidewalk which is identified as the BEGINNING corner of Deed Book 173, Page 215, McDowell County Public Registry; thence with Crawford Street, North 51 degrees 02 minutes 47 seconds East 179.44 feet to a pkm nail set on November 7, 2001; thence with a new line, South 68 degrees 30 minutes 36 seconds East 53.11 feet to a pkm nail set on November 7, 2001; thence with a new line, South 34 degrees 26 minutes 12 seconds East 39.43 feet to a pkm nail set on November 7, 2001; thence South 21 degrees 29 minutes 07 seconds East 117.68 feet to the point and place of BEGINNING.

Being a portion of Deed Book 173, Page 215, McDowell County Public Registry.

2. The City Council accepts the offer of the Mental Health Association in North Carolina to purchase the above described property for $170,000, subject to the upset bid process being followed as required by N.C.G.S. 160A-269.

3. The City Clerk shall notify the Mental Health Association in North Carolina of the acceptance of this offer, receive a five percent bid deposit from the bidder, and cause a notice of this resolution to be published in accordance with G.S. 160A-269. Such notice shall state that prospective bidders have ten days from the date the notice is published to offer an upset bid, pursuant to G.S. 160A-269.

4. Once the upset bid process is completed, in accordance with G.S. 160A-269, the City Manager is designated to dispose of the above described property to the bidder selected by City Council, for a minimum price of $170,000. The effective date of the sale shall be on March 31, 2003, or sooner if McDowell County vacates the premises of the above described property.

Notice is hereby given that any interested person may raise the bid by not less than 10 percent of the first $1,000 of the original bid as described above plus five percent of any amount above $1,000 of the original bid as described above. Bids must be submitted in writing to: Bob Boyette, City Manager, City of Marion, P.O. Drawer 700, Marion, NC 28752, or may be delivered to City Hall at 194 North Main Street in Marion. Upset bids must be accompanied by a five percent bid deposit and a letter of credit. Upset bids must be received to the City of Marion no later than 10 days following publication of this notice, or the sale described above shall become final. The City of Marion reserves the right to reject any and all offers.

Adopted this the 10th day of December, 2002.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-02-12-10-1

AWARD CONTRACT SEWER EXTENSION: The City Manager advised that the small section of sewer extension from the Hospital Pump Station across Mr. Woessner's property (Sugar Hill Road Mobile Home Park) to Sugar Hill Road was bid the week of Thanksgiving. The low bid came in at $45,390 from Carolina Construction of Rutherfordton.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to accept the bid from Carolina Construction in the amount of $45,390.

CONSIDER ACCEPTANCE OF DONATION: The City Manager advised that Mr. Frank Bolden has offered to donate $1,000.00 toward hanging flower baskets to go in the downtown area. The Downtown Advisory Committee Design Subcommittee and Freddie Killough, Glen Sherlin and Suzy Davis have discussed various ideas. The only place to hang this type basket in the City would be at the intersections on the metal poles.

Councilman Edwards suggested that the City accept Mr. Bolden's donation and commit to maintain the baskets, to the extent that $1,000 will allow.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to accept Mr. Bolden's donation to the City of Marion in the amount of $1,000.00.

COUNCILMAN COMMENTS:

Councilman Edwards advised that the new mausoleum looks good. He noted that the marble on the new mausoleum is a bit different from the old unit, but actually looks better.

Councilman Owenby advised that there is a limb hanging over Fern Avenue that may need some attention.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Edwards, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in a Special Called Meeting on Tuesday evening, December 20, 2002 at 11:45 A.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary;

GUESTS PRESENT: Johnny Patton, Interim Police Chief; Jim Neal, Fire Chief; Glen Sherlin, Utilities/Projects Director; Bruce Jarvis, McDowell County SBI Agent; Ragan Robinson, News Reporter, The McDowell News.

MAYOR EVERETTE CLARK opened this Special Called Meeting to discuss and appoint a new Chief of Police. He advised that the City received sixty two (62) applications for this position. Four applicants was interviewed by Council.

CITY MANAGER ROBERT BOYETTE recommended that, after an extensive period of review of 62 applications and, after conducting interviews, Mr. Mika V. Elliott be appointed as the City of Marion's new Police Chief, with the following terms of hire:

Salary:	$45,000
Moving Expenses:	The City will pay $1,000 toward moving expenses for Mr. Elliott and his family.
Moving Date:	Mr. Elliott will be asked to move within the City, or submit a request to live outside the City, within six months after his first day of work.
Starting Date:	To be determined, but likely around late January or early February.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to accept the recommendation of the City Manager to appoint Mr. Elliott as the new Chief of Police for the City of Marion, with the terms of hire outlined by the City Manager.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 7, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, and Cecil Owenby.

Councilman Martin was not present for this meeting. City Crews were working on a water line, in the vicinity of Mr. Martin's home, and he had no water.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Johnny Patton, Interim Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Fred T. Brown, 625 State Street, Marion, NC 28752, Donnie Suttles, Marion, NC 28752

CITIZEN OF THE MONTH FOR JANUARY – SELECTED BY COUNCILMAN OWENBY: Councilman Owenby selected the Citizen of the Month January:

FRED T. BROWN

Councilman Owenby advised that he chose Mr. Fred T. Brown for the Citizen of the Month due to being such a man of conviction and character.

Mr. Brown married in 1955 and had seven children. He raised his family in Marion and has watched many of his grandchildren be raised here and was active in many rolls of their lives, such as Little League.

Mr. Brown served as a volunteer Fireman for over twenty years.

He is an active member of West Court Baptist Church.

Mayor Clark, Council Members and Family Members all shared with kind words about Mr. Fred T. Brown.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - December 20, 2002 and December 20, 2002 Special Called Meeting

B. Budget Amendment:

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(Fourth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Inventory Tax, Account Number

10-310-0000, is decreased from $186,000 to $0.

b. General Fund Revenues, Miscellaneous Revenues, Account Number 10-335-0000, is decreased from $22,463 to $10,463.

c. . General Fund Revenues, Intangibles Tax, Account Number 10-339-0000, is decreased from $35,000 to $0.

d. General Fund Revenues, Sales Tax, Account Number 10-345-0000, is increased from $770,709 to $868,709.

e. General Fund Revenues, Seizures, Account Number 10-398-0600, is increased from $0 to $3,000.

f. General Fund Expenditures, Non Departmental, Account Number, 10-660-9950, Special Projects, is decreased from $212,476 to $57,476.

g. General Fund Expenditures, Police Department, Account Number 10-510-74, is increased from $135,746 to $138,746.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 7th day of January, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-03-01-07-1

C. Resolution – Designation of Applicant's Agent:
Glen Sherlin, Primary Agent · Robert Parker, Secondary Agent

BE IT RESOLVED BY the governing body of the City of Marion that the above named primary and Secondary Agents are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the City of Marion for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, Public Law 93-288 as amended) or as otherwise available.

BE IT FURTHER RESOLVED that the above-named agents are authorized to represent and act for the City of Marion in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to such disaster assistance required by the grant agreements and the assurances printed on the reverse side hereof.

BE IT FINALLY RESOVED THAT the above-named agents are authorized to act severally.

ADOPTED this the 7th day of January 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Approval of Annual Certification of Firemen -

ANNUAL CERTIFICATION OF FIREMEN

A list of the 2002 Fire Department Roster can be found on file at City Hall and at the Marion Fire Department.

AWARD CONTRACT – BARNES ROAD SEWER: The City Manager advised that the low bid for the sewer extension on Barnes Road was from Steppe Construction of Mill Spring in Polk County, in the amount of $46,960.

This amount is higher than what was projected. Representatives of McGill Associates feel that it is a fair price.

The purpose of this project is to run sewer down Barnes Road to encourage some small industrial development

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to accept the bid from Steppe Construction in the amount of $46,960.00.

REQUEST – LOVE'S TRUCK STOP: The City Manager presented Council with a letter from Mr. Brad Butcher, Real Estate Project Manager for Love's Travel Stops & Country Stores advising that it is their understanding that the Right of Way that serves the Robbins Oil Property was originally to be placed into the State of North Carolina Road System. Because it was an industrial access road project, and the industry it was to served is no longer there, the Right of Way agreement was completed but never formally filed at the McDowell County Courthouse.

They are requesting that the City of Marion place this road on the City System. The City has utility lines in the road, and the property is within the City Limits. He also advised that by accepting this road it would eliminate the need to have easement agreements of access to the utility lines.

A discussion followed regarding the amount of damage heavy trucks can cause to a street, and questions were raised regarding the distance of this street from other streets on the City's Powell Bill system.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to deny this request.

DISCUSS TRAFFIC SIGNAL AT NORTH MAIN AND NEW STREETS: The City Manager advised that Division Traffic Engineer Mark Teague has contacted him concerning the downtown traffic signals. He had received a letter from a Ms. Isenhoff regarding the need for synchronization of traffic signals and the need for a left turn arrow at North Main and New Streets.

DOT has determined that a left turn arrow is needed. In order to place the felt turn arrow, DOT would propose to make the left lane of southbound North Main Street in front of City Hall a left turn only lane. Two through lanes would be in place for southbound traffic beginning at New Street. In order for DOT to proceed with this request, they would like an endorsement from City Council.

The City Manager advised that he would have concerns that any present traffic delays, which could block the driveways of our banks between Fort and New Street.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to decline the endorsement of this request.

GRAYSON STREET PARKING: The City Manager advised that there had been some concerns expressed about the parking on the southern end of Grayson Street.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to refer this item to the Street Committee.

SUGAR HILL ROAD SIDEWALK: The City Manager advised that in November, Council authorized a request to be made to DOT asking for a sidewalk to be extended from Rankin Drive to Shady Lane, as part of the Sugar Hill Road widening project. A letter from DOT was received advising that the sidewalk cannot be extended, now that the contract for the project had been awarded, unless the City funds 100 percent of the costs, which is estimated to be $37,000.

The City Manager advised that he had spoken with Mr. Jay Swain and Alan Thornburg to assist the City with finding Enhancement funds for this project, unless Council wished the City to fund 100 percent of the costs of the sidewalk.

A discussion followed.

Council members agreed that the City should not pay for the entire cost of the sidewalk and that efforts should continue to encourage DOT to fund the bulk of the sidewalk cost.

RECOMMENED STREET AND PARKING IMPORVEMENTS: The City Manager advised that the Safety Team at East Junior High has recommended the following improvements on State Street:

Crosswalks painted in front of the school
Pedestrian Crossing signals installed.
Construction of a sidewalk in front of the school.
No parking signs in front of the school.
Flashing signs.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to refer this matter to the Street Committee and allow the City Manager and Street Committee to meet with school officials and complete as many of the request as the current budget will allow, while taking into account safety considerations.

REVIEW REVISED DEBT FINANCING INFORMATION: The City Manager advised that he had recently discovered that he had made some errors in his calculation for refinancing the existing water and sewer debt. The previous spreadsheet he presented Council showed a saving of about $30,000 per year on the water and sewer loan payments with a 3.5% interest rate. In doing the calculations, he included a loan term of five months, rather than five years, which obviously overstated the savings. The corrected spreadsheet shows varying 10, 12 or 15 year terms for the Police Department financing. With the revised figures, the breakeven point for our overall refinancing and new debt financing returns to the 15 year loan term on the Police Department financing. One positive point is that a quote has been received from First Union Bank to lower the interest rate on the City's existing water and sewer debt from 4.8% to 3.1%. The Local Government Commission is urging the City to accept this lower rate, rather than to include the refinancing with the financing of the new debt for the Police Department expansion and the Automated Meter Reading system.

Further review of the total debt package can then come when all bids are received.

A discussion followed.

No action was taken.

DISCUSSION – CHARTER CABLE SERVICE: The City Manager presented Council with a letter from Mr. David Harris advising that Charter Communications has applied to the FCC for relief from all rate regulation due to effective competition from satellite penetration into the market.

The City can contract with Action Audits of Raleigh, as other jurisdictions have done, for a cost of about $1,000.00.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to file the appeal, to show the City's attempt at controlling cable rates and maintaining some level of regulation.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN EDWARDS suggested that we place a notice on the City Channel advising that it is illegal to place gutters and/or types of storm water run off in the City's Sewer System.

Councilman Edwards advised that the City needs to pursue getting signs of closed businesses removed. The City Manager advised that the City Planner was working on these signs, as part of the effort to remove portable and flashing arrow signs within the City.

Councilman Edwards also advised that he is being contacted by various individuals about the fluoride that is going to be placed in City Water System and suggested that primary discussion of this matter be held at the Town Meeting on January 23, 2003. Councilman Little and Councilman Edwards noted that they felt that Council had already decided to go forward with fluoridation and that there was no need for protracted discussion on this matter.

COUCNILMAN LITTLE suggested that the steps in the old section of the Cemetery be looked at in the Oak Grove Cemetery. They are in need of repair and handrails.

A discussion followed.

It was the consensus of those members of Council present to make the necessary improvements to in the Oak Grove Cemetery. The City Manager was directed to make the necessary improvements, using money from the Cemetery Fund.

A discussion was also held regarding a memorial in the Cemetery in memory of Warren Hobbs.

ADJORNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 21, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little left this meeting after the Oath of Office to the Police Chief Mika Elliott due to a family commitment.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Johnny Patton, Interim Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Toney Owen, Brevard, NC; Robert Shurlan, Brevard, N.C.; Debbie Patton, Marion, NC; Chris Smith, Hendersonville, NC; John Nicholson, Brevard, NC; Jerry Rice, Hendersonville, NC; Mika & Dale Elliott, Arden, NC; Scott Spratt, Mike Fox, Kim Davis, Kellie Duncan, Gaye Noblitt, Virgil Varone, Charlie Oliver, Glenda Elam, Tommy Lytle, Sarah Vess and Chris Taylor, Marion Police Department, Marion, NC; Nate Thompson, Marion, NC.; Bruce Jarvis, Marion, NC; Bob Ayala, Burnsville, NC; Gail Harris, Marion, NC; Steve Carter, Chris Denny and Jeff Patterson, Hendersonville, NC; N.C. Representative Mitch Gillespie, Marion, NC; Kathy Romine Asheville, NC; Tim Shook, Asheville, NC; Buddy & Valerie Hall, Marion, NC; Barry & Brenda Bailey, Nebo, NC; Daniel & Sandra Norris; Lee Elliott, Marion, NC; Kathy Rosemore, Marion, NC; Debbie Olson; Steven Hensley, Marion, NC; Dudley Green, Marion, NC; McDowell County Sheriff Jackie Turner, Marion, NC; Todd Lockhart, ATF; Charlie & Jennie McDonald, Henderson County; Victor Hollifield, McDowell Drug Enforcement; Chief Jim Neal, Marion Fire Department; and David Miller.

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MAYOR CLARK OPENED THIS MEETING WITH A MOMENT OF SILENT PRAYER IN MEMORY OF CITY EMPLOYEE HANK SCHWEBE WHO WAS KILLED IN A MOTORCYCLE ACCIDENT THIS PAST WEEK:

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ADMINISTRATION OF OATH OF OFFICE TO MIKA ELLIOTT: The following Oath of Office was administered to Mr. Mika Elliott who is scheduled to take office on February 3, 2003:

I, Mika V. Elliott, do solemnly swear (or affirm) that I will support the Constitution of the United States; so help me God.

_____
Mika V. Elliott

I, Mika V. Elliott, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are, or may be, established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said state, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God.

_____
Mika V. Elliott

I, Mika V. Elliott, do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me God.

_____
Mika V. Elliott

I, Mika V. Elliott, do solemnly swear (or affirm) that I will well and truly execute the duties of Chief of Police for the City of Marion, North Carolina, according to the best of my skill and ability, according to law; so help me God.

Mika V. Elliott

SWORN and subscribed before me, this the 21st, day of January, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

The Mayor, City Council members and City Manager all welcomed Chief Elliott to Marion and wished him well in his new position.

PUBLIC APPEARANCE – MS. ROSIE CLARK: Ms. Rosie Clark appeared before Council advising that she is opposed to putting fluoride in the City Water System.

PUBLIC APPEARANCE – MS. VERNICE FRANCIS: Ms. Vernice Francis appeared before Council advising that persons were rude to her on the phone at City Hall. She also advised that she thought the Marion Police Department was doing a good job.

APPROVE CHANGE IN CAPITALIZATION POLICY FOR FIXED ASSETS: The City Manager advised that in November the City Auditors noted that as a result of the new GASB 34 rules, the Local Government Commission was recommending that local governments raise their minimum threshold for a piece of equipment to be considered a fixed asset from the normal $500.00. The LGC recommended that a $5,000.00 limit. City Auditors and staff feel that a $1,000.00 limit would be more appropriate.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted that the City's threshold for recording equipment as a fixed asset be raised from $500.00 to $1,000.00. The City will still maintain internal control measures for certain pieces of equipment valued under $1,000.00.

STREET COMMITTEE RECOMMENDATIONS: The City Manager presented Council with several Street Committee Recommendations for street and parking improvements along State Street in the area of East McDowell Junior High School.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to accept the Street Committee recommendations:

(A) Continue to encourage DOT to install pedestrian crossing signals at the South McDowell Avenue/State Street Intersection.
(B) Paint a crosswalk in front of the School.
(C) Install flashing speed limit signs along State Street.
(D) Construct a sidewalk along State Street in front of the School. The School officials asked that consideration be given to widening State Street and putting in angled parking between the school driveway and an area halfway down the block toward South McDowell Avenue. The sidewalk would be constructed behind this parking area. If angled parking is not possible, a parallel parking area could be considered as a back-up. The School also requested that the sidewalk be constructed across the East Junior High driveway at least as far east as the entrance to the track.
(E) Designate areas of No Parking. An ordinance will be brought before Council at a future meeting to designate the exact No Parking areas.

The City Manager also advised that the Street Committee has examined the parking situation along Grayson Street Extension and that an ordinance would be forthcoming at a future meeting to prohibit parking in several places along the street.

CONSIDERATION OF ORDINANCE AUTHROIZING CONDEMNATION OF DWELLING UNFIT FOR HUMAN HABITATION AND ABANDONED STRUCTURES:
The City Manager advised that the City Attorney had reviewed the City's current condemnation procedures for dilapidated structures, and determined that the City needed a framework ordinance in place to provide staff and Council with the authority to seek condemnation and the eventual demolition of dilapidated dwellings and abandoned structures. The attached ordinance had been drafted for Council consideration. Upon a motion by Councilman Cuthbertson,

seconded by Councilman Edwards, those members of Council present voted to adopt the following Ordinances:

ORDINANCE
AMENDING CHAPTER 4
BUILDINGS AND BUILDING REGULATIONS
MARION CITY CODE

WHEREAS, Part 6, Article 19, Chapter 160A of the North Carolina General Statutes [NCGS 160A-441 *et seq.*] authorizes municipalities to exercise its police powers to provide for the repair, closure or demolition of dwellings that are found to be unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals or otherwise inimical to the welfare of the residents of the City of Marion; and

WHEREAS, Part 6, Article 19, Chapter 160A of the North Carolina General Statutes also authorizes municipalities to exercise its police powers to provide for the repair, closure or demolition of any abandoned structure which the City Council finds to be a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities; and

WHEREAS, the City of Marion finds that, from time-to-time, dwellings that are unfit for human habitation and unsafe abandoned structures are located within its corporation limits; and

WHEREAS, the City of Marion wishes to enact an ordinance concerning the repair, closure or demolition of such dwellings and structures;

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 4, Buildings and Building Regulations, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 4 is amended by adding the following:

ARTICLE VI. DWELLINGS UNFIT FOR HUMAN HABITATION AND ABANDONED STRUCTURES

Sec. 4-125. Designation of public officer.

The Fire Chief of the City of Marion is hereby designated as the public officer that is to exercise the powers granted in this Article.

Sec. 4-126. Investigation of dwellings unfit for human habitation; hearing before public officer.

Whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the City of Marion charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within McDowell County, said hearing date to be fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

Sec. 4-127. Determination of findings of fact after hearing; order to repair or demolish dwelling.

If, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order stating:

(a) If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the owner is required, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

(b) If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the owner is required, within the time specified, to repair, alter or improve the dwelling in order to remove or demolish such dwelling. However, notwithstanding any other provision of

law, if the dwelling is located in a locally designated historic district of the City of Marion and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with NCGS 160A-400.14(a).

Sec. 4-128. Failure of owner to comply with order of public officer; posting of placard on dwelling.

(a) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class I misdemeanor.

(b) If the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished.

(c) The duties of the public officer set forth in subsections (a) and (b) of this section shall not be exercised until the City Council shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in McDowell County and shall be indexed in the name of the property owner in the grantor index.

Sec. 4-129. Lien for costs of repairs or demolition.

The amount of the costs of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessments provided in Article 10 of Chapter 160A of the North Carolina General Statutes. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the City of Marion to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

Sec. 4-130. Failure to comply with order to vacate a dwelling.

If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the City of Marion to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in NCGS 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the City Council pursuant to Section 4-128 (c) authorizing the public officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered unto NCGS 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in NCGS 7A-228, and the execution of such judgment may be stayed as provided in NCGS 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the City Council has ordered the public officer to proceed to exercise his duties under Section 4-128 of this Ordinance to vacate and close or remove and demolish the dwelling.

Sec. 4-131. Requirements for mailed notice of order to repair or demolish dwelling to organizations involved in promoting affordable housing.

That whenever a determination is made pursuant to Section 4-127 of this Article that a dwelling must be vacated and closed, or removed and demolished, under the provisions of this Article, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a

written request for such notices. A minimum of 45 days from the mailing of such notices shall be given before any removal or demolition by action of the public officer to all the opportunity for any organization to negotiate with the owner to make repairs, lease or purchase the property for the purpose of providing affordable housing. The public officer or City Clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition.

Sec. 4-132. Applicability of article to abandoned structures.

All of the provisions and procedures prescribed by this Article for the repair, closing or demolition of dwellings found to be unfit for human habitation shall also apply to any abandoned structures which the City Council has found to be a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities.

Sec. 4-133. Conditions existing in a dwelling that determine if a dwelling is unfit for human habitation.

The public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the City of Marion. Defective conditions may include, but are not limited to: defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; and/or uncleanliness.

Sec. 4-134. Service of complaints and orders.

Service of complaints and orders issued pursuant to this Article shall be governed by the following:

(a) Complaints or orders issued by the public officer pursuant to this Article shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent be regular mail. Service is deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the City of Marion at least once no later than the time at which personal service would be required under this Article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected thereby.

Sec. 4-135. Housing appeal board established; procedures for appeal.

The City Council for the City of Marion shall serve as the housing appeals board. Appeals under this Article shall be governed by the following:

(a) Appeals from any decision or order of the public officer may be taken by any person aggrieved thereby or by any officer, board or commission of the City of Marion. Any appeal from the public officer shall be taken within 10 days from the rendering of the decision or service of the order by filing with the public officer and with the housing appeals board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of the notice of appeal, the public officer shall forthwith transmit to the housing appeals board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the public officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When an appeal is from a decision of the public officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the housing appeals board, unless the public officer certifies to the housing appeals board, after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the public officer, by the housing appeals board, or by a court of record upon petition made pursuant to subparagraph d herein.

(b) The housing appeals board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render a decision within a reasonable time. Any party may appear in person or by agent or

attorney. The housing appeals board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision or order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the public officer, but the concurring vote of four-fifths of its members shall be necessary to reverse or modify any decision or order of the public officer. The housing appeals board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Article, to adapt the application of this Article to the necessities of the case to the end that the spirit of the Article shall be observed, public safety and welfare secured, and substantial justice done.

(c) Every decision of the housing appeals board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the housing appeals board, but not otherwise.

(d) Any person aggrieved by an order issued by the public officer or a decision rendered by the housing appeals board may petition the superior court for an injunction restraining the public officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days, and shall be given preference over other matters on the court's calendar. The court shall hear and determine issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this Article or NCGS 160A-446(f).

Sec. 4-136. Powers of public officer.

The public officer is hereby granted the authority to exercise any powers necessary or convenient in carrying out and effectuating the purpose and provisions of this Article and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes, including, but not limited to, the following:

(a) The power and authority to investigate the dwelling conditions within the City of Marion in order to determine which dwellings therein are unfit for human habitation;

(b) The power and authority to administer oaths and affirmations, examine witnesses and receive evidence;

(c) The power and authority to enter upon premises for the purpose of making examinations in the manner that will do the least possible inconvenience to the persons in possession;

(d) The power and authority to appoint and fix the duties of officers, agents and employees necessary to carry out the purposes of this Article; and

(e) The power and authority to delegate any of his functions and powers under this Article to other officers and other agents.

Sec. 4-137. Violations.

If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of (1) Part 6, Article 19, Chapter 160A of the North Carolina General Statutes, (2) this Article, or (3) any validly issued order or decision of the public officer or the housing appeals board made pursuant to this Article, the public officer or housing appeals board may institute any appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

Sec. 4-138. Preparation of estimate of annual expenses or costs to enforce provisions of this article.

The City Manager, in consultation with the public officer, is directed to, within a reasonable time after the adoption of this Article, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings within the City of Marion for the purpose of determining the fitness of dwellings for human habitation, and for enforcement and administration of this Article.

Sec. 4-139. Definitions.

All definitions contained in NCGS 160A-442 are incorporated herein by reference as if fully set forth herein, including but not limited to the following:

(a) "Dwelling" shall mean any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or

mobile home, which is used solely for a seasonal vacation purpose;

(b) "Owner" shall mean the holder of the title in fee simple and every mortgagee of record;

(c) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof;

(d) "Public authority" shall mean any officer who is in charge of any department or branch of the government of the City of Marion, McDowell County, or the State of North Carolina relating to health, fire, building regulations, or other activities concerning dwellings in the City of Marion.

Sec. 4-140. Conflicts with other ordinances or statutes.

This Article is enacted pursuant to and consistent with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes. To the extent that any conflicts exist between this Article and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes, the applicable North Carolina General Statutes shall prevail.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of January, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-01-21-1

REQUEST FOR REIMBURSEMENT – WEST MARION COMMUNITY PARK – ADDIES CHAPEL UNITED METHODIST CHURCH: The City Manager presented Council with a letter of request advising that $2,800.00 has been spent on repairs to the Addie's Chapel United Methodist Church Driveway.

They are requesting a one time contribution of $700.00 to help cover this cost. This driveway is also used by persons visiting the City's West Marion Community Park.

A discussion followed.

Upon a motion by Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to reimburse a portion of the cost in the amount of $700.00 to Addie's Chapel United Methodist Church for driveway repairs leading into the West Marion Park.

CITY MANAGER'S COMMENTS: The City Manager gave an update on current projects.

MAYOR CLARK advised that Oak Grove Cemetery does not have a flag pole in it.

A discussion was held regarding a Memorial for Mr. Warren Hobbs.

The Cemetery Committee will look at this item and advise of its recommendations at a future City Council Meeting.

MAYOR CLARK also advised that he has some concerns about the basement section of the proposed expansion to the Marion Police Department Concerns regarding the building plans will be presented to the project architects.

COUNCILMAN CUTHBERTSON noted a street light that was out on Railroad Street. The Police Department will call in this light to Duke Power.

COUNCILMAN CUTHBERTSON also noted corrections that need to be made to the Downtown Master Plan, as prepared by the Downtown Advisory Committee, in preparation for their presentation of this plan at the Town Meeting on January 23 (or January 30 in the case of inclement weather on January 30).

INTERIM POLICE CHIEF JOHNNY PATTON advised that he would like to thank and commend the Public Works Department for a job well done during the recent snow. Their hard work contributed to no motor vehicle accidents in the City Limits during the snow fall and cold temperatures.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adjourn in memory of Ms. Doris Hill, who passed away in the past week.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held its Annual Town Meeting on Thursday January 30, 2003 at 7:00 P.M. at the Marion Community Building.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little; Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Robert Boyette, City Manager; Debi Sherlin, Secretary; Freddie Killough, Downtown Business Association Executive Director; Suzy Davis, City Planner; Jay Suttles, Building Inspector; Robert Parker, Finance Officer; Buck Byrd, Chief Operator, Water Filter Plant; Johnny Patton, Interim Police Chief; Jim Neal, Fire Chief; Glen Sherlin, Public Utilities/Projects Manager; Aaron Adams, Street Superintendent; Steve Basney, Water Superintendent; Roger Estes, Sanitation Supervisor; Larry Carver, Superintendent, Waste Water Treatment Plant; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Mike & Ellen Ornberg; J. B. Bundy; Beth Henderson; Patti Hart; Woody Killough; Dean Kanipe; Mr. & Mrs. Jim Brown; Dot McCall; Beth Padgett.

UTILITY REPRESENTATIVES:

PUBLIC SERVICE COMPANY OF NORTH CAROLINA:
Don Hallingse

UNITED STATES POSTAL SERVICE:
Barry Gouge

CHARTER CABLE COMPANY:
Wayne Ollis

EMERGENCY MANAGEMENT – 911 ADDRESSING SYSTEM:
Carroll Hemphill

DUKE ENERGY COMPANY:

No Representative

GTE PHONE COMPANY:
No Representative

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION:
Gary Spangler
Gene Morgan

TOWN MEETING:

Mayor Clark opened the Town Meeting and welcome all in attendance. Council members also welcomed those who had come to the meeting.

City Manager Bob Boyette introduced City department heads, the DBA Director, and invited guests from outside agencies.

Ms. Freddie Killough gave a presentation of the Downtown Master Plan, which has come together as a result of input from last year's Town Meeting.

Downtown Advisory Committee Members (DAC)

Mayor A. Everette Clark
Mike Edwards, City Council, Design
Bob Boyette, City Manager, ex-officio member
Freddie Killough, DBA Director, ex-officio member
Suzy Davis, City Planner, Staff

Mike Ornberg, DT Property Owner/Merchant, Activities Committee Chair
Tracy Fuller, DT Merchant, Activities
Tracy Ross, MACA Director, Activities
Patti Hart, DT Property Owner/Merchant, Retail
Doris McCurry, DT Property Owner/Merchant, Retail
Bobbie Young, DBAS Board Member, Retail
Mike Rabb, DT Property Owner/Merchant, Retail
Rod Birdsong, Chamber of Commerce (ex-officio member), Retail
Dean Canipe, McDowell Tech (ex-0fficio member,) Retail
Beth Henderson, McDowell Tech (ex-officio member,) Retail
Donna Stevens, Keep McDowell Beautiful (ex-officio member,) Design

Their Mission Statement:

- Attract and retain a diverse group of people of all ages to downtown Marion in search of shopping, entertainment and culture.
- Develop a unique, beautiful, and alluring downtown streetscape complete with public art, open space, adequate parking and attractive entrances to downtown.
- Preserve the Historic Value of Building and structures.
- Promote a sense of pride and ownership by providing continuous, diverse, public and private partnership activities.

Mr. Jim Brown of South Madison Street directed several questions to Mr. Barry Gouge, Post Master, regarding his Mail Service.

Mr. Brown also advised that he was against adding fluoride to the City of Marion Water System and the need for new sidewalks on South Madison.

Mr. Ray McCall with the North Carolina Department of Environment Natural Resources in Asheville, Dr. Robert Leddy, Public Health Dentist Supervisor for the North Carolina Department of Health and Human Services and Mr. Jerry Freeman with NCDENR gave reports supporting the fluoridation of the City's Water System.

Ms. Beth Padgett also spoke against adding fluoride to the Water System. Ms. Padgett also advised that the City of Marion is a great place to live.

Mike Ornberg thanked Council Members of all they do to improve the City of Marion, including placing fluoride in the Water System.

Gary and Patti Hart stated that they would like to see underground phone, cable and telephone lines on all Street entrances into the City.

Mayor Clark stressed the need for the City to have old signs on Buildings removed in the Downtown Area, and for property owners across the City to clean up and improve their properties.

ADJOURNMENT: The town meeting adjourned at 8:30 P.M.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 4, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Mike Edwards was absent from this meeting due to sickness.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Major Johnny Patton, Marion Police Department; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: T. Walton Clapp, Jr. Marion, NC 28752

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Mayor Clark opened this meeting in memory of
Space Shuttle Columbia
Bobby, Anderson, Chief of P.G. Fire Department
And
Dr. James Wheeler

****

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN LLOYD CUTHBERTSON: Councilman Lloyd Cuthbertson selected the Citizen of the Month of February:

T. WALTON CLAPP, JR.

Councilman Lloyd Cuthbertson advised that Mr. T. Walton Clapp, Jr. is a retired mortician.

He is a deacon and elder at the First Baptist Church and a member of the Mystic Tie Lodge.

He is a charter member of the McDowell County Rescue Squad and the Marion Lions Club.

Mr. Clapp served as County coroner for more than twenty years and was later appointed as the county's medical examiner. He taught first aid classes to local industries for the American Red Cross. He also taught first aid to
the Rescue Squad.

Mayor Clark and Council Members all had kind words to honor Mr. Clapp.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of City Council Minutes - January 21, 2003
B. Approval of Amendment to Cemetery Ordinance

ORDINANCE
AMENDING CHAPTER 5
CEMETERIES
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 5, Cemeteries, of the Code of Ordinances, City of Marion, North Carolina is amended as follows:

Section 2. Chapter 5 is amended by deleting Section 5-12 (h) in its entirety and replacing it with the following:

(h) No more than one body or cremated remains of a body may be placed in any single gravesite, mausoleum vault, or columbarium niche. An exception to this rule may be made only in cases where a single family owns a block of four or more contiguous gravesites, in which case one additional gravesite may be permitted only if physical space exists within the bounds of the family owned block to allow an additional gravesite. Such additional gravesite shall not be allowed to extend into any walkway or common area of the Cemetery. Cremated remains to be placed in a columbarium niche must be in an approved container designed for the sole purpose of holding human ashes.

Section 3. This Ordinance shall become effective upon its adoption.

Adopted this the 4th day of February, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-02-04-1

C. Report – Unpaid 2002 Real Property Taxes - As state in G.S. 105-369(a), municipal Tax Collector must report unpaid 2002 taxes that are liens on real property. As of January 30, 2003 the amount of unpaid 2002 real property taxes is $129,825.37.

D. Approval – Advertisement of Delinquent Real Property Taxes – Advertise City of Marion 2002 Real Property Taxes in the McDowell News, Wednesday, May 7, 2003.

APPROVAL OF DEBT REFINANCING RESOLUTION: The City Manager advised that Wachovia/First Union Bank had agreed to reduce the rate on the City's outstanding water and sewer debt from 4.80% to 3.10%, which will save the City abut $12,000 per year, or $63,000 over the remaining five and one-half years of the loan. The following resolution would authorize the refinancing of the debt. Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the following Resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARION, NORTH CAROLINA, APPROVING CERTAIN AMENDMENTS AND MODIFICATIONS TO AN INSTALLMENT FINANCING CONTRACT, THE EXECUTION AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS.

PREAMBLES

WHEREAS, the City of Marion, North Carolina (the *"City"*), is a duly and regularly created, organized and validly existing municipal corporation and political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the *"State"*);

WHEREAS, the City has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) finance the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of moneys advanced or made available therefor;

WHEREAS, the City previously entered into an Installment Financing Contract, dated as of December 21, 1995 (the *"Original Contract"*), between the City and Wachovia Bank, National Association (formerly First Union National

Bank as successor to First Union National Bank of North Carolina), a national banking association organized and existing under the laws of the United States of America (the "***Bank***"), pursuant to which the Bank advanced funds in the amount $3,271,495.76 to the City to (1) refinance the City's obligations under an Installment Purchase Contract, dated as of October 7, 1992, between the City and First-Citizens Bank & Trust Company, the proceeds of which were used to finance the purchase of a building for use as the City Hall, (2) refinance the City's obligations under a Deed of Trust and Security Agreement, dated as of April 2, 1993, from the City to Fleming L. Loyd, III, Trustee, for the benefit of Southern National Leasing Corporation, the proceeds of which were used, together with other available funds, to construct improvements to the City's water treatment plant and other improvements to the City's water and sewer systems, and (3) refinance the City's obligations under a Deed of Trust and Note Agreement, dated as of March 16, 1992, from the City to William A. Campbell, Trustee, for the benefit of Southern National Leasing Corporation, the proceeds of which were used, together with other available funds, to finance the construction of a Fire Station;

WHEREAS, in order to secure the obligations of the City under the Original Contract, the City executed and delivered a Deed of Trust and Security Agreement, dated as of December 21, 1995 (the "***Deed of Trust***"), from the City to Lynn M. Beckham, as deed of trust trustee, placing a lien on the real property described therein for the benefit of the Bank;

WHEREAS, the City is required to make installment payments (the "***Installment Payments***") to the Bank, as described in Section 3 of the Original Contract and as specified in Paragraph 5 of Schedule A of Real Property and Facilities attached to and made a part of the Original Contract ("***Schedule A***"), such Installment Payments consisting of principal and interest components to be paid semiannually on each March 21 and September 21 of each year during the term of the Original Contract, with a final scheduled payment date of March 21, 2008;

WHEREAS, the interest component of the Installment Payments required to be paid under the Original Contract, as specified in Schedule A, was calculated on the basis of an interest rate equal to 4.77% per annum;

WHEREAS, the City has the option, pursuant to Section 3.5 of the Original Contract, to prepay the outstanding Installment Payments in full, at any time, at a prepayment price equal to one hundred percent (100%) of the principal component thereof, plus the interest component accrued to the date of prepayment, upon not less than thirty (30) days' written notice to the Bank;

WHEREAS, the Bank has proposed to the City that the interest component of the remaining Installment Payments to be paid under the Original Contract after February 10, 2003, as specified in Schedule A, be recalculated based on an interest rate equal to 3.10% per annum as consideration for the City's agreement to waive the City's option to prepay the outstanding Installment Payments prior to the final scheduled payment date of the Original Contract pursuant to Section 3.5 of the original Contract, which reduction in the applicable interest rate will lower the remaining interest costs to the City under the Original Contract and which optional prepayment waiver by the City will provide the Bank with protection against losing its investment in the Original Contract;

WHEREAS, the City and the Bank have agreed to amend and modify the Original Contract and Schedule A in order to provide for the recalculation of the interest component of the remaining Installment Payments to be paid under the Original Contract after February 10, 2003, as specified in Schedule A, based on an interest rate equal to 3.10% per annum and to waive the City's option to prepay the outstanding Installment Payments prior to the final scheduled payment date of the Original Contract pursuant to Section 3.5 of the Original Contract (collectively, the "***Contract Modifications***"), by entering into an Amendment Number One to Installment Financing Contract, to be dated as of its date of execution and delivery (the "***First Amendment Agreement***"), between the City and the Bank;

WHEREAS, the obligation of the City to make Installment Payments under the Original Contract, as modified by the First Amendment Agreement (the Original Contract as modified by the First Amendment Agreement hereinafter referred to as the "***Contract***"), is a limited obligation of the City payable solely from currently budgeted appropriations of the City and does not constitute a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any amounts due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with applicable law, and the City has not been censured by the Local Government Commission of North Carolina (the "***LGC***"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, there has been presented to the City Council of the City the form of the First Amendment Agreement which the City proposes to approve, enter into, execute and deliver, as applicable, to effectuate the Contract Modifications to the Original Contract and Schedule A as set forth in the First Amendment Agreement; and

WHEREAS, it appears that the First Amendment Agreement is in appropriate form and is an appropriate instrument for the purposes intended;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION, NORTH CAROLINA, AS FOLLOWS:

Section 1. ***Ratification of Prior Actions*** All actions of the Mayor, the City Manager, the Finance Director of the City and the City Clerk, and their respective designees, in effectuating the Contract Modifications to the Original Contract and Schedule A are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the First Amendment Agreement.

Section 2. ***Approval, Authorization and Execution of First Amendment Agreement.*** The City hereby approves the Contract Modifications to the Original Contract and Schedule A in accordance with the terms of the First Amendment Agreement, and intends that the Original Contract as amended and modified by the First Amendment Agreement will be a valid, legal and binding obligation of the City in accordance with the terms thereof. The form and content of the First Amendment Agreement and the Original Contract, as amended, modified and supplemented by the First Amendment Agreement, are in all respects authorized, approved and confirmed, and the Mayor, the City Manager, the Finance Director of the City and the City Clerk, and their respective designees, are authorized, empowered and directed to execute and deliver the First Amendment Agreement for and on behalf of the City, including necessary counterparts, in substantially the form presented to the City Council for approval, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the First Amendment Agreement, the Mayor, the City Manager, the Finance Director of the City and the City Clerk or their respective designees are hereby authorized, empowered and directed to do all such acts and things and to execute all such other documents as may be necessary to carry out and comply with the provisions of the Original Contract, as amended, modified and supplemented by the First Amendment Agreement, as executed.

Section 3. ***Further Actions.*** The Mayor, the City Manager, and the Finance Director of the City are hereby designated as the City's representatives to act on behalf of the City in connection with the transactions contemplated by the First Amendment Agreement, and the Mayor, the City Manager, and the Finance Director of the City are authorized and directed to proceed with the modification and amendment of the Original Contract and Schedule A in accordance with the terms of the First Amendment Agreement, and to seek opinions on matters of law from the City Attorney, which the City Attorney is authorized to furnish on behalf of the City, and opinions of law from such other attorneys with respect to all documents contemplated by this Resolution as may be required by law or otherwise. The Mayor, the City Manager and the Finance Director of the City are hereby authorized to designate one or more employees of the City to take all actions which the Mayor, the City Manager and the Finance Director of the City are authorized to perform under this Resolution, and the Mayor, the City Manager, the Finance Director of the City and their respective designees are in all respects authorized on behalf of the City to supply all information pertaining to the transactions contemplated by the First Amendment Agreement. The Mayor, the City Manager, the Finance Director of the City and the City Clerk are authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the First Amendment Agreement or as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 4. ***Deemed Designated as Bank Qualified*** The City acknowledges that (1) he Original Contract was designated as a ***"qualified tax-exempt obligation"*** for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the ***"Code"***), (2) the Original Contract was therefore eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code, and (3) the Original Contract, as amended and modified by the First Amendment Agreement, will be deemed to be designated as a ***"qualified tax-exempt obligation"*** (within the meaning of Section 265(b)(3) of the Code) for purposes of Section 265(b)(3) of the Code.

Section 5. ***Repealer*** All motions, orders, resolutions, ordinances and parts thereof in conflict with this Resolution are hereby repealed to the extent of any such conflict.

Section 6. ***Severability.*** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 7. ***Effective Date.*** This Resolution shall become effective on the date of its adoption.

YEAS _____

_____

_____

_____

_____

_____

NAYS _____

PASSED, ADOPTED AND APPROVED this 4th day of February, 2003.

STATE OF NORTH CAROLINA)
)
COUNTY OF McDOWELL)

I, J. Robert Boyette, the duly appointed City Clerk of the City of Marion, North Carolina, do hereby certify that the foregoing is a true, complete and accurate copy of the resolution relating to the approval of certain amendments and modifications to an installment financing contract and certain other related matters addressed therein which was passed, adopted and approved by the City Council of the City of Marion, North Carolina, at its regular meeting held on Tuesday, February 4, 2003, at which meeting a quorum was present and acting throughout, such resolution to become effective on such date, and that such resolution has been duly recorded in the minutes of the City.

WITNESS my hand and the corporate seal of the City of Marion, North Carolina, this the 4th day of February, 2003

[SEAL]

By: _____
J. Robert Boyette
City Clerk
City of Marion, North Carolina

EXTRACT FROM MINUTES OF CITY COUNCIL

A Regular Meeting of the City Council of the City of Marion, North Carolina was duly held on Tuesday, February 4, 2003, at 7:00 P.M. at the City Hall, 194 North Main Street, Marion, North Carolina 28752, with Mayor A. Everette Clark presiding.

Council Members Present:

Lloyd Williamson Cuthbertson
Cecil M. Owenby
A. Michael Edwards
Billy S. Martin
Stephen R. Little

Council Members Absent:

None

Council Members Abstaining:

None

Council Member _____ moved that the following resolution be adopted, seconded by Council Member _____:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARION, NORTH CAROLINA, APPROVING CERTAIN AMENDMENTS AND MODIFICATIONS TO AN INSTALLMENT FINANCING CONTRACT, THE EXECUTION AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS.

The motion was adopted by the following vote:

Ayes:

Nays:

STATE OF NORTH CAROLINA)
)
COUNTY OF McDOWELL)

I, J. Robert Boyette, the duly appointed City Clerk of the City of Marion, North Carolina, do hereby certify that the foregoing is a full, true and accurate extract from the minutes of the City Council of the City of Marion, North Carolina, from its regular meeting held on February 4, 2003, at which meeting a quorum was present and acting throughout, relating to the resolution approving certain amendments and modifications to an installment financing contract and certain other related matters addressed therein.

WITNESS my hand and the corporate seal of the City of Marion, North Carolina, this the 4th day of February, 2003.

[SEAL]

By: _____
J. Robert Boyette
City Clerk
City of Marion, North Carolina

NO PARKING ORDINANCE – GRAYSON STREET EXTENSION:
The City Manager noted that the following ordinance was recommended by the Street Committee, to prohibit parking on one side of Grayson Street Extension, in the cul-de-sac at the end of the road, and behind a driveway on the road, due to the narrow width of the street. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
GRAYSON STREET EXTENSION	PARKING PROHIBITED	WEST SIDE, LENGTH OF STREET
	PARKING PROHIBITED	CUL-DE-SAC FROM BEGINNING OF CUL-DE-SAC ON WEST SIDE OF STREET 115 FEET AROUND TO EAST SIDE OF STREET.
	PARKING PROHIBITED	EAST SIDE OF STREET BEGINNING 85 FT. NORTH OF END OF CUL-DE-SAC AND EXTENDING 30 FEET NORTH

Section 3. This Ordinance shall become effective upon its adoption.

Adopted this the 4th day of February, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: City Manager/Clerk

NO PARKING ORDINANCE/STREET AND PARKING IMPROVEMENTS – STATE STREET: The City Manager reported that the Street Committee had recommended the restriction of parking on State Street, opposite from East McDowell Junior High School, from Carroll Street, eastward to the first driveway. Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE

MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2 Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
STATE STREET	PARKING PROHIBITED	NORTH SIDE OF STREET, BEGINNING AT NE CORNER OF STATE STREET AND CARROLL STREET AND EXTENDING 150 FEET EAST.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 4th day of February, 2003.

Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manger/Clerk

Ordinance Number: O-03-02-04-3

A discussion was held regarding the Parallel/Angle Parking in front of the school. Street Superintendent Aaron Adams recommended that parallel parking be placed in front of the school. Angled parking would add only three parking spaces, and cost of $4,000 to the project/

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to install parallel parking for a distance of one hundred eighty (180) feet on the South side of State Street in front of the school. There will be no cost for these spaces other than cost of paint.

POLICE DEPARTMENT EXPANSION/AUTOMATED WATER METER UPDATE: The City Manager advised that the project architects have completed the construction plans and that they are being reviewed by Jay Suttles, the City's Building Inspector. The Architects will be ready to go out for bid on February 12, 2003.

Specifications have also been completed for the automated water meter system, and are also ready to go to bid on February 12, 2003.

Requests for bank bids are scheduled to be received by mid February.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to authorized the City Manger to seek bids on the Police Department expansion and the automated water meter system, and to receive bank bids on our financing.

A Public Hearing for this financing will be held on February 18, 2003.

ADOPTION OF RESOLUTION APPROVING FINAL SALE OF SENIOR CENTER PROPERTY: The City Manger reported that the City Attorney had recommended that City Council adopt one additional resolution accepting the offer of the Mental Health Association in

North Carolina to purchase the Senior Center building and property for $170,000, now that the upset bid process had been completed. Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution:

Resolution Authorizing Final Acceptance Of Offer to Purchase Senior Center Property Owned by the City of Marion After Solicitation of Upset Bids

WHEREAS, N.C.G.S. 160A-269 authorizes a city to convey by negotiated offer and upset bid any real or personal property; and

WHEREAS, the Mental Health Association in North Carolina, a nonprofit agency, has submitted a bid in the amount of $170,000 for the Senior Center property, as described below; and

WHEREAS, the City Council of the City of Marion adopted a resolution on December 10, 2002, in accordance with N.C.G.S. 160A-269, accepting the offer of the Mental Health Association in North Carolina, a nonprojet agency, to purchase the Senior Center property, as described below, for a sum of $170,000; and

WHEREAS, in accordance with N.C.G.S. 160A-269, the City of Marion received a five percent bid deposit from the Mental Health Association in North Carolina; and

WHEREAS, in accordance with N.C.G.S. 160A-269, the City of Marion, on January 14, 2003, caused notice of the proposed sale of the Senior Center property, as described below, to be published in the McDowell News; and

WHEREAS, the City of Marion has completed the ten day upset bid period required by N.C.G.S. 160A-269, without the receipt of any upset bids; and

WHEREAS, the City Council of the City of Marion desires to completer the sale of the Senior Center property to the Mental Health Association in North Carolina

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Marion that:

1. The following described property is hereby declared to be surplus to the needs of the City of Marion:

BEING a parcel containing .69 of an acre, according to that certain unrecorded plat of survey prepared by R.L. Greene Surveying and which Survey is dated November 7, 2001 and which survey has a map file number of MM1-022R and which survey is entitled, Survey of a Portion of that property described in a deed to The Town of Marion, Deed Book 173, Page 215 and from which survey the following metes and bounds description is taken.

BEGINNING AT an existing concrete monument which is located North 43 degrees 32 minutes 39 seconds West 262.92 meters from N.C.G.S. Monument Main which has NAD 83 grid coordinates of N = 218059.962 meters and E = 337533.111 meters and which Monument Main is located North 62 degrees 18 minutes 17 seconds West 123 8875 meters from N C G S Monument Clair which has NAD 83 grid coordinates of N = 218002.383 meters and E = 337642.805 meters and which BEGINNING point is located at the NorthWestern corner of land now or formerly owned by the City of Marion, see Deed Book 428, Page 164, McDowell County Public Registry and which BEGINNING point is located at the Southernmost corner of property now or formerly owned by Krann E. Evans, see Deed Book 509, Page 190, McDowell County Public Registry, thence from said BEGINNING point and with the line of lands now or formerly owned by the City of Marion, see Deed Book 173, Page 215, and Deed Book 428, Page 167, McDowell County Public Registry, South 68 degrees 08 minutes 59 seconds West 38.90 feet to an existing iron pin; thence South 68 degrees 08 minutes 59 seconds West 88.74 feet to an unmarked point in the center of the Creek, an unmarked point which is located in the line of lands now or formerly owned by Heritage Hill Associates, see Deed Book 345, Page 822, McDowell County Public Registry, thence with the creek, the following courses and distances which are all to unmarked point, North 56 degrees 36 minutes 07 seconds West 21.80 feet; North 32 degrees 51 minutes 07 seconds West 45 23 feet; North 82 degrees 01 minutes 52 seconds West 31 12 feet; South 69 degrees 48 minutes 04 seconds West 21.65 feet; thence with the culvert, North 40 degrees 24 minutes 54 seconds West 64 80 feet to a punch mark placed in a sidewalk which is identified as the BEGINNING corner of Deed Book 173, Page 215, McDowell County Public Registry, thence with Crawford Street, North 51 degrees 02 minutes 47 seconds East 179.44 feet to a pkm nail set on November 7, 2001; thence with a new line, South 68 degrees 30 minutes 36 seconds East 53 11 feet to a pkm nail set on November 7, 2001, thence with a new line, South 34 degrees 26 minutes 12 seconds East 39.43 feet to a pkm nail set on November 7, 2001; thence South 21 degrees 29 minutes 07 seconds East 117.68 feet to the point and place of BEGINNING.

Being a portion of Deed Book 173, Page 215, McDowell County Public Registry.

2. The City Council accepts the offer of the Mental Health Association in North Carolina to purchase the above described property for $1,700,000, and directs the City Manager to proceed with the sale of sale of said property, as authorized by N.C.G.S. 160A-269.

The effective date of the sale shall be on March 31, 2003, or sooner if McDowell County vacates the premises of the above described property.

Adopted this the 4th day of February, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-03-02-04-1

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN MARTIN extended his thanks for a job well done this winter during recent snow and ice storms by the Public Works Department
Employees.

COUNCILMAN LITTLE took the opportunity on behalf of all Council Members to present Mayor Clark with a Thirty-Year Service Pin from the City of Marion. Councilman Little noted how rare and commendable it is for a person to spend thirty consecutive years in an elected office.

COUNCILMAN OWENBY extended his thanks for a job well done by the Sanitation Department.

CHIEF ELLIOTT advised that Jim Cook Chevrolet has donated a car to the City of Marion to use in the DARE Program at East Junior High, Mayor Clark suggested inviting a representative from Jim Cook Chevrolet to a Council Meeting to be recognized for this donation.

MAYOR CLARK, COUNCIL MEMBERS AND CITY MANAGER all extended their appreciation for a job well done by Johnny Patton as he has filled in as the Interim Police Chief for the City of Marion.

MAYOR CLARK advised that the City will be honoring/acknowledging Ms. Linda Suttles' retirement at a later date. Her health is improving and we hope to have her at a Council Meeting in March.

COUNCILMAN CUTHBERTSON inquired why the sidewalk on Rutherford Road has been torn out for so long.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to go into Closed Session to discuss a personnel matter under N.C.G.S. 143-318.11
(a)(6) and to discuss the location of industry under N.C.G.S. 143-318.11 (a)(4).

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to go back into Regular Session.

There was no action taken.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 18, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief

GUESTS PRESENT: None

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - January 30, 2003, and February 4, 2003 Minutes

PUBLIC HEARING/APPROVAL OF DEBT FINANCING RESOLUTION: Mayor Clark opened the Public Hearing.

The City Manager advised that the adoption of the Resolution is required in order to make application to the Local Government Commission for approval of debt financing.

A discussion followed.

There were no citizens present to discuss this item.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION OF THE CITY COUNCIL OF CITY OF MARION, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT

WHEREAS, the City of Marion, North Carolina is a duly and regularly created, organized and validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina,

WHEREAS, the City has the power, pursuant to North Carolina General Statutes to (I) purchase real and personal property, (II) enter into installment financing contracts in order to finance the purchase of real personal property used, or to be used, for public purposes, and (III) to finance the construction of fixtures or improvements on real property by contracts that create, on the real property on which such fixtures or improvements are located, a security interest to secure repayment of moneys advanced or made available for such construction,

WHEREAS, the City Council, of City of Marion, North Carolina, hereby determines that it is in the best interest of the City to receive an advance of funds in an aggregate principal amount of not more than $2,100,000 by entering into an installment financing contract with a North Carolina corporation, and a deed of trust or other security agreement related thereto to secure the City's obligations under the Contract. This financing is new debt of $2,100,000 for the purpose of Water Meter and Police Building Improvements.

*Section 1*Ratification of Prior Actions That all actions of the City, the City Manager, the Finance Officer of the City, and the City Clerk and their respective designees in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments

Section 2. That City of Marion does hereby approve the financing of the project referenced above, in accordance with the terms of the proposal made by RBC Centura, a copy of which is attached hereto. The annual interest rate for the Water Meter and Police Building Improvements is 3.26 percent for 10 years financing term The Installment Purchase Contract and the Deed of Trust in connection therewith, which said financing will be valid, legal and binding obligation of the City of Marion in accordance with their terms. The form and content of the Contract and related documents are in all respects authorized, approved and confirmed and the City Manager is hereby authorized, empowered and directed to do all such acts to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as approved.

Section 3 That the City Manager is hereby designated as the City's representative to act on behalf of the City in connection with the transactions contemplated hereby and by the Instruments referenced herein, and the City Manager is further authorized and directed to seek opinions as to matters of law from the City Attorney, which opinions the City Attorney is hereby authorized to furnish on behalf of the City.

The City Manager is further authorized to execute and deliver for and on behalf of the City, any and all additional certificates, documents, opinions, or other papers and to perform all other acts as may be required by the instruments or as he and the City Attorney may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 4. That if any section, phrase or provisions of this Resolution is for any reason declared to be invalid, then such declaration shall not effect the validity of the remainder of the sections, phrases, or provisions of this Resolution which shall remain and continue in full force and effect.

Section 5 That all motions, orders, resolutions, ordinances and parts thereof which are or may be in conflict herewith are hereby repealed.

Section 6 This Resolution is subject, however, to City of Marion obtaining approval for the proposed installment purchase financing from the North Carolina Local Government Commission.

Section 7. That this Resolution shall become effective immediately upon its adoption.

WHEREAS, the City hereby determines that the improvements of the above described project is essential to the City's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Project will provide an essential use and will permit the City to carry out public functions that it is authorized by law to perform; and that entering into the Contract is necessary and expedient for the City by virtue of the findings presented herein.

WHEREAS, the City hereby determines that the estimated cost of the new improvements in this project is approximately $2,100,000 and that such costs exceed the amount that can be prudently raised from currently available appropriations, unappropriated fund balances in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State.

WHEREAS, although the cost of financing the improvements of this project pursuant to the Contract could exceed the cost of financing the renovations of the project pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the project pursuant to the Contract and the Deed of Trust and the obligations of the City thereunder are preferable to a general obligation bond financing for several reasons, including but not limited to the following: (I) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; and (II) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring the project;

WHEREAS, the City hereby determines that the estimated cost of financing the renovation project pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preamble;

WHEREAS, obligation of the City to make Installment Payments under the Contract is a limited obligation of the City payable solely from currently budgeted appropriations of the City and does not constitute a pledge of a faith and credit of the City within the meaning of any constitutional debt limitation;

WHEREAS, in order to secure the City's obligations under the Contract, the City will enter into the Deed of Trust trustee named for the benefit of the Corporation;

WHEREAS, no property tax increases will be required to pay installment payments falling due under the Contract in any fiscal year during the term of the Contract;

WHEREAS, the City Attorney will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law and constitute a purpose for which public funds may be expended pursuant to the Constitution and laws of the State;

WHEREAS, no deficiency judgement may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any monies due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission, external auditors or any other regulatory agencies in connection with such debt management and contract obligation payments policies,

WHEREAS, the City Council conducted a public hearing with respect to the Water Meter and Police Building Improvements on February 18, 2003 to receive public comments on the Project, the proposed financing, the Contract and the Deed of Trust for improvements of the Project, and the City will file an application with the LGC for approval of the LGC with respect to the City entering into the Contract,

WHEREAS, the forms of the Contract, upon review of the City Attorney, the City proposes to approve, enter into and deliver, applicable, to effectuate the proposed financing at the interest rate and maximum principal amount as specified therein; and

WHEREAS, it appears that the Instrument is in appropriate form and is an appropriate instrument of the purposes intended;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, CITY OF MARION, NORTH CAROLINA, AS FOLLOWS:

The motion to adopt this Resolution was made by Council Member _____. Seconded by Council Member _____, and was passed unanimously by those members present at the meeting of the City Council, North Carolina, held on the _____.

A. Everette Clark, Mayor, City of Marion

Attest:

J. Robert Boyette, City Manager/Clerk

Date

ADOPTION OF ORDINANCE – AUTHORIZE CRIMINAL HISTORY CHECKS – APPLICANTS FOR LICENSES – POOL ROOMS, BOWLING ALLEYS, PINBALL MACHINES, VIDEO GAMES: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 10
LICENSES, PERMITS AND BUSINESS REGULATIONS
MARION CITY CODE

WHERAS, Chapter 10, Article IV of the Marion City Code requires persons wishing to operate pool rooms, bowling alleys, pinball machines and video games within the City to apply for a license; and

WHEREAS, such applications for licenses must be reviewed by the City Council; and

WHEREAS, the City Council of the City of Marion feels that, in order to protect the public health, safety and welfare and promote the peace of mind of citizens of and visitors to the City, criminal records background checks are necessary for applicants for City licenses.

NOW THEREFORE BE IT ORDAINED **by the City Council of the City of Marion, North Carolina as follows:**

Section 1. That Chapter 10, Licenses, Permits and Business Regulations, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 10 is amended by deleting Section 10-94 in its entirety and replacing it with the following:

Sec. 10-94. Criminal history check authorized; disqualifications.

A criminal records background check is required for applicants for a license under this Article, in order to protect the public health, safety and welfare. Such background check shall be conducted by the Police Department in conformity with State law. The result of the background check can determine the suitability of the applicant.

The City Council shall not issue a permit required by this article to any person who:

(1) Has been convicted of unlawfully selling intoxicating liquors or narcotic drugs; or

(2) Is not a citizen and resident of this state; or

(3) Is an excessive user of intoxicating liquor or narcotic drugs; or

(4) As a result of the criminal background check, is deemed by the City Council to be unfit to conduct a business for which the license is applied.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of February, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-02-18-1

ADOPTION OF ORDINANCE – AUTHORIZE CRIMINAL HISTORY CHECKS – APPLICATNTS FOR LICENSES – PEDDLERS AND SOLICITORS: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 10
LICENSES, PERMITS AND BUSINESS REGULATIONS
MARION CITY CODE

WHERAS, Chapter 10, Article V of the Marion City Code requires persons wishing to engage in peddling or soliciting within the City to apply for a license; and

WHEREAS, such applications for licenses must be reviewed by the City Clerk; and

WHEREAS, the City Council of the City of Marion feels that, in order to protect the public health, safety and welfare and promote the peace of mind of citizens of and visitors to the City, criminal records background checks are necessary for applicants for City licenses.

NOW THEREFORE BE IT ORDAINED **by the City Council of the City of Marion, North Carolina as follows:**

Section 1. That Chapter 10, Licenses, Permits and Business Regulations, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 10 is amended by deleting Section 10-128 in its entirety and replacing it with the following:

Sec. 10-128. Issuance.

(a) Upon receipt of an application, the City Clerk shall cause to be made such investigation of the applicant's moral character and business responsibility as is necessary to protect the public health, safety and welfare.

(b) A criminal records background check is required for applicants for a license under this Article, in order to protect the public health, safety and welfare. Such background check shall be conducted by the Police Department in conformity with State law. The result of the background check can determine the suitability of the applicant.

(c) If, as a result of this background check, the character and responsibility of the applicant appear to be satisfactory, the City Clerk shall issue a permit. Providing that the applicant complies with Sections 10-112 and 10-113.

(d) The City Clerk shall not issue a permit required by this article to any person who, as a result of the investigation and background check:

(1) Appears to have an unsatisfactory character and business responsibility; or

(2) As a result of the criminal background check, is deemed by the City Clerk to be unfit to conduct the activities for which the license is applied.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of February, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-02-18-2

ADOPTION OF ORDINANCE – AUTHORIZE CRIMINAL HISTROY CHECKS – APPLICATNTS FOR CERTIFICATES OF PUBLIC NECESSITY AND CONVENIENCE FOR TAXICABS:

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 17
TAXICABS
MARION CITY CODE

WHEREAS, Chapter 17, Article II of the Marion City Code requires persons wishing to operate or own a taxicab for hire within the City to apply for a certificate of public convenience and necessity; and

WHEREAS, such applications for certificates must be reviewed by the City Council; and

WHEREAS, the City Council of the City of Marion feels that, in order to protect the public health, safety and welfare and promote the peace of mind of citizens of and visitors to the City, criminal records background checks are necessary for applicants for City licenses and certificates.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 17, Taxicabs, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 17 is amended by deleting Section 17-44 in its entirety and replacing it with the following:

Sec. 17-44. Issuance.

(a) A criminal records background check is required for applicants for a certificate under this Article, in order to protect the public health, safety and welfare. Such background check shall be conducted by the Police Department in conformity with State law. The result of the background check can determine the suitability of the applicant.

(b) If the City Council finds that further taxicab service in the City is required by the public convenience and necessity and the applicant is fit, willing and able to perform such public transportation and to conform to the provisions of this chapter and the rules promulgated by the City Council, that the applicant has filed proof of financial responsibility as required by state law, and that the background check shows that the applicant will not threaten the public health, safety or welfare, the City Council shall direct the City Clerk to issue a certificate stating the name and address of the applicant, the number of vehicles authorized under such certificate, and the date of issuance. Otherwise, the applicant shall be denied.

(c) In making the above findings, the City Council shall take into consideration the number of taxicabs already in operation, whether existing transportation is adequate to meet the public needs, the probable effect of increased service on local traffic conditions, the character, experience and responsibility of the applicant, and the results of the criminal background check.

The City Clerk shall not issue a permit required by this article to any person who, as a result of the investigation and background check:

(1) Appears to be of unsatisfactory character or a threat to the public health, safety or welfare; or

(2) As a result of the criminal background check, is deemed by the City Council to be unfit to conduct the activities for which the license is applied.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of February, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-02-18-3

ADOPTION OF ORDINANCE – AUTHORIZE CRIMINAL HISTROY CHECKS – APPLICATNS FOR TAXI CAB DRIVER'S PERMITS: Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 17
TAXICABS
MARION CITY CODE

WHERAS, Chapter 17, Article III of the Marion City Code requires persons wishing to drive a taxicab for hire within the City to apply for a driver's permit; and

WHEREAS, such applications for certificates must be reviewed by the Police Chief; and

WHEREAS, the City Council of the City of Marion feels that, in order to protect the public health, safety and welfare and promote the peace of mind of citizens of and visitors to the City, criminal records background checks are necessary for applicants for City licenses and permits.

NOW THEREFORE BE IT ORDAINED **by the City Council of the City of Marion, North Carolina as follows:**

Section 1. That Chapter 17, Taxicabs, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 17 is amended by adding Section 17-63.5 as follows:

Sec. 17-63.5. Review of application.

(a) A criminal records background check is required for applicants for a permit under this Article, in order to protect the public health, safety and welfare. Such background check shall be conducted by the Police Department in conformity with State law. The result of the background check can determine the suitability of the applicant.

(b) If, as a result of this background check, the character and responsibility of the applicant appear to be satisfactory, the Police Chief shall issue a permit.

(d) The Police Chief shall not issue a permit required by this article to any person who, as a result of the investigation and background check:

(1) Appears to be of unsatisfactory character; or

(2) As a result of the criminal background check, is deemed by the Police Chief to be unfit to drive a taxicab for hire within the City; or

(3) Has been convicted of unlawfully selling intoxicating liquors or narcotic drugs; or

(4) Is an excessive user of intoxicating liquor or narcotic drugs; or

(5) Has been convicted of driving while impaired; or

(6) Has a driving record which would endanger the public; or

(7) As a result of the criminal background check, is deemed by the Police Chief Council to be unfit to conduct a business for which the license is applied.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of February, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-02-18-4

CITY OPEN HOUSE: The City Manager reported that arrangements had been made with the School System for the City to hold an Open House of all City facilities and to the public and all third graders in the County. The date for the Open House is April 11.

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Little stated that the family of Warren Hobbs had discussed the idea of a memorial for Warren in Oak Grove Cemetery. Councilman Little stated that the family appreciated the willingness of the City and other groups to provide a memorial for Warren, but that they felt the best way to honor Warren would be to continue efforts to improve and make needed repairs to Oak Grove, rather than to single him out with a specific memorial.

Councilman Cuthbertson discussed complaints about activities in the Teen Center in the old House Theater at Garden and Court Streets. Chief Elliott and the City Manager gave an update on efforts to address inappropriate activities at this location.

Councilman Owenby noted needed patching to Montevista Avenue near North Main Street.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 4, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief.

GUESTS PRESENT: Claudia Severson, Lovina Smith, Ann Searcy, Libb Whiteside, City Employees, Ronnie Smith, Marion, NC 28752, Linda Suttles, Marion, NC 28752, Carl Johnson, Marion, NC 28752, Kellie Duncan, Marion Police Department, Mr. & Mrs. Jed Rankin and Children, Marion, NC, 28752, Steve Dirhold, Marion, NC 28752, Kathy Atkinson, Marion, NC 28752, Dean Walker, Marion, NC 28752.

RECOGNITION OF RETIRED CITY EMPLOYEE: Mayor Clark, Council Members, City Employees and friends all joined together to recognize Linda Suttles.

Linda worked for the City of Marion and recently had to retire with disability due to health issues.

Mayor Clark presented Linda with a beautiful plaque that read as follows:

CITY OF MARION, NORTH CAROLINA
PRESENTS TO
Linda W. Suttles
For
Over Twenty Four Years
Of Loyal and Dedicated Service
To the City of Marion
June 21, 1978 – October 1, 2002
By Mayor A. Everette Clark and the Marion City Council

CITIZEN OF THE MONTH SELECTED BY MAYOR PRO TEM STEVE LITTLE: Mayor Pro Tem Steve Little selected the Citizen of the Month for March.

The following information was presented about March's Citizen of the Month:

RAY E. BUCHANAN

Mayor Pro Tem Steve Little advised that Mr. Buchanan was born and raised in Haywood County. He graduated from Waynesville High School, Western Carolina University and the School of Banking of the South at L.S.U.

Mr. Buchanan served as an officer in the US Marine Corps.

He was employed by First Union National Bank for 34 years, serving in Charlotte, Asheville, Waynesville, Statesville, Charlotte, Marshall, Sylva, and the last twenty years in Marion.

Following his retirement from FUNB, he worked with UBS/Paine Webber as a Financial Advisor-Trustee.

Mr. Buchanan has been a Rotary Club member for over forty years, serving in Sylva and Marion as Club President, District Treasurer, Director and numerous other committees. He served as a Trustee of the Corpening Foundation from 1975-1994 and currently serves as President of the Maxwell M. Corpening Jr. Memorial Center, Inc.

Mayor Clark, City Council, Family Members and Friends all shared kind words to honor Mr. Buchanan.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - February 18, 2003

B. Authorize Closing of Main Street for Car Shows
The MOPAR Club will hold two car shows this year in addition to their planned show at the Mountain Glory Festival.
June 14, 2003 from 4:45 PM until 9:15 PM
September 13, 2003 from 4:45 PM until 9:15 PM

The Club will be responsible for the entire event except for erecting and taking down the barricades blocking the street, which would be handled by the Marion Police Department. The City will coordinate with Kirksey Funeral Home, to make sure there are no conflicts.

C. Approval – Reimbursement to Downtown Business Association

Reimburse Downtown Business Association the amount of $144.52 in expenses relating to work of the Downtown Advisory Committee.
Expenses included: A site visit to Shelby
The purchase of educational materials

D. Authorize Request for Lease for Police Department Parking

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

LEASE AGREEMENT

This is a LEASE AGREEMENT, entered into between the City of Marion, hereinafter called TENANT, and Krinn E. Evans, hereinafter called LANDLORD(s), executed on this the ____ day of ____, 2003.

1. The premises leased by LANDLORD(S) to TENANT consists of approximately 0.45 acres. As shown by the attached Exhibit A, located along the shared boundary line between TENANT and LANDLORD at Marion, N.C., in Marion Township, McDowell County, North Carolina.

2. The period of the lease shall be for a term of one (1) year, from the _____ day of _____, 2003 to the _____ day of _____, 2004.

3. TENANT agrees to pay rental on said premises in the amount of One and 00/100 Dollars ($1.00). To be paid as of the signing of this agreement.

4. TENANT and LANDLORD agree that except as provided below, TENANT shall have the exclusive use of said parking are.

5. TENANT agrees, during the term of this LEASE, that they shall set aside six (6) parking spaces for the exclusive use of LANDLORD or his clients. Incident with this use TENANT agrees that it shall allow LANDLORD or his clients access across the property of TENANT for the purpose of ingress, egress, and regress from the leased premises. Likewise , during the term of the lease, LANDLORD shall allow TENANT or its clients access across the property of LANDLORD for the purpose of ingress, egress, and regress from the leased premises.

6. TENANT is/are responsible for the following;
   a. TENANT is/are responsible for all utilities, and will pay all utility bills if electricity is supplied to to the lease premises so long as TENANT remain in possession.
   b. TENANT must maintain the rental property in a reasonable clean and orderly condition at all time and properly dispose of garbage and trash.

c. No unlawful use may be made of the rental property. No controlled substances shall be illegally possessed or used upon the rental property.
d. TENANT shall be responsible for glass breakage and for injury to the premises caused by the willfulness or negligence of TENANT or any client or guests of TENANT.

7. It is expressly agreed that if TENANT shall neglect to make any payment of rent when due or neglect to do and perform any matter or things herein agreed to be done and performed by him, and shall remain in default thereof for a period of 30 days after written notice from Landlord calling attention to such default, Landlord may declare this Lease terminated and cancelled and take possession of said premises without prejudice to any other legal remedy he may have on account of such default. Said notice shall be given to the City Manager for the City of Marion at P.O. Drawer 700, Marion, NC 28752

8. If during the term of this Lease the Leased premises are do damaged by fire, tornado or other catastrophe or casualty as to render the same uninhabitable, this Lease shall terminate.

9. TENANT may not transfer this LEASE agreement, nor may TENANT sublease any portion of the leased.

10. At the expiration of the one (1) year period, this LEASE may be renewed for an additional one (1) year period. During this renewal period, the conditions se forth above shall remain in effect.

11. TENANT will indemnify Landlord and save him harmless from and against any and all claims, actions, damages, liability and expense in connections with the loss of life, personal injury, or damage to property occurring in or about, or arising out of, the demised premises, or occasion wholly or in part by any act or omission of Tenant, his clients, his patron, his agents, or employees.

I have read the foregoing Lease Agreement and agree to be bound by it, this the day of _____, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RECOGNITION – JIM COOK'S CHEVROLET – D.A.R.E. VEHICLE DONATION; Mr. Steve Dirhold, Manager/Dealer of Jim Cook's Chevrolet, appeared before Council to receive recognition for donation of a D.A.R.E. vehicle to the City of Marion Police Department.

Police Chief Mika Elliot and Officer Kellie Duncan of the D.A.R.E. Program were present for this presentation.

Mayor Clark presented Mr. Dirhold with a plaque that read as follow:

IN RECOGNITION AND APPREACIATION
OF
YOUR CONTINUING SUPPORT OF THE
D.A.R.E.
PROGRAM
AT THE
CITY OF MARION POLICE DEPARTMENT
PRESENTED TO
JIM COOK'S CHEVROLET
MARCH 4, 2003
BY MAYOR A. EVERETTE CLARK
AND
MARION CITY COUNCIL

Chief Elliott and Officer Duncan presented plans for a golf tournament to be held in April at the Marion Lake Club, to raise money for the D.A.R.E. program, and for equipment for the new vehicle.

PUBLIC APPEARANCE – MR. JAMES PHILLIPS: Mr. James Phillips of 39 Lincoln Avenue appeared before Council advising that he has made several attempts at getting a hedge on his neighbors property removed due to obstructing vision where backing from his driveway.

A discussion followed.

It was decided that the City Manager, Police Chief and Building Inspector would investigate this complaint and take appropriate action to resolve this matter.

PUBLIC APPEARANCE – DEAN WALKER – COMMUNITY BUILDING SIGN: Mr. Dean Walker appeared before Council and presented several drawings of signs for the Marion Community Building.
These drawings have been designed by students at McDowell High School.

A discussion followed.

It was decided to meet in a Reconvened Regular Session on Thursday, Evening at 5:00 PM in front of the Marion Community to get further information regarding the placement of this sign.

COMMUNITY BUILDING UPDATE: Ms. Sharon Parker, City Attorney gave a detailed update on findings concerning the Marion Community Building and the use of the kitchen. The State Health Inspector has recently determined that the Community Building and the regular cook in the building, Ms. Mary Katherine Walker, may not be in compliance with current health regulations. The City Manager noted frustration with all communication with the Health Department being verbal, with nothing being in writing. Mayor Clark noted that the local Health Department had also been caught off guard by the State Health Inspector, and was displeased with the situation. Councilman Edwards noted that the City should take all steps necessary to keep the building open, and to prevent Ms. Walker from being put out of business.

A discussion followed. Council determined that the City Manager should contact State Senator Queen and State Representative Gillespie to request the introduction of legislation to exempt municipal facilities from Health Department regulation. Council also directed the City Manager to send a letter to the State Health Department, to complain about the poor communication and attitude shown by the State Health Inspector during this matter. The City Manager and City Attorney will research other options available to the City, and continue to press the Health Department for an interpretation in writing regarding the legality of the Community Building.

PUBLIC HEARING – ZONING AMENDMENT TEMPORARY RETAIL SALES: Mayor Clark opened the Public Hearing. City Planner, Suzy Davis gave a brief update on temporary retail sales. She noted that this amendment would authorize temporary retail sales in the OI and M-1 districts, in locations typically requested by itinerant merchants, under the stricter regulations adopted by Council last year. Ms. Davis noted that the Planning Board had voted unanimously to recommend the approval of this request.

There were no citizens present to discuss this Amendment.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII, Use Requirements by District, Section 805.2 , M-I Industrial District, Permitted Uses is amended by adding the following permitted use:

(13) Temporary retail sales for itinerant merchants as defined in 10-172 of the Marion City Code provided that the temporary sale last no longer than seven (7) consecutive days and are not held more than once per quarter.

Section 3. Appendix A, Article VIII, Use Requirements by District, Section 806.2 , O-I Office and Institutional District, Permitted Uses is amended by adding the following permitted use:

(14) Temporary retail sales for itinerant merchants as defined in 10-172 of the Marion City Code provided that the temporary sale last no longer than seven (7) consecutive days and are not held more than once per quarter.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 4th day of March 2003.

A. Everette Clark, Mayor

ATTEST:

L. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-03-03-04-01

PUBLIC HEARING – ZONING AMENDMENT – SITE PLAN REVIEW: Mayor Clark opened the Public Hearing. City Planner, Suzy Davis gave a brief update on the amendment, which sets standards for submission of plot plans for small single-family or duplex residential development and site plans for larger commercial and multi-family projects. She noted that the Planning Board has voted unanimously to recommend the approval of this amendment.

A discussion followed.

There were no citizens present to discuss this Amendment.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article X. Exceptions and Modifications, Section 1102 is amended as follows:

Section 1102. Zoning permit required.
No building or other structure shall be erected, moved, added to, or structurally altered until the Administrative Officer shall have issued a zoning permit. No zoning permit shall be issued except in conformity with the provisions of this Ordinance except after written order from the Board. The fee for the permit is to be determined by the City Council.

Section 3. Appendix A, Article X. Exceptions and Modifications, Section 1102.1 is amended as follows:

1102.1 Application for zoning permits.
All applications for a zoning permit shall be accompanied by one- (1) set of plans. The plans shall be submitted and reviewed in accordance with Section 1102.2.

Section 4. Appendix A, Article X. Exceptions and Modifications, Section 1102.2 is amended as follows:

1102.2 Plan Review

A. Purpose
The purpose of site plan review is to:
(1) Provide site-specific information on a particular site's capacity to support a proposed development.
(2) Insure compliance with the standards and requirements of the City of Marion as they relate to individual cases.
(3) Document and record plans to insure compliance with approved plans as well as to update the CGIS (City's Geographical Information System.)
(4) Provide a coordinated and timely review procedure by which to insure comprehensive and equitable enforcement of the minimum standards of the City of Marion.
(5) Promote and preserve the health, safety, and general welfare of the people.

B. Applicability and Requirements

(1) Plot Plan Required. No building permit for a single-family or two-family dwelling, accessory structures and additions involving 50% or less increase of total square footage of a structure on a single lot shall be issued until a Plot Plan has been submitted and approved. Plot Plans shall be drawn to scale and should include the following information:
a. The location and dimensions of proposed and existing structures
b. The location of existing and proposed driveway, sidewalks, streets and right-of-ways.

(2) Site Plan Required. No other building permit shall be issued on a lot until a Site Plan has been approved submitted and reviewed for the development. No new or amended site plan shall be required if an adequate Site Plan is already on file, no increase in or rearrangement of parking is proposed or required, and no increase in impervious surface is proposed or required. Site plans submitted for approval must be drawn to a scale of not less than one (1) inch equals one hundred (100) feet by an engineer, land surveyor, architect or other qualified professional and shall show the following information on one (1) or more sheets:

a. Location and dimensions of all existing and proposed

structures and setbacks from right-of-way and property lines. If no right-of-way exist, indicate distance from traveled way.

b. Location of all utilities (water and sewer lines, manholes, power lines, streetlights, and drainage structures) Include diameter and materials used on new water and sewer lines

c. Location of internal and external streets, right-of-ways, sidewalks, entrances and exits.

d. Parking lots indicating individual spaces, loading zones, and handicap parking. Adequate information to determine parking requirements.

e . Landscape Plan as required by Section 707.

f. Location of dumpsters and other refuse areas including screening/ buffering plan.

g. Location and picture of proposed and existing signage as well as sign permits

h. Pervious to non-pervious calculations.

i. All water, sewer, drainage, erosion control and street facilities plans (including driveway permit) shall be submitted to the appropriate official or agency prior to the final approval of the Site Plan (if applicable.)

C. Procedures.

Staff shall review all plans and insure compliance with the City of Marion's Codes and Ordinances. If the use is a special exception then the Site Plan will be forwarded to the Planning Board and the Board of Adjustment. If the proposed use is a permitted use, the administrative officer will review, insure compliance with all applicable provisions of this ordinance and issue a Zoning Permit upon approval.

For large scale developments, a technical review committee (TRC) will review the plan to insure consistency with the City of Marion's codes, ordinances, and operational concerns. The technical review committee consists of the City Planner, Building Inspector, and representatives from each appropriate department.

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 4th day of March 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-03-03-04-02

APPROVAL OF SPRING RESURFACING SCHEDULE: The City Manager advised that the Street Committee had reviewed the proposed Street Resurfacing Schedule, and recommended its approval. Robert Street had been looked at for resurfacing, but was not recommended for resurfacing this year, since only a few small places were in need of repair, which could be dealt with through patching. Upon a motion by Councilman Little, seconded by

Councilman Cuthbertson, Council voted unanimously to adopt the following resurfacing schedule:

RESURFACING LIST – SPRING 2003

Hillcrest Drive – from Logan Street to Reservoir Road
Length – 2,547' Width – 23' 9,339, square yards
Miller Avenue – from Alabama Avenue to State Street
Length – 1,106' Width – 24' 2,949 square yards
Euclid Avenue – from State Street to Ridgecrest Street
Length – 1,106' Width – 22' 1,525 square yards
North McDowell Avenue – from Oak Street to Azalea Street
Length –485' Width – 20' 1,078 square yards
Claremont Street – from Morgan Street to Glenview Street
Length – 681' Width – 24' 1,816 square yards
South McDowell Avenue from State Street to Pineview Street
Length – 285' Width – 30' 950 square yards
New Street – from Main Street to Garden
Length – 370' Width – 26' 1,069 square yards
First Street, East Marion – from Baldwin Avenue to end of maintenance
Length – 680' Width – 26' 1,436 square yards
Second Street, East Marion entire length of street
Length – 659' Width – 17' 1,245 square yards
Circle Street, Clinchfield – from Virginia Avenue to Church Street
Length – 1,265' Width – 39' 3,709 square yards
State Street – from South McDowell to Ann Street
Length – 856' Width – 39' 3,709 square yards

Total Square Yards – 27,365

REQUEST FOR REIMBURSEMENT OF SEWER HAULING CHARGES AUTUMN CARE: The City Manager presented Council with a memo from the Administrator of Autumn Care, Requesting reimbursement of sewer dumping charges in the amount to $665.00.

The City Manager noted that these charges are set out by City policy. The sewer that was hauled by Mr. Burgin to the Public Works Department was essentially already paid for as part of Autumn Care's monthly water and sewer bill, thus justifying consideration of the reimbursement request.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to reimburse Autumn Care in the amount of $665.00.

DISCUSSION – TIME PAYMENT PLAN FOR WATER/SEWER CONNECTIONS: The City Manager advised that persons wishing to finance a sewer tap, with the City of Marion, had suggested the City adjusting the interest rate on financing taps closer to the market rate. The City Manager noted that, while the current interest rate of eight percent was higher than bank rates right now, he would not recommend going to the difficulty of adjusting rates, as market conditions change.

A discussion followed. Council members agreed that the current rate should remain, as the City was in the financing business, only as a last resort and a convenience to customers.

No action was taken.

MEETING DATE WITH COUNTY COMMISSIONERS: The City Manager advised that March 20, 2003, at 6:30 P.M. at Carolina Chocolatiers had been set for the Joint Meeting of the

Marion City Council and the McDowell County Board of Commissioners. No business will be discussed at the meeting.

AWARD CONTRACT – LANDSCAPING SERVICES: The City Manager reported that bids had been received for City landscaping services. Only one bid was received, from L.L. Moore Landscaping, in the amount of $410.00 per week for the 32 week contract period. He noted that Mr. Moore had performed satisfactory work for the City over the past few years.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to award the Landscaping Contract to L.L. Moore Landscaping in the amount of $410.00 per week.

AWARD CONTRACT – RIGHT OF WAY MOWING: The City Manager reported that bids had been received for City right of way mowing services. Three bids were received, with Kelly's Landscaping & Lawn Care submitting the low bid, in the amount of $1,230.00 per week for the 32 week contract period. He noted that Mr. Kelly had performed satisfactory work for the City over the past few years, and further added that a few additional areas had been added to the contract this year.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to award the Right Of Way Mowing Contract to Kelly's Landscaping and Lawn Care, in the amount of $1,230.00 per week.

AWARD CONTRCT – CEMETERY MOWING: The City Manager reported that bids had been received for City cemetery mowing services. Four bids were received, with M & M Landscaping & Lawn Care submitting the low bid, in the amount of $700.00 per week for the 32 week contract period. He noted that Mr. Miller had never done work for the City, but had submitted three letters of reference. The City Manager suggested awarding the contract to the low bidder, but reserving the right to cancel the contract at any time if performance is not up to the level expected by the City.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to award the Cemetery Mowing Contract to M & M Landscaping and Lawn Care, in the amount of $700.00 per week.

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

The City Manager noted that he and the County Manager had discussed the Eastfield sewer project, and that he would recommend the City waiving the tap fee for new water customers who connect in the Eastfield Community during the project, as long as City crews do not physically have to go out and make a tap. This is the same policy approved by Council for other grant projects. Council members agreed by consensus to this recommendation.

The City Manager also provided an update on the County's proposed grant application for a water and sewer extension on U.S. 221 North Business to Hankins Road. He recommended that the $135,000 local match for the $1.1 million project be funded as follows:

McDowell County Contribution	$40,000
City of Marion Conmibution	$40,000
City Connection Fees	$55,000

Once water and sewer is extended to the area, the City can consider annexation. Council members agreed by consensus to this recommendation.

COUNCILMAN COMMENTS:

Councilman Cuthbertson had questions regarding rules for the City's Firing Range. The City Manager agreed to work with Chief Elliott to draft rules and a liability waiver for the Firing

Range, and to present these documents to Council for review, to make sure current practice is in keeping with the intent of Council for this property.

Councilman Cuthbertson also advised that he had noticed streamers hanging from a utility pole on Rutherfordton Road at a car lot next to Paul Davis' Garage. The City Manager stated that the owner would be asked to remove the streamers.

Councilman Cuthbertson requested that the previously discussed donation to the Senior Center be placed on the next Agenda.

CLOSED SESSION: Upon a motion by Councilman Martin, seconded by Councilman Edwards, those members of Council present voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(6) to discuss a personnel matter.

REGULAR SESSION: Upon a motion by Councilman Edwards, seconded by Councilman Little, those members of Council present voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adjourn this meeting until 5:00 P.M. on Thursday, March 6, 2003, at the Marion Community Building, at 191 North Main Street.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Thursday evening, March 6, 2003 at 5:00 P.M. at the Marion Community Building located at 191 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin.

Councilman Owenby was not able to attend this meeting.

OTHERS PRESENT: Bob Boyette, City Manager.

GUESTS PRESENT: Aaron Adams, Street Superintendent.

MARION COMMUNITY BUILDING SIGN:
Mayor Clark reconvened the March 4th City Council Regular Session at 5:00 P.M. at the Marion Community Building.

A discussion was held regarding a possible design of a sign for the Community Building. Council agreed on a design, but asked the City Manager to have a scale representation of the proposed sign made for further review at the March 18 Council meeting.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 18, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards was not present for this meeting due to medical reasons.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief.

GUESTS PRESENT: Charlie Elliott, East Court Street, Marion, NC28752; Donna Stevens, Marion, NC 28752

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of City Council Minutes - March 4, 2003 & March 6, 2003
March 6, 2003 Closed Session

B. Approve Dates for Spring Clean-up/Waiver of Collection Charges for Large Items: Waive charges for the collection of bulky items during Spring Clean-Up April 12th through April 26th.

C. Budget Amendment Ordinance –

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(Fifth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues, Reimbursement DOT – Sugar Hill Road Water, Account Number 30-376-0000, is decreased from $513,000 to $39,4000.
b. Water and Sewer Fund Revenues, N.C. Rural Center Grant – Sugar Hill Road Sewer, Account Number 30-377-0000, is decreased from $200, to $0.
c. Water and Sewer Fund Revenues, Fund Balance Appropriated, Account Number 30-299-000, is increased from $373,087 to $463,279.
d. Water and Sewer Fund Expenditures, Utility Lines Maintenance Department, Account Number 30-810-45, Contracted Services, is decreased from $863,000 to $189,400.
e. Water and Sewer Fund Expenditures, Non-Departmental, account Number 30-660-8000, Transfer to Water and Sewer Capital projects Fund, is increased from $0 to $90,192.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 18th day of March, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk
Ordinance Number: O-03-03-18-1

D. Adoption of Capital Project Ordinance:

CITY OF MARION, NORTH CAROLINA
WATER AND SEWER CAPITAL PROJECTS FUND ORDINANCE – U.S. 221 SOUTH SEWER IMPROVEMENTS PROJECT AND SUGAR HILL ROAD/SHADY LANE WATER AND SEWER IMPROVEMENTS PROJECT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows to include the expenditures associated with Water and Sewer Capital Projects by adopting the following Water and Sewer Capital Projects Fund Ordinance:

WATER AND SEWER CAPITAL PROJECTS FUND

a. **Water and Sewer Capital Projects Fund Expenditures, U.S. 221 South Sewer Improvements, Account Number 31-171-1100, is increased from $0 to $336,247.**

b. **Water and Sewer Capital Projects Fund Expenditures, Sugar Hill Road/Shady Lane Water and Sewer Improvements, Account Number 31-171-0800, is increased from $0 to $776,435.**

c. **Water and Sewer Capital Projects Fund Revenues, N.C. Rural Center Grant – U.S. 221 South Sewer, Account Number 31-375-0000, is increased from $0 to $299,260.**

d. **Water and Sewer Capital Projects Fund Revenues, N.C. Rural Center Grant – Sugar Hill Road Sewer, Account Number 31-377-0000, is increased from $0 to $200,000.**

e. **Water and Sewer Capital Projects Fund Revenues, N.C. Department of Transportation Reimbursement, Account Number 31-376-0000, is increased from $0 to $473,430.**

f. **Water and Sewer Capital Projects Fund Revenues, McDowell County Funding, Account Number 31-379-0000, is increased from $0 to $50,000.**

g. **Water and Sewer Capital Projects Fund Revenues, Transfer from Water and Sewer Fund, Account Number 31-380-0000, is increased from $0 to $90,192.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 18th day of March, 2003.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-03-18-2

E. Approval of Tax Refund: Israel Investment Inc. paid taxes on a tractor located outside the City as follows: 1998 - $27.54, 1999 - $29.85, 2000 - $26.21 and 2001 - $25.16 - **Total amount refunded $108.76**

PUBLIC APPEARANCE – DONNA STEVENS: Ms. Donna Stevens appeared before Council challenging all persons in McDowell County to Help Keep America Beautiful.

This years Paint Swap is scheduled for April 12th in the Wal-Mart Shopping Center Parking Lot.

PUBLIC APPEARANCE – CHARLIE ELLIOTT: Mr. Charlie Elliott appeared before Council advising that he has a problem with the water service at his place of business. He advised that there is a Public Garage being operated behind his business on East Court Street with no water facility. The only water used by this garage is coming from his establishment. The owner of his business also has an office located on this property. It has a restroom. There are a total of three or four business on the property owned by Mr. Bill Ledbetter.

Mr. Elliott advised that he feels he is paying the water bill for all four of these establishments and that it is against City Policy.

A discussion followed.

City personnel will contact Mr. Elliott and will further investigate and discuss with him this matter.

PUBLIC HEARING – ZONING AMENDMENT – DEFINITIONS: Mayor Clark opened the Public Hearing.

Suzy Davis gave a report advising the amendments to define an alley for setback purposes. There were no citizens present for this Public Hearing.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to approve the following Zoning Amendment Ordinance as follows:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article IV. Definitions and terms used in the ordinance, Section 400. Definitions is amended to add the following definition of an alley:

Alley. A public thoroughfare which affords a secondary means of access to abutting property and is fifteen (15) feet or less in width.

Section 3. Appendix A, Article X. Exceptions and Modifications, Section 1001, Side and Rear Setbacks is amended as follows:

Section 1001. Side and rear yard setback.
Where a side or rear yard abuts a street, the setback requirement for said street yard shall be the same as the front yard setback requirements for abutting property on the side street. Where a side or rear yard abuts an alley, the setback requirement shall be the same as the side or rear yard setback requirement set forth in Article IX. Dimensional Requirements and shall be measured from the edge of the alley right-of-way.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of March 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-03-03-18-03

PUBLIC HEARING – ZONING AMENDMENT – LOCATION OF STORAGE FACILITIES: Mayor Clark opened the Public Hearing.

Suzy Davis gave a report advising that Mr. Joe Davis would like to construct commercial storage units in the basement of his building. The proposed zoning amendment would allow commercial storage in basements below street grade of buildings in the C-1 district.

Mayor Clark advised that he had concerns with this type of storage unit, due to possible storage of flammable material.

A discussion followed regarding the types of material that should be allowed in this type of storage unit.

The City Manager suggested that staff could come back to Council with a list of possible items that could be allowed in the storage units.

It was the consensus of Council to table this item, and ask staff to bring back a list of possible items that could be allowed in the storage units.

PUBLIC HEARING – ZONING AMENDMENT – DOWNTOWN OVERLAY DISTRICT:
Mayor Clark opened the Public Hearing.

City Planner Suzy Davis stated that the Planning Board and Downtown Advisory Committee had reviewed the proposed zoning amendment, and recommended its approval. The amendment would designate a Downtown Overlay District, which would be a district that would be in addition to underlying zoning districts in the downtown area, such as C-1, C-2 and R-2. The Downtown Overlay District would set three additional requirements for new or expanded development, other than single-family or duplex residential development: no metal building would be allowed, awnings would have to be canvas instead of metal material, and no bricking of windows would be allowed.

Mayor Clark noted that he was concerned about confusing the public with additional zoning districts. He asked if the regulations could be applied without creating an overlay district. Ms. Davis noted that one other possible idea would be to zone the entire downtown area as one district, and have the regulations listed above apply within that district.

Ms. Davis further noted that the boundaries of the district would have to be set by Council in a future meeting, but would likely coincide with the area of responsibility of the Downtown Advisory Committee.
Mayor Clark closed the public hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to approve the following Zoning Amendment Ordinance as follows:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII is amended to include Section 900, Overlay Districts as follows:

Section 900 Overlay Districts It is the intent of this article to define specific overlay districts in the City of Marion. The standards for overlay districts are in addition to the general use district.

Section 3. Appendix A, Article VIII is amended to include Section 901, Section 901.1, and Section 901.2 as follows:

Section 901. D-O. Downtown Overlay District

The Downtown Overlay District (D-O) is established to provide development and design standards for the entire downtown and Main Street corridor, which are in addition to underlying general use districts. Within the overlay district there exist multiple general use districts. Each parcel retains the same requirements for its designated general use district in addition to the standards set forth for the Downtown Overlay District. Where noted, the uses and standards of the D-O supersede those uses and standards of the underlying districts.

901.1 Purpose. The purpose for the D-O is to enhance the aesthetic, functional and economic qualities of and emphasize the importance of the significant downtown area and to enhance and protect significant properties despite their varying general-use zoning districts in:

(1) defining and protecting the downtown architectural, environmental and visual character;

(2) providing for the safe and efficient movement of vehicles and pedestrians; and

(3) contributing to the physical, social and economic well-being of the downtown Marion.

901.2 Design Standards.

(1) Facades. In no case shall a new structure, addition, or façade improvement have metal siding. Recommended sidings include masonry, stone, stucco, or other traditional materials.

(2) Awnings. Awnings shall have a clearing of at least nine (9) feet above ground level. Awnings may project over sidewalk if properly anchored. Metal awnings are prohibited for new construction or alterations to existing awnings. Canvas or canvas covered awnings are recommended.

(3) Windows. Boarding or bricking of windows is prohibited.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of March 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-03-03-18-04

COMMUNITY BUILDING UPDATE: The City Manager presented Council with a letter from Mr. Fred Matthews, District Environmental Health Supervisor for the Rutherford-Polk-McDowell District Health Department.

The letter advised that structural and building amendments and equipment needs necessary for their department to permit the kitchen of the Community building as a food handling establishment as follows:

Building/Remodeling Needs:

1. Remove all wooden residential wall cabinets and the doors from the base cabinets. Cover all wall with fiberglass, reinforced panels (FRP) with proper stripping between the 4x8 sheets. This should eliminate all crack exposure in the old paneling and cabinets that encourage

vermin harborage. The base cabinets remaining need new Formica tops and shelf coverage. Leaving these cabinets will eliminate any floor work which would be required the base cabinets were removed.

2. Adjacent narrow storeroom must also be brought up to standard with FRP wallboards. Flooring is satisfactory everywhere, kitchen included. Approved shelving is needed also.
3. Paint ceiling gloss white.
4. Convert old toilet room off storeroom to a can wash/mop sink area.
5. Install self-closers on two toilet rooms. Ladies room needs a new toilet seat. Other wise the bathrooms are satisfactory.
6. Replace missing end cap on light fixture in kitchen.

Equipment Needs:

1. Replace residential freezer/refrigerator with N.S.F. commercial type.
2. Install hand wash sink in kitchen area.
3. Install two-compartment, stainless steel vegetable preparation sink in kitchen.
4. Convert old toilet room to can wash/mop sink area.
5. Replace chipped dishes and pots and pans as needed.
7. Hot holding equipment and sneeze shield protection is needed for buffet service in dining are.

The City Manager noted that the local Health Department had offered a proposal whereby the City would make the improvements to the Community building kitchen listed above and would be permitted as a licensed food handling establishment. The Health Department in turn would work through the City on all issues, and would not deal with civic clubs, cooks or other users of the Community Building. The City Manager stated that he and the City Attorney were researching the City's liability under this proposal, and that he was determining the cost of the improvements. The City Manager stated that he would come back to Council with an assessment of the proposal, including costs, liability issues and possible effect on the Community Building Rules and Regulations.

No action was taken on this matter.

Councilman Cuthbertson excused himself from the meeting during discussion of the Community Building for approximately ten minutes.

APPROVAL - PLANS/DESIGN FOR COMMUNITY BUILDING SIGN: The City Manager advised that Mr. Dean Walker has informed him that the High School needs a decision made on the sign in order to allow time for the sign to be built before school is out. The City Manager discussed the proposed specifications and design for the sign and suggested that Council step across the street to look at a model of the sign made by the Street Department.

A discussion followed.

Council agreed to look at the sign at the end of the meeting.

DISCUSSION OF DONATION TO SENIOR CENTER: Councilman Cuthbertson made a motion to pledge $20,000 to the Council on Aging for use with the Senior Center project, said donation to be conditional on the sale of the Senior Center property for the agreed upon price of $170,000.

A discussion followed.

Councilman Little suggested a donation of $12,000, to allow the City to retain $15,000 from the sale of the Senior Center to be used to cover expenses incurred with the sale and the cost of building the road next to the property to the back of the Police Department property. Councilman Little advised that if the amount was $12,000, instead of $20,000, he would vote for the motion.

Councilman Cuthbertson amended his motion to reflect a donation of $12,000.

Upon a motion by Councilman Cuthbertson Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to pledge $12,000.00 to the Council on Aging, contingent upon the sale of the present Senior Center Property.

APPROVAL - DESIGN DEVELOPMENT PHASE OF DEPOT RENOVATION: The City Manager advised that Hager Smith Architects is requesting to proceed to the next phase of the depot design and development.

At this stage, the design would be completed, and the architects would begin to prepare construction documents upon approval of the design.

Over the next few months, the architects will be ready to make a presentation to the local rail committee and to City Council.

The cost of design development is $69,941, with the City's share being $6,994.10.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little, those members of Council present voted to approve this stage of the design development.

AMENDMENT TO WATER/SEWER POLICY – PROVISION OF WATER SERVICE OUTSIDE CITY: The City Manager advised that, as discussed at the Planning Session, the following policy had been drafted to require annexation for properties requesting water service where water and sewer was available to the property, or would be available to the property within two years. Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the following policy:

CITY OF MARION, NORTH CAROLINA

POLICY ON PROVIDING SEWER AND WATER SERVICE TO PROPERTIES OUTSIDE THE CITY LIMITS

It shall be the policy of the City of Marion, upon approval by the City Council, to provide sewer service to properties outside the City Limits which appear to be eligible for future annexation, upon receipt of a petition for annexation signed by all persons having any interest in the property to be served by the City Sewer System, said annexation to occur at such time as deemed necessary and feasible by the City Council.

In addition, a legal document shall be executed by the persons requesting service and recorded to insure that, should the property be sold prior to said annexation, the new owner(s) shall be obligated to sign a new petition requesting annexation of the property. Said annexation to occur at such time as deemed necessary by the Marion City Council.

Adopted this the _____ day of _____ 2003.

NEW WORDING:

It shall be the policy of the City of Marion, upon approval by the City Council, to provide water and/or sewer services to property outside the City Limits, which appear to be eligible for future annexations, as follows:

If sewer service is requested and water service is already available or will be available within a reasonable time, connection to the City's water system is required.

If water service is requested and sewer service is already available or will be available within a reasonable time, connection to the City's sewer system is not required.

In either case, a petition requesting annexation signed by all parties having interest in the property must be submitted. Annexation of the property will occur at such time as deemed necessary and feasible by the City of Marion.

In addition, a legal document shall be executed by the persons requesting service and recorded to insure that, should the property be sold prior to said annexation, the new owner(s) shall be obligated to sign a new petition requesting annexation of the property. Said annexation to occur at such time as deemed necessary by the Marion City Council.

Adopted this the 18th day of March 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

ADOPTION OF RESOLUTION TO ACCEPT MAINTENANCE OF RANKIN DRIVE AND SUPERIOR MACHINE ROAD: A discussion was held regarding accepting maintenance of Rankin Drive and Superior Machine Road.

The City Manager presented Council with a resolution to authorize the City to assume maintenance of these roads, as was discussed at the Council Planning Session.

Several issues with Rankin Drive were questioned. Councilman little suggested that the City not accept Rankin Drive due to recurring problems with the road breaking apart every few years. It was the consensus of Council not to accept Rankin Drive at this time.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution to accept maintenance of Superior Machine Road:

CITY OF MARION
RESOLUTION

WHEREAS, the City of Marion plans to accept Superior Machine Road (SR 1208), from the Department of Transportation; and

WHEREAS, this road has been paved by the North Carolina Department of Transportation as requested by the City of Marion; and

WHEREAS, the road is located inside the Marion City Limits; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, that this resolution be presented to the North Carolina Department of Transportation requesting that the North Carolina Department of Transportation abandon from the State Highway System the following street so it may be added to the City of Marion Municipal Street System:

Superior Machine Road (SR 1208) 0.14 miles

Adopted this the 18th day of March, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DISCUSSION OF RELOCATION OF TREES AT POLICE DEPARTMENT: A discussion was held regarding the removal and replacement of the two Japanese Maples located at the Police Department. They will need to be removed prior to the beginning of renovations.

The City Manager provided Council with a memo from Public Utilities/Projects Manager Glen Sherlin advising that these two maple trees have an estimated value between $1,500 and $2,500 per tree.

The trees can be taken up and stored off site, or in another City location, such as City Hall, until completion of the Police Department.

A discussion followed. Councilman Little suggested that trees be sold. Mayor Clark suggested that City crews move the trees all at once, rather than over time, as suggested by the City landscaping contractor, to avoid spending $800 on the tree moving.

It was the consensus of Council to discuss this project with Mr. Phil Ray, a certified arborist, who serves on the City's Tree Board, but not to spend much money to move the trees. Council members understood that the trees may not survive the move.

APPROVAL – RESOLUTION AUTHORIZING MUNICIPAL AGREEMENT WITH DOT – SUGAR HILL ROAD SIDEWALK: The City Manager advised that DOT has sent an agreement regarding the sidewalk the City has requested to be constructed on Sugar Hill Road. The agreement calls for the City to complete the work and that DOT would fund $37,000 for the work. The City Manager noted that he had asked the DOT Division Engineer to clarify whether the $37,000 level of DOT funding represented 80 percent of the project funding, as had been requested by City Council, and whether DOT wished to have the Sugar Hill Road paving contractor or the City actually construct the sidewalk.

It was the consensus of Council to table this item, until the City receives answers to the questions noted above.

DISCUSSION – CORPORATE MEMBERSHIP – YMCA: The City Manager advised that the Corporate Membership, for the YMCA, for the City of Marion will cost nothing up front and that, instead, the a week will be set up in which City Employees can use the YMCA free of charge. After this free week, employees would have the opportunity to join at half the membership fee. ($50.00 instead of $100.00) Then pay a monthly fee. ($39.00 per person or $54.00 per family.)

Council had no objection to this item.

DISCUSSION – MUSIC SERVICE FOR CITY GOVERNMENT ACCESS CHANNEL: The City Manager advised that the music service, on the City's Cable Station and on the Phone System is contracted with Muzak at a cost of $172.00 per month.

Charter Cablevision now offers a music service.

Councilman Little noted that he had listened to Charter's Easy Listening channel, and found it to be as good as, if not better than, the Easy Listening Channel offered by Muzak.

It was the consensus of Council to allow the City Manager to pursue the cost of the service offered by Charter Cablevision and to switch the service if Charter can provide music for the City at a cost lower than Muzak.

CITY MANAGER REPORT: The City Manager gave a brief report on current projects.

CDBG AND ARC FUNDING/STATE BUDGET: The City Manager requested that the City send a letter to Senator Queen and Representative Gillespie, supporting changes to the Community Development Block Grant that will result in geographic distribution of funds and guaranteed funding for Western North Carolina, and to oppose a provision in the Governor's

budget that would eliminate hold harmless payments to local governments. The City Manager also requested that a letter be sent to Congressman Taylor and senators Edwards and Dole, opposing proposed cuts to the Appalachian Regional Commission budget.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to authorize the City Manager to send the letters noted above to State and Federal legislators.

SENATE BILL 322: Mayor Clark advised that Senate Bill 322 has been introduced and would authorize the State to require interconnections of public water systems with private water systems and other public systems. The Mayor stated that this should be a matter of local discretion, not something mandated by the State.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to direct the City Manager to send a letter to State legislators and the North Carolina League of Municipalities opposing this bill.

COUNICLMAN COMMENTS: Councilman Owenby advised that he was impressed with the automated water meter reading system that he visited last week in Conover, along with the City Manager and Finance Officer Robert Parker.

Councilman Cuthbertson inquired about the item in the City Manager's report about the fire inspection of the bingo parlor on South Main Street. The City Manager stated he would check on the current status of the inspection and inform Council.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to go into closed session in accordance with N.C.G.S. 143-318.11 (a)(3) to consult with the City Attorney regarding a matter of current litigation, involving the case of City of Marion v. Brown Utility Co.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to go back into Regular Session.

Mayor Clark announced that no action had been taken in Closed Session.

COMMUNITY BUILDING SIGN REPORT: Council walked across the street to the Community Building and looked at a model of the proposed new Community Building sign. Council agreed on a design for the new sign.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 1, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Major Johnny Patton, Marion Police Department; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Fred & Beth Coates Marion, NC 28752; Jim & Karen Peppers, Marion, NC 28752; Nancy Clark, Fleming Avenue, Marion, NC 28752; Joe Davis, Main Street, Marion, NC 28752; Paula Kempton Rutherfordton, NC.

CITIZEN OF THE MONTH SELECTED BY MAYOR A. EVERETTE CLARK: Mayor Clark selected the Citizen of the Month for April.

The following information was presented about April's Citizen of the Month:

DR. JAMES F. PEPPERS

Mayor Clark advised that Dr. Peppers had been a Dentist in Marion for thirty-seven years. He raised his family in East Marion. He has two children and four Grandchildren. He is a member of the East Marion Baptist Church and is married to Karen Peppers.

He has served in the Army, on the McDowell County Board of Education, served as School Board Chairman, served on the Department of Social Services Board, and much more.

Dr. Peppers is a family man and has specialized in children's dentistry for many years. He is a gentle man and has set a wonderful example for all to follow.

Council Members, family and friends all shared kind words about Dr. Peppers.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - March 18, 2003 Regular and Closed Session Minutes

B. Lease Agreement – McDowell County

Resolution
Authorizing the Lease of Certain Property
Owned by the City of Marion
to
McDowell County for a One Year Term

WHEREAS, N.C.G.S. 160A-272 authorizes City Councils to lease municipal owned property that will not be needed by the municipality during the term of the lease; and

WHEREAS, N.C.G.S. 160A-272 further authorizes City Councils to lease any municipal owned property for a term of up to one year by resolution at any meeting; and

WHEREAS, the City of Marion owns property on West Court Street adjacent to the McDowell County Recreation Department; and

WHEREAS, said property is currently being used as a parking lot for the ball fields on the McDowell County Recreation Department and the County desires the continued use of the property for this purpose; and

WHEREAS, the City Council of the City of Marion has determined that said property will not be needed by the City during the one year term of this lease.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby agree to lease the property described on the attached lease agreement to McDowell County for a period of one year, from April 20, 2003 to April 30, 2004.

Section 2. This resolution shall be effective upon its adoption and the execution of the attached lease by all involved parties.

Adopted this the 1st day of April, 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-03-04-01-1

PUBLIC HEARING – CLOSEOUT OF SPAULDING WOODS CDBG PROJECT: Mayor Clark Opened the Public Hearing.

Ms. Paula Kempton, Representative of the Isothermal Planning & Development Commission was present for this Public Hearing. She advised that Spaulding Woods CDBG Project is complete and went smoothly. $133,825.31 of the $198,000 grant was spent to extend water and sewer down Spaulding Road to the new 44 unit Spaulding Woods Apartments. The balance of $64,174.69 will be returned to the North Carolina Department of Commerce.

There were no citizens present for the Public Hearing.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to close out the Spaulding Woods CDBG Project.

ZONING AMENDMENT – LOCATION OF COMMERCIAL STORAGE FACILITIES: Mayor Clark continued the Public Hearing from the March 18, 2003 City Council Meeting.

Mr. Joe Davis was present for this meeting.

Ms. Suzy Davis presented Council with a list of various items that would be allowed in this type of commercial storage, composing low and moderate hazard items as listed in the North Carolina State Building Code. She reported that the Zoning Amendment would allow for commercial storage in basements below street grade in the C-1 district.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following Zoning Amendment:

ORDINANCE
AMENDING APPENDIX A

ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII, Section 803.2 (46) is amended to read as follows:

46. Commercial storage units provided that units are located in the level (s) below the adjacent street level of existing buildings and that they contain only low to moderate hazardous storage as defined in the North Carolina State Building Code.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of April 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-03-04-01-1

CONSIDERATION OF RECOMMENMDATION – DOWNTOWN ADVISORY COMMITTEE: City Planner Suzy Davis advised that the Downtown Advisory Committee met on Thursday, March 27, 2003 and discussed the proposed downtown summer concert series planned for this summer.

The Activities sub-committee has planned four concerts. The four concerts would have four genres of music; bluegrass, rock, beach and folk.

The estimated cost for one concert is
$300 Band
$250 Rent for PA system
$50 Posters
$150 Radio Adds
$175 News Paper Ads

Total for each concert is $925.00 or $3,700.00 for all four concerts.

The Committee is requesting that $1,000 be used from the DAC Funds to be used for the first two concerts, with sponsors to be sought for the remaining amount.

Ms. Davis further reported that the original estimates for the PA system rent has turned out to be low, and that instead the cost of renting a PA system would be $500 per event. Due to this change, the DAC had recommended not holding the first concert until June and to explore the purchase of a PA system, which could cost $2,000 to $2,500, and be used for indoor and outdoor purposes.

Mayor Clark stated that he thought the purchase of a PA system would be a wise idea and that the system could be stored at MACA.

Councilman Owenby suggested that the PA system might be better stored on City property, to protect it from theft and damage.

The City Manager noted that the cost of the PA could be brought back to Council for consideration, and could be split between the Downtown Advisory Committee funds and Mountain Glory Funds.

Ms. Davis advised that the DAC had recommended that the stage be set in front of the Courthouse lawn, and that Main Street be blocked from the gazebo to West Henderson Street.

The City Manager noted that blocking the street could be done without a tremendous amount of effort. Police Chief Mika Elliott and Major Patton discussed specific ideas about ensuring public safety for concert goers during the events.

Councilman Cuthbertson urged that the stage be set as far away from Kirksey Funeral Home as possible.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request as stated above and to authorize the City to contribute $1,000.00 total of Downtown Advisory Committee funds toward the first two concerts,.

COMPLAINT – TRANSFER TRUCKS: A discussion was held regarding the problems occurring on Tate Street with tractor trailers and other large trucks. The trucks are utilizing Tate Street to avoid traffic and construction on Sugar Hill Road and are causing dangerous conditions on Tate Street, a street that is too narrow and winding to accommodate large trucks.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to direct the City Manager to contact DOT and request that No Through Truck signs be placed on Tate Street.

REQUEST – MCDOWELL COUNTY – PG SEWER PROJECT: The City Manager presented Council with a written request from County Manager Charles Abernathy stating that the sewer line in the Pleasant Gardens Community is complete and ready to put into service. The letter also confirmed that McDowell County is ready to turn the system over to the City of Marion operation and ownership.

The City Manager noted that discussion he has held with the project engineer, McGill Associates, shows that the line has passed final inspection but is not quite ready to be placed into service. The City Manager recommended that the City accept the wastewater flow from the PG project, once the line is placed into service, and that consideration of ownership and maintenance of the sewer lines and pump station in the project be considered at a future time.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to authorize the City to accept the wastewater flow from the PG project, once the line is released for service by the project engineer.

REQUEST FOR REIMBURSEMENT – MCDOWELL COUNTY: The City Manager presented Council with a request from County Manager Charles Abernathy requesting reimbursement in the amount of $3,624.52 for electrical service to the City's Performance Rail pump station on Old 221 South for which the County had been paying. The City had accepted ownership and maintenance of this pump station in January 2002, but the power bill had never been switched over to the City's name.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to reimburse the County in the amount of $3,624.52 for power expenses incurred at the Performance Rail Pump Station since February 2002.

APPROVE FIRING RANGE GUIDELINES: The City Manager presented Council with revised draft guidelines for the City Firing Range. Discussion was held about the original intent of Council regarding the use of the range. It was the consensus of Council to Table this item until the next City Council Meeting. The Police Committee, City Manager and Mayor will look over the Guidelines prior to that meeting.

APPROVE STREET PAVING CONTRACT: The City Manger presented Council with a memo from Ms. Kathy Austin, Purchasing Agent with the following Street Resurfacing Proposals.

APAC Carolina, Inc.	$3.10 per square yard	Total $84,831.50
Fred Callahan Company	$3.10 per square yard	Total $84,831.50
Johnson Paving Company	$3.78 per square yard	Total $103,439.70

The City Manager advised that he, Ms. Austin and the City Attorney were seeking to find a way to distinguish the two low bidders. If the two low bidders cannot be distinguished, the Institute of Government had recommended a random selection of the company to be awarded a contract for the street paving project.

It was the consensus of Council to hold approval of this item until further Council is sought, due to the identical low bids, until the April 15, 2003 City Council Meeting.

RESOLUTION – APPROVE MUNICIPAL AGREEMENT: The City Manager advised that the DOT Division Engineer had arranged for DOT to pay full costs, estimated at $37,000, for the sidewalk requested by the City on Sugar Hill Road from Rankin Drive to Shady Lane. The DOT project contractor completing the widening project will construct the sidewalk. All that is needed to allow DOT to proceed is the adoption of a resolution authorizing the City to enter into a Municipal Agreement with DOT to complete this project.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

CITY OF MARION
RESOLUTION
SUGAR HILL ROAD SIDEWALK

WHEREAS, the Department and the Municipality have agreed to participate in the construction of a (5) five-foot wide sidewalk along Sugar Hill Road, SR 1001, R-2643 approximately 0.52 mile; and,

WHEREAS, the Municipality shall be responsible for the preparation of the facility design and project plans, acquisition of any required right of way, relocation of all utilities, and construction of the project; and,

WHEREAS, the Department agrees to participate in the actual cost of the construction cost up to $37,000 for the actual cost of the project to construct said sidewalk. Reimbursement to the Municipality shall be made in one lump sum payment upon completion of the project.

NOW, THEREFORE, BE IT RESOLVED that Project E-2971 M in McDowell County is hereby formally approved by the City Council of the Municipality of Marion and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

Adopted this the 1st day of April, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

REQUEST FOR REIMBURSEMENT – SEWER BLOCKAGE – MS. BONNIE EDWARDS: The City Manager presented Council with a request from Ms. Bonnie Edwards advising that on Sunday, March 30th she called in a sewer blockage at one of her rental properties located at 102 Snipes Street to the Marion Police Department. After waiting approximately forty-five minutes for the on call person to respond, Ms. Edwards contacted Roto-Rooter. The City's on call person was tied up on another call. The invoice for Roto Rooter was $134.88. The City Manager noted that City Wastewater personnel later inspected the location and verified that the City's line had been blocked.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve this reimbursement to Ms. Bonnie Edwards in the amount of $134.88.

CITY MANAGER'S REPORT: The City Manger gave a brief report of current projects.

The City Manager reminded Council of the Open House scheduled for Friday, April 11th for all City Facilities.

The City Manager advised that Architects are ready to present the final design for the Depot to Council. It will take approximately one and a half hours.

It was decided to hold the meeting with the Architects on a separate date other than a Regular City Council Meeting.

The Architects will be contacted and ask to schedule this meeting on April 22, 2003 at 7:00 P.M. at City Hall.

COUNICLMAN COMMENTS: Councilman Martin reminded Council of the Pray for our Troops Rally at 11:45 AM on Friday.

Councilman Cuthbertson inquired about the relocation of the Japanese maple trees from the Police Department. The City Manager advised that the trees would be moved by City personnel to City Hall within the next week, hopefully without damage to the trees.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to go into closed session in accordance with N.C.G.S. 143-318.11 (a)(3) in order to consult with the City Attorney to obtain legal advice concerning the City Community Building and to give instructions concerning the handling of current litigation in the matter of City of Marion v. Brown Utility Company.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session.

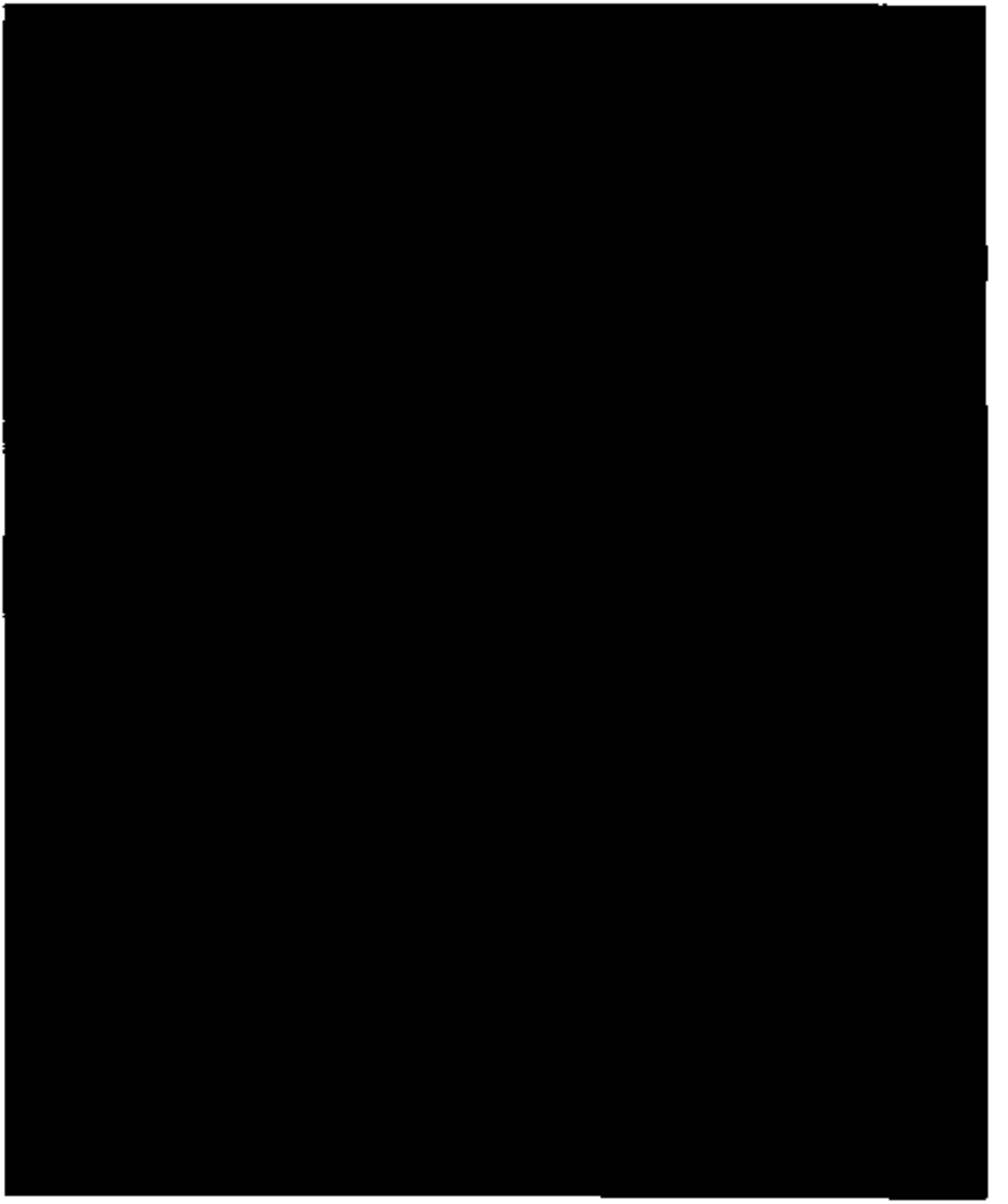
Mayor Clark announced that no action had been taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk



McDOWELL COUNTY

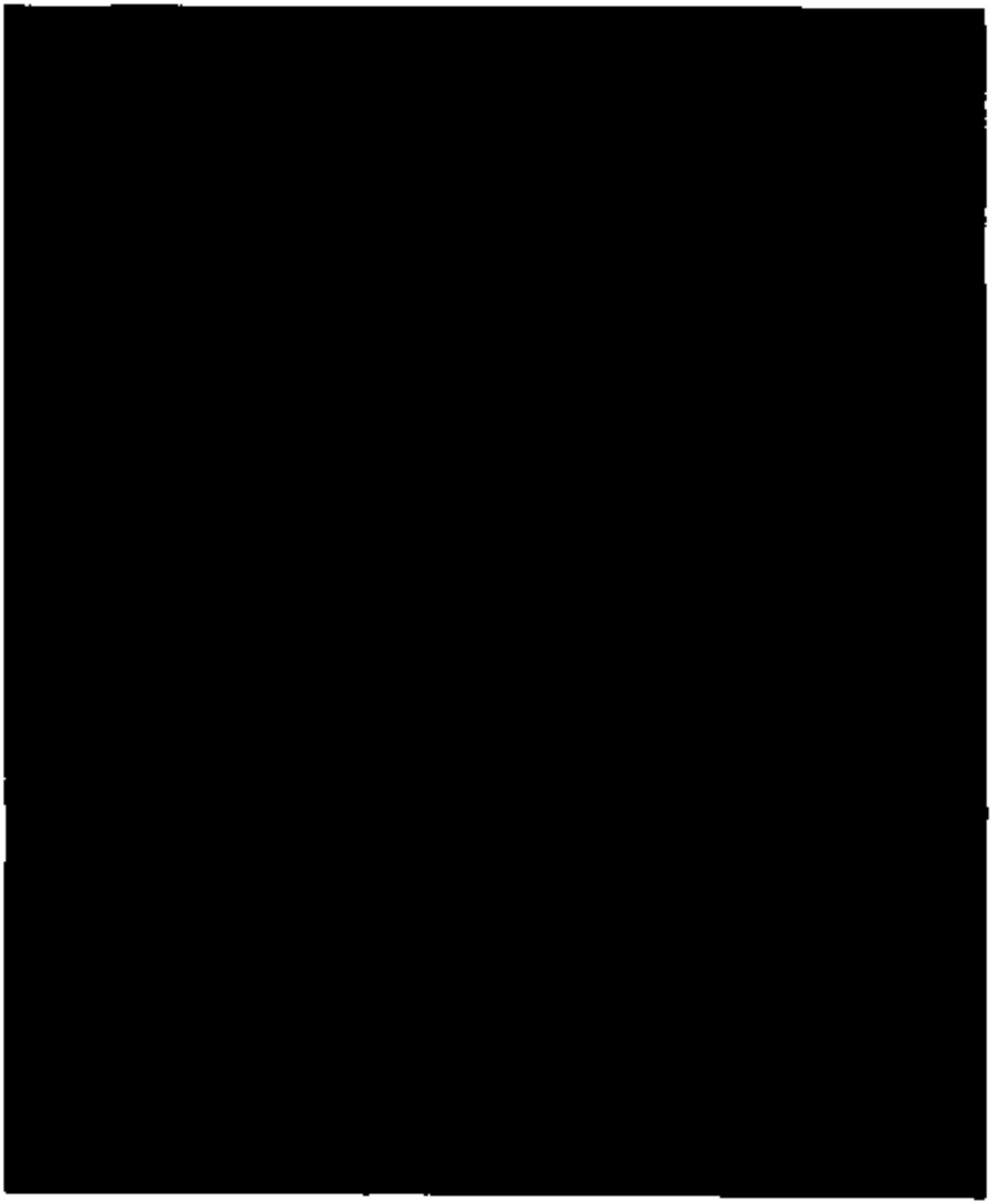
CITY OF MARION

CITY COUNCIL

MINUTES

VOLUME: 11

(APRIL 1, 2003 – SEPTEMBER 20, 2005)
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STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

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OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Major Johnny Patton, Marion Police Department; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Fred & Beth Coates Marion, NC 28752; Jim & Karen Peppers, Marion, NC 28752; Nancy Clark, Fleming Avenue, Marion, NC 28752; Joe Davis, Main Street, Marion, NC 28752; Paula Kempton Rutherfordton, NC.

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The following information was presented about April's Citizen of the Month:

DR. JAMES F. PEPPERS

Mayor Clark advised that Dr. Peppers had been a Dentist in Marion for thirty-seven years. He raised his family in East Marion. He has two children and four Grandchildren. He is a member of the East Marion Baptist Church and is married to Karen Peppers.

He has served in the Army, on the McDowell County Board of Education, served as School Board Chairman, served on the Department of Social Services Board, and much more.

Dr. Peppers is a family man and has specialized in children's dentistry for many years. He is a gentle man and has set a wonderful example for all to follow.

Council Members, family and friends all shared kind words about Dr. Peppers.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

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to
McDowell County for a One Year Term

WHEREAS, N.C.G.S. 160A-272 authorizes City Councils to lease municipal owned property that will not be needed by the municipality during the term of the lease; and

WHEREAS, N.C.G.S. 160A-272 further authorizes City Councils to lease any municipal owned property for a term of up to one year by resolution at any meeting; and

WHEREAS, the City of Marion owns property on West Court Street adjacent to the McDowell County Recreation Department; and

WHEREAS, said property is currently being used as a parking lot for the ball fields on the McDowell County Recreation Department and the County desires the continued use of the property for this purpose; and

WHEREAS, the City Council of the City of Marion has determined that said property will not be needed by the City during the one year term of this lease.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby agree to lease the property described on the attached lease agreement to McDowell Couty for a period of one year, from April 20, 2003 to April 30, 2004.

Section 2. This resolution shall be effective upon its adoption and the execution of the attached lease by all involved parties.

Adopted this the 1st day of April, 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-03-04-01-1

PUBLIC HEARING – CLOSEOUT OF SPAULDING WOODS CDBG PROJECT: Mayor Clark Opened the Public Hearing.

Ms. Paula Kempton, Representative of the Isothermal Planning & Development Commission was present for this Public Hearing. She advised that Spaulding Woods CDBG Project is complete and went smoothly. $133,825.31 of the $198,000 grant was spent to extend water and sewer down Spaulding Road to the new 44 unit Spaulding Woods Apartments. The balance of $64,174.69 will be returned to the North Carolina Department of Commerce.

There were no citizens present for the Public Hearing.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to close out the Spaulding Woods CDBG Project.

ZONING AMENDMENT – LOCATION OF COMMERCIAL STORAGE FACILITIES: Mayor Clark continued the Public Hearing from the March 18, 2003 City Council Meeting.

Mr. Joe Davis was present for this meeting.

Ms. Suzy Davis presented Council with a list of various items that would be allowed in this type of commercial storage, composing low and moderate hazard items as listed in the North Carolina State Building Code. She reported that the Zoning Amendment would allow for commercial storage in basements below street grade in the C-1 district.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following Zoning Amendment:

ORDINANCE
AMENDING APPENDIX A

ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII, Section 803.2 (46) is amended to read as follows:

46. Commercial storage units provided that units are located in the level (s) below the adjacent street level of existing buildings and that they contain only low to moderate hazardous storage as defined in the North Carolina State Building Code.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of April 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-03-04-01-1

CONSIDERATION OF RECOMMENMDATION – DOWNTOWN ADVISORY COMMITTEE: City Planner Suzy Davis advised that the Downtown Advisory Committee met on Thursday, March 27, 2003 and discussed the proposed downtown summer concert series planned for this summer.

The Activities sub-committee has planned four concerts. The four concerts would have four genres of music; bluegrass, rock, beach and folk.

The estimated cost for one concert is
$300 Band
$250 Rent for PA system
$50 Posters
$150 Radio Adds
$175 News Paper Ads

Total for each concert is $925.00 or $3,700.00 for all four concerts.

The Committee is requesting that $1,000 be used from the DAC Funds to be used for the first two concerts, with sponsors to be sought for the remaining amount.

Ms. Davis further reported that the original estimates for the PA system rent has turned out to be low, and that instead the cost of renting a PA system would be $500 per event. Due to this change, the DAC had recommended not holding the first concert until June and to explore the purchase of a PA system, which could cost $2,000 to $2,500, and be used for indoor and outdoor purposes.

Mayor Clark stated that he thought the purchase of a PA system would be a wise idea and that the system could be stored at MACA.

Councilman Owenby suggested that the PA system might be better stored on City property, to protect it from theft and damage.

The City Manager noted that the cost of the PA could be brought back to Council for consideration, and could be split between the Downtown Advisory Committee funds and Mountain Glory Funds.

Ms. Davis advised that the DAC had recommended that the stage be set in front of the Courthouse lawn, and that Main Street be blocked from the gazebo to West Henderson Street.

The City Manager noted that blocking the street could be done without a tremendous amount of effort. Police Chief Mika Elliott and Major Patton discussed specific ideas about ensuring public safety for concert goers during the events.

Councilman Cuthbertson urged that the stage be set as far away from Kirksey Funeral Home as possible.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request as stated above and to authorize the City to contribute $1,000.00 total of Downtown Advisory Committee funds toward the first two concerts,.

COMPLAINT – TRANSFER TRUCKS: A discussion was held regarding the problems occurring on Tate Street with tractor trailers and other large trucks. The trucks are utilizing Tate Street to avoid traffic and construction on Sugar Hill Road and are causing dangerous conditions on Tate Street, a street that is too narrow and winding to accommodate large trucks.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to direct the City Manager to contact DOT and request that No Through Truck signs be placed on Tate Street.

REQUEST – MCDOWELL COUNTY – PG SEWER PROJECT: The City Manager presented Council with a written request from County Manager Charles Abernathy stating that the sewer line in the Pleasant Gardens Community is complete and ready to put into service. The letter also confirmed that McDowell County is ready to turn the system over to the City of Marion operation and ownership.

The City Manager noted that discussion he has held with the project engineer, McGill Associates, shows that the line has passed final inspection but is not quite ready to be placed into service. The City Manager recommended that the City accept the wastewater flow from the PG project, once the line is placed into service, and that consideration of ownership and maintenance of the sewer lines and pump station in the project be considered at a future time.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to authorize the City to accept the wastewater flow from the PG project, once the line is released for service by the project engineer.

REQUEST FOR REIMBURSEMENT – MCDOWELL COUNTY: The City Manager presented Council with a request from County Manager Charles Abernathy requesting reimbursement in the amount of $3,624.52 for electrical service to the City's Performance Rail pump station on Old 221 South for which the County had been paying. The City had accepted ownership and maintenance of this pump station in January 2002, but the power bill had never been switched over to the City's name.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to reimburse the County in the amount of $3,624.52 for power expenses incurred at the Performance Rail Pump Station since February 2002.

APPROVE FIRING RANGE GUIDELINES: The City Manager presented Council with revised draft guidelines for the City Firing Range. Discussion was held about the original intent of Council regarding the use of the range. It was the consensus of Council to Table this item until the next City Council Meeting. The Police Committee, City Manager and Mayor will look over the Guidelines prior to that meeting.

APPROVE STREET PAVING CONTRACT: The City Manger presented Council with a memo from Ms. Kathy Austin, Purchasing Agent with the following Street Resurfacing Proposals.

APAC Carolina, Inc.	$3.10 per square yard	Total $84,831.50
Fred Callahan Company	$3.10 per square yard	Total $84,831.50
Johnson Paving Company	$3.78 per square yard	Total $103,439.70

The City Manager advised that he, Ms. Austin and the City Attorney were seeking to find a way to distinguish the two low bidders. If the two low bidders cannot be distinguished, the Institute of Government had recommended a random selection of the company to be awarded a contract for the street paving project.

It was the consensus of Council to hold approval of this item until further Council is sought, due to the identical low bids, until the April 15, 2003 City Council Meeting.

RESOLUTION – APPROVE MUNICIPAL AGREEMENT: The City Manager advised that the DOT Division Engineer had arranged for DOT to pay full costs, estimated at $37,000, for the sidewalk requested by the City on Sugar Hill Road from Rankin Drive to Shady Lane. The DOT project contractor completing the widening project will construct the sidewalk. All that is needed to allow DOT to proceed is the adoption of a resolution authorizing the City to enter into a Municipal Agreement with DOT to complete this project.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

CITY OF MARION
RESOLUTION
SUGAR HILL ROAD SIDEWALK

WHEREAS, the Department and the Municipality have agreed to participate in the construction of a (5) five-foot wide sidewalk along Sugar Hill Road, SR 1001, R-2643 approximately 0.52 mile; and,

WHEREAS, the Municipality shall be responsible for the preparation of the facility design and project plans, acquisition of any required right of way, relocation of all utilities, and construction of the project; and,

WHEREAS, the Department agrees to participate in the actual cost of the construction cost up to $37,000 for the actual cost of the project to construct said sidewalk. Reimbursement to the Municipality shall be made in one lump sum payment upon completion of the project.

NOW, THEREFORE, BE IT RESOLVED that Project E-2971 M in McDowell County is hereby formally approved by the City Council of the Municipality of Marion and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

Adopted this the 1st day of April, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

REQUEST FOR REIMBURSEMENT – SEWER BLOCKAGE – MS. BONNIE EDWARDS: The City Manager presented Council with a request from Ms. Bonnie Edwards advising that on Sunday, March 30th she called in a sewer blockage at one of her rental properties located at 102 Snipes Street to the Marion Police Department. After waiting approximately forty-five minutes for the on call person to respond, Ms. Edwards contacted Roto-Rooter. The City's on call person was tied up on another call. The invoice for Roto Rooter was $134.88. The City Manager noted that City Wastewater personnel later inspected the location and verified that the City's line had been blocked.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve this reimbursement to Ms. Bonnie Edwards in the amount of $134.88.

CITY MANAGER'S REPORT: The City Manger gave a brief report of current projects.

The City Manager reminded Council of the Open House scheduled for Friday, April 11th for all City Facilities.

The City Manager advised that Architects are ready to present the final design for the Depot to Council. It will take approximately one and a half hours.

It was decided to hold the meeting with the Architects on a separate date other than a Regular City Council Meeting.

The Architects will be contacted and ask to schedule this meeting on April 22, 2003 at 7:00 P.M. at City Hall.

COUNICLMAN COMMENTS: Councilman Martin reminded Council of the Pray for our Troops Rally at 11:45 AM on Friday.

Councilman Cuthbertson inquired about the relocation of the Japanese maple trees from the Police Department. The City Manager advised that the trees would be moved by City personnel to City Hall within the next week, hopefully without damage to the trees.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to go into closed session in accordance with N.C.G.S. 143-318.11 (a)(3) in order to consult with the City Attorney to obtain legal advice concerning the City Community Building and to give instructions concerning the handling of current litigation in the matter of City of Marion v. Brown Utility Company.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session.

Mayor Clark announced that no action had been taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 15, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little was not present for this meeting due to being out of State.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary: Mika Elliott, Police Chief; Major Johnny Patton, Marion Police Department; Mike Conley, News Reporter, The McDowell News; Freddie Killough, DBA Director.

GUESTS PRESENT: Jim Powell, Architect for Marion Police Department Project.

CONSENT AGENDA: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of City Council Minutes - April 1, 2003 Regular and Closed Session Minutes

B. DBA Sidewalk Sale - May 3, 2003

C. Budget Amendment

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(Sixth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

GENERAL FUND

a. **General Fund Revenues, Fund Balance Appropriation, Account Number 10-399-0000, is increased from $470,732 to $480,732.**

b. **General Fund Revenues, Highway Safety Grant, Account Number 10-398-0700, is increased from $0 to $36,316.**

c. **General Fund Revenues, Miscellaneous Revenues, Account Number 10-335-0000, is increased from $22,463 to $192,463.**

d. **General Fund Expenditures, Cemetery Department, Account Number 10-640-45, Contracted Services, is increased from $25,000 to $28,000.**

e. **General Fund Expenditures, Cemetery Department, Account Number 10-640-74, Capital Outlay, is increased from $95,732 to $102,732.**

f. **General Fund Expenditures, Police Department, Account Number 10-510-74, Capital Outlay, is increased from $138,646 to $174,962.**

g. **General Fund Expenditures, Non Departmental, Account Number 10-660-63, Senior Center Contribution, is increased from $0 to $155,021.**

h. **General Fund Expenditures, Administration, Account Number 10-420-04, Professional Services, is increased from $33,000 to $47,979.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 15th day of April, 2003.



A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-04-15-2

D. Firing Range/Picnic Area Guidelines:

Marion Police Department Guidelines for Firing Range and Picnic Area Use and Waiver

All persons requesting to use the Marion Police Department firing range are required to contact the Police Chief at 652-3231 to check for availability at least one day prior to the requested time. If the range is available, you will use the following guidelines.

1. You must pick up and return the range gate key from the communicator at the Police Department. The key must be returned as soon as you leave the range. Range keys are not to be duplicated.
2. You must notify the Police Department communicator of the times you will be at the range. This is for your safety as well as that of the City. If you have not returned the key at the times given, an officer will be sent to check to make sure an accident has not occurred. If the key is not returned in a timely manner, future requests to use the range will be denied.
3. Any person using the range without prior approval will be asked to leave the range. Any person leaving trash on range grounds or damaging property will be denied future access.
4. The use of the range is restricted to full-time and reserve sworn officers of the Marion Police Department, to other law enforcement groups, as approved by the Police Chief, and to City employees, as approved by the Police Chief. The Police Chief may not delegate the authority to approve the use of the Firing Range.
5. All users of the range must sign the liability waiver/hold harmless agreement below. No guests shall be permitted on the range. In no case shall any person under 18 years of age be allowed on the firing range. Persons found on the range without written approval will leave the range immediately or face possible criminal charges.
6. Use of the picnic area is allowed by City departments, City employees, or outside groups, with the approval of the Police Chief, but approval to use only the picnic area shall not entitle a person or group to use the firing range. Persons or groups using the picnic area will not leave any trash on the grounds or in the trash cans. You must take your trash with you.
7. Persons using the range will provide their targets and cardboard. Targets are not to be placed on poles on the target line. Clips are provided on the target line to secure the targets. All shots must be directed at the target line, not at the sides or pond.
8. Persons using the range will not leave any trash on the range grounds or in the trash cans. This includes empty shell casings. You must take your trash with you.
9. Smoking is not allowed on the range property.
10. Parking is permitted in the parking area only, not on the range.
11. No alcohol is permitted on the Firing Range or on any City property.

I, the undersigned, have read, understand and agree to abide by the guidelines above described.

I agree to hold the City of Marion, North Carolina and all employees and agents associated with the City of Marion, North Carolina, harmless and exempt from any and all claims, demands, liens, causes of action, actions, suits, expenses, prejudgment interest, attorneys fees, or losses of any kind or nature whatsoever arising from and/or in any way related to my use of the City of Marion, North Carolina Firing Range or equipment utilized in connection therewith.

Further, in consideration of my permitted use of the Marion Firing Range, the undersigned, for myself, my heirs, executors, agents and assigns, and for all other persons, firms, or corporations who might claim through me, hereby releases, acquits, and forever discharges The City of Marion, North Carolina, and its employees, agents and assigns thereof, of and from any and all claims, demands, liens, causes of action, actions, suits, expenses, prejudgment interest, attorneys fees, or losses of any kind or nature whatsoever arising from or in any way related to my use of the City of Marion, North Carolina Firing Range and/or equipment utilized in connection therewith.

Moreover, in consideration of my permitted use of the Marion Firing Range, I agree to indemnify the City of Marion, North Carolina, its employees, agents, successors and assigns from any damage, expense, or loss as well as all costs and expenses (including interest paid thereon and all reasonable attorneys' fees incurred) incidental to or arising from actions, suits, proceedings, demands, assessments, judgments, costs, and expenses, and which liabilities or claims against the City of Marion, North Carolina I cause either directly or indirectly whether through my negligence (whether intentional or not and however and whenever arising) or otherwise.

I understand the dangerous nature of fire-arm practice, use, and training. I assume this risk for myself, my family, my heirs, and my executor(s) and agree to use fire arms responsibly and conduct myself responsibly at the firing range. If an event occurs at the firing range or around the firing range where persons (including myself) or property (including mine) is injured by my action or failure to act, or by others at the firing range who may act or fail to act, I agree to the foregoing

This the _____ day of _____, 200__.

Signature Address

City Department/Group/Agency Name

CONSIDER AWARDING CONTRACT – POLICE DEPARTMENT EXPANSION: Mr. Jim Powell, Architect, was present for this meeting and gave an overview of the project.

The total of the low base bid and six alternates from the low bidder, G.E.M., was $1,060.077.

A lengthy discussion followed regarding all six alternates.

The City Manager recommended that Council award the contract for the Police Department construction, contingent on signing the loan documents with REC Centura, to the low bidder, G.E.M. Constructors, for the base bid, plus Alternates 4 (Interior Finishes), 2 (Site Improvements), 6 (Upgrade Finishes in Existing Building) and 5 (Lower Level Mechanical System). The total of the base bid and the four recommended alternates is $952,149.00. The City Manager recommended holding off on Alternate 1 (Rear Driveway), since this work could be done in the future by City forces, and holding off on Alternate 3 (Generator), since the Police Department has submitted a FEMA grant to pay for the $94,128 cost of the generator.

The City Manager and Architect also discussed an elevator for the Police Department. The City Manager noted that the Local Government Commission had approved the City for the full financing amount of $1,200,000, and that this amount could cover the recommended contract award of $952,149, a five percent construction contingency of $47,607.45, the elevator at $150,000 - $180,000, and furniture and soft costs in the range of $20,000 - $50,000, for a total loan amount of $1,200,000.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to award the contract for the Police Department construction, contingent on signing the loan documents with RBC Centura, to the low bidder, G.E.M. Constructors, for the base bid, plus Alternates 4 (Interior Finishes), 2 (Site Improvements), 6 (Upgrade Finishes in Existing Building) and 5 (Lower Level Mechanical System), for a total contract amount of $952,149.00.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council voted to authorize the Architect to obtain bid prices on an elevator for the Police Department Expansion in the range of approximately $150,000 to $180,000, and to authorize a loan amount of $1,200,000, to include recommended contract award of $952,149, a five percent construction contingency of $47,607.45, the elevator at $150,000 - $180,000, and furniture and soft costs in the range of $20,000 - $50,000.

APPROVE P.A. PURCHASE DOWNTOWN ADVISORY COMMITTEE: Ms. Freddie Killough was present for this meeting and presented a price for a new P.A. System as stated below. The P.A. system would be used for the downtown concert series, for future musical performances in the depot, and for Mountain Glory and other downtown events. Funding for the P.A. system will be split from Downtown Advisory Committee funds and Mountain Glory Funds.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to purchase a P.A. System in the amount of $2, 786.55.

	Retail	Killoughs
Washburn System		
10 Channel Head-600 Watts of Power	$699.95	$489.96
(2) 15" R15 Speakers	$839.98	$587.98
(2) 12" Moniters	$330.00	$231.00

(2) Speaker Stands	$99.00	$69.30
(4) Sure SM 58 Microphones ($188 EA)	$752.00	$526.40
(4) Sure SM 57 Microphone ($146EA)	$584.00	$408.80
(8) Microphone Cables ($19.98 EA)	$159.84	$111.89
(4) Microphone Stands W/ Boom ARM	$147.80	$103.46
(4) Microphone Stands	$107.80	$75.46
SUBTOTAL	$3,720.37	$2,604.25
TAX	$260.43	$182.30
TOTAL	$3,980.80	$2,786.55

APPROVAL OF MAIN STREET PROGRAM APPLICATION: The City Manager advised that DBA Director Freddie Killough, City Planner Suzy Davis and DAC Member Patti Hart had spent a great deal of time and effort to complete the City's application to join the North Carolina Main Street Program. Freddie Killough gave an overview of the application, which included a commitment to maintain staff for the downtown program and to commit funds to a resource team visit for the downtown area. Upon a motion by Councilman Cuthbertson. seconded by Councilman Martin, those members of Council present voted to adopt the following Resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITYOF MARION EXPRESSING SUPPORT FOR THE CITY'S PARTICIPATION IN THE NORTH CAROLINA MAIN STREET PROGRAM

WHEREAS, the City of Marion has been actively involved in downtown revitalization and development for over 20 years; and

WHEREAS, the City of Marion has provide consistent funding and staff resources during this time for downtown events, capital projects. business recruitment. and operations; and

WHEREAS, the North Carolina Main Street Program has provided support and technical support for many downtowns across North Carolina; and

WHEREAS, the City of Marion meets the qualifications for inclusion in the North Carolina Main Street Program through the provision of a part-time downtown director, and staff time provided by the City Planner and City Manager; and

WHEREAS, the City Council of the City of Marion believes it would be desirable for the City of Marion to join the North Carolina Main Street Program.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES THAT:

The City Council of the City of Marion hereby offers its full support for the City's application to join the North Carolina Main Street Program, and urges the North Carolina Department of Commerce to approve the application.

Adopted this the 1st day of April, 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R:03-04-01-1

REQUEST - DOWNTOWN BUSINESS ASSOCIATION – YELLOW RIBBONS ON DOWNTOWN POLES: Ms. Freddie Killough appeared before Council advising that on behalf of the Board of Directors of the Marion Downtown Business Association, Inc., she is requesting permission to place yellow bows on the metal traffic signal poles at each intersection in the Downtown Area. These bows would honor the troops that are fighting in Operation Iraqi Freedom.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the request by the Marion Downtown Business Association to place yellow bows on Main Street.

APPROVAL OF WATER/SEWER RATE ORDINANCE: The City Manager presented a revised Water and Sewer Rate Ordinance, which would increase up front water and sewer deposits for business, industrial and master meter customers. The Ordinance revisions also added a temporary water service charge and adjusted the City's returned check charge. Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

ORDINANCE

ESTABLISHING WATER/SEWER RATES, CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That new water/sewer rates, connection (tap fees) fees, cost recovery charges and other miscellaneous charges are hereby established as follows:

	INSIDE CITY	OUTSIDE CITY
Water Rates:	**$1.40 per 1,000 Gallons, plus $8.00 Service Charge per month**	**$2.80 per 1,000 Gallons, plus $16.00 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.00**	**$20.00**
Master Meter Rate	**$1.40 per 1,000 Gallons, plus $6.40 Service Charge per month**	**$2.80 per 1,000 Gallons, plus $12.80 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.40**	**$16.80**

	INSIDE CITY	OUTSIDE CITY
Sewer Rates:	$1.40 per 1,000 Gallons, plus $8.00 Service Charge per month	$2.80 per 1,000 Gallons, plus $16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate	$1.40 per 1,000 Gallons, plus $6.40 Service Charge per month	$2.80 per 1,000 Gallons, plus $12.80 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.40	$16.80

	INSIDE CITY	OUTSIDE CITY
Sewer Rates for Private Wells	**$2.10 per 1,000 Gallons, plus $8.00 Service Charge per**	**$4.20 per 1,000 Gallons, plus $16.00 Service Charge per**

month month

Important Notices:

All sewer charges are based on water meter readings, unless a sewer metering device approved by the City has been installed.

When more than one unit is served by a Master Meter, such as a mobile home park, shopping center or apartment complex, the monthly service charge is $6.40 for water and $6.40 for sewer in the City, and $12.80 for water and $12.80 for sewer outside the City, whether said units are occupied or not.

A single family residence using a private well, with no water meter, shall pay a flat rate of $12.00 per month for sewer service.

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1 ½"	1,400	7,120	2,100	7,120
2"	1,600	11,392	2,400	11,392
3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):
The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10.00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200
4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION. IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 1,200	$ 820	$ 1,800	$ 820
1"	1,300	2,050	1,950	2,050
1 ½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,500
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999

12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY
RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	AT COST	COST PLUS 10%

INCREASE METER SIZE	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

	INSIDE CITY	OUTSIDE CITY
WATER DEPOSIT	$ 30.00	$ 60.00
SEWER DEPOSIT	$ 30.00	$ 30.00

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY:

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS FOR COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS SHALL BE AS FOLLOWS:

INSIDE CITY

	WATER	SEWER	WATER AND SEWER
FAST FOOD/PIZZA RESTAURANTS	$100.00	$100.00	$ 200.00
OTHER RESTAURANTS (WITH SEATING)	$150.00	$150.00	$ 300.00
GROCERY STORES	$150.00	$150.00	$ 300.00
APARTMENT COMPLEXES (MASTER METER)	$150.00	$150.00	$ 300.00
CAR WASHES	$150.00	$150.00	$ 300.00
LAUNDRIES	$200.00	$200.00	$ 400.00
NURSING/FAMILY CARE HOMES	$200.00	$200.00	$ 400.00
INDUSTRY (50 OR MORE EMPLOYEES)	$500.00	$500.00	$1,000.00
INDUSTRY (LESS THAN 50 EMPLOYEES)	$200.00	$200.00	$ 400.00
OTHER MASTER METER ACCOUNTS	$100.00	$100.00	$ 200.00
GENERAL BUSINESS	$ 50.00	$ 50.00	$ 100.00

OUTSIDE CITY

	WATER	SEWER	WATER AND SEWER
FAST FOOD/PIZZA RESTAURANTS	$ 200.00	$ 200.00	$ 400.00
OTHER RESTAURANTS			

(WITH SEATING)	$ 300.00	$ 300.00	$ 600.00
GROCERY STORES	$ 300.00	$ 300.00	$ 600.00
APARTMENT COMPLEXES (MASTER METER)	$ 300.00	$ 300.00	$ 600.00
CAR WASHES	$ 300.00	$ 300.00	$ 600.00
LAUNDRIES	$ 400.00	$ 400.00	$ 800.00
NURSING/FAMILY CARE HOMES	$ 400.00	$ 400.00	$ 800.00
INDUSTRY (50 OR MORE EMPLOYEES)	$1,000.00	$1,000.00	$2,000.00
INDUSTRY (LESS THAN 50 EMPLOYEES)	$ 400.00	$ 400.00	$ 800.00
OTHER MASTER METER ACCOUNTS	$ 200.00	$ 200.00	$ 400.00
GENERAL BUSINESS	$ 100.00	$ 100.00	$ 200.00

THE CITY MANAGER SHALL DETERMINE THE APPROPRIATE DEPOSIT FOR ANY COMMERCIAL, INDUSTRIAL OR MASTER METER CUSTOMER NOT LISTED IN THE PRECEDING SCHEDULE. AT THE END OF SIX MONTHS OF SERVICE, THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED. IF THE AVERGAE MONTHLY DEPOSIT IS LOWER THAN THE AMOUNT THE CITY HAS RECEIVED FROM THE INITIAL DEPOSIT, THE CITY WILL CREDIT THE WATER ACCOUNT OF THE CUSTOMER FOR THE AMOUNT OF THE DIFFERENCE IN THE INITIAL DEPOSIT AND THE AVERAGE MONTHLY BILL.

OTHER MISCELLANEOUS CHARGES

	INSIDE CITY	OUTSIDE CITY
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00
TEMPORARY SERVICE (SEVEN OR LESS DAYS)	$ 15.00 PLUS ACTUAL WATER USAGE	$ 15.00 PLUS ACTUAL WATER USAGE
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
RETURN CHECK SERVICE CHARGE	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER
BANK DRAFT CUSTOMER – CHARGE FOR CLOSED ACCOUNT	$ 25.00	$ 25.00
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY		
¾" AND 1" METERS	$ 15.00	$ 15.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on October 8, 2002 is rescinded upon the effective date of this Ordinance

Section 3. All other ordinances, in conflict with this ordinance, are rescinded upon the effective date of this ordinance

Section 4. This Ordinance shall become effective upon its adoption

ADOPTED this the 15th day of April, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-03-04-15-1

APPROVAL OF UPDATED SALARY RANGES/POSITION CLASSIFICATION: The City Manager presented Council with updated Salary Ranges and Position Classifications. He noted that the updates were based on a survey of similar sized cities in North Carolina. The adjustments will not cost the City any money up front, but will increase the minimum and maximum salaries for most positions, to keep the City competitive with other municipalities.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the following Salary Ranges/Position Classification Plan, effective July 1, 2003:

SALARY GRADE	MINIMUM SALARY	MAXIMUM SALARY	POSITION TITLE
1	$14,664	$22,880	
2	$15,412	$24,044	
3	$16,203	$25,272	General Maintenance Worker I
4	$17,014	$26,540	Police Aide/Ordinance Enforcement Officer Administrative Secretary I
5	$17,867	$27,892	Meter Reader General Maintenance Worker II Warehouse Storekeeper Billing and Collections Clerk
6	$18,761	$29,307	Police Telecommunicator Equipment Operator
7	$19,718	$30,784	Wastewater Plant Operator Water Plant Operator Fleet Mechanic Account/Records Clerk Administrative Secretary II
8	$20,716	$32,344	Fire Suppression Officer Head Billing and Collections Clerk Accounting Assistant/Bookkeeper Police Officer I Police Telecommunications Supervisor Public Works Crew Leader
9	$21,777	$33,987	Tax Collector Police Officer II Fleet Mechanic Supervisor Wastewater Plant Maintenance Technician/ Operator Wastewater Plant Laboratory Technician/ Operator
10	$22,880	$35,713	Purchasing Agent Fire Inspector School Resource Officer Wastewater Plant Assistant ORC
11	$24,044	$37,523	Fire Lieutenant Police Sergeant Police Detective
12	$25,272	$39,416	Fire Captain Police Lieutenant
13	$26,540	$41,412	Grants Administrator Sanitation Supervisor
14	$27,892	$43,513	Personnel Officer Police Major Assistant Fire Chief
15	$29,307	$45,718	Water Distribution Superintendent Street Superintendent
16	$30,784	$48,027	City Planner Building Inspector Water Plant Superintendent Wastewater Plant Superintendent
17	$32,344	$50,460	

18	$33,987	$53,019	
19	$35,713	$55,702	Fire Chief Finance Officer Public Utilities/Projects Director
20	$37,523	$58,531	Police Chief Public Works Director
21	$39,416	$61,484	
22	$41,412	$64,604	
23	$43,513	$67,891	
24	$45,718	$71,344	
25	$48,027	$74,963	
26	$50,460	$78,748	
27	$53,019	$82,742	
28	$55,702	$86,923	
29	$58,531	$91,312	
30	$61,484	$95,950	

Approved by
City Council
April 15, 2003

APPROVE STREET PAVING CONTRACT: The City Manager advised that prior to the last City Council Meeting bids were opened on the Spring 2003 Resurfacing Project, resulting in two low bidders.

City staff determined that APAC had more experience on past City paving projects and had completed past projects with a higher quality and fewer problems. Therefore, the City Manager recommended awarding the contract for the Spring 2003 Resurfacing to APAC, in the amount of $3.10 per square yard.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to approve the paving contract as recommended to APAC, in the amount of $3.10 per square yard.

AWARD CONTRACT – PICKUP TRUCK: The City Manager presented Council with a memo from Kathy Austin, Purchasing Agent with the following bids on a new 2003 pickup truck for the Street Department:

Jim Cook Chevrolet

2003 Chevrolet Silverado 2-Wheel Drive	$17,205.60
2003 Chevrolet Silverado 4-Wheel Drive	19,755.25

Legendary Ford

2003 Ford F150 2-Wheel Drive	$18,087.05
2003 Ford F150 4-Wheel Drive	20,773.05

Everette Chevrolet

2003 Chevrolet Silverado 2-Wheel Drive	$19,315.60
2003 Chevrolet Silverado 4-Wheel Drive	21,865.25

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to accept the low bid of Jim Cook Chevrolet of $19,755.25 for a 2003 Chevrolet Silverado 4-Wheel Drive Truck.

APPOINTMENT ABC BOARD: The City Manager advised that Mr. Jim Isaacs' term on the ABC BOARD expired on April 18, 2003. Mr. Robert Teeter, Chairman of the ABC Board presented Council with a letter recommending that Jim Isaacs be reappointed for another three year term, said term to end April 18, 2006. The City Manager noted that Mr. Isaacs was willing to be reappointed for another term.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to reappoint Mr. Isaacs to another three year term.

REQUEST – SPAULDING WOODS APARTMENT – WATER DEPOSITS: The City Manager presented Council with a letter from Ms. Karen Perry, of Landmark Asset Services, Inc., requesting that Council waive the water deposit on Spaulding Woods Apartments. The City Manager noted that under the previous water deposit policy, the City would determine the appropriate water deposit for Spaulding Woods after six months, based on the average of the three highest water and sewer bills. Under this policy, the appropriate deposit for Spaulding Woods would be $1,050.00

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to deny the request by Landmark Asset Services, Inc. to waive the water and sewer deposit for Spaulding Woods Apartments, and to abide by City policy and set the water and sewer deposit at $1,050.00.

EASTFIELD WATER/SEWER PROJECT UPDATE: The City Manager reported that the Joint City/County Utility Committee had met and recommended adjustments to the City's charges and policies for the extension of water and sewer service to the Eastfield Community. Mayor Clark noted that these changes should provide the County all the tools they need to obtain the necessary easement signatures for the project.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to approve the following Water/Sewer Policy for the Eastfield Project:

Eastfield Water/Sewer Project Policy Amendments
April 15, 2003

In coordinating the extension of water and sewer service into the Eastfield Community, Council has previously agreed to the following policies for this project:

1. For properties that immediately connect to sewer as part of the project and where City forces do not have to physically make sewer taps, the sewer tap fee will be waived. The County, through the grant, will pay the City for over 350 sewer Cost Recovery Charges at $820 each, for a total payment of about $300,000. I have interpreted this policy to allow a reasonable period for people to connect after the project is closed out (perhaps six months, which is the time frame used with the PG sewer extension.)

2. In cases where water is extended to unserved areas of the Eastfield Community and where City forces do not have to physically make water taps, the water tap fee will be waived. The understanding was that the County or the property owner would pay the $1,424 cost recovery charge for water service.

As progress has been made on this project, and conversations have been held with individual property owners as part of the easement process, the following additional policies would be recommended, to substitute for items 1 and 2 above, where in conflict, as follows:

3. In situations where the County must issue easements, if property owners, particularly of undeveloped land, do not wish to connect to sewer, the County would pay the Cost Recovery Charge and the City would waive the tap fee. In such situations, the City would issue

a certificate allowing a future sewer connection at no charge at such time as requested by the property owner. The City will issues as many certificates per property as is needed for the County to obtain the easement signature, as long as the County pays a Cost Recovery Charge for each certificate

In such situations, no monthly sewer availability fee would be charged.

4. The County will continue exploring grant options for water extensions to the four streets unserved by City water (Pine, Westmoreland, Seagle and Tunnel). If a grant is approved, the County's contractor could install the water lines and we would waive tap fees in accordance with item 2 above. For the few households that currently have access to water but which are not connected, the City would charge only the Cost Recovery Charge, to be paid for by the County through the grant, and waive the tap fee, even if City crews have to install the tap. Water service will be required to receive sewer service on all properties where water is available.

   The County will pay, through the grant, Cost Recovery Charges for water for all structures that currently do not have water. The City will waive the water tap fee, and issue certificates to property owners that currently do not have access to water, authorizing such property owners to receive a future water connection at no charge, at such time as water service becomes available. Properties without access to water will be allowed to connect to sewer service without having water service, and will be charged the flat monthly fee (no metering of private wells will be required). Such properties will be expected to connect to City water when water is available

   If no grant funds for water extensions are received by the County, the City will hold discuss with the County the option of having City crews install the water lines to the four unserved streets in Eastfield.

6. In a few situations, such as around Moodytown Road, the County will need easements for the sewer lines in areas where water cannot be supplied. If requested, property owners in such situations may connect to sewer service since water service will not be available at any time in the near future. The County, through the grant, will pay the Cost Recovery Charge for such properties, and the City will waive the tap fee. Such properties will be charged the flat monthly fee (no metering of private wells will be required).

Approved by Council this the 15th day of April, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DISCUSSION – TRAFFIC SIGNALS – WEST HENDERSON STREET/SUGAR HILL ROAD: The City Manager advised that last year, the City requested that DOT consider traffic signals at various locations, including Wilhemenia Street and West Henderson Street. Councilman Martin had noted that the City might be wise to resubmit this request, since DOT was now in the process of widening West Henderson Street/Sugar Hill Road from two lanes to five lanes.

A discussion followed.

It was the consensus of those members of Council present to direct the City Manager to resubmit the request for a traffic signal at Wilhemenia Street and West Henderson Street to the Department of Transportation.

REQUEST – MACA – COMMUNITY BUILDING BASEMENT – STAY AFTER 3 PROGRAM: The City Manager presented Council with a request from MACA Officials requesting the use of the Community Building Basement at no charge for the Stay After 3 Program again this year. The program will use the basement on Tuesday, Wednesdays and Thursday during the months of June and July.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the request contingent upon all guidelines being met by the Stay After 3 Program as in the past.

DISCUSSION - POTENTIAL LOCAL PROJECTS FOR PROPOSED NORTH CAROLINA: MOVING AHEAD PROGRAM: Councilman Cuthbertson discussed a request from DOT to help identify potential projects to be funded from the proposed North Carolina: Moving Ahead! Initiative announced by Governor Easley February 19th. North Carolina: Moving Ahead is a major transportation initiative that will provide $700 million of additional funds for maintenance modernization and public transportation improvements across the state.

A discussion followed:

The City Manager will contact DOT with the following suggestions for funding for the North Carolina Moving Ahead program:

-Realign intersection of US 70 East/Church Street/Yancey Street to improve traffic flow
-Install traffic signal at Wilhemenia Street/West Henderson Street
-Explore ways to straighten Tate Street

CITY MANAGER'S REPORT: The City Manager gave a brief report of current projects.

By consensus, Council gave the City Manager the direction to state the city's opposition to HB 429 and SB 534, which would restrict the City's authority to phase out, or "amortize" undesired uses such as non-conforming signs, billboards and junkyards.

COUNICLMAN COMMENTS:

Councilman Edwards suggested that Council consider painting the downtown metal traffic signal poles black to improve the appearance of downtown, especially, since Council had authorized DOT to install black traffic signal poles on West Henderson Street/Sugar Hill Road.

Councilman Owenby noted that itinerant merchants had been frequently setting up on a lot on US 70 West across from Wal Mart. This lot is outside the City, but the City Manager noted that the Police Department will be directed to make sure that no itinerant merchants set up inside the City Limits without the proper permits.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Special Session on Tuesday evening, April 22, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson and Cecil Owenby.

Mayor Clark was absent from this meeting due to being out of State.

Councilmen Mike Edwards and Billy Martin were absent from this meeting due to work conflicts.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mike Conley, News Reporter, The McDowell News; Freddie Killough, DBA Director.

GUESTS PRESENT: Ms. Myra McCurry, West Henderson Street, Marion, NC 28752; Tony & Gina DeGrechie 246 Plantation Drive, Marion, NC 28752; Eleanor Bibb, 28 West Henderson Street, Marion, NC 28752; David Black, Hager Smith Design, Raleigh, NC; Craig Newton, NC DOT Rail Division, Raleigh, NC.

COUNCIL MEMBERS – NO QUORUM: There was not a quorum present for this meeting. No action was taken.

DEPOT RENOVATION PRESENTATION:

Mayor Pro Tem Little opened the meeting and welcomed everyone. He stated the purpose of the meeting was to discuss and review plans for the depot restoration. City Manager Bob Boyette introduced Craig Newton, Senior Project Engineer, with the North Carolina Department of Transportation, and David Black, Project Architect with Hager Smith Design.

Mr. Newton provided some background on the project and the funding sources for the depot restoration and for passenger rail service in the future. He noted that DOT was negotiating with Norfolk Southern to acquire the permanent easement, at a cost of approximately $150,000. The City will have to incur no costs related to the easement acquisition. Mr. Newton noted that the changes requested by the City had been added to the easement document and sent to Norfolk Southern for review. The easement must be acquired by DOT prior to construction beginning on the depot. Mr. Newton further noted he would meet with officials from Morganton, Marion and Old Fort here at Marion City Hall at 1:30 p.m. on Thursday, May 1 to discuss the groundbreaking for the three station restorations. Mr. Newton noted that the original cost of the depot restoration had been about $1.8 million, but since the depot now would not be moved, the cost estimates for the project were down to about $1.2 million. DOT will revise the Municipal Agreement with the City to reflect this reduced cost estimate and the City's reduced ten percent share of the total project cost.

Mr. Black presented the depot plans, which are complete through the design development phase. The next phase in the process will be completion of construction documents. Specific design elements mentioned included:

-Existing loading docks on the west side of the building will be demolished.
-A plaza area will be created between the depot and Laughridge Furniture and will include a fountain, a possible monument/sculpture, a framework on which art or sculpture can be hung, benches, trees and a track layout in the brick.

-Depot Street will be extended throughout the site to connect with the existing City parking lot on West Henderson Street.
-A platform will be constructed on the west side of the building for performances with a grassy lawn in front of it. Power will be made available to this stage.
-A four foot high wrought iron fence will be constructed between the depot and the tracks, per railroad regulations.
-All property behind the City parking lot on West Henderson Street and the Laughridge Furniture buildings will be acquired as part of the permanent easement. The easement will extend within five feet of the centerline of the tracks to allow for a future platform to be built outside the fence and next to the tracks, to allow passengers to the board the train.
-The 1952 addition to the building will serve as the passenger rail office and waiting area. New sheetrock, chair rails and light fixtures will be installed. The existing flooring will be repaired. The outside of the 1952 addition will be cleaned up, repaired and painted. In the passenger waiting room, benches appropriate for the 1952 era will be used. These benches will probably be moveable.
-The old Freight Depot, which dates to the late 1860's, will be used as an excursion waiting area, with a stage included. The trusses and brick work will be exposed and lighting added to illuminate the trusses. Suspended lighting will also be installed. Sheet rubber flooring is proposed instead of the existing concrete floor. A City seal is planned for one end of the freight depot. Baseboard receptacles will be placed in the freight depot.
-In between the passenger waiting area and the excursion waiting area will be several bathrooms, a storage area for tables and chairs, a warming kitchen and a mechanical loft above for the HVAC systems. In the corridor around the bathrooms, sheet rock will be added. In the kitchen, all wiring and plumbing will be completed and cabinets installed. Appliances such as a dishwasher and stove cannot be purchased by DOT as part of this project.
-The existing hip roof will be removed from the 1952 addition. Gable ends will be added to the freight depot, per the direction of the State Historic Preservation Office. The doors will be green, the building will have red brick, and the trim under the eaves will be yellow to match as closely as possible the historical colors on the building. The tin roof will be painted, possibly a charcoal gray, to match historical colors. The flat roof over the 1952 addition will be replaced.
-Some of the building openings will be used, some will be filled in and some will be recreated.
-Wiring on the site will be underground.
-The 1952 addition is approximately 1,100 square feet.
-The freight depot is approximately 3,000 square feet.

Mr. Black noted that the design of the structure was affected greatly by the requirements of the State Historic Preservation Office. The 1952 addition was kept despite some objections by the State. The City fought hard to keep the 1952 addition and to avoid the loss of usable space.

Mr. Newton discussed the status of funding and the future of passenger rail service in Western North Carolina. He anticipated no passenger rail service until at least 2008 and noted that the full cost of track improvements and other costs associated with passenger rail service to be about $135 million.

Mr. Newton discussed the schedule for proceeding with the project, as follows:

-April 22 – Meeting with City Council – Comments regarding the design are needed within the next two weeks.
-In May, the architects will complete the construction documents. After construction documents are completed, the architects can come back to Council to present the plans before the project goes out to bid.
-In June, the project would be proposed to go out to bid.
-In July, bids could be awarded. Also, in July or August, the groundbreaking previously discussed could be held. In August, the State Board of Transportation would have to approve the project bids.

-In August or September, the project contracts would be signed and construction could begin.

Mr. Newton noted that Morganton and Old Fort are approximately one month ahead of Marion's schedule.

Mr. Black and Mr. Newton addressed questions from City Council, City staff and members of the audience.

Mayor Pro Tem Little stated that the entire community was excited about the depot renovation project. He commended Mr. Newton, Mr. Black and City and DBA staff for their work on the project.

ADJOURNMENT: The Presentation was over at 8:15 P.M. There being no further business, Mayor Pro Tem Little declared the meeting adjourned.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 6, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Steve Little, Billy Martin and Cecil Owenby.

Councilman Edwards arrived for this meeting during the discussion of the Automated Water System at 7:40 P.M.

Councilman Little had to be excused from the meeting at 8:00 P.M.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Steve Basney, Water Distribution Superintendent; Glen Sherlin, Projects Manager; Mike Conley, News Reporter, The McDowell News

GUESTS PRESENT: Diane Lewis, 14 Hill Road, Marion, NC 28752; Mike Waresak, McGill Associates; Andy Jayne, Main Line Supply, Asheville,NC; Bryan Harwood, Hersey Meter, Cleveland, NC.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of City Council Minutes - April 15, 2003 and April 22, 2003

B. Personnel Policy Amendments

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article VII, Section 5, Sick Leave, is amended by deleting the fourth paragraph in its entirety and replacing it with the following.

"Notification of the desire to take sick leave shall be submitted to the employee's supervisor as early as possible, but in no case later than two hours after the beginning of the scheduled workday. Employees who resign or are dismissed from City employment shall lose all sick leave credits. Employees who retire with the City may apply sick leave credits toward retirement, subject to the rules of the North Carolina Local Government Employee's Retirement System. An employee may transfer sick leave to the City from another governmental agency. Such transferred sick leave shall be used for retirement purposes only, and an employee transferring such sick leave may not use any transferred sick time during the course of their employment with the City. Retroactive transfers of sick leave from another governmental agency are allowed provided that the employee provides documentation from the previous employer of the number of hours to be transferred."

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 6th day of May, 2003.

A. Everette Clark, Mayor

ATTEST.

J. Robert Boyette, City Manager/Clerk

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article VII, Section 4, Vacation Leave, is amended by deleting subsection (c) in its entirety and replacing it with the following:

"(c) Annual leave may be accumulated up to 200 hours maximum for 40 hour employees, up to 210 hours maximum for 42 hour employee and up to 280 hours maximum for 56 hour employees. Vacation accumulated beyond this maximum amount shall automatically be transferred to sick leave on an hour for hour basis. However, if the employee separates from service, payment for accumulated annual shall not exceed the maximum accumulation listed above. Like regular sick leave, any unused converted sick leave may be counted toward creditable service at retirement, if allowed by the rules of the Local Government Employees' Retirement System."

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 6th day of May, 2003.

A. Everette Clark, Mayor

ATTEST:

L. Robert Boyette, City Manager/Clerk

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article I, Section 7, Qualification Standards, is amended by deleting Section 7 in its entirety and replacing it with the following:

Section 7. Qualification Standards/Pre-Employment Requirements

Employees shall meet the employment standards established by the position classification plan and such other reasonable, job-related minimum standards of character, aptitude, knowledge, skills, abilities, and physical condition as may be established by the City Manager with the advice and recommendation(s) of department heads. These qualifications may also include the requirements that applicants be drug free prior to entering the workforce.

(a) Pre-Employment Testing. The City Manager has the authority to require pre-employment testing for the final applicants for full time, permanent positions as well as part time positions. Additionally, the State of North Carolina and the federal government may also establish requirements for pre-employment testing in some instances. In the absence of specific requirements by the City Manager, the procedures for pre-employment testing are set out as follows:

(1) Confidentiality. The results of all tests administered as part of the screening process, including the names of applicants, will remain as confidential as possible taking into consideration the fact that the City is a public employer.

(2) Medical Screening for Physical Fitness. Individuals who have applied for a job and have been extended a conditional offer of employment, regardless of permanent or part time, will be required to undergo a thorough medical screening to be administered by a doctor or a healthcare technician chosen and paid for by the City. The determination to require physical examinations and other medical screenings will be based on the responsibilities of the position and other relevant considerations. Normally, any medical screening will relate to and take into account the physical and/or mental requirements of the job as listed in the relevant job description, or any OSHA requirements.

A Medical Review Officer, designated by the City, will review and make the final determination concerning the applicant's fitness for the job.

Current employees may also be required to undergo a physical examination to determine ability to perform the duties of his or her position. Such examinations may become particularly important when an employee is being considered for a transfer or a promotion and the City needs to take into consideration the physical requirements of the job as listed in the relevant job description.

When an applicant or an existing employee is being considered for a job that is subject to OSHA requirements for medical review, fitness for duty and the ability to meet the OSHA standards, then all OSHA requirements shall apply and shall be included in the medical screening process. If the results of any required test are unsatisfactory so that a favorable recommendation for employment cannot be obtained by the doctor or health care personnel, then any conditional offer of employment to an applicant may be withdrawn or the promotion or change in job by a current employee may be denied.

(3) Medical Testing and Fitness for Duty. Generally, employees are not required to undergo physicals, psychological or emotional testing or other types of medical testing. However, fitness for duty is a concern to the City so that the City can be assured that the employee is capable of performing his or her duties and is not a risk to the employee or coworkers. If there is any question concerning the employee's fitness for duty, the City may require the employee to undergo a physical or to otherwise participate in appropriate medical screenings to insure the ability to perform the duties and a safe workplace. Under normal circumstances, physicals and other medical testing resulting from workplace accidents, injuries and events and required as a condition of returning to employment will be paid for by the City, but for accidents and injuries occurring outside the workplace or for second opinions requested by the employee, the employee may be required to pay the costs.

Certain OSHA programs require medical screenings for employees who are subject to or fall under these programs. As a condition of continued employment, the employee shall be required to participate in the screening and to have a medical clearance issued by the City's medical service provider.

(4) Medical Screening for Mental or Emotional Fitness. Once an applicant is extended a conditional offer of employment, the applicant may be required to undergo an examination by a licensed psychologist for mental or emotional fitness for duty. Unsatisfactory results from such testing of the failure of the testing personnel to recommend employment will result in the conditional offer of employment being withdrawn.

(5) Drug and Alcohol Testing. Applicants for full time, permanent jobs and applicants for part time or temporary positions involving public safety and security or the provision of critical municipal services whom have been extended a conditional offer of employment by the City may be required to undergo alcohol and/or drug tests. Further, the Personnel Department or the City Manager may also require applicants for other positions to undergo tests to determine drug and/or alcohol abuse in appropriate cases. See "Substance Abuse Policy" for more information.

(b) Qualifications shall be reviewed periodically to assure that requirements are fair and conform to the actual job performance requirements.

(c) The City may employ an applicant in a trainee capacity that does not meet all minimum qualifications for a particular job if the deficiencies can be eliminated through orientation and on-the-job training.

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 6th day of May, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article VII, Leaves of Absences, is amended by adding Section 13, Civil Leave, as follows.

Section 13. Civil Leave

(a) An employee who is called for jury duty shall be entitled to leave with pay for such duty and may keep all fees received for jury duty, provided the employee reports for work during required working hours, when not required to be in court. No charge shall be made against his or her accrued leave.

(b) If any employee is subpoenaed to testify in a court case, the employee must notify his or her supervisor or department head Charge will be made against the employee's accrued leave, if notice of the leave is provided in advance

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 6th day of May, 2003

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article VI, Work Conditions and Expectations, is amended by deleting Article VI, Section 7. Outside Employment, in its entirety and replacing it with the following:

Section 7. Outside Employment

The work of the City will take precedence over other occupational or special interest of employees that may interfere or be perceived as creating a conflict or interference. All outside employment for salaries, wages, or other compensation and all self-employment must be reported to and approved by the employee's department head and City Manager. Outside employment causing or perceived as a conflict of interest shall be disapproved. The City Manager shall be responsible for final interpretation Conflicting outside employment will be grounds for disciplinary action up to and including dismissal.

The City Manager may restrict the number of hours of outside employment to be worked by an individual employee. As a guideline, the average outside employment hours worked over a calendar year should be no more than one-half the amount of hours worked weekly for the City in a normal work week with no overtime (20 hours per week for a 40 hour employee, 21 hours per week for a 42 hour employee, 28 hours per week for a 56 hour employee).

Employees working a second job are not to apply for unemployment benefits with the outside employer without notifying their supervisor in writing. Authorization to apply for unemployment benefits from an outside employer must be given in writing by the City Manager, in order for the employee to apply for such benefits, since the City will be held responsible for the majority of the unemployment benefit as the primary employer. It is the responsibility of the employee to determine if the outside employer has filed for unemployment benefits on the employee's behalf. Failure to follow this policy shall be grounds for disciplinary action up to and including dismissal. The employee shall be required to reimburse the City for all unemployment benefits charged to the City as a result of outside employment

Section 2. This amendment shall become effective upon its adoption

Adopted this the 6th day of May, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

C. Budget Amendment

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(Seventh Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

GENERAL FUND

a. **General Fund Revenues, Miscellaneous Revenues, Account Number 10-335-0000, is decreased from $192,463 to $22,463.**

b. **General Fund Revenues, Sale of Property, Account Number 10-394-5000, is increased from $0 to $170,000.**

c. **General Fund Revenues, Fund Balance Appropriation, Account Number 10-399-0000, is increased from $480,732 to $500,399.**

d. **General Fund Expenditures, Recreation Department, Account Number 10-620-74, Capital Outlay, is increased from $117,542 to $137,109.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 6th day of May, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-05-06-1

APPEAL – CIVIL CITATION – DOG RUNNING LOOSE: The City Manager presented Council with information regarding an appeal for a civil citation issued to Ms. Diane Lewis on April 11, 2003 for her dog running loose on Virginia Road. Ms. Lewis lives on Hill Road outside the City Limits. The dog was running loose inside the City Limits.

Ms. Lewis had since received another citation for the dog running loose on April 23, 2003, which she paid.

After this citation, the dog was picked up by our Ordinance Enforcement Officer and transported to the County Shelter.

Ms. Lewis was present for this meeting.

Ms. Lewis advised that her dog had been missing for three days during the first citation and that Officer Bailey could not describe the dog accurately. She is asking that the $50.00 Citation on April 11 be waived.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to waive the fine for the first $50.00 Citation for Ms. Lewis.

PUBLIC HEARING – APPROVE DOWNTOWN OVERLAY DISTRICT BOUNDARIES: Mayor Clark opened the Public Hearing.

The City Manager advised that Mr. David Setzer, of the McDowell News, could not be present for this Public Hearing. However, he wanted Council to be advised that he does not want the McDowell News Property on North Logan Street to be included in the downtown overlay district boundaries, if the district includes provisions to prohibit metal awnings.

A discussion was held regarding a section of the Policy regarding Design Standards, specifically, Metal Awnings. Mayor Clark suggested that this provision be looked at again since metal awnings can be attractive if properly built. Councilman Little noted that canvas awnings could fade and did not necessarily look good after several years of use.

It was the consensus of those members of Council present to approve the Overlay District Boundaries only and to re-advertise this Public Hearing and to refer the metal awnings issue back to the Planning Board for a recommendation to Council in June.

City Planner Suzy Davis presented the boundaries of the Downtown Overlay District, which approximates the area of responsibility of the Downtown Advisory Committee, with the addition of the Social Services Building on East Court Street.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to approve the Downtown Overlay District Boundaries as presented.

APPROVAL – WATER STUDY: Mr. Glen Sherlin, Projects Manager for the City of Marion gave a brief update of the progress of the Water Study.

Mr. Mike Waresak, McGill Associates, was also present for this meeting with an update of the study and the budget.

The primary focus of the study is to is to identify short and long term sources of alternate water supply for the City of Marion and to identify measurable "triggers" for voluntary and mandatory water conservation in the future.

The total cost for the project is $12,740.00. The City Manager stated he hoped the study could be completed for a lesser price, since McGill will charge on a hourly basis, and considering that some of the study may be able to be completed using existing information and City staff.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council voted to approve the Water Study to be completed by McGill Associates, for a fee not to exceed $12,740.00.

AWARD CONTRACT – AUTOMATED WATER METER SYSTEM: The City Manager advised that the Local Government Commission approved the City's financing application for

the full amount of $2,100,000.00, including $900,000.00 for the new Automated Meter Reading System. Listed below is the proposed budget for the Automated Water System.

Procurement of Automated Meter Reading System	$ 658,943.00
Installation (Material, City Forces, Contract Services)	$ 188,676.00
Subtotal	$ 847,619.00
5% Contingency	$ 42,381.00
Engineering Services	$ 10,000.00
Total Project Cost	$900,000.00

Carolina Meter & Supply had the low bid. However their bid did not meet City specifications for an absolute encoder register. Had Carolina Meter met the specifications, the bid would not have been low bid.

McGill Associates and City Staff are recommending that Mainline Supply be awarded this Bid in the amount of $658,943.00 for Hersey Meters.

Glen Sherlin noted that City staff had visited the Hersey Meter plant in Cleveland, North Carolina and had seen the system at work. No information had been received on Hersey Meters that would warrant the City not to consider purchase of Hersey Meters.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to award the contract for the purchase of the Automated Meter Reading System to Mainline Supply of Asheville in the amount of $658,943.00.

APPROVAL – UPGRADES TO COMMUNITY BUILDING KITCHEN: The City Manager advised that bids had been sought for the renovation work at the Community Building kitchen, as required by the local Health Department. The low bid had been received from Kerlee's Construction, Inc. of Old Fort for an amount of $16,176.92. With the needed purchase of items such as a commercial refrigerator and sinks, the total renovation cost will be around $20,000. The remaining funds from the sale of timber at the Water Plant will be used to fund the renovation work. The City Manager reported that the contractor could complete the work in two weeks, but that the Community Building kitchen will need to be closed during the construction work.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to award the contract for the Community Building kitchen renovations to Kerlee's Construction Inc., in the amount of $16,176.92.

RESOLUTION – MUNICIPAL AGREEMENT – DOT: The City Manager advised that DOT had submitted the following resolution, which would fund the proposed sidewalk/ curb and gutter work on Fern/Montevista Avenue between North Main Street and Fleming Avenue in the amount of $45,000, the full amount required for City forces to complete this work.

Council members directed the City Manager to obtain contracted prices for this work, to see if private contractors could complete the project and not take City forces off of scheduled projects.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Resolution:

CITY OF MARION
RESOLUTION

WHEREAS, the Department and the Municipality have agreed to participate in the construction of a (5) five-foot wide sidewalk along Monte Vista Avenue from SR 1500 (Fleming Road) to US 70 approximately 2050 feet; and,

WHEREAS, the Municipality shall be responsible for the preparation of the facility design and project plans, acquisition of any required right of way, relocation of all utilities, and construction of the project; and

WHEREAS, the Department agrees to participate in the actual cost of the construction cost up to $45,000 for the actual cost of the project to construct said sidewalk. Reimbursement to the Municipality shall be made in one lump sum payment upon completion of the project.

NOW, THEREFORE, BE IT RESOLVED that Project E-2971 M in McDowell County is hereby formally approved by the City Council of the Municipality of Marion and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

Adopted this the 6th day of May, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-03-05-06-1

AWARD CONTRACT – AUDIT SERVICES – JOHNSON, PRICE AND SPRINKLE:
The City Manager presented Council with a contract from Johnson, Price & Sprinkle to complete the 2002-03 City Audit for a fee of $18,780. The City Manager noted that last year's fees of $18,200 included bookkeeping services, which Johnson, Price & Sprinkle can no longer provide for the City, under new independence rules for auditors. The new GASB 34 accounting standards taking effect for the City on July 1, 2003 will cause the cost of the actual audit to rise from $16,500 to $18,780, an increase of 13.8 percent.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the contact from Johnson, Price and Sprinkle for the 2002-03 City Audit.

DISCUSSION – DEPOT DESIGN: The City Manager asked Council if they had any comments or changes to make to the depot plans presented by the depot architect on April 22.

Council members had no changes or additions to the plans. Mayor Clark noted that the architects had done a good job in incorporating the ideas of the City into the depot renovation plans.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to proceed with the Depot Design Plans.

DISCUSSION – JOINT CITY/COUNTY GRANT WRITING: The City Manager advised that the County is proposing to go in with the City and Old Fort to hire a Grant Writer to write grants for all three jurisdictions. The proposed split would be 50% County, 40% City and 10% Old Fort.

A discussion followed. The Mayor and Council felt that the idea had merit and should be considered.

No action was taken. Council will evaluate this item as part of the annual budget.

CITY MANAGER'S REPORT: The City Manager gave a brief report of current projects.

The Mayor and City Manager gave a report of the City Open House on May 2, at which all third graders in McDowell County received tours of six City facilities and were fed lunch at the Community Building. The names of volunteers were noted and City departments and employees were commended for their efforts to make the Open House possible.

COUNICLMAN COMMENTS:

Councilman Cuthbertson inquired into the paving schedule for Crescent Drive. The City Manager noted that water line work first needed to be done on this street, which would place the paving of the street no sooner than Spring 2004.

CLOSED SESSION: Upon a motion by Councilman Owenby, seconded by Councilman Edwards, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(3) to discuss a matter involving current litigation, the case of City of Marion v. Brown Utility Co.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to go back into Regular Session. Mayor Clark announced that no action had been taken in the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 20, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little arrived for this meeting at 8:00 P.M. due to a school function involving one of his daughters.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Tom, Cathy, Thomas, C.J. and Anna Atkinson.

CITIZEN OF THE MONTH SELECTED BY COUNCILMAN EDWARDS: Councilman Edwards selected the Citizen of the Month for May.

The following information was presented about May's Citizen of the Month:

ANNA ATKINSON

Ms. Anna Atkinson is a Sophomore at McDowell High School. She is an A Honor Roll Student and ranks third in her class.

She shows leadership in many aspects of her life. She has excelled as a two sport athlete, and has won many awards in basketball and soccer. She also plays tennis.

Ms. Atkinson is also active in her church and has shown many unfailing acts as a Christian.

Mayor Clark, Council Members and family members all shared kind words about Ms. Atkinson.

CONSENT AGENDA: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present, voted to approve the consent Agenda as follows:

A. Approval of City Council Minutes - May 1, 2003 Regular and Closed Session Minutes

B. Resolution – Directing Clerk to Investigate Petition for Voluntary Annexation – U.S. 221 South Property/Approve Certificate of Sufficiency

RESOLUTION
DIRECTING CLERK TO INVESTIGATE PETITION

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 20, 2003, by the City of Marion; and

WHEREAS, 160A-58.2 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 20th day of May 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/City Clerk

****

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-56.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 20th day of May 2003.

J. Robert Boyette, City Clerk

C. Resolution – Setting Date of Public Hearing for Voluntary Annexation – U.S. 221 South property

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, June 17, 2003.

Section 2. The areas proposed for annexation are described as follows:

MCDOWELL FOOD SYSTEMS, INC.
SAGEBRUSH STEAK HOUSE AND SALOON
Deed Book 335, Page 511
Map No. 1710, Block 31, Lot 3629

BEGINNING on a railroad spike set in the center line of U.S. Highway 221, said spike located South 4 degrees 20 minutes West 635 feet from the center line of Interstate Highway 40; and runs thence along the center of said Highway 221 South 4 degrees 55 minutes West 338.55 feet to an railroad spike set in the center of said Highway 221; thence leaving said Highway and runs South 87 degrees 51 minutes 45 seconds East 754.59 feet to a concrete monument; thence North 4 degrees 09 minutes 30 East 461.97 feet to a concrete monument; thence North 78 degrees 47 minutes 55 seconds West 322.57 feet to an iron pin; thence South 4 degrees 44 minutes 20 seconds West 187.37 feet to an iron pin; thence North 86 degrees 08 minutes 35 seconds West 427.51 feet to the BEGINNING, containing 6.88 acres, more or less.

ROYSTER OIL COMPANY, INC.
Deed Book 278, Page 419
Map No. 1710, Block 21, Lot 8804

BEGINNING on a point in the center line of U.S. Highway #21, said beginning point being South 4 degrees 15' West, measured along and center line of U.S. Highway #221, 552.20 feet from the point of its intersection with the center line of Interstate Highway #40 and running thence from said beginning point South 4 degrees 15' West, with the center line of said U.S. Highway #221, 200 feet to a stake; thence North 85 degrees 55' West 363.67 feet to a point; thence North 46 degrees 41' East 24.44 feet to a point; thence North 37 degrees 45' West 17.89 feet to a monument on the right of way line of Interstate Highway #40; thence following courses and distances with said right of way of Interstate Highway #40; North 58 degrees 15" East 148.13 feet; South 40 degrees 56' East 51.03 feet; South 58 degrees 55' East 48.81 feet to the point of BEGINNING.

CULTURED MARBLE INTERIORS, INC.
Deed Book 446, Page 195
Map No. 1710, Block 20, Lot 6822

BEGINNING at a pint in the centerline of the pavement of U.S. Highway 221 and in the line of the property of Ramesh Desai, said point being located North 83 degrees 16 minutes 54 seconds West 12.07 feet from a bolt which serves as the eighth corner of the property of Remesh Desai as recorded in McDowell County Deed Book 395, at page 696, and from the BEGINNING running with the centerline of the pavement of U.S. Highway 221 South, South 04 degrees 02 minutes 25 seconds West with the line of Pauline E. Richie as recorded in McDowell County Deed Book 401 at page 612 for a distance of 770.60 feet to a point; thence continuing South 04 degrees 02 minutes 25 seconds West 77.30 feet to a point which serves as the second corner of the property of Coy Bolick as recorded in McDowell County Deed Book 256 at page 211; then leaving the centerline of U.S. Highway 221 and running North 88 degrees 37 minutes 34 seconds West 50.00feet to a ¾ inch iron pipe set in a deep gully; then continuing North 88 degrees 37 minutes 34 seconds West 43.73 feet to a ¾ inch pipe set in place of the second corner of the Pauline E. Richie property as recorded in McDowell County Deed Book 401 at page 612; then North 00 degrees 53 minutes 43 seconds East 76.41 feet to a point; then continuing North 00 degrees 53 minutes 43 seconds East with the line of Max Harris as recorded in McDowell County Deed Book 166 at page 35 crossing a gravel driveway which connects the Max Harris residence with U. S. Highway 221, and running for a distance of 358.96 feet to a ¾ inch iron pipe set in a persimmon stump, a common corner with the property of Max Harris and the beginning corner of the property of Pauline E. Richie as described in McDowell County Deed Book 401 at page 612, which is the parent tract from which this subject tract is taken; then continuing with the line of Max Harris, North 52 degrees 50 minutes 58 seconds West 373.46 feet to a ¾ inch pipe set; then running North 00 degrees 53 minutes 43 seconds East 198.00 feet to a 20 inch maple which serves as the twelfth corner of the parent tract and the twentieth corner of the property of Ramesh Desai, as recorded in McDowell County Deed Book 395 at page 696; then with the line of Ramesh Desai the

following courses and distances: North 46 degrees 09 minutes 06 seconds East 82.50 feet to a ¾ inch iron pipe on the Northern side of an old road bed, South 88 degrees 38 minutes 22 seconds East 22.48 feet to a ¾ inch iron pipe in place of the 19th corner of the Ramesh Desai property, South 67 degrees 49 minutes 07 seconds East with the centerline of the old road bed 91.31 feet to a point, South 18 degrees 30 minutes 40 seconds East 4.00 feet to a ¾ inch iron pipe which serves as the 16th corner of the Ramesh Desai property as recorded in McDowell County Deed Book 395 at page 696 and which also serves as the 9th corner of a separate tract owned by Ramesh Desai recorded in McDowell County Deed Book 395 at page 692; then running with the Ramesi Desai property as recorded in McDowell County Deed Book 395 at page 692, South 83 degrees 16 minutes 54 seconds East 275.90 feet to the BEGINNING, containing 4.79 acres, according to a survey of Suttles Surveying, P.A., dated December 20, 1989 and revised January 9, 1990.

ASSOCIATED DYNAMIC INVESTORS, INC.,
A North Carolina Corporation
Deed Book 477, Page 332
Map 1710, Block 30, Lot 2562

BEGINNING on a point in the center line of the pavement of U.S. Highway 221, said point being the Northwest and second corner of the property of Coy Bolick (McDowell Deed Book 256 at Page 211), and from said BEGINNING running with the center line of the property of Cultured Marble Interiors, Inc. (McDowell Deed Book 409 Page 142) North 04 degrees 02 minutes 25 seconds West 847.90 feet to a point in the center line of U.S. Highway 221, said point being in the line of the property of Ramesh Desai (McDowell Deed Book 395 Page 692); then with the Desai line South 83 degrees 16 minutes 54 seconds East 12.07 feet to a bolt on the Eastern edge of the pavement of U.S. Highway 221; then continuing with the Desai line South 83 degrees 16 minutes 54 seconds East approximately 15 feet to a three/fourths inch iron pipe which serves as the Easternmost corner of said Desai property; then with the Southern line of the 10.62 acre parcel of Ramesh Desai (McDowell Deed Book 395 Page 696) North 87 degrees 53 minutes 43 seconds East 686.40 feet to a three/fourths inch iron pipe in the Western line of the Workman property (McDowell Deed Book 272 Page 436), said iron pipe also being in place of the Southeast corner of the property described in McDowell Deed Book 336 at Page 406 and the Northeast corner of Lot number 4 of the John W. England division of lands (McDowell Deed Book 99 Page 352 and McDowell Deed Book 401 Page 612); then partly with the Western line of the Workman property South 05 degrees 01 minute 12 seconds West approximately 780 feet to an iron pipe in place of the Southeastern corner of lot 4 of the England division of lands; then North approximately 89 degrees West approximately 151.15 feet to an iron pipe which serves as the Northeastern corner of the Bolick property (McDowell Deed Book 256 Page 211); then with the Northern line of the Bolick property North 89 degrees 21 minutes 0 seconds West 535.25 feet to the BEGINNING.

RAMESH DESAI
Deed Book 395, Page 696
Map No. 1710, Block 31, Lot 2074

BEGINNING on a concrete nail set in the centerline of U.S. Highway 221, said concrete nail being located South 02 degrees 39 minutes 04 seconds West 937.45 feet from N.C.G.S. Mon. "Lemon Tree" bearing grid coordinate of N:702,188.98 and E:1,112,942.62 (NAD-27), and said concrete nail also serving as the second (2nd) corner of the Marion Motel Associates property as recorded in McDowell County Deed Book 352 at page 188 and from said BEGINNING running with the centerline of U.S. Highway 221 South 04 degrees 05 minutes 24 seconds West with the line of Tract Three of the Childers property recorded in McDowell County Deed Book 370 at page 647 for a distance of 49.28 feet to a concrete nail set in the centerline of said highway; then with Tract Three of the Childers property, South 87 degrees 10 minutes 56 seconds East 50.01 feet to a ¾ inch iron pin set on the Eastern margin of the 100-foot right-of-way for U.S. Highway 221; then continuing with the common line of Tract Three

of the Childers property, South 87 degrees 10 minutes 56 seconds East 315.18 feet to a ½ inch existing iron pin which serves as the second (2nd) corner of the Harvey property as recorded in McDowell County Deed Book 336 at page 406, the sixth (6th) corner of Tract Three of Childers property and the seventh (7th) corner of Tract Three of the Childers property as recorded in McDowell County Deed Book 370 at page 647; then with the line of Tract One of the Childers property, North 78 degrees 21 minutes 49 seconds East 195.21 feet to a 37 inch chestnut oak which serves as the beginning corner of the Harvey property and the 5th corner of Tract One of the Childers property then continuing North 78 degrees 21 minutes 49 seconds East 2.91 feet to a ½ inch iron pin set in the Western boundary line of the Workman property as recorded in McDowell Deed Book 272 at page 436; then with the line of the Workman property, South 04 degrees 03 minutes 18 seconds West 320.01 feet to a ¾ inch iron pin set which serves as the Southeastern corner of the Harvey property and the Northeastern corner of the England property as recorded in McDowell County Deed Book 99 at page 352; then with the line of the England property, South 87 degrees 53 minutes 43 seconds West 686.40 feet to a 3'4 inch iron pin set which serves as the 14th corner of the Harvey property and the 4th corner of the England property; then North 49 degrees 06 minutes 17 seconds West 20.14 feet to a ¾ inch square iron pin set at the Eastern margin of the 100 foot right-of-way for U. S. Highway 221; then continuing North 49 degrees 06 minutes 17 seconds West crossing U. S. Highway 221, for a distance of 124.89 feet to a ¾ INCH iron pin set in the Western margin of the 100 foot right-of-way for U. S. Highway 221; then continuing with the England property line, North 39 degrees 06 minutes 17 seconds West 91.20 feet to a ½ inch iron pin set in the root of a 14 inch beech which serves as the seventh (17) corner of the England property and the 12th corner of the Harvey property; then continuing with the England line, South 56 degrees 30 minutes 38 seconds West 49.62 feet to a point in the centerline of a small branch; then with the centerline of the small branch and with the line of the England property the following courses and distances: South 39 degrees 45 minutes 51 seconds West 45.07 feet to a point, South 22 degrees 31 minutes 38 seconds West 29.06 feet to a point, South 71 degrees 03 minutes 23 seconds West 36.78 feet to a point, and South 73 degrees 26 minutes 41 seconds West 47.10 feet to a ¾ inch iron pin set in the centerline of the branch and in the center of an old road bed, in place of the 11th corner of the Harvey property and the 8th corner of the England property; then running with the center of the old road bed, North 18 degrees 30 minutes 40 seconds West 4.00 to a point; then continuing with the center of the old road bed, North 67 degrees 49 minutes 07 seconds West 91.31 feet to a point; then leaving the center of the old road bed and running North 88 degrees 28 minutes 32 seconds West 22.48 feet to a ¾ inch iron pin set at the Northwestern edge of the old roadbed and in place of the 10th corner of the Harvey property and the 9th corner of the England property; then crossing the old road bed and running South 46 degrees 09 minutes 06 seconds West 82.50 feet to a 20 inch maple which serves as the 9th corner of the Harvey property, the 10th corner of the England property and the 3rd corner of Tract 1 of the Harris property as described in McDowell County Deed Book 166 at page 35; then running with the line of Tract 1 of the Harris property, North 84 degrees 42 minutes 36 seconds West 319.18 feet to an 1 inch iron pin set in the centerline of the old road bed and in the centerline of the creek, which serves as the 8th corner of the Harvey property, the 4th corner of Tract 1 of the Harris property, the beginning corner of Tract 4 of the Harris property and the 12th corner of the Fortenberry property as recorded in McDowell Deed Book 172 at page 79; then running with the Fortenberry property line and with the center of the creek the following courses and distances: North 21 degrees 28 minutes 43 seconds East 105.65 feet to a point, North 17 degrees 53 minutes 50 seconds West 57.68 feet to a point, North 03 degrees 02 minutes 40 seconds East 35.89 feet to a point, North 26 degrees 06 minutes 07 seconds East 56.31 feet to a point, North 00 degrees 48 minutes 40 seconds East 34.87 feet to a point, and North 11 degrees 41 minutes 00 seconds West 39.27 feet to a ¾ inch iron pin set in place of the 7th corner of the Harvey property and the 6th corner of the Marion Motel Associates property as recorded in McDowell County Deed Book 352 at page 188, then with the line of the Marion Motel Associates property, North 76 degrees 03 minutes 01 second

East 363.61 feet to a ¾ inch existing iron pin on the top of a hill, which serves as the 5th corner of the Marion Motel Associates property and the 6th corner of the Harvey property; then continuing with the Marion Motel Associates line, North 87 degrees 43 minutes 01 second East 237.70 feet to a ¾ inch iron pin set in place of the 4th corner of the Marion Motel Associates property; then continuing with the Marion Motel Associates property the following three courses and distances: South 03 degrees 16 minutes 59 seconds East 140.00 feet to a ¾ inch iron pin set, North 86 degrees 13 minutes 01 second East 94.17 feet to a point in the Western margin of the 100 feet right-of-way for U. S. Highway 221, and North 86 degrees 13 minutes 01 second East50.48 feet to the BEGINNING, containing 10.62 acres, more or less, according to a survey of Suttles Surveyors, P.A. dated April, 1989.

DONNA ROSE BOYD
Deed Book 308, Page 296
Map No. 1710, Block 31, Lot 2904

BEGINNING on a concrete right-of-way monument, said monument being located at the point of intersection of the Eastern margin of the 100 foot right-of-way of the #221 ramp West entrance to North Carolina Interstate #40, and runs with the margin of U.S. Highway #221, South 4 degrees 28 minutes West 174.72 feet to a two inch concrete filled iron pipe monument; thence South 87 degrees 01 minute East, passing through power pole #70 of the Duke Power Company, 378.26 feet to a two inch concrete filled iron pipe monument, surrounded by marked trees; thence North 3 degrees 42 minutes East 187.29 feet to a two inch concrete filled iron pipe monument, surrounded with marked trees, located in an old fence line and being a point in the England old outside property line; thence North 86 degrees 20 minutes West 360.65 feet to a two inch concrete filled iron pipe monument located in the Southeastern right of way of the #221 West entrance ramp to N. C. Interstate #40; thence with the right of way of said ramp, South 45 degrees 27 minutes West 22.90 feet to a concrete right of way monument and the point or place of BEGINNING, containing 71,313.18 square feet or 1.6371 acres.

Section 3. Notice of public hearing shall be published once in the McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 20th of May, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/City Clerk

D. Resolution – Directing City Clerk to Investigate a petition for Voluntary Annexation - N.C. 226 South Property (N.C. Department of Corrections)/Approve Certificate of Sufficiency

RESOLUTION
DIRECTING CLERK TO INVESTIGATE PETITION

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 20, 2003, by the City of Marion; and

WHEREAS, 160A-58.2 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation
proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 20th day of May 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/City Clerk

****

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-56.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 20th day of May 2003.

J. Robert Boyette, City Clerk

E. Resolution – Setting Date of Public Hearing for Voluntary Annexation – N.C. 226 South Property (N.C. Department of Corrections)

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, June 17, 2003.

Section 2. The area proposed for annexation is described as follows:

State of North Carolina
McDowell County Tax Map 1720.00, Block 30, Lot 7993
Deed Book 425, Page 93

BEGINNING on a planted stone in the old western line, the same being the second corner of tract recorded in Deed Book 420 at page 405. of the McDowell County Deed Registry and runs thence, with said Western line and the line of C. W. Greene (Book 354 at page 142) the following six courses and distances: North 00 degrees 31 minutes 27 seconds E 415.36 feet to an existing iron pin, the third corner of tract recorded in Deed Book 420 at page 405: North 05 degrees 00 minutes 39 seconds East955.65 feet to an existing iron pin; North 05 degrees 00 minutes 39 seconds East 88.99 feet to an existing iron pin set in the Southeast margin of State Road #1794, in the Seaboard Railroad right of way; North 28 degrees 20 minutes 18 seconds East 52.11 feet with said Seaboard Railroad right of way to an iron pin set in said railroad right of way; North 23 degrees 29 minutes 08 seconds East 159.07 feet with said state road and railroad rights of way to an iron pin set; North 18 degrees 17 minutes 22 seconds East 32.67 feet said railroad right of way to an iron pin set; thence with the T. R. Hall line (Deed Book 93 at page262), South 83 degrees 35 minutes 12 seconds East 1,585.36 feet to an existing iron pin, the beginning corner of tract recorded in Deed Book 1 at page 293 of said Registry, said corner located, North 10 degrees 43 minutes 40 seconds East 41.30 feet from a double dogwood; thence, crossing the Duke Power Company right of way (Deed Book 180 at page 425), West to East, South 83 degrees 35 minutes 12 seconds East 297.59 feet to an iron pin set in the Northern line of right of way; thence with the Nathan Mason line, North 07 degrees 39 minutes 22 seconds East 726.88 feet passing a nail set in rhodendron at 703.48 feet to a point in the centerline of Youngs Branch; thence with the centerline of said branch the following four courses and distances: South 65 degrees 59 minutes 17 seconds East 128.07 feet to a point; thence South 55 degrees 18 minutes 30 seconds East 124.72 feet to a point; thence South 60 degrees 33 minutes 19 seconds East 122.43 feet to a point; thence South 57 degrees 44 minutes 24 seconds East 71.88 feet to a point; thence leaving said centerline, South 48 degrees 18 minutes 54 seconds West 127.55 feet passing a triple sycamore at 32.55 feet to a point in the centerline of a small branch; thence with small branch centerline and the line of Floyd E. Smith (Deed Book 117 at page 462) the following five courses and distances: South 15 degrees 03 minutes 08 seconds East 63.54 feet to a point; South 37 degrees 47 minutes 44 seconds East 33.57 feet to a point; South 12 degrees 19 minutes 46 seconds East 35.68 feet to a point; South 22 degrees 56 minutes 13 seconds East 91.88 feet to a point; South 17 degrees 29 minutes 50 seconds East 56.59 feet to a point at a pump house; thence, continuing with said Smith tract (Book 117 at page 462) and leaving said creek the following two courses and distances: South 08 degrees 34 minutes 24 seconds East 176.03 feet to a railroad iron; South 87 degrees 52 minutes 04 seconds East 193.80 feet to an iron pin set in the Floyd E. Smith line (Book 167 at page 705), said iron pin set located North 87 degrees 52 minutes 04 seconds West 4.40 feet from a 21-inch red oak, the second corner of tract recorded in Deed Book 117 at page 462; thence with the Smith line(Book 167 at page 705) South 07 degrees 25 minutes 54 seconds West 935.34 feet to a planted stone in a stump hole; thence with said Smith line, South 54 degrees 24 minutes 11 seconds East 261.37 feet to a planted stone reset, the 12th corner of tract recorded in Deed Book 420, at page 405; thence with a new line so as to exclude a 1.41 acre deed fappage with Floyd Smith (Deed Book 167 at page 705), South 44 degrees 34 minutes 00 seconds West 934.28 feet to an iron pin set at the base of a 28" pine stump, the 14th corner of tract recorded in Deed Book 420, at page 405; thence with the Patrick Lewis Haney line (Book 348 at page 931), South 62 degrees 24 minutes 29 seconds West 827.82 feet passing a planted stone on line at 530.82 feet to a iron pin set; thence South 07 degrees 24 minutes 29 seconds West 187.38 feet passing an iron pin set on line at 154.35 feet to a point in the centerline of North Muddy Creek; thence with said centerline of said North Muddy Creek the following thirty courses and distances: South 66 degrees 13 minutes 20 seconds West 37.39 feet; South 25 degrees 51 minutes 32 seconds West 34.14 feet; South 26 degrees 13 minutes 58 seconds East 65.17 feet; South 06 degrees 52 minutes 51 seconds East 45.07 feet; South 83 degrees 22 minutes 19 seconds West 45,36 feet; North 52 degrees 51 minutes 25 seconds West 76.94 feet; North 38 degrees 21 minutes 58 seconds West 91.86 feet; North 02 degrees 08 minutes 36 seconds East 44.41 feet; North 17 degrees 50 minutes 20 seconds West 30.21 feet; North 47 degrees 05 minutes 05 seconds West 61.32 feet; North 50 degrees 32 minutes 37 seconds West 108.84 feet; North 40 degrees 42 minutes 35 seconds West 154.90 feet; North 32 degrees 25 minutes 25 seconds West113.85 feet; North 54 degrees 04 minutes 42 seconds West 227.02 feet; North 25 degrees 27 minutes 15 seconds West 68.57 feet; North 21 degrees 07 minutes 58 seconds West 84.37 feet; North 44 degrees 15 minutes 41 seconds West 40.03 feet; North 61 degrees 05 minutes23 seconds West 75.25 feet; North 79 degrees 42 minutes 59 seconds West 37.03 feet; South 58 degrees 22 minutes 58 seconds West 35.83 feet; South 56 degrees 12 minutes 37 seconds West 59.84 feet; South 86 degrees 09 minutes 22 seconds West 41.32 feet; North 69 degrees 43 minutes 48 seconds West 44.68 feet; North 81 degrees 04 minutes 28 seconds West 83.18 feet; North 66 degrees 24 minutes 49 seconds West 117.14 feet; South 84 degrees 14 minutes 25 seconds West 89.51 feet; South 69 degrees 56 minutes 45 seconds West 52.86 feet; North 80 degrees 44 minutes 54 seconds West 33.97 feet; North 49 degrees 10 minutes 42 seconds West 50.88 feet; North 34 degrees 53 minutes 01 seconds West 128.52 feet; thence leaving said centerline of said North Muddy Creek, North 21 degrees 50 seconds 47 seconds East 78.09 feet passing an existing iron pin set on line at 22.15 feet unto the point of the BEGINNING, containing 124.92 acres, more or less, description based on survey revised by R. L. Greene Surveying & Mapping, dated December 5, 1990, License #L-1517.

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 20th day of May 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

F. Resolution – Directing City Clerk to Investigate petition for Voluntary Annexation – Old Glenwood Road Property (NC Department of Corrections)/Approve Certificate of Sufficiency

RESOLUTION
DIRECTING CLERK TO INVESTIGATE PETITION

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 20, 2003, by the City of Marion; and

WHEREAS, 160A-58.2 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 20th day of May 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/City Clerk

****

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-56.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 20th day of May 2003.

J. Robert Boyette, City Clerk

G. Resolution - Setting Date of Public Hearing – Voluntary Annexation Old Glenwood Road Property (N.C. Department of Corrections)

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, June 17, 2003.

Section 2. The area proposed for annexation is described as follows:

NORTH CAROLINA PRISON DEPARTMENT
North Carolina Highway 226 South

BEGINNING at a point on the eastern boundary line of the McDowell County prison camp property, common corner of the County of McDowell and the North Carolina State Highway Commission, said BEGINNING point being South 35 degrees 00 minutes East 860.5 feet from a concrete marker; runs thence South 55 degrees 00 minutes West 960.14 feet to an iron spike in the center of North Carolina Highway 26 (currently identified as Highway 226 South); thence South 27 degrees 39 minutes East 287.5 feet to an iron spike; thence South 06 degrees 07 minutes East 384.8 feet to an iron spike, said point being South 55 degrees 00 minutes West 25.0 feet from a concrete marker; thence North 55 degrees 00 minutes East 1190.0 feet to a concrete marker; thence North 35 degrees 00 minutes West 624.9 feet to the point of BEGINNING; containing 15.32 acres; more or less; saving and excepting all road right-of-way heretofore acquired by the North Carolina State Highway Commission; all as shown by the attached plat which is made a part hereof.

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the Public Hearing.

Adopted this the 20th day of May 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

H. Proclamation – National Small Cities and Towns Day:

CITY OF MARION
PROCLAMATION
National Small Cities And Towns Day

Whereas, small cities and towns under 50,000 population constitute the vast majority of municipalities across the United States; and

Whereas, small cities and towns provide opportunities which allow millions of people across America to lead better lives; and

Whereas, small cities and towns invest in their communities through the provision of services and programs which improve the quality of life for all citizens; and

Whereas, the federal government is a partner in investing in small cities and towns, and must be encouraged to continue to support programs and legislation to strengthen communities; and

Whereas, state governments are partners in investing in small cities and towns, and must also be encouraged to continue to support programs and legislation to strengthen communities; and

Whereas, organizations, businesses, and citizens are partners in investing in small cities and towns, and must be encouraged to continue to support efforts that make their communities better places in which to live; and

Whereas, during these challenging economic times, the need for a renewed intergovernmental partnership to support essential public services is more important than ever, and

Whereas, the Board of Directors and the Small Cities Council of the National League of Cities have declared June 20, 2003, as National Small Cities and Towns Day; and

Whereas, the Small Cities Council of the National League of Cities has challenged all cities, towns, and villages across America to proclaim June 20, 2003, as National Small Cities and Towns Day, and to conduct activities – such as news conferences, public service announcements, and events in local schools and community centers – on that day which highlight the different ways in which the federal government, state governments, organizations, businesses, and citizens partner with small cities and towns to invest in their communities and better the lives of all citizens;

Now therefore, the City Council of the City of Marion does hereby proclaim Friday, June 20, 2003, as National Small Cities and Towns Day, and encourages President Bush, Congress, state governments, organizations, businesses, and all citizens to recognize this event, and to work together on this day and throughout the year to invest in small cities and towns to better the lives of all citizens.

A Everette Clark, Mayor

I. Approve Waiver – City Residency Requirement – Marion Police Chief: Police Chief Mika Elliott will be residing in Pleasant Gardens approximately 3.2 miles from the City Limits. The City Manager recommended approval of the request.

PUBLIC APPEARANCE – MR. DEAN STEVENS: Mr. Dean Stevens asked to be placed on this Agenda. However, he did not appear for the meeting.

DISCUSSION/APPROVAL – DOWNTOWN WALKING TOUR BROCHURE: The City Manager advised that the Downtown Advisory Committee (DAC) had endorsed a brochure for a walking tour of the Downtown Historic District. The DAC recommended printing 5,000 copies of the brochure for a cost of $1,025.00. Funds appropriated for the DAC would be used for this purpose.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the printing of 5,000 brochures for a cost of $1,025.00.

DISCUSSION/APPROVAL - BROWN UTILITY LAWSUIT SETTLEMENT: The City Manager presented Council with a settlement agreement from Brown Utilities Attorney that would involve both sides walking away without the exchange of money.

A discussion followed.

The agreement can be found on file at City Hall.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to accept the settlement as presented with no exchange of money.

BUDGET WORKSHOP: The City Manager presented Council with the recommended 2003-04 City budget. The date for a budget workshop to review the budget was set for June 10, 2003 at 7:00 P.M., at City Hall.

REVIEW BRICK COLORS FOR POLICE DEPARTMENT EXPANSION: Brick samples, for renovation of the Police Department, were presented for Council's view.

A discussion was held about the importance of matching the old and new brick on the new Police Department. Council directed the City Manager to have the project architects prepare a display of the recommended brick color on the site.

No action was necessary.

DISCUSSION – FLAGPOLE – OAK GROVE CEMETERY: The City Manager advised that the Woodmen of the World have offered to donate a flagpole to the City for use at Oak Grove Cemetery.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to accept the donation of the Flagpole to use at Oak Grove Cemetery.

*** Councilman Little arrived for this meeting at 8:00 P.M.**

CITY MANAGER'S REPORT: The City Manager gave a brief update of current projects.

COUNICLMAN COMMENTS:

COUNCILMAN MARTIN inquired about the timing of the patching of High Street. The City Manager advised that High Street shoulc be patched within the next few weeks, now that asphalt is available.

COUNCILMAN EDWARDS advised that he had received complaints of speeding on Academy Street and of people running the stop sign at Railroad and Main Streets. The Police Department will monitor these locations

MAYOR CLARK asked Police Chief Elliott if shift changes are leaving the City unprotected. Chief Elliott noted that shift changes in the early morning hours do reduce the numbers of officers on patrol, but that no reported problems had resulted.

COUNCILMAN LITTLE commented that the City still has a problem with noise, in particular, cars. The City Manager advised that he had instructed the Police Chief to have the officers enforce this ordinance aggressively.

COUNCILMAN CUTHBERTSON advised that he is seeing trucks parked on City Sidewalks. He also advised of a weeded lot on West Henderson Street, and noted needed curb repairs at South McDowell Avenue and State Street.

COUNCILMAN OWENBY advised that he had been contacted regarding drainage behind the Methodist Church on Robert Street. The City Manager advised that City Staff is aware of this drainage problem and that the problem is coming from private property. Two property owners had made requested improvements, while one had not.

MAYOR CLARK asked if it would be appropriate to hold a groundbreaking for the Police Department expansion, with construction set to begin next week.

A discussion followed.

It was decided to hold a ground breaking at 10:00 A.M. on Friday, May 23, 2003.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 3, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief.

GUESTS PRESENT: Scott Whitmoyer, Officer; Marion Police Department.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - May 20, 2003 Regular Minutes
B. Ordinance – Budget Amendments - Automated Meter Reading System and Police Department Expansion Projects:

CITY OF MARION, NORTH CAROLINA
WATER AND SEWER CAPITAL PROJECTS FUND ORDINANCE – AUTOMATED METER READING SYSTEM PROJECT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows to include the expenditures associated with Water and Sewer Capital Projects by adopting the following Water and Sewer Capital Projects Fund Ordinance:

WATER AND SEWER CAPITAL PROJECTS FUND

a. Water and Sewer Capital Projects Fund Expenditures, Automated Meter Reading System, Account Number 31-171-0100, is increased from $0 to $900,000.

b. Water and Sewer Capital Projects Fund Revenues, RBC Centura Loan Proceeds – Automated Meter Reading System, Account Number 31-377-0100, is increased from $0 to $900,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 3rd day of June, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-06-03-1

CITY OF MARION, NORTH CAROLINA
GENERAL CAPITAL PROJECTS FUND ORDINANCE – POLICE DEPARTMENT EXPANSION PROJECT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows to include the

expenditures associated with General Capital Projects by adopting the following General Capital Projects Fund Ordinance:

GENERAL CAPITAL PROJECTS FUND

a. General Capital Projects Fund Expenditures, Police Department Expansion, Account Number 11-171-0100, is increased from $0 to $1,200,000.

b. General Capital Projects Fund Revenues, RBC Centura Loan Proceeds – Police Department Expansion, Account Number 11-377-0100, is increased from $0 to $1,200,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 3rd day of June, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-06-03-2

C. Donations – Volunteer Firemen:
Donations were approved for the following volunteer firemen who worked relief shifts in the past six months:

Anderson 75 Hours - $975.00
Coward – 54 Hours - $702.00
Creson – 162 Hours - $2,106.00
Depoyster – 122 – Hours - $1,586.00
King – 47 Hours - $611.00
Walker – 15 Hours - $195.00

D. Revision - Pleasant Gardens Sewer Project Policy

City of Marion Policy
Pleasant Gardens Sewer Extension

The City of Marion imposes two types of fees when a connection ("tap") is made to a City sewer line: (1) tap fee, and (2) cost recovery charge. The sewer tap fee is intended to cover the City's costs of labor and materials in installing the connection to the City's sewer line. The sewer cost recovery charge is intended to help with the ultimate expansion or replacement of the City's wastewater treatment facilities and infrastructure.

The City of Marion will waive the sewer tap fee for structures existing at the date construction on the Pleasant Gardens sewer extension project begins, as long as such structures connect to sewer service under this project no later than September 30, 2003, which is six months after the completion of the project. Property owners wishing to connect to sewer service after September 30, 2003 must pay all applicable tap fees to the City of Marion before sewer service can be provided. Cost recovery charges will be charged by the City of Marion to all who connect and must be paid prior to receipt of sewer service. In addition, sewer service shall not be provided unless water service is available, and the individual property desiring sewer service also connects to City

water service and pays all tap fees and cost recovery charges applicable to the water lines.

Notwithstanding the provisions listed above, the City of Marion will waive the sewer tap fee for any sewer taps installed by the project contractor for a property owner in exchange for the granting of an easement. Such tap fee shall be waived in perpetuity, even if the property owner does not wish to immediately connect to City sewer. Cost recovery charges will be charged by the City of Marion and must be paid prior to receipt of sewer service. The City must be given a list of all such taps made by McDowell County, for which the tap fee is to be waived. Property owners receiving this waiver of tap fee for service they do not immediately want will be given a certificate entitling them to waiver of the tap fee for the sewer tap constructed at their property. This certificate must be kept by the property owner and is transferable should the property be sold. The tap fee waiver will not be honored unless the certificate is presented to the City at such time as the property owner wishes to connect to City sewer service. The certificate will state that provision of the sewer tap in the future is contingent upon State and Federal regulations, and that no guarantee is made by the City that regulatory authorities will allow the tap to be provided by the City in the future. In addition, sewer service shall not be provided unless water service is available, and the individual property desiring sewer service also connects to city water service and pays all applicable water service tap fees and water service cost recovery charges.

This policy is adopted by the City Council of the City of Marion this the 3rd day of June, 2003

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

E. Removed From Agenda

F. Removed From Agenda

G. Agreement – Use of Firing Range - McDowell Tech
Copy of Agreement on file at City Hall

INTRODUCTION – NEW EMPLOYEE – POLICE DEPARTMENT: Chief Elliott introduced Mr. Scott Whitmoyer. Scott is the City of Marion's newest Police Officer.

Mayor Clark, Council members and the City Manager welcomed Mr. Whitmoyer.

PRESENTATION – CITIZEN CORPS GRANT: Police Chief Mika Elliott gave a brief presentation of the Citizen Corps Grant the Police Department is applying for from the North Carolina Division of Emergency Management. The grant is in the amount of $2,500 and will provide training for homeland security and disaster response.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to endorse the Citizen Corps Grant as presented.

A copy of the Grant can be found on file at City Hall.

AWARD CONTRACT – WATER METER INSTALLATION: The City Manager presented Council with a memo from Glen Sherlin, Projects Manager advising that he and Steve Basney, Water/Sewer Superintendent, had met with two contactors who specialize in installing radio read type water meters. The bids from these contractors are as follows:

Utility Partners of America from Greenville, South Carolina
4200 meters @ $28.00 per meter totaling $117,600

Vanguard Utility Service, Inc. from Owensboro, Kentucky
4200 meters @$26.50 per meter totaling $111,300

City Staff recommends low bid.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to accept the low bid from Vanguard Utility Service as listed above.

AWARD CONTRACT – SCOTT ROAD SEWER EXTENSION - The City Manager presented Council with a memo from Glen Sherlin, Projects Manager advising that the following bids for the Scott Road Sewer Extension had been received:

Carolina Construction - $43,600.00
Steppe Construction - $45,376.00

City Staff recommends Low Bid

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the low bid from Carolina Construction as listed above.

RESOLUTION – MUNICIPAL AGREEMENT – DOT DEPOT RENOVATION: The City Manager advised that the North Carolina Department of Transportation had reached an agreement with Norfolk Southern Railroad to purchase a permanent easement for the depot and surrounding property for a price of approximately $160,000. DOT has agreed to pay for 100 percent of this right of way acquisition cost. The City Manager reported that Council needed to adopt a resolution authorizing the City to enter into a municipal agreement with DOT, to allow DOT to proceed with the right of way acquisition.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

RESOLUTION
CITY OF MARION
DEPOT RENOVATIONS

WHEREAS, the North Carolina Department of Transportation and the Municipality entered into an agreement on the 7th day of December 2001 for the improvements to the Marion Train Station located in Marion under Project P-4012; and,

WHEREAS, the Municipality has requested additional funding for the Marion Train Station and the Department has programmed funding in the 2002-2008 Transportation Improvement Program, as amended, for the Marion Train Station under project P-4012, McDowell County; and,

WHEREAS, under the proposed supplemental agreement and subject to the supplemental agreement provisions, the Department shall increase the reimbursement rate for right of way costs from 90% to 100% into provision 11; and,

NOW, THEREFORE, BE IT RESOLVED THAT PROJECT P-4012, McDowell County, is hereby formally approved by the City Council of the City of Marion and that the Mayor and

Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

Adopted this the 3rd Day of June, 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

CITY MANAGER'S REPORT: The City Manager gave a brief update of current projects.

AUCTION – DORIS HILL ESTATE: The City Manager advised that Ms. Freddie Killough, Downtown Business Association Director, bid on several items of historic value to the City of Marion at the Doris Hill Estate Auction this past Saturday, including an 1892 Set of City Ordinances on Cloth, pictures and descriptions of the 1894 Fire and a 1912 print of the City. Ms. Killough purchased these items for $550. The City Manager requested that Council formally approve the reimbursement of $550 to the Marion Downtown Business Association for the purchase of these historical items.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to reimburse the DBA for the purchase of these historical items.

COUNICLMAN COMMENTS:

Councilman Owenby advised that the mirror behind the Post Office on South Garden Street needs to be replaced.

Councilman Owenby also advised that there seems to be a house on Park Avenue operating as an Auction House.

Councilman Cuthbertson advised that he would like to begin enforcement of the Auto Repair Shop Ordinance. The City Manager noted that the City Attorney should be ready to provide recommendations on needed revisions to the ordinance at the June 17 meeting.

CLOSED SESSION - Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(3) to discuss a legal matter involving potential litigation and in accordance with N.C.G.S. 143-318.11(a)(4) to discuss a matter involving the location of industry.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 10, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Clark was absent due to being out of State.

OTHERS PRESENT: Bob Boyette, City Manager

GUESTS PRESENT: None

Mayor Pro Tem Steve Little opened the meeting.

City Manager Bob Boyette presented the proposed 2003-04 City budget and answered the questions of Council about the budget.

A discussion followed.

Council members made no changes to the City Manager's recommended budget, other than to agree to reduce the 2003-04 sales tax revenue estimate by at least $35,000.

The public hearing on the 2003-04 budget is scheduled for June 17.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn this meeting.

Steve Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 17, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Laura, James and Matthew Hill, South Main Street, Marion, NC 28752; Shirley Arrowood, West Court Street, Marion, NC, 28752; Mike and Becky Wilson 2928 NC 226 South, Marion, NC 28752; Hubert Mash, 33 Bobs Import Drive, Marion, NC 28752; Pat Glenn 231 Highland Drive, Marion NC 28752

CITIZEN OF THE MONTH SELECTED BY COUNCILMAN MARTIN: Councilman Martin selected the Citizen of the Month for June.

The following information was presented about June's Citizen of the Month:

SHIRLEY ARROWOOD

Ms. Arrowood grew up in the Mt. Hebron Community in Old Fort. She is the daughter of Roy and Sarah Burgin. She is the mother of five and the grandmother of eight.

When Ms. Arrowood's oldest child entered college she decided to go back to school. She earned an associate degree from McDowell Tech. In 1983 she joined the staff of the Senior Center. In 1985 she was promoted to director. She enrolled in the Division of Aging Summer Schools of Gerontology and in 1988 was awarded a Certificate of Extended Studies in Aging from the North Carolina Department of Human Resources, Division of Aging.

Ms. Arrowood also served on the McDowell County Transportation Planning Board, the Board of Directors for the Volunteer Center, the Maxwell M. Corpening Center Board and is active in the Marion Seventh Day Adventist Church.

Mayor Clark and Council members all had kind words to share about Ms. Arrowood.

COMPLAINT – SPEEDING – HIGHLAND DRIVE: Mr. Pat Glenn appeared before Council advising that speeding is a problem on Highland Drive. He owns a cat that has been hit by a car. The problem is mainly with one or two individuals on the street. Mr. Glenn requested that Council do what ever it takes to resolve this problem before a child is hit by these speeding vehicles.

A discussion followed.

The City Manager stated that the Police Department will work to increase visibility in the area, and that the speed trailer could be placed on the street to slow down traffic.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - June 3, 2003 and June 10, 2003

B. Resolution – Declaring Certain Items of Personal Property Owned by the City as Surplus and Authoring their Sale:

Resolution Declaring Certain Items of Personal Property Owned by the City of Marion as Surplus and Authorizing Their Sale

WHEREAS, N.C.G.S. 160A-266(b) authorizes cities to dispose of personal property valued at less than $30,000 by private negotiation and sale; and

WHEREAS, N.C.G.S. 160A-267 requires that when a City Council proposes to dispose of property by private sale, it adopt a resolution at a regular Council meeting authorizing an appropriate City official to dispose of the property by private sale at a negotiated price; and

WHEREAS, the City of Marion owns four Polycorders (handheld water meter readers) that will no longer be needed by the City with the purchase of a new radio read meter system; and

WHEREAS, the City should be able to sell these items to other interested units of governments or persons.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the following items of personal property owned by the City to be surplus and authorizes the City Manager to dispose of said property by private sale, with the designated minimum price for each item:

Brand	Model	Quantity	Minimum Price
Polycorders	PC600-12801	4	$1,000

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (10) days after its publication.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 17th day of June, 2003.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-03-06-17-1

PUBLIC HEARING – ADOPTION OF 2003-04 BUDGET ORDINANCE: Mayor Clark opened the Public Hearing. The City Manager gave a brief summary of the City budget and noted the differences between the City and County increases in tax base this year as a result of revaluation, which meant that the City tax rate decrease was smaller than that proposed by the County.

There were no citizens present to discuss the budget.

A brief discussion followed.

Councilman Edwards noted that despite the fact the City's tax rate was only decreasing by four cents, the City was actually doing more to reduce taxes than the County, since the City's tax base increased much less this year than that of the County.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

BUDGET ORDINANCE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the City Government and it's activities for the fiscal year beginning July 1, 2003 and ending June 30, 2004 in accordance with the chart of accounts heretofore established by the City:

Administration	$ 453,082
Purchasing and Warehousing	45,149
Inspection	118,974
Police Department	1,351,736
Fire Department	287,769
Public Works Administration	60,383
Fleet Maintenance	47,069
Street Department	685,973
Sanitation	436,347
Recreation	135,000
Cemetery	42,000
Non-Departmental	641,142
TOTAL	**$ 4,304,624**

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Prior Year's Taxes	$ 25,000
Vehicle Tax-Collected by County	122,500
Current Taxes	1,410,257
Tax Penalties & Interest	10,000
Privilege License Sales	18,500
Interest Earned	60,000
Rents and Concessions	16,000
Misc Revenues	20,000
D&A Christmas Reimbursement	1,860
Utilities Franchise Tax	448,000
Beer/Wine Revenue	24,000
Hold Harmless Funds	25,000
Sales Tax	1,083,000
Sales Tax Refund	25,000
ABC Revenues	140,000
ABC Officer Revenues	5,100
Court Costs, Fees & Charges	5,000
Parking Violations	3,500
County Fire Protection	100,000
County Contribution – Recycling	5,000
Cemetery Revenues	3,000
DOT Reimbursement-Grass	3,500
Garbage Fees	105,000
Gas tax Refunds	10,000
Zoning Income - Inspection Fees	14,000
Sale of Garbage/Leaf/Recycling Bags	800
Cable TV Revenues	40,000
Sales of Surplus Equipment	8,000
McDowell County Schools	16,000
Highway Safety Grant	60,000
Fund Balance	496,607
TOTAL	**$ 4,304,624**

Section 3. The following amounts are hereby appropriated in the Powell Bill Fund for Street Maintenance, including curb and gutter work, sidewalk work, storm drainage and other expenses relating thereto for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Professional Services	$ 500
Department Supplies	60,000
Contracted Services	209,250
TOTAL	**$ 269,750**

Section 4. It is estimated that the following revenues will be available in the Powell Bill Fund for the fiscal year beginning July 1, 2003 and ending on June 30, 2004:

Interest Earned	$ 1,400
Powell Bill Allocation	173,350
Sales Tax Refund	6,000
Fund Balance - Prior Year	90,000
TOTAL	**$ 269,750**

Section 5. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Reserve for future appropriations:	$ 520,000
TOTAL	**$ 520,000**

Section 6. It is estimated that the following revenues will be available in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Fund Balance Appropriated	$ 512,000
Interest on Investments	8,000
Transfer from General Fund	0
TOTAL	**$ 520,000**

Section 7. The following amounts are hereby appropriated in the Water/Sewer Fund for operation of Water and Sewer Utilities for the fiscal year beginning July 1, 2003 and ending on June 30, 2004 in accordance with the accounts heretofore approved for the City:

Utility Line Operation	$ 1,025,479
Water Filter Plant	503,342
Waste Treatment Plant	887,275
Non-Departmental	571,321
TOTAL	**$ 2,987,417**

Section 8. It is estimated that the following revenues will be available in the Water/Sewer Fund for the fiscal year beginning July 1, 2003 and ending
June 30, 2004:

Fund Balance	$ 407,917
Interest Earned	18,000
Misc. Income	8,000
Reimbursement – Septic	4,000
Reimbursement – Pretreatment	3,000
Water Sales	800,000
Cut on Fees/Late Penalties	50,000
Sewer Service	425,000
Water Taps	25,000
Sewer Taps	25,000
Tank Truck Charges	1,500
Cost Recovery – water	175,000
Cost Recovery – sewer	175,000
Water Service Charge	500,000
Sewer Service Charge	245,000
NC Fluoridation Grant	10,000
Free Water Reimb- Annex Subsidy	115,000
TOTAL	**$ 2,987,417**

Section 9. The following amounts are hereby appropriated in the Capital Reserve Fund -- Water/Sewer for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Reserve for future appropriations:	$ 212,000
TOTAL	**$ 212,000**

Section 10. It is estimated that the following revenues will be available in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Fund Balance Appropriated	$ 159,000
Interest on Investments	3,000
Transfer from Water/Sewer	50,000
TOTAL	**$ 212,000**

Section 11. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Inventory (Supplies)	$ 150,000
TOTAL	**$ 150,000**

Section 12. It is estimated that the following revenues will be available in the Internal Service Fund for the fiscal year beginning July 1, 2003 and ending June 30, 2004:

Purchase by Other Funds	$ 150,000
Transfer from General Fund	
Transfer from W/S Fund	
TOTAL	**$ 150,000**

Section 13. There is hereby levied a tax at the rate of fifty-one ($ .51) per one hundred ($100) valuation of property as listed for taxes as of January 1, 2003 for the purpose of raising the revenue listed as "Current Year Property Taxes" in the General Fund in Section 2 of this Ordinance. These rates are based on estimated total valuation of property for the purpose of taxation of $ 288,042,816 and estimated rate of collection of 96%.

Section 14. The Budget Officer is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

A. He may transfer amounts between objects of expenditure within a department without limitation and without a report being required

B. He may transfer amounts up to $1,000.00 between departments of the same fund with an official report on such transfers at the next regular meeting of the City Council

C. He may not transfer any amounts between funds nor from any contingency appropriation within any fund.

Section 15. Copies of the Budget Ordinance shall be furnished to the Finance/Budget Officer of the City to be kept on file for direction in the disbursement of funds.

ADOPTED this the 17th day of June, 2003

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

PUBLIC HEARING /ADOPTION OF ANNEXATION ORDINANCE – 221 SOUTH VOLUNTARY ANNEXATION : Mayor Clark opened the Public Hearing.

The City Manager advised that this annexation consisted of a voluntary satellite annexation of six properties on US 221 South of Interstate 40. The effective date of the annexation was June 30, 2003.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

**AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA**

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, June 17, 2003, after due notice by publication on Friday, June 6, 2003; and

WHEREAS, the City Council finds that the area described therein meets the standards of G.S. 160A-58.1(b) to wit:

a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the City of Marion;

b. No point on the proposed satellite corporate limits is closer to another municipality than to the City of Marion;

c. The area described is so situated that the City of Marion will be able to provide the same services within the proposed satellite corporate limits that is provides within the primary corporate limits;

d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;

e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Marion (NOTE: City of Marion exempted from this requirement by General Assembly of North Carolina, Session 2001, House Bill 77, April 26, 2001; and

WHEREAS, the City Council further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City Council further finds that the petition is otherwise valid, and that the pubic health, safety and welfare of the City of Marion and of the area proposed for annexation will be best served by annexing the area described.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described territory is hereby annexed and made part of the City of Marion as of June 30, 2003:

Lot No. 1: McDowell Food Systems, Inc. (Sagebrush Steak House and Saloon), Deed Book 335, Page 511, Map No. 1710, Block 31, Lot 3629

BEGINNING on a railroad spike set in the center line of U.S. Highway 221, said spike located South 4 degrees 20 minutes West 635 feet from the center line of Interstate Highway 40; and runs thence along the center of said Highway 221 South 4 degrees 55 minutes West 338.55 feet to an railroad spike set in the center of said Highway 221; thence leaving said Highway and runs South 87 degrees 51 minutes 45 seconds East 754.59 feet to a concrete monument; thence North 4 degrees 09 minutes 30 East 461.97 feet to a concrete monument; thence North 78 degrees 47 minutes 55 seconds West 322.57 feet to an iron pin; thence South 4 degrees 44 minutes 20 seconds West 187.37 feet to an iron pin; thence North 86 degrees 08 minutes 35 seconds West 427.51 feet to the BEGINNING, containing 6.88 acres, more or less.

Lot No. 2: Royster Oil Company, Inc, Deed Book 278, Page 419, Map No. 1710, Block 21, Lot 8804

BEGINNING on a point in the center line of U.S. Highway #21, said beginning point being South 4 degrees 15' West, measured along and center line of U.S. Highway #221, 552.20 feet from the point of its intersection with the center line of Interstate Highway #40 and running thence from said beginning point South 4 degrees 15' West, with the center line of said U.S. Highway #221, 200 feet to a stake; thence North 85 degrees 55' West 363.67 feet to a point; thence North 46 degrees 41' East 24.44 feet to a point; thence North 37 degrees 45' West 17.89 feet to a monument on the right of way line of Interstate Highway #40; thence following courses and distances with said right of way of Interstate Highway #40; North 58 degrees 15" East 148.13 feet; South 40 degrees 56' East 51.03 feet; South 58 degrees 55' East 48.81 feet to the point of BEGINNING.

Lot No. 3: Cultured Marble Interiors, Inc., Deed Book 446, Page 195, Map No. 1710, Block 20 Lot 682

BEGINNING at a pint in the centerline of the pavement of U.S. Highway 221 and in the line of the property of Ramesh Desai, said point being located North 83 degrees 16 minutes 54 seconds West 12.07 feet from a bolt which serves as the eighth corner of the property of Remesh Desai as recorded in McDowell County Deed Book 395, at page 696, and from the BEGINNING running with the centerline of the pavement of U.S. Highway 221 South, South 04 degrees 02 minutes 25 seconds West with the line of Pauline E. Richie as recorded in McDowell County Deed Book 401 at page 612 for a distance of 770.60 feet to a point; thence continuing South 04 degrees 02 minutes 25 seconds West 77.30 feet to a point which serves as the second corner of the property of Coy Bolick as recorded in McDowell County Deed Book 256 at page 211; then leaving the centerline of U.S. Highway 221 and running North 88 degrees 37 minutes 34 seconds West 50.00feet to a ¾ inch iron pipe set in a deep gully; then continuing North 88 degrees 37 minutes 34 seconds West 43.73 feet to a ¾ inch pipe set in place of the second corner of the Pauline E. Richie property as recorded in McDowell County Deed Book 401 at page 612; then North 00 degrees 53 minutes 43 seconds East 76.41 feet to a point; then continuing North 00 degrees 53 minutes 43 seconds East with the line of Max Harris as recorded in McDowell County Deed Book 166 at page 35 crossing a gravel driveway which connects the Max Harris residence with U. S. Highway 221, and running for a distance of 358.96 feet to a ¾ inch iron pipe set in a persimmon stump, a common corner with the property of Max Harris and the beginning corner of the property of Pauline E. Richie as described in McDowell County Deed Book 401 at page 612, which is the parent tract from which this subject tract is taken; then continuing with the line of Max Harris, North 52 degrees 50 minutes 58 seconds West 373.46 feet to a ¾ inch pipe set; then running North 00 degrees 53 minutes 43 seconds East 198.00 feet to a 20 inch maple which serves as the twelfth corner of the parent tract and the twentieth corner of the property of Ramesh Desai, as recorded in McDowell County Deed Book 395 at page 696; then with the line of Ramesh Desai the following courses and distances: North 46 degrees 09 minutes 06 seconds East 82.50 feet to a ¾ inch iron pipe on the Northern side of an old road bed, South 88 degrees 38 minutes 22 seconds East 22.48 feet to a ¾ inch iron pipe in place of the 19th corner of the Ramesh Desai property, South 67 degrees 49 minutes 07 seconds East with the centerline of the old road bed 91.31 feet to a point, South 18 degrees 30 minutes 40 seconds East 4.00 feet to a ¾ inch iron pipe which serves as the 16th corner of the Ramesh Desai property as recorded in McDowell County Deed Book 395 at page 696 and which also serves as the 9th corner of a separate tract owned by Ramesh Desai recorded in McDowell County Deed Book 395 at page 692; then running with the Ramesi Desai property as recorded in McDowell County Deed Book 395 at page 692, South 83 degrees 16 minutes 54 seconds East 275.90 feet to the BEGINNING, containing 4.79 acres, according to a survey of Suttles Surveying, P.A., dated December 20, 1989 and revised January 9, 1990.

Lot No. 4; Associated Dynamic Investors, Inc., A North Carolina Corporation, Deed Book 477, Page 332, Map No. 1710, Block 30, Lot 2562

BEGINNING on a point in the center line of the pavement of U.S. Highway 221, said point being the Northwest and second corner of the property of Coy Bolick (McDowell Deed Book 256 at Page 211), and from said BEGINNING running with the center line of the property of Cultured Marble Interiors, Inc. (McDowell Deed Book 409 Page 142) North 04 degrees 02 minutes 25 seconds West 847.90 feet to a point in the center line of U.S. Highway 221, said point being in the line of the property of Ramesh Desai (McDowell Deed Book 395 Page 692); then with the Desai line South 83 degrees 16 minutes 54 seconds East 12.07 feet to a bolt on the Eastern edge of the pavement of U.S. Highway 221; then continuing with the Desai line South 83 degrees 16 minutes 54 seconds East approximately 15 feet to a three/fourths inch

iron pipe which serves as the Easternmost corner of said Desai property; then with the Southern line of the 10.62 acre parcel of Ramesh Desai (McDowell Deed Book 395 Page 696) North 87 degrees 53 minutes 43 seconds East 686.40 feet to a three/fourths inch iron pipe in the Western line of the Workman property (McDowell Deed Book 272 Page 436), said iron pipe also being in place of the Southeast corner of the property described in McDowell Deed Book 336 at Page 406 and the Northeast corner of Lot number 4 of the John W. England division of lands (McDowell Deed Book 99 Page 352 and McDowell Deed Book 401 Page 612); then partly with the Western line of the Workman property South 05 degrees 01 minute 12 seconds West approximately 780 feet to an iron pipe in place of the Southeastern corner of lot 4 of the England division of lands; then North approximately 89 degrees West approximately 151.15 feet to an iron pipe which serves as the Northeastern corner of the Bolick property (McDowell Deed Book 256 Page 211); then with the Northern line of the Bolick property North 89 degrees 21 minutes 0 seconds West 535.25 feet to the BEGINNING.

Lot No. 5: Ramesh Desai, Deed Book 396, Page 696, Map No. 1710, Block 31, Lot 2074

BEGINNING on a concrete nail set in the centerline of U.S. Highway 221, said concrete nail being located South 02 degrees 39 minutes 04 seconds West 937.45 feet from N.C.G.S. Mon. "Lemon Tree" bearing grid coordinate of N:702,188.98 and E:1,112,942.62 (NAD-27), and said concrete nail also serving as the second (2nd) corner of the Marion Motel Associates property as recorded in McDowell County Deed Book 352 at page 188 and from said BEGINNING running with the centerline of U.S. Highway 221 South 04 degrees 05 minutes 24 seconds West with the line of Tract Three of the Childers property recorded in McDowell County Deed Book 370 at page 647 for a distance of 49.28 feet to a concrete nail set in the centerline of said highway; then with Tract Three of the Childers property, South 87 degrees 10 minutes 56 seconds East 50.01 feet to a ¾ inch iron pin set on the Eastern margin of the 100-foot right-of-way for U.S. Highway 221; then continuing with the common line of Tract Three of the Childers property, South 87 degrees 10 minutes 56 seconds East 315.18 feet to a ½ inch existing iron pin which serves as the second (2nd) corner of the Harvey property as recorded in McDowell County Deed Book 336 at page 406, the sixth (6th) corner of Tract Three of Childers property and the seventh (7th) corner of Tract Three of the Childers property as recorded in McDowell County Deed Book 370 at page 647; then with the line of Tract One of the Childers property, North 78 degrees 21 minutes 49 seconds East 195.21 feet to a 37 inch chestnut oak which serves as the beginning corner of the Harvey property and the 5th corner of Tract One of the Childers property then continuing North 78 degrees 21 minutes 49 seconds East 2.91 feet to a ½ inch iron pin set in the Western boundary line of the Workman property as recorded in McDowell Deed Book 272 at page 436; then with the line of the Workman property, South 04 degrees 03 minutes 18 seconds West 320.01 feet to a ¾ inch iron pin set which serves as the Southeastern corner of the Harvey property and the Northeastern corner of the England property as recorded in McDowell County Deed Book 99 at page 352; then with the line of the England property, South 87 degrees 53 minutes 43 seconds West 686.40 feet to a 3/4 inch iron pin set which serves as the 14th corner of the Harvey property and the 4th corner of the England property; then North 49 degrees 06 minutes 17 seconds West 20.14 feet to a ¾ inch square iron pin set at the Eastern margin of the 100 foot right-of-way for U. S. Highway 221; then continuing North 49 degrees 06 minutes 17 seconds West crossing U. S. Highway 221, for a distance of 124.89 feet to a ¾ INCH iron pin set in the Western margin of the 100 foot right-of-way for U. S. Highway 221; then continuing with the England property line, North 39 degrees 06 minutes 17 seconds West 91.20 feet to a ½ inch iron pin set in the root of a 14 inch beech which serves as the seventh (17) corner of the England property and the 12th corner of the Harvey property; then continuing with the England line, South 56 degrees 30 minutes 38 seconds West 49.62 feet to a point in the centerline of a small branch; then with the centerline of the small branch and with the line of the England property the following courses and distances: South 39 degrees 45 minutes 51 seconds West 45.07 feet to a point, South 22 degrees 31 minutes 38 seconds West 29.06 feet to a point, South 71 degrees 03 minutes 23 seconds West 36.78 feet to a point, and South 73 degrees 26 minutes 41 seconds West 47.10 feet to a ¾ inch iron pin set in the centerline of the branch and in the center of an old road bed, in place of the 11th corner of the Harvey property and the 8th corner of the England property; then running with the center of the old road bed, North 18 degrees 30 minutes 40 seconds West 4.00 to a point; then continuing with the center of the old road bed, North 67 degrees 49 minutes 07 seconds West 91.31 feet to a point; then leaving the center of the old road bed and running North 88 degrees 28 minutes 32 seconds West 22.48 feet to a ¾ inch iron pin set at the Northwestern edge of the old roadbed and in place of the 10th corner of the Harvey property and the 9th corner of the England property; then crossing the old road bed and running South 46 degrees 09 minutes 06 seconds West 82.50 feet to a 20 inch maple which serves as the 9th corner of the Harvey property, the 10th corner of the England property and the 3rd corner of Tract 1 of the Harris property as described in McDowell County Deed Book 166 at page 35; then running with the line of Tract 1 of the Harris property, North 84 degrees 42

minutes 36 seconds West 319.18 feet to an 1 inch iron pin set in the centerline of the old road bed and in the centerline of the creek, which serves as the 8th corner of the Harvey property, the 4th corner of Tract 1 of the Harris property, the beginning corner of Tract 4 of the Harris property and the 12th corner of the Fortenberry property as recorded in McDowell Deed Book 172 at page 79; then running with the Fortenberry property line and with the center of the creek the following courses and distances: North 21 degrees 28 minutes 43 seconds East 105.65 feet to a point, North 17 degrees 53 minutes 50 seconds West 57.68 feet to a point, North 03 degrees 02 minutes 40 seconds East 35.89 feet to a point, North 26 degrees 06 minutes 07 seconds East 56.31 feet to a point, North 00 degrees 48 minutes 40 seconds East 34.87 feet to a point, and North 11 degrees 41 minutes 00 seconds West 39.27 feet to a ¾ inch iron pin set in place of the 7th corner of the Harvey property and the 6th corner of the Marion Motel Associates property as recorded in McDowell County Deed Book 352 at page 188, then with the line of the Marion Motel Associates property, North 76 degrees 03 minutes 01 second East 363.61 feet to a ¾ inch existing iron pin on the top of a hill, which serves as the 5th corner of the Marion Motel Associates property and the 6th corner of the Harvey property; then continuing with the Marion Motel Associates line, North 87 degrees 43 minutes 01 second East 237.70 feet to a ¾ inch iron pin set in place of the 4th corner of the Marion Motel Associates property; then continuing with the Marion Motel Associates property the following three courses and distances: South 03 degrees 16 minutes 59 seconds East 140.00 feet to a ¾ inch iron pin set, North 86 degrees 13 minutes 01 second East 94.17 feet to a point in the Western margin of the 100 feet right-of-way for U. S. Highway 221, and North 86 degrees 13 minutes 01 second East50.48 feet to the BEGINNING, containing 10.62 acres, more or less, according to a survey of Suttles Surveyors, P.A. dated April, 1989.

Lot No. 6: Donna Rose Boyd, Deed Book 308, Page 296, Map No. 1710, Block 31, Page 2904

BEGINNING on a concrete right-of-way monument, said monument being located at the point of intersection of the Eastern margin of the 100 foot right-of-way of the #221 ramp West entrance to North Carolina Interstate #40, and runs with the margin of U.S. Highway #221, South 4 degrees 28 minutes West 174.72 feet to a two inch concrete filled iron pipe monument; thence South 87 degrees 01 minute East, passing through power pole #70 of the Duke Power Company, 378.26 feet to a two inch concrete filled iron pipe monument, surrounded by marked trees; thence North 3 degrees 42 minutes East 187.29 feet to a two inch concrete filled iron pipe monument, surrounded with marked trees, located in an old fence line and being a point in the England old outside property line; thence North 86 degrees 20 minutes West 360.65 feet to a two inch concrete filled iron pipe monument located in the Southeastern right of way of the #221 West entrance ramp to N. C. Interstate #40; thence with the right of way of said ramp, South 45 degrees 27 minutes West 22.90 feet to a concrete right of way monument and the point or place of BEGINNING, containing 71,313.18 square feet or 1.6371 acres.

Section 2. Upon and after June 30, 2003 , the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

ADOPTED this the 17th day of June 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

PUBLIC HEARING/ADOPTION OF ANNEXATION ORDINANCE – NC 226 SOUTH VOLUNTARY ANNEXATION: Mayor Clark opened the Public Hearing.

The City Manager advised that this voluntary satellite annexation consisted of the old prison, the Marion Minimum Security Unit. The effective date for this annexation will be June 30, 2003.

A discussion followed. There were several persons present for this Public Hearing. Mr. Hubert Mash of NC 226 South inquired about the zoning of the area between the Interstate and the Prison. Mayor Clark advised that the Prison was being annexed as a satellite area and that the property between the Interstate and the Prison was not being annexed.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, June 17, 2003, after due notice by publication on Friday, June 6, 2003; and

WHEREAS, the City Council finds that the area described therein meets the standards of G.S. 160A-58.1(b) to wit:

f. The nearest point on the proposed satellite corporate limits is not more than thee (3) miles from the corporate limits of the City of Marion;

g. No point on the proposed satellite corporate limits is closer to another municipality than to the City of Marion;

h. The area described is so situated that the City of Marion will be able to provide the same services within the proposed satellite corporate limits that is provides within the primary corporate limits;

i. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;

j. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Marion (NOTE: City of Marion exempt from this requirement by General Assembly of North Carolina, Session 2001, House Bill 77, April 26, 2001; and

WHEREAS, the City Council further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City Council further finds that the petition is otherwise valid, and that the pubic health, safety and welfare of the City of Marion and of the area proposed for annexation will be best served by annexing the area described.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described territory is hereby annexed and made part of the City of Marion as of June 30, 2003:

NORTH CAROLINA PRISON DEPARTMENT
North Carolina Highway 26 South

BEGINNING at a point on the eastern boundary line of the McDowell County prison camp property, common corner of the County of McDowell and the North Carolina State Highway Commission, said BEGINNING point being South 35 degrees 00 minutes East 860.5 feet from a concrete marker; runs thence South 55 degrees 00 minutes West 960.14 feet to an iron spike in the center of North Carolina Highway 26 (currently identified as Highway 226 South); thence South 27 degrees 39 minutes East 287.5 feet to an iron spike; thence South 06 degrees 07 minutes East 384.8 feet to an iron spike, said point being South 55 degrees 00 minutes West 25.0 feet from a concrete marker; thence North 55 degrees 00 minutes East 1190 0 feet to a concrete marker; thence North 35 degrees 00 minutes West 624.9 feet to the point of BEGINNING; containing 15 32 acres; more or less; saving and excepting all road right-of-way heretofore acquired by the North Carolina State Highway Commission; all as shown by the attached plat which is made a part hereof.

Section 2. Upon and after June 30, 2003, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 17th day of June 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

PUBLIC HEARING/ADOPTION OF ANNEXATION ORDINANCE – OLD GLENWOOD ROAD VOLUNTARY ANNEXATION: Mayor Clark opened the Public Hearing.

The City Manager advised that this voluntary satellite annexation consisted of the Marion Correctional Institution property. The effective date of the annexation will be June 30, 2003.

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, June 17, 2003, after due notice by publication on Friday, June 6, 2993; and

WHEREAS, the City Council finds that the area described therein meets the standards of G.S. 160A-58.1(b) to wit:

a. The nearest point on the proposed satellite corporate limits is not more than thee (3) miles from the corporate limits of the City of Marion;

b. No point on the proposed satellite corporate limits is closer to another municipality than to the City of Marion;

c. The area described is so situated that the City of Marion will be able to provide the same services within the proposed satellite corporate limits that is provides within the primary corporate limits;

d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;

e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Marion (NOTE: City of Marion exempt from this requirement by General Assembly of North Carolina, Session 2001, House Bill 77, April 26, 2001; and

WHEREAS, the City Council further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City Council further finds that the petition is otherwise valid, and that the pubic health, safety and welfare of the City of Marion and of the area proposed for annexation will be best served by annexing the area described.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described territory is hereby annexed and made part of the City of Manon as of June 30, 2003:

BEGINNING on a planted stone in the old western line, the same being the second corner of tract recorded in Deed Book 420 at page 405, of the McDowell County Deed Registry and runs thence, with said Western line and the line of C. W. Greene (Book 354 at page 142) the following six courses and distances: North 00 degrees 31 minutes 27 seconds E 415.36 feet to an existing iron pin, the third corner of tract recorded in Deed Book 420 at page 405; North 05 degrees 00 minutes 39 seconds East955.65 feet to an existing iron pin; North 05 degrees 00 minutes 39 seconds East 88.99 feet to an existing iron pin set in the Southeast margin of State Road #1794, in the Seaboard Railroad right of way; North 28 degrees 20 minutes 18 seconds East 52.11 feet with said Seaboard Railroad right of way to an iron pin set in said railroad right of way; North 23 degrees 29 minutes 08 seconds East 159.07 feet with said state road and railroad rights of way to an iron pin set; North 18 degrees 17 minutes 22 seconds East 32.67 feet said railroad right of way to an iron pin set; thence with the T. R. Hall line Deed Book 93 at page262), South 83 degrees 35 minutes 12 seconds East 1,585.36 feet to an existing iron pin, the beginning corner of tract recorded in Deed Book 1 at page 293 of said Registry, said corner located, North 10 degrees 43 minutes 40 seconds East 41.30 feet from a double dogwood; thence, crossing the Duke Power Company right of way (Deed Book 180 at page 425), West to East, South 83 degrees 35 minutes 12 seconds East 297.59 feet to an iron pin set in the Northern line of right of way; thence with the Nathan Mason line, North 07 degrees 39 minutes 22 seconds East 726.88 feet passing a nail set in rhodendron at 703.48 feet to a point in the centerline of Youngs Branch; thence with the centerline of said branch the following four courses and distances: South 65 degrees 59 minutes 19 seconds East 128.07 feet to a point; thence South 55 degrees 18 minutes 30 seconds East 124.72 feet to a point; thence South 60 degrees 33 minutes 19 seconds East 122.43 feet to a point; thence South 57 degrees 44 minutes 24 seconds East 71.88 feet to a point; thence leaving said centerline, South 48 degrees 18 minutes 54 seconds West 127.55 feet passing a triple sycamore at 32.55 feet to a point in the centerline of a small branch; thence with small branch centerline and the line of Floyd E. Smith (Deed Book 117 at page 462) the following five courses and distances: South 15 degrees 03 minutes 08 seconds East 63.54 feet to a point; South 37 degrees 47

minutes 44 seconds East 33.57 feet to a point; South 12 degrees 19 minutes 46 seconds East 35.68 feet to a point; South 22 degrees 56 minutes 13 seconds East 91.88 feet to a point; South 17 degrees 29 minutes 50 seconds East 56.59 feet to a point at a pump house; thence, continuing with said Smith tract (Book 117 at page 462 and leaving said creek the following two courses and distances: South 08 degrees 34 minutes 24 seconds East 176.03 feet to a railroad iron; South 87 degrees 52 minutes 04 seconds East 193.80 feet to an iron pin set in the Floyd E. Smith line (Book 167 at page 705) South 07 25 54 West 935.34 feet to a planted stone in a stump hole; thence with said Smith line, South 54 degrees 24 minutes 11 seconds East 261.37 feet to a planted stone reset, the 12th corner of tract recorded in Deed Book 420, at page 405; thence with a new line so as to exclude a 1.41 acre deed lappage with Floyd Smith Deed Book 167 at page 705), South 44 degrees 34 minutes 00 seconds West 934.28 feet to an iron pin set at the base of a 28" pine stump, the 14th corner of tract recorded in Deed Book 420, at page 405; thence with the Patrick Lewis Haney line (Book 348 at page 931), South 62 degrees 24 minutes 29 seconds West 827.82 feet passing a planted stone on line at 530.82 feet to a iron pin set; thence South 07 degrees 24 minutes 29 seconds West 187.38 feet passing an iron pin set on line at 154.35 feet to a point in the centerline of North Muddy Creek; thence with said centerline of said North Muddy Creek the following thirty courses and distances: South 66 degrees 13 minutes 20 seconds West 17.39 feet; South 25 degrees 51 minutes 32 seconds West 34.14 feet; South 26 degrees 13 minutes 58 seconds East 65.17 feet; South 06 degrees 52 minutes 51 seconds East 45.07 feet; South 83 degrees 22 minutes 19 seconds West 45.36 feet; North 52 degrees 51 minutes 25 seconds West 76.94 feet; North 38 degrees 21 minutes 58 seconds West 91.86 feet; North 02 degrees 08 minutes 36 seconds East 44.41 feet; North 17 degrees 50 minutes 20 seconds West 30.21 feet; North 47 degrees 05 minutes 05 seconds West 61.32 feet; North 50 degrees 32 minutes 37 seconds West 108.84 feet; North 40 degrees 42 minutes 35 seconds West 154.90 feet; North 32 degrees 25 minutes 25 seconds West113.85 feet; North 54 degrees 04 minutes 42 seconds West 227.02 feet; North 25 degrees 27 minutes 15 seconds West 68.57 feet; North 21 degrees 07 minutes 58 seconds West 84.37 feet; North 44 degrees 15 minutes 41 seconds West 40.03 feet; North 61 degrees 05 minutes23 seconds West 75.25 feet; North 79 degrees 42 minutes 59 seconds West 37.03 feet; South 58 degrees 22 minutes 58 seconds West 35.83 feet; South 56 degrees 12 minutes 37 seconds West 59.64 feet; South 86 degrees 09 minutes 22 seconds West 41.32 feet; North 69 degrees 43 minutes 48 seconds West 44.68 feet; North 81 degrees 04 minutes 28 seconds West 63.18 feet; North 86 degrees 24 minutes 49 seconds West 117.14 feet; South 84 degrees 14 minutes 25 seconds West 89.51 feet; South 69 degrees 56 minutes 45 seconds West 52.86 feet; North 80 degrees 44 minutes 54 seconds West 33.97 feet; North 49 degrees 10 minutes 42 seconds West 50.88 feet; North 34 degrees 53 minutes 01 seconds West 128.52 feet; thence leaving said centerline of said North Muddy Creek, North 21 degrees 50 seconds 47 seconds East 78.09 feet passing an existing iron pin set on line at 22.15 feet unto the point of the BEGINNING, containing 124.92 acres, more or less, description based on survey revised by R. L. Greene Surveying & Mapping, dated December 5, 1990, License #L-1517.

Section 2. Upon and after June 30, 2003, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 17th day of June 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

PUBLIC HEARING – ZONING OF ANNEXED AREAS; Mayor Clark opened the Public Hearing.

City Planner Suzy Davis provided the Planning Board recommendations for the zoning of the prison property on NC 226 South (M-1), the US 221 South annexation area (C-2), the Sugar Hill Road annexation area (C-2 and R-2) and the NC 226 South annexation area (M-1, R-2 and C-2). The City Manager advised that he had not communicated to the City Planner that the Marion Correctional Institution property was being annexed; therefore, the Planning Board would not have a recommendation on the zoning of this area until July or August. Ms. Davis noted that the Planning Board meeting was well attended and that the Planning Board had received significant input from the public on the zoning of these annexed areas.

A discussion followed. There were several persons present for this Public Hearing. Ms. Becky Wilson, owner of Becky's Second Time Around on NC 226 South requested that her property be zoned C-2 instead of the proposed R-2 classification.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to zone the annexed properties as recommended by the Planning Board, effective June 30, 2003, with the change as requested above by Ms. Becky Wilson. A copy of the map is available at City Hall.

PUBLIC HEARING ZONING AMENDMENT – DOWNTOWN OVERLAY DISTRICT REQUIREMENTS FOR AWNINGS: City Planner Suzy Davis reported that the Planning Board was recommending changes to the provisions of the Downtown Overlay District pertaining to metal awnings. Under the change, metal awnings would be discouraged, but not outright prohibited in the Downtown Overlay District. Instead, advisory design guidelines have been drafted to encourage canvas awnings that will reflect the historical and architectural style of buildings within the Downtown Overlay District.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to approve the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII, Section 901.2 (2) is amended to as follows:

(2) Awnings.

a. Awnings should have a clearing of at least nine (9) feet above ground level and may project over sidewalk if properly anchored.

b. Awnings should fit the store front opening and emphasize building proportions

c. Awnings should not obscure or damage important architectural building details

d. Awnings should align with others on the block

e. Awning should be mounted to align with top edge of transom or fit framing between clerestory and display window

f. Awnings should coordinate with the color scheme of entire building and surrounding structures.

g. Awnings may be of flexible material or fixed, however fabric awnings are preferred.

h. Awnings create a visual interest to the building, provide shade, shelter and add variety to the streetscape.

i Awnings should be positioned to emphasize special shapes or details of the façade, draw attention to an entry, or emphasize a display window.

Section 3. This ordinance shall become effective upon its adoption.
Adopted this the 17th day of June 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-03-06-17-02

REVIEW AUTO REPAIR SHOP ORDINANCE: The City Manager presented Council with suggested language from the City Attorney regarding the Auto Repair Shop Ordinance.

A discussion followed.

No action was taken. The ordinance will be referred to the Planning Board for a recommendation. Council members will give their comments on the ordinance to the staff. The City Manager did advise that he was planning to contract with a private planning firm, Benchmark, Inc., to help review and enforce this ordinance. Council stated no objection to this proposal.

COMMUNITY BUILDING PERMIT OPTIONS: The City Manager presented Council with a letter from the State Division of Health, addressing Community Building permit options. The State's position is that either the City or cooks using the building need to be permitted.

The City Manager advised that he had spoken with Ms. Mary Katherine Walker and that she appears willing to obtain a caterer's license, in order to prepare meals for various clubs utilizing the Community Building. The City Manager requested permission to proceed in this direction, after a meeting was held with the Health Department, Ms. Walker and the City in early July.

No action was taken.

REQUEST – MCDOWELL COUNTY SHCOOLS – WATER LINE EXTENSION – GLENWOOD ELEMENTARY SCHOOL: The City Manager presented Council with a letter from School superintendent Dr. Crawford asking for approval of the Glenwood Elementary School water line. The extension would involve an extension of the current 12 inch water line on U.S. 221 South from the Performance Rail Building to Glenwood Church Road and then to the school.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, Council voted unanimously to approve this request, conditioned on the City Engineer reviewing and approving the construction plans and the School System bearing all costs for the extension.

DISCUSSION – JULY MEETING SCHEDULE: The City Manager presented Council with a copy of an e-mail from Mr. Craig Newton advising that a City Council Meeting will need to be held in late July for the purpose of awarding the contract for the depot construction.

A discussion followed.

It was the consensus of Council to hold the Regular Scheduled July 15, 2003 City Council Meeting and a Special Called Meeting on or around July 31, 2003.

CITY MANAGER'S REPORT: The City Manager gave a brief update of current projects.

COUNICLMAN COMMENTS:

COUNCILMAN CUTHBERTSON advised of junked cars on Baldwin Avenue, adjacent to the railroad tracks. Councilman Little advised that he had specific knowledge that these cars would be removed in the near future.

COUNCILMAN OWENBY suggested that the speed limit on Fleming Avenue be looked at for possible reduction from 35 mile per hour to 25 miles per hour between Dogwood Lane and the City Limits.

COUNCILMAN OWENBY also advised that cars are starting to appear for sale in the Wal-mart parking lot again. The City Manager stated that he would have the Police Department make contact again with the owners of these cars, as was done last year.

The Street Committee will look at the speed limit on Fleming Avenue and bring back a recommendation to Council.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, July 15, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Councilman Little was absent due to being out of the country.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Ralph Turner, Virginia Road, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted approve the consent Agenda as follows:

A. Approval of City Council Minutes - June 17, 2003 Regular Minutes
B. Tax Releases:

Real Property	Personal Property	Late List	Interest	Total
$4,702.32	$3,152.65	$198.91	$11,942.72	$19,996.60

SCHEDULE PUBLIC HEARING – ECONOMIC DEVELOPMENT INCENTIVES – KEY GAS: The City Manager stated that Council had had previously discussed and tentatively endorsed a $20,000 incentive to Key Gas for their location in the Superior Modular Building on Clay Street, given their proposed investment of $2.3 million in machinery and equipment. The County Commissioners have already approved a $30,000 incentive from the County. The County would apply for a $50,000 State incentive, which must be matched locally. The City Manager recommended that the City's $20,000 incentive be paid over two years, after the increased investment in machinery and equipment by Key Gas is officially reflected in the tax value. The City Manager further suggested that Council hold the public hearing on the incentives that is required by State law at the August 5 meeting.

A discussion followed. Mayor Clark suggested that the incentives not be paid until Key Gas actually pays their property taxes. Councilman Cuthbertson stated he agreed with this suggestion, as long as the State incentive request allows the local match to stretch over a two year period. Mayor Clark also suggested changes to the County's draft agreement, including adding a statement that "time is of the essence" in meeting deadlines specified in the agreement.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to set a Public Hearing Date for August 5, 2003 at 7:00 P.M. for the proposed $20,000 incentive package for Key Gas.

DISCUSSION – PROPOSED WATER AND SEWER EXTENSION – ASHWORTH ROAD INDUSTRIAL PARK: The City Manager advised
That the County is requesting approval of the extension of water and sewer to the proposed second industrial park located at Ashworth Road and Interstate 40. He noted that McGill Associates has recently completed a study in which several options for water and sewer extensions were explored. Option A has been recommended for water, to extend water service from the I-40 rest areas to the Ashworth Road site. Option C has been recommended for sewer and involves the placement of a pump station on the new industrial park site (this pump station could serve all of the Ashworth Road/I-40 interchange with gravity sewer, according to the McGill study) and the construction of a force main sewer line to the old industrial park pump station. The City Manager advised that the downside of this alternative is that wastewater from

the Ashworth Road pump station would have to be pumped through the Performance Rail Pump Station as well as the existing Industrial Park pump station, increasing utility costs and typing up capacity at both pump stations. All costs for the extension would be paid for by the County, and annexation of the total 300+ acre site would be required.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council voted to authorize the extension of water and sewer service site to the proposed Ashworth Road Industrial Park, using Option A for water – to be extended from the Rest Areas on I-40 to Ashworth Road Industrial Park site at an estimated cost of $238,160 and Option C for the sewer– which would involve a pump station on the Ashworth Road Industrial Park site and the construction of a force main between the new Ashworth Road pump station and the existing Industrial Park pump station at a cost of $548,600. All expenses for the extension will be paid by McDowell County, and annexation of the entire 300+ acre site currently owned by Mr. Steve Henry will be required prior to the water and sewer service being connected.

APPROVAL – RECOMMENDATION – FLEMING AVENUE SPEED LIMIT: The City Manager advised that the Street Committee met in June and recommended that the speed limit on Fleming Avenue between Dogwood Lane and the City Limits be reduced from 35 to 25. This speed limit change would need to be sent to DOT for approval.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve this request and direct the City Manager to contact the Department of Transportation to ask that this speed limit change be made.

AWARD CONTRACT – CITY HALL ROOF: The City Manager advised that the 2003-04 budget contains funds for a new roof for City Hall. Bids were recently received for a roof replacement.

The bids received were as follows:

Turner Waterproofing Inc.	$23,910.00
Johnson Roofing	$19,683.00

The City Manager further noted that, as requested by Council, Finance Officer Robert Parker had explored a possible metal roof option. Unfortunately, Mr. Wayne Harris, a local metal roof contractor, had looked at the roof and stated that the installation of a metal roof would involve the reconstruction of the building and astronomical costs.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to accept the low bid of $19,683.00 from Johnson Roofing.

A Copy of the Contract and warranty can be found on file in the legal documents at City Hall.

SCHEDULE SPECIAL MEETING – DEPOT CONTRACT: The City Manager advised that a special meeting is needed to award the contact for the depot renovation.

It was the consensus of Council to schedule this meeting for July 31, 2003 at a time between 11:45 A.M. and 1:15 P.M. at City Hall. The City Manager will contact Council and determine the exact time for the meeting.

DISCUSSION – MARION FIRE DEPARTMENT - SIX MILE RADIUS: A discussion was held regarding the resent news coverage of development of the Black Bear Area on the

north side of Lake James and the need for fire protection. The City Manager advised that he and the Fire Chief had recently met with County Emergency Services Director Carroll Hemphill, the Nebo Fire Department and representatives from Crescent Resources to discuss this development. The City Manager stated he was concerned about this development being 12 to 13 miles from the City Fire Station, outside of the City's Fire District, but in an area where the City would be expected to serve, since no other volunteer fire departments are closer. The City Manager stated he and the Fire Chief had indicated to Crescent that the City could not serve the proposed 55 lot, multi-million dollar development for free. Therefore, several options were discussed, ranging from the formation of a new fire department, the City placing a substation and second fire district in the area, to a temporary contract between Crescent and the City until a new fire department is formed.

The Mayor and Council agreed it would neither be practical nor advisable for the City to operate a substation eight to ten or more miles outside the City Limits. The City Manager suggested that Crescent be asked to make a presentation on the development to Council, so that a determination could be made on which option should be selected. Mayor Clark noted that the City Fire Department had traditionally responded to calls up to the North Fork bridge on Yancey Road. The area outside the Fire District had not been issue up to now, since development in the area was so sparse.

Councilman Martin stated that the values in the proposed developments should be able to support a new Fire Department. He expressed concern about the impact of the development on fire response within the City.

The City Manager further reported that State law now allows a six mile, instead of a five mile, fire district. He suggested that Council may wish going to a six mile district, to gain additional taxable area in the Hankins Road/Cannon Road/Yancey Road area.

By consensus, Council agreed to authorize the City Manager to bring back information on the possibility of a six mile district, and to contact Crescent Resources to request a presentation on the proposed Black Bear development.

DISCUSSION – CITY PARKING LOT LEASE – CROOKED DOOR COFFEE SHOP:

The City Manager advised that Mr. Mike Ornberg, owner of the Crooked Door Coffee, is requesting that he be allowed to lease the City's Parking Lot located at the Gazebo on Main Street on Friday Nights starting next spring. Mr. Ornberg proposes to have various music groups come in and play acoustic music. The expected crowds would exceed the limits of the Coffee Shop. Mr. Ornberg would open the event to the public at no charge, but would make money by selling beverages. Mr. Ornberg would move the event indoors in case of inclement weather or a visitation at Kirksey Funeral Home.

A discussion followed.

Councilman Edwards stated he had spoken with Mr. Ornberg about the idea and that he would support the request on a trail basis, suggesting that the City Manager and Mr. Ornberg work out lease details. Council members did suggest the need to develop rules for the use of parking lots, so that undesirable activities would not be allowed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council presented voted to lease the parking lot to Mr. Ornberg on a trial basis contingent upon the City Manager and Mr. Ornberg working out lease details and rules and regulations for the use of the parking lot.

CITY MANAGER'S REPORT: The City Manager gave a brief update of current projects.

The City Manager reported that the Police Department had received approval of a grant from the Governor's Highway Safety Program that would provide 75 percent funding for a fully equipped patrol car. The City Manager advised that the City had only expected 50 percent

funding of the car, but the Police Chief was able to obtain the 75 percent grant from the State. In order to qualify for the grant, the Police Department will need to designate a second traffic officer position, which would be an existing position and not involve the hiring of any new personnel. The City Manager noted that he and the Police Chief had reviewed and fully discussed the grant and the traffic officer designation and had come to the conclusion that there should be no drop in response time or service ability. The broad definition of traffic allowed by the grant should allow the position to focus on many areas, including traffic patrol and enforcement, parades, funeral escorts and complaints and problems on any street in the City, which should actually enhance patrol of streets throughout the City during daylight hours. The position would provide backup to other officers if necessary but would not answer calls on a regular basis. The City Manager noted that in no way was the intent of the grant to have an officer exclusively writing tickets throughout their shift. The Police Chief provided an overview of the grant and the traffic officer position.

The City Manager advised that full funding for the patrol car and the traffic safety officer position was included in the adopted.
2003-04 budget.

By consensus, City Council agreed to accept the grant, to authorize the resolution and grant documents to be executed and to provide the local match for the patrol car and the funding for the redesignation of an existing police officer position to serve as a traffic safety officer.

COUNICLMAN COMMENTS:

Councilman Martin advised that the Street Committee needs to look at several streets in the West Marion area that have drainage and curb problems.

Mayor Clark advised that he recently attended the National League of Cities Conference in South Dakota. He advised that Honorable Mayor Brenda Barger of Watertown, South Dakota is running for 2nd Vice President of the National League of Cities.

Councilman Owenby suggested that City Officials send a letter endorsing Mayor Barger.
A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to send a letter to the National League of Cities endorsing Mayor Barger for 2nd Vice President of the National League of Cities.

Mayor Clark also advised that he enjoyed participating in the Hudgins- Mountain View School reunion the weekend of July 4th. Councilman Martin reported that about 300 people attended and had a wonderful time. He commended the City for preparing the West Marion Park for the event and noted that everyone had nice things to say about Marion.

Mayor Clark invited Council to upcoming events, including a Western North Carolina swim meet at the YMCA on Saturday, July 19 and National Night Out at the County Recreation Department on Tuesday, July 29, from 6:00 p.m. to 8:00 p.m.

Councilman Cuthbertson advised that the Department of Transportation had begun work on the shoulder improvements on Tate Street.

Councilman Owenby discussed the flushing of the City water system the week of July 21 and procedures for washing streets.

Councilman Owenby also commended Officer Eric Lipe for his quick response to a call involving a motorist who had blacked out. The quick response may well have saved the man's life.

CLOSED SESSION: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(4) to discuss the location of industry or other business.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to go back into Regular Session.

Mayor Clark announced that no action was taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Special Session on Thursday afternoon, July 31, 2003 at 1:00 P.M. in the City Council Chambers located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Mayor Clark was absent from this meeting due to being out of town.

Councilman Edwards was not present for this meeting due to being in court.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Van McKinney, News Reporter, WBRM.

GUESTS PRESENT: No Guests

MARION DEPOT RENOVATION BIDS: The City Manager presented Council with a with a report from Mr. David Black, AIA; regarding bids received on Tuesday July 29, 2003 for the renovation of the Marion Depot as follows:

Beam Construction Company, Inc.	$1,217,700.00
Jerry Payne Construction Company	$1,167,000.00
Progressive Contracting Company, Inc.	$1,147,774.00
Wilkie Construction Company, Inc.	$1,328,195.00

The project architect recommended the award of the contract, including bid alternates, to Progressive Contracting Company in the amount of $1,147,774.00, due to their demonstrated experience with historic preservation projects.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Resolution accepting the low bid of Progressive Contracting Company in the amount of $1,147,774.00.

CITY OF MARION, NC
RESOLUTION
MARION TRAIN STATION
RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF MARION A CONTRACT AND ANY CHANGE ORDERS WITHIN THE BUDGETED AMOUNT FOR THE PROJECT KNOWN AS MARION TRAIN STATION RENOVATION.

WHEREAS, the City of Marion has entered into a Municipal Agreement with the North Carolina Department of Transportation to renovate the historic Marion Train Station; and

WHEREAS, sealed bids were received and opened on Tuesday, July 29, 2003 at 3:00 P.M. for Marion Train Station Renovation;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION THAT:

The Mayor of the City of Marion is hereby authorized to execute on behalf of the City of Marion a contract with Progressive Contracting Company, Inc. in the amount of $1,147,774.00

and any change orders within the budged amount for the Marion Train Station Renovation and Concurrence in Award provided the award of contract is approved by the North Carolina Department of Transportation.

Read, approved and adopted this 31st day of July, 2003.

Steve Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager/Clerk

R-03-07-31-1
The City Manager also reported on plans for the depot groundbreaking, to be held on Friday, August 15, at 11:15 a.m.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adjourn this meeting.

Steve Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 5, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Sgt. Tommy Lytle, Marion Police Department.

GUESTS PRESENT: Earl Daniels, Garden Street, Marion, NC 28752; Kurt Wright, Golden Valley, NC.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to approve the consent Agenda as follows, (excluding the Personnel Policy Amendment):

A. Approval of City Council Minutes - July 15, 2003 Regular Minutes
B. Approve Personnel Policy Amendment – (This Item removed from consent Agenda for further discussion).
C. Budget Amendments – Depot Project:

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(First Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. **General Fund Expenditures, Non Departmental, Account Number 10-660-9950, Special Projects, is decreased from $175,000 to $50,000.**

b. **General Fund Expenditures, Recreation, Account Number 10-620-8000, Transfer to General Capital Projects Fund, is increased from $0 to $125,000.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 5th day of August, 2003.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-08-05-1

CITY OF MARION, NORTH CAROLINA
GENERAL CAPITAL PROJECTS FUND ORDINANCE – DEPOT RENOVATION PROJECT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows to include the expenditures associated with General Capital Projects by adopting the following General Capital Projects Fund Ordinance:

GENERAL CAPITAL PROJECTS FUND

a. General Capital Projects Fund Expenditures. Depot Renovation, Account Number 11-171-0800, is increased from $0 to $1,250,000.

b. General Capital Projects Fund Revenues, N.C. Department of Transportation Reimbursement, Account Number 11-376-0000, is increased from $0 to $1,125,000.

c. General Capital Projects Fund Revenues, Transfer from General Fund, Account Number 11-380-0000, is increased from $0 to $125,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 5th day of August, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-08-05-2

DISCUSSION/APPROVAL PERSONNEL POLICY AMENDMENT: Councilman Cuthbertson asked that this policy be removed from the Consent Agenda so that it could be discussed.

A discussion was held regarding the personnel policy amendment regarding Smallpox Vaccinations. The City Manager advised that the General Assembly passed a bill this past session which required local governments employing public safety officials to adopt a policy allowing such employees to receive paid time off that is not charged against their sick leave if they take a smallpox vaccination pursuant to the Federal Homeland Security Act and they suffer an adverse reaction that requires them to be out of work.

The proposed Personnel policy Amendment drafted for Council is using the same guidelines as the State's policy.

Councilman Cuthbertson was concerned about how part time employees might be categorized under this type of leave. The City Manager indicated that he believed that all police and fire employees, whether full or part time, would be covered, but that he could get a further ruling on this issue.

A discussion followed.

It was the consensus of Council to adopt the policy as presented, and to make further amendments in the future if necessary.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the following Personnel Policy Amendment:

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows.

Section 1. That Article VII, Leaves of Absences, is amended by adding Section 16, Leave for Employees With Adverse Reactions to Smallpox Vaccinations, as follows:

Section 16. Leave for Employees with Adverse Reactions to Smallpox Vaccinations

An employee is entitled to continuation of salary and to leave in addition to the sick leave otherwise available under the following circumstances:

The absence from work is due to an adverse reaction resulting from the employee receiving in employment vaccination against smallpox pursuant to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act. The provisions of this section shall apply for a maximum of 480 employment hours. An employee qualifying for this leave shall be required to provide their department head with certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this section.

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 5th day of August, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

PUBLIC APPEARANCE – KURT WRIGHT – ENGINEERING SERVICES: Mr. Kurt Wright appeared before Council expressing his availability to work for the City of Marion as a Consulting Engineer. He gave a brief report of his credentials.

No action was taken on this matter.

APPROVAL – ANNUAL TAX SETTLEMENT/ORDER OF COLLECTION OF TAXES: Ms. Claudia Severson, Tax Collector appeared before Council presenting the tax settlement for 2002 taxes. Her report included the following information:

July 1, 2002 - June 30, 2003

CHARGES		CREDITS	
Real Property	$ 934,654.73	Tax Revenue	$ 1,263,075.98
Less Exemption	(25,090.67)	Less 1% Discount	(3,391.57)
Personal Prop.	376,216.64	Less Refunds	(00.00)
Utilities	61,378.66	Late Listing	3,792.19
Discoveries	10,085.89	Interest & Penalties	2,750.86
Total Tax	**$ 1,357,245.25**	**Total Revenue**	**$ 1,266,227.46**
Late Listing	4,873.29	**ADJUSTMENTS**	
Interest & Penalties	2,781.71	1% Discount	3,391.57
TOTAL	**$ 1,364,900.25**	Tax Releases	1,654.67
		Tax Refunds	00.00
		Uncollected Late List	1,017.86
		Uncollected - Real	74,598.84
		Uncollected - Personal	18,009.85
		TOTAL	**$1,364,900.25**

Listed below is the unpaid Taxes as of July 31, 2003:

YEAR	REAL ESTATE	PERSONAL	MUNICIPAL	LATE LIST	PENALT & INT	TOTAL
1992	5,297.05	10,417.84	12.92	433.18	15,518 78	31,679.77
1993	4,928.09	1,604 49	12.92	23 38	5,852.22	12,451.10
1994	5,693.91	1,600 02	115.55	61.77	5,994.32	13,465 57

1995	11,916.33	1,885.29	32.87	73.68	9,467 48	23,375 65
1996	10,315.08	4,251.25	32.87	231.89	8,777.87	23,608.96
1997	13,915.75	2,701 21	32 87	141.00	8,677.41	25,468.24
1998	15,147.95	2,648.05	0 00	128.65	7,773.16	25,697 81
1999	38,742.56	21,624 58	0 00	390.09	20,182.68	80,939.91
2000	30,818.23	11,478.65	0 00	975.62	10,966.25	54,238.75
2001	32,064.39	13,485.26	0 00	242.70	7,390.57	53,182 92
2002	61,904.80	17,205 16	0.00	1,017.86	5,361.58	85,489.40
TOTAL	**230,744.14**	**88,931.80**	**240.00**	**3,719.82**	**105,962.32**	**429,598.08**

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the tax settlement as presented and to approve the following order of collection to authorize 2003 tax bills to be mailed:

ORDER OF COLLECTION OF TAXES

STATE OF NORTH CAROLINA
CITY OF MARION

To the Tax Collector of the City of Marion:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records for the year 2003 filed in the office of the Tax Collector and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the City of Marion, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand, and official seal, this 5th day of August, 2003

(Seal)
A. Everette Clark
Mayor, City of Marion

ATTEST:
J. Robert Boyette
City Manager/Clerk
Of the City of Marion

The City Manager outlined efforts being made to collect delinquent taxes. It was the consensus of the Mayor and Council to direct a more aggressive approach to collecting back taxes. The idea of a policy to guide tax foreclosures was discussed, to include delinquent taxes above a certain amount. A minimum threshold of $1,000 to $1,500 was discussed. The City Manager will obtain advice from the City Attorney regarding a recommended minimum threshold for tax foreclosures, based on anticipated legal expenses for such actions.

DESIGNATE FIRE LANE – NEW DEVELOPMENT – US 70 WEST: The City Manager presented Council with a letter from Jemsite Development, LLC, which is planning to build a new large retail store on Highway 70 West next to Peeble's, requesting that the Police

Department be authorized to enforce fire lanes and tow away zones designated on the site for the access and operation of fire equipment. The City Manager noted that the proposed building would be in excess of 100,000 square feet, but that no definite confirmation of the business to go into the new development had been made.

The City Manager advised that the only other officially designated fire lane in the City is in front of the Wal-Mart Shopping Center.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve this request. The zoned areas will be marked and signed as necessary.

AMENDMENT – FEE SCHEDULE ORDINANCE – TEMPORARY SIGN PERMITS:
The City Manager presented a recommended new fee schedule ordinance for the Planning and Inspections Department, which would waive the charges for temporary sign permits for non-profit organizations with offices or locations within the City. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson Council voted unanimously to adopt the following Ordinance which includes the amended temporary sign permit fees:

AN ORDINANCE ESTABLISHING FEES FOR THE PLANNING AND INSPECTIONS DEPARTMENT

BE IT ORDIAINED by the City Council of the City of Marion, North Carolina as follows:

SECTION 1. CERTIFICATE OF OCCUPANCY/ COMPLIANCE. The City of Marion shall charge a fifty dollars ($50.00) fee for a certificate of occupancy/ compliance (C.O.) for a change of use for a building, land, or structure in the City of Marion. This fee includes Zoning and Building Code review as well as an initial and final inspection. If a building permit is required, the fee for the certificate of occupancy can be credited to the building permit.

SECTION 2. SIGN PERMITS. This section shall apply to advertising signs and billboards. The size and location of signs shall be in accordance with City Ordinances.

On Premise Signs. The permit fee for an on-premise sign that is twenty-four (24) square feet or less that requires a footing and/or electrical inspection shall be fifty dollars ($50.00) plus $.50 for each additional square foot over 24 square feet. The permit fee for an on-premise sign that is twenty-four (24) square feet or less that does not require a footing and/or electrical inspection shall be twenty-five dollars ($25.00) plus S.50 for each additional square foot over 24 square feet. The fee for a temporary (2 weeks) spectacular sign permit or a directional sign permit shall be fifteen dollars ($15.00). No fee shall be charged for a temporary (2 weeks) spectacular sign permit or a directional sign permit for non-profit organizations with offices or locations within the City Limits.

Off premise Signs. The initial fee for an off-premise sign permit shall be seventy-five ($75.00) plus $1.00 for each additional square foot over one hundred square feet.. The fee includes footing and/ or an electrical inspection. An annual fee will be charged for all off-premise advertising sign. The annual off-premise sign fee will be as follows:

0-100 square feet	$20.00
101-200 square feet	$35.00
201-300 square feet	$50.00

SECTION 3. FEES FOR AMENDMENTS, VARIANCES, APPEALS AND SPECIAL EXCEPTIONS. A fee of seventy-five dollars ($75.00) will be charged for each application for an amendment, variance, appeal or special exception to the Marion Zoning Ordinance or Zoning Map.

SECTION 4. CELL TOWERS. A cell tower permit application fee shall be two thousand five hundred dollars ($2,500.00.)

SECTION 5. SUBDIVISION REVIEW. The fee for subdivision plat review is $20.00 per lot with a maximum fee of $500.00.

SECTION 6. GIS MAPS. The following fees shall be paid for the production of a city map;

	Black and White	Color	Aerial
8.5" x 11"		$2.00	$4.00
11" x 17"	$4.00	$6.00	$8.00
17" x 22"	$6.00	$8.00	$10.00
22" x 34"	$8.00	$10.00	$12.00
34" x 44"	$10.00	$12.00	$14.00

SECTION 7. COPIES OF ORDINANCES. A copy of the zoning ordinance shall be $5.00. A copy of the sign ordinance shall be $2.00. A copy of the Subdivision Ordinance shall be $2.00.

SECTION 8. BUILDING PERMITS. Building permit fees for all new buildings and additions to existing buildings constructed in the City of Marion will be based on the total number of square feet in the building or addition by using the Permit Chart below. There will be a minimum fee of $50.00 per trade. Dwelling units in a multi-family structure are calculated individually. Building Permit Fee includes plan review for zoning compliance.

Chart Instructions:

A = Total Gross Building Area
B = Fee Per Square Foot
A x B = Fee

Homeowners Recovery Fund. The City shall charge all licensed general contractors a $5.00 fee for the construction and/or alteration of a single family residential dwelling unit, including townhouses and condominiums. The fee will be collected for each dwelling unit and will be in addition to the City's regular building permit. The City will forward $4.00 of each fee collected to the North Carolina Licensing Board for General Contractors. (G.S. 87-15.6)

SECTION 9. RENOVATION TO EXISTING BUILDINGS. Renovation and/ or alteration permits will be required for closing in porches or carports, installing or removing structural supports. The fee will be $1.00 per $1,000.00 of estimated costs. The minimum permit fee will be $50.00. Electrical, plumbing, and mechanical will be based on Permit Chart with a Minimum fee per trade of $50.00.

SECTION 10. ELECTRICAL INSPECTIONS. Fees for electrical inspections shall be determined by the Permit Chart.

SECTION 11. PLUMBING INSPECTIONS. Fees for plumbing inspections shall be determined by the Permit Chart.

SECTION 12. MECHANICAL INSPECTIONS. Fees for mechanical inspections shall be determined by the Permit Chart.

SECTION 13. MANUFACTURED HOMES. The permit fee for a manufactured home shall be seventy-five ($75.00.) The mobile home permit will include all trades. Modular home fees shall not be considered a manufactured home.

SECTION 14. MISCELLANEOUS INSPECTIONS. Fees for miscellaneous inspections will be as follows:

TYPE OF INSPECTION	FEE
Fuel Storage Tanks	$50.00
Swimming Pools	$50.00
Insulation	$50.00
Demolition	$50.00
Other Required Inspection	$50.00
Return Inspection	$50.00

PERMIT CHART

SIZE	BUILDING	ELECTRIC	PLUMBING	HEATING	A/C	INSULATION	TOTAL
Assembly							
0-10,000sf	0.068	0.0368	0.0312	0.0056	0.0056	0.0104	0.1576

10,001-50,000sf	0.06	0.0264	0.00208	0.004	0.004	0.0072	0.10368
Above 50,000sf	0.052	0.0208	0.016	0.0032	0.0032	0.00104	0.09624
Business							
0-10,000sf	0.06	0.0368	0.0264	0.0208	0.0208	0.0104	0.1752
10,001-50,000sf	0.0544	0.032	0.0232	0.0176	0.0176	0.0056	0.1504
Above 50,000sf	0.0488	0.024	0.0176	0.0056	0.0056	0.0032	0.1048
Educational							
0-10,000sf	0.068	0.0312	0.0312	0.0056	0.0056	0.0104	0.152
10,001-50,000sf	0.052	0.0208	0.0208	0.0036	0.0036	0.0072	0.108
Above 50,000sf	0.0472	0.0184	0.0184	0.0032	0.0032	0.0056	0.096
Factory/Industrial							
0-10,000sf	0.0312	0.016	0.0104	0.0056	0.0056	0.0056	0.0744
10,001-50,000sf	0.0208	0.0104	0.0056	0.0032	0.0032	0.0032	0.0464
Above 50,000sf	0.02	0.008	0.0032	0.0024	0.0024	0.00104	0.03704
Hazardous							
0-5,000sf	0.0312	0.008	0.008	0.008	0.008	0.0104	0.0736
5,001 &: Above	0.0236	0.0064	0.0064	0.0064	0.0064	0.008	0.0572
Institution							
0-10,000sf	0.104	0.0576	0.0576	0.0312	0.0312	0.0104	0.292
10,001-50,000sf	0.0728	0.0312	0.0344	0.0208	0.0208	0.004	0.184
Above 50,000sf	0.052	0.0208	0.0208	0.016	0.016	0.0032	0.1288
Mercantile							
0-10,000sf	0.0448	0.0208	0.0208	0.016	0.016	0.0104	0.1288
10,001-50,000sf	0.0416	0.0184	0.0136	0.0104	0.0104	0.0072	0.1016
Above 50,000sf	0.0312	0.0128	0.0056	0.0072	0.0072	0.0032	0.0672
Storage							
0-10,000sf	0.0312	0.0072	0.0072	0.0072	0.0072	0.004	0.064
10,001-50,000sf	0.02704	0.0056	0.0056	0.0016	0.004	0.004	0.04784
Above 50,000sf	0.0208	0.004	0.004	0.0032	0.00104	0.0016	0.03464
Residential							
	0.0624	0.0312	0.0312	0.02	0.02	0.008	0.1728

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 5th day of August 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-03-08-05-3

Council members did ask that the Planning Board review procedures for allowing temporary signs, to make sure that recently phased out signs are not permitted even on a temporary basis, since such allowance could send mixed signals to the public.

ADMENTMENT TO FORTH BUDGET AMENDMENT FOR CLARIFICATION: The City Manager advised that City Auditors had discovered that the 2002-03 budget amendment number four was not recorded in the minutes in a way that it was intended. It decreased revenues by $236,000 and decreased expenditures by $256,000, making the budget amendment out of balance. The City Manager stated that the intent of the budget amendment was to

eliminate from the 2002-03 budget all revenues from other units of government that were not to be received, due to budget cuts. The adopted budget amendment included elimination of inventory tax ($186,000), intangibles tax ($35,000) and food stamp and other miscellaneous revenues ($12,000), but failed to list the elimination of the County recycling contribution, making the budget amendment out of balance by $20,000.

A correct version of the fourth budget amendment was presented to Council.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to readopt the following budget ordinance and to clarify that the intent of Council in adopting 2002-03 budget amendment number four was to eliminate all revenues from other units of government that were not to be received, due to budget cuts, including the County recycling contribution of $20,000, that was inadvertently left out of budget amendment number four:

CITY OF MARION, NORTH CAROLINA
2002-2003 BUDGET ORDINANCE
(Fourth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2002-03 as adopted by the Marion City Council on the 18th day of June, 2002 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Inventory Tax, Account Number 10-310-0000, is decreased from $186,000 to $0.

b. General Fund Revenues, Miscellaneous Revenues, Account Number 10-335-0000, is decreased from $22,463 to $10,463.

c. General Fund Revenues, Intangibles Tax, Account Number 10-339-0000, is decreased from $35,000 to $0.

d. General Fund Revenues, County Contribution – Recycling, Account Number 10-354-0000, is decreased from $20,000 to $0.

e. General Fund Revenues, Sales Tax, Account Number 10-345-0000, is increased from $770,709 to $868,709.

f. General Fund Revenues, Seizures, Account Number 10-398-0600, is increased from $0 to $3,000.

g. General Fund Expenditures, Non Departmental, Account Number, 10-660-9950, Special Projects, is decreased from $212,476 to $57,476.

h. General Fund Expenditures, Police Department, Account Number 10-510-74, is increased from $135,646 to $138,646.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 7th day of January, 2003.
Readopted with technical correction this the 7th day of August, 2003.

Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-01-07-1

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects.

The City Manager reported that a Public Hearing for Key Gas is scheduled for the August 19, 2003 City Council Meeting.

The City Manager advised that four hanging baskets have been placed at the intersection of North Main Street and Court Street and that only about one-half of the money donated by Frank Boldon for the baskets has been spent. Council agreed that four more baskets should be placed at a second intersection and that Lawrence Moore should be contacted about watering and maintaining these eight planters, to alleviate time demands on City staff.

The City Manager reported that the second downtown concert held this past Friday night went well, except for Main Street being shut down too early, prior to 5:00 p.m. instead of the prescribed time of 6:00 p.m., causing problems for motorists and businesses. The City Manager reported that he had advised the Street Superintendent and Police Chief that downtown streets were never to be shut down on a non-holiday weekday prior to 6:00 p.m., without specific approval or except in the event of an emergency.

COUNCILMAN COMMENTS:

Councilman Cuthbertson advised that Mr. Joe Frisbee of Broad Street had contacted him about a sudsy substance in the creek behind his house. The City Manager advised that he would contact the Public Works Department regarding the creek. Councilman Cuthbertson also advised that barrels had been placed on the edge of Tate Street where the Department of Transportation has been widening the road edge and placing guardrail. These areas are not holding, which is callusing a power pole to lean. Duke Power will be contacted about this pole.

Councilman Owenby advised that he had been contacted by a member of the American Legion requesting that with Council's approval, their organization would like to have a member present at each City Council Meeting to lead the Pledge of Allegiance. A brief discussion followed. This request will be discussed further at a later date.

Councilman Martin advised of a drainage problem on Rutherford Road that he would like the Street Committee to examine. The Street Committee agreed to meet on Friday, August 8 to look at Rutherford Road and the DOT work on Tate Street.

Councilman Edwards advised that several young people had been in his office recently pedaling junk. Sgt. Tommy Lytle of the Police Department noted this and will check with the day shift about requiring proper permits and or licenses for these individuals.

Mayor Clark thanked Mayor Pro Tem Steve Little for filling in for him at the National Night Out on July 29 and the July 31 Special Called City Council Meeting.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 19, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner.

GUESTS PRESENT: Earl Daniels, Garden Street, Marion, NC 28752; A.D. Potcat, PO Box 643, Marion, NC 28752; Troy Lucas, 400 S. Tryon Street, Charlotte, NC 28201; Sarah Buchanan 277 Forest Road, Marion, NC 28752; James Norton, 325 Berryhill Farm Drive, Nebo NC 28761; Gary Berryhill, 326 Berryhill Farm Drive, Nebo, NC 28761; Dr. Suzanne Sewell, 522 Starr Crest Drive, Nebo, NC 28761; Ronnie Burgin, Wildlife Road, Nebo, NC 28761.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - July 15, 2003 Closed Session Minutes, July 31, 2003 and August 5, 2003 Minutes

B. Approve Personnel Policy Amendment –

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article VII, Leaves of Absences, is amended by deleting Section 16, Leave for Employees With Adverse Reactions to Smallpox Vaccinations, in its entirety and replacing it with the following:

Section 16 Leave for Employees with Adverse Reactions to Smallpox Vaccinations

A regular/full-time employee is entitled to continuation of salary and to leave in addition to the sick leave otherwise available under the following circumstances:

The absence from work is due to an adverse reaction resulting from the employee receiving in employment vaccination against smallpox pursuant to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act. The provisions of this section shall not exceed the maximum amount allowed for such leave by the State of North Carolina. An employee qualifying for this leave shall be required to provide their department head with certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this section.

Situations involving part-time employees who have an adverse reaction resulting from the employee receiving in employment vaccination against smallpox pursuant to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act will be treated as Worker's Compensation claims.

This amendment shall become effective upon its adoption.

Adopted this the 19th day of August, 2003

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

C. Budget Amendment – Citizen Corps Grant:

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(Second Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-362-0100, Citizen Corps Grant, is increased from $0 to $2,500.

b. General Fund Expenditures, Police, Account Number 10-510-4300, Citizen Programs, is increased from $0 to $2,500.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 19th day of August, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-08-19-1

D. Resolution Declaring Handheld Water Meter Readers Surplus

Resolution Declaring Certain Items of Personal Property Owned by the City of Marion as Surplus and Authorizing Their Sale

WHEREAS, N.C.G.S. 160A-266(b) authorizes cities to dispose of personal property valued at less than $30,000 by private negotiation and sale; and

WHEREAS, N.C.G.S. 160A-267 requires that when a City Council proposes to dispose of property by private sale, it adopt a resolution at a regular Council meeting authorizing an appropriate City official to dispose of the property by private sale at a negotiated price; and

WHEREAS, the City of Marion owns four Polycorders (handheld water meter readers) that will no longer be needed by the City with the purchase of a new radio read meter system; and

WHEREAS, the City should be able to sell these items to other interested units of governments or persons.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the following items of personal property owned by the City to be surplus and authorizes the City Manager to dispose of said property by private sale, with the designated minimum price for each item:

Brand	Model	Quantity	Minimum Price
Polycorders	PC600-12801	4	$500

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (10) days after its publication.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 19th day of August, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-03-08-19-1

E. Resolution – Directing Clerk to Investigate Petition for Voluntary Annexation/Adopt Resolution Setting Public Hearing Date for Annexation – Great Meadows – US 70 West:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, August 19, 2003, by the Marion City Council, and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation,

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

The City Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the City Council the result of his investigation.

ADOPTED this the 19th day of August 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at City Hall at 7:00 P.M. on Tuesday, September 2, 2003.

Section 2. The area proposed for annexation is described as follows:

BEGINNING on an etched "X" set in concrete in the western edge of the entrance drive into the Wal-Mart shopping center, said point also being located two courses and distances from GPS Station "Curb", a North Carolina Department of Transportation Disc in concrete; said bearings are South 60 deg. 43 min. 59 sec. 49.81 feet and North 87 deg; 11 min. 04 sec. West 36.72 feet from said mark; GPS Station "Curb" having X coordinate of 334,597.815 meters and Y coordinate of 220,845.507 meters, elevation 374.535 meters, combined scale factor 0.99984992 North American Datumn 83 and runs thence with the northern right-of-way line of U.S. Highway 70 the following three courses and distances: South 60 deg. 43 min. 59 sec. West 10.66 feet to an existing right-of-way monument; thence continuing said right-of-way South 21 deg. 42 min. 06 sec. 29.77 feet to an existing right-of-way monument; thence continuing with the northern right-of-way of U.S. Highway 70 South 60 deg. 53 min. 59 sec. West 702.08 feet to a concrete monument set, said concrete monument being located in the northern right-of-way of U.S. Highway 70; thence leaving said right-of-way a new line through the Great Meadows, Inc. property as recorded in Deed Book

184, Page 355 North 29 deg. 08 min. 01 sec. West 830.84 feet to a concrete monument set, a new corner in the Great Meadows, Inc. property; thence continuing another new line North 60 deg. 53 min. 59 sec. East 736.01 feet to a concrete monument, a new corner, thence continuing with the new line through the Great Meadows, Inc. property South 29 deg. 05 min. 09 sec. East 51.00 feet to a ½" iron pipe set, iron pipe being located at the northern margin of a concrete curb around a paved circle leading into the Wal-Mart Shopping Center; also said corner being a western corner of the Wal-Mart Shopping Center; thence with a curve to the left having a length of 78.54 feet, a radius of 50.00 feet, a chord bearing of South 20 deg. 57 min. 22 sec. East, a chord distance of 70.71 feet to a point of reverse curve; thence a curve to the right a length of 32.18 feet, a radius of 50.00 feet, a chord bearing of South 47 deg. 31 min. 22 sec. East 31.63 feet to a ½" iron pipe set at end of curvature; thence with the Wal-Mart western boundary line South 29 deg. 05 min. 09 sec. East a distance of 660.99 feet to the point of BEGINNING, containing 14.00 acres as shown on a plat prepared by Sutlles Surveying, P.A. dated July 30, 2003, entitled *"Survey for JEMSITE DEVELOPMENT, L.L.C., and being located in Marion Township, McDowell County, North Carolina, Project Number 12987-R1, and being a portion of the Great Meadows, Inc. property as recorded in Deed Book 184, Page 355".*

Section 3. Notice of the Public Hearing shall be published in The McDowell News, a newspaper having general circulation in the City of Marion, at least ten (10) days prior to the date of the public hearing.

ADOPTED this the 19th day of August 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

PUBLIC APPEARANCE – A.D. POTEAT: Mr. A. D. Poteat appeared before Council advising that his property tax bill is incorrect.

A brief discussion followed. Mayor Clark and the City Manager reviewed Mr. Poteat's bill and determined that Mr. Poteat had been billed for property not inside the City.

The City Manager advised that he would get this error corrected first thing Wednesday Morning and a new tax bill would be prepared.

CIVIL CITATION APPEAL – JESSE BURSE – NOISE VIOLATION: The City Manager presented Council with a request from Mr. Jesse Burse requesting that a noise violation he received on July 19, 2003 be appealed.

Mr. Burse was not present for this meeting.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to deny this request.

REQUEST BY CORPENING MEMORIAL CENTER – NAME PRIVATE ROAD: The City Manager presented Council with a letter from Ray Buchanan, President of the Maxwell M. Corpening, Jr. Memorial Center.

Mr. Buchanan advised that the Board of Directors of the Corpening Memorial Center is requesting that the entrance drive to the YMCA be named "Grace Corpening Drive".

Mrs. Sarah Buchanan spoke on behalf of the Corpening Memorial Center and requested that the private road be named as requested in the letter.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve this request. The Corpening Center will pay for any expenses incurred for the street sign.

PRESENTATION – CRESCENT RESOURCES – BLACK BEAR DEVELOPMENT: Mr. Troy Lucas, Representative of Crescent Resources appeared before Council to discuss the

proposed Black Forest Development on the north side of Lake James and its impact on fire protection. Mr. Lucas gave a summary of the development.

A discussion followed.

Fire Chief Jim Neal advised that the Marion Fire Department serves a five mile radius. He drove to the proposed development and advised that it is not in the five mile radius. There is no way, under present policy, that the Marion Fire Department could serve this area and receive tax funds. The City could extend the current five mile district to six miles, under State law, and pick up additional areas that are essentially currently served, including the remainder of Hankins Road, all of Cannon Road, and part of Yancey Road, but not including the Black Forest development due to its distance from the City.

The City Manager advised that he had indicated to Crescent that the City could not serve the area for free, and that a new fire department may be in order. The City Manager noted another alternative could be going to the six mile district and pursuing a contract with Crescent and/or the Black Forest homeowner's association, whereby the City is adequately compensated for serving the area, but is not held responsible for poor response time due to distance.

Mayor Clark advised that the developer of this project needs to be aware of the fire protection issue and insure adequate means of protection for this area. He noted that service of this area was not the responsibility of the City and that the City would not accept any responsibility for fire damage to homes as a result of slow response time due to the distance from the City's fire station. However, the Marion Fire Department will serve as mutual aid to this area as it has other areas in need of assistance.

Council agreed by consensus for the City Fire Committee to discuss the issues involving fire service to the Black Forest development and possibly going to a six mile fire district in places and to make a recommendation back to Council.

PUBLIC HEARING – INCENTIVES – KEY GAS: Mayor Clark opened the Public Hearing to receive public comment concerning economic development incentives offered by the City of Marion for economic development activities as authorized by Section 158.7.1 of the North Carolina General Statutes.

The City Manager advised that the incentive agreement would include the payment of $20,000.00 for building repairs and upgrades to the former "Superior Modular Building", on Clay Street, to Key Gas, Inc. Such payment would be made from the City of Marion General Fund over a two year period. The payment of the inventive is tied to performance targets involving employment and investment of machinery and equipment, to be made by Key Gas over a three year period.

The City Manager advised that he had not discussed this proposed agreement with Key Gas officials.

There were no citizens present to discuss this agreement.

The Public Hearing was closed.

It was the consensus of Council that the City Manager will discuss the proposed agreement with Key Gas officials and bring the agreement back to Council at a later date.

PUBLIC HEARING – ASSIGN ZONING – MARION CORRECTIONAL INSTITUTION PROPERTY: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that the Planning Board had unanimously recommended that the Marion Correctional Institution property be zoned M-1, the same as the Marion Minimum Security Prison.

There were no citizens present.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted to accept the recommendation of the Planning Board to zone the 124 acre Marion Correctional Institution property on Old Glenwood Road as M-1 Industrial, the same zoning approved in June for the Minimum Security Unit on Highway 226 South.

PUBLIC HEARING – REZONING – NORTH MAIN STREET: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that this request involves the rezoning of 2.90 acres of property (two parcels) owned by Alvin Berryhill Sr. on North Main Street just North of Lady Marion Plaza, from R-2 to C-2.

Dr. Suzanne Sewell of Crestview Veterinary Clinic was present for this Public Hearing. She is proposing to purchase this property to house a new Veterinary Clinic.

No citizens spoke during the public hearing.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the recommendation of the Planning Board to rezone 2.90 acres of property (two parcels) owned by Alvin Berryhill Sr. on North Main Street just North of Lady Marion Plaza, from R-2 to C-2.

PUBLIC HEARING – ZONING AMENDMENT – PLANNED UNIT DEVELOPMENTS: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that a developer is looking at a large retail development next to Wal-Mart on Highway 70 West. The proposed amendment would reduce parking requirements for planned unit developments (developments which exceed 25,000 square feet of floor space) from 1 parking space per 200 square feet to 1 parking space per 250 square feet. The proposed amendment would also allow the Board of Adjustment to decrease required parking for large developments by up to 20 percent if the Board of Adjustment feels adequate parking is being provided in the site plan. The Board of Adjustment would also be able to approve outside display areas within the parking lot. The proposed amendment would also decrease required loading zones, which seem excessive for this type of development.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII, Section 702 is amended to restate the following provision:

Retail stores and shops of all kinds including barber, shoe repair and similar service outlets which are not included in an approved Planned Unit Development --One (1) space for each two hundred (200) square feet of gross floor space, plus one (1) space for each two (2) employees.

Section 3. Appendix A, Article VII, Section 702 is amended to include the following provision:

Planned Unit Development consisting of retail and service outlets - Four (4) parking spaces for every 1000 square feet of gross floor space. The Board of Adjustment may approve up to twenty percent (20%) reduction of the required parking upon finding that the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, considering the nature of the use and characteristics of the property. The Board of Adjustment may approve parking spaces for use of an outdoor display area provided that such area is indicated on the site plan and approved by the Board of Adjustment.

Section 3. Appendix A, Article VII, Section 703 is amended and restated as follows:

Section 703. Off street loading and unloading space required.
Every lot on which business or trade use is hereafter established, shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley or if there is no alley, to a street. For the purpose of this section an off-street loading space shall have minimum dimensions of twelve (12) feet by forty (40) feet. Required space shall be considered as follows:

(1) Any business with less than 10,000 square feet of gross floor space shall provide one (1) or more loading zones.
(2) Any business with 10,000 to 25,000 square feet of gross floor space shall provide two (2) or more loading zones.
(3) Any business with over 25,000 square feet of gross floor space shall provide at least three (3) or more loading zones.

Section 4. This ordinance shall become effective upon its adoption.
Adopted this the 19th day of August 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-03-08-19-03

PUBLIC HEARING – ZONING AMENDMENT – AUTO REPAIR SHOP/JUNKYARD REGULATIONS: Mayor Clark opened the Public Hearing.

The City Manager advised that the City Attorney, City Planner Suzy Davis and Benchmark LLC have all worked for several weeks to draft a recommended auto repair shop/junkyard ordinance as follows:

ORDINANCE
AMENDING APPENDIX A. "ZONING"
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 Appendix A. Article IV. Section 400, are amended and restated in order to revise or add the following definitions:

Approved screening Includes, but is not limited to, opaque enclosures, buildings, natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of junked or inoperable motor vehicles (or other uses that are required to be screened) from adjoining property or the public roadway at any season of the year. In determining whether screening is adequate, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Approved screening plan: A site specific plan approved by the person or board issuing the permit and that includes but is not limited to natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of junked or inoperable motor vehicles (or other use that is required to be screened) from the public roadway at any season of the year. In determining whether to approve a screening plan, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation

Automobile graveyard– any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard."
Cross reference: NCGS 136-143(1)

Automobile repair shop: Any establishment or place of business which is maintained or operated for the primary purpose of making mechanical and/or body repairs to motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to repair service broken down into the following categories, new parts, labor for service, used auto parts; (2) the age of each vehicle and how long each vehicle

has been on the property (used vehicles that are on the property for longer than 6 months should be evidence that the business is not an automobile repair shop, but rather an automobile graveyard and/or junk yard), (3) any business-type licenses that are held, or the lack thereof, and (4) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Automobile sales (also referred to as "car sales" or "motor vehicle sales") *businesses*: Any establishment or place of business which is maintained or operated for the primary purpose of selling motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to vehicle sales or service broken down into the following categories: vehicle sales, new parts, labor for service, and used auto parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months should be evidence that the business is not an automobile sales business, but rather an automobile graveyard and/or junk yard). (3) any business-type licenses that are held, or the lack thereof, and (4) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile ~~repair shops~~ *sales*

Gasoline service or filling stations. Any establishment or place of business which is maintained or operated for the primary purpose of selling gasoline or motor fuel or which contains fuel pumps and other such fuel dispensing appliances. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to gasoline or motor fuel sales or service broken down into the following categories: gasoline or motor fuel sales, labor for service, and parts, (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months should be evidence that the business is not a gasoline service or filling station, but rather an automobile graveyard and/or junk yard), (3) any business-type licenses that are held, or the lack thereof, and (4) the number of gasoline pumps or fuel distribution devices, (5) the number and configuration of grease bays or repair work areas. For the purposes of this definition, gasoline service or filling stations where the service or repair work constitutes 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Inoperable Motor Vehicle – see "Junked and/or Inoperable Motor Vehicle"

Junkyard – an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for maintenance or operation of an automobile graveyard, and the terms shall include garbage dumps and sanitary fills. An establishment or place of business which store or keeps for a period of 15 days or more materials within the meaning of "junk" as defined herein which had been derived or created as a result of industrial activity shall be deemed to be a junkyard.

Cross reference : NCGS 136-143(4))

Junk – old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

Cross Reference: NCGS 136-143(3)

Junked and/or Inoperable Motor Vehicle: A vehicle that does not display a current license plate and that (1) is partially dismantled or wrecked, or (2) cannot be self-propelled or moved in the manner in which it originally was intended to move, or (3) is more than 5 years old and appears to be worth less than one hundred dollars ($100.00).

Cross Reference: NCGS 160A-303.2(a)

"*In view*" or "*visible*" means that it is capable of being seen without visual aid by a person of normal visual acuity.

Nuisance Vehicle A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be:

1. A breeding ground or harbor for mosquitoes, or other insects, rats, or pests; or
2. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; or
3. A point of collection of pools or pounds of water, or
4. A point of concentration of quantities of gasoline oil or other flammable or explosive materials as evidenced by odor; or
5. One which has areas of confinement which cannot be operated from the inside, such as trunk, hoods, etc., or
6. So situated or located that there is a danger of it falling or turning over; or
7. One which is a point of collection of garbage, food waste, animal waste or any rotten or putrescible matter of any kind; or
8. One which has sharp points thereon which are jagged or contain sharp edges of metal or glass; or
9. Located within a public right of way and which is creating a traffic hazard or impeding ingress or egress into a residential dwelling or place of business.
10. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

Section 2. Appendix A, Article VII, Section 700. Nonconforming Uses, is amended to add the following provision:

"Nothing herein shall preclude the adoption of an amortization period in which certain non-conforming uses or conditions are to be phased out."

Section 3 Appendix A, Article VII, Section 702, is amended as follows:

Add the following provision;

Automobile repair shop. Two (2) spaces for each gas pump plus two (2) spaces for each grease rack or working bay or one (1) space for each two hundred square feet of gross floor space, which ever number produces the largest number of parking spaces, plus one space for each employee at maximum employment on any one shift.

Amend the following provision as restated:

Automobile sales, car sales, motor vehicle sales, outdoor equipment and machinery sales, and commercial nurseries— One (1) space for each two hundred [200] square feet of gross floor area, plus one (1) space for each employee or sales person, plus one space for each vehicle stored on site

Section 4. Appendix A, Article VII, Section 705, is amended and restated as follows:

Section 705. **Gasoline service or filling stations**

The following regulations shall apply to all gasoline service or filling stations:

1. All buildings shall be located at least forty (40) feet from any street or road right of way
2. Gasoline pumps and other appliances shall be located at least fifteen (15) feet from any street right-of-way.
3. All service, storage or similar activities shall be conducted entirely on the premises.
4. All major repair work, if any, shall be conducted within a completely enclosed building.
5. Open storage of wrecked or junked motor vehicles, discarded tires, auto parts or similar materials shall not be permitted.
6. Wrecked or junked motor vehicles, discarded tires, auto parts or similar materials may be stored within an enclosed structure which visually conceals such objects.
7. Vehicles associated with gasoline service or filling stations may not be stored or repaired within federal, state or local public rights-of-way, including streets and sidewalks
8. On-site traffic areas shall be provided and arranged in such a manner as to provide clearly identified ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.
9. Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.
10. The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continues to apply.
11. Gasoline service or filling stations must obtain a permit from the Zoning Office
12. All gasoline service or filling stations within the city limits of Marion not in compliance with this Section 705 within six (6) months after the adoption of the ordinance adopting or amending this Section 705, shall be in violation.

Section 5. Appendix A, Article VII, Section 708, is amended and restated as follows:

Section 708. **Automobile Repair Shops and Automobile Sales**

The following regulations shall apply to all automobile repair shops and all automobile sales businesses:

1. Open storage of junked or inoperable motor vehicles, discarded tires, auto parts or similar materials shall not be permitted.
2. Junked or inoperable motor vehicles, discarded tires, auto parts or similar materials may be stored within an enclosed structure which visually conceals such objects or stored on a site that is the subject of an approved screening plan, ***as defined herein and approved by the Zoning Administrator.***
3. ~~An approved screening plan is a site specific plan approved by the Zoning Administrator that includes but is not limited to natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of such use from the public roadway at any season of the year. In determining whether to approve a screening plan, the following factors should be considered: topographical features of the property and naturally occurring vegetation.~~
4. Vehicles associated with an automobile repair shops or automobile sales businesses may not be parked, displayed, stored or repaired within federal, state or local public rights-of-way, including streets and sidewalks
5. On-site traffic areas shall be provided and arranged in such a manner as to provide clearly identified ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.
6. Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.
7. All service, sales, storage or similar activities shall be conducted entirely on the premises.
8. All major repair work, if any, shall be conducted within a completely enclosed building.
9. Certain businesses claiming to be auto repair shops or automobile sales businesses may be deemed gasoline service or filling stations and, therefore, subject to the regulations governing Gasoline Service or Filling Stations.
10. Certain businesses claiming to be automobile repair shops or automobile sales businesses may be deemed junk yards and, therefore, subject to the regulations governing Junk Yards
11. The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continues to apply.
12. Automobile repair shops and automobile sales businesses must obtain a permit from the Zoning Office.
13. All automobile repair shops and automobile sales businesses within the city limits of Marion not in compliance with this 708 within six (6) months after the adoption of the ordinance adopting or amending this 708, shall be in violation.

Section 6 Appendix A, Article VII, Section 710, is added:

Section 710. **Swimming Pools**

All swimming pools both public and private shall be completely enclosed by a solid wall or chain link fence at least six (6) feet in height. Swimming pools shall be located only in rear or side yards and shall be at least ten (10) feet from the property line.

Section 7 Appendix A, Article VIII, Section 805.3 (1) is amended as follows:

(1) Automobile graveyard, automobile wrecking, junkyard and salvage yards provided that

(a)

(f) For the purposes this section 805.3, an inoperable or junked motor vehicle shall not be deemed to be viewed from a public roadway if it is stored on a site that is the subject of an approved screening plan, ***as defined herein and approved by the body issuing the permit,*** or within an enclosed structure which visually conceals the inoperable motor vehicles.

~~(g) An approved screening plan is a site specific plan approved by the body issuing the permit that includes but is not limited to natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of such use from the public roadway at any season of the year. In determining whether to approve a screening plan, the following factors should be considered: topographical features of the property and naturally occurring vegetation.~~

(h) Vehicles associated with Automobile graveyard, Automobile wrecking, junkyard and salvage yards may not be parked, displayed, stored or repaired within federal, state or local public rights-of-way, including streets and sidewalks.

(i) On-site traffic areas shall be provided and arranged in such a manner as to provide clearly identified ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.

(j) Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.

(k) The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continue to apply.

(l) Automobile graveyard, Automobile wrecking, junkyard and salvage yards must obtain a permit from the Zoning Office.

(m) Those junk yards or automobile graveyards lawfully existing at the time that sub-section (f) through (m) of Section 805.3(1) of this Ordinance is adopted shall have five (5) years from the adoption of the Ordinance to come into full compliance with the provisions in Section 805.3(1)(f) through (m).

Section 8. Appendix A, Article XV, Section 1500(C) is amended and restated as follows:

Section 1500. Penalties and Enforcement.

(C) Failure to comply with the notice of violations. If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision of the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by State law or by Section 1500.1 Enforcement Methods.

Section 9. Appendix A, Article XV, Section 1500.1(5) and (6) are amended and restated as follows:

Section 1500.1 Enforcement Methods.

(5) Revocation of Permits or Certificates. The Planning and Inspections Department may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocations. Permits or certificates shall be revoked for [a] any substantial departure from the approved application, plans, or specifications; [b] refusal or failure to comply with the requirements of State or local laws; [c] false statements or misrepresentations made in securing the permit; or [d] a certificate mistakenly issued in violation of an applicable state or local law.

(6) Civil Penalties- Any act constituting a violation shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt or as otherwise provided herein if the offended fails to pay the penalty with 15 days.

a. Responsible parties. The owner or occupant of any land, building, structure, sign, use of land, or part thereof, any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and other remedies provided herein.

b. Issuance of citations. No civil penalty shall be assessed under this section until the person alleged to be in violation has been notified in accordance with Section 1500(A) Notice of Violations If after receiving a Notice of Violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation. Such citation shall be in writing; shall be delivered by certified or registered mail to the last known address of the responsible party or by personal service; shall state the civil penalty to be imposed upon the violator; and shall direct the violator to pay the civil penalty within fifteen (15) calendar days of the date of the citation.

c. Continuing Violation. For each day the violation is not corrected, the violator will be guilty of an additional separate offense and subject to additional civil penalties until the prohibited activity is ceased or abated.

d. Penalties. Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty in the amount of fifty dollars ($50.00) per violation, per day until the prohibited activity is ceased or abated. Penalties shall start on the date or deadline listed in the Notice of Violation in Section 1500(A)(4) if no appeal is taken. If appeal is timely filed, the penalty will be tolled pending the appeal but will begin again on the date that appeal is denied.

e. Nonpayment. If payment is not received or equitable settlement reached within thirty (30) days, the matter shall be referred to the city attorney to institute a civil action for recovery of the civil penalty.

Section 10. Appendix A, Article XV, Section 1500.2 is amended and restated as follows:

Section 1500.2 Repeat Violations. Any violation of the same Article of this Ordinance reoccurring on the same property by the same violator more than once in a 36-month period shall be considered a repeat offense. A notice of violation shall be issued by the Administrator or his/her designee and shall have an immediate civil penalty of $100.00. No warning period shall be granted since this provision applies only to violations that occur more than once in a 36-month period and proper notice was given for the initial violation as prescribed under Section 1500(A). For each day the repeat violation remains, the violator shall be subject to a civil penalty of $100.00. The collection of a penalty pursuant hereto shall not foreclose further proceedings for penalties that come after the date of the filing of a prior proceeding. The provisions of this section may also be enforced through any other appropriate remedies as prescribed in Section 1500.1.

Section 11. This ordinance shall become effective upon its adoption.

The ordinance would essentially require screening of junked cars at auto repair shop, auto sales lots, automobile graveyards and junkyards and gasoline stations. Standards for parking and ingress and egress would also be established.
Mr. Dean Wall and his son Darryl were present for this meeting and asked for a copy of the proposed Ordinance.

A discussion followed.

Mr. Wall requested that this item be tabled so that he could have time to study this proposed Ordinance.

Mayor Clark Closed the Public Hearing.

It was the consensus of Council to hold this item until the September 2, 2003 City Council Meeting.

ADOPT ORDINANCE AMENDING CHAPTER 1, SECTION 1-2, DEFINITIONS, AND AMENDING CHAPTER 9, ARTICLE III, JUNKED VEHICLES, OF THE CITY CODE:
The City Manager advised that the following proposed Ordinance pertains to the Auto Repair

Shop/Junkyard Regulations above and will also be held until the September 2, 2003 Council meeting.

ORDINANCE
AMENDING PART III, CHAPTER 1, SECTION1-2
AMENDING CHAPTER 9, ARTICLE III
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. Part III, Chapter 1, Section 1-3 of the Code of Ordinances is amended to add or revise the following definitions:

Approved screening: Includes, but is not limited to, opaque enclosures, buildings, natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of junked or inoperable motor vehicles (or other uses that are required to be screened) from adjoining property or the public roadway at any season of the year. In determining whether screening is adequate, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Approved screening plan: A site specific plan approved by the person or board issuing the permit and that includes but is not limited to natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of junked or inoperable motor vehicles (or other uses that is required to be screened) from the public roadway at any season of the year. In determining whether to approve a screening plan, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Automobile graveyard– any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard."
Cross reference. NCGS 136-143(1)

Automobile repair shop: Any establishment or place of business which is maintained or operated for the primary purpose of making mechanical and/or body repairs to motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to repair service broken down into the following categories: new parts, labor for service, used auto parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months should be evidence that the business is not an automobile repair shop, but rather an automobile graveyard and/or junk yard); (3) any business-type licenses that are held, or the lack thereof, and (4) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Automobile sales (also referred to as "car sales" or "motor vehicle sales") *businesses*: Any establishment or place of business which is maintained or operated for the primary purpose of selling motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to vehicle sales or service broken down into the following categories: vehicle sales, new parts, labor for service, and used auto parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months should be evidence that the business is not an automobile sales business, but rather an automobile graveyard and/or junk yard); (3) any business-type licenses that are held, or the lack thereof, and (4) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Gasoline service or filling stations: Any establishment or place of business which is maintained or operated for the primary purpose of selling gasoline or motor fuel or which contains fuel pumps and other such fuel dispensing appliances. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to gasoline or motor fuel sales or service broken down into the following categories: gasoline or motor fuel sales, labor for service, and parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months should be evidence that the business is not a gasoline service or filling station, but rather an automobile graveyard and/or junk yard); (3) any business-type licenses that are held, or the lack thereof, and (4) the number of gasoline pumps or fuel distribution devices, (5) the number and configuration of grease bays or repair work areas. For the purposes of this definition, gasoline service or filling stations where the service or repair work constitutes 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Inoperable Motor Vehicle - see "Junked and/or Inoperable Motor Vehicle"

Junkyard – an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for maintenance or operation of an automobile graveyard, and the terms shall include garbage dumps and sanitary fills. An establishment or place of business which store or keeps for a period of 15 days or more materials within the meaning of "junk" as defined herein which had been derived or created as a result of industrial activity shall be deemed to be a junkyard.
Cross reference : NCGS 136-143(4))

Junk – old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
Cross Reference: NCGS 136-143(3)

Junked and/or Inoperable Motor Vehicle: A vehicle that does not display a current license plate and that (1) is partially dismantled or wrecked, or (2) cannot be self-propelled or moved in the manner in which it originally was intended to move, or (3) is more than 5 years old and appears to be worth less than one hundred dollars ($100.00).
Cross Reference: NCGS 160A-303.2(a)

"*In view*" or "*visible*" means that it is capable of being seen without visual aid by a person of normal visual acuity.

Nuisance Vehicle: A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be:

1. A breeding ground or harbor for mosquitoes, or other insects, rats, or pests; or
2. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height, or
3. A point of collection of pools or pounds of water; or
4. A point of concentration of quantities of gasoline oil or other flammable or explosive materials as evidenced by odor; or
5. One which has areas of confinement which cannot be operated from the inside, such as trunk, hoods, etc.; or
6. So situated or located that there is a danger of it falling or turning over; or
7. One which is a point of collection of garbage, food waste, animal waste or any rotten or putrescible matter of any kind, or
8. One which has sharp points thereon which are jagged or contain sharp edges of metal or glass, or
9. Located within a public right of way and which is creating a traffic hazard or impeding ingress or egress into a residential dwelling or place of business.
10. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

Section 2. Chapter 9, Article III of the Code of Ordinances is amended to add or revise the following definitions as restated:

Approved screening: Includes, but is not limited to, opaque enclosures, buildings, natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of junked or inoperable motor vehicles (or other uses that are required to be screened) from adjoining property or the public roadway at any season of the year. In determining whether screening is adequate, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Approved screening plan: A site specific plan approved by the person or board issuing the permit and that includes but is not limited to natural objects, plantings, fencings, walls or other appropriate means to completely obstruct the view of junked or inoperable motor vehicles (or other uses that is required to be screened) from the public roadway at any season of the year. In determining whether to approve a screening plan, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Automobile graveyard: any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard."

Cross reference: NCGS 136-143(1)

Inoperable Motor Vehicle – see "Junked and/or Inoperable Motor Vehicle"

Junkyard – an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for maintenance or operation of an automobile graveyard, and the terms shall include garbage dumps and sanitary fills. An establishment or place of business which store or keeps for a period of 15 days or more materials within the meaning of "junk" as defined herein which had been derived or created as a result of industrial activity shall be deemed to be a junkyard.

Cross reference: NCGS 136-143(4))

Junk – old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

Cross Reference. NCGS 136-143(3)

Junked and/or Inoperable Motor Vehicle. A vehicle that does not display a current license plate and that (1) is partially dismantled or wrecked, or (2) cannot be self-propelled or moved in the manner in which it originally was intended to move, or (3) is more than 5 years old and appears to be worth less than one hundred dollars ($100.00).

Cross Reference. NCGS 160A-303.2(a)

"*In view*" or "*visible*" means that it is capable of being seen without visual aid by a person of normal visual acuity.

Nuisance Vehicle: A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be:

1. A breeding ground or harbor for mosquitoes, or other insects, rats, or pests; or
2. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; or
3. A point of collection of pools or pounds of water; or
4. A point of concentration of quantities of gasoline oil or other flammable or explosive materials as evidenced by odor; or
5. One which has areas of confinement which cannot be operated from the inside, such as trunk, hoods, etc.; or
6. So situated or located that there is a danger of it falling or turning over; or
7. One which is a point of collection of garbage, food waste, animal waste or any rotten or putrescible matter of any kind; or
8. One which has sharp points thereon which are jagged or contain sharp edges of metal or glass; or
9. Located within a public right of way and which is creating a traffic hazard or impeding ingress or egress into a residential dwelling or place of business.
10. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

Section 3. Chapter 9, Article III, Section 9-66 of the Code of Ordinances, City of Marion, North Carolina, is amended and restated as follows:

Section 9-65. **Junked or Inoperable motor vehicle regulated; removal authorized.**

(a) It shall be unlawful for the registered owner or person entitled to the possession of a junked or inoperable motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked or inoperable motor vehicle is located, to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(b) It shall be unlawful to have more than one (1) junked or inoperable motor vehicle, as defined herein, on the premises of public or private property except as provided in subsection (e) of this section. A single, permitted junked motor vehicle must strictly comply with the location, screening and concealment requirements of this section.

(c) It shall be unlawful for any owner or person entitled to the possession of a junked or inoperable motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked or inoperable motor vehicle is located, to fail to comply with the location requirements of this section

(d) Subject to the provisions of subsection (e) of this section, upon investigation, the city manager (or his designee) may order the removal of a junked or inoperable motor vehicle after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;

(2) Promotion of tourism and other economic development opportunities;

(3) Indirect protection of public health and safety;

(4) Preservation of the character and integrity of the community; and

(5) Promotion of the comfort, happiness and emotional stability of residents.

(e) Permitted concealment or enclosure of a junked or inoperable motor vehicle:

(1) One junked motor vehicle, in its entirety, may be located in the rear yard, as defined in the City Zoning Ordinance, provided the junked motor vehicle is entirely concealed from public view from a public street and/or abutting premises by an acceptable covering for not more than sixty (60) calendar days. Junked motor vehicles kept on the premises more than sixty (60) calendar days shall be kept inside a completely enclosed building. The City Manager (or designee) has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate.

(2) Any more than on junked or inoperable motor vehicle must be kept in a garage or building structure that provides a complete enclosure so that the junked or inoperable motor vehicle(s) cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of the building permit and which has been constructed in accordance with all zoning ordinances and building code regulations

(f) To the extent that the provisions in this Chapter 9, Article III are inconsistent with Appendix A, Article VII, Sections 705 and 708 or Appendix A, Article VIII, Section 805.3, the most restrictive provisions shall apply.

Section 4 Chapter 9, Article III, Section 9-66 of the Code of Ordinances, City of Marion, North Carolina, is amended and restated as follows.

Section 9-66 **Removal of abandoned, nuisance, junked or inoperable motor vehicles; pre-towing notice requirements.**

Except as set forth in section 9-67 below, abandoned, nuisance, junked or inoperable vehicles which are to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle(s). In the case of nuisance, junked or inoperable vehicles, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle(s), or the owner or lessee or occupant of the real property upon which the vehicle(s) is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to which mailed, and the date mailed. If such names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle, a notice indicating that the vehicle will be removed by the city on a specified date (no sooner than seven (7) days after the notice is affixed). The notice shall state that the vehicle(s) will be removed by the town on a specified date, no sooner than seven (7) days after the notice is affixed or mailed, unless the vehicle(s) are moved by the owner or legal possessor prior to that time.

With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked or inoperable motor vehicle that aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the city council in writing, heard at the next regularly scheduled meeting of the city council, and further proceedings to remove the vehicle(s) shall be stayed until the appeal is heard and decided

Section 5. Chapter 9, Article III, Section 9-74 of the Code of Ordinances, City of Marion, North Carolina, is amended and restated as follows:

Section 9-74. **Exceptions.**

Nothing in this Article shall apply to (1) any vehicle not visible from the public roadway or adjoining property and located in an enclosed building, or (2) which is in an appropriate enclosed storage place or depository maintained in a lawful place and manner as permitted by the City.

Section 6 This ordinance shall become effective upon its adoption.

No action was taken.

APPROVE UTILITY AGREEMENT WITH DOT – SUGAR HILL ROAD WATER AND SEWER EXTENSION: The City Manager presented Council with a proposed Utility

Agreement with the Department of Transportation for the Sugar Hill Road Water and Sewer extension currently being constructed by a DOT contractor. The cost of the extension would be $179,601.25 plus $17,693.07 for "betterment costs" for higher grade PVC C-900 pipe that we typically require plus construction of an eight inch line instead of a six inch to be paid for by DOT, for a total cost of $197,294.32.

The City of Marion has already spent $36,840 on the short sewer extension completed by Carolina Construction between Rankin Drive and Sugar Hill Road.

With the utility Agreement from DOT, the estimated cost of this part of the project (including engineering) could possibly end up at about $275,000. The DOT is not charging the City for the water extension. The water extension is part of a larger project to run water service to the I-40 rest areas. The City would pay the betterment cost to include the upgrade PVC pipe and the difference in price between the six and eight inch line, and the County will pay the difference between the eight and twelve inch line through a separate agreement between the County and DOT.

Copy of said Agreement can be found on file at City Hall.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

RESOLUTION

WHEREAS, the North Carolina Department of Transportation has prepared and adopted plans for the improvement of SR 1001 (Sugar Hill Road) from I-40 to US 221/NC 226 (Marion Bypass); and,

WHEREAS, said Department of Transportation and the City of Marion propose to enter into an agreement whereby said Department will include in its construction contact provisions for the construction contractor to perform certain betterment work to the municipally-owned water and sewer lines; and,

WHEREAS, the Municipality agrees to reimburse the Department of Transportation for the entire cost of said betterment work with reimbursement to be made in one final payment upon completion of the work.

NOW, THEREFORE, BE IT RESOLVED that Project R-2643, McDowell County, is hereby formally approved by the City Council of the City of Marion and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

Adopted this the 19th day of August, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

UPDATE – FERN AVENUE CURB AND GUTTER/SIDEWALK PROJECT: The City Manager advised that only one bid had been received on the Fern Avenue Curb and Gutter/Sidewalk Project.

The City Manager advised that judging from the one bid we have received, Council may wish to let contractors complete the curb and gutter work and City Crews complete the sidewalk work.

The bid price received is $88,000 for the curb and gutter and $30,000 for the sidewalk. The City has $45,000 in funding from DOT and could possibly afford to invest $43,000 of our Powell Bill Fund Balance in the curb work and then allow City Crews to complete the sidewalk work.

It was the consensus of Council to move with this project as soon as possible. The City Manager stated he would work to obtain bids for review as soon as possible.

No action was necessary on this item.

POLICY – PROPERTY TAX FORECLOSURES:

ORDINANCE – AMENDING CHAPTER 18, TRAFFIC, OF CITY CODE: The City Manager advised that he had spoken with City Attorney Mia Lorenz about tax foreclosures.

Ms. Lorenz suggests that our typical out of pocket expense for a tax foreclosure should not generally exceed $1,500.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to pursue the collection of delinquent taxes above the recommended $1,500 threshold through foreclosure procedure with City Attorneys, once other collection remedies are not successful.

ADOPT ORDINANCE AMENDING CHAPTER 18, TRAFFIC, OF THE CITY CODE:
The City Manager advised that a 25 mile per hour speed limit unless otherwise posted had been in effect City-wide for many years. This City-wide speed limit had been posted at the City Limits. However, the City Code still listed 35 miles per hour as the speed limit unless otherwise posted. The City Manager recommended that an ordinance be adopted to make the City Code match current City practice.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following ordinance:

ORDINANCE
AMENDING CHAPTER 18
TRAFFIC
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 That Chapter 18, Traffic, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 18 is amended by deleting Section 18-91 in its entirety and replacing it with the following:

> **Sec. 18-91. Speed limit in city limits.**
>
> Except as otherwise provided in this article, it shall be unlawful to operate a vehicle in excess of twenty-five (25) miles per hour inside the municipal corporate limits.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 19th day of August, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-08-19-2

AWARD CONTRACT – UTILITY TRUCK PURCHASE – WASTEWATER TREATMENT DEPARTMENT: The City Manager advised that the utility truck in the Wastewater Department is in need of major repairs well in excess of $1,000.00.

The City typically does not bid out vehicles until the first of the year. However, due to not purchasing a needed vehicle last year, circumstances necessitate the purchase sooner.

Two bids were received as follows:

Everette Chevrolet of Hickory	$31,067.35
Legendary Ford	No Bid
Jim Cook Chevrolet	$31,538.00

The City Manager advised that $38,000. had been budgeted for this for this truck and recommended that the low bid of Everette Chevrolet in the amount of $31,067.35 be approved.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the high bid of Jim Cook Chevrolet in the amount of $31,538.00, based on the determination that lower service and delivery costs will make the higher bid by Jim Cook the better value for the City.

A discussion followed regarding State Statutes on bid process. The City Manager advised that State law typically dictates that the lowest responsible bid be awarded; however, research could be undertaken to see if there was a way under State law to justify accepting a higher bid due the factors suggested by Councilman Little.

Councilman Little agreed to withdraw his motion.
Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to table this item until the September 2nd City Council Meeting while the City Manager researches bid procedure and laws.

DISCUSSION – AUTOMATED METER READER INSTALLION PROGRESS REPORT: The City Manager reported that Mainline Supply of Asheville, the company the City had contracted with to purchase the new automated water meters, had reported in the past week that Hersey Meters, the meter supplier, had stopped shipping meters due to a possible problem with a part in the meter's radio transmitter. The stopping of the meter shipments in turn necessitated the City to have to stop the contracted meter installer, Vanguard Utilities, from installing any additional meters. The City Manager advised that he, Mayor Clark, Public Utilities/Projects Director Glen Sherlin, Water Superintendent Steve Basney and Finance Officer Robert Parker had met with representatives from Mainline and Hersey earlier that day to learn more about the problem. The City Manager noted that Hersey's engineers would be meeting with the makers of the radio transmitter, Ramar, later in the week to determine the scope and duration of the possible part failure. Mainline had been given two weeks to report back to the City the exact nature of the problem, the options for correcting the problem and the timeline for correcting the problem. Mainline had agreed to reimburse the City for any added expenses incurred as a result of the City having to stop the meter installation. The City

Manager stressed the need for both Mainline and Hersey to do whatever it took to make the city comfortable that the meter being purchased was reliable.

Mayor Clark advised that he felt both Mainline and Hersey were sincere in their efforts to communicate the problem to the City and to find a way to correct any problems. He further stated that Hersey might have been too cautious in making the move to stop shipment of meters, but that the City should not suffer too much if the problem is quickly corrected.

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects.

COUNCILMAN COMMENTS:

Councilman Cuthbertson asked how the mowing in the Cemetery was going with all the rain we have had the past few months.

The City Manager advised that despite the weather, and having a new contractor this year, maintenance at the Cemetery has been accomplished successfully.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 2, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner.

GUESTS PRESENT: Earl Daniels, Garden Street, Marion, NC 28752; Larry Scott, Hankins Road Marion, NC 28752; Lucille Huffman 490 Morehead Road, Marion, NC 28752; Ron PO Box 1091 Marion, NC 28752; Dustin Berryhill, Marion, NC 28752; Kit Alverson, Marion, NC 28752; Dean Wall, Marion, NC 28752; Gary Berryhill, Marion, NC 28752; Susan Dietrich, 600 McDowell High Drive, Marion, NC 28752; Jeff and Dawn Dreibus, 1127 Drucilla Church Road, Nebo, NC 29871; Sharon Parker, City Attorney, Marion, NC 29752; Boy Scout Troop 805, Billy Lloyd, Darren Bailey, Kyle Bailey, Shane Poteat, Zack Cemgan and Brandon Fritts.

CITIZEN OF THE MONTH - SELECTED BY COUNCILMAN CECIL OWENBY:
Councilman Cecil Owenby selected the Citizen of the Month of September:

LUCILLE HUFFMAN

Councilman Owenby advised that Ms. Lucille Huffman at one time served as Chief Accountant and assistant to the President of the Marion Manufacturing Plant.

She presently owns and operates her own business.

She is a member of the East Marion Pentecostal Holiness Church and an active worker with their youth.

Councilman Owenby advised that she is remembered as a member of the singing Sunlight Trio, who used to sing on WBRM many years ago.

She is a member of the Pilot Club and has served two terms as President, and she serves on a number of other committees that benefit the citizens of Marion as well as the City.

When asked of one of her greatest achievements, Ms. Huffman advised that it was her friends and travel that mean most to her.

She is a woman of honesty and integrity

Mayor Clark and Council Members all had kind words to share about Ms. Huffman.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - August 19, 2003 Minutes

B. Resolution – Declaring City Personal Property Surplus and Authorizing Sale by Auction:

Resolution Declaring Certain Items of Personal Property Owned by the City of Marion as Surplus and Authorizing Their Sale

WHEREAS, N.C.G.S. 160A-270 authorizes cities to dispose of personal property by auction; and

WHEREAS, N.C.G.S. 160A-270 requires that when a City Council proposes to dispose of property by auction, it adopt a resolution at a regular Council meeting authorizing an appropriate City official to dispose of the property by auction; and

WHEREAS, the City of Marion owns many items of personal property, as shown on the attached sheets, that are no longer needed by the City; and

WHEREAS, the City of Marion, McDowell County, and the McDowell County School Board have traditionally held an annual auction for surplus items during the fall of each year.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the personal property owned by the City and listed on the attached sheets to be surplus and authorizes the City Manager or his designee to dispose of said property by auction, with the designated minimum price where listed.

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (10) days after its publication.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 2nd day of September, 2003.

A list of items from the City of Marion to be sold at the auction is available at City Hall.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

A copy of the auction list is available at City Hall.

RESOLUTION NUMBER: R-03-09-02-1

PUBLIC HEARING – ADOPTION – ANNEXATION ORDINANCE – NEW DEVELOPMENT – HIGHWAY 70 WEST: Mayor Clark opened the Public Hearing. The City Manager advised that the proposed ordinance involved the voluntary annexation of 14 acres on US 70 West owned by Great Meadows, Inc., adjacent to the existing Wal Mart Shopping Center. This property is being considered for a new Lowe's Home Improvement Warehouse.

There were no citizens present to discuss this issue.

Mayor Clark closed the public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, September 2, 2003, after due notice by publication on Friday, August 22, 2003; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of September 30, 2003:

Section 2. Upon and after September 30, 2003, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

BEGINNING on an etched "X" set in concrete in the western edge of the entrance drive into the Wal-Mart shopping center, said point also being located two courses and distances from GPS Station "Curb", a North Carolina Department of Transportation Disc in concrete; said bearings are South 60 deg. 43 min. 59 sec. 49.81 feet and North 87 deg; 11 min. 04 sec. West 36.72 feet from said mark; GPS Station "Curb" having X coordinate of 334,597.815 meters and Y coordinate of 220,845.507 meters, elevation 374.535 meters, combined scale factor 0.99984992 North American Datumn 83 and runs thence with the northern right-of-way line of U.S. Highway 70 the following three courses and distances: South 60 deg. 43 min. 59 sec. West 10.66 feet to an existing right-of-way monument; thence continuing said right-of-way South 21 deg. 42 min. 06 sec. 29.77 feet to an existing right-of-way monument; thence continuing with the northern right-of-way of U.S. Highway 70 South 60 deg. 53 min. 59 sec. West 702.08 feet to a concrete monument set, said concrete monument being located in the northern right-of-way of U.S. Highway 70; thence leaving said right-of-way a new line through the Great Meadows, Inc. property as recorded in Deed Book 184, Page 355 North 29 deg. 06 min. 01 sec. West 830.84 feet to a concrete monument set, a new corner in the Great Meadows, Inc. property; thence continuing another new line North 60 deg. 53 min. 59 sec. East 736.01 feet to a concrete monument, a new corner, thence continuing with the new line through the Great Meadows, Inc. property South 29 deg. 05 min. 09 sec. East 51.00 feet to a ½" iron pipe set, iron pipe being located at the northern margin of a concrete curb around a paved circle leading into the Wal-Mart Shopping Center; also said corner being a western corner of the Wal-Mart Shopping Center; thence with a curve to the left having a length of 78.54 feet, a radius of 50.00 feet, a chord bearing of South 20 deg. 57 min. 22 sec. East, a chord distance of 70.71 feet to a point of reverse curve; thence a curve to the right a length of 32.18 feet, a radius of 50.00 feet, a chord bearing of South 47 deg. 31 min. 22 sec. East 31.63 feet to a ½" iron pipe set at end of curvature; thence with the Wal-Mart western boundary line South 29 deg. 05 min. 09 sec. East a distance of 660.99 feet to the point of BEGINNING, containing 14.00 acres as shown on a plat prepared by Suttles Surveying, P.A. dated July 30, 2003, entitled *"Survey for JEMSITE DEVELOPMENT, L.L.C., and being located in Marion Township, McDowell County, North Carolina, Project Number 12987-R1, and being a portion of the Great Meadows, Inc. property as recorded in Deed Book 184, Page 355"*.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 2nd day of September 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

REQUEST – MCDOWELL COUNTY SCHOOLS – BASEMENT OF COMMUNITY BUILDING: Ms. Susan Dietrich, Tobacco Prevention Coordinator for McDowell County Schools, appeared before Council requesting to rent the Community Building Basement for a month from September 26th – October 26th and that the fees be set at $20.00 per day.

The name of this event is "The Drag of Doom" and is going to be used to promote tobacco prevention. It is a walk through activity in the shape of a cigarette where the children of McDowell County will get to see the damaging affects of tobacco use. The program would run Monday through Friday and they would be responsible for clean up and liable for insurance while on the premises.

Ms. Dietrich advised that our county is in the top 2.5 percent of children who use tobacco. She stated that the School System has an opportunity to reach thousands of children with this event.

These dates will not conflict with any other events scheduled in the basement of the Community Building.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve this request.

ADOPT ZONING AMENDMENT – AUTO REPAIR SHOP/JUNKYARD REGULATIONS: The City Manager advised that the required public hearing for this zoning amendment had been held on August 19. At that meeting, City Council had agreed to allow additional time for owners of automobile sales lots and repair shops to review the ordinance. The City Manager stated that he, City Planner Suzy Davis and Jennifer Jackson from the City Attorney's office had met with about 12 owners of automobile sales lots and repair shops on August 28. Many constructive suggestions were received regarding the ordinance during this meeting. The City Manager noted that Ms. Davis and Ms. Jackson had met further to discuss ways to incorporate these comments into the existing ordinance.

Ms. Suzy Davis, City Planner provided an update on seven suggested changes to the proposed Repair Shop/Junkyard Regulations, as proposed by the owners of automobile sales lots and repair shops. Sharon Parker from the City Attorney's office advised that the changes were significant enough to warrant referral back to the Planning Board and a new public hearing.

A discussion followed.

There were several business owners represented at this meeting.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to refer the Auto Repair Shop Zoning Amendment and the ordinance to amend Chapter 9, Article III, Junked Vehicles, of the City Code, back to the Planning Board for a recommendation at their October 2 meeting. The City Manager will schedule another Public Hearing on October 21, 2003.

REQUEST – REIMBURSEMENT OF RESIDENTIAL DEPOSIT: Mr. Christopher Roth appeared, unscheduled, before Council requesting that he be reimbursed sixty dollars for a water deposit he paid. He stated that he was not aware of a minimum monthly charge and feels that he should only pay for water used. Mr. Roth further stated that the City's water and sewer agreement should list minimum charges for water.

A discussion followed.

The City Manager advised that late fees were also taken out of this deposit for non-payment. He further noted that water and sewer rates, minimum charges, connection fees and deposits were not listed on the one page water and sewer service agreement because they are part of a larger seven page document.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to deny this request.

The City Manager and Utility Committee will look closer at the information relayed to customers regarding their water accounts.

UPDATE – AUTOMATED METER PROJECT: The City Manager gave a brief update on the automated meter project. He noted that a meeting would be held the next day with representatives from Mainline Supply and Hersey Meters to determine the status of the testing on the reliability of the radio transmitters in the new meters and to develop a timeline for when the meter installation could begin again. Preliminary tests indicate that the batch of meters received and installed so far by the City did not contain the defect in the radio transmitter that was detected in another batch of meters by Hersey.

No action was taken on this matter.

ADOPT – ORDINANCE – FIRE LANES: The City Manager presented Council with a proposed ordinance that would allow fire lanes to be designated by Council on public streets or on private property, if a request is received from the property for the Police Department to enforce such fire lanes, such a request is approved by Council and markings and signage directed by Fire Chief are placed by the property owner to indicate a fire lane is in place.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 18
TRAFFIC
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 18, Traffic, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 18 is amended by deleting Section 18-39 in its entirety and replacing it with the following:

Sec. 18-39. Fire lanes.

No person shall park a vehicle or permit it to stand, whether attended or unattended, upon any public vehicular area, street, highway or roadway in any area designated as a fire lane, provided that such areas are marked as fire lanes and contain adequate signage as specified by the Fire Chief. This subsection includes designated fire lanes in shopping center parking lots and all other public vehicular areas, provided that authorization to enforce such areas is provided by action of the City Council upon a request from the property owner. However, persons loading or unloading supplies or merchandise may park temporarily in a fire lane located in a shopping center parking lot or other public vehicular area as long as the vehicle is not left unattended. The prima facie rule of evidence created by G.S. 20-162.1 is applicable to prosecutions for violation of this section. The owner of a vehicle parked in violation of this subsection shall be deemed to have appointed any state, county or municipal law enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. No law enforcement officer removing such a vehicle shall be held criminally or civilly liable in any way for any acts or omissions arising out of or caused by carrying out or enforcing any provisions of this subsection, unless the conduct of the officer amounts to wanton misconduct or intentional wrongdoing.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of September, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-03-09-02-1

Council asked the City Manager to bring back any necessary ordinance changes to designate an appropriate penalty for violations of the Fire Lane Ordinance.

AWARD CONTRACT – UTILITY TRUCK PURCHASE – WASTEWATER TREATMENT DEPARTMENT: The City Manager advised that as stated at the last Regular Meeting, a utility truck in the Wastewater Department is in need of major repairs well in excess of $1,000.00.

The City typically does not bid out vehicles until the first of the year. However, due to not purchasing a needed vehicle last year, circumstances necessitate the purchase sooner.

Bids received were as follows:

Everette Chevrolet of Hickory	$31,067.35
Legendary Ford	No Bid
Jim Cook Chevrolet	$31,538.00

The City Manager advised that $38,000. had been budgeted for this for this truck and recommended that the low bid of Everette Chevrolet in the amount of $31,067.35 be approved.

A discussion followed regarding State Statutes on bid process.

The City Manager advised that State law typically dictates that the lowest responsible bid be awarded; however, research could be undertaken to see if there was a way under State law to justify accepting a higher bid as was suggested by Councilman Little at the August 19 meeting.

At the August 19, 2003 City Council Meeting, a motion was made by Councilman Little, seconded by Councilman Owenby to accept the high bid of Jim Cook Chevrolet.

This motion was withdrawn, and the item tabled.

The City Manager presented Council with a memo from Kathy Austin, Purchasing Agent, advising that she had reviewed the statutes on this particular situation and those on the material deviation in the proposal from Everette Chevrolet, which was the omission of a delivery date.

Based on her findings and advisement from purchasing contract professionals at the Institute of Government, she feels confident that Council is well within legal and ethical bounds in awarding the contract to Jim Cook Chevrolet.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to reinstate his previous motion and accept the bid of $31,538.00 from Jim Cook Chevrolet for the purchase of a utility truck in the Wastewater Treatment Department.

APPROVE CHANGE ORDER – POLICE DEPARTMENT EXPANSION – ELEVATOR: The City Manager presented Council with an estimate from G.E.M. for an elevator for the police Department in the amount of $170,647. The elevator and stairwell will be completely enclosed and provided with heat and air. The City Manager advised that the project budget contained $180,000 for the elevator.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the change work order for the installation of the elevator in the amount of $170,647, as presented by G.E.M.

ADOPT ORDINANCE – STATE STREET PARKING – EAST MCDOWELL JUNIOR HIGHT SCHOOL: The City Manager reported that the Street Committee had met with officials from East McDowell Junior High School to observe the parking situation on State Street in front of the school. The recommendation of the Street Committee was to designate an area on the south side of State Street (the school side) from the intersection of South McDowell Avenue and State Street eastward to the first marked parking space as a no parking zone, and to designate an area on the south side of State Street on either side of the entrance and exit driveway of the school as a no stopping, standing or parking area. Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
STATE STREET	PARKING PROHIBITED	SOUTH SIDE, BEGINNING 350 FT. EAST OF THE SE CORNER OF S. MCDOWELL AND STATE CONTINUING 226 FT. EASTERLY.

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
STATE STREET	PARKING PROHIBITED	SOUTH SIDE OF STREET, BEGINNING AT SE CORNER OF STATE ST AND SOUTH MCDOWELL AVE. AND EXTENDING 61 FEET EASTERLY.
	STOPPING, STANDING AND PARKING PROHIBITED	SOUTH SIDE OF STREET, BEGINNING 40 FT. WEST OF SW CORNER OF STATE ST. AND EAST MCDOWELL JR. HIGH SCHOOL DRIVEWAY AND EXTENDING 208 FT. EASTERLY.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of September, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-09-02-2

UPDATE ON KEY GAS - CONSIDERATION OF ADOPTION OF INCENTIVE AGREEMENT: The City Manager advised that he had sent a letter to Mr. Roy Kuhn and Mr. Jim Kuhn with Key Gas, asking for their comments on the Incentive Agreement that was endorsed in concept by Council at their August 19th meeting. To date the City Manager has not heard from Key Gas.

Council agreed to take no action on this matter until such time as Key Gas notifies the City of their comments concerning the incentive agreement.

DISCUSS NAMING OF STREET NEXT TO OLD SENIOR CENTER: The City Manager presented Council with a map showing the location of the street to extend from Crawford Street to the back of the old Police Department. At some point, a name needs to be chosen for this street, so that it could be listed as an official street and claimed on the Powell Bill Map.

A discussion followed. Several suggestions were made. No action was taken. Council will consider this item at a future meeting.

DEPOT RENOVATION UPDATE: The City Manager advised that construction of the depot will start with a pre-construction conference at City Hall on Thursday, September 11th at 10:00 A.M.

The City Manager stated that the exact use of the depot, after completion of renovations, and rules and regulations for the building, will need to be determined by Council. It was the consensus of Council to direct the City Manager and Recreation Committee to look at recommendations for possible uses and rules and regulations for the depot.

Mayor Clark further suggested that the City look at improvements to Depot Street, including brick sidewalks and a possible brick street, burying of overhead power lines and installation of decorative street lighting, between the depot site and West Henderson Street. DOT will be contacted about possible enhancement funding for this project. Mayor Clark further suggested that consideration be given to construction of a sidewalk and retaining wall from the edge of the depot site, behind the City parking lot on West Henderson Street, up to South Main Street. Contact will be made with DOT and Norfolk Southern Railway about this possible project.

SELECT VOTING DELEGATE/ALTERNATE FOR N.C. LEAGUE OF MUNICIPALITIES CONFERENCE : Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to appoint Mayor Clark as voting delegate and City Manager Bob Boyette as Alternate for the N.C. League of Municipalities conference.

ENDORSE MAYOR CLARK - 2ND VICE PRESIDENT OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITES: Mayor Clark advised that he had been nominated to run for 2nd Vice President of the N.C. League of Municipalities.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to endorse Mayor Clark' candidacy for 2nd Vice President of the N.C. League of Municipalities.

SELECT VOTING DELEGATE/ALTERNATE FOR NTIONAL LEAGUE OF CITIES CONFERENCE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Mayor Clark as voting delegate for the National League of Cities Conference and appoint either the City Manager or a Council Member as an alternate voting delegate, depending on who attends this conference.

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects.

COUNCILMAN COMMENTS:

Councilman Martin advised that it is his understanding that construction is to begin again, in two weeks on the Sugar Hill Road widening project.

Councilman Edwards commended Chief Elliott with the recent publicity picturing Chief Elliott and the County Sheriff in the McDowell News working together on a joint drug bust.

Councilman Little also commended Chief Elliott on recent work and the Police Department maintaining a good presence around the City.

Councilman Cuthbertson asked when work on the Cross Mill Mini Park would begin. The City Manager advised that city crews will be scheduled as soon as possible to begin this work and that the project must be completed by June 30, 2004, per State grant deadlines.

Councilman Owenby Commended Chief Elliott on the City's participation with the AMBER ALERT program for missing children.

Councilman Owenby also advised that he had been contacted, once again, regarding the road conditions on Bradley Street going into the back of the Lady Marian Plaza. A brief discussion followed. No action taken, as this is a private road. The City Manager was asked to investigate water flowing from Yamasa Japanese Restaurant onto this private road.

Mayor Clark advised Council of the WNC Caucus Dinner scheduled for September 25, 2003 at 6:00 PM.

Mayor Clark urged the need for the Police Department to focus on recent armed robberies. Chief Elliott noted that information would be coming out in the newspaper the next day, regarding how businesses can best protect themselves.

A guest attending this Council Meeting with members of the Boy Scouts, advised that erosion is occurring down stream of the Bridge on Mackey Creek. The City Manager advised that he would have this problem explored.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 16, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Jennifer Jackson, City Attorney's Office; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Sue Ledford, New Manna Baptist Church, Marion, NC, 28752; Anwer Gillani, PO Box 1536 Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of City Council Minutes - September 2, 2003 Minutes

B. Proclamation – CROP Walk Day:

PROCLAMATION
CROP WALK DAY

WHEREAS, at the end of World War II many people wanted to share our country's abundance with European war victims; and Church World Service and CROP's first purpose was to gather wheat and other crops from U.S. farms for shipment to Europe; and

WHEREAS, today, locally-organized, Church World Service-sponsored CROP WALKS are an important part of community life for more that 2,000 towns and cities in the United States, bringing together people of different faiths, diverse cultures, and all age groups; and,

WHEREAS, in the last 15 years alone, CROP WALKS have raised over $200 million to bring help and hope to people in need in need in more than 80 countries, including the U.S.; and,

WHEREAS, each year CROP WALKS help more than 3,200 local food pantries, food banks, and meal sites in the U.S. provide food to neighbors in need, including our own McDowell Ministries in Marion.

WHEREAS, the Annual CROP WALK will be held on October 5th to help our community become aware of and concerned about hunger and its causes; and,

WHEREAS, The CROP WALK will raise funds to help stop hunger both locally and globally;

NOW, THEREFORE, I, A. Everette Clark, Mayor of the City of Marion, do hereby proclaim Sunday, October 5, 2003 as

CROP WALK DAY IN MARION

And do urge the citizens of Marion to support this crop walk.

_____
A. Everette Clark, Mayor

RECOGNITION – POLICE DEPARTMENT EMPLOYEES RECIEVING ADVANCED LAW ENFORCEMENT CERTIFICATES: Police Chief Mika Elliott presented Sergeant Janie Schutz and Corporal Mike Fox with an Advanced Law Enforcement Certificate from the Training and Standards Division of the Department of Justice.

Chief Elliott commended both Sergeant Schutz and Corporal Fox for their achievements in Law Enforcement and to the City of Marion Police Department. The certificates they were presented are the highest ones available for law enforcement in North Carolina.

Mayor Clark, Council Members and the City Manager all commended Sergeant Schutz and Corporal Fox for their work and dedication to the citizens of Marion and for their receipt of the Advanced Certificate.

INTRODUCTION – NEW STREET SUPERINTENDENT – ROGER ESTES: The City Manager recognized Mr. Roger Estes as the City's new Street Superintendent. Mr. Estes has fifteen years of service with the City of Marion and will assume his new duties as Street Superintendent on November 1, 2003. Current Street Superintendent Aaron Adams will work with the City on contract through the end of December.

PUBLIC APPEARANCE – MR. ANWER GILLANI – WATER/SEWER SUGAR HILL ROAD: Mr. Anwer Gillani appeared before Council requesting that Council consider annexing his property on Sugar Hill Road near I-40. Mr. Gillani stated that other property owners in the area are interested also and are willing to forego the receipt of City services such as water and sewer.

The City Manager advised that the City of Marion in general cannot annex a property, even voluntarily, unless the City can provide full services, including water and sewer. He stated he could research the matter further if desired by Council.

A discussion followed.

Council members directed the City Manager to research this matter further to see if any mechanisms existed within State law to allow the City to annex property voluntarily and not provide full services.

No action was taken on this matter.

PUBLIC HEARING – REZONING – PARK AVENUE: Mayor Clark opened the Public Hearing.

Ms. Sue Ledford appeared before Council on behalf of New Manna Baptist Church. New Manna is requesting that a lot on Maple Avenue adjacent to their property be rezoned from R-2 Residential to C-2 Commercial. This property contains an old house that was recently the location of frequent yard sales. The Church would like to operate a thrift shop with money going into the Church.

Ms. Suzy Davis, City Planner advised that the Planning Board recommends approval of this request. She outlined the 70+ uses that would be allowed in the C-2 district for this property if the rezoning was approved.

Several Council Members discussed various concerns about rezoning in this residential area. Councilman Owenby inquired as to how many residents in the neighborhood were advised of the public hearing. Ms. Davis stated that notices had been sent out to adjoining property owners within 100 feet of the lot proposed for rezoning, in accordance with the Zoning Ordinance, and that she had included a few additional property owners beyond this 100 foot distance. Councilman Owenby stated that he was not opposed to what the church wanted to do, but felt that the rezoning of this property would be detrimental to Park Avenue, a residential

street, since it would open up the property to many types of commercial uses. Councilman Owenby asked if a special exception could be considered.

Ms. Davis advised that the request could be modified to a zoning amendment to allow thrift stores as a special exception in the R-2 district. The Board of Adjustment would then review individual requests for thrift stores in the R-2 district on a case by case basis. She stated that the Planning Board had concerns in the past with opening up the R-2 district to any type of commercial use. The City Manager advised that the zoning amendment could be written up narrowly, to allow only thrift stores operated by non-profit organizations and to specify a maximum number of days per week that such a store could be operated.

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to refer this item back to the Planning Board. Council members suggested that the church work with City staff to modify their request to a zoning amendment to allow thrift stores as a special exception in the R-2 district.

The City Manager advised that, without objection, New Manna Church would not be charged an additional application fee to modify their request.

PUBLIC HEARING – ADOPTION OF McDOWELL COUNTY SOLID WASTE PLAN:
Mayor Clark opened the Public Hearing.

The City Manager advised that in past years the City has participated with the County and the Town of Old Fort on the preparation of a Ten Year Solid Waste Plan. All participating jurisdictions are asked to adopt a resolution approving the plan.

The Plan would continue the 2000 Solid Waste Plan targets of a proposed 30 percent waste reduction goal (from 1995-96 numbers) by 2007-08, with a further 30 percent waste reduction gold by 2012-13.

The County cites recycling as a major method of achieving waste reduction.

The City of Marion is the only jurisdiction in McDowell County engaged in curbside recycling collection.

Sanitation Supervisor Roger Estes provided further background on the Solid Waste Plan.

A discussion followed.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

CITY OF MARION
RESOLUTION
TO APPROVE THE MCDOWELL COUNTY SOLID WASTE PLAN

WHEREAS, better planning for solid waste will help protect public health and the environment, provide for an improved solid waste management system, better utilize our natural resources, control the cost of solid waste management; and,

WHEREAS, NC General Statute 130A-309.09 A(b) requires each unit of local government, either individually or in cooperation with other units of local government, to develop a 10-year comprehensive solid waste management plan; and,

WHEREAS, the City of Marion was represented on the McDowell County Planning Advisory Committee and has been actively involved in the planning process;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marion hereby approve the McDowell County comprehensive Solid Waste Management Plan.

Adopted this 16th day of September, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

DISCUSSION OF FIRE LANE PARKING PENALTIES: The City Manager advised that as directed by Council at the last meeting he had examined how the City Code handles violations for parking in fire lanes.

Section 1-16 of the City Code, civil citations for violations of the City Code are set at $50.00, with the exception of parking violations, which are set at $5.00. The recently amended fire lane section, Section 18-39 clearly states that "No person shall park a vehicle in any area designated as a fire lane." The City Manager stated that he and the Police Chief therefore felt that the existing language in the City Code set a $5.00 penalty for fire lane violations.

No changes are recommended at this point.

No action was necessary by Council on this matter.

UPDATE – KEY GAS/CONSIDERATION OF ADOPTION OF INCENTIVE AGREEMENT: The City Manager advised that he had spoken with Mr. Jim Kuhn of Key Gas, regarding revisions of the Incentive Agreement for Key Gas. Mr. Kuhn advised that the date of occupancy would move from October 1, 2003 to January 1, 2004, that the number of employees would be 60 instead of 70 and that the company's investment would be reduced from $2.3 million to $1.8 million. The City Manager recommended that the City's investment be reduced to $18,400.00 over two years from $20,000.00.

A discussion followed. The City Manager advised that he would not bring this matter back before Council, unless otherwise directed, until the agreement was accepted by Key Gas.

No action was taken by Council on this matter.

DISCUSS/ENDORSE GRANT APPLICATION – N.C. RURAL CENTER CAPACITY GRANT: The City Manager advised that Mr. Dennie Martin of McGill has proposed that the City submit a grant application to the N.C. Rural Economic Development Center to conduct an assessment of and financial plan for our water and sewer system, including our water and wastewater treatment plants and our water distribution and wastewater collection system. The amount of the grant would be $40,000 and the City's match would be $4,000. Our local share could be budgeted in 2004-05. This document could pull together previous studies into a plan for making needed water and sewer system improvements over the next ten years. Updated mapping of water and sewer lines could also be undertaken. The grant application deadline is early October, and would need to be submitted through McGill Associates.

A brief discussion followed.

The City Manager advised that this plan could be particularly important as we face potential major expenditures in the future with repairs at the Water Plant and the Corpening Creek Wastewater Plant.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this grant application.

APPROVE HOUSE BURNING – NORTH MAIN STREET: The City Manager advised that Dr. Suzanne Sewell recently purchased a property on North Main Street to build a new Veterinary Clinic. Dr. Sewell is requesting that the Marion Fire Department burn the old house on the property to make room for her new building.

The City Manager advised that he had spoken with Chief Neal and that the house could be burned safely and would serve as a useful training exercise for the firemen. Dr. Seawell will pay for all asbestos tests, permits and for clearing all debris promptly after the burn takes place.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve this request.

Councilman Little advised that this property was once owned by Ms. Margaret Wall.

REQUEST FROM DOWNTOWN BUSINESS ASSSOCIATION – MOUNTAIN GLORY FESTIVAL: The City Manager advised that at the September 9th Board of Directors Meeting, the Staff and Board of Directors of the Downtown Business Association held an annual review of their Executive Director, Ms. Freddie Killough. A desire was expressed by the DBA Board to bring Freddie's salary in line with other similar professionals such as the MACA Director and the TDA Director, but funding concerns presented an obstacle to this change.

Ms. Debra Ledbetter, President of the Downtown Business Association, sent in a written request for funding in the amount of $2,000 to assist with budget increases for personnel and operational expenses.

The City Manager recommended that Council authorize a certain percentage, up to 50 percent, of annual profits from the Mountain Glory Festival to be returned to the Downtown Business Association as a reward for the DBA running the festival and other downtown parades and events every year. The City Manager presented a summary of Mountain Glory Finances showing that since the City and DBA took over the Festival in 1998, the Festival had accumulated a balance of $21,920, with a profit of $6,909 in 2002.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to give the Marion Downtown Business Association an immediate $2,000 in funding from the Mountain Glory account, and each January, beginning in January 2004, to authorize one half of the Mountain Glory Festival profits from the prior year be given to the Downtown Business Association. The Mayor and Council noted that the Mountain Glory Festival would not be possible without the hard work of DBA Director Freddie Killough and all the DBA Board and volunteers.

APPROVE CONTRACT FOR CONSTRUCTION ADMINISTRATION SERVICES – DEPOT RENOVATION: The City Manager advised that the contract with Hager Smith Architects for the depot renovation needs to be amended to add construction administration services in the amount of $48,713. The City's share of these services is ten percent, or

$4,871.30. In addition, Hager Smith had presented a contract for additional design and construction administration services to rework the City parking lot on West Henderson Street. The amount of this additional contract was $1,500 and the City's share of these services would also be ten percent, or $150.00.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the amendments to the contract with Hager Smith Architects to add construction administration services in the amount of $48,713 and for additional design and construction administration services to rework the City parking lot on West Henderson Street in the amount of $1,500.00.

DISCUSS – CDBG ECONOMIC RECOVERY PLANNING ASSISTANCE GRANT: The City Manager advised that he had spoken with Paul Hughes and Jim Edwards, with Isothermal Planning and Development Commission, regarding applying for some grant money on a local or regional basis to some preliminary assessments of brownfield sites such as Marion Mills. Jim Edwards with Isothermal feels that the City could submit a regional application to assess brownfield sites in McDowell, Rutherford and Cleveland Counties. Paul Hughes has spoken with Bill McNeil, director of the N.C. Division of Community Assistance, and he feels that this application might qualify on a regional basis, given job losses in a multi-county region that might not be present in our county alone. The maximum grant application would be $600,000.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to apply for this grant funding.
The City Manager advised that a formal public hearing would need to be held on this grant application at the next meeting.

CHANGE ORDER – G.E.M. – MARION POLICE DEPARTMENT RENOVATIONS: The City Manager advised that the project contractor, G.E.M. Constructors, have presented three change orders which have been reviewed and approved by the project architect, ADW. The first change order in the amount of $14,840 was related to extra backfill required for the retaining wall. Councilman Little inquired if soil conditions on the site had dictated this change. The City Manager advised that the project plans had called for using backfill from the site, but that soil tests showed the soil on site to be unsuitable for use as backfill for the retaining wall.

The additional change orders were for plumbing in the basement for a possible relocation of the evidence room to the lower level ($942) and the rerouting of existing drain lines in conflict with new footings ($2,334). The total amount of all three change orders was $18,116.

The City Manager advised that these change orders could be funded out of the $47,000 project contingency.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve three change orders as listed above.

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects.

COUNCILMAN COMMENTS:

Councilman Owenby requested that the Street Committee look at an unopened Alleyway on Snipes Street that has generated complaints. The Street Committee meeting was set for Thursday, September 18 at 2:30 P.M.

Councilman Cuthbertson advised that Council may soon be asked to revisit the Oak Grove Cemetery policy that prohibits more than one urn or cremated remains of a body from being placed in an individual grave site.

Councilman Little stated that he hoped the contract could be awarded for the curb and gutter and sidewalk work on Fern and Montevista Avenues in October, since this project is greatly needed to enhance safety in the area.

Councilman Edwards advised that he is receiving more complaints about Stacy Brown loitering and intimidating people in the downtown area and that he had personally witnessed him cursing and pointing at people and cars on the street. The Police Chief stated that he will look at possible solutions to this problem or to at least keep him moving.

Councilman Martin advised that he would urge Council to find a way to extend water and sewer service down Sugar Hill Road to the Interstate so that this corridor could be annexed, to assist Mr. Anwer Gilliani and others with their efforts to bring additional development and tax base to Marion.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(4) to discuss a matter involving the location of industry and under N.C.G.S. 143.318.11(a)(3) to discuss a legal matter in consultation with the City Attorney.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to go back into Regular Session.

Mayor Clark announced that no action was taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adjourn this meeting in Memory of retired City Employee, Mr. Harry Phillips, who had passed away a few days prior after a battle with cancer.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

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Council asked the City Manager to bring back any necessary ordinance changes to designate an appropriate penalty for violations of the Fire Lane Ordinance.

AWARD CONTRACT – UTILITY TRUCK PURCHASE – WASTEWATER TREATMENT DEPARTMENT: The City Manager advised that as stated at the last Regular Meeting, a utility truck in the Wastewater Department is in need of major repairs well in excess of $1,000.00.

The City typically does not bid out vehicles until the first of the year. However, due to not purchasing a needed vehicle last year, circumstances necessitate the purchase sooner.

Bids received were as follows:

Everette Chevrolet of Hickory	$31,067.35
Legendary Ford	No Bid
Jim Cook Chevrolet	$31,538.00

The City Manager advised that $38,000. had been budgeted for this for this truck and recommended that the low bid of Everette Chevrolet in the amount of $31,067.35 be approved.

A discussion followed regarding State Statutes on bid process.

The City Manager advised that State law typically dictates that the lowest responsible bid be awarded; however, research could be undertaken to see if there was a way under State law to justify accepting a higher bid as was suggested by Councilman Little at the August 19 meeting.

At the August 19, 2003 City Council Meeting, a motion was made by Councilman Little, seconded by Councilman Owenby to accept the high bid of Jim Cook Chevrolet.

This motion was withdrawn, and the item tabled.

The City Manager presented Council with a memo from Kathy Austin, Purchasing Agent, advising that she had reviewed the statutes on this particular situation and those on the material deviation in the proposal from Everette Chevrolet, which was the omission of a delivery date.

Based on her findings and advisement from purchasing contract professionals at the Institute of Government, she feels confident that Council is well within legal and ethical bounds in awarding the contract to Jim Cook Chevrolet.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to reinstate his previous motion and accept the bid of $31,538.00 from Jim Cook Chevrolet for the purchase of a utility truck in the Wastewater Treatment Department.

APPROVE CHANGE ORDER – POLICE DEPARTMENT EXPANSION – ELEVATOR: The City Manager presented Council with an estimate from G.E.M. for an elevator for the police Department in the amount of $170,647. The elevator and stairwell will be completely enclosed and provided with heat and air. The City Manager advised that the project budget contained $180,000 for the elevator.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the change work order for the installation of the elevator in the amount of $170,647, as presented by G.E.M.

ADOPT ORDINANCE – STATE STREET PARKING – EAST MCDOWELL JUNIOR HIGHT SCHOOL: The City Manager reported that the Street Committee had met with

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officials from East McDowell Junior High School to observe the parking situation on State Street in front of the school. The recommendation of the Street Committee was to designate an area on the south side of State Street (the school side) from the intersection of South McDowell Avenue and State Street eastward to the first marked parking space as a no parking zone, and to designate an area on the south side of State Street on either side of the entrance and exit driveway of the school as a no stopping, standing or parking area. Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
STATE STREET	PARKING PROHIBITED	SOUTH SIDE, BEGINNING 350 FT. EAST OF THE SE CORNER OF S. MCDOWELL AND STATE CONTINUING 226 FT. EASTERLY.

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
STATE STREET	PARKING PROHIBITED	SOUTH SIDE OF STREET, BEGINNING AT SE CORNER OF STATE ST. AND SOUTH MCDOWELL AVE. AND EXTENDING 61 FEET EASTERLY.
	STOPPING, STANDING AND PARKING PROHIBITED	SOUTH SIDE OF STREET, BEGINNING 40 FT. WEST OF SW CORNER OF STATE ST. AND EAST MCDOWELL JR. HIGH SCHOOL DRIVEWAY AND EXTENDING 208 FT. EASTERLY.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of September, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-09-02-2

UPDATE ON KEY GAS - CONSIDERATION OF ADOPTION OF INCENTIVE AGREEMENT: The City Manager advised that he had sent a letter to Mr. Roy Kuhn and Mr. Jim Kuhn with Key Gas, asking for their comments on the Incentive Agreement that was

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endorsed in concept by Council at their August 19th meeting. To date the City Manager has not heard from Key Gas.

Council agreed to take no action on this matter until such time as Key Gas notifies the City of their comments concerning the incentive agreement.

DISCUSS NAMING OF STREET NEXT TO OLD SENIOR CENTER: The City Manager presented Council with a map showing the location of the street to extend from Crawford Street to the back of the old Police Department. At some point, a name needs to be chosen for this street, so that it could be listed as an official street and claimed on the Powell Bill Map.

A discussion followed. Several suggestions were made. No action was taken. Council will consider this item at a future meeting.

DEPOT RENOVATION UPDATE: The City Manager advised that construction of the depot will start with a pre-construction conference at City Hall on Thursday, September 11th at 10:00 A.M.

The City Manager stated that the exact use of the depot, after completion of renovations, and rules and regulations for the building, will need to be determined by Council. It was the consensus of Council to direct the City Manager and Recreation Committee to look at recommendations for possible uses and rules and regulations for the depot.

Mayor Clark further suggested that the City look at improvements to Depot Street, including brick sidewalks and a possible brick street, burying of overhead power lines and installation of decorative street lighting, between the depot site and West Henderson Street. DOT will be contacted about possible enhancement funding for this project. Mayor Clark further suggested that consideration be given to construction of a sidewalk and retaining wall from the edge of the depot site, behind the City parking lot on West Henderson Street, up to South Main Street. Contact will be made with DOT and Norfolk Southern Railway about this possible project.

SELECT VOTING DELEGATE/ALTERNATE FOR N.C. LEAGUE OF MUNICIPALITIES CONFERENCE : Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to appoint Mayor Clark as voting delegate and City Manager Bob Boyette as Alternate for the N.C. League of Municipalities conference.

ENDORSE MAYOR CLARK - 2ND VICE PRESIDENT OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITES: Mayor Clark advised that he had been nominated to run for 2nd Vice President of the N.C. League of Municipalities.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to endorse Mayor Clark' candidacy for 2nd Vice President of the N.C. League of Municipalities.

SELECT VOTING DELEGATE/ALTERNATE FOR NTIONAL LEAGUE OF CITIES CONFERENCE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Mayor Clark as voting delegate for the National League of Cities Conference and appoint either the City Manager or a Council Member as an alternate voting delegate, depending on who attends this conference.

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects.

COUNCILMAN COMMENTS:

Councilman Martin advised that it is his understanding that construction is to begin again, in two weeks on the Sugar Hill Road widening project.

Councilman Edwards commended Chief Elliott with the recent publicity picturing Chief Elliott and the County Sheriff in the McDowell News working together on a joint drug bust.

Councilman Little also commended Chief Elliott on recent work and the Police Department maintaining a good presence around the City.

Councilman Cuthbertson asked when work on the Cross Mill Mini Park would begin. The City Manager advised that city crews will be scheduled as soon as possible to begin this work and that the project must be completed by June 30, 2004, per State grant deadlines.

Councilman Owenby Commended Chief Elliott on the City's participation with the AMBER ALERT program for missing children.

Councilman Owenby also advised that he had been contacted, once again, regarding the road conditions on Bradley Street going into the back of the Lady Marian Plaza. A brief discussion followed. No action taken, as this is a private road. The City Manager was asked to investigate water flowing from Yamasa Japanese Restaurant onto this private road.

Mayor Clark advised Council of the WNC Caucus Dinner scheduled for September 25, 2003 at 6:00 PM.

Mayor Clark urged the need for the Police Department to focus on recent armed robberies. Chief Elliott noted that information would be coming out in the newspaper the next day, regarding how businesses can best protect themselves.

A guest attending this Council Meeting with members of the Boy Scouts, advised that erosion is occurring down stream of the Bridge on Mackey Creek. The City Manager advised that he would have this problem explored.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 7, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: J. Earl Daniels, Garden Street, Marion, NC 28752; Charles Riney, Charlotte, NC; Tom Gwynn, Charlotte, NC; Andy Jaynes, Asheville, NC; Dean Wall, Marion, NC 28752; Jim Gibson, Marion, NC 28752; Angela Broadwell, 2434 Sugar Hill Road, Marion, NC 28752; Mike Rabb 281 South Garden Street, Marion, NC 28752; Rachel Carnes 459 Forest Heights Drive, Marion, NC 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN LLOYD CUTHBERTSON: Councilman Lloyd Cuthbertson selected the Citizen of the Month for October:

RACHEL CARNES

Councilman Cuthbertson advised that Mrs. Carnes was born in Lumberton, North Carolina. She has resided in Marion since 1948 when she married Everette "Buddy" Carnes and they moved to set up his law office.

They have two sons, Michael and Andrew.

Ms. Carnes enjoys golfing, music, cooking and people.

She is a mainstay at the First Untied Methodist Church in Marion where she has played piano and organ, sung and directed the choir and taught the Neal Parker Sunday School Class. One particular instance involving Mrs. Carnes was about ten years ago when the Church was deciding the future of its child care program. A meeting was called and both sides of the issue were presented and discussed. Near the end of the meeting Mrs. Carnes made the statement that "If Jesus were walking down the halls of the church, he would be more pleased to see dirty hand prints of the little children than clean white walls."

Mayor Clark and Council Members all had kind words to share about Ms. Carnes.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda, excluding item D as follows:

A. Approval of City Council Minutes - September 16, 2003 Minutes
B. Ordinance – 25 MPH – Fleming Avenue

ORDINANCE
CITY OF MARION
FLEMING AVENUE

Based upon engineering and traffic investigation pursuant to authority granted by G.S. 20—141 90) declaring the following speed limit modifications as set forth below on the following described portion of a State Highway System Street:

Declare the Following Speed Limit

Speed Limit	Ordinance Number	Description
25 MPH	580200057	SR 1500 (Fleming Avenue), from US 70 (Garden Street) Northward to a point 0.10 mile north of SR 1504, in Marion.

Rescind the Following Speed Limit

Speed Limit	Ordinance Number	Description
25 MPH	580200048	SR 1500 (Fleming Avenue), from Garden Street, Northward to SR 1501 (Yancey Road)

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

C. Authorize Flu Shots for City Employees

RESOLUTION – MUNICIPAL AGREEMENT AUTHORIZING INSPECTIONS OF CITY BRIDGES BY DOT: Councilman Little requested that this item be removed from the Consent Agenda and discussed separately. Councilman Little stated that he had long opposed the bridge inspections that are required every other year. Councilman Edwards stated that he would support Councilman Little's opposition, recognizing that the inspections are a federal requirement.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson the following Agreement was approved three (3) to two (2):

NORTH CAROLINA
MCDOWELL COUNTY

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION
AND MUNICIPAL AGREEMENT

CITY OF MARION

REINSPECTION OF BRIDGES ON
THE MUNICIPAL STREET SYSTEM
F.A. PROJECT BRZ-NBIS (13)

THIS AGREEMENT, made and entered into this the 7th day of October, of 2003, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and CITY OF MARION, a municipal corporation, hereinafter referred to as the Municipality;

W I T N E S S E T H:

WHEREAS, the Surface Transportation Assistance Act of 1978 provided funding for a Federal-Aid Highway Bridge Replacement and Rehabilitation Program; and
WHEREAS, the Highway Bridge Replacement and Rehabilitation portion of the law requires that all structures defined as bridges located on public roads must be inspected on a cycle, not to exceed two years in accordance with the national Bridge Inspection Standard (NBIS); and

WHEREAS, the Municipality has requested the Department or a Consultant retained by the Department to reinspect and analyze all public bridges located on its Municipal Street System in compliance with the National Bridge Inspection Standards; and
WHEREAS, the Department and the Municipality are authorized to enter into an agreement for such work under the provisions of G.S. 136-18 (12), G.S. 136-41.3, and G.S. 136-66.1; and,
WHEREAS, the City Council of the municipality has approved the hereinabove referenced reinspection and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out.
NOW, THEREFORE, the Department and the municipality agree as follows:

1. The Department or a Consulting Engineering firm retained by the Department shall reinspect, analyze, and prepare the necessary inspection reports for all bridges on the Municipal Street System in accordance with the national Bridge Inspection Standards.
2. All work shall be done in compliance with the following documents:
   (a) national Bridge Inspection Standards (23 CFR, Chapter 1 part 650)
   (b) AASHTO Manual for Maintenance Inspection of Bridges 1983
   (c) Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges – December, 1988.
3. The Municipality shall be responsible for providing any required traffic control personnel during the work period.
4. The Municipality shall furnish all data in the possession of the municipality that can be released that will help the Department or its Consultant in the accomplishment of the work including but not limited to appropriate municipal maps showing the location of the bridges, plans for the bridges when available, and any prior inspection reports.
5. During the inspection process, some repairs may be discovered that require immediate attention or repair, or a regulatory sign may be missing, damaged or incorrect. A Prompt Action Notice or regulatory Sign Notice will be issued in these cases. It is required that the Municipality resolve the Prompt Actions and/or Regulatory Sign notice within ninety (90) days of issuance.
6. The municipality shall designate a responsible Municipal official with whom the Department or its Consultant will coordinate the work.
7. It is understood by the parties hereto that the Federal Highway Administration, through the Department, is to participate in the costs of the work to the extent of eighty (80) percent of actual costs, subject to compliance with all applicable federal policy and procedural rules and regulations. All costs not participated in by the Federal Highway Administration shall be borne by the Municipality.
8. Upon completion of the bridge reinspections, and analysis work, the Department shall invoice the municipality for accumulated project costs not participated in by the Federal Highway Administration,. Upon FHWA final audit, the Department shall invoice/refund the Municipality any differences in the amount previously invoiced and the actual costs not participated in by the Municipality within sixty (60) days of the invoice date. After the due date, a late payment penalty and interest hall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-24.1 (i).
9. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipality hereby authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1, until such time as the Department has received payment in full.
10. Upon completion of the work the Department shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this agreement. Further, the Department shall make such materials available at its office for three (3) years from the date of payment of the Final Voucher by the Federal Highway Administration under this agreement, for inspection an audit by the Federal Highway Administration under this agreement, for inspection and audit by the Federal Highway administration, or any authorized representatives of the Federal Government.

IT IS UNDERSTOOD AND AGREED that the approval of the work by the Department is subject to the conditions of this agreement, and that no expenditure of funds on the part of the

Department will be made until the terms of this agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given, as evidenced by the attached certified copy of resolution, ordinance or charter provision, as the case may be.

L.S.
ATTEST CITY OF MATTON

By: _____
CLERK MAYOR
SEAL OF MUNICIPALITY

L.S.
ATTEST DEPARTMENT OF TRANSPORTATION

_____ BY: _____ _____
SECRETARY TO THE BOARD STATE HWY. ADMINISTRATION

BOARD OF TRANSPORTATION SEAL APPROVED AS TO FORM
MICHAEL F. EASLEY
ATTORNEY GENERAL

By: _____ _____
ASSISTANT ATTORNEY GENERAL

The vote was as follows:

Councilman Cuthbertson	Yes
Councilman Martin	Yes
Councilman Owenby	Yes
Councilman Edwards	No
Councilman Little	No

DISCUSSION – AUTOMATED WATER METERS – MAINLINE SUPPLY AND HERSEY METERS: The City Manager advised that representatives from Mainline supply and Hersey Meters were present to discuss the results of the testing on the automated water meters. Hersey had stopped shipment of the water meters in August due to a potential problem with the radio transmitter in the meter.

Mr. Andy Jaynes of Mainline Supply and Charles Riney, General Manager, Tom Gwynn, Senior Engineer, and Mr. Brian Harwood, Salesman, from Hersey Meters appeared before Council.

Mr. Riney advised that it was a difficult decision for Hersey Meters to stop shipment on their meters, but it was thought that this decision was the most prudent course of action. Mr. Riney explained that testing had been conducted for about a seven week period on the meter and the radio transmitter and that the testing had revealed a problem with the packaging of the unit that allowed moisture to seep into the unit and damage the electronics. Mr. Riney stated that this problem had been corrected. He stated that Hersey Meters and Ramar, the maker of the radio transmitter, had agreed to extend the warranty on the unit from the normal one year to two years, at no extra charge. In addition, Mr. Riney stated that Hersey Meters would replace the 800+ meters already installed at no expense to the City.

A discussion followed.

Councilman Owenby asked if Hersey would continue to check for mal-functions before installation. Mr. Riney stated that Hersey was continually testing their product, but felt that the unit being sent to Marion was reliable, now that the problem with the packaging was identified and corrected.

Councilman Little advised that he appreciated Hersey's decision to contact the City about a potential problem and to take the step to stop shipment on their product.

Mayor Clark expressed that no long term testing on this new unit left him uncomfortable with the product. He stated that the City was investing a great deal of money in this new technology and needed assurances that the product would work and that the City would not experience mass failures in the future. Mayor Clark stated that if Hersey was truly comfortable with their product that they would offer a longer warranty. Mr. Riney stated that Hersey Meters would stand behind their product but could not offer an unconditional guarantee on electronics. He stated that the experience of Hersey Meters was that a one to two percent failure rate was normal.

The City Manager discussed a possible extended warranty on the meters, available for $1.50 per meter per year. The Mayor and Council members expressed that they did not see purchase of an extended warranty as necessary.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the offer of Hersey Meters to begin shipment of the meters again by October 24th and to extend the warranty on the meters from one year to two years, at no cost to the City.

Mainline has agreed to pay the meter installer, Vanguard, for their added expenses in having to stop the meter installation in August. The City Manager asked Mr. Jaynes for confirmation in writing when this payment to Vanguard was made.

JIM GIBSON – DISCUSSION – STREET RIGHT-OF-WAY BEHIND WESTMORELAND FUNERAL HOME: Mr. Jim Gibson appeared before Council requesting that a Street Right of Way behind Westmoreland Funeral Home be relocated from its present location behind the old Heilig Myers building to elsewhere on Westmoreland's property, while still maintaining access to other property owners.

A discussion followed.

The City Manager advised that the City could not swap land with a private property owner, but that it might be possible to have a street closing and the acceptance of right of way from Mr. Gibson for a relocated street.

Councilman Little stated that he would suggest that the street closing and acceptance of right of way be done simultaneously.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to allow the City Manager to look further into Mr. Gibson's request with the City Attorney.

CIVIL CITATION APPEAL – NOISE VIOLATION – TIMOTHY PARKER: Mr. Timothy Parker appeared before Council requesting that a noise violation he received on September 21, 2003 be waived. Mr. Parker feels that his factory stereo system cannot be heard at a distance of 50 feet.

Council reviewed the written statement of the officer writing the citation, Sgt. Tommy Lytle. The City Manager and Police Chief gave an overview of the City Noise Ordinance, which states that loud noise, such as music, audible from 50 feet away, is a violation.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Owenby, Council voted unanimously to respectfully deny this request.

PUBLIC HEARING – SOUTH MAIN STREET REZONING: Mayor Clark opened the public hearing. City Planner Suzy Davis advised that this request involved the rezoning of a house and lot at South Main Street from C-2 General Business to R-2 Residential. The applicant is requesting the rezoning to allow the property to be used for residential purposes, which is not allowed under C-2 zoning. Ms. Davis reported that the Planning Board had recommended unanimously the approval of this request, based on no opposition at their meeting.

Angela Broadwell of Brooks & Broadwell Realty appeared on behalf of the applicant. She stated that the Bank of America owned the house and was trying to sell the property. The sale is contingent upon rezoning to R-2. Ms. Broadwell noted that she and other realtors had tried unsuccessfully for some time to market this property for commercial uses.

Mr. Mike Rabb appeared before Council opposing the request to rezone the property at 366 South Main Street from C-2 General Business to R-2 Residential. He advised that Main Street is the signature of the City and has been designated through the City's Land Use Plan as a commercial area. Mr. Rabb noted that the City and surrounding property owners would lose some control over the property if it was rezoned to R-2 and made into rental property, given limited appearance standards currently in place for residential properties.

Mayor Clark asked if the Planning Board had looked at the City of Marion's Land Use Plan. Ms. Davis stated that the Planning Board had considered the Land Use Plan's designation of South Main Street as a commercial area but had felt that residential was the best possible use for the property at this time.

The City Manager asked if the fact that the Land Use Plan was written in 1978 affected the Planning Board's recommendation. Ms. Davis stated that the Planning Board probably does not take the Land Use Plan as seriously as they should given the fact that it is twenty-five years old.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to deny the request by Integrated Asset Services, Inc., on behalf of Bank of America, to rezone the property at 366 South Main Street from C-2 General Business to R-2 Residential.

PUBLIC HEARING – APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT ECONOMIC RECOVERY GRANT: Mayor Clark opened the Public Hearing.

The City Manager advised that as mentioned at the last City Council meeting, he has spoken with Isothermal about an idea to apply for some grant money on a local or regional basis to some preliminary assessments of Brownfield sites such as Marion Mills.

Mr. Jim Edwards with Isothermal was present for this meeting, and proposed the submission of an application to assess brownfield sites in McDowell, Rutherford and Cleveland County. Mr. Edwards stated that he has spoken with Mr. Bill McNeil, director of the N.C. Division of Community Assistance, and Mr. McNeil feels that we might could qualify for this grant on a regional basis, given job losses in the multi county region that might not be present in our county alone. The maximum grant application would be $600,000. Mr. Edwards advised that the City's grant application would be for $97,000 and require no local match.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution.

RESOLUTION OF THE
MARION CITY COUNCIL

WHEREAS, the loss of manufacturing firms in the region has created severe economic distress through the loss of jobs and reductions in the local tax base, and

WHEREAS, the City of Marion is undertaking various measures to encourage new business and business expansions to reverse this trend; and

WHEREAS, the North Carolina Department of Commerce, Division of Community Assistance has created an Economic Recovery planning Category within the Small Cities Community Development block Grant program (GDBG.)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION, NORTH CAROLINA,

1) The City shall make application for $97,000.00 from the CDBG 2003 Economic Recovery Planning Category for the project entitled Region C economic Recovery Planning and further described in said application.

2) The appropriate officials are authorized to execute all documents necessary to complete said application; and in the event that the grant is awarded, such officials are hereby authorized to execute such documents as necessary to accept the award.

Adopted this 7th day of October, 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

CIVIL CITATION APPEAL – DOG RUNNING LOOSE – D.W. DAVIS: Mr. D.W. Davis of East Hudgins Street requested that he be placed on this agenda to appeal a civil citation received for his pit bull running loose in the East Hudgins/Mitchell Street area.

Mr. Davis was not present to discuss his request.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to deny this request.

DISCUSS FUNDING – US 221 NORTH BUSINESS WATER AND SEWER EXTENSION TO HANKINS ROAD: Mr. Danny Bridges, P.E., of McGill Associates appeared before Council presenting an overview of the US 221 North water and sewer extension to Hankins Road. He provided a summary of how the water and sewer lines would run to this area, and some possible additional areas of service. Mr. Bridges noted a project cost of approximately $490,000 for water and about $632,000 for sewer.

Mr. Dennie Martin of Martin-McGill appeared before Council and discuss the funding for the project. About $890,000. in grant funding has been committed, along with a local match of $136,000 previously agreed to by the City Council and County Commissioners. Another $100,000 grant from the Appalachian Regional Commission had been sought but not funded. Therefore, the project needs an additional $96,000 in funding to be completed.

The City Manager advised that the Joint City-County Utility Committee had discussed the funding for this project at their September 16 meeting. The City and County members had recommended that the City and County split this additional $96,000 on a 50-50 basis ($48,000 each), with the City's share rising to 70%, or $67,200, if connection fees are sufficient to cover this additional expense. The City Manager reported that the Utility Committee had discussed options of paying cash for the entire $232,000 local match, or financing the local match over a five to seven year period, to take advantage of current low interest rates. Dennie Martin advised that the rules of the North Carolina Rural Economic Development Center, the funding agency for the sewer grant, require the local match to be paid first, which might pose a cash flow problem for the City and County, since much of the City's share of the local match is tied to receipt of connection fees, which will likely not be paid until near the end of the project, when businesses and residences are able to connect to City water and sewer. The City Manager also advised that the provision of water and sewer would open this area up to annexation by the City.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to proceed with this project with the City and County splitting the additional $96,000 local match on a 50-50 basis ($48,000 each), with the City's share rising to 70%, or $67,200, if connection fees are sufficient to cover this additional expense. Council further directed the City Manager to work with the County on financing the entire local match of $232,000, with the City likely serving as the applicant for the debt issuance to the Local Government Commission.

PUBLIC HEARING – ZONING AMENDMENT – THRIFT STORES – SPECIAL EXCEPTION – R-2 DISTICT: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that New Manna Church has changed their rezoning request to a zoning amendment request to allow thrift stores as a special exception in the R-2 District. Several conditions would be placed on such thrift stores, including that they must be operated as an accessory use to a non-profit organization that is specifically permitted in the R-2 district. (this wording limited the operation of the store to non-profits with hours limited to 7:00 a.m. to 7:00 p.m. with adequate parking provided). Ms. Davis advised that the Planning Board had recommended unanimously the approval of this Zoning Amendment.

Ms. Davis further advised that the City Attorney had recommended against setting a maximum number of days per week the store could be open.

This zoning amendment would apply to all R-2 properties in the City, not just to the property of the New Manna Church on Park Avenue.

A discussion followed.

Councilman Owenby asked why a condition could not be added to the Zoning Amendment, restricting such uses to a maximum of two days of operation per week, as had been originally requested at the September 16 public hearing by a representative of New Manna Church. The City Manager advised that Council could certainly add a maximum number of days for this use to the Zoning Amendment.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to approve the Zoning Amendment to allow thrift stores as a special exception in the R2 district, as requested by New Manna Church, with the addition of a condition restricting the operation of the thrift store to a maximum of two days per week.

All requests for special exceptions for thrift stores in the R-2 district would be evaluated on a case by case basis by the Board of Adjustment.

The Zoning Amendment approved by Council to add thrift stores as a special exception in the R-2 district is included in the revised Zoning Ordinance adopted by Council below, but the specific language is listed as follows:

(11) Thrift/ retail stores operated on the premise and as an accessory use of a non-profit organization provided that:
   a. The non-profit organization is expressly permitted in the R-2 District.
   b. The store shall not be open from 7:00 PM to 7:00 AM and shall not be open for more than two (2) days per week.
   c. Off-street parking is provided per Section 702. Off-street parking requirements.
   d. Only one on-premise freestanding sign shall be permitted and it shall not exceed four (4) square feet in area. (Amended 10-7-03)

PUBLIC HEARING – ASSIGN ZONING TO ANNEXED PROPERTY – 70 WEST:
Mayor Clark opened the Public Hearing.

The City Manager advised that the proposed 14 acre Lowe's site on Highway 70 West was annexed effective September 30.

City Planner Suzy Davis advised that it is the recommendation of the Planning Board to zone this area as C-2.

The Public Hearing was closed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to approve this zoning as recommended by the Planning Board.

PUBLIC HEARING – ZONING AMENDMENT – TEMPORARY SIGN PERMITS:
Mayor Clark opened the Public Hearing.

The City Manager advised that as requested by Council in August, the Planning Board reviewed the way temporary sign permits are allowed in the Zoning Ordinance. Council had stated that flashing arrow signs should not be allowed as temporary signs since they are no longer allowed as permanent signs.

City Planner Suzy Davis advised that the Planning Board met and recommended that the ordinance be left as is.

Several options were presented to Council for their consideration.

A discussion followed.

Councilman Edwards stated that he would suggest limiting the usage of temporary spectacular signs to non-profits located in the City. He noted that the City looks good with businesses having to remove all flashing arrow signs and that any allowance of flashing arrow signs sends mixed signals to the community.

The Public Hearing was closed.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to adopt a Zoning Amendment restrict use of temporary spectacular signs to non-profits located in the City including churches and other religious organizations.

The Zoning Amendment approved by Council to revise the provisions for allowance of temporary spectacular signs is included in the revised Zoning Ordinance adopted by Council below, but the specific language is listed as follows:

(I) Spectacular signs shall only be permitted for non-profit organizations located with the city limits of Marion. Spectacular signs may be located only in the C-1 Central Business District and the C-2 General Business District after an application has been submitted to the Inspection Department and a permit issued therefore. No more than one spectacular sign shall be permitted per property. Spectacular sign shall only be used with a temporary spectacular sign permit issued by the City of Marion. The permit shall only be good for a two week period. The city shall not issue a permit more than four times in a year for and such permits shall not be issued consecutively. The location of said sign shall be approved by the Planning and Inspections Department. A spectacular sign may be converted into a permanent free-standing sign according to the definition of a permanent sign in section 706.1.

PUBLIC HEARING – ZONING AMENDMENT – RE-ADOPTION/RE-NUMBERING OF ZONING ORDINANCE: Mayor Clark opened the Public Hearing.

The City Manager advised that City Planner Suzy Davis had noticed some missing ordinances and numbering inconsistencies with the attached Zoning Ordinance.

Ms. Davis advised she had looked through City Council minutes and put together a complete Zoning Ordinance, which could be presented to Municipal Code Corporation for inclusion in the official City Code. Ms. Davis further noted that the Planning Board had reviewed the Zoning Ordinance and recommended the re-adoption of the entire ordinance, to include all ordinances adopted through the years.

Mayor Clark closed the public hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adopt the attached revised Zoning Ordinance in its entirety.

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

APPENDIX A ZONING*

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*Editor's note—Printed herein is the zoning ordinance adopted by city council on February 19, 1974; effective April 1, 1974. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision derives unchanged from the original ordinance. A uniform system of punctuation and capitalization has been used. Obvious misspellings have been corrected without notation and material in brackets [ ] has been added for clarity.

Cross reference(s)—Buildings and building regulations, Ch. 4; cemeteries, Ch. 5; flood hazard management, Ch. 8; parks and recreation, Ch. 12; planning, Ch. 13; streets, sidewalks and other public places, Ch. 15; subdivisions, Ch. 16.

State law reference(s)—Planning and regulation of development, G.S. § 160A-360 et seq.; zoning, G.S. § 160A-381 et seq.

Art. I. Authority and Enactment Clause, § 100

Art. II. Short Title, § 200

Art. III. Jurisdiction, § 300

Art. IV. Definition of Terms Used in the Ordinance, § 400

Art. V. Establishment of District, §§ 500--502

Art. VI. Application of Regulations, §§ 600—604

Art. VII. General Provisions, §§ 700--708

Art. VIII. Use Requirements by District, §§ 800—806

Art. IX. Dimensional Requirements

Art. X. Exceptions and Modifications, §§ 1000--1006

Art. XI. Administration and Enforcement, §§ 1100—1103

Art. XII. Planning and Zoning Board, §§ 1200—1206

Art. XIII. Amendments, §§ 1300, 1301

Art. XIV. Legal Status Provisions, §§ 1400, 1401

Art. XV. Penalty and Effective Date, §§ 1500, 1501

ZONING ORDINANCE

CITY OF MARION, NORTH CAROLINA

AN ORDINANCE OF THE CITY OF MARION, NORTH CAROLINA, REGULATING THE USE OF LAND, THE SIZE OF LOTS AND OTHER OPEN SPACES, THE HEIGHT OF BUILDINGS AND OTHER STRUCTURES, AND THE DENSITY OF DWELLING UNITS; CREATING DISTRICTS FOR SAID PURPOSES AND ESTABLISHING BOUNDARIES THEREOF; PROVIDING FOR THE METHOD OF ADMINISTRATION, ENFORCEMENT AND AMENDMENT; PROVIDING FOR A BOARD OF ADJUSTMENT; DEFINING CERTAIN TERMS USED HEREIN; AND PROVIDING FOR THE IMPOSITION OF PENALTIES FOR VIOLATION OF PROVISIONS OF THIS ORDINANCE.

ARTICLE I. AUTHORITY AND ENACTMENT CLAUSE

The City Council of Marion, North Carolina, in pursuance of the authority granted by the General Statutes of North Carolina, particularly Chapter 160-A, Article 19, Part 3, hereby ordains and enacts into law the following articles and sections.

(Ord. of 4-20-93)

ARTICLE II. SHORT TITLE

This Ordinance shall be known and may be cited as The Zoning Ordinance of the City of Marion, North Carolina.

(Ord of 4-20-93)

ARTICLE III. JURISDICTION

The provision of this Ordinance shall apply within the corporate limits of the City of Marion as established on the map entitled "Official Zoning Map, City of Marion, North Carolina."
(Ord. of 4-20-93)

ARTICLE IV. DEFINITION OF TERMS USED IN THE ORDINANCE

Section 400. Definitions.

Except as specifically defined herein, all words used in this Ordinance shall have their customary dictionary definitions. For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular. The word "shall" is always mandatory. The word "lot" includes the word "plot" or "parcel." The word "building" includes the word "structures " The word "person" includes a firm, association, organization, partnership, trust company or corporation as well as an individual. The work "used" or "occupied," as applied to any land or building, shall be construed to include the words intended, arranged, or designed to be used or occupied The word "map, zoning map, or Marion Zoning Map" shall be the "Official Zoning Map of the City of Marion, North Carolina."

1) Alley. A public thoroughfare which affords a secondary means of access to abutting property and is fifteen (15) feet or less in width. (Amended 3-18-03)

2) Armory A place where arms and federal and/or state military equipment may be stored and military personnel may be trained.

3) *Automobile repair shop.* Any establishment or place of business which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles. (Amended 11-19-02)

4) *Bed and breakfast home* A private home offering bed and breakfast accommodations to eight (8) or less persons per night for a period of less than one (1) week provided that the business (1) does not serve food or drink to the general public for pay; (2) serves only the breakfast meal, and that the meal is served only to overnight guests of the business; (3) included the price of breakfast in the room rate; and (4) is the permanent residence of the owner or manager of the business.

5) *Boarding house.* Any dwelling, wherefore compensation, lodging and/or meals are provided. The occupancy for such use of a dwelling unit shall not exceed more that one (1) person per two hundred (200) square feet of gross floor space, other than the owner and/ ore employees of the unit. (Amended 10-22-96)

6) *Building.* A structure which is completely enclosed by a roof and by three (3) or more solid exterior walls, which is permanently affixed to a lot or lots, and used or intended for the shelter, support or enclosure of persons, animals, or property of any kind.

7) *Building, customary accessory.* A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot therewith.

8) *Building height* The vertical distance from the mean elevation of the finished

i. grade along the front of the building to the highest point of the roof.

9) *Building, principal.* A building in which is conducted the principal use of the lot on which said building is located.

10) *Building setback line.* A line delineating the minimum distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Whenever the front, side or rear portions of a lot abuts a street right-of-way, setback lines shall be measured from said right-of-way line. In the event there is no right-of-way line, the setback shall be measured from the traveled portion of the road or street.

11) *Carport.* A structure consisting of a roof and two (2) or less exterior walls.

12) *Condominium.* A single-family dwelling unit constructed in a series or group of attached units where each dwelling unit is to be deeded and/or separately owned from the other units, and where all land is owned in common by owners of all the dwelling units collectively.

13) *Condominium Building.* A building containing tow (2) or more condominium dwelling units.

14) *Construction office, temporary* A structure, housing the field office operations for the construction of a building or group of buildings being built simultaneously. The temporary construction office shall be located on the actual construction site and must be removed immediately upon completion of construction.

15) *Customary incidental home occupation* Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, and in connection with which there are no direct retail sales or permanent display on the premises and no person not a resident on the premises is employed specifically in connection with the activity, except that not more than one (1) assistant may be employed in the following home occupations: lawyer, physician, optometrist, dentist, osteopath, private home shows, chiropractor, and insurance agent. Provided further that no mechanical equipment is installed or used except such as is normally used for domestic or professional purposes, and that not over twenty-five (25) percent of the total floor space of any structure is used for home occupations. (Amended6-19-2001)

16) *Domestic Servant* An individual or individuals employed by the occupant of a dwelling unit, for wages reportable and reported to the Internal Revenue Service, to perform services such as household duties, yard maintenance, and the like on a regular (not less frequently than weekly) basis. (Amended 10-22-96)

17) *Dwelling unit.* A building, or portion thereof, providing complete and permanent living facilities for one family.

18) *Dwelling, single family.* A building arranged or designed to be occupied by one (1) family.

19) *Dwelling, multi family.* A building arranged or designed to be occupied by two (2) or more families living independently of each other.

20) *Family.* One (1) or more persons occupying a single family dwelling unit who are related by blood or marriage or adoption. A maximum of five (5) persons, not related by blood or marriage or adoption, may occupy a single family dwelling unit. Domestic servants employed or living on the premises may be housed on the premises without being counted as part of the family. The maximum permissible number of five (5) unrelated persons who may lawfully occupy a single family dwelling unit shall not apply to any group occupying a boarding/ rooming house or a fraternity house. (amended 10-22-96)

21) *Family care home.* A home with supppprt and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six (6) resident handicapped persons.

22) *Group care facility.* An establishment qualified for a license by the State of North Carolina that provides resident services to individuals of whom one or more are unrelated. The individuals are handicapped, aged or disabled, are undergoing rehabilitation or extended care, and are provided services to meet their needs. This category includes group homes for all ages, half-way houses, and foster and boarding homes.

23) *Handicapped person* A person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. section 122-58.2(1)b. (1981, c. 565, s.1.)

24) *Inoperable vehicle.* means a vehicle and other machinery that cannot be self propelled or moved in the manner in which it originally was intended to move and that:

(A) Is partially dismantled or wrecked; or
(B) Is more than five years old and appears to be worth less than one hundred dollars ($100.00); or
(C) Does not display a current license plate. (Amended 11-19-02)

25) *Junk yard* A lot, land, or structure, or part thereof, used primarily for the collection, storage and sale of waste paper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage and/or salvaging of machinery or vehicles not in operating condition and for the sale of parts thereof.

26) *Law enforcement facility*. A facility used for law enforcement functions including but not limited to law enforcement agency offices, communication centers, court room facilities and jails.

27) *Lot*. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. For the purposes of this ordinance, the word "lot" shall mean any number of contiguous lots, or portions thereof, upon which one or more principal structures are to be erected for a single use.

28) *Lot, depth of*. The average distance between front and rear lot lines as measured along the side lot lines.

29) *Lot, width of* The distance between side lot lines measured at the building line.

30) *Lot of record*. A lot which is a part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of McDowell County, North Carolina, or a lot described by metes and bounds, the description of which has been so recorded

31) *Mobile home*. A factory assembled portable housing unit, or a portion thereof, built on a chassis and intended for use as a dwelling unit, and is not constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for one and two family dwellings. A mobile home is designed to be transported on its own chassis. A mobile home shall be construed to remain a mobile home whether or not wheels, axles, hitch, or other appurtenance to mobility are removed, and regardless of the nature of the foundation provided. All vehicles which are designated mobile homes by the Uniform Standards Code for Mobile Homes shall be construed as mobile homes. A mobile home shall not be construed to be a travel trailer or other form of recreations vehicle. All references to mobile homes in this ordinance shall include manufactured homes.

32) *Mobile home park*. Any premises where more than one (1) mobile home is parked for living and sleeping purposes, or any premises used or set apart for the purpose of supplying to the public parking space for mobile homes for living and sleeping purposes, and which includes any building, structures, vehicles, or enclosures used or intended for use as part of such mobile home park.

33) *Mobile home site*. A plot of ground within a Mobile Home Park designated for the accommodation and use of one (1) trailer or mobile home and containing all improvements and utility connections required under this Ordinance and other applicable city codes.

34) *Modular housing*. A form of manufactured housing unit that meets the construction standards of the North Carolina Uniform Residential Building Codes for one and two family dwellings regardless of how the unit or its components are transported to the site.

35) *Motel* A building or group of buildings used as an abiding place of ten (10) or more persons, who are lodged for compensation. Parking spaces are conveniently located to each unit.

36) *Nonconforming use*. Any building or structure, or the use of any land, building or structure existing at the time of the adoption of, or amendment to, this ordinance, that does not conform to the regulations of the district in which it is located.

37) *Nursing home*. A nursing home is defined as an institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care for three (3) or more persons unrelated to the licensee A nursing home is a home for chronic or convalescent who do not usually require special facilities, such as an operating room, x-ray facilities, laboratory facilities, and obstetrical facilities. A nursing home provides care for persons who have remedial ailments or other ailments, for which medical or nursing care is indicated.

38) *Parking space*. An area of not less than nine (9) feet by eighteen (18) feet, plus the necessary access space. Parking spaces shall be provided with vehicular access to a street or alley, shall not be provided in a required front yard area, and shall always be located outside the dedicated street right-of-way.

39) *Patio home*. A one-story single family dwelling (excluding mobile homes) designed to maximize the combination of indoor-outdoor living and privacy through the use of patio walls and court yards as buffer areas. Patio homes may only be constructed within approved Patio Home Developments.

40) *Planned unit development*. Any development where more than one principal building is proposed to be constructed on a single tract, or any multi-family development containing nine (9) or more dwelling units, or any building with a gross floor area of more than twenty-five thousand (25,000) square feet.

41) *Property line* A line delineating the boundary of a lot or other piece of property.

42) *Sign*. Any display of letters, words, numbers, figures, devices, emblems, pictures, logos, or any other means whereby the same are made visible for the purpose of making anything known, whether such display be on, or

attached to, or as a part of a structure, surface, or any object whether natural or manmade. The word "sign" does not include the flag, pennant, or insignia of any nation, state, city, or other political unit.

43) *Special exception.* A use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in a zoning district as a special exception, if specific provision for such special exception is made in this zoning ordinance.

44) *Sports Complex.* A sports complex consists of a combination of a bowling center, batting cages, miniature golf, sports fields and similar non-motorized activities. A sports complex may have a restaurant, snack bar, and/ or concession stand to serve its patrons.

45) *Street.* A public thoroughfare which affords a principal means of access to abutting property.

46) *Structure.* Anything constructed or erected, or anything attached to something having a permanent location on the ground.

47) *Townhouse.* A single building unit constructed in a series of group of attached units, with property lines separating such units, and where each building units and lot is to be deeded and/or separately owned from the other building units and lots.

48) *Townhouse Building.* A building containing two (2) or more townhouse building units.

49) Townhouse development. A development consisting of two (2) or more townhouse buildings

50) *Travel trailer.* A vehicular or portable structure designed as a temporary dwelling for travel, recreation or vacation uses.

51) *Use.* Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or structure or on a tract of land.

52) *Use, accessory.* A use location on the same lot with a principal use, and clearly incidental or subordinate to and customary in connection with the principal use.

53) *Use, principal.* The main use on a lot.

54) *Variance.* A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to the condition peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

55) *Yard.* An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery or as otherwise provided herein.

56) *Yard, front.* A yard across the full width of the lot extending from the front line of the building to the front line of the lot, excluding steps.

57) *Yard, rear.* A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

58) *Yard, side.* An open unoccupied space on the same lot with a building between the building and the side line of the lot extending through from the building line to the rear yard.

(Ord. of 4-20-93; Ord. of 7-19-94; Ord. of 7-22-97, § 1)

ARTICLE V. ESTABLISHMENT OF DISTRICT

Section 500. Use district.
For the purpose of this Ordinance, the City of Marion is hereby divided into six (6) districts designated as follows:

(1) R-1 Single Family Residential District

(2) R-2 General Residential District

(3) C-1 Central Business District

(4) C-2 General Business District

(5) M-1 Industrial District

(6) Office and Institutional District

Section 501. District boundaries.

The boundaries of the districts enumerated in section 500 above, are hereby established as shown on the map entitled, "Official Zoning Map, City of Marion, North Carolina," adopted by the City Council and certified by the City Clerk. Said map and all explanatory matter thereon accompanies and is hereby made a part of this ordinance as if fully written herein. Said map shall be retained in the Office of the City Clerk.

Section 502. Interpretation of district boundaries.
Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Official Zoning Map the following rules shall apply:

(1) Where district boundaries are indicated as approximately following the center lines of streets, highway, streams, or rivers, street right-of-way lines or such lines extended, such lines shall be construed to be such boundaries.

(2) Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.

(3) Where district boundaries are so indicated that they are approximately parallel to the center lines of streets or highways, or right-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the Zoning Map. If no distance is given such dimension shall be determined by the use of the scale shown on said Zoning Map.

(4) Where a district boundary line divides a lot of single ownership, the direct requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extension shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line.

ARTICLE VI. APPLICATION OF REGULATIONS

Section 600. Use.
No building or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved, or structurally altered except in conformity with the regulations of this Ordinance or amendments thereto, for the district in which it is located.

Section 601. Height and density.
No building shall hereafter be erected or altered so as to exceed the height limits, or to exceed the density regulations of this Ordinance for the district in which it is located.

Section 602. Lot size.
No lot, even though it may consist of one (1) or more adjacent lots of record, shall be reduced in size so that the lot width or depth, front, side or rear yard, lot area per family, or other requirements of this Ordinance are not maintained.

Section 603. Yard use limitations.
No part of a yard or other space required about any building for the purpose of complying with the provisions of this Ordinance shall be included as part of a yard or other open space similarly required for another building.

Section 604. Only one principal building on any lot.
Only one (1) principal building and its customary accessory buildings may hereafter be erected on any lot, except as authorized by Article X, Section 1003, nor shall any building be erected on any lot which does not abut at least thirty-five (35) feet on a publicly dedicated or maintained street.

ARTICLE VII. GENERAL PROVISIONS

Section 700. Nonconforming uses.
Within the districts established by this Ordinance, or amendment thereto, there exists lots, structures, or uses of land and structures which were lawful before this Ordinance was adopted or amended, but which are prohibited in the future under the terms of this Ordinance, or amendment.

It is the intent of this article to permit the continuance of certain of these nonconforming uses until they are removed by economic forces or otherwise

It is the intent of this article to discourage the survival of nonconforming uses to prohibit their enlargement, expansion, or extension.

700.1 Continuance.
Lawful nonconforming uses, buildings and structures existing at the time of the enactment of this Ordinance, or any amendment thereto, shall be allowed to remain subject to the following regulations:

(1) A nonconforming use of a building may be reestablished after discontinuance of less than twelve (12) months provided it is reestablished as the same nonconforming use that previously occupied the building. The reestablishment of a nonconforming use shall be subject to the written approval of the Board and subject to such conditions as the Board may require in order to protect the health, safety and welfare of the area.

(2) A nonconforming use of land shall be restricted to the area occupied by such use as of the effective date of the zoning ordinance. A nonconforming use of a building or buildings shall not be enlarged to either additional land or buildings after the effective date of the zoning ordinance.

(3) When a nonconforming use of any structure or land has been discontinued for a period of twelve (12) months, it shall not be reestablished or changed to any use not in conformity with the provisions of the zoning ordinance.

(4) Any nonconforming building or nonconforming use, which is damaged by fire, flood, wind or other act of God or man, may be reconstructed and used as before, if it be done within twelve (12) months of such damage, unless damaged to extent of more than sixty (60) percent of its fair sale value immediately prior to damage in which case any repair or reconstruction shall be in conformity with the provision of the zoning ordinance.

(5) A nonconforming building or building house [housing] a nonconforming use shall not be structurally altered except in conformance with the provision of the zoning ordinance. This provision shall not be construed to prevent normal maintenance and repairs required for structural safety.

Section 701. Nonconforming lots of record.

Where the owner of a lot of official record in any district at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this Ordinance, such lot may be used as a building site provided that:

(1) Where the lot area and lot width are no more than twenty-five (25) percent below the minimum specified in this Ordinance, and other dimensional requirements are otherwise complied with, the Administrative Officer is authorized to issue a building permit; and

(2) Where the lot area and lot width are more than twenty-five (25) percent below the minimum specified in the Ordinance, or other dimensional requirements cannot be met, the Board is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

Section 702. Off-street parking requirement.

Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified below for the various uses. Each space shall be provided with adequate space for turning so that no vehicle shall be required to back into the street except from space used for single-family dwellings. However, no off-street parking shall be required within the C-1 Central Business District.

Cross reference(s)--Off-street parking, § 18-256 et seq.

REQUIRED PARKING SPACES FOR FOLLOWING USES

Rooming and boarding houses--One (1) space for each accommodations; plus one (1) space for each two (2) employees.

Motels, hotels, inns, and tourist courts--One (1) space for each accommodation, plus one (1) space for each two (2) employees.

Bowling alleys--Two (2) spaces for each alley, plus one (1) space for each two (2) employees.

Funeral homes (mortuary)--One (1) space for each four (4) seats in the chapel or parlor.

Places of public assembly with fixed seats--One (1) space for each two hundred (200) square feet of gross floor space directed to patron use.

Residential dwellings--Two (2) spaces for each dwelling unit, including mobile homes.

Schools, kindergartens, elementary and junior high, public or private- One (1) space for each classroom and administrative offices.

Schools, high, public and private--One (1) space for each staff member and employee plus one (1) space for each ten (10) students Spaces should be calculated for the maximum staff and students for which the building is designed.

Churches and other religious institutions-- One (1) space for each four (4) seats in the principal assembly room.

Colleges-- One (1) space for each four (4) students, plus one (1) space for each faculty and staff member.

Libraries, museums, art galleries, and public buildings- One (1) space for each two hundred (200) square feet of gross floor space.

Professional and business offices- One (1) space for each two hundred (200) square feet of gross floor space.

Wholesale and industrial uses- One (1) space for each two (2) employees at maximum employment on a single shift. plus one (1) space for each company vehicle operating from the premises

Bank and other financial institutions--One (1) space for each two hundred (200) square feet of gross floor space, plus one (1) space for each two (2) employees.

Retail stores and shops of all kinds including barber, shoe repair and similar service outlets which are not included in an approved Planned Unit Development - One (1) space for each two hundred (200) square feet of gross floor space, plus one (1) space for each two (2) employees. (Ord. of 8-19-03)

Car sales, outdoor equipment and machinery sales, and commercial nurseries- Four (4) spaces for each sales person, plus one (1) space for each two (2) employees.

Restaurants (cafe)- One (1) space for each three (3) seating accommodations, plus one (1) space for each two (2) employees on shifts of greatest employment.

Gasoline service or filling stations-Two (2) spaces for each gas pump plus two (2) spaces for each grease rack or other working bay.

Hospitals- One (1) space per bed intended for patients (except bessinets) plus one (1) space for each medical staff member, plus one (1) space for each two (2) employees on shift of greatest employment.

Law enforcement facilities--One (1) space per two (2) cells, plus one (1) space for each staff member on the shift of greater employment.

Auditoriums, assembly halls, gymnasiums, community centers, and senior centers- One (1) space for every three (3) fixed seats and one (1) space for every three (3) movable seats in the largest assembly room.

Recreational center swimming pools- One (1) space for each one (1) hundred square feet of water and deck area.

Bed and breakfast homes- One (1) space for each accommodation (rented bedroom) plus two (2) spaces for the owner/manager.

Planned Unit Development consisting of retail and service outlets— Four (4) parking spaces for every 1000 square feet of gross floor space. The Board of Adjustment may approve up to twenty percent (20%) reduction of the required parking upon finding that the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, considering the nature of the use and characteristics of the property. The Board of Adjustment may approve parking spaces for use of an outdoor display area provided that such area is indicated on the site plan and approved by the Board of Adjustment.
(Ord. of 8-19-03)

702.1 Reduction in area and number of parking spaces.
No open area in an off-street parking area shall be encroached upon by buildings, storage, or any other uses; nor shall the number of parking spaces be reduced except after the submission of proof to the Administrative Officer that, by reason of reduction in floor area, seating capacity, number of employees, or change in other factors controlling the regulation of the number of off-street parking spaces, the proposed reduction is reasonable and consistent with the intent of this Ordinance

702.2 Mixed uses.
In the case of mixed uses, the total requirements for off-street parking space shall be the sum of the requirements of the various uses computed separately as specified herein.
(Ord. of 7-19-94; Ord. of 7-22-97, § 1)

Section 703. Off street loading and unloading space required.
Every lot on which business or trade use is hereafter established, shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley or if there is no alley, to a street. For the purpose of this section an off-street loading space shall have minimum dimensions of twelve (12) feet by forty (40) feet. Required space shall be considered as follows:

(1) Any business with less than 10,000 square feet of gross floor space shall provide one (1) or more loading zones.
(2) Any business with 10,000 to 25,000 square feet of gross floor space shall provide two (2) or more loading zones.
(3) Any business with over 25,000 square feet of gross floor space shall provide at least three (3) or more loading zones. (Ord. of 8-19-03)

Section 704. Visibility at intersections.
On a corner lot in any residential district, no planting, structure, sign, fence, wall or obstruction to vision more than two and one-half (2 1/2) feet in height measured from the center line of the street shall be placed or maintained within the triangular area formed by the intersection street right-of-way lines and a straight line connection points on said street right-of-way lines each of which is thirty-five (35) feet distance from the point of intersection.

Section 705. Gasoline service or filling stations. The following regulations shall apply to all gasoline service or filling stations:

(1) All buildings shall be located at least forty (40) feet from any street right-of-way line.
(2) Gasoline pumps and other appliances shall be located at least fifteen (15) feet from any street right-of-way.
(3) All service, storage or similar activities shall be conducted entirely on the premises
(4) All major repair work, if any, shall be conducted within a completely enclosed building.
(5) Open storage of wrecked or inoperable cars, discarded tires, auto parts or similar material shall not be permitted.
(6) No part of any freestanding structure to provide shelter for gasoline pumps shall extend into any street right-of-way. In the event a right-of-way does not exist, the structure shall be placed in conformity with the setbacks requirements of the district in which it is located.

Section 706. Signs, billboard and other advertising structures.
The purpose of this section is to regulate the erection and placement of certain advertising signs. The City Council is committed to preserving the scenic and aesthetic features of the City of Marion in order to protect and promote the development of the tourist industry and provide for the protection of the quality of life for residents and visitors. The City

Council further seeks to insure the safety of the local and visiting motorist on the public roads by reducing the detracting influence of uncontrolled advertising signage. The City Council is aware of, and sensitive to, the need for local businesses to adequately identify their products and services and is committed to providing reasonable regulations while safeguarding the interest of local businesses. These regulations are established as a reasonable and impartial method of regulating advertising structures in order to insure light, air, and open space, to reduce hazard at intersections, and to protect property values of the entire community. The Marion City Council provides that any sign regulated by this ordinance may contain, in lieu of any other copy, any otherwise lawful, noncommercial messages, that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with the size, lighting, spacing, setback, and other requirements of the district in which it is located.

706.1 Definitions. The following words or terms have the meaning as herein defined:

(1) **Height of signs.** The height of a sign shall not exceed the maximum height set forth in this Article. The height of a sign shall be measured from the existing grade level to the uppermost point of the sign or sign structure, whichever is higher.

(2) **Sign.** Any display of letters, words, numbers, figures, devices, emblems, pictures, logos, or any other means whereby the same are made visible for the purpose of making anything known, whether such display be on, or attached to, or as a part of a structure, surface, or any object whether natural or manmade. The word "sign" does not include the flag, pennant, or insignia of any nation, state, city, or other political unit.

(3) **Sign, area of.** The smallest rectilinear figure which encompasses all lettering, wording, design or symbols, together with any background differences on which the sign is located, if such background is designed as an integral part of and related to the sign. Any cut-outs or extensions shall be included in the area of the sign, but supports and bracing which are not intended as a part of the sign shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.

(4) **Signs, Marquee-** a sign with interchangeable letters attached to a marquee. A marquee is a roof-like structure, characteristically bearing a signboard, projecting over an entrance to a theatre or other building.

(5) **Signs, non-conforming.** Any sign which was lawfully erected in compliance with applicable code provisions and maintained prior to the effective date of this ordinance or prior to annexation into the city, and which fails to conform to applicable standards and restrictions of this ordinance. Portable signs, temporary signs and spectacular signs as defined in this section shall not attain legal non-conforming status.

(6) **Sign, off-premises advertising.** Any sign advertising a product, service, business or activity sold, located or conducted primarily elsewhere than on the premises on which the sign is located.

(7) **Sign, off-premises directional.** Any sign indicating the location of or directions to a business, office, or other activity located elsewhere than on the premises on which the sign is located.

(8) **Sign, On-premise.** A permanent sign which is located on the same lot as the business or establishment that it is advertising for.

(9) **Sign, permanent.** A sign which is permanently attached or mounted to a wall or permanently attached or mounted to the ground by one or more poles. A permanent sign shall be safely and securely fastened by means of metal anchors, bolts or approved expansions screws of sufficient size and anchorage to safely support the loads applied. A spectacular sign can be converted into a permanent freestanding sign only by removing the legs, the arrow, and flashing lights and by permanently mounting on one or more poles.

(10) **Sign, portable.** A sign that is designed or has the potential to be relocated and which is not permanently installed or permanently anchored to either the ground or a pole. For the purpose of this article, directional signs and temporary signs shall not be considered portable signs. Portable signs attached to the ground or a pole are prohibited within the city limits of Marion.

(11) **Sign, Temporary.** An on-premise sign that is used in connection with a circumstance, situation, or event that is designed, intended, or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign, or is intended to remain on the location where it is erected or placed for a period of not more than thirty (30) consecutive days. A banner shall be considered a temporary sign. If the message on a display area of a permanent on-premise sign as defined in section 706.1 is subject to periodic changes, that sign shall not be regarded as temporary.

(12) **Sign maintenance.** For the purpose of this Article, maintenance shall include repair procedures listed in Section 706.5 of this ordinance. Work done to restore or repair a sign which is damaged or destroyed shall be considered repairs in accordance with the provision in Section 706.6, 706.8 and Section 706.9.

(13) Spectacular sign. An "Outdoor Advertising Display Sign" advertising copy, usually constructed of metal and or poly-material with area(s) for the use of changeable letters to display a message or to advertise, these signs may or may not be wired for lights, usually referred to as "flashing arrow signs."

(14) Value of signs. The value of a sign shall be the value for tax purposes of any sign so listed. If the tax value is not available, the value shall mean the original cost of the sign. In the absence of information as to the original cost submitted by the sign owner, the Administrative Officer shall estimate the original cost based upon the best information reasonably available.

706.2 Permits, fees, and non-conforming signs.

(1) Permit required. All signs maintained, erected, placed, posted, attached, painted or otherwise made visible from an adjacent property or right-of-way, except as otherwise prohibited, exempted or not requiring a permit by this Article, require a sign permit in accordance with the provisions of this section. Any sign that is erected, placed or maintained without a required permit shall be in violation of this Ordinance.

(2) Permit application. No sign permit shall be issued until an application has been completed for each separate sign structure and until that application has been submitted to and approved by the Administrative Officer with the required fees. Applications for a permit to maintain an existing sign and/or construct a new sign may be obtained from the City of Marion Planning and Inspections Department.

(A) On premise permit application. The only application that shall be required for on-premise signs is the application for the initial issuance of a permit and that initial permit shall be valid until revoked by the Administrative Officer, with the exception of section 706.11 (1)(H), spectacular signs.

On-Premise permit fees. There shall only be one initial fee for an on-premise sign. Such fee schedules shall be determined by the City Council, with the exception of section 706.11 (1)(H), spectacular signs.

(B) Off premise permit application. The only application that shall be required for off-premise signs is the application for the initial issuance of a permit and that initial permit shall be valid until revoked by the Administrative Officer. The off-premise sign owner shall pay an annual renewal fee for each off-premise sign. The erection of off-premise sign structures shall not commence until a permit and an emblem have been issued. The sign structure must be completely constructed and erected with the permit emblem affixed within one hundred eighty (180) days from the date of issuance of the permit. During the 180-day period, the new sign structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the appropriate rules and regulations of this Ordinance. The permit emblem, which will have an identifying permit number, shall be placed on the off-premises sign structure in such a position as to be visible from the main traveled roadway of the adjacent highway. A permit along with a permit emblem shall be issued upon sign application completion, approval and the payment of fees for lawful off-premises sign structures.

Off-premise permit fees. Off-premise initial and annual renewal fees shall be required to be paid by the owners of the off-premises sign structures for each permit requested in order to defray the cost of the administrative and inspection expenses incurred by the City of Marion in administering the permit procedures. Such fee schedules shall be determined by the City Council.

706.3 Registering existing signs.

All sign structures constructed and in place prior to the adoption of a moratorium ordinance by the City Council of the City of Marion on May 3, 1989 shall be required to obtain a permit by the procedures set forth in this Section and affix a city permit emblem within thirty (30) days after the issuance of the permit unless exempted under Section 706.12 (1). The permit shall be obtained within a period of one hundred eighty (180) days beginning with the effective date on this Ordinance. If the sign is a legal non-conforming sign, the permit shall state and be registered as such.

All existing signs that require a permit that have not been registered within the one hundred eighty (180) days shall be in violation of the provisions of this ordinance and subject to penalties provided in Section [707 14].

If the existence of a sign prior to the passage of the moratorium ordinance is questioned, the issue will be determined by a panel made up of the Administrative Officer, City Manager, sign owner, and a designated representative from Keep McDowell County Beautiful, and use of the videotape made of the county roadways at the time of the passage of the moratorium act. If the sign is determined to be in violation of the ordinance, it shall be removed at the owner's expense.

706.4 Transfer of permit.

The transfer of ownership of a sign structure for which a permit has been lawfully issued to the original owner shall not in any way affect the validity of the permit for that specific structure, provided that the Administrative Officer is given notice of the transfer of ownership within thirty (30) days of the actual transfer.

706.5 Sign maintenance, abandoned signs, tree cutting.

Maintenance provisions. All signs, supports, braces, poles, wires and other appurtenances of signs or sign structures shall be kept in good repair, maintained in safe condition, and shall conform to the standards in this section. Maintenance carried out in accordance with this section and not the result of damage or destruction shall

not require a sign permit, provided the sign is not enlarged, moved or altered in any manner which would create or increase a non-conforming condition.

(1) A sign shall be in a state of disrepair when more than twenty (20) per cent of its total surface area is absent, covered with disfigured, cracked, ripped or peeling paint or poker paper, or any combination of these conditions. Any sign in a state of disrepair shall be considered in violation of this Ordinance.

(2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which cause the sign to stand more than fifteen (15) degrees from the perpendicular.

(3) No sign or sign structure shall be allowed to have weeds, vines or other vegetation growing on it and obscuring it from the street or highway from [which] it is intended to be viewed.

(4) No neon or illuminated sign shall be allowed to stand with only partial illumination operational or partial neon operations.

Any sign that violates the maintenance provisions listed above shall be in violation of this Ordinance and shall be repaired or removed as required by the applicable sections of this Ordinance.

Lawful cutting of trees or shrubs. No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim, destroy or remove any trees, shrubs or other vegetation located within a public right-of-way of any road or highway, except where a legal permit for such has been obtained from the North Carolina Department of Transportation.

706.6 Revocation of permit. Any valid permit issued for a lawful sign structure shall be revoked by the Administrative Officer for any one (1) of the following reasons:

(1) Mistake of material facts by the issuing authority for which had the correct facts been known. the sign permit in question would not have been issued.

(2) Misrepresentation of material facts by the applicant on the application for permit for the sign.

(3) Failure to pay annual renewal fees.

(4) Failure to construct the sign structure and affix the permanent emblem within one hundred eighty (180) days from the date of issuance of the permit.

(5) Any alteration of a sign structure for which a permit has previously been issued which would cause that sign structure to fail to comply with the provisions of this Ordinance and the rules and regulations promulgated by the City Council of the City of Marion pursuant thereto.

(6) Any violation of Section 706.8.

(7) Unlawful destruction of trees or shrubs or other growth located on the right-of-way in order to increase or enhance the visibility of a sign structure.

(8) Abandonment or discontinuance of a sign.

(9) Failure to maintain a sign such that it remains blank for a period of twelve (12) consecutive months.

(10) Failure to maintain a sign such that it reaches a state of dilapidation or disrepair as determined by the Administrative Officer.

(11) Making repairs to a nonconforming sign which exceed fifty (50) per cent of the initial cost of the sign. Total repairs within any twenty-four (24) consecutive months may not exceed fifty (50) per cent of the value of the sign. To avoid liability under this clause, the advertiser should contact the Administrative Officer prior to making any repairs to discuss the scope of the proposed improvements. The scope of the improvements is limited to the following: repairing the sign or the sign structure, replacing broken glass or other work to keep the sign safe and in good repair.

706.7 Notice given for refusing to issue permit.

Should the Administrative Officer determine that a proposed sign structure would not conform to the standards of outdoor advertising as set out in this ordinance or the rules and regulations promulgated thereto by the City Council to the City of Marion the Administrative Officer shall refuse to issue a permit for that proposed sign structure.

When such noncompliance of this ordinance has been determined, the Administrative Officer shall so notify the owner of the proposed sign structure in question by first class United States mail in the form of a letter setting forth the reasons why the proposed sign structure in question does not comply, and shall also return the application and seventy-five (75) per cent of the application fee to the applicant.

706.8 Nonconforming signs.

(1) Any sign which becomes a legal nonconforming sign as herein defined may continue to exist provided that no nonconforming sign shall be:

(A) Changed or replaced with another nonconforming sign, except that copy may be changed on an existing sign

(B) Expanded.

(C) Relocated, except in conformance with the requirements of this ordinance.

(D) Re-established after damage or destruction in excess of fifty (50) percent

of the value at the time of the damage or destruction.

(E) Modified in any way which increases the sign's degree of nonconformity.

(F) Re-established after the sign structure has been removed.

706.9 Reconstruction of damaged signs or sign structures.

(1) Any conforming sign or sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within thirty (30) days and completed within sixty (60) days' of such damage. However, if the sign should be declared unsafe by the Administrative Officer, the owner of the sign or the owner of the record of the real property whereon the sign is located, shall immediately correct all unsafe conditions in a manner satisfactory to the Administrative Officer.

(2) As a courtesy to the sign owner, if the Administrative Officer discovers that a sign has been damaged or is in an unsafe condition, the Administrative Officer will promptly notify the owner of the sign or the owner of record of the real property whereon the sign is located of such damage or unsafe condition The affirmative duty and liability shall, however, at all times remain with the owner of each sign to keep each sign in a safe and undamaged condition in keeping with the terms of this Ordinance.

706.10 Administration, enforcement, appeals.

The Administrative Officer shall have the following authority:

(1) To issue a Violation Notice for any violation of the Ordinance. A Violation Notice shall be delivered by certified mail, return receipt requested, or by such other method as allowed by law, to the owner of the sign in violation of the ordinance. Whenever the owner of the sign cannot be located and notified, said notice shall be delivered to the owner of record of the real property whereon the sign is located. The time period provided herein shall commence upon receipt of such Violation Notice. The Violation Notice shall identify the sign and shall describe the nature of the violation, refer to the section of the ordinance violated, specify in detail what action must be taken to correct the violation, and specify a reasonable time limit of up to thirty (30) days within which the violation must be corrected.

(2) To issue a remove order for any sign or sign structure not corrected within the time allotted under the Violation Notice, or for a prohibited sign under the Violation Notice, or for a prohibited sign as established by this Ordinance. A Remove Order shall be delivered to the sign owner or to the owner of record of real property whereon the sign is located in the same manner as set out for a Violation Notice and shall not be effective until received. The recipient of the Remove Order shall be allowed thirty (30) days after the receipt of the Remove Order within which to remove the subject sign at his expense. The Remove Order shall identify the sign and reasons for the issuance of the Remove Order and shall refer to the section of the Ordinance violated.

(3) To remove or cause to be removed any sign or sign structure not removed in accordance with a Remove Order after thirty (30) days from receipt of such order, and to assess the receipt of such order with the cost of such removal

(4) To issue citations for any violation of this Ordinance in accordance with Article XV.

(5) To issue an Unsafe Sign Notice should the Administrative Officer find that any sign has become insecure in imminent danger of falling or otherwise unsafe. An Unsafe Sign Notice shall be delivered to the sign owner or to the owner of the record of the real property whereon the sign is located in the same manner as set out for a Violation Notice except that the recipient of the notice shall forthwith in the case of immediate danger and in any case within ten (10) days, of receipt, secure the sign in a manner to be approved by the Administrative Officer in conformance with the provisions of this Ordinance or remove such sign. If the notice is not complied with in ten (10) days, the administrative officer shall remove such sign at the expense of the recipient of the notice.

(Ord of 4-20-93;

706.11 The regulations for On-premises signs and other advertising structures are enumerated below:

(1) In any zoning district the following general regulations shall apply:

(A) No sign shall be erected or maintained where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal, or device.

(B) No sign having flashing, intermittent or animated illumination shall be permitted within three hundred (300) feet of property in any residential district unless such sign is not visible from such property

(C) No illuminated sign shall be permitted within fifty (50) feet of property in any residential district unless the illumination of such sign is so designed that it does not shine or reflect light onto such property. Any illuminated sign that is permitted in a residential district shall not reflect light or shine onto any property in the residential district except the property on which the sign is located.

(D) No free standing on-premises sign attached to the ground shall be erected to exceed thirty (30) feet above ground level or fifty (50) feet in length. The bottom copy of such sign shall be at least three (3) feet above the ground level.

(E) Free-standing on-premise signs attached to the ground may exceed the maximum sign height provided the following conditions are met:

1. The property in which the sign is located shall be zoned C-2 and shall be no less than 2 acres in size.

2. The sign shall be within a one thousand (1000) foot radius of the center point of the I-40 interchange
3. The sign height shall be no greater than fifty (50) feet above the street grade of the adjacent interstate.
4. The area of the sign shall not exceed eight hundred and fifty (850) square feet.
5. The sign shall be used only for advertising restaurants, lodging, and/or gas stations
6. The sign shall not be located within four hundred (400) feet of another sign that is greater than 30 feet in height.

(F) No part of any free standing on-premises sign shall extend into any street right-of-way. In the event a right-of-way does not exist, the sign shall be placed in conformity with the setback requirements of the district in which it is located.

(G) Signs erected and overhanging any sidewalk must be placed at least nine (9) feet above the sidewalk and may extend over the sidewalk a distance equal to two-thirds (2/3) the width of the sidewalk, but in no case exceeding ten (10) feet.

(H) Marquee signs may be attached to, or hung from a marquee, and such signs when hung from a marquee shall be at least nine (9) feet at its lowest level above the sidewalk or ground level, and further, no such sign shall extend outside the line of such marquee. Marquee signs may be attached to the sides and front of a marquee, and such sign may extend the entire length and width of said marquee, provided such sign does not extend more than six (6) feet above, nor one (1) foot below such marquee, but under no circumstance, shall a sign have a vertical dimension greater than eight (8) feet.

(I) Spectacular signs shall only be permitted for non-profit organizations located with the city limits of Marion. Spectacular signs may be located only in the C-1 Central Business District and the C-2 General Business District after an application has been submitted to the Inspection Department and a permit issued therefore. No more than one spectacular sign shall be permitted per property. Spectacular sign shall only be used with a temporary spectacular sign permit issued by the City of Marion. The permit shall only be good for a two-week period. The city shall not issue a permit more than four times in a year for and such permits shall not be issued consecutively. The location of said sign shall be approved by the Planning and Inspections Department. A spectacular sign may be converted into a permanent free-standing sign according to the definition of a permanent sign in section 706.1

(J) Professional signs and signs for home occupations shall not exceed two (2) square feet in area.

(K) No sign which obstructs ingress or egress, creates an unsafe distraction for motorist, or obstructs the view of motorist entering a public road or highway shall be permitted.

(L) No signs which contain words or graphics which are obscene, as that term is defined in Chapter 15 of the North Carolina General Statutes are permitted.

(M) No signs located on or attached to the roof of a structure shall be permitted.

(N) No signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features shall be permitted.

(O) No signs located in a manner which are designated to be visible from any road, street or highway, or portion thereof, which is designated a Scenic Corridor by the City Council shall be permitted.

(2) In the Residential District, the following regulations shall apply:

(A) Nameplates indicating name, address, house number, announcements of boarders or roomers, or customary home occupations are permitted.
(B) For apartment buildings, identification signs not exceeding nine (9) square feet in area are permitted.
(C) Church, school, or public building bulletin boards or identification signs, not exceeding twenty (20) square feet in area are permitted.
(D) Flashing or intermittent illumination is prohibited.
(E) For mobile home parks, identification signs not exceeding nine (9) square feet are permitted.
(F) Bed and breakfast homes, identification signs not exceeding nine (9) square feet are permitted.

(3) In C-1 Central Business District and C-2 General Business District any sign, subject to all other requirements of this section, is permitted. There shall be no more than two freestanding signs permitted per property in the C-1 or C-2 District. If the property has multiple road frontages, one additional sign may be permitted for each additional road frontage.

(4) In M-1 Industrial District, any sign meeting the requirements of this section and in addition pertaining to the product manufactured on the premises or the firm occupying the premises is permitted. There shall be no more than two freestanding signs permitted per property in the M-1 District. If the property has multiple road frontages, one additional sign may be permitted for each additional road frontage.

(5) In any district the following signs shall be permitted without a sign permit:

(A) Signs for parking spaces, entrance and exit signs not exceeding two (2) square feet in area and not more than one (1) sign not more than nine

(9) square feet in area identifying or designating the conditions of the use of such parking area.

(B) Non-illuminated "For Sale" or "For Rent" signs not exceeding four (4) square feet in area

(C) One (1) sign not more than twelve (12) square feet in area giving the names of the contractors, engineers, or architect, during construction of a building. Signs must be removed before a certificate of occupancy is issued.

(D) Signs established by, or by order of, any governmental agency.

(E) For special events of public interest, one (1) sign, not over twenty-four (24) square feet in area located upon the site of the event.

(F) One (1) sign of not more than twelve (12) square feet giving the name(s) of future tenant(s) of the building(s) under construction. These signs must be removed before a certificate of occupancy is issued.

(G) Trade names and graphics which are located on newspaper, soft drink, and similar vending devices.

(H) Decorations associated with a national or religious holiday.

(I) Sign warning of danger posted by utility or construction companies.

(J) Commemorative tablets, markers or monuments erected by or with the permission of the city council of the City of Marion.

(K) Signs with non-commercial messages.

(L) Temporary signs advertising the sale, rental or lease of property on which said sign is located are allowed provided that:

1. Such signs are non-illuminated.
2. Signs do not exceed four (4) feet in height and do not exceed four (4) square feet per face for property zoned residential.
3. Signs do not exceed eight (8) feet in height and do not exceed thirty-two (32) square feet per face for property zoned other than residential.
4. All signs shall be removed within seven (7) days after the closing of the sale, rental, or lease of property.

(M) Temporary sign, as defined in 706.1 of this article, provided that a temporary sign is not up longer than 30 consecutive days. Temporary signs shall only be attached to a building and shall not be attached directly to the ground or to a pole."

(Ord. of 4-20-93; Ord. of 9-21-93; Ord. of 7-22-97, § 1)

Section 706.12 The regulations for Off-premises signs, billboards and other advertising structures are enumerated below:

(1) The following signs are exempt from this Article:

(A) On-premises advertising and on-premises incidental signs.

(B) Signs of a governmental body, including traffic warning or regulatory signs and devices. These signs shall also include other government signs including building identification, directional, information and welcome signs

(C) Trade names and graphics which are located on newspaper, soft drink and similar vending devices.

(D) Flags or insignia of any governmental or non-profit organizations when not displayed as an advertising device.

(E) Decorations associated with a national or religious holiday.

(F) Signs warning of danger posted by utility or construction companies.

(G) Commemorative tablets, markers or monuments erected by or with the permission of the City Council of the City of Marion.

(H) Signs on operational motor vehicles indicating the name of a business, when the vehicle is not intended to be used for display of signs.

(I) Sign required by law, statute or ordinance.

(J) Signs smaller than eight (8) square feet giving notice or direction for sale of real estate or personal property, such as temporary realtor's signs and yard sale signs.

(K) Signs with non-commercial messages.

(L) Portable political campaign signs, provided that they are removed no later than 7 days after Election Day.

(2) Signs prohibited. The following off-premises signs are prohibited within the jurisdiction of this Ordinance

(A) No sign shall be erected or maintained where by reason of its position, wording, illumination, size, shape, or color where that it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal, or device.

(B) Signs, whether temporary or permanent, within any street or highway right-of-way, with the exception of governmental signage.

(C) Any sign which obstructs ingress or egress, creates an unsafe distraction for motorist, or obstructs the view of motorist entering a public road or highway.

(D) Signs which incorporate flashing or blinking lights or signs with moving parts or parts which simulate movement.

(E) Signs located on or attached to the roof of a structure.

(F) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(G) Signs located in a manner which are designated to be visible from any road, street or highway, or portion thereof, which is designated a Scenic Corridor by the City Council.

(H) Signs which contain words or graphics which are obscene, as that term is defined in Chapter 15 of the North Carolina General Statutes.

(I) Off-premise spectacular signs
(J) Off-premise temporary signs

(3) Directional Signs. The following off-premises signs, known as Directional Signs shall conform to the standards and provisions of this Article, except Section 706.12 (4). Directional signs shall:

(A) Contain only the name and logo of a business located city limits of Marion, North Carolina, an arrow or other mark to indicate the direction of the business location and the distance to the business from the sign.

(B) Not exceed eight (8) square feet in area per sign face.

(C) Directional sign shall not be located in the right-of-way and shall have written permission from the property owner in which the sign is located.

(D) All non-advertising off-premises signs which meet the above definition of directions sign except for the sign face area but which do not exceed thirty-two (32) square feet in sign face area which were in place before May 3, 1988 shall be considered legal non-conforming directional signs.

(E) All directional signs within the city limits of Marion shall obtain a directional sign permit, issued by the City of Marion for each sign in the City limits. Such permit shall only be issued if a letter is submitted from the property owner granting permission to locate a directional sign on their property.

(4) Regulation of off-premises advertising signs. Off-premises advertising signs are permitted in accordance with the following regulations:

(A) A permit is required for each off-premises advertising sign, regardless of size.

(B) Off-premises advertising signs located where designed to be visible from any U.S. or N.C. highways shall not exceed three hundred (300) square feet per sign face, shall be not closer to the right-of-way than twenty (20) feet (or no closer than thirty (30) feet from the edge of the traveled way where the right-of-way is unknown or does not exist and shall have a height no greater than thirty (30) feet. Such signs shall be at least one thousand five hundred (1,500) linear feet (measuring along both sides of the highway) from any other off-premises advertising sign; at least five hundred (500) feet from any intersection of the centerlines of any streets: at least five hundred (500) feet from any at-grade railroad crossing or any bright; and at least one thousand (1,000) feet from any dwelling unit, church or place of worship, cemetery, school, playground or park located within six hundred sixty (660) feet of the right-of-way.

(C) Off-premises advertising signs located where designed to be visible from any other road or street shall not exceed one hundred fifty (150) square feet per sign face, shall be no closer to the right-of-way than ten (10) feet (or no closer than twenty (20) feet from the edge of the traveled way where the right-of-way is unknown or does not exist and shall have a height of not greater than thirty (30) feet. Such signs shall be at least one thousand (1,000) linear feet (measuring along both sides of the highway) from any other off-premises advertising sign, at least three hundred (300) feet away from any intersection of the centerlines of any streets; at least three hundred (300) feet from any at-grade railroad crossing or any bridge, and at least five hundred (500) feet from any dwelling unit, church or place of worship, cemetery, school, playground or park located within six hundred sixty (660) feet of the right-of-way.

(D) No off-premises outdoor advertising sign in any location shall be more than eight hundred (800) feet from a business, commercial or industrial enterprise located on the same side of the street, road or highway as the sign.

(E) An off-premises advertising sign structure may have one (1) sign face for each side. No structure shall have more than one (1) sign face per side or more than a total of two (2) sign faces.

(F) No off-premises advertising sign shall be attached to or painted on any building or structure. Notwithstanding the restrictions set forth in subparts (B), (C), and (D) of Section 706.12 (4) above, an off-premises advertising sign may be constructed within one thousand (1,000) feet from any dwelling unit (for the purpose of sub-part (B) and (C) of Section 706.12 (4) or within five hundred (500) feet of a dwelling unit for purposes of sub-part (D) above) PROVIDED the placement of such off-premises advertising sign is in strict compliance with all other requirements and regulations of this Ordinance as long as each owner of any dwelling unit located within such distance executes a statement granting express permission for the placement called for by this Ordinance. Such statement shall refer to the book and page number on which the deed for the owner's property is recorded in the McDowell County Registry and said statement shall be properly notarized. A copy of said statement shall be delivered to the Planning and Inspections Department.

706.13 Amortization of Certain Signs.

Spectacular signs shall become nonconforming in all districts within one (1) year after the date of adoption of this ordinance, at which time annual permits will expire and shall not be renewed. After the one-year amortization period, all spectacular signs in the City Limits shall be considered in violation of this ordinance and shall be removed. Spectacular sign shall then only be used with a temporary spectacular sign permit issued by the City of Marion and only for a two-week period. The city shall not issue a permit more than four times in a year for each property in the City Limits and such permits shall not be issued consecutively.

Portable Signs as defined in section 706.1 shall become non-conforming in all districts, unless otherwise specified, as of the date of adoption of this Ordinance and shall be removed within six (6) months after the date of adoption.

(Ord. of 6-22-93, Ord. of 4-02-02, Ord of 7-16-02)

Section 707. Landscaping and buffering

707.1 General Provisions

(1) Purpose and Intent. The purpose of this section is to encourage landscaping throughout the City of Marion hence protecting and enhancing public and private investments, economic and tourism opportunities while providing multiple environmental benefits. The landscaping and buffering standards for new development, as defined in part C, set forth below require landscaping along public right-of-ways, in parking lots, between residential districts and commercial or industrial districts and require screening of certain trash containers, in order to:

(A) Improve the visual quality of the city and minimize potential negative impacts of developments such as noise, dust, glare of lights, parking lots, traffic, heat, overcrowding, and odor.

(B) Provide environmental benefits such as climate modification, decreased energy consumption, reduced impervious surface area and storm water runoff, decreased erosion, improved water and air quality and protection of wildlife habitat.

(C) Safeguard public and private property values and to protect public and private investment.

(2) Definitions. The following words or terms have the meaning as herein defined:

Ground Cover: A prostrate plant growing less than two feet (2') in height at maturity that is grown for ornamental purposes. Ground Covers are used as an alternative to grasses. On slopes, Ground Covers control erosion while eliminating the maintenance of mowing on hillsides. Many Ground Covers survive in poor soils, shade and other adverse conditions.

Planting area: The area prepared for the purpose of accommodating the planting of trees, shrubs, and groundcovers.

Residential Buffer Strip: A row of plants reaching a height of at least eight feet so that property is screened visually from neighboring residential uses Buffer strips shall be a species, or combination of species dense enough to provide visual screening from the ground level to the mature height of at least eight feet.

Shrub: A woody plant, usually multi-stemmed or well branched from the base, the branches being retained to the ground. When used for buffer plantings, shrubs must also reach a mature height between four and fifteen feet.

Street Yard: A planting area, extending from the curb towards the property and including the sidewalk, parallel to a public street designed to provide continuity of vegetation along the right-of-way and to soften the impact of development by providing a pleasing view from the road and decreasing the amount of runoff from impervious surface.

Tree, Ornamental: A small to medium tree, growing 15' to 40' in height at maturity, that is planted for aesthetic purposes such as colorful flowers, interesting bark, or fall foliage.

Tree, Shade: A large tree growing to over forty feet (40') in height at maturity, usually deciduous that is planted to provide canopy cover shade.

(3) Landscape Plan Required - A landscape plan is required for:

(A) Any new development in the C-1, C-2, M-1, or OI districts

(B) Any new development in the R-1 or R-2 district with the exception of single-family, or multi-family developments with less than eight (8) units.

(C) Renovations in the C-2, M-1 or OI districts with a total cost exceeding fifty percent (50%) of the assessed value of the building, according to McDowell County tax records, within a twenty-four month time-period.

(D) Expansions exceeding fifty percent (50%) of the pre-expansion floor area or paved surface in the C-2, M-1, or OI districts within a twenty-four (24) month time-period.

(E) Existing unpaved parking lots which are paved over or existing paved lots which are demolished and repaved.

(4) Contents of Landscape Plan and Approval Process

(A) Applicants are advised to meet with staff prior to submitting a plan in order to discuss applicable landscape requirements, other ordinance requirements, and coordination with utility plans

(B) Whenever an application for a zoning permit and/or a building permit is submitted to the Planning and Inspections Department, a landscape plan shall be submitted if required by section 707.1 (C) of this ordinance. Such plan shall be in sufficient detail to enable staff to determine whether or not such plan, when fully implemented, will comply with these landscaping requirements. Planning staff shall review the plan and assure compliance with these requirements, and approve or deny zoning permit accordingly.

(C) A landscape plan shall be drawn to scale and shall contain the location of the streets, street right-of-ways, all existing and proposed structures, utilities, dumpster (trash container), street yards, planting areas, screening, parking lots with individual spaces identified, as well as location of existing and proposed plants and associated characteristics. Plants shall be identified on plan by species (common or scientific name,) size and age. Proposed date of planting shall also be noted on plan. The dimensions of the required street yard and planting areas shall be identified. The landscape plan may be incorporated into the site plan as outlined in 1102.02. Design professionals seals required as per section 302.4 of the North Carolina State Building Code.

(D) Certificate of Occupancy- The landscape shall be completely installed as indicated on approved plan prior to the issuance of a certificate of compliance/ occupancy. A conditional certificate of occupancy may be issued by the building inspector for the temporary use and occupancy of a building, structure or land for a maximum period of 180 days from the date of the issuance of such certificate whenever the landscaping requirements of this ordinance are not complied with on time. If the landscaping indicated on approved plans in not completely installed within one hundred and eighty (180) days, the conditional certificate of occupancy shall expire and further use of the property shall constitute an illegal use and occupancy of said property.

707.2 General Requirements and Conditions

(1) Alternate Methods of Compliance- The landscape requirements are intended to be minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. An alternative compliance proposal may be used if it is equal or better than normal compliance in its ability to fulfill the intent of this article, and exhibits superior design quality. The Marion Planning Board shall determine whether alternate method of compliance is equal or better than normal compliance and that the intent of this ordinance has been fulfilled.

(2) Safety Considerations- Landscaping shall not obstruct the view of motorists using any street, private drive, parking aisle or other approaches to street intersections so as to constitute a condition endangering the public safety upon any such street, driveway, parking aisle or street intersection.

(3) Landscaping to be maintained in perpetuity - All required planting and landscaped areas shall be maintained at all times in good, stable and healthy condition.

(4) Large shade trees shall not be planted under overhead electrical power lines.

(5) Adequate wheel stops or curbs shall be installed for the protection of required trees and plantings that are within five feet of a vehicular parking/ display area or driveway. Wheel stops or curbs shall be a minimum of six inches in height and shall be anchored to the ground, and may be concrete, rot-resistant heavy timber or other effective materials.

(6) In most cases, the applicant shall avoid removing existing vegetation and shall incorporate such vegetation as much as possible in proposed plan.

707.3 Specific landscaping requirements.

(1) Street-yards- A Street yard consists of a planting area parallel to a public street designed to provide continuity of vegetation along the right-of-way and to soften the impact of development by providing a pleasing view from the road, while still allowing the identification of buildings and land use.

(A) All land uses to which these landscaping requirements apply with the exception of properties in the C-1, Central Business District, shall provide a street yard along the property being developed. Street yards shall be a minimum of twenty (20) feet wide.

(B) Impervious surfaces, such as driveways, within a street yard shall not exceed 25 percent of the required street yard, except that not more than two 25-foot drives may be permitted for any lot having a street frontage of less than 200 feet in length.

(C) Landscaping on street yards shall consist of a creative variation of groundcover, shrubs and trees.

(D) Parking, merchandise display and off-street loading are prohibited in the street yard.

(E) Signs are permitted in accordance with Section 706 of this ordinance, provided that no portion of any sign is located within a street right-of-way.

(2) Vehicular Parking Areas and Display Areas

(A) All new parking lots with 12 or more spaces or parking lots expanded to add 12 or more spaces shall be required to obtain a zoning permit and to comply with this section of the landscape ordinance

(B) If an existing parking lot (paved or unpaved) is expanded or improved to add 12 or more spaces within twenty-four (24) months, it shall comply with the parking lot requirements of the landscape ordinance within the expanded or improved portion.

(C) In new or expanded parking lots with 12 or more spaces; trees shall be planted at a rate of one shade tree or two ornamental trees for every 12 spaces.

(D). Required trees shall be located within or adjacent to parking lots as tree islands, medians, at the end of parking bays, traffic delineators, or between rows or parking spaces in a manner such that no parking space is located more than sixty (60) feet from a parking lot tree.

(3) Buffers and screening

(A) Any use required to submit a landscape plan as outlined in this article abutting a residentially zoned district must provide a residential buffer strip of ten (10) feet between the proposed development and the existing residential district.

(4) Trash container (i.e. Dumpsters) screens and/or buffers.

(A) It is the intent of this section to provide for a visual screen and/ or buffers between trash container and dumpster location and all street right-of-ways and adjoining properties.

(B) Trash containers and dumpsters shall not be located in the front yard of any property and shall be screened from view on all side, except for one opening not greater than ten feet in width to allow for service access. If access is difficult, the public works director and the city planner shall determine the acceptable location of the dumpster. Screening may consist of evergreen vegetation growing to over ten feet at maturity or a solid wood fence. Existing vegetation may be used as an alternative method of compliance as set forth in section 707 2 (A.)

(Ord. of 8-06-02)

Section 708. Swimming pools.
All swimming pools both public and private shall be completely enclosed by a solid wall or chain link fence at least six (6) feet in height. Swimming pools shall be located only in rear or side yards and shall be at least ten (10) feet from the property line

Section 709 Yard sales.
Yard or garage sales will be allowed in any zoning district. Sales shall be limited to one (1) per month per property used for residential purposes. Sales shall be limited to no more than ten (10) hours per day and may not be held for more than two (2) consecutive days. Temporary signs of no more than four (4) square feet will be permitted on the property on which the sale is being conducted Signs must be removed when sales are over. (see 11-13-95 pb)

Section 710. Automobile repair shops and/ or automobile sales and services.
The following regulations shall apply to all automobile repair shops and/ or automobile sales and services:

(1) An auto repair shop may store as many as six (6) inoperable motor vehicles, within view of the public road way at one time, regardless of the length of time that individual motor vehicles are stored or kept at such property. If the auto repair shop is greater than two acres, six (6) additional inoperable motor vehicles as described herein may be allowed exposed to the public road way. This means they can either have 6 or 12 inoperable vehicles in view of the public road way at any one time. If there are more, they shall be kept behind a screened, fenced area out of sight of the public road ways.
(2) On-site traffic areas shall be provided and arranged in a manner to provide clearly identified ingress and egress and adequate areas to prevent backward movement onto the public road ways.
(3) Inoperable motor vehicles shall not be stored in the customer parking spaces required per Section 702. Off street parking requirements.
(4) All auto repair shops and/ or auto sales and services within the city limits of Marion not in compliance with this ordinance within six months after the adoption of said ordinance shall be in violation. (Amended 11-19-02)

ARTICLE VIII. USE REQUIREMENTS BY DISTRICT

Section 800. Intent.
It is the intent of this article that if any use or class of use is not specifically permitted in a district as set forth below, it shall be prohibited in that district.

Section 801. R-1 Single family residential district.

801.1 Intent. The R-1 Single Family Residential District is established as a district in which the principal use of land is for single family residential purposes.

801.2 Permitted uses. Within the R-1 Single Family Residential District, a building or land shall be used only for the following purposes:

(1) Single family dwellings (excluding mobile homes).

(2) Multi-family dwellings provided that:
- (A) Multi-family dwellings are created only within existing residential structure.
- (B) Adequate off-street parking shall be available as provided in Section 702.
- (C) The owner of the multi-family dwelling must live on the premises.
- (D) There shall be no more than two (2) separate units created within any residential structure.
- (E) A Zoning Compliance Certificate must be obtained from the Zoning Administrator and/or the Administrative Officer.

(3) Churches or similar places of worship, including single-family parish houses or parsonages.

(4.) Golf courses, parks, playgrounds, swimming pools, community centers, country clubs, civic clubs and lodges operated on a noncommercial or nonprofit basis for recreational purposes only.

(5.) Public elementary, junior high school, high school and private schools having a similar curriculum, but not trade school.

(6.) Public utility buildings and facilities if such use is essential for the service of the immediate area and provided that:
- (A) All building shall be located at least thirty-five (35) feet from side and front lot lines and ten (10) feet from rear lot lines.
- (B) Fences and/or other appropriate safety devices are installed to protect the public safety and welfare.
- (C) No vehicles or equipment are stored, maintained or repaired on the premises.
- (D) All structures are in keeping with the residential character of the neighborhood.
- (E) Adequate landscaping, screening and/or buffering shall be provided to insure compatibility with the neighborhood.

(7.) Customary incidental home occupations as defined in Article IV, Section 400(8), of this Ordinance and subject to all conditions stated therein, provided there is no external evidence of such occupation except an announcement or professional sign not more than two (2) square feet in area.

(8.) Customary accessory building, including private garages and non-commercial workshops and greenhouses, provided that:

(A) Such buildings shall be located in the rear yard and shall comply with all applicable setback requirements of this section and of Article IX of this Ordinance.

(B) No accessory building on a corner lot shall extend beyond the front yard line required for abutting property on the side street.

(C) No greenhouse heating plants shall be located within twenty-five (25) feet of any lot line.

(9.) Carports may be allowed in the rear yard of the principal building and may not be allowed within one (1) foot of the side and rear property lines and may not be constructed so as to not drain onto adjoining property. (Refer to Article X, Exceptions and Modifications, Page 23)

(10.) Patio Home Developments: A development consisting of individual lots (minimum sixty (60) feet width and seven thousand (7,000) square feet) which are designed for detached single family housing to allow the use of the patio home concept. Prior to development each individual lot must be platted and described by metes and bounds and must show location of all proposed buildings and patio walls to be located on each lot. The description must be recorded in the Office of the Register of Deeds for McDowell County, North Carolina following final approval of said development by the Marion City Council, provided that:

(A) The ground floor area of principal and accessory buildings shall not exceed fifty (50) percent of the total lot area

(B) All patio home sites must abut either a publicly dedicated street or a driveway of not less than twenty-one (21) feet in width and one hundred fifty (150) feet in length. All driveways shall have unobstructed access to a public street or highway.

(C) The patio wall set back must be a minimum of two (2) feet from the property line. All other setbacks shall meet the provisions of this Ordinance. No principal building shall be closer than twelve (12) feet to each other.

(D) The Marion City Council shall have final approval of all patio home developments.

Section 801.3 Special Exception. The following uses are permitted as special exceptions as provided for in Article XII, Planning and Zoning Board, Section 1202. Powers and Duties of the Board, 1202.2. Special Exceptions.

(1) Bed and breakfast homes, provided that:

(A) The business does not serve food or drink to the general public for pay.

(B) The business serves only the breakfast meal, and that meal is served only to overnight guest.

(C) The room rates include the price of the breakfast.

(D) The business is the permanent residence of the owner or manager.

(E) One (1) off-street parking space be provided for each accommodation (rented bedroom) plus two (2) spaces for the owner/manager.

(Ord. of 7-22-97, § 1)

Section 802. R-2 General residential district.

802.1 Intent. The R-2 General Residential District is established as a district in which the principal use of land is for residential purposes.

802.2 Permitted Uses. Within the R-2 General Residential District, a building or land shall be used only for the following purposes:

(1) All uses permitted in the R-1 Single Family Residential District.

(2) Multi-family dwellings of eight (8) or less.

(3) Rooming and boarding houses.

(4) Cemeteries.

(5) Day nurseries and kindergartens.

(6) One (1) mobile home per residential lot, providing that

(A) It is the principal structure on that lot,

(B) No other residential structure is located on that lot,

(C) The mobile home has the moving hitch apparatus, wheels, axles and transporting lights removed,

(D) The mobile home shall be set up in accordance with the standards established by the North Carolina Department of Insurance. In addition, continuous underpinning of a material generally accepted in the mobile home industry shall be installed under the perimeter, un-pierced except for required ventilation and access,

(E) The mobile home complies with all other municipal building, housing, and zoning codes. Mobile homes built before June 15, 1976 prior to HUD Code construction and safety standards are prohibited within the City Limits

(7) Armory facility.

802.3 Special Exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance:

(1) Radio and television transmitting stations and studios provided that:
- (A) Such facilities shall be housed in structures which are in keeping with the character of the residential neighborhood.
- (B) No structure shall be located within thirty-five (35) feet of any lot.
- (C) Adequate landscaping, screening and/or buffering shall be provided to insure compatibility with the neighborhood.

(2) Mobile home parks, provided that:
- (A) The minimum area for any mobile home park shall be two (2) acres.
- (B) The maximum density shall be eight (8) mobile home sites per acre.
- (C) Not less than five (5) mobile home sites shall be available at first occupancy.
- (D) The minimum lot size for individual mobile home sites shall be forty (40) feet by eighty (80) feet.
- (E) All mobile home sites shall abut upon a driveway of not less than twenty (20) feet in width. All driveways shall have unobstructed access to a public street or highway and shall be hard surfaced, or of properly compacted gravel, well marked and lighted by the mobile home park owner.
- (F) There shall be a minimum of two (2) off-street parking spaces for each mobile home space, which shall be on the same site as the mobile home served.
- (G) A densely planted buffer strip, consisting of evergreen trees or shrubs shall be located along all sides of the mobile home park, but shall not extend beyond the established setback line along any street. Such buffer strip shall be not less than twelve (12) feet in height. This planting requirement may be modified by the Board where adequate buffering exists in the form of vegetation and/or terrain.

(3) Hospitals, sanitariums, nursing homes, group care facilities and medical and dental offices and clinics not used primarily for the treatment of contagious diseases, alcoholics, or drug addicts.

(4) Funeral homes.

(5) Emergency Service Facilities provided that a 20-foot vegetative buffer is approved the Board of Adjustment after receiving tree-planting recommendations from the City of Marion Tree Board.

(6) Planned unit development.

(7) Restaurants in historic structures serving the general public subject to the following conditions:
- (A) A site plan shall be submitted to the Zoning Administrator showing the proposed layout including property lines and dimensions with North arrow; location, use and dimensions of all buildings; drives, easements and right-of-way; off-street parking areas showing methods for lighting; buffers, screens and fences; solid waste disposal facilities showing location and buffering, and such other information as may be essential for determining whether the provisions of this ordinance are being observed.
- (B) The structure shall be listed on the National Register of Historic Places at the time of the application.
- (C) All rehabilitation shall be done in accordance with the "Secretary of Interior's Guidelines for Historic Preservation."
- (D) All landscaping, parking and site improvements shall preserve the historic character of the structure.
- (E) All mechanical systems and solid waste storage facilities shall be properly screened so as not to be visible from adjacent property.
- (F) One (1) free standing sign not to exceed nine (9) square feet in size and eight (8) feet in height shall be allowed.
- (G) Outbuildings should be preserved if of an historical significance.
- (H) The structure shall be located on a lot of at least ten (10) acres.
- (I) No outside lighting shall direct light on adjacent property.
- (J) All parking areas shall be properly screened so as not to be visible from adjacent property.

(8) Townhouses and Condominiums (Amended 11-97)

(9) Accounting and Attorney offices (Amended 2-20-90)

(11) Real-estate offices (4-21-92)

(12) **Thrift/ retail stores operated on the premise and as an accessory use of a non-profit organization provided that:**
- **a. The non-profit organization is expressly permitted in the R-2 District.**
- **b. The store shall not be open from 7:00 PM to 7:00 AM and shall not be open for more than two (2) days per week.**
- **c. Off-street parking is provided per Section 702. Off-street parking requirements.**
- **d. Only one on-premise freestanding sign shall be permitted and it shall not exceed four (4) square feet in area. (Amended 10-7-03)**

(Ord. of 4-20-93)

Section 803. C-1 Central business.

803.1 Intent. In order to protect and improve the main shopping area of Marion and to discourage uses which do not require a central location and which are not compatible with the function of the area as the primary shopping and office area a central business district is hereby established.

803.2 Permitted uses. Within the C-1 Central Business District the following uses shall be permitted:

(1) Appliance sales and services.

(2) Automobile parking lots and structures.

(3) Automobile sales.

(4) Bakeries, where the products are sold exclusively at retail on the premises.

(5) Banks and other financial institutions including loan and finance companies.

(6) Barber and beauty shops.

(7) Billiard and pool halls, video game parlors or other coin operated amusement or recreational machine parlors.

(8) Business colleges, barber and beauty colleges, art schools, music and dance studios and similar uses, but excluding industrial or vocational trade school.

(9) Bus stations.

(10) Churches.

(11) Civic and fraternal organizations.

(12) Commercial parking lots.

(13) Construction office, temporary. (See Section 400.5)

(14) Dry cleaning and laundry establishments.

(15) Fire and police stations.

(16) Florist shop, but not commercial greenhouses.

(17) Food stores, retail only.

(18) Funeral homes.

(19) Furriers and fur storage.

(20) Gasoline service stations (provided that petroleum derivatives in excess of five hundred (500) gallons are not stored above ground).

(21) Hotels.

(22) Libraries, museums and art galleries

(23) Locksmith and gunsmiths.

(24) Newspaper offices and printing plants incidental to such offices.

(25) Office supplies and equipment, sales and services.

(26) Offices - business, professional and public (including doctors, dentist, etc.).

(27) Opticians and optical goods stores.

(28) Pawn shops.

(29) Photographic studios and camera supply stores.

(30) Physical culture and reducing salons.

(31) Printing, publishing and reproducing establishments.

(32) Public buildings and lands other than elementary, junior high or senior high schools.

(33) Radio and television stations, studies and offices.

(34) Radio and television sales and repairs, electric shops.

(35) Restaurants, and cafes, but no drive-in restaurants.

(36) Retail establishments such as department, clothing, fabric, shoe, variety, notion, drug, hardware, furniture, appliance, floor covering, paint, antique, art goods, jewelry, gift, music, toy, sporting goods, book and stationery, magazine, candy, tobacco, pet and hobby and craft stores, but not excluding similar retail outlets.

(37) Shoe repair shops.

(38) Signs, as regulated in Article VII, Section 706.

(39) Tailor, dressmaking and millinery shops.

(40) Taxicab stands.

(41) Telegraph or messenger service office.

(42) Theaters, housed in a permanent indoor structure.

(43) Public utility distribution lines, transformer stations, transmission lines and towers, water tanks and tower, and telephone exchanges, with service or storage yards contained within the building.

(44) Customary accessory uses and structures when located on the same lot as the main structure, excluding, however, open storage.

(45) Furniture re-upholstery shops operated within the confines of the building.

(46) Commercial storage units provided that units are located in the level (s) blow the adjacent street level of existing buildings and that they contain only low to moderate hazardous storage as defined in the North Carolina State Building Code.

803.3 Open storage. The storage of materials, either raw materials, partly or completely finished products, scrap or waste, shall be prohibited unless such materials are completely screened from view from all adjoining streets, alleys or properties

803.4 Special exceptions. The following uses are permitted as special exception as provided for in Article XII, Section 1204.2 of this Ordinance not provided in C-2.

(1) Single or multi-family residential dwellings units in existing structures provided that all units are located on floor levels above or below the adjacent street level, or a single residential owner-occupied dwelling unit located in the back forty percent (40%) of the street level when the front sixty (60%) percent is commercial and provided that there is a minimum of 400 square feet living space. There shall be no apparent evidence of residential living from within the commercial establishment, and the dwelling units shall have a separate ingress and egress. In lieu of any other parking requirements of this ordinance, each dwelling unit shall be provided one off-street parking space. Such space may be located on property separate from the dwelling unit but shall be with a reasonable walking distance of such unit." (Amended 1-8-02)

(2) Construction of new multi-family buildings. Parking will be as set forth in section 702.

(3) Planned unit development.

(4) Light industry. (8-19-97)

(Ord. of 4-20-93; Ord. of 8-19-97, § 1)

Section 804. General business district.

804.1 Intent. The purpose of this district is to provide for general and commercial activity along major thoroughfares and at other convenient points in the City. Regulations are designed to preserve the traffic carrying capacity of the streets and to provide for off-street parking. It is not the intent of this district to encourage extensive strip commercial development, but rather to provide concentration of general commercial activities.

804.2 Permitted uses. The following uses are permitted within the C-2 General Business District:

(1) All uses permitted in a Central Business District.

(2) Animal hospital or veterinary clinic, but no open kennels on the premises.

(3) Assembly halls, coliseums, gymnasiums, and similar structures.

(4) Automobile washing establishments.

(5) Automobile repair and paint shops.

(6) Bakeries and other establishments manufacturing prepared food and miscellaneous food products.

(7) Bicycle sales and repairs.

(8) Bottling plants.

(9) Bowling supply and equipment sales.

(10) Building supply and equipment sales.

(11) Cold storage or freezer lockers.

(12) Dairy bars and ice cream manufacturers.

(13) Electrical repair shops.

(14) Fabricating shops of small size such as woodworking shops, cabinet shops and upholstery shops, but excluding open storage.

(15) Farm machinery assembly, sales and repairs.

(16) Feed and seed stores.

(17) Glass and mirror shops, Venetian blind and awning shops, tile companies, and similar building specialties outlets.

(18) Greenhouses or horticultural nurseries.

(19) Hospital, sanitarium, nursing homes and medical and dental clinics

(20) Ice pick-up stations.

(21) Industrial or vocations trade schools.

(22) Laundries and dry cleaning establishments - including self service.

(23) Mobile home sales.

(24) Monument sales.

(25) Motel, inns and tourist courts.

(26) Restaurants, including drive-in restaurants.

(27) Sheet metal, roofing, plumbing, heating and refrigeration shops, not excluding open storage.

(28) Sign painting and fabricating shops.

(29) Signs, as regulated in Article VII, Section 706.

(30) Wholesale and warehousing establishments except for storage of dangerous or offensive items such as uncured hides, explosives, oil, gasoline, etc.

(31) Certain small manufacturing operations such as knitting, hosiery and machine assembly operations will be a permitted use provided that all manufacturing activities are conducted completely within an enclosed building and in such a manner that noise, odor, smoke or other debris associated with the manufacturing operation will not be offensive to adjoining property owners. Further provided that there will be no outside storage of raw materials, machinery or finished products. Also, if the concern borders on a residential district, adequate landscaping, screening or buffering will be required to insure compatibility with the neighborhood.

(32) Sports Complexes, provided that 20 feet of undisturbed, natural buffer along the entire perimeter of the property is provided to protect surrounding property owners from noise and visual effects, and that the total

requirement of off-street parking spaces shall be the sum of the off-street parking requirements of the various uses computed separately as specified in Section 702 of the Zoning Ordinance.

804.3 Special exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance.

(1) Tire recapping centers. Provided all recapping activities are conducted completely within an enclosed building and in such a manner that noise, odor, smoke, and other debris associated with this type of operation, will not be offensive to adjoining property owners. Further provided that there will be no outside storage of any materials, including tires, old or new. It is not the intent of this section to prohibit tire displays. Tire displays shall be limited to no more than ten (10) tires.

(A) Tires may be temporarily located outside, only during business hours of the recapping operations, for the purpose of loading and unloading tires.

(2) Planned unit development.

(3) Single or multi-family residential dwellings units in existing structures; provided all units are located on floor levels above or below the adjacent street level. In lieu of any other parking requirements of this ordinance, each dwelling unit shall be provided one off-street parking space. The off-street parking shall be in addition to other required parking for the existing structure and its uses.

(4) Non-motorized bike track (amended 10-19-99)

(5) Tattoo and/ or Body piercing shops provided that the business is not located or operated within one thousand feet of:

(A) A church, synagogue, or regular place of worship;
(B) A public or private elementary or secondary school;
(C) A public library;
(D) A park or playground;
(E) A licensed child-care facility"
(F) A licensed group-home facility,
(G) An entertainment business that is oriented primarily towards minors.

For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where tattoo and/ or body piercing is conducted, to the nearest property line of the premises of any use listed above."

(Ord. of 4-20-93)

Section 805. M-1 Industrial district.

805.1 Intent: This district is established to provide areas for manufacturing, warehousing, and similar uses.

805.2 Permitted uses. Within the M-1 Industrial District the following uses are permitted:

(1) Contractor's plants or storage yards

(2) Golf or baseball driving ranges, miniature golf and similar recreation facilities.

(3) Industrial equipment machinery repair and service.

(4) Lumber yards, building materials storage.

(5) Machine shops.

(6) Plumbing shops and their accessory storage yards.

(7) Radio and television stations and masts.

(8) Signs, as regulated by Article VII, Section 706.

(9) Skating rinks, permanent.

(10) Tire recapping shops.

(11) Trucking terminals.

(12) Wholesale establishments for storage of oil, fuel oil and gasoline.

(13) Temporary retail sales for itinerant merchants as defined in 10-172 of the Marion City Code provided that the temporary sale last no longer than seven (7) consecutive days and are not held more than once per quarter. (Amended 3-4-03)

See Section 702 for parking requirements.

805.3 Special exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance:

(1) Automobile wrecking, junk and salvage yards provided that
- (A) All motor vehicles stored or kept in such yards shall be so kept that they will not catch and hold water in which mosquitoes may breed and so that they will not constitute a place or places in which rats, mice, or other vermin may be harbored, reared, or propagated.
- (B) Because of the tendency for salvage yards to promote the breeding of vermin, such operation shall be permitted no closer than two hundred (200) feet from any established residential zone.
- (C) All outdoor storage of salvage and wrecking operations shall be conducted entirely within an enclosed opaque fence, screen, or wall, excepting driveway area, from eight (8) to twelve (12) feet in height. Storage between the road and street and such fence, screen, or wall is expressly prohibited. Any fence, screen, or wall for screening purposes shall be properly painted or otherwise maintained in good condition.
- (D) All such yards shall be so maintained as to be in sanitary condition and so as not to be a menace to the public health or safety.
- (E) The number of vehicular access driveways permitted on any single street frontage shall be limited to:
  1. One driveway where the parcel to be used as a maximum road or street frontage of one hundred (100) feet or less.
  2. Two (2) driveways where the road or street frontage exceeds one hundred (100) feet.

  Driveways used for ingress and egress shall be limited to twenty-five (25) feet in width.

(2) Manufacturing and processing operations provided, however, that no permit shall be issued except in conformance with Article XII, Section 1204.2 of this Ordinance and further provided that these uses are subject to such conditions as the Board shall require in order to prevent smoke, odor, noise, dust or other efforts that would be detrimental to the health, safety and general welfare of the community.
- (A) Where in the opinion of the Board engineering data or other studies are needed to determine the possible adverse effects of a proposed industry on the health, safety, and welfare of the community, the Board may require the applicant to submit such data or other studies prepared by competent engineers or other technical people.

(3) Planned unit development

(4) Trade lots and/ or Flea Markets located totally within an existing structure.

(Ord. of 4-20-93)

Section 806. O-I Office and Institutional district.

806.1 Intent. This district is established to provide areas for hospitals, doctor offices, schools, and similar uses.

806.2 Permitted Uses. Within the O-I Office and Institutional District the following uses are permitted:

(1) Offices (business and professional).

(2) Hospital, medical and dental offices (excluding animal hospitals).

(3) Medical and dental laboratories.

(4) Medical, dental, optical, pharmaceutical and hospital supplies, cut excluding warehousing activities.

(5) Opticians and optical services.

(6) Public elementary, high schools and schools of higher learning

(7) Other health care facilities, nursing homes and rehabilitation centers.

(8) Public buildings and utilities necessary for service of the immediate vicinity.

(9) Allied health professionals and services.

(10) Retail pharmacies (restricted to medical and health related items for sale).

(11) Cafeterias, gift or variety shops, soda bars and incidental retail uses conducted solely for employees, patients, patrons, or visitors on the premises of a hospital or public school building only and without exterior advertising display

(12) Signs as regulated in Article VII, Section 706.

(13) Community and/or recreational centers, senior centers

(14) Temporary retail sales for itinerant merchants as defined in 10-172 of the Marion City Code provided that the temporary sale last no longer than seven (7) consecutive days and are not held more than once per quarter. (Amended 3-4-03)

Section 806.3 Special exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this ordinance.

(1) Heliports

(2) Planned unit development.

(3) Law enforcement facilities.
(Ord. of 4-20-93; Ord. of 7-19-94)

Section 900 Intent. It is the intent of this article to define specific overlay districts in the City of Marion. The standards for overlay districts are in addition to the general use district.

Section 901. D-O. Downtown Overlay District. The Downtown Overlay District (D-O) is established to provide development and design standards for the entire downtown and Main Street corridor, which are in addition to underlying general use districts. Within the overlay district there exist multiple general use districts. Each parcel retains the same requirements for its designated general use district in addition to the standards set forth for the Downtown Overlay District. Where noted, the uses and standards of the D-O supersede those uses and standards of the underlying districts.

901.1 Purpose. The purpose for the D-O is to enhance the aesthetic, functional and economic qualities of and emphasize the importance of the significant downtown area and to enhance and protect significant properties despite their varying general-use zoning districts in:

(1) defining and protecting the downtown architectural, environmental and visual character;

(2) providing for the safe and efficient movement of vehicles and pedestrians; and

(3) contributing to the physical, social and economic well-being of the downtown Marion

901.2 Design Standards.

(1) Facades. In no case shall a new structure, addition, or façade improvement have metal siding. Recommended sidings include masonry, stone, stucco, or other traditional materials.

(2) Awnings.

(A) Awnings should have a clearing of at least nine (9) feet above ground level and may project over sidewalk if properly anchored.
(B) Awnings should fit the store front opening and emphasize building proportions
(C) Awnings should not obscure or damage important architectural building details
(D) Awnings should align with others on the block
(E) Awning should be mounted to align with top edge of transom or fit framing between clerestory and display window
(F) Awnings should coordinate with the color scheme of entire building and surrounding structures.
(G) Awnings may be of flexible material or fixed, however fabric awnings are preferred.
(H) Awnings create a visual interest to the building, provide shade, shelter and add variety to the streetscape.
(I) Awnings should be positioned to emphasize special shapes or details of the façade, draw attention to an entry, or emphasize a display window.
(J) Windows. Boarding or bricking of windows is prohibited.
(Ord. of 3-18-03) (Ord of 6-17-03)

ARTICLE IX. DIMENSIONAL REQUIREMENTS

R-1 Single family residential

Minimum Lot Size:

Lot Area 7,000 sq ft.

Lot Width: 60 ft.

Minimum Yard Requirements:

Front Yard Setback: 25 ft.

Side Yard Setback: 10 ft.

Rear Yard Setback: 10 ft.

Maximum Building Height: 35 ft.

Minimum Lot Size:

Lot Area: 10,000 sq. ft.

Lot Width: 80 ft.

Minimum Yard Requirements:

Front Yard Setback: 25 ft.

Side Yard Setback: 10 ft.

Rear Yard Setback: 10 ft.

Maximum Building Height: 35 ft.

Minimum Lot Area:

Lot Area: 20,000 sq. ft.

Lot Width: 100 ft.

Minimum Yard Requirements:

Front Yard Setback: 15 ft.

Side Yard Setback: 15 ft.

Rear Yard Setback: 15 ft

Maximum Building Height: 35 ft.

R-2 General Residential

Minimum Lot Size:

Lot Area: 7,000 sq. ft.[1]

Lot Width: 60 ft.

Minimum Yard Requirements:

Front Yard Setback: 25 ft.

Side Yard Setback: 10 ft.

Rear Yard Setback: 10 ft.

Maximum Building Height: 35 ft.

Minimum Lot Size:

Lot Area. 10,000 sq. ft.[2]

Lot Width: 80 ft.

Minimum Yard Requirements.

Front Yard Setback: 25 ft.

Side Yard Setback: 10 ft.

Rear Yard Setback: 10 ft.

Maximum Building Height: 35 ft.

Minimum Lot Size:

Lot Area: 20,000 sq. ft.[3]

Lot Width: 100 ft

Minimum Yard Requirements:

Front Yard Setback: 35 ft.

Side Yard Setback: 15 ft.

Rear Yard Setback: 15 ft.

Maximum Building Height: 35 ft.

C-1 Central Business

Minimum Lot Area: NA

Minimum Yard Requirements: NA

Maximum Building Height: NA

C-2 General Business

Minimum Lot Area:

Lot Area:[4]

Lot Width: NA

Minimum Yard Requirements:

Front Yard Setback: 15 ft.

Side Yard Setback: NA

Rear Yard Setback: NA

Maximum Building Height: 35 ft.

M-1 Industrial

Minimum Lot Size:

Lot Area: 10,000 sq. ft.

Lot Width: 100 ft.

Minimum Yard Requirements:

Front Yard Setback: 25 ft.

Side Yard Setback: 15 ft.

Rear Yard Setback: 25 ft.[5]

Maximum Building Height: 50 ft.[6]

O-1 Office and Institutional

Minimum Lot Size:

Lot Area: 10,000 sq. ft.

Lot Width: 80 ft.

Minimum Yard Requirements

Front Yard Setback: 25 ft.

Side Yard Setback: 15 ft.

Rear Yard Setback: 15 ft.

Maximum Building Height: 35 ft.

Footnotes

(1) Minimum lot size where public water and sewerage is available, plus three thousand (3,000) additional square feet of lot area for the second family and an additional two thousand five hundred (2,500) sq. ft. for each additional family after the 2nd family.

(2) Minimum lot size where public water service is available but sewerage is not, plus three thousand (3,000) additional square feet of lot area for the second family and an additional two thousand five hundred (2,500) sq. ft. for each additional family after the 2nd family.

(3) Minimum lot size where neither public water or [nor] sewerage service is available, plus five thousand (5,000) additional square feet of lot area for the second family and an additional four thousand five hundred (4,500) sq. ft. for each additional family after the 2nd family.

(4) Total ground area covered by principal structure and accessory structures shall not exceed fifty (50) percent of the total lot area.

(5) If the industrial lot abuts a residential zoned lot the setback will be twenty-five (25) feet; otherwise there will be no setback requirements.

(6) No building shall exceed fifty (50) feet in height unless written permission is first secured from the City Fire Chief in order to determine: (1) If the height of the structure exceeds the fire fighting capacity of the fire department, (2) To determine if the structure meets fire safety standards (including fire escapes, etc.), and further provided that the depth of the front and total width of the side yards required herein shall be increased by five (5) for each additional story.

ARTICLE X. EXCEPTIONS AND MODIFICATIONS

Compliance with the requirements of this Ordinance is mandatory except that under the specific conditions enumerated in the following sections the requirements may be varied or modified as so stated.

Section 1000. Front yard setbacks for dwellings.

The front yard setback requirements of this Ordinance for dwellings shall not apply on any lot where the average setback of existing buildings, located either wholly or in part within one hundred (100) feet on each side of such lot within the same block and zoning district and fronting on the same side of the street, is less than the minimum required setback. In such cases, the setback on such lot may be less than the required setback but not less than the average or the setbacks of the aforementioned existing buildings.

Section 1001. Side and rear yard setback.

Where a side or rear yard abuts a street, the setback requirement for said street yard shall be the same as the front yard setback requirements for abutting property on the side street. Where a side or rear yard abuts an alley, the setback requirement shall be the same as the side or rear yard setback requirement set forth in Article IX. Dimensional Requirements and shall be measured from the edge of the alley right-of-way. (Ord. of 4-20-93) (Ord. of 3-18-03)

Section 1002. Projections into required open space.

Every part of a required yard shall be open from its lowest point to the sky unobstructed, except as follows

(1) The ordinary projection of sills, belt courses, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above shall project into a minimum side yard more than twenty-four (24) inches.

(2) Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a minimum yard not more than three and one-half (3 1/2) feet, and the ordinary projections of chimneys and flues may be permitted by the Administrative Officer where same are so placed as not to obstruct the light and ventilation

Section 1003. Planned unit development.

Purpose. The purpose of this section is to encourage and provide for flexibility and innovation in the design and location of structures and land development, to provide for the most effecient use of land resources, and to provide an opportunity to develop land areas in a manner different from the standard arrangement of one (1) principal building on one (1) lot. It is further intended that a planned unit development will be in harmony with the character of the district in which it is located.

Planned unit development defined. In this ordinance, a planned unit development means a development where more than one principal building is proposed to be constructed on a single tract, or any residential complex containing nine (9) or more multi-family dwelling units, or any building with a gross floor area of twenty-five thousand (25,000) square feet or more.

Land development standards The following land development standards shall apply for all planned unit developments. These planned unit developments may be located only in certain specified districts as conditional uses, subject to a finding by the Board that the following conditions exists:

(1) *Ownership control.* The land in a planned unit development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sale agreement) shall be provided that the development can be successfully completed by the applicant.

(2) *Density requirements.* There are no density requirements for nonresidential uses as long as the proposed project does not violate the intent of the district in which it is located. The proposed residential density of the

planned unit development shall conform to that permitted in the district in which the development is located as indicated in Article VI, Applications of Regulations. If the planned unit development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.

(3) *Frontage requirement.* Planned unit developments shall have access to a highway or road suitable for the scale and density of development being proposed.

(4) *Minimum requirements.*

(A) Required distance between buildings: The minimum distance between buildings shall be twenty (20) feet or as otherwise specified by the Board to ensure adequate air, light, privacy, and space for emergency vehicles.

(B) Every dwelling unit shall have access to a public or private street, walkway or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles.

(5) *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walks, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants and adjacent properties for screening of objectionable views or uses, and for reduction of noise. Multi-level buildings shall be located in such a way as to dissipate any adverse impact on adjoining low rise buildings and shall not invade the privacy of the occupants of such low rise buildings.

(6) *Perimeter requirements.* Structures located on the perimeter of the development must be set back from property lines and right-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.

(7) Plans and accompanying documentation to ensure that the water and sewer systems proposed for the planned unit development have been approved by the appropriate local and state agencies shall be submitted as part of the application.

(8) Preliminary plans shall include parking provisions for all proposed uses within the planned unit development in accordance with Section 702 of Article VII, General Provisions. When more than one use is located in the planned unit development, the minimum required parking shall be the sum of the required parking for each use within the development.

(9) Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

(10) Layout of parking areas, service areas, entrances, exits, yards, courts and landscaping, and control of signs, lighting, noise or other potentially adverse influences shall be such as to protect the character within the zoning district and desirable character in any adjoining district.

(11) Conveyance and maintenance of open space, recreational areas and communally owned facilities shall be in accordance with the Unit Ownership Act (Chapter 47-A of the North Carolina General Statutes) and/or any other appropriate mechanisms accepted to the Board.

(Ord. of 4-20-93)

Section 1004. Right-of-way.

Street and highway right-of-way shall not be determined as a part of a lot or any required yard or open space.

Section 1005. Fences and walls.

In any district the following regulations shall apply for any wall or fence (either natural or man-made):

(1) Fences and walls may be permitted in a rear yard adjacent to the lot line provided such fences and walls do not exceed eight (8) feet in height.

(2) Fences and walls may be permitted in a side and/or front yard adjacent to the lot line provided such fences and walls do not exceed six (6) feet in height.

(3) On a corner lot, no fence or wall located along a property line shall exceed six (6) feet in height if it is located adjacent to a front or side lot line of any adjoining property.

(4) Fences and walls used to enclose the following areas shall not exceed twelve (12) twelve feet in height and may be located adjacent to a property line. However, no such fence or wall shall exceed the height limits as set forth in letter A and B of this section when located in a side yard or is adjacent to a street right-of-way line unless such fence or wall is set back at least ten (10) feet from the lot line or the street right-of-way line:

(A) Recreational areas such as swimming pools, basketball courts, handball courts, and tennis courts

(B) C-2 General Business District

(C) M-1 Industrial District

(D) OI Office and Institutional District

(Amended 2-2-99)

(5) Retaining walls built specifically to keep a bank of earth from sliding or water from flooding shall be permitted anywhere on the property as needed

(6) No fence, wall or other obstruction shall be placed so as to obstruct vision to a public street from any public or private drive.

(7) No fence or wall shall be permitted within a publicly dedicated street right-of-way.

(8) All fence and wall heights shall be measured from ground level at base of fence or wall.

Section 1006. Reserved.

Editor's note--An ordinance of Apr. 20, 1993, deleted § 1006 pertaining to multi-family dwellings of over five units, as derived from the original zoning ordinance of Feb. 19, 1974.

ARTICLE XI. ADMINISTRATION AND ENFORCEMENT

Section 1100. Intent.
It is the intent of this Ordinance that all questions arising in connection with the enforcement or the interpretation of this Ordinance shall be first presented to the Administrative Officer and that such questions shall be presented to the Board only on appeal from the Administrative Officer and that from the decision of the Board, recourse shall be taken to the courts as provided by law. It is further the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and passing on disputed questions which might arise in connection with the enforcement or interpretation of this Ordinance, but the procedures for determining such questions shall be as stated in this Ordinance, and the duties of the City Council in connection with this Ordinance shall be only the duty of holding a public hearing and voting upon any proposed amendment or repeal of this Ordinance as provided by law.

Section 1101. Administrative officer.
The Marion City Council shall appoint an administrative officer whose duty it shall be to enforce and administer the provisions of this Ordinance.

(Ord. of 4-20-93)

Section 1102. Zoning permit required.
No building or other structure shall be erected, moved, added to, or structurally altered until the Administrative Officer shall have issued a zoning permit. No zoning permit shall be issued except in conformity with the provisions of this Ordinance except after written order from the Board. The fee for the permit is to be determined by the City Council.

1102.1 Application for zoning permits
All applications for a zoning permit shall be accompanied by one- (1) set of plans.
The plans shall be submitted and reviewed in accordance with Section 1102.2.

1102.2 Plan Review

(1) Purpose. The purpose of site plan review is to:

(A) Provide site-specific information on a particular site's capacity to support a proposed development.

(B) Insure compliance with the standards and requirements of the City of Marion as they relate to individual cases.

(C) Document and record plans to insure compliance with approved plans as well as to update the CGIS (City's Geographical Information System.)

(D) Provide a coordinated and timely review procedure by which to insure comprehensive and equitable enforcement of the minimum standards of the City of Marion.

(E) Promote and preserve the health, safety, and general welfare of the people.

(2) Applicability and Requirements

(A) Plot Plan Required. No building permit for a single-family or two-family dwelling, accessory structures and additions involving 50% or less increase of total square footage of a structure on a single lot shall be issued until a Plot Plan has been submitted and approved Plot Plans shall be drawn to scale and should include the following information:

(B) The location and dimensions of proposed and existing structures

(C) The location of existing and proposed driveway, sidewalks, streets and right-of-ways.

(3) Site Plan Required. No other building permit shall be issued on a lot until a Site Plan has been approved .submitted and reviewed for the development No new or amended site plan shall be required if an adequate Site Plan is already on file, no increase in or rearrangement of parking is proposed or required, and no increase in impervious surface is proposed or required. Site plans submitted for approval must be drawn to a scale of not less than one (1) inch equals one hundred (100) feet by an engineer, land surveyor, architect or other qualified professional and shall show the following information on one (1) or more sheets:

(A) Location and dimensions of all existing and proposed structures and setbacks from right-of-way and property lines. If no right-of-way exist, indicate distance from traveled way.

(B) Location of all utilities (water and sewer lines, manholes, power lines, streetlights, and drainage structures) Include diameter and materials used on new water and sewer lines.

(C) Location of internal and external streets, right-of-ways, sidewalks, entrances and exits.

(D) Parking lots indicating individual spaces, loading zones, and handicap parking. Adequate information to determine parking requirements.

(E) Landscape Plan as required by Section 707.

(F) Location of dumpsters and other refuse areas including screening/ buffering plan.

(G) Location and picture of proposed and existing signage as well as sign permits

(H) Pervious to non-pervious calculations.

(I) All water, sewer, drainage, erosion control and street facilities plans (including driveway permit) shall be submitted to the appropriate official or agency prior to the final approval of the Site Plan (if applicable)

(4) Procedures. Staff shall review all plans and insure compliance with the City of Marion's Codes and Ordinances. If the use is a special exception then the Site Plan will be forwarded to the Planning Board and

the Board of Adjustment. If the proposed use is a permitted use, the administrative officer will review, insure compliance with all applicable provisions of this ordinance and issue a Zoning Permit upon approval.

For large scale developments, a technical review committee (TRC) will review the plan to insure consistency with the City of Marion's codes, ordinances, and operational concerns The technical review committee consists of the City Planner, Building Inspector, and representatives from each appropriate department.

1102.3 Construction progress. If no substantial construction progress has been made within six (6) months of the date of issuance of the zoning permit, or if the work authorized is suspended for a period of one (1) year, the permit becomes invalid.

Section 1103. Certificate of occupancy required.
A Certificate of Occupancy issued by the Administrative Officer is required in advance of:
(1) Occupancy or use of a building thereafter erected, altered, or moved.
(2) A change of use of any building or land

1103.1 Application for occupancy permit. A Certificate of Occupancy, either for the whole or a part of a building shall be applied for coincident with the application for a zoning permit and shall be issued within ten (10) days after the erection or structural alteration of such building, or part, shall have been completed in conformity with the provisions of this Ordinance. A Certificate of Occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this Ordinance. If the Certificate of Occupancy is denied, the Administrative Officer shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the Office of the Administrative Officer and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building or land involved.

1103.2 Remedies. In case any building is erected, constructed, re-constructed, altered, repaired, converted or maintained, or any building or land is used in violation of this Ordinance, the Administrative Officer, or any other appropriate City authority, or any person who would be damaged by such violation, in additional to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceeding to prevent such violation.

Section 1104. Establishment of vested rights.
(1) A vested right shall be deemed established with respect to any property upon the valid approval or conditional approval of a site-specific development plan in accordance with procedures outlined in this Section and G.S. 160A-385.1 Such vested right shall confer upon the landowner the right to undertake the development and use of the property under the terms and conditions of the approved site-specific development plan and shall preclude any zoning action of the City of Marion that would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved plan. The establishment of a vested right shall not preclude, however, the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use; nor shall it preclude the application of ordinances or regulations that are general in nature and are applicable to all property subject to land use regulations by the City of Marion including, but not limited to, building, fire, electrical, plumbing and mechanical codes. Otherwise, any applicable new or amended regulations shall become effective with respect to property for which a vested right has been established only upon the expiration or termination of the vested right in accordance with paragraph (3) of this Section.

(2) *Definitions* The following definitions shall apply to this Section:

(A) *Landowner.* Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan in a manner allowed by this Ordinance.

(B) *Property.* All real property subject to zoning regulations and restriction by the City of Marion.

(C) *Site specific development plan.* A plan that has been submitted to the City of Marion by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such a plan is hereby defined as the information and review procedures required for the approval of a special exception as contained in Article XII of this Ordinance.

(D) *Vested right* The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(3) *Establishment, duration and termination of a vested right.*
(A) In order to establish a vested right, a landowner shall submit a site specific development plan as outlined in this Section. The applicant must indicate at the time of application, on a form to be provided by the City, that a zoning vested right is being sought. Each map, plat, site plan or other document submitted evidencing a site specific development plan shall contain the following notation: "APPROVAL OF THIS PLAN ESTABLISHES A VESTED RIGHT UNDER G.S. 160A-385.1. UNLESS TERMINATED AT AN EARLIER DATE, THE ZONING VESTED RIGHT SHALL BE VALID UNTIL _____."

(B) Landowners electing to pursue the vested rights option will be subject to review procedures as specified in Subsection 1204.2, Special Exceptions, and henceforth, the project under consideration for

vested rights will be processed as a special exception subject to conditions, specifications and procedures as outlined in Article XII.

(C) A right which as been vested shall remain vested for a period of two (2) years, and shall not be extended by any amendment or modification of the approved site specific development plan. A right which has been vested, together with the special exception which has been issued in conjunction therewith, shall expire or terminate as follows:

1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
2. With the written consent of the affected landowner;
3. Upon findings by the City Council, by Ordinance and after notice and a public hearing as required in Section 1300 of this Ordinance, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed in accordance with said approval;

(D) To the extent that the affected landowner receives compensation for all costs, expenses and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval of the site specific development plan, together with interest thereon at the legal rate until paid, but not including any diminution in the value of the property which is caused by such action;

(E) Upon findings by the City Council, by Ordinance and after notice and public hearing as required in Section 1300 of this Ordinance, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval of the site specific development plan;

(F) Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the approval site specific development plan, in which case the City Council may modify the affected provisions upon a finding, by Ordinance and after a public hearing as required in Section 1300 of this Ordinance, that the change in State or federal law has a fundamental effect on the approved site specific development plan.

(4) The City of Marion may rescind the approval of a site specific development plan for failure to comply with applicable terms and conditions as specified in the approval of said plan or as specified by this Ordinance.

(5) Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply, except that a permit shall not expire or be revoked because of the running of time which a vested right under this section is outstanding.

(Ord. of 4-20-93)

ARTICLE XII. PLANNING AND ZONING BOARD

Section 1200. Establishment of board.
The Marion City Council has, by ordinance, created the Planning and Zoning Board, hereafter referred to as the "Board," as authorized by G.S. 160A-361. Under the provisions of G.S. 160A-388 the Board performs the duties of a Board as outlined by the North Carolina General Statutes and the Marion Zoning Ordinance. Composition, organization and proceedings of the Board shall be as established in the ordinance creating said board and in the adopted by-laws of said Board.

(Ord. of 4-20-93)

Sections 1201, 1202. Reserved.

Editor's note--An ordinance of Apr. 20, 1993, deleted §§ 1201 and 1202 pertaining to proceedings and decisions of the Board of Adjustment, as derived from the original zoning ordinance of Feb. 19, 1974.

Section 1203. Appeals from decision of the Administrative Officer.
Appeals to the Board may be taken by any person aggrieved or by any officer, department, board of the City of Marion affected by any decision of the Administrative Officer or other City official based on this Ordinance. Such appeal shall be filed in accordance with the adopted by-laws of the Board. The Administrative Officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. All appeal stays all proceedings in furtherance of the action appealed from unless the Administrative Officer certifies to the Board, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the Administrative Officer and on due cause show.

(Ord. of 4-20-93)

Section 1204. Powers and duties of the Board.
The Board shall have the following powers and duties:

1204.1 **Administrative review.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrative Officer in the enforcement of this Ordinance.

1204.2 Special exceptions. To hear and decide only such special exception as the Board is specifically authorized to pass on under the terms of this Ordinance. To decide such questions as are involved in determining whether a special exception should be granted. To grant special exceptions with such conditions and safeguards when not in harmony with the intent of this Ordinance. A special exception may be granted by the Board only after making the following findings:

(1) That the Board is empowered under a specific section of this Ordinance to grant the special exception and that the granting of the special exception will not adversely affect the public interest.

(2) Before any special exception shall be issued, the Board shall make written findings certifying compliance with all specific rules governing the individual special exception and that satisfactory provision and arrangement has been made concerning the following wherever applicable:

(A) Ingress and egress to property and proposed structures with particular reference to automotive and pedestrian safety, convenience, traffic flow and control, and access in case of fire or catastrophe.

(B) Refuse and service areas, with particular reference to the items in (1) and (2) above.

(C) Off-street parking and loading areas where required with particular attention to the items in one (1) above and to the economic, noise, glare or odor effects of the special exception on adjoining properties and generally in the district.

(D) Utilities, with reference to location, availability and compatibility.

(E) Screening and buffering, with reference to type, dimensions, and character.

(F) Sign, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.

(G) Required yards and other open spaces.

(H) General compatibility with adjacent property and other property in the district.

(3) The Board shall request the Marion Planning Board to review and make recommendations concerning the special exception relative to the following considerations:

(A) Relation of the special exception to applicable elements of the planning program.

(B) Appearance of the special exception relative to location, structure, and design.

1204.3 Variances. To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the Board that the following conditions exist:

(1) There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

(2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

(3) A literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

(4) The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.

(5) The special circumstances are not the result of the actions of the applicant.

(6) The variance requested is the minimum variance that will make possible the legal use of the land, building and structure.

(7) The variance is not a request to permit a use of land, building, or structure which is not permitted by right or by special exception in the district involved.

In granting a variance the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation which shall be punishable under Article XV, Section 1500 of this Ordinance. The existence of a non-conforming use of neighboring buildings or structures in the same district or of permitted or non-conforming uses in other districts shall not constitute a reason for the requested variance.

Section 1205. Appeals from the Board.

Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer or any officer, department, board of the City of Marion may, within thirty (30) days after the filing of the decision in the office of the Board, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.

Section 1206. Fees for variances, appeals, and special exceptions.

The Marion City Council shall establish a fee schedule for each application for a variance, exception or appeal, to cover the necessary administrative costs and advertising.

(Ord. of 4-20-93)

ARTICLE XIII. AMENDMENTS

Section 1300. Amendments.

This Ordinance, including the Official Zoning Map, may be amended from time to time, but no amendment shall become effective unless it shall have been proposed by, or shall have first been submitted to, the City of Marion Planning Board for review and recommendations. The Planning Board shall have forty-five (45) days within which to submit its report. If the Planning Board fails to submit a report within the forty-five (45) day period, it shall be deemed to have approved the proposed amendment. A public hearing shall be held by the City Council before adoption of any proposed amendment to this Ordinance. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper of general circulation in the City of Marion, said notices to be published the first time not less than ten (10) days and not more than twenty-five (25) days prior to the date established for such public hearing. In the case of a protest against an amendment, supplement, change, modification, or repeal signed by the owners of twenty (20) percent or more either of the area of lots included in such proposed change, or of those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending one hundred (100) feet therefrom, or of those directly opposed thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all members of the City Council.

Section 1301. Fees for amendments.
The Marion City Council shall establish a fee schedule for each application for an amendment to cover the cost of advertising and other administrative expenses involved.
(Ord. of 4-20-93)

ARTICLE XIV. LEGAL STATUS PROVISIONS

Section 1400. Conflicting regulations.
In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare of the City of Marion. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances of the City, or any easements, covenants or other agreements between parties. However, if the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances of the City of Marion or with easements, covenants or agreements between parties, the more restrictive of that imposing the higher standards shall govern.

Section 1401. Validity.
Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than that part so declared to be unconstitutional or invalid.

ARTICLE XV. PENALTY AND EFFECTIVE DATE

Section 1500. Penalties and Enforcement.
(Amended 11-19-02)

(1) **Notice of Violation.** When the administrator of this ordinance, or his/ her designee finds a violation of this Ordinance, it shall be his/ her duty to give the owner or occupant of the property in violation written notice by certified or registered mail to his last know address, by personal service of the notice, or by posting the notice conspicuously on the property. The following information shall be included in the notice of violation:
(A) that the land, building, structures, sign, or use is in violation of the Zoning Ordinance of the City of Marion;
(B) the nature of the violation(s), and citation of the section(s) of the Ordinance violated,
(C) the measures necessary to remedy the violations; and
(D) the time period in which the violation must be corrected.

If applicable a stop work order may be issued at this time.

(2) **Appeal.** Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the administrator of this ordinance or his/ her designee to the Board of Adjustment within thirty (30) days following the date of the receipt of the Notice of Violation. The Board of Adjustment shall hear the appeal within sixty days, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal the decision of the zoning administrator or his/ her designee shall be final.

(3) **Failure to comply with the notice of violations.** If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taking, or a final decision of the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by State or by section 1500.1 Enforcement Methods.

Section 1500.1 Enforcement Methods. Enforcement may be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

(1) **Injunctions-** Enforcement may be achieved by injunction. When a violation occurs the City may either before or after the institution of any other authorized action or proceeding, apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction commanding the defendant, or in the case of counterclaims the plaintiff, to correct the unlawful condition or cease the unlawful use of the property.

(2) **Order of Abatements-** The City may apply for and the court may enter an order of abatement. An order of abatement may direct that buildings and other structures on the property be closed, demolished, or

removed, that fixtures, furniture, or other movable property be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this ordinance. Whenever the party is cited for contempt by the court and the City executed the order of abatement, the City shall have a lien on the property for the cost of executing the order of abatement

(3) **Criminal Penalties**- Any violation to this Ordinance shall be a misdemeanor or infraction as provided by N.C.G.S. 14-4.

(4) **Denial of Permit or Certificates**- The Planning and Inspections Department shall withhold or deny any permit, certificate, or other authorization on any land, building, structure, sign, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

(5) **Revocation of Permits or Certificates.** The Planning and Inspections Department may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocations. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State of local laws; or the false statements or misrepresentations made in securing the permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked.

(6) **Civil Penalties**- Any act constituting a violation shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt or as otherwise provided herein if the offended fails to pay the penalty with 15 days.

(A) Responsible parties. The owner or occupant of any land, building, structure, sign, use of land, or part thereof, any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and other remedies provided herein.

(B) Issuance of citations. No civil penalty shall be assessed under this section until the person alleged to be in violation has been notified in accordance with section 1500 (A) Notice of Violations. If after receiving a Notice of Violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation. Such citation shall be in writing; shall be delivered by certified or registered mail to the last know address of the responsible party or by personal service; shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within fifteen (15) calendar days of the date of the citation.

(C) Continuing Violation For each day the violation is not corrected, the violator will be guilty of an additional separate offense and subject to additional civil penalties.

(D) Penalties Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty in the amount of fifty dollars ($50.00) per violation, per day. The penalty would begin after the expiration of the thirty day appeal period for the notice of violation as described in 1500 (B) or after an appeal from a notice of violation is denied.

(E) Nonpayment. If payment is not received or equitable settlement reached within thirty (30) days, the matter shall be referred to the city attorney to institute a civil action for recovery of the civil penalty.

Section 1500.2 Repeat Violations. If the violator of this ordinance repeats the violation within a three (3) year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies. An additional notice of violation shall not be necessary.

Section 1501. Effective date.

This Ordinance was adopted by the Marion City Council on February 19, 1974, and shall take effect on the 1st day of April, 1974. This Ordinance shall include all amendments duly adopted after April 1, 1974.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of October 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

ORDINANCE NUMBER: 03-10-07-01

DISCUSS MARION AREA FIRE DISTRICT ISSUES: It was the consensus of Council to hold this item until a later date.

CONSIDER AWARD OF CONTRACT – FERN/MONTEVISTA CURB/SIDEWALK WORK: The City Manager advised that notice of the impending curb and sidewalk work on Fern and Montevista Avenues was sent to residents on September 20.

Two bids have been received as follows:

	Curb & Gutter	Drainage	Sidewalk
Wilson Concrete Contractors	$82,193.75	$12,550.00	$26,000.00
Valdese Concrete	$95,500.00	$13,180.00	$25,000.00

The City Manager advised that the Powell bill Fund has a balance of $97,000 prior to our receipt of our 2003 Powell Bill Funds from the State. This amount will be spent down somewhat during the Fiscal Year. With the State funding $45,000 of this project, the City's share of the project for curb and gutter only would be $37,193.75 and for curb and gutter and drainage would be $$49,473.75. If the sidewalk work from Wilson were added, the total amount would come to $75,473.75.

The total job would take Wilson six to eight weeks to complete. The City Manager added that we will soon be facing cold weather and we have to work around school traffic. The City will also need to coordinate with Wilson to put in a new water line on Fern.

The City Manager advised that material for the sidewalk project only would run approximately $10,000.00.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to award Wilson Concrete Contractors a contract for the completion of curb and gutter, drainage and sidewalk work on Fern and Montevista Avenues, in the amount of $120,743.75.

The City Manager advised that this project would start after the installation of a new water line on Fern Avenue, to replace the existing undersized four inch line on this street.

APPROVE 2006-2012 TRANSPORTATION IMPROVEMENT PROGRAM PROGRAMS: The City Manager advised that the Annual TIP meeting for DOT Division 13 will be held in Spindale on October 16, 2003.

Last year's City TIP priority list included the following

1. NC 226 – Widen Roadway to Multi-lanes from US 221 Bypass to SR 1794 (Old Glenwood Road)
2. US – 70 – Feasibility study of a northern Bypass of US 70 around Marion and a connector road between US 70 East of Marion and Rutherford Road with projects funded and scheduled based on the study.
3. US-221 Business (Rutherford Road) – Widen Roadway to multi-lane Facility with a Curb and Gutter from Georgia Avenue to the Highway 221 By-Pass.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to forward the above listed priorities again this year for the 2006-2012 Transportation Improvement Program.

RECEIVE STREET COMMITTEE RECOMMENDATION – ALLEYWAY BETWEEN PULLIAM AND SNIPES STREETS: The City Manager advised that the Street Committee met on September 18th and looked at a complaint involving through traffic on an alleyway off of Snipes Street.

The Street Committee determined that the alleyway is being used as a cut through between Snipes and Pulliam Street. It is the recommendation of the Street Committee to place a barricade at the end of the alley. The City Manager advised that this action would have the effect of the City taking over maintenance of the alleyway, since it is not entirely clear that the City has ever taken steps to accept maintenance of the alley.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Owenby, Council voted unanimously to approve the recommendation of the Street Committee and place a barricade at the end of the alley.

REVIEW COMMUNITY BUILDING KITCHEN RENTAL/DEPOSIT CHARGES: The City Manager advised that with the purchase of new chafing dishes for the Community Building, an increase in the rental and deposit fees for the kitchen may be necessary to help prevent the loss of these expensive items.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to restrict the use of the chafing dishes to licensed caterers only, and to refer a review of Community kitchen rental and deposit fees to the Recreation Committee for a recommendation.

VOLUNTARY ANNEXATION UPDATE: The City Manager advised that, in September, Mr. Anwer Gillani appeared before Council expressing interest in the voluntary annexation of property owned by he and other persons on Sugar Hill Road around Interstate 40. Mr. Gillani stated that he and other property owners would waive their right to City service.

After researching this request with the North Carolina League of Municipalities and the Institute of Government, the City Manager advised that such agreements are probably not enforceable against current property owners and definitely unenforceable against future property owners. However, the City Manager noted that the Institute of Government did state that agreements between municipalities and property owners that delay the receipt of particular services for a reasonable period of time, likely not to exceed five to ten years, are likely permissible. The City Manager advised obtaining a new estimate from the City Engineer for the extension of water and sewer service down Sugar Hill Road to I-40, and to ask Mr. Gillani to obtain commitments for annexation from property owners on Sugar Hill Road in writing. He stated that the County had expressed some interest in helping the City possibly finance this water and sewer extension in the future.

Council members agreed by consensus to direct the City Manager to obtain a new estimate from the City Engineer for the extension of water and sewer service down Sugar Hill Road to I-40, and to ask Mr. Gillani to obtain commitments for annexation from property owners on Sugar Hill Road in writing. An evaluation can then be made by Council as to how the water and sewer extension could be financed.

No action was necessary.

DISCUSS NOVEMBER/DECEMBER COUNCIL MEETING SCHEDULE: A discussion was held regarding the November and December City Council Meeting Dates.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to cancel the November 4 Council meeting on Election Day and instead have Council meet one time in November on the 18th and once in December on the 2nd. The December meeting will be brief and be followed by City Council's Christmas Dinner at Carolina Chocolatiers.

DISCUSSION – LOITERING – DOWNTOWN AREA: The City Manager advised that meetings with DSS, the Clerk of Court and Members of Mental Health Association have been held to discuss loitering activity in the downtown area. The results of the meeting were not extremely promising, as the State agencies represented informed the City that their options were limited in placing people in locked facilities who had not committed violent acts. Mayor Clark and Police Chief Mika Elliott also attended these meetings.

A discussion followed.

The City Manager advised that the outside agencies had suggested that the City might have to criminalize loitering activity in order to resolve situations with persons intimidating or scaring persons in the downtown area. The City Manager stated that the Police Chief is talking to other Police Departments to see if there are any good loitering ordinance examples still in use. Councilman Little noted that general loitering ordinances had been struck down by the Supreme Court as unconstitutional. Ordinances had to serve a particular purpose, but could not simply prohibit loitering. Councilman Edwards suggested that the City Manager contact the Institute of Government or other experts to determine if there are legal ways in which to adopt a loitering ordinance.

Council members agreed by consensus to direct the City Manager to contact the Institute of Government or other experts to determine if there are legal ways in which to adopt a loitering ordinance.

SHADY LANE – RESOLUTION – LOW BID: The City Manager reported that bids were received on September 16 for the extension of water service down Shady Lane Road to the DOT Rest Areas on I-40. The low bid was received from Buckeye Construction in the amount of $349,018.30 for the construction of a 12 inch line. The City Manager noted that DOT agreed to pay the equivalent cost of a six inch water line, making the portion of the project attributable to DOT $230,591.35, with the remaining amount paid by the City and County. The State Board of Transportation will consider ward of the contract to Buckeye Construction at November meeting, but requested first the adoption of a resolution by City Council, conditionally approving the project contract.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

Resolution
Approving Bid and Contract for Shady Lane Water Line Improvements
and
Requesting the North Carolina Department of Transportation to
Approve Said Bid and Contract

WHEREAS, the City of Marion and the North Carolina Department of Transportation entered into a Utility Agreement dated February 1, 2002 for the extension of water service to the Rest Areas south of Marion on Interstate 40 stating that the Department would pay for the construction of a six inch water line and that the City and McDowell County would pay additional costs to construct a twelve inch water line; and

WHEREAS, the project design, as completed by the City's consulting engineer, carried the water line down Sugar Hill Road (SR 1001) and Shady Lane Road (SR 1164) to the Interstate 40 Rest Areas; and

WHEREAS, the portion of the water line along Sugar Hill Road (SR 1001) is being installed as part of TIP Project Number R-2643 as part of a separate agreement between the City of Marion and the North Carolina Department of Transportation; and

WHEREAS, bids were solicited and a bid opening held on September 16, 2003 for the extension of water service along Shady Lane (SR 1164) to the Interstate 40 Rest Areas; and

WHEREAS, the low bid was received from Buckeye Construction Company in the amount of $349,018.30, below the engineer's estimate of $452,900, with the amount of the project costs attributable to the North Carolina Department of Transportation under the aforementioned utility agreement totaling $230,591.35; and

WHEREAS, Buckeye Construction has provided required bonds and information sufficient to establish that they are the lowest responsible bidder for the project; and

WHEREAS, the City Council of the City of Marion desires that this project be initiated as soon as possible, so that needed water service can be extended to the Interstate 40 Rest Areas and other properties in the vicinity;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby accept the bid of and award a contract to Buckeye Construction for the construction of the water line along Shady Lane (SR 1164) to the Interstate 40 Rest Areas in the amount of $349,018.30, subject to the approval of the North Carolina Department of Transportation.

Section 2. The City Council of the City of Marion requests that the North Carolina Department of Transportation approve the award of the contract for the construction of a water line along Shady Lane (SR 1164) to the Interstate 40 Rest Areas in the amount of $230,591.35, the total of costs attributable to the Department for the construction of a six inch water line, and provide written notice of this approval as soon as possible to the City so that the project may be initiated.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 7th day of October, 2003.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-03-10-07-1

CITIZEN REQUEST – WEST HENDERSON AND BURGIN: The City Manager advised that he had received a request suggesting that the City ask DOT to study a possible traffic signal at the intersection of West Henderson Street, Burgin Street and Blue Ridge Street.

A discussion followed.

It was the consensus of Council to refer this request to the Street Committee.

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects. He requested and received approval from Council for the Police Department to work again with Law Publications on educational materials on crime and drug issues for youth. Law

Publications will solicit local businesses for advertisements in these publications, and then will provide the educational materials to the Police Department free of charge.

MAYOR CLARK: Mayor Clark advised that he would like to see Marion have a City Flag.

Council members agreed by consensus for the Mayor to work with the City Manager on pursuing this idea.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(4) to discuss a matter involving the location of industry or other business.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session.

Mayor Clark announced that no action was taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 21, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Jim Neal, Fire Chief and Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Earl Daniels, Garden Street, Marion, NC 28752; Kit Alverson, Marion, NC 28752; Dean Wall, Marion, NC 28752; and Sharon Parker, City Attorney.

MOMENT OF SILENCE – IN MEMORY - BRIAN BUCKNER: Mayor Clark called the meeting to order and requested a moment of silence in Memory of Brian Buckner, a City Employee in the Street Department, age 32, who died unexpectedly at his residence the previous week of a heart attack.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Consent Agenda as follows:

A. **Approval of Minutes** - October 7, 2003 Minutes
October 7, 2003 Closed Session Minutes

B. Budget Amendment – Police Grants

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(Third Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-398-0310, Reimbursement ATTF Initiative, is increased from $0 to $8,573
b. General Fund Revenues, Account Number 10-398-0410, Safe Neighborhood Grant, is increased from $0 to $500.00.
c. General Fund Expenditures, Police, Account Number 10-510-7400, Capital Outlay, is increased from $195,626 to $204,199.
d. General Fund Expenditures, Police, Account Number 10-510-3300, Department Supplies, is increased from $15,000 to $15,500.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget officer to be kept on file for direction in the disbursement of funds.

Adopted this the 21st day of October, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-03-10-21-1

C. Resolution – Authorizing Staff to Obtain Regulatory Approvals for Fluoridation of the City Water System

RESOLUTION
AUTHORIZING FLUORIDATION OF
THE PUBLIC WATER SUPPLY IN THE CITY OF MARION

WHEREAS, the City of Marion currently operates a public water system that serves approximately 9,000 people within the City of Marion and McDowell County; and

WHEREAS, the City of Marion has received written support for fluoridation of the water supply from the McDowell County School Board, the McDowell County Medical Society, the McDowell County Dental Society, the local Public Health Dental Hygienist, the North Carolina Department of Health and Human Services Oral Health Section, the McDowell Hospital, local pediatricians and the McDowell County Partnership for Children;

WHEREAS, subsequently, the Marion City Council held a public meeting on January 30, 2003 at which public comment was received from individuals such as medical professionals, public health experts and interested citizenry both in support of, and against the prospect of adding fluoride to the public water supply; and

WHEREAS, the Marion City Council understands that 89 percent of public water systems in North Carolina currently fluoridate their water supply and that the City of Marion is among a very small percentage of municipalities able to fluoridate the water supply but not currently doing so; and

WHEREAS, substantial evidence presented at the public meeting and received from public health sources indicates that fluoridation of the water supply has health benefits for all segments of the populations validated by scores of studies since the inception of the practice in the early 1940's; and

WHEREAS, the Marion City Council feels that, based on the recommendation of medical and health professionals and testimony of experts present at the public meeting, there would be, on the whole, substantial benefits and negligible, if any, detrimental effects to fluoridation of the City water supply; and

WHEREAS, the North Carolina Administrative Code requires approval of fluoridation plans by local boards of health before a public water system may apply for State permits;

WHEREAS, the Rutherford-Polk-McDowell District Board of Health has approved the City's plans for water fluoridation;

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

1. The City Council of the City of Marion concurs with the recommendation of health and educational professionals and the approval of the District Board of Health and states its intention to immediately implement the practice of adding fluoride to the water supply as a preventive oral health measure.

2. The City Manager and staff are hereby directed to proceed with the necessary steps to obtain regulatory approval and to construct the necessary facilities in order to implement

fluoridation of the City of Marion water system.

Adopted this 21st day of October, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-03-10-21-I

D. Approve Longevity Pay for City Employees – Departmental Summary Longevity 2003 – Total $35,841.52

E. Approve Turkeys for City Employees – One Turkey per employee, to be given out before Thanksgiving.

PUBLIC HEARING – ZONING AMENDMENT – AUTO REPAIR SHOP/JUNKYARD REGULATIONS: Mayor Clark opened the Public Hearing.

The City Manager gave an overview of the Auto Repair Shop/Junkyard Regulations.

The City Planner advised that the Planning Board met on October 2nd 2003 to discuss the final changes to the ordinance regulation repair shop, auto sales, gas stations, junkyard and similar uses. The Board Members took the business owners' concerns into consideration and proposed a final recommendation for the amendment.

There were several citizens present to discuss this item who stated that they were satisfied with the proposed amendments.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A, 'ZONING'
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. Appendix A, Article IV, Section 400, are amended and restated in order to revise or add the following definitions

Approved screening Includes, but is not limited to, opaque enclosures, buildings, natural objects, plantings, fencings, walls or other appropriate means to visually conceal the view of junked or inoperable motor vehicles (or other uses that are required to be screened) from adjoining property or the public roadway at any season of the year. In determining whether screening is adequate, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Approved screening plan: A site specific plan approved by the person or board issuing the permit and that includes but is not limited to natural objects, plantings, fencings, walls or other appropriate means to visually conceal the view of junked or inoperable motor vehicles (or other use that is required to be screened) from the public roadway at any season of the year. In determining whether to approve a screening plan, the following factors, along with others, should be considered topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Automobile. for the purpose of this ordinance the term automobile shall include all motor vehicles.

Automobile graveyard: any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard." Cross reference: NCGS 136-143(1)

Automobile repair shop. Any establishment or place of business which is maintained or operated for the primary purpose of making mechanical and/or body repairs to motor vehicles. Factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to repair service broken down into the following categories: new parts, labor for service, used parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months may be evidence that the business is not an automobile repair shop, but rather an automobile graveyard and/or junk yard), (3) Whether business has initiated proceedings to declare vehicles abandoned under state law so the vehicle can be disposed of; (4) any business-type licenses that are held, or the lack thereof, and (5) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops. For purposes of this ordinance, automobile tire sales and service shops, as defined herein, shall be considered automobile repair shops. An automobile repair shop that operates a combination of towing, tire and sales shall comply with all the regulations governing each use.

Automobile tire sales and service shops: Any establishment or place of business which is maintained or operated for the primary purpose of selling tires and/or tire repair. For purposes of this definition, factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to tire service; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months may be evidence that the business is not an automobile tire shop, but rather a automobile graveyard and/or junk yard), (3) the length of time that used tires are stored on the property. (4) Used tires stored on the property longer than thirty (30) days should be evidence that the business is not an automobile tire shop, but rather a junk yard. (5) Any business-type licenses that are held, or the lack thereof. For the purpose of this ordinance tire, tire sales and services shall be considered an automobile repair shop.

Automobile towing and wrecker service businesses: Any establishment or place of business which is maintained or operated for the primary purpose of towing motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to towing service; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months may be evidence that the business is not an automobile towing service, but rather a automobile graveyard and/or junk yard). (3) the length of time and number of junked vehicles that are stored on the property. (4) Whether business has initiated proceedings to declare vehicles abandoned under state law so the vehicle can be disposed of; (5) Any business-type licenses that are held, or the lack thereof. For the purpose of this ordinance tire, towing and wrecking services shall be considered an automobile repair shop.

Automobile sales (also referred to as "car sales" or "motor vehicle sales") businesses: Any establishment or place of business which is maintained or operated for the primary purpose of selling motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to vehicle sales or service broken down into the following categories: vehicle sales, new parts, labor for service, and used parts, (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 12 months may be evidence that the business is not an automobile sales business, but rather an automobile graveyard and/or junk yard), (3) any business-type licenses that are held, or the lack thereof, and (4) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Gasoline service or filling stations. Any establishment or place of business which is maintained or operated for the primary purpose of selling gasoline or motor fuel or which contains fuel pumps and other such fuel dispensing appliances. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to gasoline or motor fuel sales or service broken down into the following categories: gasoline or motor fuel sales, labor for service, and parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months may be evidence that the business is not a gasoline service or filling station, but rather an automobile graveyard and/or junk yard), (3) any business-type licenses that are held, or the lack thereof, and (4) the number of gasoline pumps or fuel distribution devices, (5) the number and configuration of grease bays or repair work areas. For the purposes of this definition, gasoline service or filling stations where the service or repair work constitutes 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Inoperable Motor Vehicle: see "Junked and/or Inoperable Motor Vehicle"

Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for maintenance or operation of an automobile graveyard, and the terms shall include garbage dumps and sanitary fills. An establishment or place of business which store or keeps for a period of 15 days or more materials within the meaning of "junk" as defined herein which had been derived or created as a result of industrial activity shall be deemed to be a junkyard.

Cross reference: NCGS 136-143(4))

Junk: old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

Cross Reference: NCGS 136-143(3)

Junked and/or Inoperable Motor Vehicle: A vehicle that does not display a current license plate and that (1) is partially dismantled or wrecked, or (2) cannot be self-propelled or moved in the manner in which it originally was intended to move, or (3) is more than 5 years old and appears to be worth less than one hundred dollars ($100.00)

Cross Reference: NCGS 160A-303.2(a)

"In view" or "visible" means that it is capable of being seen without visual aid by a person of normal visual acuity.

Major automobile repair work: Work on a vehicle that is necessary to ensure the correct operation of the vehicle which cannot be completed in less than one (1) hour.

Minor automobile repair work. Work on a vehicle that is necessary to ensure the correct operation of the vehicle which can be completed in less than one (1) hour.

Nuisance Vehicle: A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be:

1. A breeding ground or harbor for mosquitoes, or other insects, rats, or pests; or
2 A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; or
3. A point of collection of pools or pounds of water; or
4. A point of concentration of quantities of gasoline oil or other flammable or explosive materials as evidenced by odor, or
5. One which has areas of confinement which cannot be operated from the inside, such as trunk, hoods, etc., or
6. So situated or located that there is a danger of it falling or turning over, or
7. One which is a point of collection of garbage, food waste, animal waste or any rotten or putrescible matter of any kind; or
8. One which has sharp points thereon which are jagged or contain sharp edges of metal or glass; or
9. Located within a public right of way and which is creating a traffic hazard or impeding ingress or egress into a residential dwelling or place of business.
10 Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council

Section 2. Appendix A, Article VII, Section 700, Nonconforming Uses, is amended to add the following provision:

"Nothing herein shall preclude the adoption of an amortization period in which certain non-conforming uses or conditions are to be phased out."

Section 3. Appendix A, Article VII, Section 702, is amended as follows:

Add the following provision;

Automobile repair shop. Two (2) spaces for each gas pump plus two (2) spaces for each grease rack or working bay or one (1) space for each two hundred square feet of gross floor space, which ever number produces the largest number of parking spaces, plus one space for each employee at maximum employment on any one shift.

Amend the following provision as restated:

Automobile sales, outdoor equipment and machinery sales, and commercial nurseries— One (1) space for each two hundred [200] square feet of gross floor area, plus one (1) space for each employee or sales person, plus one space for each vehicle stored on site.

Section 4. Appendix A, Article VII, Section 705, is amended and restated as follows:

Section 705. **Gasoline service or filling stations**

The following regulations shall apply to all gasoline service or filling stations:

1. All buildings shall be located at least forty (40) feet from any street or road right of way.
2. Gasoline pumps and other appliances shall be located at least fifteen (15) feet from any street right-of-way
3. All service, storage or similar activities shall be conducted entirely on the premises.
4. All major repair work, if any, shall be conducted within a building capable of being completely enclosed.
5. Open storage of wrecked or junked motor vehicles, discarded tires, auto parts or similar materials shall not be permitted.
6. Wrecked or junked motor vehicles, discarded tires, auto parts or similar materials may be stored within an enclosed structure which visually conceals such objects.
7. Vehicles associated with gasoline service or filling stations may not be stored or repaired within federal, state or local public rights-of-way, including streets and sidewalks.
8 On-site traffic areas shall be provided and arranged in such a manner as to provide easily identifiable ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.
9 Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702
10 The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continues to apply.
11 Gasoline service or filling stations must obtain a permit from the Zoning Office.

All gasoline service or filling stations within the city limits of Marion not in compliance with this Section 705 within six (6) months after the adoption of the ordinance adopting or amending this Section 705, shall be in violation.

Section 5. Appendix A, Article VII, Section 708, is amended and restated as follows:

Section 708. Automobile Repair Shops, Automobile Sales, Tire Sales and Services, Towing Business or Combination Thereof.

The following regulations shall apply to all automobile repair shops, automobile sales, tire sales and services, towing and wrecking service businesses or combination thereof

1. Open storage of junked or inoperable motor vehicles, auto parts or similar materials shall not be permitted. Tires may be temporarily stored for no longer than thirty (30) days in the side or rear yard and shall be neatly stacked at all times or enclosed in approved screening.
2. Junked or inoperable motor vehicles, auto parts or similar materials may be stored within an enclosed structure which visually conceals such objects or stored on a site that is the subject of an approved screening plan, as defined herein and approved by the Zoning Administrator
3. Vehicles associated with an automobile repair shops, automobile sales, tire sales and services, towing and wrecking service businesses may not be parked, displayed, stored or repaired within federal, state or local public rights-of-way, including streets and sidewalks
4. On-site traffic areas shall be provided and arranged in such a manner as to provide easily identifiable ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided
5 Junked or Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.
6. All service, sales, storage or similar activities shall be conducted entirely on the premises.

7. All major repair work, if any, shall be conducted within a building capable of being completely closed
8. Certain businesses claiming to be auto repair shops, automobile sales, tire sales and services or towing and wrecking service businesses that do not meet the definitions in Section 400 of this ordinance may be deemed gasoline service or filling stations and, therefore, subject to the regulations governing Gasoline Service or Filling Stations.
9. Certain businesses claiming to be automobile repair shops, automobile sales, tire sales and services, and towing and wrecking service businesses that do not meet the definitions in Section 400 of this ordinance may be deemed junk yards and, therefore, subject to the regulations governing Junk Yards.
10. The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continues to apply. Automobile repair shops and automobile sales businesses, tire sales and services and towing and wrecking service businesses must obtain a permit from the Zoning Office
11. All automobile repair shops and automobile sales businesses, tire sales and services and towing and wrecking service businesses within the city limits of Marion not in compliance with this 708 within six (6) months after the adoption of the ordinance adopting or amending this 708, shall be in violation

Section 6. Appendix A, Article VII, Section 710, is added:

Section 710. **Swimming Pools**

All swimming pools both public and private shall be completely enclosed by a solid wall or chain link fence at least six (6) feet in height. Swimming pools shall be located only in rear or side yards and shall be at least ten (10) feet from the property line.

Section 7. Appendix A, Article VIII, Section 805.3 (1) is amended as follows:

(1) Automobile graveyard, automobile wrecking, junkyard and salvage yards provided that

(A) ...

(F) For the purposes this section 805.3, an inoperable or junked motor vehicle shall not be deemed to be viewed from a public roadway if it is stored on a site that is the subject of an approved screening plan, as defined herein and approved by the body issuing the permit, or within an enclosed structure which visually conceals the inoperable motor vehicles.

(G) Vehicles associated with automobile graveyard, automobile wrecking, junkyard and salvage yards may not be parked, displayed, stored or repaired within federal, state or local public rights-of-way, including streets and sidewalks.

(H) On-site traffic areas shall be provided and arranged in such a manner as to provide easily identifiable ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.

(I) Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.

(J) The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continue to apply.

(K) Automobile graveyard, Automobile wrecking, junkyard and salvage yards must obtain a permit from the Zoning Office

(L) Those junk yards or automobile graveyards lawfully existing at the time that sub-section (f) through (m) of Section 805.3(1) of this Ordinance is adopted shall have five (5) years from the adoption of the Ordinance to come into full compliance with the provisions in Section 805.3(1)(f) through (m).

Section 8. Appendix A, Article VIII, Section 804.2 (5) is amended as follows:

804.2 Permitted uses. The following uses are permitted within the C-2 General Business District:
Change: 5. Automobile repair and paint shops to:

5. Automobile repair shops, automobile sales, tire sales/ services, or towing and wrecking service businesses as defined herein. These businesses shall comply with section 708.

Section 9. Appendix A, Article XV, Section 1500(C) is amended and restated as follows:

Section 1500. Penalties and Enforcement.

(C) **Failure to comply with the notice of violations.** If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision of the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by State law or by Section 1500.1 Enforcement Methods.

Section 10. Appendix A, Article XV, Section 1500.1(5) and (6) are amended and restated as follows:

Section 1500.1 Enforcement Methods.

(5) **Revocation of Permits or Certificates.** The Planning and Inspections Department may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocations. Permits or certificates shall be revoked for [a] any substantial departure from the approved application, plans, or specifications, [b] refusal or failure to comply with the requirements of State or local laws; [c] false statements or misrepresentations made in securing the permit; or [d] a certificate mistakenly issued in violation of an applicable state or local law.

(6) **Civil Penalties**- Any act constituting a violation shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt or as otherwise provided herein if the offended fails to pay the penalty with 15 days.

a Responsible parties. The owner or occupant of any land, building, structure, sign, use of land, or part thereof, any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs,

creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and other remedies provided herein.

b. Issuance of citations. No civil penalty shall be assessed under this section until the person alleged to be in violation has been notified in accordance with Section 1500(A) Notice of Violations. If after receiving a Notice of Violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation. Such citation shall be in writing; shall be delivered by certified or registered mail to the last known address of the responsible party or by personal service; shall state the civil penalty to be imposed upon the violator; and shall direct the violator to pay the civil penalty within fifteen (15) calendar days of the date of the citation.

c. Continuing Violation. For each day the violation is not corrected, the violator will be guilty of an additional separate offense and subject to additional civil penalties until the prohibited activity is ceased or abated

d. Penalties. Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty in the amount of fifty dollars ($50.00) per violation, per day until the prohibited activity is ceased or abated. Penalties shall start on the date or deadline listed in the Notice of Violation in Section 1500(A)(4) if no appeal is taken. If appeal is timely filed, the penalty will be tolled pending the appeal but will begin again on the date that appeal is denied

e. Nonpayment. If payment is not received or equitable settlement reached within thirty (30) days, the matter shall be referred to the city attorney to institute a civil action for recovery of the civil penalty.

Section 11. Appendix A, Article XV, Section 1500.2 is amended and restated as follows.

Section 1500.2 Repeat Violations. Any violation of the same Article of this Ordinance reoccurring on the same property by the same violator more than once in a 36-month period shall be considered a repeat offense. A notice of violation shall be issued by the Administrator or his/her designee and shall have an immediate civil penalty of $100.00. No warning period shall be granted since this provision applies only to violations that occur more than once in a 36-month period and proper notice was given for the initial violation as prescribed under Section 1500(A). For each day the repeat violation remains, the violator shall be subject to a civil penalty of $100.00. The collection of a penalty pursuant hereto shall not foreclose further proceedings for penalties that come after the date of the filing of a prior proceeding. The provisions of this section may also be enforced through any other appropriate remedies as prescribed in Section 1500.1.

Section 12. This ordinance shall become effective upon its adoption

AYES. _____

NAYS: _____

ADOPTED the _____ day of _____, 2003.

CITY OF MARION

Mayor

ATTESTED BY

City Clerk

APPROVED AS TO FORM:

City Attorney

Ordinance number. O-03-10-21-01

ORDINANCE – AMENDING CHAPTER 1, SECTION 1-2 DEFINITIONS, AND AMENDING CHAPTER 9, ARTICLE 111, JUNKED VEHICLES, OF THE CITY CODE: The City Manager advised that the proposed amendments involved changes to Chapter 1 and Chapter 9 of the City Code, to ensure consistency with the Zoning Ordinance provisions for junked vehicles. The City Manager noted that the City's planning consultant, Benchmark, Inc., had recommended a 60 day limit on the screening of one junked vehicle in the rear yard of a residential lot. He noted that the current ordinance allowed one junked vehicle to be completely covered from public view in a rear yard with no time limit. After discussion, Council members agreed to continue to allow one junked vehicle in a rear yard, as long as the vehicle is covered and not able to be seen, with no time limits.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING PART III, CHAPTER 1, SECTION1-2
AMENDING CHAPTER 9, ARTICLE II
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 Part III, Chapter 1, Section 1-3 of the Code of Ordinances is amended to add or revise the following definitions:
Approved screening Includes, but is not limited to, opaque enclosures, buildings, natural objects, plantings, fencings, walls or other appropriate means to visually conceal the view of junked or inoperable motor vehicles (or other uses that are required to be screened) from adjoining property or the public roadway at any season of the year. In determining whether screening is adequate, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Approved screening plan: A site specific plan approved by the person or board issuing the permit and that includes but is not limited to natural objects, plantings, fencings, walls or other appropriate means to visually conceal the view of junked or inoperable motor vehicles (or other use that is required to be screened) from the public roadway at any season of the year. In determining whether to approve a screening plan, the following factors, along with others, should be considered: topographical features of the property and naturally occurring visual obstructions, such as but not limited to vegetation.

Automobile graveyard: any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard."
Cross reference: NCGS 136-143(1)

Automobile repair shop: Any establishment or place of business which is maintained or operated for the primary purpose of making mechanical and/or body repairs to motor vehicles. Factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to repair service broken down into the following categories: new parts, labor for service, used auto parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than *6 months may* be evidence that the business is not an automobile repair shop, but rather an automobile graveyard and/or junk yard). (3) *Whether business has initiated proceeding to declare vehicles abandoned under state law so the vehicle can be disposed of.* (4) any business-type licenses that are held, or the lack thereof, and (5) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops. For purposes of this ordinance, automobile tire sales and service shops, as defined herein, shall be considered automobile repair shops. An automobile repair shop that operates a combination of towing, tire and sales shall comply with all the regulations governing each use

Automobile tire sales and service shops. Any establishment or place of business which is maintained or operated for the primary purpose of selling tires and/or tire repair. For purposes of this definition, factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to tire service (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months may be evidence that the business is not an automobile tire shop, but rather a automobile graveyard and/or junk yard), (3) the length of time that used tires are stored on the property. (4) Used tires stored on the property longer than thirty (30) days should be evidence that the business is not an automobile tire shop, but rather a junk yard. (5) Any business-type licenses that are held, or the lack thereof. For the purpose of this ordinance tire, tire sales and services shall be considered an automobile repair shop.

Automobile towing and wrecker service businesses. Any establishment or place of business which is maintained or operated for the primary purpose of towing motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the shop include but are not limited to the following: (1) gross receipts of the business attributable to towing service (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months may be evidence that the business is not an automobile towing service, but rather a automobile graveyard and/or junk yard), (3) the length of time and number of junked vehicles that are stored on the property. (4) Whether business has initiated proceeding to declare vehicles abandoned under state law so the vehicle can be disposed of. (5) Any business-type licenses that are held, or the lack thereof. For the purpose of this ordinance tire, towing and wrecking services shall be considered an automobile repair shop.

Automobile sales (also referred to as "car sales" or "motor vehicle sales") businesses: Any establishment or place of business which is maintained or operated for the primary purpose of selling motor vehicles. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to vehicle sales or service broken down into the following categories: vehicle sales, new parts, labor for service, and used auto parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 12 months may be evidence that the business is not an automobile sales business, but rather an automobile graveyard and/or junk yard), (3) any business-type licenses that are held, or the lack thereof, and (4) the number and configuration of grease bays or repair work areas. For the purposes of this definition, automobile sales businesses where the service department generates 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Gasoline service or filling stations: Any establishment or place of business which is maintained or operated for the primary purpose of selling gasoline or motor fuel or which contains fuel pumps and other such fuel dispensing appliances. For purposes of this definition, factors to be considered in determining the primary purpose of the business include but are not limited to the following: (1) gross receipts of the business attributable to gasoline or motor fuel sales or service broken down into the following categories: gasoline or motor fuel sales, labor for service, and parts; (2) the age of each vehicle and how long each vehicle has been on the property (used vehicles that are on the property for longer than 6 months may be evidence that the business is not a gasoline service or filling station, but rather an automobile graveyard and/or junk yard). (3) any business-type licenses that are held, or the lack thereof.

and (4) the number of gasoline pumps or fuel distribution devices. (5) the number and configuration of grease bays or repair work areas. For the purposes of this definition, gasoline service or filling stations where the service or repair work constitutes 50% or more of the gross receipts of the business are considered to be automobile repair shops and subject to all regulations governing automobile repair shops.

Inoperable Motor Vehicle : see "Junked and/or Inoperable Motor Vehicle"

Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for maintenance or operation of an automobile graveyard, and the terms shall include garbage dumps and sanitary fills An establishment or place of business which store or keeps for a period of 15 days or more materials within the meaning of "junk" as defined herein which had been derived or created as a result of industrial activity shall be deemed to be a junkyard.
Cross reference: NCGS 136-143(4))

Junk. old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber. debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
Cross Reference: NCGS 136-143(3)

Junked and/or Inoperable Motor Vehicle: A vehicle that does not display a current license plate and that (1) is partially dismantled or wrecked, or (2) cannot be self propelled or moved in the manner in which it originally was intended to move, or (3) is more than 5 years old and appears to be worth less than one hundred dollars ($100.00).
Cross Reference NCGS 160A-303 2(a)

"In view" or "visible", means that it is capable of being seen without visual aid by a person of normal visual acuity.

Major automobile repair work Work on a vehicle that is necessary to ensure the correct operation of the vehicle which cannot be completed in less than one (1) hour.

Minor automobile repair work: Work on a vehicle that is necessary to ensure the correct operation of the vehicle which can be completed in less than one (1) hour.

Nuisance Vehicle: A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be:

1. A breeding ground or harbor for mosquitoes, or other insects, rats, or pests, or
2. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height: or
3. A point of collection of pools or pounds of water; or
4. A point of concentration of quantities of gasoline oil or other flammable or explosive materials as evidenced by odor: or
5. One which has areas of confinement which cannot be operated from the inside, such as trunk, hoods, etc . or
6. So situated or located that there is a danger of it falling or turning over; or
7. One which is a point of collection of garbage, food waste, animal waste or any rotten or putrescible matter of any kind; or
8. One which has sharp points thereon which are jagged or contain sharp edges of metal or glass: or
9. Located within a public right of way and which is creating a traffic hazard or impeding ingress or egress into a residential dwelling or place of business.
10. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

Section 2 Chapter 9, Article III, Section 9-65 of the Code of Ordinances, City of Marion, North Carolina, is amended and restated as follows:

Section 9-65. Junked or inoperable motor vehicle regulated; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to the possession of a junked or inoperable motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked or inoperable motor vehicle is located, to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(b) It shall be unlawful to have more than one (1) junked or inoperable motor vehicle, as defined herein, on the premises of public or private property except as provided in subsection (e) of this section A single, permitted junked motor vehicle must strictly comply with the location, screening and concealment requirements of this section.

(c) It shall be unlawful for any owner or person entitled to the possession of a junked or inoperable motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked or inoperable motor vehicle is located, to fail to comply with the location requirements of this section

(d) Subject to the provisions of subsection (e) of this section, upon investigation, the city manager (or his designee) may order the removal of a junked or inoperable motor vehicle after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance The following, among other relevant factors, may be considered:

(1) Protection of property values;

(2) Promotion of tourism and other economic development opportunities;

(3) Indirect protection of public health and safety;

(4) Preservation of the character and integrity of the community; and

(5) Promotion of the comfort, happiness and emotional stability of residents

(e) Permitted concealment or enclosure of a junked or inoperable motor vehicle

(1) One junked motor vehicle, in its entirety, may be located in the rear yard, as defined in the City Zoning Ordinance, provided the junked motor vehicle is entirely concealed from public view from a public street and/or abutting premises by an acceptable covering. Junked motor vehicles kept on the premises shall be kept inside a completely enclosed building. The City Manager (or designee) has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate

(2) Any more than one junked or inoperable motor vehicle must be kept in a garage or building structure that provides a complete enclosure so that the junked or inoperable motor vehicle(s) cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of the building permit and which has been constructed in accordance with all zoning ordinances and building code regulations.

(f) To the extent that the provisions in this Chapter 9, Article III are inconsistent with Appendix A, Article VII, Sections 705 and 708 or Appendix A, Article VIII, Section 805.3, the most restrictive provisions shall apply.

Section 3. Chapter 9, Article III, Section 9-66 of the Code of Ordinances, City of Marion, North Carolina, is amended and restated as follows:

Section 9-66. **Removal of abandoned, nuisance, junked or inoperable motor vehicles; pre-towing notice requirements.**

Except as set forth in section 9-67 below, abandoned, nuisance, junked or inoperable vehicles which are to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle(s). In the case of nuisance, junked or inoperable vehicles, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle(s), or the owner or lessee or occupant of the real property upon which the vehicle(s) is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to which mailed, and the date mailed. If such names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle, a notice indicating that the vehicle will be removed by the city on a specified date (no sooner than seven (7) days after the notice is affixed). The notice shall state that the vehicle(s) will be removed by the town on a specified date, no sooner than seven (7) days after the notice is affixed or mailed, unless the vehicle(s) are moved by the owner or legal possessor prior to that time.

With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked or inoperable motor vehicle that aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the city council in writing, heard at the next regularly scheduled meeting of the city council, and further proceedings to remove the vehicle(s) shall be stayed until the appeal is heard and decided.

Section 4. Chapter 9, Article III, Section 9-74 of the Code of Ordinances, City of Marion, North Carolina, is amended and restated as follows:

Section 9-74. **Exceptions.**

Nothing in this Article shall apply to (1) any vehicle not visible from the public roadway or adjoining property and located in an enclosed building, or (2) which is in an appropriate enclosed storage place or depository maintained in a lawful place and manner as permitted by the City.

Section 5. This ordinance shall become effective upon its adoption.

AYES

NAYS.

ADOPTED the _____ day of _____, 2003.

CITY OF MARION

Mayor

ATTESTED BY:

City Clerk

APPROVED AS TO FORM

City Attorney

Ordinance number. O-03-10-21-02

CIVIL CITATION APPEAL – HANDICAPPED PARKING VIOLATION: The City Manager advised that Mr. Y.M. (Marion) Good received a $5.00 citation on October 9th for parking in a handicapped parking space at Food Lion on 70 West without a handicapped placard. Mr. Good has a placard, however had failed to display it when parking at Food Lion.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to waive the $5.00 penalty.

REQUEST FROM AUTUMN CARE – WAIVE SEWER DISPOSAL CHARGES FOR SEWAGE HAULING FROM PUMP STATION: The City Manager presented Council with a letter from Mr. Michael Weaver, the Administrator of Autumn Care. Mr. Weaver advised that on September 14th their septic tank pumps became inoperable thus requiring them to contract with Burgin and Son septic tank cleaning company. Burgin and Son pumped 19 truck loads @ 1750 gallons each to the city sewer. The City disposal charge for this amount of wastewater is $950.00. Autumn Care is connected to the city sewer and would in essence be paying for the sewer twice.

The City Manager noted that Autumn Care was requesting that the $950.00 disposal charge be waived.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to waive the $950.00 disposal charge as requested, and to authorize the City Manager to waive further wastewater disposal charges for City sewer customers.

STREET COMMITTEE RECOMMENDATION – REQUEST FOR TRAFFIC SIGNAL: The City Manager advised that the Street Committee had looked into a request for a traffic light at the intersection of Blue Ridge and West Henderson Streets.

Police Reports show a lack of accidents in this area. The Street Committee recommended that no request be made to DOT for a traffic signal at this location.

A brief discussion followed. The mayor and Council members stated that they agreed with the recommendation of the Street Committee.

No action was taken.

AWARD CONTRACT-POLICE CAR PURCHASE: The City Manager reported that Purchasing Agent Kathy Austin had advertised and received bids for two police cars, one marked unit and one unmarked unit. The City Manager advised that a total of three police cars were included in the 2003-04 budget, with one vehicle to be funded mainly through grant proceeds. After research, the Purchasing Agent and Police Chief had recommended that obtaining a fully equipped car would yield the best price versus buying a car and then the City equipping the vehicle. The low bids were received for the marked unit from Bobby Jones Ford in the amount of $30,314.36 and for the unmarked unit from Vic Bailey Ford in the amount of $23,214.00. The City Manager advised that a total of $86,428 was budged for two marked and one unmarked car, so the City would be under budget with the purchase of these two cars.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson Council voted unanimously to award a contract for a marked police car to Bobby Jones Ford in the amount of $31,314.36 and a contract for an unmarked police car to Vic Bailey Ford in the amount of $23,214.00.

DISCUSS MARION AREA FIRE DISTRICT ISSUES: The City Manager advised that the Fire Committee met in September to discuss various issues involving the Marion Area Fire District.

One issue is to endorse the ideal of going to a six-mile district in the area of Hankins Road. This change would bring on no more service responsibility than we currently have, while bringing in additional tax revenue.

The other issue was service to the proposed Crescent/Duke Power Development, Black Forest. This are would be adjacent, but not included within, a new six mile district. The Fire Committee absolutely ruled out any substation in this area. The Fire Committee also was reluctant to ask the County outright to form a Fire Department in this area, since a viable Fire District might have to include much or all of Hankins Road, which would take away tax revenues from the City and reduce somewhat the amount of pension funds received by the Fire Department.

The recommendation is that the City could serve this area for at least the maximum amount allowed under State law, at 15 cents per $100 valuation. The beginning basis for the valuation could be negotiated, but probably should be set no less than the asking price of Crescent for the Black Forest lots, (approximately $300,000 to $400,000 for 50 to 60 lots, for a total tax value of around $20 million). Such a valuation would result in a beginning contract price of up to $30,000. This amount would go up as development occurs. The contract could be for a set period of time and would specifically state that the City would not be held responsible for fire damage that occurred as a result of response time from the City Fire Station to Black Forest. The proposed contract would further state that no set response time could be guaranteed.

A discussion was held regarding the current MA District tax rate and the need for a new district truck. The most recent district truck, (303, a tanker/pumper) was purchased about seven years ago and financed for eight years. The final payment of $22,896.00 will be paid on in July 2004 out of the MA District tax proceeds. The other district truck (306, a tanker) has become dangerous to drive and needs replacing with a clone of 303. The project price is about $200,000. if we wait for 303 to be paid off, the new truck could not be received until mid 2005. There is a need to have a new truck in service within one year. In addition, the Fire Committee looked at the ratio of District and City funding for the Fire Department, and determined that the funding plus the truck would warrant the increase of the MA District tax rate from tow cents to four cents, effective in 2004-05.

Mr. Barry Step of Hankins Road was present for this meeting and advised that several citizens from the Hankins area are interested in forming a Community Fire Department.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to approve all three recommendations of the Fire Committee, to include a request to the County Commissioners for a six (6) mile Fire District, to make a proposal to Crescent Resource/Duke Power for the City to serve the proposed Black Forest Development for a charge of 15 cents/$100 property valuation and to request the County to take steps to immediately purchase a new tanker/pumper for the MA District and to increase the MA District tax rate from $.02/$100 valuation to $.04/4100 valuation, effective for the 2004-05 Fiscal year.

RESOLUTION – REQUESTING PRESIDENT BUSH AND THE UNITED STATES CONGRESS TO TAKE IMMEDIATE STEPS TO PROTECT THE TEXTILE AND FURNITURE INDUSTRIES IN NORTH CAREOLINA FROM UNFAIR FOREIGN TRADE PRACTICES: The City Manager advised that the City, in particular Mayor Clark, had been seeking attention form State and Federal officials regarding the impacts of Federal trade policies on communities such as Marion for several years. The City of Marion has lost 1,798 manufacturing jobs and nearly $400,000 in utility revenues due to plant closings since 1990. The City Manager advised that at the recent North Carolina League of Municipalities conference, both Senator Dole and Governor Easley had spoken regarding Federal trade policy, especially in regards to China and the impacts on the textile and furniture industries, and called on the Federal impacts on the textile and furniture industries, and called on the Federal government to take steps to correct unfair foreign trade practices. The City manger presented a resolution prepared by the Governor's office that called upon the Federal government to correct these unfair foreign trade practices.

Mayor Clark outlined some of the efforts he had made over the past years to bring this matter to the attention of State and Federal officials, and stated that he was glad that the seriousness of the situation in Western North Carolina was finally being recognized.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson Council voted unanimously to adopt the following Resolution:

Resolution Requesting President Bush and the United States Congress to Take Immediate Steps to Protect the Textile and Furniture Industries in North Carolina from Unfair Foreign Trade Practices

WHEREAS, the effects of international trade agreements have been devastating for traditional manufacturing industries in North Carolina; and

WHEREAS, since the implementation of NAFTA in 1994, employment levels for the textile and apparel industries in North Carolina have been cut in half – by more than 138,000 jobs – and our manufacturing industry as a whole has lost 200,000 jobs, including 1,500 job losses affecting the City of Marion; and

WHEREAS, each plant closing or mass layoff has caused untold suffering for workers, their families and the communities that have long hosted traditional manufacturing plants; and

WHEREAS, President Bush has stated that minimizing the impact of future trade deals on the domestic textile industry would be at the top of his administration's agenda; and

WHEREAS, the Office of the U.S. Trade Representative (USTR) has negotiated a series of agreements that eliminate tariffs without sufficiently addressing unfair trading practices, illegal smuggling and other customs fraud, and non-tariff barriers to trade – all of which keep our textile industry from playing on a level field with our trading partners; and

WHEREAS, a recent report from the American Textile manufactures Institute analyzing the impact of trade agreements on domestic textile production estimates that China is poised to seize 65 to 75 percent of the U.S. textile and apparel market once remaining quotas are removed on January 1, 2005 – which would trigger another wave of plant closures and worker layoffs in the southeast, including North Carolina; and

WHEREAS, currency manipulations have become a significant barrier to United States exports to China and other Asian markets, causing prices for Asian goods to fall dramatically – which prevents exports to export markets and causes the loss of export-oriented and import-competing jobs in the southeast; and

WHEARAS, a new approach is needed that makes it possible for ur retooled domestic textile and furniture industries to compete in the global marketplace while also acknowledging and rectifying the impact that trade agreements have on our traditional manufacturing industries, our working families and their communities.

NOW THEREFORE THE CITY COUCNIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby call on the President and Congress to fulfill their commitment to ensure the long-term viability of our domestic manufacturing industries. Specifically, we call on our leaders in Washington to:

- Direct the International Trade Commission to aggressively combat widespread "dumping" of textile goods and other goods on U.S. markets and to address the failure of trading partners to open their markets to U.S. exports of textile and apparel and other products, as committed in prior agreements;

- Actively seek to curb the ongoing manipulation of currency to gain an unfair competitive advantage and pursue this policy through direct consultations with trading partners, International Monetary Fund review procedures; bilateral consultations with targeted currency manipulators; and direct action against recalcitrant currency manipulators; through the World Trade Organization;

- Direct the USTR to consider whether trading partners have already achieved competitive advantage through currency manipulation in determining whether or not to allow further adjustments or tariff reductions for textiles and other products in future trade negotiations;

- Initiate the "special China safeguard" on sensitive textile and apparel categories to control the unfair surge of Chinese imports into the United States market and commit to initiate more comprehensive measures when the next phase of the China WTO agreement is implemented on January 1, 2005; and

- Provide the U.S. Customs Service with the additional staff and resources necessary to crack down on illegal smuggling and other customs fraud, which leads to billions of dollars in lost sales for our textile industry every year.

Section 2. This resolution shall be effective upon its adoption.

Adopted this the 21st day of October, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

PLANNING AND DEVELOPMENT WORKSHOP DISCUSSION: The City Manger suggested that t planning and development workshop be held by early December, to obtain direction on several potential annexation proceedings.

It was decided that a planning and development workshop would be held at 6:00 P.M. prior to the Regular Scheduled City Council Meeting on November 18, 2003.

TREE BOARD APPOINTMENT: Councilman Cuthbertson advised that Mr. Walton Clapp has agreed to fill the un-expired term of Ms. Judy Jarrett on the City of Marion Tree Committee.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve this appointment.

The current Tree Committee Members and Terms are as follows:

Pat Brown	December 31, 2006
Walton Clapp	December 31, 2004
Joan Hensley	December 31, 2004
Loretta Smith	December 31, 2005
Phil Tate	December 31, 2006

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects.

COUNCILMAN COMMENTS:

Councilman Owenby advised that he has had some complaints regarding people running a stop sign at Sinclair and Teal Street due to weeds obscuring the visibility of the stop sign. The City Manager stated that he would check on this location and take appropriate action.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, November 18, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Jim Neal, Fire Chief Tommy Wilson, Sanitation Supervisor and Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: Fuchia Flynn, 45 Norton Street, Marion, NC 28752; Terry Randolph, 166 7th Street, Marion, NC 28752; John Thompson, 804 State Street, Marion, NC 28752; Bill Warren 3939 Harmony Grove Road, Nebo, NC 28761; Cliff Wilson 804 State Street, Marion, NC 28752; Bob Reynolds 14901 221 North, Marion, NC 28752; Thomas Jenkins, 167 Oak West Drive, Marion, NC 28752; Allen McKinney 653 Mackey Creek Road, Marion, NC 28752; April Westmoreland and Harriett Thomas with Johnson, Price and Sprinkle and Jennifer Jackson, City Attorney.

PLANNING AND DEVELOPMENT WORKSHOP:

The City Council held a workshop at 6:00 p.m. to review possible areas for annexation in 2004. The City Manager presented maps and projected revenue and expenditure figures for several annexation areas. After discussion, Council endorsed proceeding with annexation of the following areas:

1. All properties fronting on Baldwin Avenue not currently in the City Limits, with access to City water and sewer after the conclusion of the County's Eastfield sewer extension. Council discussed the possibility of pursuing annexation of the entire Eastfield Community, but decided it would be better to allow the County to complete its infrastructure project, and then for Council to hold a community meeting in the area sometime in 2004 to assess whether the neighborhood desires City services and being annexed.

2. All properties fronting on Hillcrest Drive not currently in the City Limits, with access to City water and sewer.

3. Properties in the Dogwood Lane/Airport Road area adjacent to the City Limits with access to water and sewer, or to at least sewer.

4. Properties on Garden Creek Road with current access to water and sewer.

The City Manager advised that the formal annexation process for the endorsed areas would start by early February, with June 30, 2004 set as the target date of annexation.

REGULAR MEETING: Mayor Clark opened the regular City Council Meeting at 7:00 P.M.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Consent Agenda as follows:

A. Approval of Minutes - October 21, 2003 Minutes

B. Resolution – Support of Passenger Rail Service in Western North Carolina

RESOLUTION
IN SUPPORT OF A STATEWIDE INITIATIVE FOR LEGISLATIVE AND FUNDING SUPPORT FOR ENHANCED AND IMPROVED PASSENGER RAIL SERVICE FOR THE STATE OF NORTH CAROLINA

WHEREAS, passenger rail service is an integral part of a comprehensive transportation system for the state of North Carolina; and

WHEREAS, economic development, tourism and job creation will benefit through the enhancement of a passenger rail system that serves the citizens of North Carolina and visitors to our state; and,

WHEREAS, we applaud the state of North Carolina for development of comprehensive intercity rail services in urban jurisdictions throughout the state; and,

WHEREAS, there is a vital need to provide a balanced transportation system both statewide and nationwide as demonstrated in the aftermath of the September 11, 2001 tragedies; and,

WHEREAS, an increase in state funding for passenger rail service in North Carolina is necessary to support development of intercity rail services that can connect our small urban and rural areas of the state with the urbanized centers of our state; and,

WHEREAS, support by local and state elected officials is essential for the future of alternative transportation in North Carolina; and,

WHEREAS, this resolution is a vehicle to express the unified support of communities and chambers of commerce throughout North Carolina for increased statewide funding for passenger rail service; and,

WHEREAS, rail linkages between communities and regions within North Carolina establish and strengthen social, historical, commercial and cultural bonds; and,

WHEREAS, the average return on investment for the surrounding community for station revitalizations throughout North Carolina for increased statewide funding for passenger rail service; and,

WHEREAS, the associated improvement to rail facilities will increase the efficiency and safety of rail service, help attract new freight traffic and provide environmental benefits by reducing the impact of truck traffic on North Carolina's highways and by reducing harmful emissions; and,

WHEREAS, an integrated passenger rail system will enhance accessibility and reliability for key military locations and ports.

NOW, THEREFORE, BE IT RESOLVED, that the Marion City Council, through the adoption of this resolution, fully supports the creation of a comprehensive passenger rail system to serve the state of North Carolina, with its ultimate objective to further economic opportunity, help preserve the environment, improve the quality of life and enhance public health, safety and welfare for all citizens, communities and regions.

Adopted this 18th day of November, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

C. Approval – Donation to Volunteer Firemen: The following annual donation to volunteer firemen was presented for approval:

Donald Anderson	$1,323.00
Marty Coward	850.00
Durwood Creson	918.00
Terry Depoyster	2,228.00
Steve King	1,782.00

Craig Walker 1,647.00

D. Resolution – Authorizing Application to Local Government Commission for Approval of Financing Agreement – 221 North Water and Sewer Extension:

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTES 160A-20

WHEREAS, the City of Marion desires to finance sewer system improvements; and

WHEREAS, the City of Marion desires to finance these improvements by the use of an installment contract or revenue bonds authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, Findings of Fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its Findings of Fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion, North Carolina, meeting in regular session on November 18, 2003, that the said Council makes the following FINDINGS OF FACT:

1. The proposed contract is for the purpose of financing $231,800, for sewer system improvements by the City of Marion.
2. The Proposed contract is preferable to a bond issue because; 1) the total costs of the financing are not sufficient to warrant the expenses involved in a General Obligation Bond issue, 2) the proposed project is too expensive to be funded through current revenues and/or fund balance, thus the installment contract method of financing proves to be the best alternative for the City of Marion; and 3) the desired term of the sewer system financing is five or seven years, thereby making bonds a less desirable alternative.
3. The sum to fall due under the contract will be adequate and not excessive for the proposed purpose and the rate of interest will be approximately the same or lower than that of a general obligation bond issue, when considering total costs involved in a referendum, legal expenses, insurance etc.
4. The City of Marion's debt management procedures and policies are acceptable. The City adheres to its Budget Ordinance, has a history of timely debt obligation payments, and maintains an acceptable level of unappropriated fund balance. The City Manager and Finance Officer constantly monitor the City's fiscal structure and periodically report the financial condition to the City Council.
5. The City of Marion is not in default in meeting its debt service obligations.

NOW, THEREFORE, BE IT FURTHER RESOVED that the City Manager is hereby authorized to act on behalf of the City of Marion in filing an application with the North Carolina Local Government Commission for approval of the Financing and other actions not inconsistent with this resolution.

BE IT FURTHER RESOLVED that a Public Hearting be held to hear public input on the financing of existing debt by the use of an installment financing contract as allowed for under N.C.G.S 160A-20 for the said financing on January 20, 2004 at 7:00 P.M. in the City Hall of Marion, NC, and that the Clerk to the Board is hereby authorized and directed to cause to be published, a notice of the said meeting as by law required.

This Resolution is effective upon its adoption this 18th day of November, 2003.

The motion to adopt this resolution was made by Councilman Little, seconded by Councilman Cuthbertson, and passed unanimously by the City Council of Marion, North Carolina.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

E. Resolution – Declaring Old City Water Meters Surplus and Authorizing Their Sale:

RESOLUTION DECLARING CERTAIN ITEMS OF PERSONAL PROPERTY OWNED BY THE CITY OF MARION AS SURPLUS AND AUTHORIZING THEIR SALE

WHEREAS, N.C.G S. 160A-266(b) authorizes cities to dispose of personal property valued at less than $30,000 by private negotiation and sale; and

WHEREAS, N.C.G S. 160A-267 requires that when a city Council proposes to dispose of property by private sale, it adopts a Resolution at a Regular Council meeting authorizing an appropriate City official to dispose of the property by private sale at a negotiated price; and

WHEREAS, The City of Marion owns approximately 4,000 water meters that will no longer be needed by the City with the purchase of a new radio read meter system; and

WHEREAS, the City should be able to sell these items to other interested units of governments or persons.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the following items of personal property owned y the City to be surplus and authorizes the City manager to dispose of said property by private sale, with the designated minimum price for each item:

Item	Models	Quality	Minimum Price
Water Meters	Badger/Nepture	4,000	Not Specified

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (100 days after its publication.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 18th day of November, 2004.

Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

F. Resolution – Consideration – Annexation Areas:

RESOLUTION IDENTIFYING THE AREA DESCRIBED HEREIN AS BEING UNDER CONSIDERATION FOR ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion.

SECTION 1. That pursuant to G S 160A-37 (1), the following described areas are hereby identified as being under consideration for future annexation by the City of Marion under the provisions of Part 2, Article 4A of Chapter 160A of the General Statutes of North Carolina

The description below is in reference to the map which will be certified as the actual area under consideration. This map will be placed on display in the Office of the City Planner and the City Clerk.

This Resolution of Consideration will include these described areas which are contiguous to the City Limits of the City of Marion on the 18th day of November 2003.

Areas under consideration will include all properties which are either contiguous to, have access to, or are in development which are directly connected to the streets listed as boundaries. This is to be understood unless otherwise stated. This description will include all properties which lie between these listed boundaries and the area currently under consideration as noted above

DESCRIPTION OF AREAS UNDER CONSIDERATION

BEGINNING at a point located at the intersection of U.S. Highway 70 East and the center of the bridge over Southern Railway. Thence in a straight line traveling in a Southerly direction, to the center of the bridge at the intersection of Fairview Road (SR 1741) and Interstate 40. Thence in a straight line, in a Southerly direction, to a point 2600 feet South of Interstate 40 located on N.C. Highway 226 South. Thence following a line 2600 feet South of and parallel to Interstate 40 in a Westerly direction, to a point where said line intersects with Marler Road (SR 1257). Thence following Marler Road (SR 1257) in a Northerly direction to its intersection with Zion Hill Road (SR 1137). Thence following in a straight line, in a Northerly direction, to a point on Interstate 40 located 1300 feet West of Nix Creek Road (SR

1911). Thence following a line 1300 feet West of and parallel to Nix Creek Road (SR1311) in a Northwesterly direction to a point located 650 feet to the end of Waycaster Road (SR 1319). Thence in a straight line Northerly direction to a point located 650 feet West of the end of Clear Creek Road (SR 1422). Thence following the line 650 feet North of and parallel to Clear Creek Road (SR 1422) in a Easterly direction to a point located 650 feet West of Lake Tahoma Road (N.C. Highway 80. Then following the line 650 feet West of and parallel to Lake Tahoma Road (N.C. Highway 80) to a point 650 feet West of the intersection of Lake Tahoma Road (N.C. Highway 80) and Tom's Creek Road (SR 1434). Thence following a line 650 feet West of and parallel to Tom's Creek Road (SR 1434) in a Northerly and Easterly direction to a point located on U.S. 221 North 650 feet North of the intersection of U.S. 221 North to Tom's Creek Road (SR 1434). Then in a straight line in an Easterly direction to the intersection of Cannon Road (SR 1553) and CSXT Railroad. Thence in a straight line in a Southeasterly direction to the intersection of Hankins Road (SR 1502) and Yancey Road (SR 1504). Thence in a straight line in a Southeasterly direction to the intersection of Hankins Road (SR 1501) and Yancey Road (SR 1504). Thence in a straight line in a Southeasterly direction to the point of BEGINNING.

SECTION 2. Owners of agricultural land, horticultural land and forestland within /the area/(s) under consideration for annexation as described in Section 1 above are hereby notified that they may have rights to a delayed effective date of annexation. G.S. 1604A-49 (f1) and (f2) provides that land being taxed at present-use value qualifies for delayed annexation, and land that is eligible for present use value taxation but which has not been in actual production for the time period required by G.S. 105-277.3 may qualify for delayed annexation by making application to the McDowell County Tax Assessor for certification. For qualified tracts, the annexation will not become effective for most purposes until the last day of the month in which the tract or part thereof becomes ineligible for present use value classification under G.S. 105277.4 or no longer meets the requirements of G.S. 160A-49 (f1) and (f2). Until annexation of a tract becomes effective, the tract will not be taxed by the City and will not be entitled to services from the City.

SECTION 3. That a copy of this Resolution shall be filed with the Marion City Council.

ADOPTED this the 18th day of November, 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

G. Tax Refund:

McDowell County Rescue Squad – Tax Exempt - PIN Number 170112860734 $187.68 for 2003. Documentation of the tax exempt status of the McDowell County Rescue Squad was received from the McDowell County Tax Office.

INTRODUCTION OF NEW SANITATION SUPERVISOR – TOMMY WILSON: The City Manager introduced Mr. Tommy Wilson as the City's New Sanitation Supervisor. Tommy has been with the City of Marion for fifteen years and officially started his duties as Sanitation Supervisor on November 10.

PRESENTATION OF STATE AWARD – MARION WATER FILTER PLANT: The City Manager advised that the City of Marion Water Filter Plant received an award from the North Carolina Public Water Section for facility optimization for turbidity removal. We were one of only 12 plants out of more than 160 surface water treatment plants in the State to receive this award for exceeding State standards for turbidity removal.

This is the first year the State has issued these awards for excellence, however State officials stated that Buck Byrd would have received this award for the past 10 or 12 years

Mayor Clark, City Council and the City Manager all commended Buck Byrd and his operators fir efforts to produce high quality water at the Water Plant. Buck was not present for this meeting, however the award will be given to him to place at the Water Plant.

PRESENTATION – ISOTHERMAL PLANNING AND DEVELOPMENT COMMISSION – ECONOMIC DEVELOPMENT DISTRICT DESIGNATION: Mr. Jim Edwards appeared before Council to discuss the benefits of Isothermal Planning and Development Commission applying for and receiving Economic Development District Designation, from the Federal Economic the region and the cost of the program.

The City of Marion did not qualify to receive the CDBG Economic Recovery Grant for the regional brownfield assessment.

Mr. Edwards discussed other avenues through the Future Forward region for McDowell and Rutherford Counties to possibly receive funding for brownfield assessments. . He stated that he will continue to look for funding to benefit the City of Marion.

A discussion followed.

No action was taken. Council will take this matter under advisement.

PUBLIC APPEARANCE MS. FUCHSIA FLYNN AND MR. TERRY RANDOLPH: Ms. Fuchsia Flynn appeared before Council advising that the City had forced her to pay and tap on to the City's Sewer System on Norton Street in Clinchfield. However, when the property behind her was sold, those persons were allowed to put in a septic tank.

The City Manager advised that he strongly encouraged this property owner to tape on to the City's Sewer System and install a pump station. However, when a property is below street level, it becomes a different situation because of the flow, and they can chose to install and pay for a septic tank.

A discussion followed.

Mr. Terry Randolph was with Ms. Flynn and he advised that his mother is on a fixed income and needs assistance with paying for this tape. Mr. John Thomas was present at this meeting, and advised that the USDA Home Owners Grants could possibly be available to assist in this type of situation.

No action was taken.
JRB

PUBLIC HEARING – ZONING AMENDMENT – ADD DEFINITIONS FOR MISSION/SHELTER AND ADD MISSION/SHELTERS AND CHURCHES AS A SPECIAL EXCEPTION IN THE O-I OFFICE AND INSTITUTIONAL DISTRICT: Mayor Clark opened the Public Hearing.

The City Planner advised that the Planning Board met on November 6, 2003 and voted unanimously to recommend the approval of a zoning amendment to establish definitions for missions/shelters with accessory stores and churches as a Special Exception in the O-I Office and Institutional District.

Mr. Bob Reynolds was present for this Public Hearing and the one for rezoning of McDowell Mission Ministries and voiced several concerns he has about the mission and its occupants.

He advised that he also had a drainage problem with run-off coming from the Mission Property.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article IV. Definitions and terms used in the ordinance, Section 400 Definitions is amended to add the following definition of an a mission/ shelter

Shelter/ Mission. Facility providing personal assistance on a nonprofit basis to individuals of an indigent status. Such assistance must include food and/or temporary shelter and may, in addition, include religious instruction, counseling, and other incidental services customarily provided by missions.

Section 3. Appendix A, Article XII USE REQUIREMENTS BY DISTRICT, Section 806.3 amended to include a Shelter/ Mission as a special exception in the O-I District.

Section 806.3 Special exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this ordinance.

(4) Shelter/ Mission provided that:

(A) Any shelter shall comply fully with the requirements of applicable state, county, and city codes, ordinances, and regulations, and

(B) Any shelter shall be contained within the structure of, and operated by, a not-for-profit corporation and/ or charitable organization; and

(C) All shelters must operate in a safe, clean and orderly manner.

(D) The applicant must state maximum capacity for overnight stay at time of application. Such capacity shall be approved by the Board of Adjustment with recommendations from the Marion Fire Chief.

(E) Three parking space shall be required per ten residents at maximum capacity.

(F) A retail establishment may be included on the premises if the purpose and profit are to benefit the shelter and other non-profits. Such retail establishment shall not exceed the size (square footage of gross floor area) of the shelter. In addition to required parking for the shelter, there shall be one parking space per 200 square feet of gross floor space associated with the retail use.

Section 4 Appendix A, Article XII. USE REQUIREMENTS BY DISTRICT, Section 806.2 amended to include churches and other religious institutions in the O-I District as a permitted use.

806.2 Permitted Uses. Within the O-I Office and Institutional District the following uses are permitted:

(15) Churches or similar places of worship, including single-family parish houses or parsonages.

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of November 2003.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-03-11-18-01

PUBLIC HEARING – REZONING REQUEST – McDOWELL MISSION MINISTRIES:
Mayor Clark opened the Public Hearing.

The City Planner advised that the Planning Board met on November 6, 2003 and voted unanimously to recommend the approval of the request from McDowell Mission Ministries from R-2 Residential to O-I Office and Institutional. In combination with the zoning amendment

the Mission could request a special exception from the Board of Adjustment to add on to their existing store.

The City Planner also advised that David Owens outlines the factors that could validate a small-scale zoning in his book Legislative Zoning Decisions, 1999. The validity of spot zoning must be supported by a clear showing of a reasonable basis and the local government must affirmatively show the reasonableness of their actions. Please see the attached excerpts on "Factors in Validity" for spot zoning. Here are some key points:

- **Establish a reasonable public policy for spot-zoning.**
- **Does the property have physical characteristics that make it suitable for the proposed zoning?**
- **Are there land uses on or in proximity to the site that are different from the uses made of most of the surrounding property?**
- **Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?**

The Board reviewed the compatibility with the Comprehensive Land use Plan. The Plan indicated that the property in question and surrounding properties were marked for public uses. Office-Institutional is district appropriate for most government/ public uses.

The surrounding properties include a school, two churches and several residents.

Churches and schools are both permitted in the O-I District.

The current use of the building is permitted in the current zoning (R-2) as a boarding house and a non-profit retail store. With the current zoning, the store can only be open for two days per week. The current use would be permitted as a special exception in the proposed zoning (O-I.) The store would be able to stay open six days per week.

The previous use of the building was the county health department. A use that is also typical for the O-I District.

The change in zoning would not have any obvious additional effects on neighboring properties.

The site has physical characteristics that make it suitable for Office-Institutional Zoning District.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adopt the report of the Planning Board as stated above.

PRESENTATION OF 2002-03 AUDIT – JOHNSON PRICE AND SPRINKLE: Ms. Harriett Thomas and Ms. April Westmoreland appeared before Council and presented the City of Marion's 2002-03 Audit Report.

A copy of this report can be found on file at City Hall.

REQUEST FOR DONATION – 1971 PUMPER TRUCK TO HANKINS-NORTH FORK FIRE DEPARTMENT: The City Manager advised that it had been requested that the City of Marion sell or donate the 1971 Ward LaFrance Pumper Truck, parked behind the station with no tag on it, to the new Hankins-North Fork Fire Department.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request contingent upon the New Department forming and being a non-profit organization.

RE-APPOINTMENT – TREE COMMITTEE – PHIL TATE: THREE YEAR TERM: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to re-appoint Mr. Phil Tate to another three year term as recommended Tree Committee Members.

The Tree Committee terms are as follows:

Phil Tate - December 31, 2003 - December 31, 2006
Walton Clapp – December 31, 2003 December 31, 2004
Joan Hensley – December 31, 2001 – December 31, 2004
Loretta Smith December 31, 2002 – December 31, 2005
Pat Brown – December 31, 2002 – December 31, 2005

**** *(Ms. Brown's date inadvertently read term to expire December 31, 2006 in the October 21, City Council Minutes. Instead of December 31, 2005.)*

REAPPOINTMENT – FIREMAN'S RELIEF FUND COMMITTEE: upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to re-appoint Councilman Mike Edwards to another term on the Fireman's Relief Fund Committee.

AUTHORIZE REQUEST TO CONGRESSIONAL DELEGATION – SALES TAX ON INTERNET PURCHASES: The City Manager presented Council with a letter from Mr. Ellis Hankins, Executive Director of the North Carolina League of Municipalities. He states that this year more than $593 million in North Carolina State and local sales and use taxes will go uncollected because this money was purchases made on line, over the phone and or by mail order.

Mr. Hankins is requesting that the City of Marion write to our representative(s) and senators asking them to co-sponsor and support HR 3184 – Simplified Sales and Use tax Act. This legislation will lift the restrictions that stop states from requiring collection of sales taxes on remote purchases.

Mr. Hankins also ask that we contact our local Chamber of Commerce or Retail Merchants Bureau and ask tem to write a letter to your representative(s) and senators about this legislation.

This is an issue of fairness and equity, as well as job protection and creation, for our hometown merchants.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to prepare a letter supporting the HR 3184- Simplified Sales and Use Tax Act and to contact the Chamber and local retail merchants.

REQUEST - LOVE'S COUNTRY STORE – WAIVER OF CHARGES FOR BULK WATER PURCHASE : The City Manager presented Council with a letter from Mr. Terry Ross, Vice President of Construction for Love's Travel Stops and Country Store. Mr. Ross is requesting consideration of reducing charges for water withdrawn from a fire hydrant by their contractor. The Contractor used 100, 000 gallons of water, which carries a charge of $6,000.00.

Fire Chief Neil advised that the contractor new the proper policy on purchasing water from the City of Marion.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to deny this request.

AWARD CONTRACT – 221 SOUTH SEWER: The City Manager presented Council with a copy of the certified bid tabulation from Mr. Danny Bridges of McGill Associates on the 221 South Sewer Improvements
Project.

The Bids were as follows:

Steppe Construction, Inc.	$298,738.75
Iron Mountain Construction Co., Inc.	$299,476.75
Hobson Construction Co., Inc.	$329,580.00
Davis Grading, Inc.	$392,535.00
Huntley Construction	$496,656.00
Buckeye Construction Con., Inc.	$555,105.00
Hickory Sand Company, Inc.	$590,305.00

The project cost estimate prepared by McGill Associates for the construction of this project was $330,685.00.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the low bid of Steppe Construction, Inc. in the amount of $298,738.75.

DISCUSSION – KEY GAS INCENTIVES: The City Manager presented Council with letter from Mr. Jim Kuhn, President of Key Gas Components, Inc. regarding the City's draft incentive agreement.

The would like to further discuss two key points of this agreement.

1. Key Gas would like the option to operate in a second facility within the City limits of Marion or move to a larger facility within the city limits during the period of Beneficial Occupancy and still maintain the incentives specified in the contract.
2. With respect to the incentive and reimbursement clauses, they would like to see monies exchanged on a pro-rata basis. In other words, if the Company acts in good faith and achieves a 55 person employment level and a 1.4MM capital investment within the three-year period, then the city would contribute (55/60 + 1.4/1.8)/2 = 84.7% of the monies noted in the contact. The City could modify the above formula to fit how the incentives are figured, weighing the employment or capital investment more heavily than the other rather than equally. To increase the comfort level, a floor could be set at which all monies are returned to the City.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to add the suggestions to the Incentive Agreement.

APPROVE CHANGE ORDER – POLICE DEPARTMENT EVIDENCE ROOM: The City Manager advised that a discussion has been held with the architects about a change work order for the police department about relocating the evidence room downstairs, for enhanced security and more flexible use of the space upstairs. G.E.M. has given a not to exceed price of $20,000 for relocating the evidence room. The amount could be taken out of the project contingency and would not affect the overall project budget.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to approve the change work order.

SCHEDULE TOWN MEETING/COUNCL PLANNING SESSION: The City of Marion Town Meeting was set for January 22, 2004, at the Marion Community Building, with January 29th being set as an alternate date in case of inclement weather.

The City Council Planning Session was set for February 7, 2004.

REQUEST BY D.R. BANKS – RECEIVE CITY LEAVES: The City Manager presented Council with a copy of an E-mail he had received from Mr. Richard Banks requesting that he be allowed to receive the leaves picked up by the City for his mulching operation. These leaves are currently being taken to the landfill and would not be any further to take to Mr. Banks Business.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve this request.

DISCUSS NOVEMBER/DECEMBER WATER BILLING: The City Manager advised that due to the holiday schedule in November and December, the water bills will likely not go our until after the first of the month. In past years, Council delayed the $5.00 late charge from the 15th of the month until the 19th of both November and December.

A brief discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to delay the late charge for November and December as in the past.

APPROVE LEASE OF PROPERTY – FIRE DEPARTMENT: The City Manager advised that the Fire Department would like to lease property from Allen Gurley on Highway 70 East across from the trade lot for their annual carnival and/or circus. This is the same location used for the circus last month. The Fire Department could receive a good deal on leasing five acres for $200 per month. The property would have to be leased per year.

Fire Department funds would be used to pay the lease, however the lease would technically fall under the overall City umbrella. The Fire Department would provide all necessary insurance and would seek to possibly sublet the property to other rides, tent revivals, or other events.

A discussion was held regarding incorporating the fundraising/social branch of the Fire Department into a separate entity called the Marion Fire Association. The City Manager advised that this worked well for the town he formerly worked with in Carthage.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the lease of this property by the Marion Fire Department.

REVIEW DEPOT/COMMUNITY BUILDING RULES: Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to use the same line of rules for the rental of the Depot Property as is being used at the Community Building.

The City Manager made note that Ms. Mary Katherine Walker had received a Grade A (97.5) inspection certificate for her catering services at the Marion Community Building.

Mayor Clark and Council Members commended Ms. Walker and ask that the City Manager write a letter congratulating her on their behalf.

APPROVE CONTRACT WITH GLENWOOD FIRE DEPARTMENT – MARION CORRECTIONAL INSTITUTION FIRE SERVICE:
The City Manager advised that Council had previously agreed that they would allow the Glenwood Fire Department to continue to serve the Marion Correctional Institution and to receive the State fire service funds of $18,000 per year. Glenwood would like to have this agreement in writing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to authorize the City Manager to enter into a signed contract with the Glenwood Fire Department for a period of five (5) years that will state that Glenwood would continue to receive any fire protection funding provided by the State of North Carolina, however, that no money would be provided to Glenwood directly by the City.

ORDINANCE – PULLIAM STREET PARKING: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to refer this item to the Street Committee.

CITY MANAGER'S REPORT: The City Manager gave a brief update on current projects.

COUNCILMAN COMMENTS:

Councilman Owenby advised that DOT needs to do a study and allow a left turn arrow on the traffic light at the intersection of East Court Street and Baldwin Avenue.

Councilman Cuthbertson advised that Mr. Carroll Hemphill had announced that the City of Marion Fire Department will be participating in the 1st responder program. The City Manager advised that this had been discussed but no agreement had been made.

Councilman Little advised that the Hensley Property on East Court Street has become unsightly again.

CLOSED SESSION: Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(6) involving personnel and N.C.G.S. 143-318.11 (a)(3) involving a legal matter.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Owenby, council voted unanimously to go back into Regular Session.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to drop the application fee and delete Section 10-175 Bond effective immediately.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, December 2, 2003 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: The Honorable Penn Dameron, Superior Court Judge, Union Mills, North Carolina; Margaret Owenby, 62 Vine Street, Marion, NC 28752; Jeff Owenby, 126 Tanya Drive, Nebo, NC 28761; Cecilia Owenby, PO Box 298 Nebo, NC 28761; Mr. & Mrs. Mace, 66 Norton Street, Marion, NC 28752; Connie Martin, 350 Holly Hill Drive, Marion NC 28752; Rasheeda Martin, 350 Holly Hill Drive, Marion, NC 28752; Charles Burgin, Mia Lorenz, Sharon Parker, Jennifer and Phillip Jackson, City Attorneys, Dameron, Burgin & Parker, P.A., Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - November 18, 2003 Minutes
November 18, 2003 Closed Session Minutes

B. Tax Refund: 2003 Tax Refund – GSPC Enterprises, Inc.

The following tax refunds involved properties owned by GSPC Enterprises, Inc. aka Resolution Packaging. The tax values for the following properties had been appealed to and adjusted by McDowell County; therefore, 2003 taxes for these properties had been overbilled. The City had not previously received notice of the adjusted values.

PIN Number	Adjustment	Tax Amount	1% Discount
170111567733	$294,590.00	$1,502.40	$15.02
170111564794	$ 18,970.00	$ 96.74	$ .97
170111569853	$178,470.00	$ 910.19	$ 9.10

Total amount of Refund $2,484.24

C. Inter-local Agreement with McDowell County – US 221 North Business Water and Sewer Improvements:

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

AGREEMENT FOR US 221 NORTH WATER AND SEWER IMPROVEMENTS

THIS CONTRACT is made and entered into this 2nd day of December 2003 by and between the County of McDowell, a North Carolina Municipal Corporation, hereinafter referred to as "the County", and the City of Marion, a North Carolina Municipal Corporation, hereinafter referred to as "the City"

WITNESSETH

WHEREAS, McDowell County and City of Marion are political subdivisions of the State of North Carolina, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the McDowell County Commission and the Marion City Council ; and

WHEREAS, an area of McDowell County in the vicinity of US 221 North of the City has a demonstrated need for water and sewer services due to extensive well contamination and the failure of private on-site wastewater disposal systems, and

WHEREAS, the County and the City have a mutual interest in providing public water and sewer services to the residents and businesses in this area, and

WHEREAS, the County has been awarded grant funds from the State's High Unit Cost Program to develop the water system improvements necessary to provide public water services to the area, and

WHEREAS, the County has been awarded grant assistance from the North Carolina Rural Economic Development Center's Supplemental Grants program to develop the sewer improvements necessary to provide public sewer services to the area, and

WHEREAS, the City has agreed to connect the subject water and sewer improvements to its water and sewer system, and

WHEREAS, the County and the City have mutually agreed to a scope of water improvements that are estimated to Cost $490,000, and a scope of sewer improvements that are estimated to cost $643,800.

WHEREAS, the City and County have agreed to jointly provide the local matching funds for the Supplemental Grant for the sewer improvements.

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1 The County and the City mutually agree that this agreement shall become effective on December 1, 2003 and it shall continue in effect until the subject water and sewer improvements have been constructed and until all of the individual and collective responsibilities provided for herein have been accomplished by each of the parties to this agreement

2 McDowell County hereby agrees to the following responsibilities:

- The County agrees to execute the respective agreements with the State of North Carolina and the North Carolina Rural Economic Development Center that are necessary to receive the High Unit Cost Grant and the Supplemental Grant to fund the subject water and sewer improvements
- The County agrees to contract with McGill Associates to complete the plans and specifications for the subject water and sewer improvements, secure the requisite governmental permits and approvals, provide the construction phase inspection services, and administer contractor warranties subsequent to construction.
- The County agrees to budget and appropriate its share of the local matching funds for the Supplemental Grant for the sewer improvements, not to exceed $88,000 plus the interest associated with borrowing said local matching funds. The County's matching funds shall be disbursed to the City in the form of equal annual debt service payments which represent one-seventh of the total interest and principal associated with the County's matching funds over a loan term of seven years
- The County shall make its annual payments of pro rated debt service to the City no later that 60 days prior to the dates that such payments are due to be paid to the lender by the City.
- The County agrees to survey and acquire the necessary real property easements and other rights necessary to construct the subject water and sewer improvements
- The County agrees to administer the subject grants and administer the construction of the subject water and sewer improvements, until such time as the improvements are conveyed to the City.
- Upon completion of construction and start-up of services, the County agrees to convey all rights and title to the subject water and sewer improvements, as well as the related easements, rights-of-way and encroachments to the City

3. The City of Marion hereby agrees to the following responsibilities

- The City agrees to budget and appropriate its share of the local matching funds for the Supplemental Grant for the sewer improvements, not to exceed $143,800 plus the interest associated with borrowing said matching funds. The City's matching funds shall consist of a combination of appropriated funds and connection fees to be paid by users who connect to the subject water and sewer improvements.
- The City agrees to borrow the combined local matching funds for the subject sewer improvements and to manage the resulting debt by soliciting competitive proposals for the loan; applying to the North Carolina Local Government Commission for permission to borrow the funds; negotiating the terms of the loan, collecting the County's share of the annual debt service and other costs associated with the loan; making the annual debt service payments; and maintaining compliance with applicable state law and the resulting loan agreement.
- The City agrees to routinely inspect the construction of the subject water and sewer improvements to insure that said improvements are designed and construction in accordance with City and State standards
- The City agrees to accept from the County the transfer of all County rights and title to the subject water and sewer improvements in a timely manner, after completion of construction and to utilize said improvements as collateral for the financing of the project
- The City agrees to connect the subject water and sewer improvements to its water and sewer systems upon completion of construction, to accept the customers who connect to the subject improvements as City customers, and to assess rates and fees that are consistent with the City's adopted schedule of water and sewer rates and fees.

- The City agrees to operate and maintain the subject water and sewer improvements in accordance with the laws and regulations of the State of North Carolina.

4 The County's responsibilities under this agreement do not extend to paying costs associated with capital improvements or major repairs to the subject water and sewer improvement after said improvements have been transferred to the City

5. The County and the City both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement

6. The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to design, construction or monetary compensation said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of both parties that pursuit of legal action shall be a remedy of last report and that a negotiated resolution, including the use of outside experts or arbitrators, shall be the preferred means of resolving disputes hereunder. It is further agreed that in the event such disputes cannot be resolved within sixty (60) days from the date they first arise, either party may seek such other remedies as may be available to it

7 Default and Termination. This agreement may be terminated for cause prior to its stated expiration date by either party in accordance with the terms and conditions set forth herein. The rights of the parties to terminate this agreement shall be strictly construed in accordance with the provisions contained herein. Upon the happening of any of the following events of default by either party, the aggrieved party shall have the right to terminate this agreement.

a) The failure of either party to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.

b) The determination that any representation, warranty or covenant made by either party is false and/or misleading in any material respect.

c) The commencement of any bankruptcy, insolvency, liquidation and / or similar proceeding against either party, which materially and adversely affects its ability to perform its duties or obligations under this agreement

d) The failure of the County to make any payment required to be made by it pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from the City that any such payment is overdue.

e) Any action by the City to divest itself of its water and / or sewer systems.

8 Upon the happening of any event described in the preceding section, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within ten (10) days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution. If either party fails to fully perform or comply with all of the conditions, provisions and covenants of this agreement, and if the nonperformance or failure shall continue for more than thirty (30) days after written notice thereof by the other party, or if the nonperformance or failure cannot be reasonably remedied within the same thirty (30) day period and the party which is in violation of the agreement has not proceeded with or commenced the remedy in good faith, within fifteen (15) days of the receipt of such notification, that party will be considered to be in default of this agreement. If the alleged default continues or the parties disagree as to whether the matter has been resolved, the aggrieved party may send written notice to the party committing the alleged default declaring an impasse and proceed to enforce all rights and remedies available to it either in equity or at law.

9. Each of the parties to this agreement shall be entitled to pursue a claim against the other for any non-monetary remedies available and any additional actual damages suffered as a result of any default by the other party, in addition to attorney's fees. Notwithstanding anything in the agreement to the contrary, neither party shall be responsible to the other for any indirect, third-party or consequential damages arising from a breach of this agreement

10. To the extent allowed by law, each party shall indemnify, defend and hold harmless the other party, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from its breach of this agreement or the negligent or willful acts of omission of the party in breach of the agreement or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of the other party.

11. **NOTICES:** For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party.

To McDowell County:	**To City of Marion:**
County of McDowell	City of Marion
60 East Court Street	Post Office Drawer 700
Marion, NC 28752	Marion, NC 28752-0700
Facsimile Number: (828) 659-3484	Facsimile number: (828) 652-1983
Attention: County Manager	Attention: City Manager

12. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement.

13. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.

14 No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provision

15 The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement

16. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina

17 Time shall be of the essence in this agreement and each and every term and condition thereof

18 Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires

19 If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

20 In the event of litigation between the County and the City as to the terms, performance, or any other aspect of this agreement, this agreement shall remain in force and effect during such litigation.

21. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart

22. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF McDOWELL, NORTH CAROLINA

By _____
County Commission Chairman

(SEAL)
Attest:

By: _____
McDowell County Clerk

CITY OF MARION, NORTH CAROLINA

By: _____
Mayor

(SEAL)
Attest:

By: _____
City Clerk

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

By: _____
Alison Morgan, Finance Officer
County of McDowell

By: _____
Robert Parker, Director of Finance
City of Marion

OATH OF OFFICE – COUNCILMEN BILLY MARTIN AND CECIL OWEBNY:

Councilmen Billy Martin and Cecil Owenby received the Oath of Office, administered by the Honorable E. Penn Dameron, Superior Court Judge.

Mayor Clark congratulated Councilman Martin and Councilman Owenby on their re-election to City Council.

Original Oaths of Office can be found on file at City Hall.

REAPPOINTMENT OF CITY ATTORNEY AND OATH OF OFFICE: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to reappoint the law office of Dameron, Burgin and Parker, P.A. as City Attorneys.

The Oath of Office for the City Attorneys was administered to Mr. Charles Burgin, Jennifer Jackson, Phillip Jackson, Mia Lorenz and Sharon Parker by the Honorable E. Penn Dameron, Superior Court Judge.

Original Oaths of Office can be found on file at City Hall.

APPOINTMENT – MAYOR PRO TEM: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to re-appoint Councilman Steve Little as Mayor Pro Tem.

Original Oath of Office can be found on file at City Hall.

REAPPOINTMENT – CITY MANAGER TO ISOTHERMAL PLANNING AND DEVELOPMENT COMMISSION BOARD:
Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to re-appoint City Manager Bob Boyette to the Isothermal Planning and Development Commission Board.

DISCUSSSION OF NEW YEAR'S EVE EVENTS: Mayor Clark discussed some ideas he has for New Year's Eve events that has been endorsed by the Downtown Advisory Committee. Plans are for Music, refreshments and to build a ball to fall at midnight, possibly from the Fire Department's ladder truck.

He advised that at this late date, the proposed plans could be looked at for New Year's Eve next year.

A brief discussion followed. Council agreed to authorize this idea to be studied further by the Downtown Advisory Committee.

CONSIDERATION PROEPRTY DONATION – HILL EVANS: The City Manager advised that Mr. Hill Evans has offered to donate four lots owned by Doris Hill in the West Marion Community. The lots are around 0.20 to 0.33 acres and some would be legal building lots with street frontage. Mr. Evans is willing to prepare the deeds at no expense to the City, however, would ask that is the City wants them, that the deeds be recorded by December 31, 2003.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept these four lots from Mr. Hill Evans, with the condition that the City incur no costs to accept the lots.

U.S. 221 SOUTH SEWER PROJECT EASEMENT: The City Manager advised that Council may need to review in the near future an issue regarding an easement for the U.S. 221 South Sewer Project.

It was the consensus of Council to refer this item to the Utility Committee for further discussion and for recommendation to City Council.

COUNCILMAN COMMENTS:

COUNCILMAN EDWARDS advised that Mr. Jerry Poteat is retiring from the Marion Fire Department after more than 29 years of service. He suggested that this retirement be recognized a future Council meeting. The City Manager noted that other retirements could be recognized at the same time.

COUNCILMAN CUTHBERTSON requested that this meeting be closed in Memory of Pfc. Joey Whitener of Old Fort who recently was killed while serving in the United States Army in Iraq.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn this meeting in Memory of Pfc. Joey Whitener.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 6, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Jerry and Sandra Poteat, 631 Reservoir Road, Marion, NC 28752; Johnny and Debbie Patton, 45 Lucky Street, Marion, NC 28752; Mr. & Mrs. Dean Walker,148 North Garden Street, Marion, NC 28752; Tommy Wilson, Marion, NC, 28752; Steve & Derrick Basney, Marion, NC 28752; Annette Bryant, Marion, NC, 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Steve Little selected the Citizen of the month for January.

DEAN R. WALKER

Councilman Little advised that Mr. Dean Walker was born in Burke County. He went to College at Liberty and Western Piedmont and has taken a variety of Courses.

Mr. Walker had dual careers, one as a civilian and one in the Military. He is married and has two children and two grandchildren.

Mr. Walker worked over thirty years with the Department of Corrections, including several years at the Marion Correctional Institution. Upon retirement he was administrator of Marion Correctional Institution.

He is a Colonel in the US Army Reserves and has received many metals through the years.

Mr. Walker is a member and Past President of the Rotary Club, a Trustee of McDowell Technical Community College, has served on the City of Marion's Planning Board and many other organizations and committees.

He is presently employed with the McDowell County School System.

Mayor Clark and Council Members all had kind words to share about Mr. Walker.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda excluding items B and C as follows:

A. Approval of Minutes - December 2, 2004

B. Approve Depot Rules and Regulations
C. Approve Depot Rental Fee

D. Authorize City to be Co-Applicant with McDowell County – US EDA Grant
EDA Pre-application Narrative

The Federal Economic Development Administration is requiring the City to be a co-applicant on the County's grant request to extend water and sewer service to the proposed Ashworth Road Industrial Park. No City funds will be provided for the local match, which will be funded entirely by McDowell County.

Investment (Project) Area:

This project will be located in McDowell County, North Carolina. The project site is just south of the intersection between Interstate 40 and Ashworth Road. Once this project is completed and infrastructure is available to the site, this area will likely be annexed into the City of Marion. The actual site is a 125-acre portion of a 300-acre tract of undeveloped land off of Ashworth Road near the intersection

McDowell County recently had a Site Analysis and Feasibility study of the 125-acre tract conducted by McGill & Associates. This study was funded through a grant provided by Advantage West, a regional development agency. According to the study, the 125-acres could support up to fourteen small manufacturing operations on tracts of land ranging from 3.7 to 15.5 acres. The remainder of the property would be preserved with creeks, nature trails and other amenities. Realistically, this park would likely house 5-7 manufacturing operations occupying one or more combined parcels. However, the park needs extensive site preparation, water and sewer extensions and an access road. These infrastructure improvements will cost approximately $1.4 million.

As a result of this industrial park development, an expanding local company – Perfect Air Control, Inc. will construct a new 48,000 sq. ft. facility. This facility will allow them to retain their current employment of 51 people and hire an additional 100 persons within three years.

Investment (Project) Description:

This project will involve the construction of 2,400 LF of access roadway. This construction involves the crossing of Muddy Creek with an "Arch Bridge." The proposed roadway will allow access into the proposed industrial park. McDowell County has applied for state funding through the NC Department of Transportation to continue the roadway through the park to Perfect Air Controls building site. The cost of main access road is estimated to be $557,317. See Figure 3, page 11 of the Feasibility Study.

Public sewer access is also needed at the site. This will require the construction of 11,000 LF of 4" force main, one pump station and various improvements to make the line functional and feasible. The estimated cost of this construction is $548,600. Once constructed by McDowell County, the lines will be deeded to the City of Marion, which will own and operate the system. See Figure 11, page 22 of the Feasibility Study.

Finally, water access must be available to the site. This will require that 4,000 LF of 12" water line be constructed. The cost of this construction is $238,160. Once constructed by McDowell County, the lines will be deeded to the City of Marion, which will own and operate the system. See Figure 6, page 17 of the Feasibility Study.

Administration expenses are expected to be about $20,000 for this project.
With the infrastructure in place, Perfect Air Control will construct a 48,000 sq. ft. manufacturing facility and become the first tenant of the new industrial park. The county will own and aggressively market the remaining 12 sites in order to attract additional high-quality jobs to the County.

Economic Development Need:

The county's economy has traditionally relied on textile and other low skilled manufacturing, service and public sector jobs. The area has a per capita income that is 69% of the National average. McDowell County provides industrial operations with good access to Interstate 40 and has a supply of workers willing to work and unable to find jobs due to multiple layoffs and plant closings in the area in recent years. The county unemployment rate in August 2003 was 7.3%, which is 2.3% higher than the national average. McDowell County has recently participated in a Comprehensive Economic Development Strategy along with nine other counties in the area. This group was known as Future Forward. The proposed project is consistent with the goals of the Future Forward plan. It provides for economic diversity away from furniture and textile manufacturing. This company is human resource intensive and requires people with some skills, but not a lot of knowledge. This appears to be a good transition industry for current workers who already have skills. A major goal of Future Forward is improving the graduation rates and the higher education attainment of local residents. This strategy will largely depend on changing local attitudes about the value of education and concentrates on future generations. For those workers currently seeking work, jobs need to be available that can accommodate their skills without requiring extensive education or retraining. Based on these factors, Perfect Air Control seems like a good fit for the present and future of McDowell County.

This project also meets another strategy of the Future Forward CEDS -- it focuses development along existing transportation corridors. A planned park at this location will help keep others areas of McDowell County pristine and available for different uses.

Based on the distress caused by the high unemployment rate and the low per capita income, McDowell County is eligible for a grant rate of up to 60%.

Investment (Project) Impact:

Development of the Ashworth Road Industrial Park to serve Perfect Air Control will retain 50 jobs, because it will allow the company to shift the workers currently employed at their plant in Marion to the new location. The Marion plant was recently purchased and placed into operation, but shortly after the company began its operations in Marion, it purchased another company and moved those operations to the Marion plant. The plant reached its capacity very quickly. It produces two different products – air control terminals and fire dampers. The plant is located on a site that cannot be expanded to accommodate the production expansion that Perfect Air Control needs to meet their customer's demands.

This company wants to remain in McDowell County and the county very much wants to retain the company. The proposed expansion at the Ashworth Road site would allow the retention of the 50 existing jobs and the creation of another 101 jobs at the new facility within three years. In addition, providing infrastructure to this site would also open up approximately 14 additional small sites (3-7 acres) in the Ashworth Road Industrial Park. This developed park would potentially provide many more jobs as new companies move into it.

Perfect Air Control will pay approximately $60,000 per year in local property taxes and have an annual payroll of $3,869,780. A large percentage of these payroll dollars will likely be spent within McDowell County.

The project will address the following selection criteria:

- Creation/retention of long-term employment opportunities – the project will allow Perfect Air Control to retain 51 jobs and create an additional 100 new jobs as a result of the new facility.
- Significant private sector investment – Perfect Air Control, Inc.'s new building and equipment represents an investment of $4.5 million. In addition, the company would have increased space for additional inventory and other investments that are not currently possible at the Marion location
- Leveraging of other funds – The requested EDA funding is approximately 60% of the project costs. The County has approached the NC Department of Transportation about funding some of the street improvements needed by the company, but have not received an answer. The county is committed to providing a large amount of local funds for the parks development – up to the 40% not provided by federal funding. In addition, they are providing the land to Perfect Air Control, which represents an investment of $50,000 in the project
- Timeliness – In order for the county to meet its commitment to Perfect Air Control, this project must begin very soon. The company wants to be operating at their new site within the next year, so completing the infrastructure improvements quickly is essential.

Proponent's Capability:

McDowell County has the capacity to plan, administer and market the Ashworth Road Industrial Park project. They will receive the assistance of the City of Marion in the completion and operation of the water and sewer improvements, which will be deeded to and operated by the City upon completion. The Isothermal Planning and Development Commission (IPDC) is providing technical assistance in the writing of the grant application and administering grant funding. IPDC is a regional planning organization with years of experience writing and administering federal and state grants. It is also a local development district for the Appalachian Regional Commission. The McDowell County Economic Development Association and the North Carolina Department of Commerce will do marketing the completed industrial park

Proposed Time Schedule for the project:

The project needs to begin within the next three months and should be complete within one year.

Project Beneficiaries:

Company	Products and Services	Jobs Saved	New Jobs	Private Sector Investment $	Committed or Interest Only
Perfect Air Control, Inc.	Air Terminal Units and Fire Dampers	51	100	4,500,000	Committed

In addition, this project will open up 5-7 good sized industrial tracts for future development. These sites will be close to "shovel ready" as a result of this project.

Civil Rights:

Neither McDowell County nor Perfect Air Control, Inc. have been the subject of civil rights issues/lawsuits/complaints.

- Does the applicant and any identified "Other Parties" as defined in 13 CFR 317.1(c) understand and agree to comply with all applicable civil rights requirements, including requirements to provide signed assurances and other information that may be needed to determine compliance?

  __X__ Yes _____ No (Explain) _____ No other Parties Identified

Proposed Budget Line Items:

Construction Project Budget Estimate		Non-Construction Project Budget Estimate	
Administrative Expenses	$20,000		
A/E Fees & Inspections	188,320		
Road Construction	456,398		
Water Construction	183,200		
Sewer Construction	422,000		
Contingencies	94,160		
Total	1,364,078		

Sources of Non-EDA funding:

The proposed project revenues are as follows.

- EDA (Preapplication) $806,000
- McDowell County $558,077
  (The County is seeking NC Department of Transportation funds for additional roads through the park, which will cost approximately $400,000 more. Neither this cost, nor this potential revenue has been included in this application)

Title/Ownership/Operation and Maintenance (Construction Projects):

58	0617	SMITH, III	WILLIAM	R	245-44-5503	V
58	0617	STEVENS	JERRY		242-72-8781	R
58	0617	SUTTLE	CHARLES	G	239-84-9781	R
58	0617	WILLIS	JAMES	D	241-88-5758	R
58	0617	YOUNG	WILLIAM	J	245-72-8996	R

A copy of this report can be found on file at the Marion Fire Department.

APPROVE DEPOT RULES AND REGULATIONS: A discussion was held and several changes made to the rules and regulations for the Depot Building.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted to approve the rules and regulation for the use of the Depot Building as follows:

CITY OF MARION DEPOT
RULES AND REGULATIONS

The Marion Depot Building is owned and operated by the City of Marion. It is available to civic groups, organizations, and individuals needing a place to meet.

DAYS OF OPERATION

The Depot Building is available to be scheduled for use seven (7) days a week, the entire year round, excluding days used by local Civic Clubs and Not-For Profit Organizations.

HOURS OF OPERATION

The Depot Building may be opened as early as one desires; however, it is requested that the person or persons using the building be out by 12:00 o'clock midnight.

RULES AND REGULATIONS

1. No one shall be permitted to use the building without first having made proper reservations, paying the required deposit and payment for the use of the building.
2. A cash deposit, as determined by the City Council, shall be required to insure compliance with the rules and regulations governing the use of the building. The deposit must be made at least five (5) work days in advance of the date the Building is to be used. The City may keep any or all of the deposit in the case of any violations of the rules or regulations or any damages to the facilities. Civic Clubs and Not-For-Profit Organizations using the building on a regular basis shall be exempt from making a deposit.
3. All persons or groups renting the Marion Depot Building must pay for the use of the building at the time reservations are made. No refunds will be made by the City should some person or group not use the building on the date scheduled; however, the person or group may re-schedule the building without additional cost at some other open date. Reservations must be made in person (no reservations by telephone), no earlier than 9:00A.M. local time and no earlier than the first day of the calendar month prior to the month one year in advance of the proposed use. (Example: If you wish to schedule the building in the month of October 2004, the earliest you can schedule the building is September 1, 2003). In the event two or more persons are at the Counter at 9 A.M.; wishing to rent the building on the same day, the name of one person, representing each group shall have their name placed in a box and drawn to determine which person may rent the building on the desired day. In all other situations, reservations shall be accepted on a first come – first serve basis. The deposit shall be picked up within seven (7) work days following the use of the building and the receipt issued by the City for the deposit must be presented to pick up the deposit. The receipt will be kept and destroyed by the City.
4. The person or group renting the Depot Building may not sub-let the building to another person or group.
5. No decorations of any kind, i.e., plaques, pictures, or any other objects shall be fastened to the walls, ceilings, windows or lighting fixtures by use of nails, tacks, screws, tape, etc.

6. The floor must be mopped before leaving the building. All garbage and refuse shall be removed from the building and be placed in the containers located on the premises.
7. No equipment of any kind, including chairs, tables, utensils, etc. shall, under any circumstances be removed from the building without the specific permission of the City Council.
8. Any fixtures, furniture, or decorations provided by the user(s) must be removed from the building immediately following the use of the same so the building will be ready for use by the next group.
9. No person, organization, etc. may use the Depot Building for commercial purposes. (It is the intent of this regulation to prohibit any person from using the building for financial gain). This prohibition shall include any educational or informational programs held by professionals at which no goods or services are sold, but where referrals may be received or information about a particular business may be distributed to or made available to those attending. Educational or information programs sponsored by a non-profit or governmental organizations with offices located in McDowell County are permitted, provided that no information will be distributed or made available about a particular business, other than the sponsoring non-profit or governmental organization itself.

   EXCEPTION: Any commercial enterprise having a business building located within the City Limits and having a City Privilege License or other necessary license or permit, may use the Community Building for no more than two (2) times per calendar year and no more than two (2) consecutive days each time for the purpose of display demonstration, and sales of materials, products and /or s services which are sold and/or provided at the commercial enterprise's main building located within the City

10. No person(s), organizations, etc. may use the Depot Building for religious services. Weddings are allowed.
11. No person, firm or corporation will be allowed to use the Depot Building for the purpose of offering bingo games to the general public.
12. Each person or group using the building will be held responsible for any damages to the walls, floors, windows, etc. and for the breakage or loss of the City owned tables, chairs etc.
13. Tables and chairs may be rearranged by persons using the building, but must be returned to their original positions after each use.
14. Once the area used has been cleaned and set in order, the Marion Police Department must be notified at 652-3231 to come inspect and lock the building.
15. The volume for the speaker system is pre-set. The equipment may, on request, be used. No other equipment may be hooked to the sound without prior permission.
16. The microphone for the sound system may be checked out and signed for through the Marion Police Department. When use of the microphone has been completed, it is to be returned to the Police Department immediately.
17. All items brought to the Depot Building by persons using the building must be removed from the building by 12:00 o'clock midnight at the end of the rental period.
18. The Officers of the Marion Police Department have authority to enter the building at any time for the purpose of insuring compliance with all rules and regulations.
19. Officers of the Marion Police Department shall have the authority to open or look in any ice chests and/or coolers on the premises.

Adopted this the 6th day of January 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

APPROVE DEPOT RENTAL FEE: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following Ordinance:

CITY OF MARION, NORTH CAROLINA
ORDINANCE
DEPOT BUILDING RATES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following rates shall be charged for the use of the Marion Depot Building effective January 6, 2004.

PER DAY, PER EVENT CHARGE: MAIN OR STREET LEVEL:

ASSEMBLY ROOM USE ONLY	$100.00
DEPOSIT FOR EACH USE:	
A. PERSONS HAVING USED THE BUILDING IN THE PAST WITHOUT INCIDENT	$100.00
B. -FIRST TIME USERS/OTHERS (ALL DEPOSITS WILL BE IN CASH, NO EXCEPTIONS)	$200.00

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATIONS AUTHORIZED BY THE CITY COUNCIL TO USE THE BUILDING
ON A REGULAR SCHEDULE AND AT SPECIAL RATE:

A. PER DAY, PER EVENT CHARGE	$25.00
NO DEPOSIT IS REQUIRED.	

ADOPTED this the 6th day of January, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk
O-02-03-19-2

RECOGNIZE RETIRING EMPLOYEES: Mayor Clark advised that Captain Jerry Poteat has retired with more than 29 years of service with the Fire Department. Major Johnny Patton of the Police Department has retired with 17 years of service.

Both Jerry and Johnny were presented with a plaque of appreciation and a City of Marion medallion.

Mayor Clark, Council Members and the City Manager all had kind words of appreciation for Captain Poteat and Major Patton.

INTRODUCE NEW EMPLOYEES: The City Manager introduced Mr. Durwood Creson to Mayor Clark and Council Members. Mr. Creson took Captain Poteat's place as a paid Fireman at the Fire Department.

PUBLIC APPEARANCE – ANNETTE BRYANT – MARION ROTARY CLUB: Ms. Annette Bryant appeared to offer the installation of the permanent reader board sign encased in rock at the Community Building by the Marion Rotary Club. This sign had been approved by

City Council in 2003, with the idea that McDowell County School would provide the labor for the construction. Due to other commitments, the School System has indicated that they will not be able to construct the sign. Ms Bryant requested that Rotary be allowed to place a small marker in the ground next to the sign to indicate that the Rotary Club had donated the sign. The City has already purchased the internal reader board sign and seal and the Rotary Club has arranged for the rock to be donated. The value of the donation of labor for the sign is estimated to be about $1,000.

Ms. Bryant further stated that the Marion Rotary Club wished to assist with the purchase of a decorative clock at the Depot site, to honor the 100th anniversary of Rotary International. She passed out a picture of the clock, which would be an 11.5 foot tall, two faced clock of a green color. The City Manager advised that DOT had agreed to fund most of the clock through the depot project, which meant that Rotary's share of the project would be about 20 percent, or around $800. The City Manager also noted that DOT and the State Historic Preservation Office had reviewed and given preliminary approval to the clock. The recommendation will be to install the clock on a pedestal included in the Depot Construction near the end of Depot Street and the eastern end of the Depot Building. Ms Bryant requested that Rotary be allowed to place a small marker in the ground next to the clock to indicate that the Rotary Club had donated the clock.

A discussion followed. Mayor Clark suggested that review be given to the orientation of the clock face, whether it should be north-south or east-west. Ms. Bryant noted that it was the Club's recommendation for the clock to face east-west.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the donation of labor by the Marion Rotary Club for the permanent reader board sign encased in rock at the Community Building, to approve the donation of a decorative clock as described above by the Marion Rotary Club at the Depot site, and to allow a plaque or marker to be placed in the ground next to both the Community Building sign and decorative clock to indicate c the donation of each by the Marion Rotary Club.

SPECIAL PRESENTATION BY MAYOR CLARK: Mayor Clark presented Councilmen Lloyd Cuthbertson and Mike Edwards with City of Marion ten year service pins.

ORDINANCE – PULLIAM STREET PARKING: The City Manager advised that the Street Committee had reviewed the parking situation of Pulliam Street and recommended that the Traffic Schedule be amended to clarify the parking on the street. The recommendation is to allow parking on the west side of the street, except near the intersection with Blue Ridge Street. Parking would be prohibited on the east side of the street. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to approve the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows.

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION	
PULLIAM STREET	PARKING	BOTH SIDES, LENGTH OF STREET	PROHIBITED

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of January, 2004.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-04-01-06-2

STREET/DRAINAGE ISSUES: The City Manager advised that the Street Committee had recently looked at a drainage situation on State Street and a request for speed bumps on Academy/Fort Streets and North Madison Street.

The City Manager reported that the drainage complaints noted two months ago at a Council meeting, involving water allegedly running across State Street from the McDowell Mission Ministries property, had been addressed with the cleaning of a drain in front of the Mission property. The location will continue to be monitored during heavy rainfall to make sure additional problems do not occur.

Regarding North Madison Street, the City Manager noted that the Street Committee had recommended that no speed bumps be placed upon any City street and that no action be take on North Madison Street, which seems to be functioning as designed. Any future specific suggestions from the neighborhood could be investigated.

In reference to Academy/Fort Street, the City Manager advised that the Street Committee also ruled out speed bumps, and recommended against physical design changes to the street, such as the installation of a small traffic island to force traffic to make a 90 degree turn where Academy and Fort Streets come together. Instead, the Street Committee recommended that a request be made to the North Carolina Department of Transportation to allow right turns on red for southbound traffic on North Logan Street at the West Court Street intersection. The City Manager reported that he and the Fire Chief had discussed such a request and agreed that it would have no adverse consequences for the Fire Department. Instead, the alloiwance of a right turn on red for this one direction of travel could encourage more motorists to take North Logan Street, instead of Academy and Fort Streets.

Councilmen Martin and Owenby advised that they did not see how speeding could be a problem on these short street and that the lifting of the right turn on red restriction at North Logan and West Court Street might be a good first step.

By consensus, Council instructed the City Manager to send a letter to the North Carolina Department of Transportation, requesting that the no turn on red restriction be lifted for southbound traffic on North Logan Street at the West Court Street intersection.

Mayor Clark discussed a concern he has with the traffic on Sugar Hill Road near the Bypass, involving traffic merging in the area near Woodlawn Street where two lanes of southbound travel are reduced to one lane.

No action was taken. The on-going widening of Sugar Hill Road by NCDOT should address this concern.

EASTFIELD SEWER PROJECT UPDATES: The City Manager presented Council with a memo from Ms. Teresa Spires, Economic Development Coordinator, of Isothermal Planning and Development Commission.

Ms. Spires noted concerns about the required deposits for the Eastfield sewer project. She advised that many of the people in this area were under the impression that the City would be annexing this area. Annexation would have of course lowered the deposit by half.

The City Manager suggested two possible options for addressing this issue. The $30 sewer deposit could be charged over a three month period, as allowed by City policy, or it could be waived for initial sewer customers in the Eastfield project.

A lengthy discussion followed. Mayor Clark suggested that Council waive the initial sewer deposits for the Eastfield customers, but also require the deposit to be paid if a customer's water is physically disconnected. After the initial connections, future customers or service changes would be required to pay the current deposit. Councilman Little stated that such a decision by Council should be viewed as a good will gesture to the Eastfield Community for this particular project, and not as a policy decision applicable to all future projects and City utility customers.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to waive the $30 sewer deposit for initial customers in the Eastfield Community, as part of the Eastfield Sewer Improvements Project, provided that new customers or persons with service changes after the initial connections will be required to pay the full deposit in effect at the time and that customers who have their water or sewer service physically disconnected for non-payment will be required to pay the full deposit in effect at the time in order to have their water and/or sewer service restored.

Councilman Cuthbertson had several questions regarding the sewer connection for the Clinchfield Baptist Church. He noted that the church seems to be confused about how the new connection for the fellowship and the problems with the existing sewer connection for the church will be handled. The City Manager advised that the County had committed to provide a sewer connection at no charge for the church fellowship hall, as part of the Eastfield project. The City is to investigate any problems with the existing sewer connection for the church. Mayor Clark advised that he had discussed this matter fully with Al Hensley with the church, but asked the City Manager to follow up to make sure that the matter was addressed promptly by the City and County.

REQUEST FROM MACA – REDUCE/WAIVE COMMUNITY BUILDING RENTAL FEES: The City Manager presented Council with a request from MACA requesting the use of the basement of the Community Building for art classes at a reduced rate.

Councilman Cuthbertson suggested that this item be looked at by the Recreation Committee.

A lengthy discussion followed. The City Manager advised that the art classes were due to begin on January 13, so MACA needed an answer very quickly. The rental charges for the classes would be about $20 per class, which are projected to be attended by 30-40 people. Councilman Owenby asked if MACA would be charging for the classes. The City Manager advised that he understood that there would be a charge for the class. Mayor Clark noted that MACA, as a non-profit organization would certainly be permitted to charge for their classes, but that a fee reduction was not necessarily warranted.

Councilman Edwards called for the question.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to allow the use of the Community Building basement by MACA, upon its availability, at the current rates, with no reductions.

CEMETERY ISSUES: The City Manager advised that a request had been received for additional steps and a railing in Oak Grove Cemetery.

Councilman Little asked if the installation of railings last year had not addressed every needed location. The City Manager stated that he believed that all locations with multiple steps had been supplied with railings. The current request involves a location with one step, but a topography which could lend itself to additional steps and a railing.

Councilman Edwards suggested that the Cemetery Committee could look at this request in the spring and also explore other needed improvements to the Cemetery.

It was the consensus of Council that this request be held over until spring at which time the Cemetery Committee could look into this request as well as other needed improvements at the Cemetery.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Martin advised that he had been contacted regarding a problem with water service on Tate Street as a result of the new water meter installation. The City Manager advised that he would have this location checked the next day.

Councilman Edwards commended efforts by City staff to put on the dinner at the Marion Community Building the previous evening to honor the local National Guard unit that is being sent to Iraq.

Councilman Little advised that there is a pot hole on South Garden Street near the Post Office in need of repair.

Councilman Owenby advised that he had received a complaint about a clogged drain pipe under Norton Street.

The Police Chief advised that the grant money for a generator for the Police Department is at a stand still in Washington. The City Manager noted that the offices of Senator Edwards and Congressman Taylor had offered their support for the grant, but that Western North Carolina appeared to be a lower priority than requests from Eastern North Carolina related to Hurricane Isabel.

CLOSED SESSION: N.C.G.S. 143-318.11(A) (5) TO DISCUSS THE ACQUISITION OF REAL ESTATE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into closed session in accordance with N.C.G.S. 143-318.11(a)(5) to discuss the acquisition of real estate.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go back into Regular Session.

Mayor Clark announced that no action was taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 20, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

Mayor A. Everette Clark was not present for this meeting due to a death in his family.

Councilman Billy Martin was not present for this meeting due to a sewer line blockage.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Angie Finberg and Sarah Vess, Marion Police Department; Pat and Kent Brown, Marion, NC 28752.

Mayor Pro Tem Steve Little opened and presided over this meeting.

There was not a quorum present at 7:00 P.M. Mayor Pro started the meeting and asked Police Chief Elliott to make the following introductions:

INTRODUCTION OF NEW EMPLOYEES: Police Chief Mika Elliott introduced Officer Angie Finberg. Ms. Finberg worked with the McDowell County Animal Shelter for several years and has numerous family members in law enforcement.

Chief Elliott also introduced Ms. Sarah Vess, who has served the Marion Police Department for many years as a Dispatcher. Ms. Vess is filling in for Chad Bailey, who is a member of the Army National Guard and was recently deployed to Iraq.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - January 6, 2004 Regular and Closed Session Minutes

PUBLIC HEARING – ZONING AMENDMENT: Mayor Pro Tem Little opened the Public Hearing.

City Planner Suzy Davis advised that the owner of Taylor Brown Law Firm is requesting a special exception in the R-2 District to place a sign at their business located on Fort Street. The current ordinance allows a two square foot sign.

Ms. Davis advised that there are special exceptions in the R-2 District that are allowed to have a nine square foot signs.

If approved this amendment would allow all special exceptions in the residential districts to have sign up to nine square feet. The Planning Board voted unanimously to recommend approval of this Zoning Amendment.

Mr. Kent Brown and Ms. Pat Brown were present for this Public Hearing.

There were no citizens present opposing this request.

A discussion followed.

Mayor Pro Tem Little Closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII, Section 706.11 (2) (F) is amended to read as follows:

706.11 (2) In the Residential District, the following regulations shall apply:
(A) ...

(F) **For all uses permitted by special exception in the R-1 and R-2 District,** identification signs not exceeding nine (9) square feet are permitted.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 20th day of January 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-04-01-20-01

CIVIL CITATION APPEAL – DOG RUNNING LOOSE: The City Manager advised that Ms. Renee Brown had not received sufficient notification of the scheduling of this civil citation appeal and he would therefore requested that this item be held until a later date.

It was the consensus of Council to table this Appeal.

PUBLIC HEARING – ADOPT RESOLUTIONS APPROVING FINANCING TERMS AND INSTALLMENT FINANCING CONTRACT – US 221 NORTH BUSINESS SEWER IMPROVEMENTS: The City Manager advised that in order to go forward with the installment financing contract for the US 221 North Business Sewer Improvements project, a public hearing must be held. Notice of the public hearing was published in the McDowell News. After the public hearing was held, Council could take action to adopt two required resolutions regarding this project, one to approve the financing terms of the selected financial institution, and one to approve the installment financing contract. The City Manager advised that bids were received from three banks for the $231,800 installment financing contract for this project. The low bid, once bank fees were taken into consideration, was submitted by BB&T, at an interest rate of 3.09% for a 5 year term or a rate of 3.44% for a 7 year term. The City Manager recommended that Council approve the 7 year term, given that BB&T would charge no prepayment penalty.

Mayor Pro Tem Little opened the Public Hearing.

There were no citizens present to discuss this Public Hearing.

A brief discussion followed.

Mayor Pro Tem Little closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolution approving financing terms with BB&T for a 5 year installment financing contract, at an interest rate of 3.44%, subject to approval of the Local Government Commission:

RESOLUTION APPROVING FINANCING TERMS

WHEREAS: The City of Marion ("City") has previously determined to undertake a project for Sewer System Improvements, and the Finance officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated January 15, 2004. The amount financed shall not exceed $231,800.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.44%, and the financing term shall not exceed 7 years from closing.

2. All financing contacts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Coty officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to made principal and interest payments under the Financing Documents as "qualified tax exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts there of) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 20th day of January, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolution, approving the installment financing contract:

A RESOLUTION OF THE CITY COUNCIL OF CITY OF MARION, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT

WHEREAS, the City of Marion, North Carolina is a duly and regularly created, organized and validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina,

WHEREAS, the City has the power, pursuant to North Carolina General Statutes to (I) purchase real and personal property, (II) enter into installment financing contracts in order to finance the purchase of real personal property used, or to be used, for public purposes, and (III) to finance the construction of fixtures or improvements on real property by contracts that create, in the real property on which such fixtures or improvements are located, a security interest to secure repayment of moneys advanced or made available for such construction;

WHEREAS, the City Council, of City of Marion, North Carolina, hereby determines that it is in the best interest of the City to receive an advance of funds in an aggregate principal amount of not more than $231,800 by entering into an installment financing contract with a North Carolina corporation, and a deed of trust or other security agreement related thereto to secure the City's obligations under the Contract. This financing is new debt of $231,800 for the purpose of Sewer System Improvements.

WHEREAS, the City hereby determines that the improvements of the above described project is essential to the City's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Project will provide an essential use and will permit the City to carry out public functions that it is authorized by law to perform, and that entering into the Contract is necessary and expedient for the City by virtue of the findings presented herein.

WHEREAS, the City hereby determines that the estimated cost of the new improvements in this project is approximately $231,800 and that such costs exceed the amount that can be prudently raised from currently available appropriations, unappropriated fund balances in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State.

WHEREAS, although the cost of financing the improvements of this project pursuant to the Contract could exceed the cost of financing the project pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the project pursuant to the Contract and the Deed of Trust and the obligations of the City thereunder are preferable to a general obligation bond financing for several reasons, including but not limited to the following. (I) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; and (II) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring the project;

WHEREAS, the City hereby determines that the estimated cost of financing the project pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preamble;

WHEREAS, obligation of the City to make Installment Payments under the Contract is a limited obligation of the City payable solely from currently budgeted appropriations of the City and does not constitute a pledge of a faith and credit of the City within the meaning of any constitutional debt limitation;

WHEREAS, in order to secure the City's obligations under the Contract, the City will enter into the Deed of Trust trustee named for the benefit of the Corporation;

WHEREAS, no property tax increases will be required to pay installment payments falling due under the Contract in any fiscal year during the term of the Contract;

WHEREAS, the City Attorney will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law and constitute a purpose for which public funds may be expended pursuant to the Constitution and laws of the State;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any monies due under the Contract,

WHEREAS, the City is not in default under any of its debt service obligations,

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission, external auditors or any other regulatory agencies in connection with such debt management and contract obligation payments policies,

WHEREAS, the City Council conducted a public hearing with respect to the Sewer System Improvements on January 20, 2004 to receive public comments on the Project, the proposed financing, the Contract and the Deed of Trust for improvements of the Project, and the City will file an application with the LGC for approval of the LGC with respect to the City entering into the Contract;

WHEREAS, the forms of the Contract, upon review of the City Attorney, the City proposes to approve, enter into and deliver, applicable, to effectuate the proposed financing at the interest rate and maximum principal amount as specified therein; and

WHEREAS, it appears that the Instrument is in appropriate form and is an appropriate instrument of the purposes intended,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, CITY OF MARION, NORTH CAROLINA, AS FOLLOWS:

Section 1. Ratification of Prior Actions. That all actions of the City, the City Manager, the Finance Officer of the City, and the City Clerk and their respective designees in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2 That City of Marion does hereby approve the financing of the project referenced above, in accordance with the terms of the proposal made by BB&T Bank, a copy of which is attached hereto. The annual interest rate for the Sewer System Improvements is 3.44 percent for 7 years financing term. The Installment Purchase Contract and the Deed of Trust in connection therewith, which said financing will be valid, legal and binding obligation of the City of Marion in accordance with their terms. The form and content of the Contract and related documents are in all respects authorized, approved and confirmed and the City Manager is hereby authorized, empowered and directed to do all such acts to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as approved.

Section 3. That the City Manager is hereby designated as the City's representative to act on behalf of the City in connection with the transactions contemplated hereby and by the Instruments referenced herein, and the City Manager is further authorized and directed to seek opinions as to matters of law from the City Attorney, which opinions the City Attorney is hereby authorized to furnish on behalf of the City.

The City Manager is further authorized to execute and deliver for and on behalf of the City, any and all additional certificates, documents, opinions, or other papers and to perform all other acts as may be required by the instruments or as he and the City Attorney may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 4. That if any section, phrase or provisions of this Resolution is for any reason declared to be invalid, then such declaration shall not effect the validity of the remainder of the sections, phrases, or provisions of this Resolution which shall remain and continue in full force and effect.

Section 5 That all motions, orders, resolutions, ordinances and parts thereof which are or may be in conflict herewith are hereby repealed.

Section 6. This Resolution is subject, however, to City of Marion obtaining approval for the proposed installment purchase financing from the North Carolina Local Government Commission.

Section 7. That this Resolution shall become effective immediately upon its adoption

Adopted this the 20th day of January, 2004

The motion to adopt this Resolution was made by Council Member Cuthbertson, Seconded by Council Member Owenby, and was passed unanimously by those members present at the meeting of the City Council, Marion, North Carolina, held on the 20th day of January, 2004

A. Everette Clark, Mayor, City of Marion

Attest:

J. Robert Boyette, City Manager/Clerk

PLANNING BOARD APPOINTMENTS: The City Manager advised that several terms on the Planning Board had expired. He presented Council with a list of regular and alternate members, and their respective terms. The Planning Board has recommended the reappointment of Gary Walker, Craig Orange and Glenys Gilbert as Regular Members and the appointment of Robert Elledge as a Regular Member, to fill the unexpired term of Stephanie Shipe.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to re-appoint Ms. Glenys Gilbert, Mr. Craig Orange and Mr. Gary Walker as Regular Members of the Planning Board, for a term of three years, to expire on January 31, 2007.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members Of Council present voted to appoint Mr. Robert Elledge to fill the un-expired term of Ms. Stephanie Shipe as a Regular Member of the Planning Board, term to expire January 31, 2005 and to reappoint Mrs. Connie Martin as an Alternate Member of the Planning Board, term to expire January 31, 2007.

There is a need for four or five more alternates on the Planning Board.

The Planning Board Members and terms are as follows:

REGULAR MEMBERS

Ms. Glenys Gilbert January 31, 2007
Mr. Craig Orange January 31, 2007
Mr. Gary Walker January 31, 2007
Mr. Kit Alverson January 31, 2005
Mr. Robert Elledge January 31, 2005

ALTERNATE MEMBERS

Ms. Connie Martin January 31, 2007
Ms. Virginia Williams January 31, 2005

A brief discussion was held regarding possible names of persons who may wish to serve. One name mentioned was Mr. Earl Daniels. Council will bring back suggestions at a later meeting

COUNCILMAN COMMENTS:

The City Manager advised that Mayor Clark had suggested a dinner similar to the one recently held for our local military men and women for the City's Advisory Board members and their spouses. These people do a lot for the City with no pay and little recognition.

A discussion followed.

It was the consensus of Council to hold a dinner for all City Advisory Board Members, the Mayor and City Council, and staff to the various boards and their spouses on Thursday, March 18, 2004 at the Community Building.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The Manager advised that Thursday January 22, 2004, is the Annual Town Meeting at the Community Building. Mayor Clark and Mayor Pro Tem Little will not be able to attend this meeting. Mayor Pro Tem Little reported that Mayor Clark has requested that Council proceed with the scheduled meeting due to guests and the public being invited. After discussion, Council agreed by consensus to hold the Town Meeting on the regularly scheduled date.

The Manager also advised that the County may need to have a Special Meeting on Friday at noon, to discuss an economic development matter. He advised that he would let everyone know if the meeting needed to be held.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held its Annual Town Meeting on Thursday January 22, 2004 at 7:00 P.M. at the Marion Community Building.

BOARD MEMBERS PRESENT: Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

BOARD MEMBERS ABSENT: Mayor A. Everette Clark and Mayor Pro Tem Steve Little were both absent from this meeting due to a death in Mayor Clark's Family. The memorial service for Mayor Clark's brother-in-law, Rev. Bob Davis, was at the same time as this Town Meeting.

OTHERS PRESENT: J. Robert Boyette, City Manager; Debi Sherlin, Secretary; Freddie Killough, Downtown Business Association Director; Suzy Davis, City Planner; Jay Suttles, Building Inspector; Robert Parker, Finance Officer; Kathy Shook, Purchasing Agent; Buck Byrd, Chief Operator, Water Filter Plant; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Glen Sherlin, Public Utilities/Projects Director; Roger Estes, Street Superintendent; Steve Basney, Water Superintendent; Tommy Wilson, Sanitation Superintendent; Larry Carver, Superintendent, Waste Water Treatment Plant; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Mr. & Mrs. David Setzer, 46 New Street, Marion, NC 28752; Ms. Bea Whisenant, 78 Elizabeth Loop, Marion, NC 28752; J. J. Laughridge, 478 Rutherford Road, Marion, NC 28752; Kit Alverson, 240 Crescent Drive, Marion, NC 28752; Johnny Patton, Lucky Street, Marion, NC 28752.

UTILITY REPRESENTATIVES:

PUBLIC SERVICE COMPANY OF NORTH CAROLINA:
No Representative

UNITED STATES POSTAL SERVICE:
No Representative

CHARTER COMMUNICATIONS CABLE COMPANY:
Dean McCracken

EMERGENCY MANAGEMENT – 911 ADDRESSING SYSTEM:
Carroll Hemphill

DUKE ENERGY COMPANY:
Don Hollifield
Gary Laws
Sandy Tallant

VERIZON PHONE COMPANY:
No Representative

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION:
Gene Morgan
Doug McNeal

TOWN MEETING: City Manager Bob Boyette opened the meeting and gave the regrets of Mayor Clark and Mayor Pro Tem Little for not being in attendance. The City Manager

introduced the City representatives and invited guests. The City Council members present welcome those in attendance and thanked them for coming out to provide comments or suggestions for the upcoming year.

PARKING TICKET: Mr. J.J. Laughridge advised that he had received a parking ticket on January 16, 2004 for parking in a Loading Zone on State Street. He advised that he was unloading tools at a business and felt he did not deserve this citation. He noted situations involving trucks making deliveries to downtown businesses that did not result in parking citations.

The City Manager and Chief Elliott noted that the City was under pressure from downtown merchants to write tickets and that the enforcement officer was instructed to enforce the law.

Mr. David Setzer stated that he understood the problem related to deliveries to The McDowell News. He thanked Council for allowing for an adequate size loading zone on North Logan Street in front of the newspaper.

TRAFFIC LIGHTS/TRAFFIC ISSUES: Mr. Kit Alverson advised that DOT needs to look at the traffic lights in Marion. He feels that the By-Pass took traffic out of the City and warrants DOT doing another study.

He also advised that the City should advise the public when the leaf vacuum machine is not in operation, through newspaper or City channel notices.

Councilman Edwards asked Mr. Alverson how he could best receive news about the City and Mr. Alverson responded that the newspaper was the best source of information.

Mr. Alverson also advised of problems with speeding on Fleming Avenue and with a mirror at Fleming Avenue and Crescent Drive that made it difficult to observe on-coming traffic.

TRAFFIC LIGHT: Ms. Freddie Killough asked that DOT officials look at the traffic light on Henderson Street at Burger King.

SUGARHILL ROAD PROJECT: Ms. Bea Whisenant asked DOT officials how long it would be before the Sugarhill Road project is completed. Mr. Doug McNeal of DOT stated that the widening project had encountered some delays but should be wrapped up by the end of the year.

TELEPHONE POLE: Mr. J.J. Laughridge advised of a leaning telephone pole in front of his house on Rutherford Road. The City Manager advised that this location had been reported previously to the power and telephone companies. Mr. Don Hollifield of Duke Power agreed to look at the location to see if Duke Power had any responsibility for the pole.

DOT PROJECTS: DOT District Engineer Doug McNeal advised that DOT would begin later in the year work to widen NC 226 South from the Bypass southward to Old Glenwood Road and US 70 West from west of the High School Road to Clear Creek Road to three lanes.

DUKE ENERGY - METER CHANGE OUT: Mr. Don Hollifield advised that Duke Energy will be changing out all electric meters in the near future and replacing them with automated radio read meters.

Mr. Gary Laws advised that McDowell County would be moving from the Hickory District of Duke Power to the Hendersonville District. He introduced the new District Manager, Sandy Tallant.

CITY APPEARANCE: Ms. Bonnie Setzer thanked City Officials for the clean and beautiful appearance of the City of Marion.

Councilman Cuthbertson advised that Mr. Frank Bolden has made another donation to the City to continue the hanging baskets downtown.

TREE TRIMMING: The City Manager noted that several complaints had been received about the lack of tree trimming in the City by Duke Power, and the fact that several "danger trees" had been flagged for several months, but not cut.

ADJOURNMENT: The town meeting adjourned at 9:05 P.M.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 3, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Mike Edwards was absent from this meeting due to sickness.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Nancy Clark, Fleming Avenue, Marion, NC 28752; Sylvia Davis, Marion, NC 28752; Clyde & Joe Pyatt, Marion, NC 28752;

CITIZEN OF THE MONTH – SELECTED BY MAYOR A. EVERETTE CLARK:
Mayor A. Everette Clark selected the Citizen of the month for February:

GENE H. BEAM

Mayor Clark advised that Mr. Gene Beam is a native of McDowell County. He graduated from Mountain View High School and attended McDowell Tech.

He is married to Norma and they have five daughters and twelve grandchildren.

Mr. Beam has worked at the McDowell Hospital for over thirty nine years. He was first employed at Marion General in 1965. He has also worked with the Home Health Care program and has touched many lives, spiritually as well as physically.

He is a member of Addie's Chapel Church where he serves as usher and treasurer of the Men's Class.
Council Members, friends and family all shared kinds word about Mr. Beam.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - January 20, 2004
B . Approve Reimbursement of Expenses –
Sewer Back-up – 350 Holly Hill - Billy & Connie Martin – Problem with city line caused back-up. Cost of clean up as follows:

Ceiling Repair	$967.28
Lamb's Cleaning Service	$150.00
Buckner Plumbing	$264.40
Carpet Cleaning	$295.00
TOTAL	$1,676.68

C. Budget Amendment Ordinance:

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(Fourth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-335-0100, Property Reimbursement, is increased from $0 to $2,090.
b. General Fund Expenditures, Police, Account Number 10-510-1700, Auto Supplies/Maintenance, is increased from $43,000 to $45,090.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.
Adopted this the 3rd day of February, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-02-03-1

D. Approve Work Order – Police Department: Wiring and transfer switch for future generator - $17,937. This change order was leaves $7,000 in contingency funds for the project.

RECOGNIZE RETIRING EMPLOYEES: Mayor Clark presented Aaron Adams with a plaque for twenty years of service to the City of Marion. The Mayor, City Council members and City Manager thanked Aaron for his service to the City.

CIVIL CITATION APPEAL – DOG RUNNING LOOSE: The City Manager presented Council with a letter from Ms. Renee Brown requesting that Council waive Civil Citation #V004575, dated 12-30-03. Ms. Brown has removed the dog from the premises. Ms. Brown has received four separate citations for the same dog.

A lengthy discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to deny Ms. Brown's request to waive the first three Civil Citation's totaling $200.00. If payment is received within ten days for these three citations, the fourth citation in the amount of $100.00 will be waived. If the three are not paid, all four will be due in full within ten days.

CIVIL CITATION APPEAL – PARKING TICKET: The City Manager presented Council with a letter from Mr. Derrick Brooks requesting that Council waive a $5.00 parking citation he received on January 21, 2004. Mr. Brooks advised that he had been parking in this particular space for over twenty years and had never received a parking citation.

A discussion followed.

Mayor Clark advised that the parking area in question should be better marked as a no parking area. Councilman Little noted that the public may not understand that a location is a no-parking zone, unless it is marked.

Councilman Martin and Owenby stated that they felt that a violation had occurred, and that Mr. Brooks should pay the ticket.

A motion by Councilman Little was made, and seconded by Councilman Cuthbertson to forgive this parking citation.

The vote was as follows:

Councilman Little	Yes
Councilman Cuthbertson	Yes
Councilman Martin	No
Councilman Owenby	No

Due to a tie vote, Mayor Clark was required to cast a vote.

Mayor Clark	Yes

The motion to forgive the parking citation carried three votes to two.

City Council directed the City Manager to see that locations such as the one on South Garden Street were striped in yellow to indicate no parking.

PLANNING BOARD RECOMMENDATIONS: Councilman Cuthbertson advised that he spoke with Earl Daniels about serving on the Planning Board and he graciously declined an appointment as an alternate member on the Planning Board.

A brief discussion followed.

The City Manager was instructed to place this item on the agenda again in March, at which time Council members could bring possible names for appointments as alternate Planning Board members.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager reminded Council that Saturday, February 7. 2004 at 7:00 AM is the Planning Session.

The City Manager mentioned the City's Open House last year. It is the consensus of the Board to host this open house again this year and to invite all third graders in the County to attend and to tour City facilities.

COUNCILMAN COMMENTS:

Councilman Martin advised that the sidewalks and underpasses in the West Marion area are icy and need attention.

Councilman Little commended City Crews for work done on City Sidewalks. He asked that the Courthouse sidewalk be cleared of ice and snow in the future, even if the City had to assist.

Councilman Cuthbertson advised that he had received several complaints about poor road conditions on Forest Heights during the bad weather.

Mayor Clark advised that the snow was pushed the wrong way in the downtown area. It needs to be pushed to the center of the street.

Councilman Owenby advised that the Post Office parking lot was difficult to get into our out of during the snow and ice, but that he had informed people that this parking lot was not the responsibility of the City to maintain.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 17, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark; Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner.

GUESTS PRESENT: Caroline Moore, Marion, NC; Patrick Jenkins PO Box 2622 Marion, NC; Tim Autrey 124 Fleming Avenue, Marion, NC; Waylan Coffey 659 Timber Road, Marion, NC; Tyler Smith 460 Burma Road, Marion, NC; Jonathan Poole 124 Fleming Avenue, Marion, NC 28752; Robert Pool 46 Surland Drive, Marion,NC; Storm Higgins 266 Mack Noblet Road, Old Fort, NC; Anthony Adkins 221 Lamplighter Lane, Marion, NC; Alissa Adkins PO Box 2622 Marion, NC; Nathan Poole 124 Fleming Avenue, Marion, NC; John Welker.1901 Nix Creek Road, Marion, NC 28752; Carma Todd PO Box 2622 Marion, NC; Joyce Smith 460 Burma Road Marion, NC; Jim Edwards, Isothermal Planning and Development Commission, Rutherfordton, NC.

BOY SCOUT TROOP 807: Mayor Clark welcomed and thanked members of Boy Scout Troop 807 for attending this meeting.

Assistant Scout Leader John Welker and several parents were also in attendance.

Mayor Clark and Council Members all commended these scouts and welcomed them.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - February 3, 2004 Minutes, February 7, 2004 Planning Session Minutes and January 22, 2004 Town Meeting Minutes

B. Budget Ordinance Amendment:

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(Fifth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-353-0200, Fire Grant, is increased from $0 to $101,250.

b. General Fund Expenditures, Fire, Account Number 10-530-7400, Capital Outlay, is increased from $13,500 to $114,750.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 17th day of February, 2004.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-02-17-2

PUBLIC APPEARANCE – ORNAMENTAL TREES: The City Manager advised that Ms. Sherry Hawkins had requested to speak with Council regarding selling ornamental trees to Marion residents.

Ms. Hawkins was not present for this meeting

APPROVAL – SUBDIVISION PLAT: This item was held due to the required information not being submitted on time by the applicant.

PUBLIC HEARING – SUBDIVISION ORDINANCE AMENDMENT: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis gave a brief update on the proposed amendment to the City's Subdivision Ordinance. This amendment would add definitions for "minor subdivisions" that could be approved by staff and streamline the process. Such subdivisions would involve five or fewer lots and ten acres or less, and no new public or private streets, easements or utility extensions.

A brief discussion followed.

Mr. Jim Edwards of Isothermal Planning and Development Commission advised that many cities were using the minor subdivision process to make subdivision procedures simpler for applicants. There were no other citizens present to discuss this amendment.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little seconded by Councilman Owenby, Council voted unanimously to adopt the following Subdivision Ordinance Amendment as follows:

ORDINANCE
AMENDING CHAPTER 16
SUBDIVISION REGULATIONS
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows.

Section 1. That Chapter 16 of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 16, Article I, Section 16-5, Definitions is amended to include definitions for minor subdivisions and major subdivisions as follows:

Minor subdivision: The division of land involving no new public or private streets or roads, right-of-way dedications, easements, or utility extensions are required, where the entire tract to be subdivided is ten acres or less in size, where five or fewer lots are created by the subdivision, and all of the newly created lots conform to the minimum lot size, lot frontage and dimensional requirements of the Marion Zoning Ordinance and the Marion Subdivision Ordinance.

Major subdivision: All subdivision shall be considered major except for those defined as minor subdivisions.

Section 3. Chapter 16, Article I, Section 16-6, Application, is amended to as follows:

Sec. 16-6. Application.

Every subdivider of land within the corporate limits of the city shall submit to the city plats and required information pertaining to the subdivision which shall conform to the requirements set forth in these subdivision regulations

Section 4. Chapter 16, Article I, Section 16-8, Approval of plat to proceed sale, is amended to as follows:

Sec. 16-8. Approval of plat to precede sales.

No subdivider shall transfer or sell with reference to a plat any lot contained within a subdivision lying within the corporate limits of the city nor shall the city issue a building permit until such subdivision and plat have been granted final approval by the city council or the subdivision administrator in accordance with the procedures set forth in these subdivision regulations, and such plat shall have been duly recorded by the register of deeds for the county.

Section 5. Chapter 16, Article II, Section 16-30, Submission of a sketch plan and general information, is inserted as follows:

Sec. 16-30. Submission of sketch plan and general information

(a) Whenever any subdivision of a tract of land is proposed to be made, the subdivider shall submit to the city planner a sample sketch plan of the proposed subdivision, together with a sketch vicinity showing the location of the subdivision in relation to neighboring tracts, subdivisions, and roads; the boundaries of the tract and the portion of the tract to be subdivided; the total acreage to be subdivided, the existing and proposed uses of the land within the subdivision and adjoining it; the proposed street and lot layout; the name, address, and telephone number of the owner; the name, if any, of the proposed subdivision, streets and lots of adjacent developed or platted properties; and the zoning classification of the tract and of adjacent properties.

(b) This sketch plan will be returned to the subdivider within three (3) weeks of the submission date with recommended changes that are needed to bring the proposed subdivision into compliance with this article.

(c) All Minor Subdivision shall be approved accordiug to Section 16-31, all other subdivision shall be approved according to Section 16-32 through 16-34.

Section 6. Chapter 16. Article II, Section 16-31, Procedures for Review and Approval of Minor Subdivisions Is inserted as follows:

Sec. 16-31 Procedures for review and approval of minor subdivisions.

Minor subdivisions as defined herein shall be reviewed by the City of Marion Subdivision Administrator and approved according to the provisions of this section and the requirements of the Marion Subdivision Regulations and the Zoning Ordinance The minor subdivision review procedure may not be used a second time within three (3) years on any property less than 1500 feet from the original property boundaries by anyone who owned, had an option on, or any legal interest in the original minor subdivision at the time the subdivision received final plat approval. Prior to final plat approval, the applicants shall submit and provide the following information to the subdivision administrator:

(a) Evidence that the proposed definition in section 16-5. Definitions.
(b) Three blue line or black line copies and one mylar copy of the surveyed final plat of the tracts to be subdivided, indicated the acreage of each tract to be subdivided, completed by a licensed and registered land surveyor currently licensed and registered in the State of North Carolina,
(c) Conformance to the minimum lot size, lot frontage and dimensional requirements of the Ordinance
(d) Evidence from the Marion Public Works Department that each proposed lot has existing access to public water and public sewer.

The subdivision administrator is hereby authorized to approve the minor subdivisions upon finding that said subdivision meets the requirements of the Marion Subdivision Regulations The subdivision administrator shall certify the approval of the minor subdivision and the approved plat shall be signed by subdivision administrator. The applicant shall have the approved final plat recorded by the Register of Deeds of McDowell County within (30) days of approval

Certificate of Approval for Recording Plat. I certify that the final plat shown hereon complies with the City of Marion Subdivision Regulation and is approved by the City of Marion for recording in the McDowell County Register of Deeds Office.

_____ Subdivision Administrator, City of Marion

Date:_____

Section 7. Chapter 16, Article II, Section 16-32(a), Submission of a Preliminary Plat, is amended as follows:

(a) After recommendations of the sketch plan have been complied with, the subdivider shall submit to the City Planner three (3) black or blueline prints of the proposed subdivision. The preliminary plat shall depict or contain the following information:

(1) The proposed name of the subdivision;

(2) A sketch vicinity map showing the relationship between the proposed subdivision and the surrounding area,

(3) The boundaries of the tract or portion thereof to be subdivided, distinctly and accurately represented, with all bearings and distances shown;

(4) Scale denoted both graphically and numerically;

(5) North arrow and declination,

(6) The plans for proposed utility layouts, including sanitary sewers, water distribution lines, natural gas, telephone and electric service, illustrating connections to existing system Plans for water supply and sewerage disposal must be accompanied by letters of preliminary approval by the appropriate county and state authorities. Plans must show line sizes, the location of fire hydrants, blow-offs, manholes, pumps, force mains and gate valves, and shall include profiles based upon mean sea level datum for sanitary sewers and storm drains;

(7) Proposed street names. All streets must be designated public or private,

(8) The zoning classification of the tract to be subdivided and of adjoining properties;

(9) Site calculations to include acreage in total tract to be subdivided, total number of parcels created and the linear feet of the proposed streets;

(10) Proposed minimum building setback lines;

(11) The names of owners and adjoining properties and any adjoining subdivisions on record;

(12) Any proposed right-of-way, utility or other easements, their location, width, and purposes,

(13) Proposed streets, existing and platted streets on adjoining properties and in the proposed subdivision, rights-of-way, pavement widths, and approximate grades;

(14) Existing and proposed property lines, both on the tract to be subdivided and on adjoining properties; building and other structures, water courses; railroads, bridges, culverts, storm drains, both on the land to be subdivided and on the land immediately adjoining; corporate lines; township boundaries; and county lines.

(15) Proposed lot lines, lot and block numbers, and approximate dimensions;

(16) Date of plat preparation,

(17) The name of the township, county, and state in which the subdivision is located.

(18) The name, address, and telephone number of the owner, mortgagee, registered surveyor, land planner, architect, landscape architect and professional engineer responsible for the subdivision and the official seal of the registered land surveyor and professional engineer.

(19) Any other information considered by the city manager and the city council to be pertinent to the review of the preliminary plat.

Section 8. This ordinance shall become effective upon its adoption.
Adopted this the 17th day of February 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/ Clerk

Ordinance Number: O-04-02-17-03

PUBLIC HEARING – CDBG ECONOMIC RECOVERY GRANT: Mayor Clark opened the Public Hearing.

Mr. Jim Edwards of Isothermal Planning and Development was present for this Public Hearing.

He advised that the City's initial application for $97,000 from the Economic Recovery grant category was not awarded due to the limited amount of funds available for this demonstration category. However, after a request to reconsider the application from the City and regional officials, the Department of Commerce has agreed to provide the $20,000 that was requested for matching funds for an EDA planning grant. The funding will allow IPDC to prepare a Comprehensive Economic Development Strategy for the four counties of Region C. Preparation of the plan will position IPDC to apply for Economic Development Administration designation as an Economic Development District. No City matching funds will be required for the grant.

A discussion followed.

There were no citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the CDBG-ER grant award, and authorized the appropriate officials to execute all necessary documents and to take such actions as may be required to satisfy any remaining grant conditions, including the execution of a Sub-recipient Agreement to pass certain grant responsibilities to IPDC with regard to the matching funds for the EDA grant.

APPOINTMENTS – DOWNTOWN ADVISORY COMMITTEE: The City Manager advised that there are two openings for either two merchants or one merchant and one property owner on the Downtown Advisory Committee. Mr. Mike Ornberg and Ms. Doris McCurry have resigned from the Committee.

A brief discussion followed.

No appointments were made at this time. City Council will accept recommendations for Committee appointments from the Downtown Advisory Committee in March.

PARKING RECOMMENDATIONS – DOWNTOWN ADVISORY COMMITTEE: Ms. Patti Hart, Chairperson of the Downtown Advisory Committee, advised that members of the DAC and the DBA have met and would ask Council to consider the following recommendations related to downtown parking:

1. The installation of approximately eight parking directional signs in the downtown area, to direct motorists to City owned off-street parking lots.

2. The adoption of a $100 penalty for all persons receiving five or more parking tickets in a 30 day period.

3. The repaving or restriping of several downtown City and County parking lots.

Ms. Hart also mentioned that the DAC and DBA were working on a recommendation for a parking validation program, whereby the DBA would pay for parking tickets issued to persons ticketed while shopping in downtown businesses.

A discussion followed. Councilman Cuthbertson stated that he felt the main parking problem in downtown was related to Courthouse traffic, not from repeat offenders. He suggested that the $100 fine would not solve the problem until a solution to the Courthouse parking situation. Mayor Clark advised that the City and County Utility Committees had been in discussions regarding the joint acquisition of additional parking for jurors, County employees or the public.

Councilman Martin suggested that Council simply increase the parking fine from $5.00 to $10.00 as a first step.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to increase the $5.00 parking fine to $10.00 and to approve the request to place more parking directional signs in the downtown area.

Councilman Owenby suggested that the DAC could study whether one hour parking areas downtown would be more effective than two hour parking areas. Councilman Cuthbertson suggested that the DAC could address the Courthouse parking situation with the County.

TREE BOARD RECOMMENDTIONS: NORTH LOGAN STREET: The City Manager advised that the Tree Board had recommended that the Bradford pear trees on North Logan Street be removed. These trees have grown to the point of affecting the adjacent sidewalks. The Tree Board recommended that some of the holly trees being relocated from the back of the West Henderson Street parking lot to make room for the depot driveway could be planted in place of the Bradford pears, with the rest of the hollies being planted at West Marion Park.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to remove the Bradford pear trees on North Logan Street and to replace them with holly trees that are being removed from the back of the West Henderson Street Parking Lot.

ORDINANCE – TREE/BURSH PICKUP RULES: The City Manager advised that this ordinance would clarify the rules for tree and brush pickup to state that the City would not pickup limbs and brush cut by professional tree trimmers or landscapers, or by employees of businesses or non-profit organizations located in residential units eligible to receive yard waste collection.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to adopt the following Ordinance:

RESOLUTION OF INTENT TO ANNEX – BALDWIN AVENUE:

The City Manager advised that the adoption of a resolution of intent to annex started the annexation process. He gave a general description of the area to be annexed, effective June 30, 2004, and stated that a public informational meeting and public hearing would be held, as required by State law.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNING at a point on the current Marion Corporate Limits, said point also being on the northern boundary of Lot 2870 in Block 19 on McDowell County Tax Map 1711.05. Thence following the northern boundary of said Lot 2870 approximately 12 feet in a easterly direction to a point, said point being at the northeastern corner of said Lot 2870. Thence following the eastern boundary of said Lot 2870 in a southerly direction approximately 73 feet to a point, said point being at the intersection of the eastern boundary of said Lot 2870 and the northern boundary of the southern Railroad right of way. Thence crossing said right of way boundary in a southerly direction in a straight line approximately 131 feet to a point. Said point being at the intersection of the northern most corner of Lot 1597 in Block 19 on McDowell County Tax Map 1711.05 and the southern margin of the Southern Railroad right of way. Thence following the eastern boundary of said Lot 1597 and Lot 2435 in Block 19 on McDowell County Tax Map 1711.05, first approximately 75 feet in and southerly direction and then approximately 51 feet in a westerly direction, then approximately 164 feet in a southeasterly direction to a point. Said point being at the intersection of the eastern most corner of said Lot 245 and the northern boundary of State Street Extension. Thence crossing State Street Extension in a straight line in a southerly direction approximately 31 feet to a point. Said point being at the intersection of the northern most corner of Lot 2342 in Block 19 on McDowell County Tax Map 1711.05 and the southern boundary of State Street Extension. Thence following the northeastern boundary of said Lot 2342 and Lots 2266, 2281 and 3105, all being in Block 19, on McDowell County Tax Map 1711.05 in a southeasterly direction approximately 287.5 feet to a point. Said point being at the intersection of the eastern most boundary of said Lot 3105 and the northwestern boundary of Matilda Avenue. Thence crossing the right of way of Matilda Avenue in a southeasterly direction in a straight line approximately 40 feet to a point. Said point being at the intersection of the northern most corner of Lot 3044 in Block 19 of McDowell County Tax Map 1711.05. Thence following the northeastern boundary of said Lot 3044 and Lots 3968 and 4845, both lots being in Block 18, on McDowell County Tax Map 1711.05, first approximately 152 feet in a southeasterly direction, then approximately 45 feet in a northeasterly direction, then approximately 157 feet in a southeasterly direction to a point, said point being at the intersection of the eastern most corner of said Lot 4845 and the northern margin of Clark Street. Thence crossing the right of way of Clark Street in a straight line approximately 30 feet to a point on the southern boundary of said right of way. Thence following the southern boundary of said right of way in a northeasterly direction approximately 122 feet to a point, said point being at the intersection of said right of way and the northern most corner of Lot 5626 in Block 18 on McDowell County Tax Map 1711.05. Thence following the eastern boundary of said Lot 5626 and Lots 4499, 4491, 4363, 4265 and 4260, all being in Block 18, on McDowell County Tax Map 17110.05, first approximately 273 feet in a southerly direction, then approximately 68 feet in a westerly direction, then approximately 151 feet in a southerly

direction, then approximately 75 feet in westerly direction, then approximately 212 feet in a southerly direction to a point, said point being at the intersection of the southeastern corner of said Lot 4260 and the northern boundary of the right of way of Leach Street. Thence crossing said right of way in a straight line in a southeasterly direction approximately 50 feet to a point, said point being at the intersection of the southern boundary of said right of way and the northeastern corner of Lot 4088 in Block 18 on McDowell County Tax Map 1711.05. Thence following the eastern boundary of said Lot 4088 and Lots 4998 and 4991 in Block 17 on McDowell County Tax Map 1711.05 approximately 267 feet in a southerly direction to a point, said point being at the intersection of the northern boundary of the right of way of Perry Street and the south eastern corner of said Lot 4991. Thence crossing said right of way in a southerly direction in a straight line approximately 40 feet to a point on the southern boundary of said right of way. Thence following the southern boundary of said right of way in a easterly direction approximately 155 feet to a point, said point being a the intersection of the southern boundary of said right of way and the north eastern corner of Lot 5796 in Block 17 on McDowell County Tax Map 1711.05. Thence following the eastern boundary of said Lot 5796 in a southerly direction approximately 133 feet to a point at the intersection of the southeastern corner of said Lot 5796 and the current Marion Corporate Limits. Thence following the current Marion Corporate Limits approximately 3220.0 feet in a westerly and northerly direction to the point of BEGINNING.

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 5, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A public hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 20, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the pubic informational meeting. The statement of financial impact contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 17th day of February, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

RESOLUTION OF INTENT TO ANNEX – GARDEN CREEK ROAD AREA: The City Manager advised that the adoption of a resolution of intent to annex started the annexation process. He gave a general description of the area to be annexed, effective June 30, 2004, and stated that a public informational meeting and public hearing would be held, as required by State law.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNING at a point in the current Marion Corporate Limits, said point being at the intersection of the eastern most corner of Lot 6521 in Block 13 on McDowell County Tax Map 1702.03 and the southwester border of Garden Creek Road (SR #); thence crossing Garden Creek Road in an easterly direction in a straight line approximately 100 feet to a point. Said point being at the southern most corner of Lot 9779, in Block 13 on McDowell County Tax Map 1702.03, said point also being on the northern boundary of Moore Drive. Thence following the southeastern boundary of said Lot 9779, in a northeasterly direction approximately 390 feet to a point. Said point being at the southeastern corner of said Lot 9779, said point also being on the Northern boundary of Moore Drive. Thence following the northeastern boundary of said Lot 9779, first approximately 188 feet in a northerwesterly direction, then approximately 105 in a northeasterly direction, then approximately 344.8 feet in a northwesterly direction to a point. Said point being the northern most corner of said Lot 9779. Thence following the northwestern boundary of said Lot 9779 in a southerwesterly direction approximately 462 feet to a point. Said point being at the intersection of the western most corner of said Lot 9779 and the northeastern boundary of Garden Creek Road. Thence crossing Garden Creek Road in a straight line in a Southwesterly direction approximately 40 feet to a point. Said point being on the current Marion Corporate Limits. Thence following the current Marion Corporate Limits approximately 326 feet in a southeasterly direction to the point of BEGINNING.

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 5, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A pubic hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 20, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the pubic informational meeting. The statement of financial impact contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 17th day of February, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

R-02-09-03-1

RESOLUTION OF INTENT TO ANNEX – HILLCREST DRIVE:

The City Manager advised that the adoption of a resolution of intent to annex started the annexation process. He gave a general description of the area to be annexed, effective June 30, 2004, and stated that a public informational meeting and public hearing would be held, as required by State law.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

BEGINNING

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNING at a point on the current Marion Corporate Limits, said point be being at the Northern most corner of Lot 6211, in Block 37 on McDowell County Tax Map 1701.10, thence following the Northern

boundary of said Lot 8211 in a Southwesterly direction approximately 210 feet to a point. Said point being at the intersection of the Western most corner of said Lot 8211 and the Northern most boundary of Lot 7125 in Block 37 on McDowell County Tax Map 1701.10. Said point also being at an eastern corner of Lot 5260 in Block 37 on McDowell County Tax Map 1701.10. Thence following the boundary of said Lot 5260, first approximately 192 feet in a northwesterly direction, then approximately 190 feet in a Southwesterly direction, then approximately 202 feet in a southeasterly direction to a point. Said point being at the northern most corner of Lot 6014 in Block 37 on McDowell County Tax Map 1701.10. Thence following the northwestern boundaries of said Lot 6014 and Lot 5090 in Block 37 on McDowell County Tax Map 1701.10 and Lot 5985 and Lot 5868 in Block 36 on McDowell County Tax Map 1701.10 in a southwesterly direction approximately 260 feet to a point. Said point being at the western most corner of said Lot 5868, said point also being on the Marion Corporate Limits. Thence following the current Marion Corporate Limits in a northeasterly direction approximately 550 feet, then approximately 175 feet in a northerly direction to the point of BEGINNING.

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 5, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A pubic hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 20, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the pubic informational meeting. The statement of financial impact contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 17th day of February, 2004.

A. Evprette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

R-02-09-03-1

RESOLUTION OF INTENT TO ANNEX – LAURELWOOD DRIVE AREA: The City Manager advised that the adoption of a resolution of intent to annex started the annexation process. He gave a general description of the area to be annexed, effective June 30, 2004, and stated that a public informational meeting and public hearing would be held, as required by State law.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Resolution:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNING at a point on the current Marion Corporate Limits, said point being in the center of Lenon Avenue thence following in a straight line in a westerly direction approximately 20 feet to a point, said point being at the intersection of the northern boundary of Lenon Avenue and the eastern boundary of Laurelwood Drive. Thence following the eastern boundary of Laurelwood Drive in a northwesterly direction approximately 736 feet to a point, said point being at the northern most corner of Laurelwood

Drive. Thence crossing Laurelwood Drive in a straight line in a southwesterly direction approximately 60 feet to a point, said point being at the intersection of Laurelwood Drive and the northern most corner of Lot 4979 in Block 61 on McDowell County Tax 1702.19. Thence following the northwestern boundary of Lot 4979 approximately 136 feet in a southwesterly direction to a point. Said point being at the western most corner of said Lot 4979, said point also being the northern most corner of Lot 3955 in Block 61 on McDowell County Tax Map 1702.19. Thence following the western boundary of said Lot 3955, approximately 79 feet to a point, said point being at the northern most corner of Lot 3524 in Block 61 on McDowell County Tax Map 1702.19. Thence following the eastern and southern boundaries of said Lot 3524 in a southerly, then easterly, then westerly direction approximately 1766.5 feet to a point, Said point being at the intersection of the southwestern corner of said Lot 3524 and the eastern boundary of Victory Drive (SR 1504). Thence crossing Victory Drive in a straight line in a southwesterly direction approximately 35 feet to a point, said point being at the intersection of the western boundary of Victory Drive a northeastern corner of Lot 9237 in Block 51 on McDowell County Tax Map 1702.19. Thence following the western boundary of Victory Drive approximately 200 feet in a southerly direction to a point, said point being at the intersection of the western boundary of Victory Drive and a northeastern corner of Lot 8069 in Block 51 on McDowell County Tax Map 1702.19, said point also being the eastern most corner Lot 0178 in Block 61 on McDowell County Tax Map 1702.19. Thence following the northern and western boundaries of said Lot 8069 in a westerly and southerly direction approximately 980.6 feet to a point, said point being at the intersection of the southwestern corner of said Lot 8069 and the northern boundary of Lot 6970 in Block 50 on McDowell County Tax Map 1702.19. Thence following the northern boundary of said Lot 6970 in a westerly direction approximately 319 feet to a point, said point being at the intersection of the western most corner of said Lot 6970 and the eastern boundary of Airport Road (SR 1500). Thence crossing Airport Road in a straight line in a westerly direction approximately 45 feet to a point, said point being on the western boundary of Airport Road. Thence following the western boundary of Airport Road in a southerly direction approximately 130 feet to a point, said point being at the intersection of the northern most corner of Lot 3479 in Block 50 on McDowell County Tax Map 1702.19 and the western boundary of Airport Road. Thence following the western boundary of said Lot 3479 in a southwesterly direction approximately 710.0 feet to a point, said point being at the southwestern corner of said Lot 3479. Said point also being the northwestern corner of Lot 5820 in Block 59 on McDowell County Tax Map 1701.07. Thence following the western boundary of said Lot 5820 in a southerly direction approximately 184 feet to a point, said point being at the western most corner of said Lot 5820, said point also being on the northern boundary of Lot 8161 in Block 40 on McDowell County Tax Map 1702.03, Thence following the northern boundary of said Lot 8161 in a easterly direction approximately 60.2feet to a point, said point being the eastern most corner of said Lot 8161, said point also being on the current Marion Corporate Limits. Thence following the current Marion Corporate Limits in a generally easterly direction approximately 3207.0 feet to the point of BEGINNING.

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 5, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A public hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 20, 2004, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting. The statement of financial impact contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 17th day of February, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

AWARD CONTRACT – COMPUTER HARDWARE/SOFTWARE PURCHASE: The City Manager advised that for the past year City staff has talked to various software companies about need accounting and purchasing software and associated computer hardware to made our accounting system compliant with GASB 34 accounting regulations.

City Auditors have very strongly encouraged us to look as such a purchase.

The following bids were received:

Logics	$44,432.00
CSI	$47,631.50
Southern Software	$27,935.50

The City Manager advised that Southern Software is not GASB 34 compliant.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to award a contract in the amount of $44,432.00 to Logics for the purchase of computer hardware and software.

UNPAID REAL TAXES: The City Manager presented Council with a memo from Tax Collector Claudia Hill advising that as stated in G.S. 105-369(a), the municipal tax collector must report to governing board total unpaid 2003 taxes that are liens on real property.

As of the date of this memo the amount of unpaid 2003 real property taxes is $143,266.25.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the report of 2003 unpaid real property taxes, as provided by the Tax Collector

UNPAID REAL TAX ADVERTISMENT: The City Manager presented a memo from Tax Collector Claudia Hill, stating that as required by G.S. 105-369(c), she must advertise tax liens on Real Property at least once between March 1st and June 30th. Ms. Hill recommend advertising the 2003 Real Property taxes in the McDowell News on Wednesday, May 5, 2004.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to advertise in the McDowell News on May 5, 2004.

COUNCILMAN COMMENTS:
Councilman Cuthbertson advised that the Asheville Citizen Times is still advertising the City Council Meetings as the first Tuesday following the first Monday, and two weeks thereafter.

Councilman Edwards asked if the County has agreed to the offer to inspect all County owned buildings. The City Manager stated that the County Manager had received this offer enthusiastically and that a letter stating the intent of the City to make this change as soon as possible had been sent to the County.

The City Manager advised the paper would be contacted about the proper Council meeting schedule.

Mayor Clark advised that the Western North Carolina Local Government Caucus would hold its Executive Committee meeting at Bruce's on Thursday, February 19, at 12:00 Noon. He invited Council members to attend. Mayor Clark also reported that he had set up a meeting, in conjunction with the National League of Cities, in Washington, D.C. with the staffs of U.S. Senators and Representatives, on Friday, March 5 to discuss funding issues in Western North Carolina.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSED SESSION: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to go into closed session to discuss the location of industry, as authorized by G.S. 143-318.11 (a)(4).

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session.

Mayor Clark announced no action was taken during Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Councilman voted to adjourn this meeting until Saturday, February 28, 2004 at 8:00 A.M. at City Hall at which time City Council will hold a closed session to discuss the location of industry and will continue the Planning Session.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met for a Special Called Meeting (Planning Session) on Saturday Morning February 28, 2004 at 8:00 A.M. in the City Hall Conference Room located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Mike Edwards was not present for this session due to health reasons.

OTHERS PRESENT: Bob Boyette, City Manager

PLANNING SESSION:

The following Topics were discussed during the Planning Session:

VI. Streets and Sidewalks
VII. Sanitation
VIII. Fleet Maintenance
IX. Public Works Administration
X. Parks and Recreation

The Mayor and City Council gave general guidance on the preparation of the 2004-05 budget and on priorities for City projects.

CLOSED SESSION:

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(4) to discuss a matter involving the location of industry.

REGULAR SESION:

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to return to Regular Session. Mayor Clark announced that no action had been taken during the Closed Session.

ADJOURN:

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adjourn the meeting.

The Planning Session will continue following the March 2, 2004 City Council Meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 2, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Mr. & Mrs. Louis Turner 285 Montevista Avenue, Marion, NC 28752; Ms. Scottie Edwards, Logan Street, Marion NC 28752; Mr. & Mrs. Kent Brown, 250 Blue Heron Drive, Marion, NC 28752; Brandi Helms, 1202 Epley Drive, Marion, NC 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Mike Edwards selected the Citizen of the month for March.

LOUIS TURNER

Councilman Edwards advised that Mr. Louis Turner was born in Newport News, Virginia. He graduated from Mars Hill College and has been married to Patti for fifteen years. They have four daughters and four grandchildren. They attend West Court Street Baptist Church.

Mr. Turner is described as a workaholic, he has had five attacks, one mini stroke and a heart transplant, and still refuses to go on disability.

He has never sought praise for his acts of kindness or generosity, and even had to be told an untruth to get him to this meeting.

He has bought medicine, fuel, groceries and even cars for various persons who were in need.

Mayor Clark, Council Members, friends and family members all shared kind words about Mr. Turner.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda excluding B & C as follows:

A. Approval of Minutes - February 17, 2004

B. Adopt Ordinance Amending Chapter 1 General Provisions of General Code

ORDINANCE
AMENDING CHAPTER 1
GENERAL PROVISIONS
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 1, General Provisions, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 1 is amended by deleting Section 1-16 (a) in its entirety and replacing it with the following:

Sec. 1-16. Civil citations--Penalties for violations.

(a) Any person determined to be in violation of any of the provisions of the chapters and/or appendices identified in section 1-21 shall receive a civil citation for a penalty of fifty dollars ($50.00) for such violation, with the exception of violators of parking regulations or ordinances, which shall receive a civil citation for a penalty in the amount of ten dollars ($10.00) for each such violation, unless a different penalty is specified by state statute or specific notice. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by a police officer or other designated code enforcement officer. Notification shall be effective if a

police officer or other designated code enforcement officer advised the suspected offender of the violation either in person, by certified mail to the violator's last known address, or by any other means provided for in the North Carolina Rules of Civil Procedure; provided notification of violation of parking regulations or ordinances may be by placing a parking ticket on the offending vehicle.

Section 3. This ordinance shall become effective on April 1, 2004.

Adopted this the 2nd day of March, 2004

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-04-03-02-1

C. Adopt – Ordinance Amending Chapter 18 Traffic of the City Code

ORDINANCE
AMENDING CHAPTER 18
TRAFFIC
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1 That Chapter 18, Traffic, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2 Chapter 18 is amended by deleting Section 18-261 in its entirety and replacing it with the following:

Sec. 18-261. Charges and fees.

(a) The owner of any motor vehicle parked in any lot designated as a two-hour parking lot, for a continuous period of time in excess of two (2) hours shall pay to the city a parking fee of ten dollars ($10.00). In addition, a fee of ten dollars ($10.00) shall be charged for each hour, or portion thereof, the vehicle is left parked beyond three (3) hours.

(b) The owner of any motor vehicle found parked in any lot described in section 18-256 and designated as an all day parking lot, between the hours of 1:00 a.m. and 7:30 a.m. shall pay a parking fee of ten dollars ($10.00) and for each separate day an additional parking fee of ten dollars ($10.00) shall be charged. Said vehicle shall not be removed until all charges are paid in full.

Section 3. This ordinance shall become effective on April 1, 2004.

Adopted this the 2nd day of March, 2004

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-04-03-02-2

APPROVE POLICY – SEWER SERVICE TO PROPERTIES AT LOWER ELEVATION THAN AVAILABLE SEWER LINES: The City Manager advised that, as discussed at the Planning Session, Council had a desire to change the City's policy for sewer service to properties below street elevation. He stated that this proposed new policy would eliminate automatic approval for septic tanks in such situations, keep in place the provisions to allow connection to City sewer service with no connection fees, provided the property owner purchases and pays all costs for an individual pump station for their property, and would allow property owners with property more than 300 feet from a gravity sewer line and below the street grade to request approval of a septic tank. Such a request for a septic tank would be subject to case-by-case review by City Council. The City Manager noted that the utility Committee had reviewed and endorsed the policy. Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following policy:

CITY OF MARION
POLICY REGARDING SEWER SERVICE FOR PROPERTIES AT LOWER ELEVATIONS THAN AVAILABLE SEWER LINES

Due to varying lot elevations within the City Limits and the cost and impracticality of being able to provide sewer service to every lot by gravity, it shall be the policy of the City of Marion to provide the following options for sewer service for those properties that are not served by a gravity sewer line.

1. The owner of any lot within the City Limits, which lot is not served by a gravity sewer line, may install or have installed a sewerage pumping system to pump the wastewater from such lot to a City gravity sewer line. The sewerage pumping system shall be installed at the owner's expense; however, the City shall waive the tap fee and cost recovery charge for this sewer line connection, to offset the cost of the sewerage pumping system. The owner or occupant shall be required to pay the same City sewer charges as other customers. Any waiver of charges allowed under this policy must be approved by the City Manager

2. In situations where gravity sewer lines are greater than three hundred (300) feet from a property line, or where the difference between the property elevation and the elevation of the nearest City gravity sewer line is so extreme as to make installation of a sewerage pumping system impractical, the owner may request permission from the City Council to install a septic tank, if allowed by the McDowell County Health Department. Such request shall be made in writing to the City Manager. Approval of both the City Council and the McDowell County Health Department will be required in order for the property owner to be allowed to install the septic tank inside the City Limits

3. If any septic tank fails or if the McDowell County Health Department and/or the City Council do not authorize the installation or repair of a septic tank, where a gravity sewer line is greater than three hundred (300) feet from a property, the owner will be required to have installed a sewerage pumping system under the conditions stated in Section 1 above.

The previous policy adopted on September 18, 1990 is hereby repealed.

Adopted this the 2nd day of March, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

REQUEST – MACA USE OF COMMUNITY BUILDING BASEMENT FOR SOS PROGRAM: The City Manager presented Council with a letter from Ms. Gina Degrechie, Director of MACA, requesting the use of the basement area of the Community Building at no charge for the SOS Program summer of 2004. The City Manager noted that the program had taken place without incident in past years; however, trash and vandalism were a problem last summer. Ms. Degrechie had pledged that MACA would provide better oversight of the program this coming summer.

Councilman Billy Martin will be directing the program this year. Mayor Clark asked if Council wished to excuse Councilman Martin from voting on this matter. Council agreed by consensus that Councilman Martin would not have a conflict of interest in voting on this matter.

A brief discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request, provided that MACA does take responsibility for damages and provide insurance for the program.

AWARD CONTRACT – POLICE DEPARTMENT GRANT VEHICLE/EQUIPMENT: The City Manager presented Council with a memo from Purchasing Agent Kathy Shook with the following bids for a fully equipped patrol car for the Police Department::

Vic Bailey Ford, Spartanburg SC	$ 38,634.00
Bobby Jones Ford, Atlanta GA	40,061.10
Police Motors Division, Miami Fl	46,782.00.

Local dealers, Legendary Ford and Jim Cook Chevrolet declined to bid, stating their operations are geared more toward supplying utility trucks to the City and they would not be able to equip and deliver a police vehicle in a timely and affordable manner.

Of the remaining bid proposals received, Phillips Ford, of Carthage, NC was unable to provide some of the special equipment in the requested sixty (60) days from date of contract award and other dealers expressed a similar concern regarding delivery time.

The City Manager noted that this vehicle and associated equipment would be 75 percent funded through a grant from the Governor's Highway Safety Program. The bids included nearly $7,000 in expenses for a mobile data terminal/laptop computer, along with all associated equipment for a patrol car, including lights, radio, radar and an in-car camera.

A lengthy discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the low bid of Vic Bailey Ford for the purchase of the Police Department grant patrol car in the amount of $38,634.00.

AWARD CONTRACT – BRUSH CHIPPER The City Manager presented Council with a memo from Purchasing Agent Kathy Shook with the following bids for the purchase of a brush chipper for the Sanitation Department:

J.P. Carlton, Spartanburg, SC	$ 22,275.00
Vermeer, Charlotte, NC	22,724.00
Blade Equipment, Clayton, NC	23,917.60
Adams Equipment, White Plains, GA	28,768.00

All bids are qualified and meet with the specifications. The City Manager noted that $22,000 had been included in the 2003-04 budget for this purchase. He also advised that the purchase of this chipper would mean that the City would have two chippers, making the yard waste collection effort speedier and more efficient.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to accept the low bid of J.P. Carlton for the purchase of a brush chipper for the Sanitation Department in the amount of $22,275.00.

APPROVE ANNEXATION REPORT – BALDWIN AVENUE ANNEXATION AREA: The City Manager advised that the next required step in the annexation process is the adoption of the annexation report. Each Council Member was presented with an annexation report prepared by Ms. Lovina Smith demonstrating that the Baldwin Avenue area meets State requirements for annexation and that the City will provide the area with required services in compliance with State Law. A copy of this report can be found on file in Ms. Smiths Office located at City Hall.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the annexation report as presented.

APPROVE ANNEXATION REPORT – GARDEN CREEK ROAD ANNEXATION AREA: The City Manager advised that the next required step in the annexation process is the adoption of the annexation report. Each Council Member was presented with an annexation report prepared by Ms. Lovina Smith demonstrating that this section of Garden Creek Road meets State requirements for annexation and that the City will provide the area with required services in compliance with State Law. A copy of this report can be found on file in Ms. Smiths Office located at City Hall.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the annexation report as presented.

APPROVE ANNEXATION REPORT – HILLCREST DRIVE ANNEXATION AREA: The City Manager advised that the next required step in the annexation process is the adoption of the annexation report. Each Council Member was presented with an annexation report prepared by Ms. Lovina Smith demonstrating that the Hillcrest Drive area meets State requirements for annexation and that the City will provide the area with required services in compliance with State Law. A copy of this report can be found on file in Ms. Smiths Office located at City Hall.

Upon a motion by Councilman Little, seconded by Councilman Owenby, , Council voted unanimously to accept the annexation report as presented.

APPROVE ANNEXATION REPORT – LAURELWOOD DRIVE ANNEXATION AREA: The City Manager advised that the next required step in the annexation process is the adoption of the annexation report. Each Council Member was presented with an annexation report prepared by Ms. Lovina Smith demonstrating that the Laurelwood Drive area meets State requirements for annexation and that the City will provide the area with required services in compliance with State Law. A copy of this report can be found on file in Ms. Smiths Office located at City Hall.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, , Council voted unanimously to accept the annexation report as presented.

PLANNING BOARD ALTERNATE APPOINTMENTS: The City Manager asked if anyone had any suggestions regarding for alternate positions for the Planning Board.

A brief discussion followed. Council agreed to continue to seek persons to appoint to the Planning Board. Councilman Edwards suggested that the City advertise that there're were vacancies on the Planning Board and that applications were being sought. The City Manager stated he would have notices put in the newspaper and on the City Channel.

No action was taken.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN MARTIN advised that he had received a phone call from Ms. Debbie Simpson of Circle Street in Clinchfield about placement of a carport on her property.

The City Manager advised that this was a zoning matter and Ms. Simpson had spoken with two City Employees that day about the situation. He stated that the City Planner and Building Inspector had attempted to inform Ms. Simpson of City ordinances and her options for putting in the carport.

COUNCILMAN LITTLE advised that while he and his wife were walking, in the downtown area in front of the Police Department, his wife asked if the Marion Police Department would be available to give a self-defense class to college age students.

A discussion followed.

Chief Mika Elliott advised that he would made some contacts and see what was available in this area for college students.

COUCNILMAN CUTHBERTSON advised that he would like to see more Police visibility on Main Street.

Chief Elliott advised of current efforts underway to get more visibility of the officers, and added that he would personally strive to make himself and his officers more visible.

COUNCILMAN OWENBY advised of some large amounts of street trash on the sidewalk on Park Avenue. This trash should be picked up on the regular collection day on Friday.

MAYOR CLARK stated that he was pleased with how well the Police Department espansion was going and how nice the building looked.

Mayor Clark also informed Council of the passing of former City Manager Earl Daniels' father. Jack Daniels passed away in Washington, NC the previous Saturday. The City sent flowers to the funeral.

MAIN/FORT STREET CURB AND GUTTER:

The City Manager advised that Mr. Chad Toney would soon be building his new office on Main Street, and that perhaps the City could assist with some of the curb and gutter work.

A discussion followed.

The Street Committee will meet on Wednesday, March 11, 2004 at 9:00 A.M. to look at this item.

Mayor Clark suggested that heavy trucks and other various equipmentthat will be used during construction of the new building at Main and Fort Streets be asked to use Fort Street instead of Main Street.

CONTINUATION OF PLANNING SESSION FROM FEBRUARY 28, 2004:

The following topics were discussed during the Planning Session:

XI. Police
XII. Fire
XIII. Purchasing
XIV. Public Buildings and Grounds
XV. Other Discussion Issues/Priorities for 2004-05 and Beyond

The Mayor and City Council gave general guidance on the preparation of the 2004-05 budget and on priorities for City projects. The 2004 Planning Session was completed with the discussion items listed above.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 16, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Suzy Davis, City Planner, also served this night as Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: A.D. Poteat , Box 643 Marion, NC 28752; Gaye Noblitt, 101 Pine Street, Marion, NC 28752; Mr. & Mrs. Paul Lingerfelt, 85 Bostic Street, Marion, NC 28752; Daniel McKinney, 409 September Drive, Marion, NC 28752; Kyle Boyd, 602 Hensley Road, Marion, NC 28752; Stephen Holloway, 42 Tight Run Road, Marion, NC 28752; Clay and Jon Gillian 1679 Tight Run Road, Marion, NC 28752; Ethan, Andrew and Kevin Walsh, 39 Griggs Road, Old Fort, NC 28762; Tommy McKinney 409 September Drive, Marion, NC 28752; Chet Effler 207 Lakeview Drive, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - February 28, 2004 Regular Session
February 28, 2004 Closed Session
March 2, 2004 Regular Session

B. Endorse Proclamation - Litter Sweep Spring 2004: Endorse Proclamation of the Governor regarding the Statewide Litter Sweep scheduled in April.

C. Approve Waiver of Bulk Collection Charges for Litter Sweep Spring 2004: Approve waiver of charges for collections of bulky items during the period April 19-23, 2004.

D. Approve blocking off Main Street – Car Shows: The MOPAR club will have two car shows this year to be held on Saturday, June 19 and Saturday, October 2. Main Street between Fort Street and Henderson Street will be blocked off both days between 4:00 p.m. and 8:00 p.m.

E. Approve Budget Amendment:

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(Sixth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. Water and Sewer Fund Revenues, Account Number 10-353-0200, Fund Balance Appropriated, is increased from $407,917 to $498,109.

b. Water and Sewer Fund Expenditures, Non-Departmental, Account Number 10-660-8000, Capital Outlay, is increased from $0 to $90,192

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 16th day of March, 2004

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-03-16-1

F. Approve Personnel Policy Amendment:

The amendment below provides for revised appointment procedures for certain City employees, allowing for appointment of the positions by the City Manager rather than the City Council.

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article II, General Provisions, is amended by deleting Section 5, Responsibility of City Council, in its entirety and replacing it with the following:

Section 5. Responsibility of City Council

The City Council will establish personnel policies and rules, including the classification and pay plan.

The position of City Clerk is appointed, promoted, suspended and dismissed by the City Council upon a recommendation of the City Manager. City Council shall be consulted and involved in the interview process and in reviewing candidates for the positions of Police Chief and Fire Chief, to the degree deemed necessary by the City Council and City Manager; however, the final hiring decision and appointment shall be made by the City Manager.

The City Council will adopt or provide for rules and regulations, resolutions or ordinances concerning personnel policies and other measures that promote the hiring and retention of capable, diligent, and honest employees under the authority of the North Carolina General Statutes, to be administered by the City Manager.

The City Council will approve all payroll deductions from employees' payroll checks to outside companies offering a product which could benefit the employee. Some examples include short-term disability, cancer coverage, vision coverage, etc.

This amendment shall become effective upon its adoption.

Adopted this the 16th day of March, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

BOY SCOUT TROOP 818: Mayor Clark welcomed and thanked members of Boy Scout Troop 818 for attending this meeting.

Mayor Clark recognized Scout Leader Chet Effler and all the Scouts introduced themselves.

Mayor Clark and Council members commended the scouts and welcomed them.

PUBLIC APPEARANCE – A.D. POTEAT: Mr. A.D. Poteat appeared before Council to advise of a problem he is having with four-wheelers on his property. He has been in contact with the Police Department and was advised to post the property for no trespassing. Mr. Poteat stated that the problem involves adults riding four wheelers and damaging his property. Mr. Poteat stated that, in his opinion, since the property has been annexed into the City, the City has a vested interest in his property and should help him solve this problem.

Chief Elliott stated he would communicate with Mr. Poteat regarding his property and that the Police Department would do its best to try to catch any persons trespassing on the property.

Mr. Poteat also complained about receiving a ticket for parking in a handicap parking space at the Winn-Dixie Store without a handicap sign. He stated that he does not have a handicap sign, but feels he should not have been ticketed.

PUBLIC APPEARANCE - EASTFIELD COMMUNITY PROEPRTY OWNERS – REQUEST ANNEXATION: Several Eastfield Community residents were present to request that the Eastfield area be annexed.

Ms. Gaye Noblitt was present for this discussion and advised that there were more persons interested in being annexed than not. Mr. Paul Lingerfelt stated that the neighborhood needed, and could benefit from, City services.

A lengthy discussion followed. Mayor Clark noted that he felt the City should seek to annex the area and provide the necessary services. Councilman Owenby stated that Council had to consider the cost of providing services and the input of annexing the area on the rest of the City. Councilman Edwards stated that if the neighborhood generally supported the idea of annexation, that he could likely support it.

Council directed the City Manager to schedule a Community Meeting at Eastfield Elementary School in the near future to obtain input from the community about annexation.

PUBLIC HEARING – ZONING AMENDMENT – SENIOR HOUSING: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that this amendment would provide a definition for "Senior Housing" and differentiate this type of development from other multi-family units. The amendment would also allow Senior Housing as a special exception in the R-2 District, and provide for a lower parking requirement for Senior Housing, at one space per dwelling unit. Ms. Davis reported that the Planning Board had voted unanimously to recommend the approval of this amendment.

There were no Citizens here to discuss this amendment.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article IV. Definitions and terms used in the ordinance, Section 400. Definitions is amended to add the following definition of an senior housing:

> Senior Housing- an independent living facility providing multiple 1-2 bedroom residential dwelling units occupied only by senior citizens that are fifty-five years and older and persons with disabilities.

Section 3. Appendix A, Article VII. General Provisions, Section 702. Off-street parking requirement, to include:

> Senior Housing--One (1) spaces for each dwelling unit

Section 4. Appendix A, Article VIII. Use Requirements by District, Section 802.3. Special Exception, to include senior housing as a special exception in the R-2 District:

> **802.3 Special Exceptions.** The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance:
> (12) Senior Housing

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 16th day of March 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-04-03-16-04

PUBLIC HEARING – ZONING AMENDMENT – DOWNTOWN SANDWICH BOARD SIGNS: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that this amendment would provide for allowances for "Sandwich Board Signs" in the overlay district. The Downtown Advisory Committee and the Planning Board have both recommended the approval of this recommendation. However, the Planning Board suggested some additional criteria beyond what was recommended by the DAC: that the signs only be permitted within three feet of the building and that no more than one sign per entrance be allowed. This amendment would ensure that the City is requiring our downtown businesses to abide by the law for placemen of portable signs. Ms. Davis advised that it is typical for cities to make some allowances for these types of signs in the downtown area, since the signs are designed to be read by pedestrians more so than motorists.

A lengthy discussion followed. It was the consensus of Council to approve the amendment, with a maximum size allowance of four square feet and restrictions stating that the signs could only be used to advertise menus or specials of businesses.

There were no citizens present to discuss this zoning amendment.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to adopt the Zoning Amendment as follows:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII. General Provision. Section 706.11 is amended to add the following:

(6) In the DO, Downtown Overlay District, commercially zoned properties, free-standing portable signs are permitted subject to the following requirements:

(A) Only permitted in the Downtown Overlay District
(B) Only permitted within three feet of the building
(C) Inside during off (closed) hours
(D) No more than one per entrance
(E) No more than four square feet per side
(F) Only used to list special or menus

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 16th day of March 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-04-03-16-05

PUBLIC HEARING – REZONING – RIDGE ROAD: Mayor Clark opened the Public Hearing. City Planner Suzy Davis advised that a request had been made by Mr. Allen Gurley to rezone the back eight acres of this property that fronts on Ridge Road and Highway 70 East from M1, Industrial to R-2 General Residential. This property will house the 32 unit Ridgecrest apartments, a senior housing development. Ms. Davis reported that the Planning Board had voted unanimously to approve this request.

There were no citizens present to discuss this request.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Steve Little, seconded by Councilman Lloyd Cuthbertson Council voted to approve the re-zoning request from Mr. Allen Gurley to rezone the back eight acres of his property on Ridge Road from M1, Industrial to R-2 General Residential.

APPROVE SUBMISSION OF FEDERAL FIRE GRANT: The City Manager advised that with the recent approval of a $101,250 Federal fire grant for purchase of equipment and turnout gear for the fire Department, Jim Neal has requested applying for another grant for 2004-05.

The City Manager advised that Chief Neal had suggested applying for the purchase of a new 75 foot aerial pumper truck. Such a truck would cost around $475,000, including equipment. A ten

percent local match of $47,500 would be required. This truck could replace the current aerial truck, which is a 1968 model. The City Manager stated that since the City paid $200,000 for this truck a few years ago, we should be able to come close to selling the truck for the amount of the $47,500 grant match. The grant application period ends April 1.

A discussion followed. Councilman Cuthbertson asked if this truck would be the exact same as the current tower truck, since he remembered being told when the City purchased the current tower truck that a new platform truck would run about $700,000. He suggested that the grant be amended to include the replacement of an exact match of the current truck, to get the most "bang for the buck". The City Manager stated that he would check with the Fire Chief on the details of the truck, but that he would request authorization to apply for the grant, to the fullest possible extent.

Mayor Clark stated that, at worst, the City could receive the grant for a smaller truck and house both pieces of equipment.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to authorize the submission of a Federal Fire Grant application for an aerial truck for the Fire Department.

APPROVE ORDINANCE – CHARTER AMENDMENT: The City Manager advised that the City Attorney has reviewed a City Charter Ordinance Amendment, after discussion at the Planning Session indicated that Council desires to have the City Manager appoint all positions except for the Clerk. Section 2 of the Amendment deletes mention of all positions appointed directly by Council except for the Clerk. The other changes refine how certain positions are appointed. The City Manager stated that this change is being done in conformity with the provision of G.S. 160A-152 which states that "if the powers and duties of a city manager set out in the city charter shall differ materially from those set out in G.S. 160 A-148 (which provides that the manager appoints all employees), the council may by ordinance confer or impose on the manager any of the powers or duties set out in G.S. 160-A-148 but not contained in the Charter."

Upon a motion by Councilman Steve Little, seconded by Councilman Billy Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING THE CHARTER
OF THE CITY OF MARION

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Article IV, Organization and Administration, of the Charter of the City of Marion, North Carolina, is amended as follows:

Section 2. Article IV is amended by deleting Section 4.2 (b) in its entirety and replacing it with the following:

(b) Recommend to the council for their approval appointments to the position of city clerk.

Section 3. Article IV is amended by deleting Section 4.5 in its entirety and replacing it with the following:

Sec. 4.5. City finance officer.

The City Manager shall appoint a city finance officer to perform the duties of the finance officer as required by the Local Government Budget and Fiscal Control Act.

Section 4. Article IV is amended by deleting Section 4.6 in its entirety and replacing it with the following:

Sec. 4.6. City tax collector.

The City Manager shall appoint a city tax collector to collect all taxes, licenses, fees and other revenues accruing to the city, subject to the general statutes, the provisions of this Charter and the ordinances of the city. The city tax collector shall diligently comply with and enforce all the laws of North Carolina relating to the collection of taxes and other revenues by municipalities.

Section 5. Article IV is amended by deleting Section 4.7 in its entirety and replacing it with the following:

Sec. 4.7. Consolidation of functions.

The City Manager may consolidate any two or more positions of city manager, city clerk, city tax collector and city finance officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

Section 6. This amendment to the Charter shall become effective upon its adoption.

Adopted this the 16th day of March, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-03-16-2

APPROVE ORDINANCE - AMEND CHAPTER 2, ADMINISTRATION : The City Manager advised that the ordinance below would provide for necessary changes in the City Code to allow for appointment of all City positions except for the City Clerk by the City Manager. Upon a motion by Councilman Billy Martin, seconded by Councilman Lloyd Cuthbertson, Council voted unanimously to approve the following Ordinance:

ORDINANCE
AMENDING CHAPTER 2
ADMINISTRATION
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 2, Administration, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 2 is amended by deleting Section 2-83 in its entirety and replacing it with the following:

Sec. 2-83. Responsibility of manager; powers of appointment and removal.

The city manager shall be responsible to the council for the proper administration of all affairs of the city placed in his charge, and to that end, except as otherwise provided in this division, he shall have the power to appoint and remove all officers and employees in the service of the city, except, however, the city manager may authorize the head of the department or office responsible to him to appoint and remove subordinates in such department or office. Appointments made by or under the authority of the city manager shall be on the basis of executive and administrative ability and on the training and experience of such appointees in the work which they are to perform. All such appointments shall be without definite term unless for provisional, temporary, or emergency service.

Section 3. Chapter 2 is amended by deleting Section 2-131 in its entirety and replacing it with the following:

Sec. 2-131. Appointment.

The city manager shall appoint a city finance officer, to perform the duties prescribed in Section 2-133 below.

Section 4. Chapter 2 is amended by deleting Section 2-134 in its entirety and replacing it with the following:

Sec. 2-134. City Manager may consolidate offices.

The city manager may in his discretion combine the duties of the city finance officer with those of the city clerk.

Section 5. Chapter 2 is amended by deleting Section 2-151 in its entirety and replacing it with the following:

Sec. 2-151. Appointment.

The city manager shall appoint a city tax collector.

Section 6. This ordinance shall become effective upon its adoption.

Adopted this the 16th day of March, 2004.

A. Eyetette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-03-16-3

APPROVE STREET RESURFACING SCHEDULE – SPRING 2004: The City Manager presented Council with a list of recommended streets to be resurfaced as part of the Spring 2004 Paving Project.

These streets could be bid for paving, and then a determination made if Powell Bill Funds would allow for all ten to be repaved.

A discussion followed.

Upon a motion by Councilman Cecil Owenby, seconded by Councilman Lloyd Cuthbertson, Council voted unanimously to accept the following streets for repaving.

1. Old West Henderson Street from Lail Street to West Henderson Street
2. Circle Lane from Church Street to Virginia Road (Clinchfield)
3. Webb Street from Carroll Street to Gladden Street (Cross Mill)
4. Pulliam Street from West Court Street to Blue Ridge Street
5. Caroll Street from State Street to end of maintenance
6. Wayne Street from Ann Street to end of maintenance
7. Ann Street from state Street to Wayne street
8. Fort Street from North Garden to North Madison Street
9. Lincoln Avenue from South Garden Street to Spring Street
10. East Henderson Street from South Main Street to South Garden Street

APPOINTMENTS DOWNTOWN ADVISORY COMMITTEE: The City Manger advised that the Downtown Advisory Committee has recommended Ms. Bridgett Elkins, owner of Hope's Boutique on North Main Street, for appointment to the DAC, to fill a merchant's slot on the Committee.

A discussion followed.

Upon a motion by Councilman Billy Martin, seconded by Councilman Steve Little, Council voted unanimously to appoint Ms. Bridgett Elkins to the Downtown Advisory Committee.

ADOPT RESOLUTION – AGREEMENT WITH MCDOWELL COUNTY: The City Manager advised that the following Resolution would authorize the signing of a memorandum

of understanding with County, whereby the County would take over building and fire inspections of County owned buildings inside the City. The Resolution also includes a provision allowing the City to inspect City owned buildings in unincorporated areas of McDowell County.

A discussion followed.

Upon a motion by Councilman Steve Little, seconded by Councilman Cecil Owenby, Council voted unanimously to adopt the following Resolution:

Resolution Authorizing the Mayor to Execute an Agreement with McDowell County

WHEREAS, the City of Marion and the County of McDowell each have their own building and fire inspections program with certified inspectors; and

WHEREAS, the City of Marion and the County of McDowell desire to allow the County of McDowell to assume responsibility for enforcement of the North Carolina State Building and Fire Codes in buildings owned by the County of McDowell and located within the corporate limits of the City of Marion; and

WHEREAS, the City of Marion and the County of McDowell desire to allow the City of Marion to assume responsibility for enforcement of the North Carolina State Building and Fire Codes in City owned buildings located in unincorporated parts of the County of McDowell; and

WHEREAS, the City Council has reviewed the proposed Memorandum of Agreement between the City of Marion and the County of McDowell regarding enforcement of the North Carolina State Building and Fire Codes in County owned buildings within the corporate limits of the City of Marion, and in City owned buildings in unincorporated parts of the County of McDowell, attached herewith as Exhibit A.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION THAT:

Section 1. The Mayor is hereby authorized to execute the document entitled "Memorandum of Agreement" attached herewith as Exhibit A.

Section 2. This resolution shall become effective upon its adoption.

Adopted this the 16th day of March, 2004.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-04-03-16-1

STATE OF NORTH CAROLINA

COUNTY OF MCDOWELL

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is entered into between the City of Marion and the County of McDowell regarding enforcement of the North Carolina State Building and Fire Codes in McDowell County owned buildings located

within the corporate limits of the City of Marion, and in Marion City owned buildings located in unincorporated parts of the County of McDowell.

WITNESSETH:

WHEREAS, the City of Marion and the County of McDowell each have their own building and fire inspections program with certified inspectors; and

WHEREAS, the City of Marion and the County of McDowell desire to allow the County of McDowell to assume responsibility for enforcement of the North Carolina State Building and Fire Codes in County of McDowell owned buildings located within the corporate limits of the City of Marion; and

WHEREAS, the City of Marion and the County of McDowell desire to allow the City of Marion to assume responsibility for enforcement of the North Carolina State Building and Fire Codes in City of Marion owned buildings located in unincorporated parts of the County of McDowell; and

WHEREAS, the City of Marion and the County of McDowell each recognize the importance of keeping City and County emergency response personnel informed of changes in, or improvements of, building, electrical, mechanical, plumbing and fire protection components of County owned buildings located within the corporate limits of the City of Marion, and in City owned buildings located in unincorporated parts of the County of McDowell.

NOW, THEREFORE, the parties hereto do hereby covenant and agree to the assignment of responsibility for enforcement of the North Carolina Building and Fire Codes in County owned buildings within the corporate limits of the City of Marion, and in City owned buildings in unincorporated parts of the County of McDowell as follows:

1. McDowell County certified inspectors shall issue permits, conduct inspections and issue certificates of compliance and certificates of occupancy for all work on building, electrical, mechanical, plumbing and fire safety components as required by the North Carolina State Building and Fire Codes for all County-owned buildings located within the corporate limits of the City of Marion.

2. City of Marion certified inspectors shall issue permits, conduct inspections and issue certificates of compliance and certificates of occupancy for all work on building, electrical, mechanical, plumbing and fire safety components as required by the North Carolina State Building and Fire Codes for all City-owned buildings located within the unincorporated areas of the County of McDowell.

3. With respect to such permit issuance, inspection, issuance of certificates of compliance and issuance of certificates of occupancy, the City of Marion agrees to indemnify and hold harmless the County of McDowell against any and all claims arising out of or related to such inspections by the City. The County of McDowell agrees to indemnify and hold harmless the City of Marion against any and all claims arising out of or related to such inspections by the County.

4. The City of Marion and the County of McDowell each agree to furnish the other with copies of all permits and certificates of occupancy issued pursuant to the provisions of this Agreement, such copies to be submitted promptly upon issuance to the respective fire official as defined by the North Carolina State Building Code, so each may notify the appropriate fire department of the undertaking of work requiring North Carolina State Building Code regulation. No fees shall be required to be paid by the City or County to each other for any permits or certificates of occupancy issued pursuant to the provisions of this agreement, or for any inspections conducted.

5. The City of Marion and the County McDowell agree to and understand that all other local regulations, such as Zoning Ordinance, Subdivision Regulations, or other local ordinances or policies, must be met and all applicable fees relating to such regulations paid to the appropriate jurisdiction.

This the 16th day of March, 2004.

ATTEST: BOARD OF COMMISSIONERS FOR THE COUNTY OF MCDOWELL

Carrie Padgett, Clerk to the Board — David Walker, Chairman

ATTEST: CITY OF MARION

J. Robert Boyette, City Manager/Clerk — A. Everette Clark, Mayor

SUGAR HILL ROAD WATER AND SEWER:

The City Manager reported that Dennie Martin of McGill Associates had advised of the opportunity to apply for $400,000 in Rural Center funds, plus $200,000 in ARC funds for the extension of water and sewer on Sugar Hill Road from Shady Lane to I-40. Combined with the $400,000 in Federal funds promised by Congressman Taylor, the grant money could pay for nearly 90 percent of the projected costs of $1.1 million for this project.

By consensus, the Mayor and City Council directed the City Manager to advise McGill to apply for these funds as soon as current Rural Center projects are closed out and the City is eligible to apply for additional funds.

COMMENTS BY MAYOR/COUNCIL:

Mayor Clark advised of discussions held recently with the Post Office and Dr. Gary Grindstaff concerning the opportunity to purchase Dr. Grindstaff's property on South Main Street, to allow for better parking and traffic flow at the Post Office. Mayor Clark noted that the Post Office Regional Executive, Mr. Ronald Lincoln, had written a letter, stating that the Post Office did not have funding to allow for the acquisition of the property. Mayor Clark stated that the City/County Utility Committee had suggested inviting Mr. Lincoln to a meeting to discuss and show him the current problems with parking and traffic flow at the Post Office.

Mayor Clark briefed Council on the presentation of the Western North Carolina Local Government Caucus to the staffs of the Senators and Congressmen representing Western North Carolina. The presentation was made on March 5 in Washington, D.C., as part of the National League of Cities conference, and attended by the Mayor, City Manager and Mayor Pro Tem Little.

Councilman Cuthbertson advised of a street light that was possibly out on Railroad Street behind Service Pharmacy.

Councilman Owenby suggested that the City draw up a proclamation honoring the McDowell High School Girl's Basketball Team, which were Runner-Up State 4-A Champions.

Councilman Owenby also advised of the need for a scoop of dirt on property at the end of Cardinal Lane, to repair some tracks made by City equipment during some drainage improvements in the area.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that Baxter's has agreed to provide food for the City Open House scheduled for Friday, April 16th.

The City Manager also advised that a Joint meeting with the County Commissioners and City Council had been scheduled on Thursday, April 15, 2004 at 6:00 p.m. at Carolina Choclatier's.

CLOSED SESSION: Upon a motion by Councilman Cecil Owenby, seconded by Councilman Billy Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(4) to discuss the location of industry.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session. Mayor Clark advised that no action was taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 6, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Due to sickness, Councilman Martin asked to be excused at 7:40 PM.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Mr. Daniel Roshelbert Logan and Mrs. Beatrice Logan, 1020 West Henderson Street, Marion, NC 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN MARTIN: Councilman Billy Martin selected the Citizen's of the month for April.

Daniel Roshelbert and Beatrice Logan

Councilman Martin advised that when you see Mr. Roshelbert Logan, you usually see Mrs. Beatrice Logan by his side. They were married September 7, 1950. Mr. Logan worked for American Thread, which is now Coates America for 15 years. He retired from Contel Telephone Company, which is now Verizon. Mrs. Logan has always been a full time housewife and together they raised seven children. The also have three Grandchildren.

All their children have finished school and/or went to college.

Far too many of today's couples lack the kind of love and commitment to each other and their families. Mr. & Mrs. Logan' have persevered and together made it work. They are a part of the foundation of the City of Marion and are to be commended for the example they have set.

Mayor and Council members all had kind words to share about Mr. & Mrs. Logan.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent agenda, excluding Building and Depot Rules, as follows:

A. Approval of Minutes - March 16, 2004

B. Budget Amendment Ordinance:

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(SEVENTH AMENDMENT)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budge ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated, is increased from $496.607 to $513,722.

b. General Fund Expenditures, Police, Account Number 10-510-7400, Capital Outlay, is increased from $204,199 to $221,314.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 6th day of April, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

C. Adopt Resolution – Support of Funding by City of Asheville for Passenger Rail Service:

RESOLUTION
IN SUPPORT OF CITY COUNCIL FUNDING FOR PUBLIC IMPROVEMENTS NECESSARY FOR THE CREATION OF PASSENGER RAIL SERVICE FOR THE CITY OF ASHEVILLE, NORTH CAROLINA

WHEREAS, the City of Marion recognizes the importance of passenger rail service for Western North Carolina and has committed funding of nearly $150,000 to renovate and equip its historic depot; and,

WHEREAS, Asheville, North Carolina, as the intended terminus for passenger rail service, is integral to the success of passenger rail service in Western North Carolina. and

WHEREAS, Asheville, North Carolina, serves as a primary destination for tourists and business travelers in Western North Carolina; and

WHEREAS, Asheville, North Carolina stands to directly benefit from the economic development potential associated with passenger rail service; and

WHEREAS, the environmental benefits associated with reduced automobile emissions as result of passenger rail service directly affect the citizens of Asheville; and

WHEREAS, the communities along the Western, North Carolina Rail Corridor have acted in good faith to provide proportionate local funding for the public improvements necessary to support the creation of passenger rail service; and.

WHEREAS, passenger rail service is an integral part of a comprehensive transportation system for the entire state of North Carolina, and

WHEREAS, support by local officials is essential for the future of alternative transportation in North Carolina, and,

WHEREAS, rail linkages between communities and regions within North Carolina establish and strengthen social, historical, commercial and cultural bonds, and,

WHEREAS, the average return on investment for the surrounding community for station revitalizations throughout North Carolina is more than one dollar for every dollar invested; and,

NOW, THEREFORE, BE IT RESOLVED, that City Council of the City of Marion, through the adoption of this resolution, fully supports and encourages public funding, on behalf of the City of Asheville, North Carolina, for improvements necessary to support passenger rail service with its ultimate objective to further economic opportunity, help preserve the environment, improve the quality of life and enhance public health, safety and welfare for the citizens of Asheville, and all of Western North Carolina.

Unanimously adopted this 6th day of April, 2004

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manger/Clerk

COMMUNITY BUILDING/DEPOT RULES REVISON: The City manager reported that he had developed a draft revision to the Community Building and depot rules to provide for a mechanism for refunds for persons or groups canceling events more than 9- days in advance of the Scheduled event. The City Manger suggested a $25 charge for such refunds. After discussion about the exact wording of the amendments, Council agreed by consensus to refer the revisions to the Recreation Committee for a recommendation. The Recreation Committee will bring a recommendation regarding this matter back to City Council at a future meeting.

APPROVAL OF DOWNTOWN CONCERT SERIES FUNDING: The City Manager presented Council with a proposed budget for the 2004 Downtown Concert Series, as developed by Downtown Advisory Committee Promotions Chairman Gina Degrechie. The budget called for a City appropriation of about a$875. The City Manger reported that the Downtown advisory Committee has endorsed this funding, to come out of their $8,000.00 appropriation, and recommended that Council approve the budget.

The City Manager advised that Council authorized up to $1,000 for the concerts last year, but not all of the money was needed, due to private sponsors.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the budget as follows:

Projected Revenue – First Friday Concerts

Private Sponsorship	$1,700.00
MACA	500.00
Tourism Development Authority	500.00
Miscellaneous Income	500.00
Total	$2,700.00

Projected Expenses

Advertising	$ 500.00
Bands	

May	700.00
June	1,000.00
August	500.00
September	500.00
Graphics/Posters	125.00
Misc Expenses:	200.00
Postage	50.00
Total	**$ 3,575.00**
Net Request for DAC Funding	$875.00
Amount of DAC Funding Approve in 2003	**$1,000.00**

DISCUSS – TOWNHOUSE/CONDOMINIUM GARAGE COLLECTION: The City Manager presented Council with a list of garbage/trash/recycling collection plans that the City has used for various types of industrial, commercial and multifamily residential locations.

One plan addresses apartment complexes and states that apartment complexes with more than eight units must have a dumpster. The City has interpreted this definition to include townhouse/condominium developments. For years, we have picked up garbage at each unit of Carriage Station on South Garden Street because there were eight units. In contrast, the City provided a dumpster at the 12 unit Marion Garden Condominiums on South Garden Street.

With the 24 unit Laurelwood Townhouses projected to come within the City on June 30, the City Manager suggested that Council address the policy and recommended that townhouse and condominium developments be treated like single family houses, with garbage collection at their door, or at least be given an option to choose between collection at each unit or a dumpster.

A discussion followed.

The City Manager was instructed to rewrite the policy and bring back to the next City Council Meeting, to provide for townhouse and condominium developments to have the choice, through their homeowner's association, of garbage collection at each individual unit or by the placement of a dumpster.

The City Manager advised that once the garbage policy was changed, the City Council would need to amend the Laurelwood Area annexation report to reflect that garbage collection to the Laurelwood Townhouses would be provided according to the new policy for townhouses and condominiums, instead of according to the policy for apartment complexes.

Councilman Martin asked to be excused at this time due to sickness. (7:40PM)

AWARD CONTRACT – UTILITY LINE MAINTENANCE DEPARTMENT UTILITY TRUCK: The City Manager presented Council with a memo from Purchasing Agent Kathy Shook with the following bids for a Utility Line Maintenance Department Utility Truck:

Everett Chevrolet, Hickory NC $32,493.48
Phillips Ford, Carthage, NC $32,663.00

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to award the contract for the purchase of a utility Line Maintenance Department Utility Truck to Everett Chevrolet, in the amount of $32,493.48.

AWARD CONTRACT –STREET PAVING: The City Manager presented Council with a memo from Purchasing Agent Kathy Shook with the following bids for the street resurfacing projects:

Fred Callahan Company

1" Resurface Per Square Yard	$2.47	$35,291.36
1 ¼" Resurface Per Square yard	$3.70	$44,149.92
1 ½" Resurface Per square yard	$3.70	$52,865.60
Dept of Social Services parking lot (1 ½" resurface per square yard)	$3.70	$23,298.90

APAC

1" Resurface per square yard	$4.50	$64,296.00
1 ¼" Resurface per square yard	$4.70	$67,153.00
1 ½" Resurface per square yard	$5.30	$75,726.40
Dept of Social Services parking lot (1 ½" Resurface per square yard)	$5.30	$33,374.10

Ms. Shook advised in her memo that she had spoken with Mr. Callahan regarding the substantial price difference between his proposal and that of APAC; inquiring if he had been provided with everything needed to make an informed proposal. Mr. Callahan assured her that his very comfortable with his bid and is looking forward to performing this work.

The City Manager suggested that, with a lower amount being proposed for street paving than is usually spent by the City, consideration be given to going with 1 ½" asphalt, to possibly extend the life of the street being resurfaced.

A motion was made by Councilman Cuthbertson, seconded by Councilman Owenby to accept the bid of Fred Callahan Company in the amount of $52,865.60 for 1 ½" asphalt.

Councilman Little asked if there was any firm data on how much longer that 1 ½" pavement would last on a street versus 1 ¼" pavement.

The City Manger advised that he had no hard evidence that an extra ¼" of pavement would last for a certain number of extra years.

A discussion followed.

Mayor Clark suggested that the City pave more mileage instead of putting down thicker asphalt.

Councilman Cuthbertson withdrew his motion, and Councilman Owenby withdrew his second.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to accept the low bid of Fred Callahan Company in the amount of $44,149.92 for 1 ¼" resurfacing for a price of $3.09 per square yard.

The City Manger was directed to add the section of Fern and Montevista Avenue on which curb and gutter and a sidewalk is being constructed between Fleming Avenue and North main Street to the Spring 2004 paving list. The Street Committee will also review a request form a citizen to add Virginia Road in Clinchfeld to the paving list.

DISCUSS CITY FLAG: The City Manager advised that, last fall, Mayor Clark had suggested that the City look at developing a design for a City flag. The City Manager noted that several ideas have been discussed regarding the design of a City flag. He suggested that options could

range from hiring someone to design a flag, having a contact for people to submit flag designs or seeking a volunteer to design a flag.

Councilman Little noted that he had heard of a municipality spending a geat deal of money on such a design and then being disappointed with the results. Mayor Clark suggested that he and the City Manager could talk to representatives from MACA, McDowell Tech and McDowell High School and then possibly open a contest to the public for the submission of a flag design. Councilman Owenby suggested that a small prize could be offered to the best submitted flag design.

By consensus, Council agreed to authorized the Mayor and City Manger to proceed with this idea.

DISCUSS INSURANCE FOR RETIRED EMPLOYEES: The City Manager advised that insurance for retired employees has become an issue with seeking bids from private companies for medical insurance coverage. Several companies have found the City's coverage unattractive due to our coverage of retirees. He presented Council with several comparisons of how other cities handle this matter.

The City Manager recommended an amendment to the Personnel Policy that would set minimum years of service requirements that would have to be met in order for a retired employee to remain on the City's insurance coverage. These service requirements would be the same as the service requirements that much be met in order for a retied employee to be eligible for a S00 monthly contribution by the City to their medical insurance coverage. The second change would be terminating retired employees from City insurance coverage once they are age 65 or eligible for Medicare. The $100 City contribution toward the purchase of a Medicare supplement would still apply, and employees retiring before a certain date could be guaranteed that their monthly costs for a Medicare supplement would be no more than they would have paid monthly out of pocket if they had stayed on the City's insurance plan. The City manager suggested that these changes would help to transition all retirees eventually to private coverage, therefore reducing the City's claim history over time.

A lengthy discussion followed.

Councilman Little suggested that the hold harmless date for employees be set at July 1, 2004 and that the reference to age 65 be remove, therefore meaning that insurance termination would begin when a retired employee became eligible for Medicare.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adopt the following policy:

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article X, Insurance/Retirement Benefits is amended by deleting Section 1, Insurance Benefits, in its entirety and replacing it with the following:

Section 1. Insurance Benefits

The City offers group hospitalization, life insurance and a separate death benefit that is offered through the North Carolina Local Governmental Employees' Retirement System to employees. The City may make other group insurance plans available for its employees upon authorization of the City Council.

Regular employees are eligible for these benefits beginning on the 31st day of employment.

Employees retiring from City employment after serving the City of Marion for a minimum of twenty (20) years and reaching fifty-five (55) years of age, at fifty (50) years of age retiring under disability with twenty (20) years of service, or retiring with thirty (30) years of service at any age are eligible to continue to remain on the City's insurance plan, subject to the provisions for payment of premiums listed below. Other employees retiring or separating from City service without meeting the service requirements listed above shall not be permitted to remain on the City's insurance plan, except as required by Federal law.

It shall be the policy of the City of Marion to pay one hundred dollars ($100.00) per month to the City's insurance carrier toward medical insurance coverage for employees retiring from City employment after serving the City of Marion for a minimum of twenty (20) years and reaching fifty-five (55) years of age, at fifty (50) years of age retiring under disability with twenty (20) years of service, or retiring with thirty (30) years of service at any age.

The said retired employee will be required to pay in advance the difference between the actual cost of medical insurance coverage and the one hundred dollars ($100.00) per month contributed by the City. The employee may continue to provide insurance coverage for his/her dependents, carried at the time of retirement, by paying the total necessary premiums, in advance for medical insurance coverage.

Upon becoming eligible for Medicare, a retired employee may continue to receive the one hundred dollar ($100.00) per month City contribution to go toward the purchase of a Medicare supplement; however, said employee will no longer be eligible to remain on the City's insurance plan. Employees retiring prior to July 1, 2004 shall be guaranteed to pay monthly Medicare supplements no greater than the amount other retired employees pay monthly for their insurance (calculated by taking the amount that the City pays monthly for insurance coverage for employees and retirees minus the monthly contribution made by the City toward the insurance cost of the retired employee). However, these employees will still be required to purchase a Medicare supplement upon reaching 65 or becoming eligible for Medicare, whichever comes first, and said employee will no longer be eligible to remain on the City's insurance plan.

Should the City of Marion, at any time, decide to discontinue this benefit to retired City employees, said employees meeting the requirements list above will be given the opportunity to continue to carry medical insurance coverage by paying to the City, in advance, the entire premiums for medical insurance, subject to the provisions listed above for switchover to Medicare and Medicare supplements.

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 6th day of April, 2004.

~~A. Everette Clark, Mayor~~

~~ATTEST:~~

A. Everette Clark, Mayor

~~ATTEST:~~
~~J. Robert Boyette, City Manager/Clerk~~

J. Robert Boyette, City Manager/Clerk

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN LITTLE asked Chief Elliott to have the Ordinance Enforcement Officer visit the property at the corner of State and Garden They are having frequent yard sales in violation of City Ordinances. The City Manger noted that this location had been warned about frequent yard sales two years ago and that he would have the City Planner and Ordinance Enforcement Officer check into the matter.

COUCNILMAN CUTHBERTSON asked about the laws regarding scooters being operated on City streets. He noted that some of the scooters appear to be operated by children without helmets. Chief Elliott stated he would look into the matter. Councilman Owenby also stated that he had wimessed similar activity going on in the parking lot of New Manna Church off of Park Avenue.

Councilman Cuthbertson asked if the Police Department had any success catching any trespassers on the property on Dock Poteat on NC 226 South, after Mr. Poteat made his complaint about this matter to Council in March. Chief Elliot advised that his officers had been watching the property, but
had not yet seen any ATV's on the property. Chief Elliott noted that persons on ATV's could be hard to apprehend, since the Police Department had no off-road vehicles.

Councilman Cuthbertson stated that Mr. Max Holland had requested that the City remove some dangerous trees off an unopened right of way behind his business at East Court and Gilkey Streets. The City manager stated that Mr. Holland had previously made this request, but that the City had no responsibility, since the right of way had never been maintained or accepted by the City. Mayor Clark suggested that Mr. Holland could request that the right of way be closed. Councilman Little noted that Mr. Holland could also simply go on the right of way himself and remove any trees that were threatening his building.

COUNCILMAN OWENBY advised that he has received a request for the addition of a curb and sidewalk on East Wilhemenia Street.

The Street Committee will look at this street next Wednesday. The City Manager noted that the Street Committee could also look at the request for the resurfacing of Virginia Road and a mater involving a driveway approach off of Machine Shop Road.

MAYOR CLARK advised that the had asked the City manger to work with Freddie Killough and Suzy Davis to prepare a presentation on the City's downtown development efforts for the National League of Cities Small Cities Council meeting in Farragut, Tennessee on June 11.

COUNCILMAN EDWARDS noted that with warmer weather, the sound of loud car stereos were being heard again in the City. He asked for increased enforcement of the Noise Ordinance where possible.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a Special Meeting with the McDowell County Board of Commissioners on Thursday evening, April 15, 2004 at 6:00 P.M. at Carolina Chocolatiers Restaurant located at 8 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

MCDOWELL COUNTY BOARD OF COMMISSIONER MEMBERS PRESENT: Chairman David Walker, Vice-Chairman Andy Webb, Commissioners Dean Buff, Butch Hogan and Michael Lavender.

OTHERS PRESENT: Bob Boyette, City Manager; Jim Neal, Fire Chief; Chuck Abernathy, McDowell County Manager; Carroll Hemphill, McDowell County Emergency Services Director; Richelle Bailey, Assistant Editor, The McDowell News.

GUESTS PRESENT: None.

WELCOME: Chairman Walker and Mayor Clark opened the meeting and gave some introductory remarks. All the City and County representatives present also provided some brief remarks.

MARION AREA FIRE DISTRICT ISSUES:

A. **Hankins-North Fork Fire Department** – The City Manager reported that it appeared that the City, County staff and the proposed Hankins-North Fork Fire Department had reached an agreement of the boundary between the Marion Area Fire District and the new department. Chief Neal gave a description of the boundary, which would fall near the end of Hankins Road between Fish Hatchery Road and Cannon Road. The City Manager advised that the City was very supportive of the new department, as the new department would take the service of the north side of Lake James away from the City Fire Department. City Council has also voted to give an old City fire truck to the new department when it forms. The City Manager stated that the City would ask that it be consulted before any decision was made regarding the boundaries of the new department, since the City could not afford to have a considerable amount of the Marion Area Fire District taken for the Hankins-North Fork Fire Department.

B. **Purchase of New District Truck** – Chief Neal gave an overview of the two trucks currently serving the Marion Area Fire District. The older 1972 truck has considerable problems, including poor brakes. Chief Neal reported that he was working on developing specifications for a new tanker-pumper that would match the existing 1997 tanker-pumper. The City Manager presented information on proposed payments for the new truck, based on an estimated purchase price of $287,000. Chief Neal noted that it could take nine months or more to receive the truck, since all new fire trucks are custom built. The City Manager suggested that the City purchase and own the new district truck, and receive all the Marion Area Fire District taxes, beginning in 2005-06, thus allowing City Council to determine whether the new truck would be financed. Mayor Clark asked how the volunteer fire departments in the County handled the purchase of trucks. Carroll Hemphill stated that all other departments received all their taxes proceeds and purchased and owned their individual trucks. Mr. Hemphill stated that the only truck owned by the County was the 1997 Marion Area Fire District tanker-pumper. After discussion, the consensus of the Board of Commissioners and the City Council was to have the City receive all Marion Area Fire District tax proceeds, beginning in 2005-06, and for the City to purchase and own the new truck. The Board of Commissioners and City Council will jointly approve an agreement, whereby the new truck would revert to the Marion Area

Fire District and/or McDowell County if the City ever ceased to provide fire protection to the Marion Area Fire District.

C. **District Tax Rate** – The City Manager reported that the City Council had unanimously voted in Fall 2003 to request the County Commissioners to increase the MA District tax rate from two cents to four cents, to provide for greater equity between City and District taxpayers regarding the funding of the City Fire Department. The City Manager presented a spreadsheet showing that, using factors such as property value protected and call volume, the MA District should be funding just over 50 percent of the City Fire Department budget. Over the past few years, the District has been funding about 40 percent of the Fire Department budget, and this figure will dip to about 32-33 percent in 2004-05 and 2005-06. To achieve the desired funding equity, the City Manager stated that the District tax rate must go up to four cents.

Commissioner Buff stated that the timing of this request was poor, as the County had just gone through revaluation the year before. The City Manager advised that revaluation only increase the District tax levy by a few thousand dollars, according to figures provided by the County Tax Department. The County Manager presented revised numbers showing that the District tax levy could be $15,000 or more higher than originally projected, thus reducing somewhat the need for a two cent tax increase.

Commissioner Lavender asked what the City taxpayer was putting into the Fire Department. The City Manager stated that the City funding was equivalent to just under six cents on the tax rate.

Commissioner Webb inquired about the impact of new development such as Lowe's on the City tax base. The City Manager noted that the effects of Lowe's would not benefit the City until at least 2005-06 and that the City's tax base was affected in the past year by declining industrial values as a result of revaluation.

Mayor Clark suggested that the County consider raising the MA District tax rate to a level that would ensure equity for the 2005-06 Fiscal Year, to coincide with the payments on the new truck. After considerable discussion, the City Council and Board of Commissioners agreed to meet again in December 2004 or early 2005 to discuss this matter further and to review new projections for the equitable tax rate.

DOWNTOWN PARKING

Mayor Clark advised that parking was one of the issues that the City received the most complaints and comments about on a daily basis. He noted that the City had been named a Main Street City in 2003 and was currently studying parking and other improvements in the downtown area.

The City Manager advised of two specific ways to improve off-street parking in the downtown area. The first would be the purchase and development of the former Doris Hill property on South Garden Street adjacent to the railroad tracks. The City Manager estimated that the property could be acquired and developed for about $200,000. Mayor Clark proposed that the City could consider paying for the development of the property and then receive payments for one-half of the development costs over a period of five to seven years. The County Manager stated that this payment schedule could make the project feasible for the County and that he would likely include some funding in his recommended budget. The City Council and Board of Commissioners expressed continued interest in the project.

The City Manager also stated that the U.S. Postal Service had been advised of an opportunity to purchase the property of Dr. Gary Grindstaff on South Main Street, to improve the parking situation at the Post Office. He stated that the Postal Service had declined to fund the purchase of the property, but that the Utility Committee had suggested that the Postal District Executive be invited to see the parking situation at its worst. Mayor Clark noted that we have an

opportunity to correct a long-standing problem and that the public would greatly appreciate any efforts to improve parking at the Post Office. Councilmen Little and Owenby stated that this matter should be solved by the Post Office, and not involve the expenditure of any City or County funds.

SKATEBOARD PARK

Mayor Clark advised that a $5,000 contribution had been received from Wal Mart toward the construction of a new skateboard park and that other solicitations were being made. He also noted that City Council had agreed to make up any gaps in funding to see that the project is done. The County Manager stated that the Board was committed to the project, but did wish to see projected usage numbers. He noted that County Recreation Director Stan Braswell and others had viewed a skateboard park in Hickory recently, and that Stan could show this video at an appropriate time to City Council. The County and City will work together to develop a plan and budget for the desired skateboard park, to be located on the County Recreation Department property on West Court Street.

ADJOURNMENT: There being no further business, the meeting was adjourned.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a Special Meeting on Monday evening, April 19, 2004 at 7:00 P.M. at Eastfield Elementary School located at 170 Eastfield School Road.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Lovina Smith, Grants Administrator.

GUESTS PRESENT: Approximately 50 to 60 Eastfield Community residents were present.

WELCOME: Mayor Clark opened the meeting and welcome those present to the meeting. He stated that the City Council had recently been approached by some Eastfield property owners who were requesting annexation of the community. Mayor Clark stated that the City Council had agreed to hold this community meeting to receive input from the community regarding annexation.

OVERVIEW OF ANNEXATION/CITY SERVICES: The City Manager provided a summary of State annexation law and procedures, the costs and savings resulting from annexation and the required City services that must be provided to an area that is annexed. He noted that part of the Eastfield Community, including properties fronting on Baldwin Avenue, was included in a current annexation process that will take effect on June 30. The City Manager advised that, due to required procedures and tax and service issues, the annexation of the remainder of the community would not be proposed to take effect prior to June 30, 2005.

QUESTION AND ANSWER/COMMENT PERIOD: Many residents and property owners gave comments about the proposed annexation or asked questions about annexation and City services.

After the comments were concluded, Mayor Clark stated that City Council would take this matter under advisement. Mayor Clark urged all present to contact he, the City Council or the City Manager if they had further questions or comments.

ADJOURNMENT: There being no further business, the meeting was adjourned.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 20, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Councilman Little arrived for this meeting at 7:20 PM. He was detained in Asheville while visiting at the Hospital.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Billy Whisnant 122 Tunnel Road, Marion, NC 28752; Dr. David Ricketts & Dr. Sherron Crawford, 33 Astorie Lane, Nebo NC 28761; Gene and Gail Hall 45 Woodvine Drive, Marion, NC 28752; N. Wise 218 Logan Street, Marion NC 28752; Bill & Loretta Smith, 141 Dogwood Lane, Marion, NC 28752; Gene Cross, 169 Montevista Avenue, Marion, NC 28752; David Clay, 475 State Street, Marion, NC 28752

Laurelwood Drive Residents: Wanda Plemmons, Kim Carson, Eileen Carson, Celia Laughridge, Mary Lois Miller, Vivian Harris, Sara Rabb, Ed & Nancy Sleder, Dianne Allred, Ruth Ann Brooks and Dottie Roland.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the consent agenda as follows:

A. Approval of Minutes - April 6, 2004

B. Approve Request for Downtown Sidewalk Sale:
May 1, 2004 – Only yard Sale planned for this year.

C. Approve Tax Refund –
2003 Tax Refund – $355.87 Richard Jason & Rachel Rebecca Freeman
Located outside the City at 59 Old Hwy. 10 West – PIN 170113140945

PUBLIC APPEARANCE – TED REMINGTON – REQUEST - SEWER BLOCKAGE REIMBURSEMENT: Mr. Ted Remington appeared before Council advising that on March 4, 2004 he experienced a blocked sewer line in front of his residence at 84 North Madison Street. He contacted Roto-Rooter and repairs were made , which ended up being 45 to 50 feet on the City's side of the Clean out. The total bill from Roto-Rooter was $253.17. Mr. Remington requested that the City reimburse him the amount paid for clean out of City line, in the amount of $136.50.

The City Manager had advised Mr. Remington in writing of the proper policy and procedure for sewer blockages on the City's System and the fact that Mr. Remington or the plumber should have called the City prior to doing any work on the City's sewer line. The City Manager stated that under long-standing City policy, reimbursement was not appropriate. Mayor Clark noted that it was a criminal offense to tamper with a City water or sewer line. The City Manager also advised that Roto Rooter had failed to obtain a City business privilege license.

Mr. Remington advised that he had not lived in Marion long and did not know to contact the Marion Police Department for this type of incident. He offered to withdraw his request for reimbursement due to not following the policy.

A lengthy discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to reimburse Mr. Remington the amount of $136.50. Council directed the City Manager to contact Roto Rooter to explain that City policy was not followed in clearing this sewer line.

PUBLIC APPEARANCE – ALMA ROLAND COMPLAINT: Ms. Roland was not present for this meeting.

* Councilman Little arrived for this meeting at 7:20 PM

ANNEXATION PUBLIC HEARING – BALDWIN AVENUE AREA: Mayor Clark opened the Public Hearing.

The City Manager presented a brief overview of the annexation report and plan of services.

Mr. Arthur Guffey, a property owner in the annexation area, was present for this Public Hearing. Mr. Guffey stated he was not opposed to the annexation but that he would need time to clean up his property. Mr. Guffey also noted traffic concerns on Baldwin Avenue at Leach Street.

There were no other citizens present to discuss this Public Hearing.

The Public Hearing was closed. Council can consider adoption of the annexation ordinance as soon as the May 4 meeting.

ANNEXATION PUBLIC HEARING – GARDEN CREEK ROAD AREA: Mayor Clark opened the Public Hearing.

The City Manager presented a brief overview of the annexation report and plan of services.

There were no citizens present to discuss this item.

The Public Hearing was closed. Council can consider adoption of the annexation ordinance as soon as the May 4 meeting.

ANNEXATION PUBLIC HEARING – HILLCREST DRIVE AREA: Mayor Clark opened the Public Hearing.

The City Manager presented a brief overview of the annexation report and plan of services.

Mr. & Mrs. Gene Hall were present for this Public Hearing. They live on property off of Hillcrest Drive and stated that this annexation will not benefit them or their property. The City Manager noted that the intent of this annexation was to take in all properties fronting on Hillcrest Drive and that two of the three properties owned by the Halls had been excluded.

There were no additional citizens present to discuss this item.

The Public Hearing was closed. Council can consider adoption of the annexation ordinance as soon as the May 4 meeting.

ANNEXATION PUBLIC HEARING – LAURELWOOD DRIVE AREA: Mayor Clark opened the Public Hearing.

The City Manager presented a brief overview of the annexation report and plan of services.

A petition opposing the annexation of the Laurelwood Townhouses was presented to Council by Ms. Celia Laughridge. Ms. Laughridge and other Laurelwood residents stated their

opposition to the annexation of this area, along with Mr. Bill Smith, who owns property on Lonon Avenue included in the annexation area.

A lengthy discussion followed.

Councilmen Cuthbertson, Little and Edwards stated that they would not vote to annex the Laurelwood Townhouses, since the City did not have a good deal to offer the property owners of the townhouses.

The Public Hearing was closed. Council members asked the City Manager if the rest of the Laurelwood Drive area could be annexed, minus the Laurelwood Townhouses. The City Manager stated that the rest of the area would not meet the statutory formula for annexation, but that perhaps a few properties from the western edge of the area toward Victory Drive could be annexed. Council can consider adoption of the annexation ordinance for all or part of the original annexation area as soon as the May 4 meeting.

PUBLIC APPEARANCE – BILLY WHISNANT: Mr. Billy Whisnant of 122 Tunnel Road appeared before Council advising that he would like the City of Marion to have a program directed to assisting persons needing low income housing and loans. He also suggested that the City look into ways to attract more jobs.

PUBLIC APPEARANCE – DAVID CLAY: Mr. David Clay of 474 State Street, appeared before Council expressing his opposition to annexing the Eastfield area. He asked Council why the Eastfield Community was now being annexed and why the City Council had met with Eastfield Community the night before. Councilman Martin stated that the City had no firm plans to annex the community; instead, Council was seeking the input of the community regarding annexation. Councilman Little noted that a group of Eastfield Community property owners had come to Council and requested that Council annex the area and meet with the Community.

APPROVE REVISED GARBAGE PLANS FOR COMMERCIAL/INDUSTRIAL/MULTIFAMILY CUSTOMERS: DISCUSS REQUEST BY MCDOWELL COUNTY SCHOOLS: The City Manager stated that with Laurelwood Townhouses not likely to be annexed effective June 30, he would suggest that minor modifications be made to the City's garbage plans, to increase the threshold for requiring a dumpster in apartment complexes or townhouse and condominium developments from eight units to ten units.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adopt the following revised City Garbage Plans for Commercial/Industrial/Multifamily Customers:

CITY OF MARION, NORTH CAROLINA
REQUEST FOR GARBAGE/TRASH/RECYCLING SERVICE

I HEREBY REQUEST GARBAGE/TRASH/RECYCLING SERVICE AS INDICATED ON THIS CONTRACT

PLAN " A " – INDUSTRIAL/COMMERCIAL DUMPSTER (METAL CONTINER) SERVICE – The City will furnish an eight (8) cubic yard dumpster (metal container) to each customer requesting service. The monthly charge for service is based on the number of pick-ups.

PLAN " B " - APARTMENT COMPLEXES/TOWNHOUSE/CONDOMINIUM DEVELOPMENTS - All apartment complexes or townhouse/condominium developments having more than ten (10) apartment, townhouse or condominium units will be required to have a dumpster (metal container). The monthly charge for service is based on the number of pickups .

PLAN " C " - COMMERCIAL CAN SERVICE - Three (3) thirty-five (35) gallon cans to be picked-up one (1) time each week. This service is limited to the number and size of cans and the number of pick-ups.

PLAN " D " - COMMERCIAL RECYCLING SERVICE - Each Commercial Establishment participating will be required to purchase one key at a one time cost of three dollars ($3.00). Two dollars ($2.00) will be refunded if the key establishments closes and returns the key. Keys may not be duplicated or shared with other establishments and must be returned to the City if an establishment closes and returns the key. Keys may not be duplicated or shared with other establishments and must be returned to the City if an establishment closes. In addition, Special Blue Bags must be used for recycling aluminum cans and junk mail. The bags, twenty (20) to a roll, are available at City Hall. This charge can be added to the monthly water/sewer bill.

ESTABLISHMENTS NOT USING PLAN " A " OR PLAN "C"
MUST PAY THE COMMERCIAL RECYCLING SERVICE RATE IN ORDER
TO PURCHASE A KEY AND PLACE ITEMS IN THE SPECIAL RECYCLING DUMPSTERS.

ANY CHANGE IN SERVICE REQUIRES A NEW SIGNED CONTRACT.

PLAN _____, _____ PICK-UPS PER _ FOR $ _ _ PER MONTH.

_____
Name of Business , Firm or Apartments

_____ _____
Mailing Address Service Location

_____
Contact Person Telephone Number

_____ _____
Signature Date

****

For Office Use Only.

Account # _____ *Rt/Seq* _____ *Rate* _____

Effective Date of Service: _____

RECEIVE SIDEWALK DISPLAYS/ENCROACHMENTS ORDINANCE: The City Manager presented an inventory of several encroachments on downtown sidewalks, involving business displays. He noted that the encroachments were in compliance with the City ordinance, except that approval was needed for a table and chairs on the sidewalk in front of the Crooked Door Coffee House on North Main Street, and except for the need for several businesses to sign releases holding the City harmless from any accidents or damages arising from sidewalk displays.

A discussion followed. Councilman Edwards noted that some of the displays involving placing merchandise outside a storefront were unattractive. Councilman Edwards also asked about businesses displaying banners on their buildings and stated that these also took away from the beauty of downtown. The City Manager stated that the banners were technically in compliance with the Zoning Ordinance if they were attached to the building.
Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to approve the placement of a table and chairs on the sidewalk in front of the Crooked Door Coffee House on North Main Street, provided that the business owner signs a release holding the City harmless from any accidents or damages arising from the placement of the tables and chairs on a public sidewalk.

DISCUSS 2004 PAY AND CLASSIFICATION PLAN: The City Manager stated that as discussed at the Planning Session, he had conducted a survey of 14 similar sized cities in Western North Carolina to determine how the City's current salaries and salary ranges compared. The City Manager suggested that existing salaries were not terribly out of line, but that he would recommend a revised Pay and Classification Plan, with adjusted pay ranges for all positions, particularly in regard for starting pay. The City Manager noted that the Police Department had recently had particular trouble in recruiting experienced officers. Chief Elliott spoke about the problems with recruitment and asked for consideration in adjusting starting pay. The City Manager advised that the revised ranges would only involve the pay increases necessary to bring employees below the new ranges to the minimum of the range and to bring experienced employees at the minimum of the new range to one step above the minimum of the range. The revised Pay and Classification Plan also reclassifies the Senior Water Plant Operator as Assistant Chief Operator.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to approve the revised 2004 City Pay and Classification Plan, as follows:

SALARY GRADE	MINIMUM SALARY	MAXIMUM SALARY	POSITION TITLE
1	$15,031	$23,452	
2	$15,797	$24,645	
3	$16,608	$25,904	General Maintenance Worker I
4	$17,439	$27,204	Police Aide/Ordinance Enforcement Officer
			Administrative Secretary I
5	$18,314	$28,589	Billing and Collections Clerk
			General Maintenance Worker II
			Warehouse Storekeeper
6	$19,230	$30,040	Police Telecommunicator
			Equipment Operator
			Meter Reader
7	$20,211	$31,554	Wastewater Plant Operator
			Water Plant Operator
8	$21,234	$33,153	Fleet Mechanic
			Account/Records Clerk
			Administrative Secretary II
			Police Telecommunications Supervisor
9	$22,321	$34,837	Tax Collector
			Public Works Crew Leader
			Wastewater Plant Maintenance Technician/ Operator
			Wastewater Plant Laboratory Technician/ Operator
			Fire Suppression Officer
			Head Billing and Collections Clerk
			Accounting Assistant/Bookkeeper
			Fire Inspector
10	$23,452	$36,606	Fleet Mechanic Supervisor
			Police Officer I
11	$24,645	$36,461	Fire Lieutenant
			School Resource Officer
			Wastewater Plant Assistant ORC
			Water Plant Assistant Chief Operator
			Purchasing Agent
			Police Officer II
12	$25,904	$40,401	
13	$27,204	$42,447	Grants Administrator
			Sanitation Supervisor
			Fire Captain
			Police Sergeant
			Police Detective
14	$28,589	$44,601	Personnel Officer
			Police Lieutenant
15	$30,040	$46,861	Water Distribution Superintendent
			Street Superintendent
			Assistant Fire Chief
16	$31,554	$49,228	Water Plant Superintendent
			Wastewater Plant Superintendent
			Police Major
17	$33,153	$51,722	City Planner
			Building Inspector
18	$34,837	$54,344	
19	$36,606	$57,095	
20	$38,461	$59,994	Fire Chief
			Finance Officer
			Public Utilities/Projects Director
21	$40,401	$63,021	Police Chief
			Public Works Director
22	$42,447	$66,219	
23	$44,601	$69,588	
24	$46,861	$73,128	
25	$49,228	$76,837	
26	$51,722	$80,717	
27	$54,344	$84,811	

28	$57,095	$89,096
29	$59,994	$93,595
30	$63,021	$98,349

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects. The City Manager asked for direction on how to handle easement negotiations for the US 221 North water and sewer extension. Council agreed by consensus for the City Manager to use his best judgment in offering certain numbers of connections or connection fee credits in exchange for easements, and to consult the Utility Committee or the full Council if problems arose.

COUNCILMAN COMMENTS:

COUNCILMAN OWENBY discussed the large amount of junk mail included with cable bills and noted that a customer had the right to request that none of the advertisements be included with their bill.

COUCNILMAN CUTHBERTSON noted a recent article in Popular Government concerning retiree insurance and urged all members to read the article, so that they would know the legal responsibilities of a public employer regarding retiree insurance.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

L. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 4, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Danny, Cathy and Tyler Cook, 113 Woodland Drive, Marion, NC 28752; Gene & Gail Hall 45 Woodvine Drive, Marion, NC 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Cecil Owenby selected the citizen of the month for May.

Danny Cook

Councilman Owenby advised that Mr. Danny Cook moved to Marion in 1976. He worked for Baxter Healthcare. He left employment with them and went to college and then returned to Baxter as the Replenishment Center Operations Manager.

He is an active member of the First United Methodist Church where he is chief cook for all fund raisers. He is known for his delicious BBQ. Monies from Mr. Cook's BBQ are always going back into the Church for various projects. Danny is a member of the Forum Sunday School Class, has served as Chairman of the Administration Board, the Clean County Board of Directors, Eco Van Advisory Committee, Delegate to Annual Conference of WNC United Methodist at Lake Junaluska and much more.

Mayor Clark and Council Members all shared kind words about Mr. Cook.
CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent agenda as follows:

A. Approval of Minutes - April 15th & 19th 2004 Special Minutes and
April 20th 2004 Regular Minutes

B. Approve Amendment – Community Building and Depot Rules

CITY OF MARION, NORTH CAROLINA
MARION COMMUNITY BUILDING
RULES AND REGULATIONS

ADDENDUM
TO RULES AND REGULATIONS

Item number 3 under the rules and regulations is deleted in its entirety and replaced with the following:

3. All persons or groups renting the Marion Community Building must pay for the use of the building at the time reservations are made. No refunds will be made by the City should the renter not use the building on the date scheduled, unless a cancellation is made at least 60 days in advance of the scheduled event, in which case a refund will be made, except for an administrative service charge of $25. In lieu of receiving a refund, a person or group canceling an event more than 60 days in advance of the scheduled event may reschedule the building without additional cost at some other open date. A person or group canceling an event less than 60 days in advance of the scheduled event may reschedule the building without additional cost at some other open date, but will not be eligible to receive a refund. Reservations must be made in person (no reservations by telephone), no earlier than 9:00 A.M. local time and no earlier than the first day of the calendar month prior to the month one year in advance of the proposed use.

(EXAMPLE: if you wish to schedule the building in the month of October 2005, the earliest you can schedule the building is September 1, 2004). In the event two or more persons are at the Counter at City Hall at 9:00 A.M., wishing to rent the building on the same day, the name of one person, representing each group shall have their name placed in a box and drawn to determine which person may rent the building on the desired day. In all other situations, reservations shall be accepted on a First Come – First Served basis. The deposit shall be picked up within seven (7) work days following the use of the building and the receipt issued by the City for the deposit must be presented to pick up the deposit. The receipt will be kept and destroyed by the City.

These new regulations shall be effective upon adoption.

Adopted this the 4th day of May, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

CITY OF MARION, NORTH CAROLINA
MARION DEPOT BUILDING
RULES AND REGULATIONS

ADDENDUM
TO RULES AND REGULATIONS

Item number 3 under the rules and regulations is deleted in its entirety and replaced with the following:

3. All persons or groups renting the Marion Depot Building must pay for the use of the building at the time reservations are made. No refunds will be made by the City should the renter not use the building on the date scheduled, unless a cancellation is made at least 60 days in advance of the scheduled event, in which case a refund will be made, except for an administrative service charge of $25. In lieu of receiving a refund, a person or group canceling an event more than 60 days in advance of the scheduled event may reschedule the building without additional cost at some other open date. A person or group canceling an event less than 60 days in advance of the scheduled event may reschedule the building without additional cost at some other open date, but will not be eligible to receive a refund. Reservations must be made in person (no reservations by telephone), no earlier than 9:00 A.M. local time and no earlier than the first day of the calendar month prior to the month one year in advance of the proposed use. (EXAMPLE: if you wish to schedule the building in the month of October 2005, the earliest you can schedule the building is September 1, 2004). In the event two or more persons are at the Counter at City Hall at 9:00 A.M., wishing to rent the building on the same day, the name of one person, representing each group shall have their name placed in a box and drawn to determine which person may rent the building on the desired day. In all other situations, reservations shall be accepted on a First Come – First Served basis. The deposit shall be picked up within seven (7) work days following the use of the building and the receipt issued by the City for the deposit must be presented to pick up the deposit. The receipt will be kept and destroyed by the City.

These new regulations shall be effective upon adoption.

Adopted this the 4th day of May, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

C. Budget Ordinance Amendment

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE

(Eighth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-362-0200, Community Emergency Response Team Grant, is increased from $0 to $16,234.

b. General Fund Expenditures, Police, Account Number 10-510-4400, Community Emergency Response Team, is increased from $0 to $16,234.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 4th day of May, 2004.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-05-04-1

D. Approve Resolution Directing the Clerk to Investigate a Petition for Voluntary Annexation and Resolution Fixing Date of Public Hearing on the Question of Annexation

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 4, 2004, by the City of Marion; and

WHEREAS, 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 4th date of May 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

CERTIFICATE OF SUFFICIENCY

To the City Council of the City of Marion:

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 4TH day of May 2004.

(Seal)

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday , May 18, 2004.

Section 2. The area proposed for annexation is described as follows:

Commencing at an iron pin located on the northern right of way of NC Highway 226 (60' right of way), said iron pin being located approximately 282.0 feet southeast from the intersection of NC Highway 226 and Fairview Road, and being the common corner with William James Young, Jr. (Deed Book 708, page 873); thence along said right of way, S 50-54-17 E for 105.04 feet to an iron pin; thence S 50-59-43 E for 4.58 feet to an iron pin being the Point of Beginning. Thence leaving said right of way, N 48-17-58 E for 170.84 feet to an iron pin; thence N 54-34-49 E for 41.65 feet to an iron pin; thence N 56-59-12 E for 73.69 feet to an iron pin; thence S 40-27-33 E for 66.00 feet to an iron pin located on the common line of Floyd P. Cannon (Deed Book 86, page 423); thence along said line, S 49-32-27 W for 15.20 feet to an iron pin; thence along the common line of Malloy Leasing, LLC (Deed Book 750, page 212), S 50-32-58 W for 77.74 feet to an iron pin; thence S 42-56-18 W for 176.06 feet to an iron pin located on the northern right of way of NC Highway 226; thence along said right of way, N 50-59-43 W for 96.00 feet to the Point of Beginning. Said tract contains 0.518 acres, more or less.

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 4th of May 2004.

A. Everette Clark,
Mayor

ATTEST:

J. Robert Boyette, City Clerk

ANNEXATION ORDINANCE – BALDWIN AVENUE AREA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION UNDER THE AUTHORITYGRANTED BY CHAPTER 160A, ARTICDLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA – BALDWIN AVENUE

WHEREAS, all of the prerequisites to adoption of this ordinance prescribed in Chapter 160A, Article 4A, Part 2 of the General Statutes of North Carolina, have been met; and

WHEREAS, the City Council has taken into full consideration of statements presented at the public hearing held on April 20, 2004 on the question of this annexation; and

WHEREAS, the City Council has concluded and hereby declares that annexation of the area described herein is necessary to the orderly growth and development of the City of Marion;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion that:

Section 1. From and after the effective date of this annexation, the following territory shall be annexed to and become a part of the City of Marion, and the corporate limits of the City of Marion shall be extended to include said territory more particularly described by metes and bounds as follows:

BEGINNING at a point on the current Marion Corporate Limits, said point also being on the northern boundary of Lot 2870 in Block 19 on McDowell County Tax Map 1711.05. Thence following the northern boundary of said Lot 2870 approximately 12 feet in a easterly direction to a point, said point being at the northeastern corner of said Lot 2870. Thence following the eastern boundary of said Lot 2870 in a southerly direction approximately 73 feet to a point, said point being at the intersection of the eastern boundary of said Lot 2870 and the northern boundary of the southern Railroad right of way. Thence crossing said right of way boundary in a southerly direction in a straight line approximately 131 feet to a point. Said point being at the intersection of the northern most corner of Lot 1597 in Block 19 on McDowell County Tax Map 1711.05 and the southern margin of the Southern Railroad right of way. Thence following the eastern boundary of said Lot 1597 and Lot 2435 in Block 19 on McDowell County Tax Map 1711.05, first approximately 75 feet in and southerly direction and then approximately 51 feet in a westerly direction, then approximately 164 feet in a southeasterly direction to a point. Said point being at the intersection of the eastern most corner of said Lot 245 and the northern boundary of State Street Extension. Thence crossing State Street Extension in a straight line in a southerly direction approximately 31 feet to a point. Said point being at the intersection of the northern most corner of Lot 2342 in Block 19 on McDowell County Tax Map 1711.05 and the southern boundary of State Street Extension. Thence following the northeastern boundary of said Lot 2342 and Lots 2266, 2281 and 3105, all being in Block 19, on McDowell County Tax Map 1711.05 in a southeasterly direction approximately 287.5 feet to a point. Said point being at the intersection of the eastern most boundary of said Lot 3105 and the northwestern boundary of Matilda Avenue. Thence crossing the right of way of Matilda Avenue in a southeasterly direction in a straight line approximately 40 feet to a point Said point being at the intersection of the northern most corner of Lot 3044 in Block 19 of McDowell County Tax Map 1711.05. Thence following the northeastern boundary of said Lot 3044 and Lots 3968 and 4845, both lots being in Block 18, on McDowell County Tax Map 1711.05, first approximately 152 feet in a southeasterly direction, then approximately 45 feet in a northeasterly direction, then approximately 157 feet in a southeasterly direction to a point, said point being at the intersection of the eastern most corner of said Lot 4845 and the northern margin of Clark Street. Thence crossing the right of way of Clark Street in a straight line approximately 30 feet to a point on the southern boundary of said right of way. Thence following the southern boundary of said right of way in a northeasterly direction approximately 122 feet to a point, said point being at the intersection of said right of way and the northern most corner of Lot 5626 in Block 18 on McDowell County Tax Map 1711.05. Thence following the eastern boundary of said Lot 5626 and Lots 4499, 4491, 4363, 4265 and 4260, all being in Block 18, on McDowell County Tax Map 17110.05, first approximately 273 feet in a southerly direction, then approximately 68 feet in a westerly direction, then approximately 151 feet in a southerly direction, then approximately 75 feet in westerly direction, then approximately 212 feet in a southerly direction to a point, said point being at the intersection of the southeastern corner of said Lot 4260 and the northern boundary of the right of way of Leach Street. Thence crossing said right of way in a straight line in a southeasterly direction approximately 50 feet to a point, said point being at the intersection of the southern boundary of said right of way and the northeastern corner of Lot 4088 in Block 18 on McDowell County Tax Map 1711.05. Thence following the eastern boundary of said Lot 4088 and Lots 4998 and 4991 in Block 17 on McDowell County Tax Map 1711.05 approximately 267 feet in a southerly direction to a point, said point being at the intersection of the northern boundary of the right of way of Perry Street and the south eastern corner of said Lot 4991. Thence crossing said right of way in a southerly direction in a straight line approximately 40 feet to a point on the southern

boundary of said right of way. Thence following the southern boundary of said right of way in a easterly direction approximately 155 feet to a point, said point being a the intersection of the southern boundary of said right of way and the north eastern corner of Lot 5796 in Block 17 on McDowell County Tax Map 1711.05. Thence following the eastern boundary of said Lot 5796 in a southerly direction approximately 133 feet to a point at the intersection of the southeastern corner of said Lot 5796 and the current Marion Corporate Limits. Thence following the current Marion Corporate Limits approximately 3220.0 feet in a westerly and northerly direction to the point of BEGINNING.

Section 2. The City Council hereby finds and declares that the above described territory meets the requirements of G.S. 160A-36, in that:

The area is adjacent and contiguous, as defined by G.S. 160A-41(1) as of the 17th day of February, 2004, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 6014.5 feet, of which 3220.0 feet (53.5%) coincides with the City boundary. Therefore, at least one eight (or 12.5%) of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality.

The area to be annexed is developed for urban purposes in that 61.0% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 100% of the total residential and vacant acreage consists of lots and tracts three (3) or less in size.

Section 3. It is the purpose and intent of the City of Marion to provide services to the area being annexed under this ordinance, as set forth in the report of plans for services approved by the City Council on March 2, 2004 and filed in the office of the Clerk for public inspection on March 2, 2004.

Section 4. The City Council hereby finds and declares that, on the effective date of annexation prescribed in Section 8 hereof, the City of Marion will have sufficient funds approved, in the amount of $0.00, to finance the estimated cost of construction of water and sewer facilities found necessary in the report of plans for services to extend the basic sewer and water system of the City of Marion into the area to be annexed under this ordinance.

Section 5. From and after the effective date of this annexation, the territory annexed and its citizen and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City.

Section 6. The newly annexed territory described above shall be subject to City taxes according to G.S 160A-58.10.

Section 7. The mayor the City of Marion shall cause an accurate map of the annexed territory described in Section 1 hereof, together with a duly certified copy of the ordinance, to be recorded in the office of the register of deeds of McDowell County, and to the office of the Secretary of State in Raleigh. Suck a map shall also be delivered to the McDowell County Boards of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2004.

As to qualified tracts of agricultural land, horticultural land and forestland, the annexation will become effective on the last day of the month in which the tract or part thereof becomes ineligible for present-use classification under G.S 105-227.4 or no longer meets the requirements of G.S 160A-37(f1)(2).

Section 9. Notice of Adoption of this ordinance shall be published once in a newspaper having general circulation in the City of Marion.

Adopted this 4th day of May 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

ANNEXATION ORDINANCE – GARDEN CREEK ROAD AREA: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICDLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA – GARDEN CREEK ROAD

WHEREAS, all of the prerequisites to adoption of this ordinance prescribed in Chapter 160A, Article 4A, Part 2 of the General Statutes of North Carolina, have been met; and

WHEREAS, the City Council has taken into full consideration of statements presented at the public hearing held on April 20, 2004 on the question of this annexation; and

WHEREAS, the City Council has concluded and hereby declares that annexation of the area described herein is necessary to the orderly growth and development of the City of Marion;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion that:

Section 1. From and after the effective date of this annexation, the following territory shall be annexed to and become a part of the City of Marion, and the corporate limits of the City of Marion shall be extended to include said territory more particularly described by metes and bounds as follows:

BEGINNING at a point in the current Marion Corporate Limits, said point being at the intersection of the eastern most corner of Lot 6521 in Block 13 on McDowell County Tax Map 1702.03 and the southwester border of Garden Creek Road (SR #); thence crossing Garden Creek Road in an easterly direction in a straight line approximately 100 feet to a point. Said point being at the southern most corner of Lot 9779, in Block 13 on McDowell County Tax Map 1702.03, said point also being on the northern boundary of Moore Drive. Thence following the southeastern boundary of said Lot 9779, in a northeasterly direction approximately 390 feet to a point. Said point being at the southeastern corner of said Lot 9779, said point also being on the Northern boundary of Moore Drive. Thence following the northeastern boundary of said Lot 9779, first approximately 188 feet in a northerwesterly direction, then approximately 105 in a northeasterly direction, then approximately 344.8 feet in a northwesterly direction to a point. Said point being the northern most corner of said Lot 9779. Thence following the northwestern boundary of said Lot 9779 in a southerwesterly direction approximately 462 feet to a point. Said point being at the intersection of the western most corner of said Lot 9779 and the northeastern boundary of Garden Creek Road. Thence crossing Garden Creek Road in a straight line in a Southwesterly direction approximately 40 feet to a point. Said point being on the current Marion Corporate Limits. Thence following the current Marion Corporate Limits approximately 326 feet in a southeasterly direction to the point of BEGINNI

Section 2. The City Council hereby finds and declares that the above described territory meets the requirements of G.S. 160A-36, in that:

The area is adjacent and contiguous, as defined by G.S. 160A-41(1) as of the 17th day of February, 2004, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 1958.8 feet, of which 326.0 feet (16.7%) coincides with the City boundary. Therefore, at least one eight (or 12.5%) of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality.

The area to be annexed is developed for urban purposes in that 100% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 100% of the total residential and vacant acreage consists of lots and tracts three (3) or less in size.

Section 3. It is the purpose and intent of the City of Marion to provide services to the area being annexed under this ordinance, as set forth in the report of plans for services approved by the City Council on March 2, 2004 and filed in the office of the Clerk for public inspection on March 2, 2004.

Section 4. The City Council hereby finds and declares that, on the effective date of annexation prescribed in Section 8 hereof, the City of Marion will have sufficient funds approved, in the amount of $0.00, to finance the estimated cost of construction of water and sewer facilities found necessary in the report of plans for services to extend the basic sewer and water system of the City of Marion into the area to be annexed under this ordinance.

Section 5. From and after the effective date of this annexation, the territory annexed and its citizen and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City.

Section 6. The newly annexed territory described above shall be subject to City taxes according to G.S 160A-58.10.

Section 7. The mayor the City of Marion shall cause an accurate map of the annexed territory described in Section 1 hereof, together with a duly certified copy of the ordinance, to be recorded in the office of the register of deeds of McDowell County, and to the office of the Secretary of State in Raleigh. Suck a map shall also be delivered to the McDowell County Boards of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2004.

As to qualified tracts of agricultural land, horticultural land and forestland, the annexation will become effective on the last day of the month in which the tract or part thereof becomes ineligible for present-use classification under G.S 105-227.4 or no longer meets the requirements of G.S 160A-37(f1)(2).

Section 9. Notice of Adoption of this ordinance shall be published once in a newspaper having general circulation in the City of Marion.

Adopted this 4th day of May-2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

ANNEXATION ORDINANCE – HILLCREST DRIVE AREA: Mr. & Mrs. Gene Hall appeared before Council again requesting that their property not be annexed. Mr. and Mrs. Hall noted that their property was located on a private street off of Hillcrest Drive. The City Manager advised that the purpose of the annexation area was to annex all properties fronting on Hillcrest Drive and not currently in the City.

A discussion followed. Mayor Clark asked if the annexation ordinance could be adopted minus the Hall property. The City Manager stated that Council could tentatively approve the annexation minus the Hall property, pending further investigation as to compliance with the Statutes.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to direct the annexation of the Hillcrest Drive area, with the deletion of the Hall Property, contingent upon the remainder of the property meeting the annexation guidelines. The City Manager will bring to the May 18 meeting necessary annexation report amendments and ordinances to finalize the annexation of this area.

ANNEXATION ORDINANCE – LAURELWOOD AERA: The City Manager advised that with Council not wishing to annex the Laurelwood Townhouses, staff is still investigating what remaining part of the Laurelwood area can meet statutory requirements for annexation. The City Manager will bring to the May 18 meeting a recommended ordinance to annex a portion of this area, minus the Laurelwood Townhouses.

PERSONNEL POLICY AMENDMENT: The City Manager advised that prior to a few years ago, the probationary period for city employees was six months. It is presently two months.

The change was made to two months as a way to enhance recruitment of new employees. The benefits of recruitment seems to be far outweighed by the need to provide for an adequate training period, which in most local governments is six months. The City Manager noted that a survey of 79 cities in North Carolina between 2,500 and 9,999 population showed that the City of Marion had the lowest probationary period at two months, with nearly 85 percent of cities having a six month probationary period.

The second part of the amendment would be to set our increase at the end of the probationary period at five percent. Our increase has typically been at 7.5 percent, however, with starting pay becoming more competitive, there is no real need to have a probationary increase higher than the typical five percent found in most local governments. The City Manager noted that more than 55 percent of surveyed cities in North Carolina between 2,500 and 9,999 population had a pay increase of five percent after probation.

A discussion followed. Councilman Cuthbertson asked if sick leave could be taken by employees in their probationary period. The City Manager stated that the policy of the City had been that sick and vacation leave could be accrued during the probationary period, but could not be taken. It was the consensus of City Council that this arrangement should be continued, since it is the prevailing practice in private business.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adopt the following Personnel Policy Amendment:

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on June 19, 2001, is hereby amended as follows:

Section 1. That Article III, Recruitment and Employment is amended by deleting Section 10. Probationary Period of Employment, in its entirety and replacing it with the following:

Section 10 Probationary Period of Employment

An employee appointed to a permanent position shall serve a probationary period of six (6) months however the City will provide life, medical and dental insurance for the employee at the end of one month of service. New police employees are required to serve a twelve (12) month probationary period for certification purposes as required by the State but will be eligible to come off of the City probationary period at the end of six months of service. This time period is to be considered a continuation of the selection process. An employee serving a probationary period following initial appointment may be dismissed with or without cause and without right of appeal at any time during the probationary period. A regular employee serving a probationary period following a promotion shall be demoted as provided in this article if unable to perform assigned duties of the new job satisfactorily.

A probationary employee whose work is unsatisfactory may receive a written warning before being terminated by the department head. If the employee's work is not satisfactory during the probationary period, the employee may be terminated.

An employee serving a probationary period following initial employment in a permanent position will receive all benefits provided in accordance with this ordinance, with the following exception or as otherwise provided.

(a) Employees may accumulate vacation leave but will not be permitted to take vacation leave during the probationary period. Employees may accrue sick leave but will not be permitted to use accrued sick leave during the probationary period.

(b) Employees serving in a probationary period following promotion will continue to receive all benefits provided in accordance with this policy.

In unusual cases, for specific reasons approved by the City Manager, the probationary period may be extended for a maximum of an additional six (6) months. In such cases, the employee must be notified of the purpose of the extension, the conditions and performance expectations, and the length of time of the extension. However, sick and vacation leave may be used by the employee in this extended probationary period with prior approval of the department head. Likewise police personnel serving in the second half of his/her twelve (12) month State probationary period may use accumulated sick and vacation with prior approval of the Police Chief.

Section 2. That Article V, The Pay Plan, is amended by deleting Section 6, Probationary Period, subsection (e), in its entirety and replacing it with the following:

(e) Probationary Period: An employee who successfully completes the probationary period is entitled to a five percent pay increase.

Section 3. This amendment shall become effective upon its adoption.

Adopted this the 4th day of May, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

APPROVE STREET PROJECT LIST: The City Manager presented Council with a prioritized list of pending street and sidewalk projects, to guide staff with scheduling.

A discussion followed. Council directed the City Manager to make Depot Street the top priority.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the list of projects as follows:

Priority	Project's
1	Depot Street – Curb and gutter (both sides), sidewalk (east side or both sides)
2	Curb, gutter, sidewalk – North Madison Street
3	Sidewalk – New Street between North Garden and North Madison Street
4	Curb, gutter, sidewalk East Wilhemenia Street (requested by property owners, church)
5	Curb, gutter, sidewalk – Spring Street between South Main and South Garden Street
6	Curb and gutter – New road next to old Senior Center
7	Drainage, curb, gutter – North Garden, James Drive, New Street
8	Sidewalk repairs – Sections of Logan Street from North Main Street to West Court Street
9	Curb and Gutter – Lail Street (also needs new water line)
10	Curb, gutter, sidewalk – Park Avenue

11 Sidewalk repairs – Sections of State Street from Clay Street to old Railroad
12 Curb, gutter, sidewalk – Cross Street
13 Curb and gutter - Morgan Terrace
14 Sidewalk section replacement – West Court Street

SPEEDING ON RESIDENTIAL STREETS: Councilman Little advised that he had received another request from residents of North Madison Street for a speed bump or hump to slow down traffic. After discussion of the matter, Council directed more enforcement of existing traffic laws, such as speeding and running of stop signs on residential streets. The City Manager directed the Police Chief to begin a focus immediately on speeding, stop sign and red light running on residential streets and the downtown area. News releases will be used to notify motorists of this effort and targeted patrols and enforcement will be used, as had been done two years ago.

DISCUSS US 221 NORTH WATER/SEWER EXTENSION: The City Manager advised that the bid opening for the US 221 North water and sewer extension was held on April 27th. The City Manager noted that the City has more project than available funds, especially if the extra line extensions to the Hall property on Highway 221 and to Scottie's Mobile Home Park are included. The low bid from Ronny Turner Construction is summarized as follows:

Total construction bid totals $1,152,275.75
Total construction bid for the original scope of work totals $961,047.45
Total construction monies budgeted totals $969,940.00

Without those two properties included, the City would still be over the construction budget for sewer and under the construction budget for water. With some shifting of soft costs, the total budget should cover the original project scope, provided that negotiation takes place with the low bidder, Ronny Turner Construction. If these issues are worked out, the County Commissioners and/or Council should be able to award the contract for the water and sewer extension in June. The County may also look at applying for additional State grant funds to cover a water extension to the two additional areas listed above.

A discussion followed. Council took no action on this matter, but agreed by consensus with the direction presented.

The City Manager recommended to Council that tap fees be waived for the US 221 North water and sewer extension for property owners connecting to water and sewer within six months after the close of the project, since the project contractor rather than the City would be making service connections. Cost recovery fees would still be charged. This approach has been used with several contracted projects, such as PG, Eastfield and Highway 221 South.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to waive tap fees for the US 221 North water and sewer extension for property owners connecting to water and sewer within six months after the close of the project, since the project contractor rather than the City would be making service connections.

REVIEW 2003-04 AUDIT CONTRACT: The City Manager presented Council with a copy of the proposed 2003-04 Audit Contract.

The total amount is $25,300.00, approximately $7,000.00 higher than this years audit. $2,000.00 of this cost difference is due to single-audit requirements due to the Depot Project (single audits are required when a local government has more than a certain amount of Federal grant money in a given year) and the remaining $5,000.00 is attributable to the new GASB 34 regulations and the increased information that will be required for our financial statements.

A discussion followed. Mayor Clark noted that the GASB 34 regulations and the new financial statement format would be of no benefit to the City, but the City had no choice but to pay the increased fees.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the proposed contract from Johnson Price and Sprinkle for the 2003-04 City Audit and the preparation of financial statements in the amount of $25,300.00.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUCNILMAN CUTHBERTSON asked if Roto Rooter had purchased their privilege license, since this matter had been brought up at the April 20 meeting in reference to the reimbursement request by Mr. Ted Remington. The City Manager advised that Roto Rooter had purchased the required privilege licenses, but that they had declined to pay the City for the $136.50 reimbursed to Mr. Remington.

Councilman Cuthbertson also advised that it will be good to finally see street lights placed at the intersection of Rutherford Road, NC 226 South and the US 221 Bypass. The installation of these lights had been delayed for nearly one year due to the unwillingness of DOT to issue an encroachment permit.

COUNCILMAN MARTIN advised that several persons had contacted him from the Airport Road area regarding the need for water service. The City Manager advised that residents of Deer Run and Somerset Place had expressed interest, and that the extension could be feasible if enough people were willing to connect to water.

Councilman Martin also advised of a bad spot in the pavement on West Court Street near Logan Street. The City Manager will have DOT advised of this problem, since West Court Street is a State maintained road.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 18, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little was not present for this meeting due to being out of town.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Gene Cross, 169 Montevista Avenue, Marion, NC 28752; Linda Hunter, 4 Brownwood Drive, Burnsville, NC; Paul and Shelia Grindstaff 252 Mackey Farm Drive, Old Fort, NC 28762; Paul Adelgren 45 Woodland Drive, Marion, NC 28752; Betty Mace, Marion, NC 28752 .

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve A, B, C, D and F of the consent agenda as follows:

A. Approval of Minutes - May 4th 2004 Regular Minutes

B. Budget Ordinance Amendment:

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(Ninth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-309-0000, Prior Year Taxes, is increased from $25,000 to $75,000

b. General Fund Expenditures, Non-Departmental, Account Number 10-660-9950, Special Projects, is increased from $50,000 to $100,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds

Adopted this the 18th day of May, 2004

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-05-18-1

C. Resolution Directing the Clerk to Investigate a Petition for Voluntary Annexation and a Resolution Fixing Date of public hearing on the Question of Annexation – Great Meadows Properties:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 – GREAT MEADOWS, INC.

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 18, 2004, by the City of Marion; and

WHEREAS, 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 18th date of May 2004.

Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31 – GREAT MEADOWS, INC.

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, June 1, 2004

Section 2 The area proposed for annexation is described as follows

PARCEL "A":

BEING A PORTION of the Great Meadows, Inc. property as recorded in Deed Book 184, Page 355, as shown on a plat prepared by Suttles Surveying, P.A., entitled *"Survey for Great Meadows, Inc., for the City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project Number 12318D, dated May 6, 2004"*

BEGINNING on a ¾" iron pipe set located in the southern limit of the 100' right-of-way of U.S. Highway 70, and also being located in the western limit of a proposed private 50' right-of-way leading into the Great Meadows property; said iron pipe is located South 60 deg. 54 min 19 sec West – 55.45 feet from a second ¾" iron pipe set, said second pipe having NAD83 coordinate values of: X = 334,606.466 meters and Y = 220,815.519 meters and said second pipe located South 16 deg. 05 min. 30 sec. East – 102.41 feet-horizontal (31.21 meters–grid) from an existing N.C. D.O.T. disc in concrete, designated by Suttles Surveying, P.A. as GPS"CURB" having NAD83 coordinate values, determined by Suttles Surveying, P.A., of X = 334,597.815, Y = 220,845.507 meters, elevation = 374.535 meters and combined scale factor = 0.99984992, and runs thence from said BEGINNING with the western right-of-way line of the proposed 50' right-of-way a bearing of South 54 deg. 42 min. 57 sec. East – 262.34 feet to a ¾" iron pipe set, said iron pipe being located in the western boundary line of said 50' right-of-way leading from U.S. Highway 70 through the Great Meadows, Inc. property and thence leaving said 50' right-of-way, South 40 deg. 03 min 11 sec. West 78.21 feet to a ¾" iron pipe set, thence South 55 deg 58 min 50 sec. East – 187.00 feet to a ¾" iron pipe set and South 80 deg. 33 min 44 sec. West – 264.99 feet to a ¾" iron pipe set in the eastern boundary of the property described in a deed to the McDowell County Board of Education recorded in Deed Book 202, Page 14; thence, with a northeastern boundary described in Deed Book 202, Page 14, North 45 deg. 42 min. 50 sec. West – 354.34 feet to a ¾" iron pipe set in the southeastern limit of the 100' right-of-way of U.S. Highway 70, said pipe located North 60 deg. 54 min 19 sec. East – 1,214.32 feet from an existing right-of-way monument located in the southeastern limit of the right-of-way of U.S. Highway 70, thence with U.S. Highway 70 the following 2 courses and distances: North 60 deg. 54 min. 19 sec. East – 219.44 feet to a ¾" iron pipe set in the southwestern limit of the aforesaid 50' right-of-way leading in and through the Great Meadows property to the point of BEGINNING; containing 2.00 acres, leased to Mayland Home Centers out of the Great Meadows, Inc. property, as recorded in Deed Book 184, Page 355; and shown on a plat prepared by Suttles Surveying, P.A. entitled *"Survey for Great Meadows, Inc., for the City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project Number 12318D, dated May 6, 2004"*

PARCEL "B":

BEING A PORTION of the Great Meadows, Inc. property as recorded in Deed Book 184, Page 355, as shown on a plat prepared by Suttles Surveying, P.A., entitled *"Survey for Great Meadows, Inc., for the City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project Number 12318D, dated May 6, 2004"*

BEGINNING on an ¾" iron pipe set in the southeast limit of the 100' right-of-way of U. S. Highway 70, having NAD83 coordinate values of: X = 334,606.466 meters and Y = 220,815.519 meters being located on the northeast limit of a proposed private 50' right-of-way leading in and through the Great Meadows property, said pipe being located South 16 deg. 05 min. 30 sec. East - 102.41 feet-horizontal (31.21 meters grid) from an existing N.C.D.O.T. disc in concrete, designated GPS"CURB" by Suttles Surveying, P.A., with NAD83 coordinate values, determined by Suttles Surveying, P.A., of: X = 334,597.815 meters, Y = 220,845.507 meters, elevation = 374.535 meters and project combined scale factor = 0.999984992; thence, from said BEGINNING, with the southeastern limit of the right-of-way of U.S. Highway 70, North 60 deg. 54 min. 19 sec. East – 250.84 feet to a ¾" iron pipe set, thence leaving the southeastern limit of the right of way of U.S. Highway 70 and with the following lines thru the property described in a deed to Great Meadows, Inc. recorded in Deed Book 184, Page 355: South 29 deg. 05 min. 41 sec. East 220.00 feet to a ¾" iron pipe set in the northwestern limit of a proposed private 30' right-of-way, thence with the northern right-of-way line of the 30' proposed private right-of-way, South 60 deg. 54 min. 19 sec. West – 145.33 feet to a ¾" iron pipe set; said iron pipe being in the northern right-of-way line of the proposed private 30' right-of-way and being in the eastern boundary line of the proposed 50' right-of-way; thence with the eastern boundary line of the 50' right-of-way North 54 deg. 42 min. 57 sec. West – 242.99 feet to the point of BEGINNING, containing 1.09 acres; said tract being a portion of Deed Book 184, Page 355 and known as the Great Meadows, Inc., property; and being shown on a plat prepared by Suttles Surveying, P.A., entitled *"Survey for Great Meadows, Inc. for City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project #12318E, dated May 6, 2004."*

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 18th of May 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

D. Approve Resolution Directing the Clerk to Investigate a Petition for Voluntary Annexation and a Resolution Fixing Date of Public Hearing on the Question of Annexation – Hospice Property – Fleming Avenue:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 – HOSPICE OF MCDOWELL COUNTY

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 18, 2004, by the City of Marion, and

WHEREAS, 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place, and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 18th date of May 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31 – HOSPICE OF MCDOWELL COUNTY

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition, and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, June 1, 2004.

Section 2. The area proposed for annexation is described as follows:

TRACT ONE:

BEGINNING AT an iron pin set which is a corner common with Eugene Cross, III, see Deed Book 185, Page 364, McDowell County Public Registry, and S. R. Cross, see Deed Book 91, Page 164, McDowell County Public Registry and which iron pin set is located North 24 degrees 14 minutes 54 seconds East 212 feet from an unmarked point which is located North 79 degrees 03 minutes 48 seconds West 60.88 feet from a concrete monument which is identified as the fifth corner of Deed Book 185, Page 364, McDowell County Public Registry and which concrete monument is located South 72 degrees 11 minutes 54 seconds West 160 10 feet from a concrete monument which is identified as the fourth corner of Deed Book 185, Page 364, McDowell County Public Registry; thence from said BEGINNING point and with the line of the aforementioned Eugene Cross, III, South 73 degrees 14 minutes 53 seconds East 696.67 feet to an iron pin set; thence South 73 degrees 14 minutes 53 seconds East 12.72 feet to an unmarked point in the centerline of the pavement for the Old Bakersville Road, thence with the centerline of the Old Bakersville Road the following courses and distances which are all to unmarked points: North 10 degrees 18 minutes 01 seconds East 23 feet; North 22 degrees 10 minutes 44 seconds East 29.94 feet; North 45 degrees 12 minutes 33 seconds East 22.05 feet; North 58 degrees 21 minutes 11 seconds East 39.95 feet; North 37 degrees 39 seconds 45 minutes East 23.38 feet; North 14 degrees 06 minutes 34 seconds East 19.62 feet; North 04 degrees 44 minutes 16 seconds West 19.77 feet, North 18 degrees 50 minutes 44 seconds West 31 21 feet; North 18 degrees 33 minutes 36 seconds West 120 25 feet; North 22 degrees 15 minutes 10 seconds West 74.61 feet; North 18 degrees 01 minutes 23 seconds West 50.63 feet, North 17 degrees 01 minutes 36 seconds West 49.26 feet; North 6 degrees 50 minutes 08 seconds West 20.54 feet; North 11 minutes 24 degrees 56 seconds East 20.68 feet; North 31 degrees 04 minutes 14 seconds East 21 91 feet; North 35 degrees 17 minutes 28 seconds East 41.18 feet to an unmarked point situated at the point of intersection of Airport Road and the Old Bakersville Road, thence staying within the pavement of Airport Road, but traversing the very Southern edge of the pavement. South 62 degrees 02 minutes 35 seconds East 108.21 feet to an existing iron pin which is the third corner of Deed Book 503, Page 786, McDowell County Public Registry; thence running just south of the pavement for Airport Road, North 56 degrees 28 minutes 09 seconds West 84 33 feet to an unmarked point; North 54 degrees 39 minutes 37 seconds West 4.20 feet to an existing iron pin which is identified as the beginning corner of Deed Book 503, Page 786, McDowell County Public Registry, thence North 47 degrees 00 minutes 00 seconds West 64.50 feet to an unmarked point; thence North 42 degrees 56 minutes 58 seconds West 44.56 feet to an existing iron pipe, a corner common with S.R. Cross, see Deed Book 91, Page 164; thence with the line of the aforementioned S.R. Cross, South 49 degrees 32 minutes 38 seconds West 221.19 feet to a concrete monument, the third corner of Deed Book 231, Page 484, McDowell County Public Registry; thence continuing with the line of the aforementioned S. R. Cross, South 24 degrees 45 minutes 07 seconds West 486.18 feet to an iron pin set, the point and place of BEGINNING.

TRACT TWO.

BEGINNING at an existing iron pipe identified as the third corner of Deed Book 503 Page 786 which is located just south of the pavement for Airport Road and which existing iron pipe is located South 66 degrees 47 minutes 32 seconds East 108 71 feet from a mag nail set at the intersection of old Bakersfield aka Bakersville Road and Airport Road; thence from said BEGINNING point South 66 degrees 06 minutes 59 seconds West 129.70 feet to an existing iron pin; thence North 57 degrees 52 minutes 32 seconds West 42.63 feet to an existing iron pin; thence North 46 degrees 59 minutes 47 seconds West 64.50 feet to an iron pin set; thence South 45 degrees 45 minutes 39 seconds West 74.59 feet to an iron pin set, thence South 57 degrees 18 minutes 23 seconds East 167.44 feet to a concrete monument which is identified as the fourth corner of Deed Book 231, Page 484, McDowell; thence North 40 degrees 35 minutes 34 (Yes or No)

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 18th of May 2004.

A. Everette Clark,
Mayor

ATTEST:

J. Robert Boyette, City Clerk

F. Proclamation – National Small Cities and Towns Day:

CITY OF MARION
PROCLAMATION

National Small Cities And Towns Day

Whereas, small cities and towns under 50,000 population constitute the vast majority of municipalities across the United States; and

Whereas, small cities and towns provide opportunities which allow millions of people across America to lead better lives; and

Whereas, small cities and towns invest in their communities through the provision of services and programs which improve the quality of life for all citizens; and

Whereas, the federal government is a partner in investing in small cities and towns, and must be encouraged to continue to support programs and legislation to strengthen communities; and

Whereas, state governments are partners in investing in small cities and towns, and must also be encouraged to continue to support programs and legislation to strengthen communities; and

Whereas, organizations, businesses, and citizens are partners in investing in small cities and towns, and must be encouraged to continue to support efforts that make their communities better places in which to live; and

Whereas, during these challenging economic times, the need for a renewed intergovernmental partnership to support essential public services is more important than ever, and

Whereas, the First National Small Cities and Towns Day was held in Marion, North Carolina in June, 2001 and has been held across the United States ever since, and

Whereas, the Board of Directors and the Small Cities Council of the National League of Cities have declared June 11, 2004, as National Small Cities and Towns Day; and

Whereas, the Small Cities Council of the National League of Cities has challenged all cities, towns, and villages across America to proclaim June 11, 2004, as National Small Cities and Towns Day, and to conduct activities – such as news conferences, public service announcements, and events in local schools and community centers – on that day which highlight the different ways in which the federal government, state governments, organizations, businesses, and citizens partner with small cities and towns to invest in their communities and better the lives of all citizens;

Now Therefore, the City Council of the City of Marion does hereby proclaim Friday, June 11, 2004, as National Small Cities and Towns Day, and encourages President Bush, Congress, state governments, organizations, businesses, and all citizens to recognize this event, and to work together on this day and throughout the year to invest in small cities and towns to better the lives of all citizens.

A Everette Clark, Mayor

E. APPROVE RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION FOR VOLUNTARY ANNEXATION AND A RESOLUTION FIXING DATE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION – MARION CHRISTIAN ACADEMY PROPERTY – US 221 SOUTH: This item was pulled from the Consent Agenda for further discussion.

The City Manager advised that concerns had been expressed about the distance of this potential annexation area from the contiguous City Limits (over two miles) and from the nearest satellite area on Highway 221 South (over one mile). The City Manager also advised that this property would receive lower water and sewer rates, but produce no revenue for the City.

Mayor Clark suggested that Council needs to decide how far out the City will grow, since this parcel is almost in the center of Glenwood. He also stated that the annexation of a far removed property would place a drain on City resources.
Mr. Paul Adelgren, was present for this meeting representing Marion Christian Academy. Mr. Adelgren stated that the school simply wanted lower water and sewer rates and to be part of the City, but that they did not require any other City services. The City Manager noted that if the property was annexed, the City must serve it in the same manner as the rest of the City, meaning that the Police Department would need to patrol the area. He stated that Council could defer action on the request, or adopt the resolutions on the agenda to take the matter to public hearing.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adopt the following Resolutions and take this annexation request to public hearing:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-58.1 – MARION CHRISTIAN ACADEMY, INC.

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 18, 2004, by the City of Marion, and

WHEREAS, 160A-58.2 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 18th date of May 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2 – MARION CHRISTIAN ACADEMY, INC, 221 SOUTH

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received, and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina, that:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at City Hall at 7:00 P.M. on June 1, 2004.

Section 2. The area proposed for annexation is described as follows:

Tract A

BEGINNING on a point on the centerline of us 221, said point being located in the Southern margin of a 50-foot right of way, and running from said beginning point with the Southern margin of the 50-foot right of way the following two courses and distances: South 90 degrees 00 minutes 00 seconds East 39.60 feet to a utility pole, South 90 degrees 00 minutes 00 seconds 360.40 feet (total distance at this bearing 400 feet) to an iron pipe set, a new corner, thence a new line South 00 degrees 00 minutes 23 seconds West 335.17 feet to an iron pin set, a new corner; thence a new line South 81 degrees 33 minutes 36 seconds West 117.69 feet to an iron pipe found a common corner with Duke Power Company (Deed Book 256, Page 753), thence with the property of Duke Power Company, 06 degrees 49 minutes 34 degrees West 499 62 feet to a concrete monument found, a common corner with the property of Duke Power Company; thence, with the Beam property (Deed Book 285, Page 874) North 72 degrees 47 minutes 25 seconds West 162 54 feet to a concrete monument found, a common corner with Beam property; thence, North 52 degrees 47 minutes 35 seconds West 63.01 feet (total distance at this bearing 378.75 feet) to a point in the centerline of US 221; thence, with the centerline of US 221, North 00 degrees 00 minutes 23 seconds East 572.57 feet to the point of BEGINNING, containing 7.594 acres, more or less, as shown on a survey "Performance Rail Products" prepared by Edward M Haynes, dated August 31, 1998.

Tract B

BEGINNING on an iron pipe set, the Northeast corner of Tract 1, said beginning point being located South 90 degrees 00 minutes 00 seconds West 400 00 feet from a point in the centerline of US 221 which point is located South 00 degrees 00 minutes 23 seconds 147.96 feet from a spike found in the centerline of US 221 at its intersection North Muddy Creek, said point being located South 89 degrees 49 minutes 02 seconds East 24.38 feet from USGS Monument TT6ASS 1958, and running from the aforesaid beginning point a new line with Tract B, containing 4.755 acres, North 84 degrees 36 minutes 39 seconds East 299.73 feet to an iron pipe found in the centerline of the 68-foot right of way for Duke Power Company, thence, with the centerline of said right of way and the property of Theron Cris Bailey (Book 489, Page 459) South 07 degrees 01 minutes 57 seconds West 403.31 feet to an pipe found in the property line of Duke Power Company (Book 256, Page 753);

thence, with the property of Duke Power Company, North 81 degrees 33 minutes 36 seconds West 134.10 feet to an iron pipe found, a common corner of the Duke Power Company and the property to be conveyed to Performance Rail Products; thence, with said property the following two courses and distances North 81 degrees 33 minutes 36 seconds West 117.69 feet to an iron pipe set and North 00 degrees 00 minutes 23 seconds East 335.17 feet to the point of BEGINNING, containing 2.315 acres, more or less, and being Tract A as shown on survey "Joel Douglas McCormick" prepared by Edward M. Haynes, dated December 6, 1998.

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion, at least ten (10) days prior to the date of the public hearing.

ADOPTED this the 18th of May 2004.

A. Everette Clark, Mayor

ATTEST.

J. Robert Boyette, Clerk

PUBLIC HEARING – REZONING – RUTHERFORD ROAD: Mayor Clark opened the Public Hearing.

There were several property owners, involved with this rezoning, present for this Public Hearing, that requested approval of the rezoning so that properties could continue to be used and marketed for residential use.

City Planner Suzy Davis was present for this meeting and advised that the Planning Board had reviewed this request to rezone these lots on Rutherford Road from C-2 General Business to R-2 General Residential. These lots were initially zoned C-2 when this area was annexed last year. The lots are being utilized as residential properties.

The Planning Board voted unanimously to recommend rezoning these properties to R-2.

Mayor Clark closed the Public Hearing.

Upon a Motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to accept the recommendation of the Planning Board and rezone the following properties from C-2 General Business to R-2 General Residential, Paul Grindstaff - PIN 1711.04-50-4180, Betty Mace – PIN 1710.02-59-6915, and George Holland PIN 1710.02-59-7877

PUBLIC HEARING – REZONING – EAST COURT STREET: Mayor Clark opened the Public Hearing.

Notices were mailed to property owners regarding this proposed rezoning.

There were no citizens present to discuss this item.

The City Manager advised that staff is requesting the rezoning of these properties on East Court Street from M-1 Industrial to C-2 General Business. These properties are used for commercial activity rather than industry. The current land uses include Dixon Brothers Detailing, Marion Oil and George Long Auto Sales. Many of these businesses are non-conforming and should be zoned commercial instead of industrial.

City Planner Suzy Davis advised that the Planning Board had reviewed this request and had voted unanimously to recommend the rezoning of the area from M-1 to C-2. She noted that this request would help with the auto repair shop enforcement process by putting a business on East Court Street in compliance.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of council present to accept the recommendation of the Planning Board and rezone the following properties from M-1 Industrial Zoning District to C-2 General Business Zoning District, William and Wanda Ledbetter -PIN 1711.05-09-7842, John Walker – PIN 1711.05-09-2448, Albert and Jeanne Hensley – PIN 1711.05-09-3567, Marion Oil Co, Inc – PIN 1711.05-09-5615, John T. and Carolyn McDavid – PIN 1711.05-09-7842 and Part Five Partnership -PIN 1711.05-09-0379.

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION-PROPERTY ON NC 226 SOUTH: Mayor Clark opened the Public Hearing. The City Manager advised that this request involved the annexation of the 0.518 acre Brewer property on NC 226 South, that is proposed as a new Waffle House site. The annexation would become effective on June 30.

There were no citizens present to discuss this annexation.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adopt the following Ordinance:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA –
HIGHWAY 226 SOUTH

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below, and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, May 18, 2004, after due notice by publication on Friday, May 7, 2004; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that.

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of June 30, 2004:

Commencing at an iron pin located on the northern right of way of NC Highway 226 (60' right of way), said iron pin being located approximately 282.0 feet southeast from the intersection of NC Highway 226 and Fairview Road, and being the common corner with William James Young, Jr (Deed Book 708, page 873); thence along said right of way, S 50-54-17 E for 105.04 feet to an iron pin, thence S 50-59-43 E for 4.58 feet to an iron pin being the Point of Beginning. Thence leaving said right of way, N 48-17-58 E for 170.84 feet to an iron pin; thence N 54-34-49 E for 41.65 feet to an iron pin; thence N 56-59-12 E for 73.69 feet to an iron pin, thence S 40-27-33 E for 66.00 feet to an iron pin located on the common line of Floyd P Cannon (Deed Book 86, page 423); thence along said line, S 49-32-27 W for 15.20 feet to an iron pin; thence along the common line of Malloy Leasing, LLC (Deed Book 750, page 212), S 50-32-58 W for 77.74 feet to an iron pin; thence S 42-56-18 W for 176.06 feet to an iron pin located on the northern right of way of NC Highway 226; thence along said right of way, N 50-59-43 W for 96.00 feet to the Point of Beginning. Said tract contains 0.518 acres, more or less.

Section 2. Upon and after June 30, 2004, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 18th day of May, 2004:

A. Everette Clark, Mayor

ATTEST.

Approved As To Form:

Robert Boyette, City Clerk

City Attorney

AMEND ANNEXATION REPORT HILLCREST DRIVE: The City Manager advised that after further review, action is needed to amend the Hillcrest Drive annexation report to revise the description of the area and the statement of qualifications. The Hall property and a back portion of one lot at Hillcrest Drive and Finley Road were deleted to meet the statutory qualifications. Four houses remain in the area, along with one vacant lot.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to amend the Hillcrest Drive annexation report as presented.

ANNEXATION ORDINANCE – HILLCREST DRIVE AREA: The City Manager presented Council with a copy of the revised Annexation Ordinance for the Hillcrest Drive Annexation Area. The annexation will take effect on June 30.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION UNDER THE AUTHORITYGRANTED BY CHAPTER 160A, ARTICDLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA – HILLCREST DRIVE (REVISED)

WHEREAS, all of the prerequisites to adoption of this ordinance prescribed in Chapter 160A, Article 4A, Part 2 of the General Statutes of North Carolina, have been met, and

WHEREAS, the City Council has taken into full consideration of statements presented at the public hearing held on April 20, 2004 on the question of this annexation; and

WHEREAS, the City Council has concluded and hereby declares that annexation of the areas described herein is necessary to the orderly growth and development of the City of Marion;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion that:

Section 1. From and after the effective date of this annexation, the following territories shall be annexed to and become a part of the City of Marion, and the corporate limits of the City of Marion shall be extended to include said territories more particularly described by metes and bounds as follows:

TRACT A

BEGINNING at a point on the current Marion Corporate Limits, said point being at the Northern most corner of Lot 8211 in Block 37 on McDowell County Tax Map 1701.10, thence following the Northern boundary of said Lot 8211 in a Southwesterly direction approximately 210 feet to a point, said point being at the intersection of the Western most corner of said Lot 8211 and the Northern most boundary of Lot 7125 in Block 37 on McDowell County Tax Map 1701.10, thence following the Northern and Western boundaries of said Lot 7125 first approximately 100 feet in a Southwesterly direction then approximately 162 feet in a Southeasterly direction to a point on the current Marion Corporate Limits, thence following the current Marion Corporate Limits, first approximately 200 feet in a Northeasterly direction then approximately 175 feet in a Northerly direction to the point of BEGINNING.

TRACT B

BDGINNING at a point on the current Marion Corporate Limits, said point being on the Northeastern boundary of Lot 6014 in Block 37 on McDowell County Tax Map 1701 10, thence following the Northeastern boundary of said Lot 6014 in a Northwesterly direction approximately 154 feet to a point, said point being at the Northern most corner of said Lot 6014, thence following the Northwestern boundary of said Lot 6014 and Lots 5090 and 5985, both being in Block 37 on McDowell County Tax Map 1701.10, approximately 160 feet in a Southwesterly direction to a point, said point being at the Western most corner of said Lot 5985, thence following the Southwestern boundary of said Lot 5985 in a Southeasterly direction approximately 68 feet to a point on the current Marion Corporate Limits, thence following the current Marion Corporate Limits in a Northeasterly direction approximately 180 feet to the point of BEGINNING.

Section 2. The City Council hereby finds and declares that the above described territories meets the requirements of G S 160A-36, in that:

TRACT A

The area is adjacent and contiguous, as defined by G.S. 160A-41(1) as of the 17th day of February 2004, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 847.00 feet, of which 375.00 feet (44%) coincides with the City boundary. Therefore, at least one eight (or 12.5%) of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality.

The area to be annexed is developed for urban purposes in that 100% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 100% of the total residential and vacant acreage consists of lots and tracts three (3) or less in size.

TRACT II

The areas is adjacent and contiguous, as defined by G.S. 160A-41(1) as of the 17th day of February, 2004, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 562.00 feet, of which 180.00 feet (32%) coincides with the City boundary. Therefore, at least one eight (or 12.5%) of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality.

The area to be annexed is developed for urban purposes in that 67% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 100% of the total residential and vacant acreage consists of lots and tracts three (3) or less in size.

Section 3. It is the purpose and intent of the City of Marion to provide services to the areas being annexed under this ordinance, as set forth in the report of plans for services approved by the City Council on March 2, 2004, amended on May 18, 2004, and filed in the office of the Clerk for public inspection on March 2, 2004.

Section 4. The City Council hereby finds and declares that, on the effective date of annexation prescribed in Section 8 hereof, the City of Marion will have sufficient funds approved, in the amount of $0.00, to finance the estimated cost of construction of water and sewer facilities found necessary in the report of plans for services to extend the basic sewer and water system of the City of Marion into the areas to be annexed under this ordinance.

Section 5. From and after the effective date of this annexation, the territories annexed and its citizen and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City.

Section 6. The newly annexed territories described above shall be subject to City taxes according to G.S 160A-58.10.

Section 7. The mayor the City of Marion shall cause an accurate map of the annexed territories described in Section 1 hereof, together with a duly certified copy of the ordinance, to be recorded in the office of the register of deeds of McDowell County, and to the office of the Secretary of State in Raleigh. Such a map shall also be delivered to the McDowell County Boards of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2004.

As to qualified tracts of agricultural land, horticultural land and forestland, the annexation will become effective on the last day of the month in which the tract or part thereof becomes ineligible for present-use classification under G.S 105-227.4 or no longer meets the requirements of G.S 160A-37(f1)(2).

Section 9. Notice of Adoption of this ordinance shall be published once in a newspaper having general circulation in the City of Marion

Adopted this 18th day of May 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

AMEND ANNEXATION REPORT – LAURELWOOD AREA:

The City Manager advised that after the public hearing on the Laurelwood Drive Annexation Area in April, Council had directed that the Laurelwood Townhouses be deleted from this area and that staff determine how much of the remaining area could qualify for annexation. The City Manager advised that after further review, the only lots remaining that could qualify for annexation in this area would be the Cross property on Montevista Avenue and the Jackson property on Fleming Avenue. The City Manager stated that in order to proceed with the annexation of either or both of these parcels, Council would first need to amend the Laurelwood area annexation report to revise the description of the area and the statement of qualifications. He noted that if no action is taken to amend the annexation report, no action can be taken to

adopt an annexation ordinance for either or both lots, since an accurate annexation report would not have been adopted.

Mr. Gene Cross was present for this meeting and advised that he did not want his property on Montevista Avenue annexed.

A discussion followed. Mayor Clark stated that City Council had stated its intent in November and February at workshops to direct the City Manager to implement the annexation process. He stated that he wanted Council and Mr. Cross to know that the City Manager had acted according to the instructions of Council and had done his job properly.

No action was taken on this item.

ANNEXATION REPORT – LAURELWOOD AREA: With no action taken on the previous matter, no action was taken by Council on this item.

REJECT BIDS – FLUORIDE SYSTEM INSTALLATION: The City Manager presented Council with a letter from McGill Associates with bids received on April 30, 2004 to install the fluoride system.

The low bid was from GEM in the amount of $61,078.00. This low bid was far in excess of the forecasted $25,000.00 cost for installation. The City Manager advised that McGill was unable to negotiate with GEM to reduce the price significantly, therefore he would recommend rejecting all bids.

A discussion followed.

The City Manager advised that the City should be able to complete the project components and stay close to the project budget by hiring subcontractors to complete the individual phases of the project.

Upon a motion by Councilman, seconded by Councilman Owenby, those members of Council present voted to reject all bids received for the fluoride installation and to authorize staff to complete the project by hiring subcontractors to complete the individual phases of the fluoride equipment installation.

SCHEDULE BUDGET WORKSHOP: The City Manager advised that a date needs to be scheduled for one or more budget workshops to review the recommended 2004-05 budget.

A discussion followed.

Monday, June 7, 2004 at 6:00 PM at City Hall was set for the Workshop.

APPROVE STREET NAME: The City Manager advised that, as directed by Council, the Laughridge family had been contacted about having the street next to the old Senior Center named after Ms. Ann C. Hawkins, who was instrumental in starting the Council on Aging and Senior Center in McDowell County. Due to conflicts with other roads in the County, the recommendation was to name this street Ann Hawkins Street.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to name this street Ann Hawkins Street.

DISUCSS DOT ENHANCEMENT PROGRAM APPLICATION: The City Manager advised that he and Mayor Clark had spoken with Craig Newton with DOT about the stabilization of the railroad bank between the Main Street bridge and the West Henderson Street Parking Lot.

Mr. Newton urged the City to consider applying for a DOT Enhancement Program grant. The proposed project could include a sidewalk from the depot site to Main Street and stabilization of the railroad bank.

The City Manager stated that he had met with McGill Associates about this project and that they could prepare a grant application and cost estimates for the project. The City's share of the project would be 20 percent, and approval of Norfolk Southern Railway will be necessary.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to have McGill Associates develop some preliminary cost estimates and assist the City with preparing the grant application to be submitted to Council for review at the June 1 City Council Meeting.

APPROVE HOUSE BURNING – NC 226 SOUTH: The City Manager advised that the prospective Waffle House developers have approached Fire Chief Jim Neal about burning a house on the proposed site on NC 226 South. He stated that Chief Neal felt that the house could be burned safely. The City Manager recommended that it be made clear that the developers and/or property owners will be responsible for the costs of any asbestos inspections and removal, for the costs of any permits required for the burning and that they be required to promptly clear any debris from the lot that remains after the house is burned.

A discussion followed. Councilman Owenby did note that the presence of tanks at Pioneer Welding next to the house to be burned caused concern, and suggested that the Fire Department take a close look at these tanks to make sure the burning can be done safely.

Upon a motion by councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the burning of the Brewer house/new Waffle House site on NC 226 South request, contingent upon the burning meeting safety codes, the developers and/or property owners being responsible for the costs of any asbestos inspections and removal and for the costs of any permits required for the burning and that the developers and/or property owner be required to promptly clear any debris from the lot that remains after the house is burned.

APPOINTMENT – PLANNING BOARD ALTERNATE MEMBER: The City Manager presented Council with a copy of an application from Ms. Joan Keuper of Morgan Terrace who wishes to serve as an alternate on the City's Planning Board. He advised that after advertisement on the City Channel and in The McDowell News, Ms. Keuper's application was the only one received for the Planning Board.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to appoint Ms. Joan Keuper as an alternate member of the Planning Board for a three year term.

REQUEST FROM AMERICAN LEGION: The City Manager presented Council with a letter from Mr. Carroll Kanipe with the American Legion requesting $750.00 in funding for an addition to the existing Veteran's monument on the Courthouse lawn. The total cost for this addition is $2,750.00. The County is also being asked to provide $750.00 in funding.

Mr. Kanipe is also asking that Mayor and City Council attend a ceremony on Saturday, May 29, 2004 to honor World War II veterans. The ceremony would be held on the Courthouse Lawn at 12:00 Noon on that date.

Mayor Clark and Councilman Edwards advised that they would be out of town and could not attend this ceremony. Councilman Owenby and Councilman Martin advised that they would attend this ceremony, and Councilman Cuthbertson stated that he thought he could attend.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to contribute $750.00 as requested for a portion of the cost of the addition to the existing monument, with the City Manager given the discretion of determining whether funds for this contribution will be taken from the 2003-04 budget, or from the 2004-05 budget.

CONSIDER ADOPTION OF ORDINANCES: The City Manager presented Council with information from Chief Neal on the status of the four dilapidated structures he investigated last fall and for which the condemnation process was started. The properties were Berryhill property on East Court Street, Cozart property on Tate Street, Jackson property on Grayson Street and Caviness property on South Main Street.

The Caviness building has been repaired, while the other three have not, despite the property owners being given seven months to repair or demolish the structures.

The City Manager recommended that Council adopt ordinances to authorize staff to repair or demolish the Berryhill, Cozart and Jackson structures by any manner deemed appropriate (burning the houses or tearing down the houses).

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted to adopt the following ordinances:

ORDINANCE
CONCERNING PARTICULAR UNINHABITABLE DWELLINGS
AND/OR
HAZARDOUS ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the City of Marion enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes, which provides for the repair, closure or demolition of dwellings that have been found to be unfit for human habitation and abandoned structures which have been found to be a health or safety hazard;

WHEREAS, pursuant to and in compliance with the said Ordinance a certain dwelling(s)/structure(s) located on property described on the attached Exhibit A was found to be unfit for human habitation or hazardous; and

WHEREAS, the owner(s) of the above-described property is as follows. Robert J. Cozart and Leonora Cozart.

WHEREAS, on the 11th day of September, 2003, the public officer designated in the above-referenced Ordinance issued an order to the owners of the property described above which required the owner(s) to demolish by the 11th day of April, 2004 (a copy of the order is attached hereto as Exhibit B);

WHEREAS, the owners have failed to comply with the above-stated order;

NOW, THEREFORE, the City of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the public officer designated in the above-referenced Ordinance is hereby ordered to proceed to effectuate the above referenced Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes by taking such action as is necessary to carry out the repair, removal or demolition of the dwelling or structure as indicated in the attached order; and

2. That the public officer shall comply with all applicable provisions and procedures contained within the Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes.

ADOPTED THIS the 18th day of May, 2004.

CITY OF MARION

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

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ORDINANCE
CONCERNING PARTICULAR UNINHABITABLE DWELLINGS
AND/OR
HAZARDOUS ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the City of Marion enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes, which provides for the repair, closure or demolition of dwellings that have been found to be unfit for human habitation and abandoned structures which have been found to be a health or safety hazard;

WHEREAS, pursuant to and in compliance with the said Ordinance a certain dwelling(s)/structure(s) located on property described on the attached Exhibit A was found to be unfit for human habitation or hazardous; and

WHEREAS, the owner(s) of the above-described property is as follows: Francis Jackson .

WHEREAS, on the 11th day of September, 2003, the public officer designated in the above-referenced Ordinance issued an order to the owners of the property described above which required the owner(s) to demolish by the 11th day of April, 2004 (a copy of the order is attached hereto as Exhibit B);

WHEREAS, the owners have failed to comply with the above-stated order;

NOW, THEREFORE, the City of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the public officer designated in the above-referenced Ordinance is hereby ordered to proceed to effectuate the above-referenced Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes by taking such action as is necessary to carry out the repair, removal or demolition of the dwelling or structure as indicated in the attached order, and

2. That the public officer shall comply with all applicable provisions and procedures contained within the Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes.

ADOPTED THIS the 18th day of May, 2004

CITY OF MARION

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

ORDINANCE
CONCERNING PARTICULAR UNINHABITABLE DWELLINGS
AND/OR
HAZARDOUS ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the City of Marion enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes, which provides for the repair, closure or demolition of dwellings that have been found to be unfit for human habitation and abandoned structures which have been found to be a health or safety hazard,

WHEREAS, pursuant to and in compliance with the said Ordinance a certain dwelling(s)/structure(s) located on property described on the attached Exhibit A was found to be unfit for human habitation or hazardous; and

WHEREAS, the owner(s) of the above-described property is as follows. Alvin Ray Berryhill.

WHEREAS, on the 11th day of September, 2003, the public officer designated in the above-referenced Ordinance issued an order to the owners of the property described above which required the owner(s) to demolish by the 11th day of April, 2004 (a copy of the order is attached hereto as Exhibit B);

WHEREAS, the owners have failed to comply with the above-stated order;

NOW, THEREFORE, the City of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the public officer designated in the above-referenced Ordinance is hereby ordered to proceed to effectuate the above-referenced Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes by taking such action as is necessary to carry out the repair, removal or demolition of the dwelling or structure as indicated in the attached order; and

2. That the public officer shall comply with all applicable provisions and procedures contained within the Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes.

ADOPTED THIS the 18th day of May, 2004.

CITY OF MARION

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

MAYOR CLARK along with Council Members commended City Manager Bob Boyette for being selected as a Credentialed Local Government Manager by the International City and County Management Association.

COUNCILMAN EDWARDS advised that the 50th anniversary of the date his father, the late retired Fire Chief Arthur Edwards, joined the Fire Department is approaching and that he and his wife Scottie would like to commemorate this date by presenting the City of Marion with gas lantern light fixtures to replace the street light that hangs on the front of the Community Building.

Councilman Edwards stated that he would like to do this presentation during Fire Prevention Week in October and use his Citizen of the Month selection to honor current and retired firemen.

Mayor and Council members all agreed that this would be a wonderful idea in honor of former Fire Chief Arthur Edwards and members of the Fire Department and graciously agreed to accept this gift from Councilman and Mrs. Edwards.

COUCNILMAN CUTHBERTSON advised that he would like for this meeting to be adjourned in Memory of Former Fire Chief Tom Milligan.

COUNCILMAN OWENBY advised of a weeded lot on School Street. The City Manager advised that this lot was on the enforcement list.

Councilman Owenby also reported that a large transfer truck had parked in a curve on Park Avenue the weekend before. He asked the Police Department to keep a watch out for this truck, so that its owner could be advised that this location was not a safe place to park a large truck.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adjourn in memory of Retired Fire Chief Tom Milligan, who passed away the day before, on May 17, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 1, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Freddie Killough and Patti Hart, DAC Representatives; Don Greer, Maymead, Inc., PO Box 911, Mountain City, Tennessee 37683; Chris Goudreau 320 South Garden Street, Marion, NC 28752; David and Ellen Clay 518 Carolina Avenue, Marion, NC 28752; Don Beam 172 Crescent Drive, Marion, NC 28752; Haskell Davis 2120 Old US 221S Marion, NC 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN CUTHBERTSON:
Councilman Cuthbertson selected the citizens of the month for June.

CHRIS AND STEPHANIE GOUDREAU

Councilman Cuthbertson advised that there have been many couples in History---Burns and Allen, Lucy and Desi, Adam and Eve, Samson and Delilah, Romeo and Juliet and Robin Hood and Maid Marion.

He presented Chris and Stephanie Goudreau as his Citizens of the Month.

Due to sickness in the family, Stephanie could not attend this meeting.

Stephanie is a native of Centerville, Ohio and received her BS Degree in Biology from Eastern Kentucky University and her Masters Degree in Fisheries and Wild Life Science from Virginia Tech.

Chris is a native of New Hyde Park, New York and received his BS Degree in Biology from Purdue University and did post graduate study at Virginia Tech where he and Stephanie first met.

They married in 1987 and moved to Marion in 1989. They have one daughter, Helen.

Stephanie is treasurer for the Partnership for Children and Families and is the incoming Vice-President of the Marion Elementary PTO. In August, she will be working as an Adult Basic Education Instructor for McDowell Tech.

Chris is a fisheries biologist with the North Carolina Wildlife Resources Commission. He is the Regional Director of the In-stream Flow Council, which is an association of one biologist from each state dedicated to the improving the knowledge and practice of in-flow science.

They are active in the First United Methodist Church of Marion. Stephanie serves as Chairperson of the Children's Council, sings in the choir in addition to being active in the United Methodist Women.

Chris has taught Sunday School for almost 15 years and currently serves on the Stewardship Committee, Finance Committee and on the Church Council. He is a past member of the Board of Trustees for the Church.

They have both served as Delegates to the Annual Conference of the Methodist Church.

Mayor and Council all joined Councilman Cuthbertson with kind words about Mr. and Mrs. Goudreau.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent agenda as follows:

A. Approval of Minutes – May 18, 2004 Regular Minutes
B. Approve use of Firing Range – McDowell Tech

AGREEMENT FOR USE OF CITY OWNED PROPERTY

Name of Facility to be Used:	City of Marion Firing Range
Date(s) of Proposed Use:	To be coordinated with Marion Police Department
Purpose of Use:	B.L.E.T Firearms Certification, Marion Police Department Firearms Re-certification, D.O.C. In Service Training, MTCC Concealed Weapons Class
Number of Persons:	(15-36)
Effective Dates of Agreement	June 1, 2004 – May 31, 2005

It is hereby agreed by and between the City of Marion by and through the Mayor, its duly authorized agent for the purpose of execution hereof; and the undersigned organization as follows:

1. The above facilities may be used for the above purpose on designated date(s) as agreed by the Marion Police Department. It is agreed and understood that the Marion Police Department and City of Marion have priority on the scheduling of the use of the Firing Range. Should any scheduling conflict arise, McDowell Technical Community College will re-schedule their classes.
2. Use of the City of Marion Firing Range by McDowell Technical Community College will be limited to the following areas of training; Basic Law Enforcement Firearms Certification, Marion Police Firearms Re-certification, Department of Corrections In-Service Training, and MTCC Concealed Handguns Class.
3. During all training on the Firing Range there will be a minimum of two Instructors present at all times. Instructors will be Firearms Instructors certifie4d by the N.C. Criminal Justice Standards Division. At least one of the Firearms Instructors will be a certified instructor presently employed by the Marion Police Department and will be compensated for his/her instructional time by McDowell Technical Community College.
4. A user fee of ten dollars per day will be paid to the City of Marion for each day the college uses the Firing Range, with the exception of training for the Marion Police Department, in which case the user fee will be waived. Any damages to the Firing Range while being used by McDowell Technical Community College will be repaired by or replace at the expense of the College.
5. All students participating in training at the Firing Range will have insurance coverage as required during his/her enrollment process.
6. It is agreed that the Marion City Council and its agents and employees shall not be responsible or liable for any damages resulting from damage to property or bodily injury or death arising out of the aforesaid use, and the undersigned organization hereby agrees to indemnify and hold harmless the Marion City Council and its said agents and employees from any liability or claim of liability for the same, including, but not limited to attorney's fee incurred by said council, its agents and employees, in defending such claim.

In Witness whereof, the City and the Organization have executed this AGREEMENT as of this, the 1st day of June, 2004.

Marion City Council

By: _____ Date: _____

A. Everette Clark, Mayor
City of Marion

McDowell Technical Community College

By: _____ Date: _____
Dr. Bryan W. Wilson, President
McDowell Technical Community College

PUBLIC APPEARANCE – MAYMEAD, INC. – WATER BILL: The City Manager presented Council with several written correspondences between Maymead, Inc., the City Attorneys and himself regarding a disputed water bill resulting from the withdrawal of 100,000 gallons of water in the Summer of 2003 from a fire hydrant at Love's Travel Stores.

One correspondence from Mr. Wiley Roak, Vice President of Maymead, Inc., asked that Council reduce the $6,000.00 bill due to $3,000.00.

Mr. Don Greer was present for this discussion on behalf of Maymead to answer any questions Council may have. He noted that Maymead had not intended to skirt any City, rules, but they had simply needed water and had not been able to wait for an answer from City staff on the proper way to obtain water from a fire hydrant. Mr. Greer stated that Maymead had kept records of the amount of water taken, which totaled 50 loads, or 100,000 gallons.

The City Manager advised that the City's rate schedule was adopted in 1989 for the withdrawal of water from fire hydrants. They were charged correctly for the water they pulled from the hydrant and used. He also advised that the basic principle of utility rates, in accordance with General Statutes, is that cities should be consistent in charging rates, although distinctions are allowed to be made based on "classes of service" and "outside the corporate limits". Once a rate is adopted, decisions to reduce or forgive bills are not supposed to be made arbitrarily, except in accordance with adopted policies, such as our leak adjustment policy.

The City Manager advised that Mr. Roark noted that Maymead is doing work for the City (indirectly) on Sugar Hill Road with the installation of water and sewer service. Mr. Roark suggested his company perhaps discounting some of the "betterment" costs we will incur for this project, due to requesting higher grade pipe and fittings, installation of service connections, replacement of existing deteriorated manholes and other items that DOT would normally not fund for such a project. The City Manager suggested that for proper accounting Maymead should pay its bill and the City should pay any bills it owes.

A discussion followed.

Mayor Clark informed Mr. Greer that taking water from a fire hydrant without permission is a criminal offense, and puts the public health and safety and jeopardy. Mayor Clark advised that the City had chosen to ignore the process used by Love's to take water from the fire hydrant and now was simply trying to collect for the amount of water used.

Councilman Little advised that Council had put the rate structure in place in 1989 for taking water from a fire hydrant out of concern for public health and safety, and because people were taking water illegally from fire hydrants.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to deny the offer of Maymead and to require the entire bill of $6,000.00 to be paid immediately.

PUBLIC APPEARANCE – DAVID CLAY: Mr. & Mrs. David Clay were present for this meeting and asked to speak to Council.

Mr. Clay reported that he and his wife do not want to be annexed. They live on Carolina Avenue in the Eastfield Community. Mr. Clay read a statement explaining why annexation is not advantageous for he and his wife.

The City Manager advised that there are no current plans to annex the Eastfield community, except for properties fronting on Baldwin Avenue. City Officials met with property owners from Eastfield in April to receive input regarding a request to annex the community. However, to date City Council has not begun any annexation proceedings for the area of Carolina Avenue.

Several Council members commented that due to the location of Mr. & Mrs. Clay's property and their desire to not be annexed, they would not be in favor of including their property in the event this area were to be annexed in the future.

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION – GREAT MEADOWS PROEPRTY – US 70 WEST: Mayor Clark opened the Public Hearing. The City Manager advised that this request involved the voluntary annexation of three acres of property on US 70 West contiguous to the City Limits, including the Mayland Mobile Homes site and the proposed Wash and Lube site.

There were no citizens present to discuss this item.

The Public Hearing was closed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION, NORTH CAROLINA – GREAT MEADOWS, INC

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, May 18, 2004, after due notice by publication on Friday, May 21, 2004; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of June 30, 2004:

TRACT A:

BEING A PORTION of the Great Meadows, Inc. property as recorded in Deed Book 164, Page 355, as shown on a plat prepared by Suttles Surveying, P.A., entitled *"Survey for Great Meadows, Inc., for the City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project Number 12318D, dated May 6, 2004"*

BEGINNING on a ¾" iron pipe set located in the southern limit of the 100' right-of-way of U.S. Highway 70, and also being located in the western limit of a proposed private 50' right-of-way leading into the Great Meadows property; said iron pipe is located South 60 deg. 54 min. 19 sec. West – 55.45 feet from a second ¾" iron pipe set, said second pipe having NAD83 coordinate values of: X = 334,606.466 meters and Y = 220,815.519 meters and said second pipe located South 16 deg. 05 min. 30 sec. East – 102.41 feet-horizontal (31.21 meters–grid) from an existing N.C. D.O.T. disc in concrete, designated by Suttles Surveying, P.A. as GPS"CURB" having NAD83 coordinate values, determined by Suttles Surveying, P.A., of: X = 334,597.815, Y = 220,845.507 meters, elevation = 374.535 meters and combined scale factor = 0.99984992; and runs thence from said BEGINNING with the western right-of-way line of the proposed 50' right-of-way a bearing of South 54 deg. 42 min. 57 sec. East – 262.34 feet to a ¾" iron pipe set, said iron pipe being located in the western boundary line of said 50' right-of-way leading from U.S. Highway 70 through the Great Meadows, Inc. property and thence leaving said 50' right-of-way, South 40 deg. 03 min. 11 sec. West – 71.21 feet to a ¾" iron pipe set, thence South 55 deg. 58 min. 50 sec. East – 187.00 feet to a ¾" iron pipe set and South 80 deg. 33 min. 44 sec. West – 264.99 feet to a ¾" iron pipe set in the eastern boundary of the property described in a deed to the McDowell County Board of Education recorded in Deed Book 202, Page 14: thence, with a northeastern boundary described in Deed Book 202, Page 14,

North 45 deg. 42 min. 50 sec. West – 354.34 feet to a ¾" iron pipe set in the southeastern limit of the 100' right-of-way of U.S. Highway 70, said pipe located North 60 deg. 54 min. 19 sec. East – 1,214.32 feet from an existing right-of-way monument located in the southeastern limit of the right-of-way of U.S. Highway 70; thence with U.S. Highway 70 the following 2 courses and distances: North 60 deg. 54 min. 19 sec. East – 219.44 feet to a ¾" iron pipe set in the southwestern limit of the aforesaid 50' right-of-way leading in and through the Great Meadows property to the point of BEGINNING; containing 2.00 acres, leased to Mayland Home Centers out of the Great Meadows, Inc. property, as recorded in Deed Book 184, Page 355; and shown on a plat prepared by Suttles Surveying, P.A. entitled *"Survey for Great Meadows, Inc., for the City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project Number 12318D, dated May 6, 2004."*

TRACT B:

BEING A PORTION of the Great Meadows, Inc. property as recorded in Deed Book 184, Page 355, as shown on a plat prepared by Suttles Surveying, P.A., entitled *"Survey for Great Meadows, Inc., for the City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project Number 12318D, dated May 6, 2004"*

BEGINNING on an ½" iron pipe set in the southeast limit of the 100' right-of-way of U. S. Highway 70, having NAD83 coordinate values of: X = 334,606.466 meters and Y = 220,815.519 meters being located on the northeast limit of a proposed private 50' right-of-way leading in and through the Great Meadows property, said pipe being located South 16 deg. 05 min. 30 sec. East - 102.41 feet-horizontal (31.21 meters–grid) from an existing N.C.D.O.T. disc in concrete, designated GPS"CURB" by Suttles Surveying, P.A., with NAD83 coordinate values, determined by Suttles Surveying, P.A., of: X = 334,597.815 meters, Y = 220,645.507 meters, elevation = 374.535 meters and project combined scale factor = 0.999984992; thence, from said BEGINNING, with the southeastern limit of the right-of-way of U.S. Highway 70, North 60 deg. 54 min. 19 sec. East – 250.84 feet to a ¾" iron pipe set; thence leaving the southeastern limit of the right of way of U.S. Highway 70 and with the following lines thru the property described in a deed to Great Meadows, Inc. recorded in Deed Book 184, Page 355: South 29 deg. 05 min. 41 sec. East – 220.00 feet to a ¾" iron pipe set in the northwestern limit of a proposed private 30' right-of-way, thence with the northern right-of-way line of the 30' proposed private right-of-way, South 60 deg. 54 min. 19 sec. West – 145.33 feet to a ¾" iron pipe set; said iron pipe being in the northern right-of-way line of the proposed private 30' right-of-way and being in the eastern boundary line of the proposed 50' right-of-way; thence with the eastern boundary line of the 50' right-of-way North 54 deg. 42 min. 57 sec. West – 242.99 feet to the point of BEGINNING, containing 1.00 acres; said tract being a portion of Deed Book 184, Page 355 and known as the Great Meadows, Inc.
property; and being shown on a plat prepared by Suttles Surveying, P.A., entitled *"Survey for Great Meadows, Inc., for City of Marion proposed annexation, Marion Township, McDowell County, North Carolina, Project #12318E, dated May 6, 2004."*

Section 2. Upon and after June 30, 2004, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 1st day of June, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION – HOSPICE PROPERTY FLEMING AVENUE: Mayor Clark opened the Public Hearing. The City Manager advised that this request involved the annexation of the Hospice property (5.42 acres) on Fleming Avenue, contiguous to the City Limits.

There were no citizens present to discuss this item.

The Public Hearing was closed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE
LIMITS OF THE CITY OF MARION, NORTH CAROLINA –
HOSPICE OF MCDOWELL COUNTY

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, May 18, 2004, after due notice by publication on Friday, May 21, 2004; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of June 30, 2004:

TRACT A:

BEGINNING AT an iron pin set which is a corner common with Eugene Cross, III, see Deed Book 185, Page 364, McDowell County Public Registry, and S. R. Cross, see Deed Book 91, Page 164, McDowell County Public Registry and which iron pin set is located North 24 degrees 14 minutes 54 seconds East 212 feet from an unmarked point which is located North 79 degrees 03 minutes 48 seconds West 60.88 feet from a concrete monument which is identified as the fifth corner of Deed Book 185, Page 364, McDowell County Public Registry and which concrete monument is located South 72 degrees 11 minutes 54 seconds West 160.10 feet from a concrete monument which is identified as the fourth corner of Deed Book 185, Page 364, McDowell County Public Registry; thence from said BEGINNING point and with the line of the aforementioned Eugene Cross, III, South 73 degrees 14 minutes 53 seconds East 696.67 feet to an iron pin set; thence South 73 degrees 14 minutes 53 seconds East 12.72 feet to an unmarked point in the centerline of the pavement for the Old Bakersville Road; thence with the centerline of the Old Bakersville Road the following courses and distances which are all to unmarked points: North 10 degrees 18 minutes 01 seconds East 23 feet; North 22 degrees 10 minutes 44 seconds East 29.94 feet; North 45 degrees 12 minutes 33 seconds East 22.05 feet; North 58 degrees 21 minutes 11 seconds East 39.95 feet; North 37 degrees 39 seconds 45 minutes East 23.38 feet; North 14 degrees 06 minutes 34 seconds East 19.62 feet; North 04 degrees 44 minutes 16 seconds West 19.77 feet; North 18 degrees 50 minutes 44 seconds West 31.21 feet; North 18 degrees 33 minutes 36 seconds West 120.25 feet; North 22 degrees 15 minutes 10 seconds West 74.61 feet; North 16 degrees 01 minutes 23 seconds West 50.63 feet; North 17 degrees 01 minutes 36 seconds West 49.26 feet; North 6 degrees 50 minutes 08 seconds West 20.54 feet; North 11 minutes 24 degrees 56 seconds East 20.68 feet; North 31 degrees 04 minutes 14 seconds East 21.91 feet; North 35 degrees 17 minutes 28 seconds East 41.18 feet to an unmarked point situated at the point of intersection of Airport Road and the Old Bakersville Road; thence staying within the pavement of Airport Road, but traversing the very Southern edge of the pavement, South 62 degrees 02 minutes 35 seconds East 108.21 feet to an existing iron pin which is the third corner of Deed Book 503, Page 786, McDowell County Public Registry; thence running just south of the pavement for Airport Road, North 56 degrees 28 minutes 09 seconds West 84.33 feet to an unmarked point; North 54 degrees 39 minutes 37 seconds West 4.20 feet to an existing iron pin which is identified as the beginning corner of Deed Book 503, Page 786, McDowell County Public Registry; thence North 47 degrees 00 minutes 00 seconds West 64.50 feet to an unmarked point; thence North 42 degrees 56 minutes 58 seconds West 44.56 feet to an existing iron pipe, a corner common with S.R. Cross, see Deed Book 91, Page 164; thence with the line of the aforementioned S.R. Cross, South 49 degrees 32 minutes 38 seconds West 221.19 feet to a concrete monument, the third corner of Deed Book 231, Page 484, McDowell County Public Registry; thence continuing with the line of the aforementioned S. R. Cross, South 24 degrees 45 minutes 07 seconds West 486.18 feet to an iron pin set, the point and place of BEGINNING.

TRACT B:

BEGINNING at an existing iron pipe identified as the third corner of Deed Book 503 Page 786 which is located just south of the pavement for Airport Road and which existing iron pipe is located South 66 degrees 47 minutes 32 seconds East 108.71 feet from a magnet nail set at the intersection of old Bakersville Road and Airport Road; thence from said BEGINNING point South 66 degrees 06 minutes 59 seconds West 129.70 feet to an existing iron pin; thence North 57 degrees 52 minutes 32 seconds West 42.63 feet to an existing iron pin; thence North 46 degrees 59 minutes 47 seconds West 84.50 feet to an iron pin set; thence South 45 degrees 45 minutes 39 seconds West 74.59 feet to an iron pin set; thence South 57 degrees 18 minutes 23 seconds East 167.44 feet to a concrete monument which is identified as the fourth corner of Deed Book 231, Page 484, McDowell; thence North 40 degrees 35 minutes 34 seconds East 129.27 feet to an unmarked point; thence North 45 degrees 05 minutes 47 seconds East 42.74 feet to the point and place of BEGINNING.

Section 2. Upon and after June 30, 2004, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 1st day of June, 2004.

A. Eyerette Clark, Mayor

ATTEST: **Approved As To Form:**

J. Robert Boyette, City Clerk **City Attorney**

PUBLIC HEARING ADOPTION OF ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION – MARION CHRISTIAN ACADEMY PROPERTY: Mayor Clark opened the Public Hearing.

Mr. Haskell Davis and Mr. Donald Beam were present on behalf of Marion Christian Academy.

The City Manager presented Council with information from other cities on how they treat non-taxable satellite annexations that are actually a drain on City resources. Most cities look at such satellite annexations in terms of the economic impact on the City. In the case of Marion Christian Academy, the City Manager stated that the property would generate no tax revenue, would cost the City due to lower water and sewer rates and would create added service responsibility for the Police and Fire Departments. The City Manager presented a memo from Fire Chief Jim Neal stating that City ISO ratings could be threatened by the annexation of this property, due to the distance of the property from the City fire station, unless a contract for fire service was entered into with the Glenwood Fire Department. Such a contract would cost the City additional revenue. The City would have to serve the property on the same basis as the rest of the City, meaning that the Police Department would be required to patrol the property and respond to calls.

If the property was contiguous to the City Limits, annexation might be more feasible, as costs for service would be greatly reduced.

A lengthy discussion followed. The Mayor and Councilmen said they appreciated the presence of Marion Christian Academy in the community and their interest in being part of the City of Marion, but that their responsibility to City taxpayers required them to consider whether it was in the best financial interest of the City to annex a satellite area.

The Public Hearing was closed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to defer this request for annexation to a future date.

APPROVE DOWNTOWN ADVISORY COMMITTEE/MAIN STREET PROGRAM VISION STATEMENT: Ms. Patti Hart and Ms. Freddie Killough were present for this meeting representing the Downtown Advisory Committee and presented Council with a Vision Statement for downtown. The statement was created by the Downtown Advisory Committee as part of the Main Street Program, based on input from the community at the Visioning Forum held at the High School in March.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin Council voted unanimously to accept the following Vision Statement:

VISION STATEMENT

The year 2010 finds downtown Marion the center for business, social, and family activities.

Visitors arriving by passenger rail tour the shops and art exhibits at the restored historic depot before strolling the beautifully landscaped walk way to Main Street. Mingling with residents of newly renovated upper level housing, some visit the unique specialty shops and boutiques. Others enjoy walking tours of restored historic buildings, cultural exhibits or just relaxing at the local pubs, pocket gardens and fountains. Numerous dining options include choices from outdoor casual cafes to international cuisine. Downtown is designed to be pedestrian and bicycle friendly while providing convenient parking and good traffic flow. Remming to the depot, visitors and locals enjoy an evening performance at the outdoor depot stage. Revitalized Marion offers something for everyone year round.

CEMETERY ORDINANCE AMENDMENT: The City Manager advised that the City recently experienced odor problems relating to a body being placed in the mausoleum without being embalmed and grave sites sinking due to not having vaults. The City has no requirements related to embalming or the concrete vaults.

Odors cannot be entirely eliminated from the mausoleum. However, Street Superintendent Roger Estes contacted a State Agency that oversees funeral homes. They stated that many local governments do choose to require embalming, particularly in mausoleums, due to odors and the possibility of bacteria.

A discussion followed. City Council agreed to address the issue of the embalming requirement first.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 5
CEMETERIES
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 5, Cemeteries, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows.

Section 2. Chapter 5, Section 5-12, General rules for Oak Grove Cemetery, is amended by adding the following.

(l) No body shall be placed in any mausoleum vault unless it has been embalmed.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of June, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-04-06-01-1

Another issue discussed was requiring vaults or concrete boxes to be placed in gravesites at the Oak Grove Cemetery to help prevent the graves from sinking. The City Manager stated that this requirement would prevent graves from sinking but would create an additional cost for burials in Oak Grove Cemetery. He suggested that Council could adopt the ordinance now or refer the matter to the Cemetery Committee for discussion, since the Committee needs to look at some possible capital improvements in the Cemetery anyway.

A discussion followed. Mayor Clark urged Council to consider approval of the ordinance due to the many problems with sinking graves and tombstones falling over.

Councilman Owenby suggested that since all lots were sold in Oak Grove, it would be better to not require the vaults or boxes, since such a requirement had not been in place up until now.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 5
CEMETERIES
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 5, Cemeteries, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 5, Section 5-12, General rules for Oak Grove Cemetery, is amended by adding the following:

(m) Vaults or concrete boxes must be installed for burials in a gravesite, to help prevent graves from sinking.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of June, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-04-06-01-2

The vote was as follows:

Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Little	Yes
Councilman Martin	Yes
Councilman Owenby	No

It was the consensus of Council to have the Cemetery Committee meet to further discuss several matters regarding the Cemetery, including a request for an additional set of steps and for other possible improvements.

CIVIL CITATION APPEAL – PARKING TICKET: The City Manager presented Council with a written appeal from Mr. Fred Gurule for a parking ticket received on May 19 on South Garden Street. He was cited for an overtime parking violation while supposedly having his handicapped placard displayed. His placard is valid.

The City Manager advised that G.S. 20-37.6 states that a person displaying a handicapped placard may park for unlimited periods in parking zones restricted as to the length of time

parking is permitted, meaning that it does not matter whether such a person is parked in a handicapped space or not. The City Manager stated that he and the Police Chief had discussed the ticket and would recommend that the $10.00 penalty be waived.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to waive the $10.00 penalty for this parking citation.

REVIEW DEPOT INTERIOR PAINT COLORS: The City Manager stated that DBA Director Freddie Killough had recently met with the Depot contractor to review interior paint colors as recommended by the architect for the depot. One color chosen was bright "lemon twist" yellow for the wainscot and back of the stage. The City Manager stated that Council had previously endorsed green and yellow as acceptable trim colors, in additional to the red flooring in the freight depot, but that he and Mrs. Killough had not expected such a bright and prominent color for the wainscot and back of the stage in the freight depot. The City Manager advised that he had asked the architect for additional recommendation, and that the architect had submitted two possibilities, with more muted colors.

Council agreed on one of the alternate color schemes, involving a terracotta color for the wainscot and the back of the stage in the freight depot, a dark green trim color, and a beige color for the kitchen. The "lemon twist" yellow color will not be used.

The City Manager will advise the depot architect of the selected colors.

DISCUSS DEPOT STREET CURB/SIDEWALK REPLACEMENT;
The City Manager advised that the curbs on both sides of Depot street along with the sidewalk on the east side of the street will need to be replaced. He stated that the City would have an option on the west side of the street of simply replacing the sidewalk in front of Laughridge Furniture showroom or constructing a concrete sidewalk the length of the street, or constructing the sidewalk with the same style of brick used in the Depot courtyard area. The City Manager presented estimates of material costs for the sidewalk as prepared by Public Utilities/Projects Director Glen Sherlin. The cost estimates showed that the brick paver option would be about 60 percent more expensive than concrete. In addition, the City Manager recommended that the City offer Laughridge Furniture the option of buying the chosen material for the sidewalk and having City crews replace the portion of sidewalk on private property next to the City sidewalk in front of either or both the old Clevenger's building on the east side of Depot Street and the Laughridge Furniture showroom on the west side of Depot Street. As part of the project, Duke Power will bury overhead power lines, remove two poles and install decorative street lights on both sides of the street. The City will incur some costs to replace overhead service to surrounding property owners with underground service.

A discussion followed. The Mayor and Council agreed that the brick sidewalks should match the ones on Main Street unless such brick would not match the brick used in the depot courtyard.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to authorize that the Depot Street sidewalk be constructed the full length of both sides of the street with brick to match the type used on Main Street, and to allow Laughridge Furniture to purchase materials and have City crews replace the portion of sidewalk on private property next to the City sidewalk in front of either or both the old Clevenger's building on the east side of Depot Street and the Laughridge Furniture showroom on the west side of Depot Street.

The City Manager was instructed to coordinate the brick color for the Depot Street sidewalk with the one for the depot courtyard, to ensure that the two types of brick would be compatible next to each other.

AWARD CONTRACT – HOUSING DEMOLITION: The City Manager advised that due to retired Chief Milligan's illness and death, Chief Neal has not been able to get prices for the demolition of properties needing to be demolished. The City Manager requested that he be authorized to proceed with the demolitions based on the lowest bids received for such work.

A discussion followed.

It was the consensus of Council to allow the City Manager to go ahead with receiving the prices and to approve the low bidders to proceed with the demolition of the properties in question. If the bids come in high in the judgment of the City Manager, he will bring the matter back to Council for further discussion.

REQUEST – SCHOOL STREET AND RIDGE ROAD: The City Manager advised that he had been contacted regarding the need for a three way stop sign at the intersection of Ridge Road and School Street. He noted that this was a State maintained road and that the request could be reviewed by the Street Committee or simply passed on to DOT.

A discussion followed.

It was the consensus of Council that DOT will need to handle this request.

REQUEST – MACA: The City Manager advised that MACA has requested the use of forty folding chairs out of the basement of the Community Building. The City Manager stated that the City had a long standing unwritten policy against loaning equipment and supplies, but that if Council wished to allow such a request, that he could draft procedures to allow for certain groups to borrow equipment of minor value.

A discussion followed. Council agreed that units of government and schools in the area and agencies with whom the City has a funding relationship should be allowed to borrow equipment and supplies of minimal value.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to allow MACA to use the chairs as requested, and to allow the City Manager to draft procedures for allowing units of government, the Schools and agencies with whom the City has a funding relationship to borrow equipment and supplies from the City.

ADOPT RESOLUTION – APPROVE DOT ENHANCEMENT PROGRAM GRANT APPLICATION:

The City Manager advised that, as reported at the May 18 meeting, McGill Associates had developed cost estimates and a scope of work for a proposed DOT Enhancement Program Grant application, to construct a 400 foot long sidewalk and retaining wall from the Depot site along the railroad bank to Main Street, with associated landscaping and safety fencing included. The cost estimate for the entire project was $564,255, including $373,258 for the retaining wall. The grant would fund 80 percent of the project, leaving a City grant share of about $113,000. The City Manager stated that the grant application was due on June 4, but that the application required a letter of intent from Norfolk Southern Railway, since the project would be constructed on the railroad right of way. Such a letter will not be able to be received in time for the grant application.

After discussion, the Mayor and Council agreed that no application should be submitted this grant cycle, but that the City and McGill should work in the next few months to obtain railroad approval of the project and see if the value of the permanent easement from the railroad could be applied to the local match.

GENERAL ASSEMBLY DISCUSSION: The City Manager advised that one of the few pieces of legislation expected to be detrimental to local government this session is a bill that would require local governments to pay excessive amounts of compensation to amortize, or

phase out, billboards over a period of time. North Carolina courts have long held that amortization is legal and does not required payment of compensation, as long as a reasonable time period is given to allow the owner of the sign to receive a return on their investment. A minimum period of at least five years has been upheld in prior court rulings. The North Carolina League of Municipalities is requesting that cities contact their State legislators to request their opposition to the bill.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to direct the City Manager to issue a request to the City's State Senator and Representative to oppose this bill.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN MARTIN advised that he had been contacted regarding initiating the street closing process for an alleyway near the Cross Mill United Methodist Church. The City Manager stated that a petition may some be forthcoming to close this alley, but noted that the request would be contested by other property owners.

COUCNILMAN LITTLE advised that several sections of Fern Avenue need further attention from the contractors regarding drainage and backfill problems.

Councilman Little also advised that there may be a need to place a screen or something in the dome area of the new Police Department due to a possible threat posed for birds.

COUNCILMAN CUTHBERTSON advised that the hanging flower baskets on Main Street look good. He suggested that perhaps more baskets could be pursued by next year.

Councilman Cuthbertson inquired about an issue involving roof work on the Depot building.

Councilman Cuthbertson stated that staff needed to continue to stress enforcement of the sign ordinance, as there is still a problem with signs being placed on poles and gasoline canopies on private businesses in the City. The City Manager stated that staff had attempted to be vigilant of signs being placed on poles, but that placement of signs on gasoline canopies was not prohibited outright by the Sign Ordinance. Councilmen Cuthbertson and Edwards suggested that the Planning Board should forward a recommendation to Council to close this loophole as soon as possible, to improve the appearance of the City.

COUNCILMAN OWENBY noted that Duke Power is tax exempt, as stated on a report of tax exempt properties in the City submitted by the City Manager in the Council packet. The City Manager stated that utility tax values were set by the City and that Duke Power apparently had at least some tax exemption.

BUDGET WORKSHOP REMINDER: The City Manager reminded Council of the budget workshop scheduled for Monday June 7, 2004 at 6:00 p.m. at City Hall.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 15, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little was not present for this meeting due to being out of town.

Councilman Cuthbertson arrived for this meeting at 7:10 P.M.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Sgt. Gaye Noblitt, Police Department; Suzy Davis, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Scott Fullbright and Will Culbreath, 570 Rockwell Drive Marion, NC 28752; Mark Wise, Executive Director, Hospice, 218 Logan Street, Marion, NC 28752; Dean Buff, County Commissioner, Nebo, NC.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to approve the consent agenda as follows:

A. Approval of Minutes - June 1st 2004 Regular Minutes
June 7th Budget Workshop Minutes

PUBLIC APPEARANCE – ROCKWELL AUTOMATION: Mr. Will Culbreath and Mr. Scott Fullbright of Rockwell Automation appeared before Council and presented a $20,000.00 check to the City of Marion, on behalf of Rockwell Automation. This donation is to be used toward the proposed skateboard park, to be located at the County Recreation Department on West Court Street.

Mr. Fullbright thanked City and County Officials for the way they treat corporate businesses.

Mayor and Council Members all commended Rockwell Officials for their donation. Mayor Clark advised that this was as significant a donation as he can remember. He noted that this donation would make the skateboard park a reality, combined with City funds and other private fundraising.

Councilman Edwards stated that we often have Scouts present for City Council Meetings. This presentation would be a good example of City, County and Corporate/Industry working together for members of the Boy Scouts to see.

Commissioner Dean Buff represented the County and thanked Rockwell for their donation.

PUBLIC HEARING – ZONING OF WAFFLE HOUSE SITE – NC 226 SOUTH: Mayor Clark opened the Public Hearing.

There were no citizens present to discuss this zoning request.

City Planner Suzy Davis advised that the Planning Board recommends C-2 zoning for the new Waffle House site on 226 South. This would be consistent with the surrounding zoning in the area.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to zone this area belonging to Thomas and Ann Brewer (PIN 1710.02 98 6256) (Waffle House) to be annexed on June 30, 2004 as C-2 as recommended by the Planning Board.

PUBLIC HEARING – ZONING OF HOSPICE PROPERTY – FLEMING AVENUE:
Mayor Clark opened the Public Hearing.

Mr. Mark Wise was present for this Public Hearing representing Hospice.

City Planner Suzy Davis advised that the Planning Board recommends R-2 zoning for the Hospice property on Fleming Avenue. Adjacent properties are zoned R-1, but the Hospice property is large enough to stand on its own as an R-2 area.

Mayor Clark advised that O-I Office and Institutional zoning would better fit the Hospice Property. Ms. Davis confirmed that the OI zoning would allow the Hospice facility as a permitted use.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to zone property on Airport Road belonging to McDowell County Hospice (PIN 1702.19 50 3479.) as O-I, Office Institutional, upon the annexation of the property on June 30, 2004.

PUBLIC HEARING - ZONING OF GARDEN CREEK ROAD ANNEXATION AREA:
Mayor Clark opened the Public Hearing.

There were no citizens present to discuss this zoning request.

City Planner Suzy Davis advised that the Planning Board recommends C-2 zoning for the front 100 feet of Mr. McKinney's property on Garden Creek Road. This C-2 area would be contiguous with C-2 zoning on the opposite side of Garden Creek Road. The back part of the property, containing the apartment units owned by Mr. McKinney and others, would be proposed for R-2 Residential, which would allow the multi-family use present on the property.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to approve the recommendation of the Planning Board to zone the property on Garden Creek Road to be annexed on June 30, 2004 (McKinney Apartments) (PIN 1702.03 13 9779), and the Kaylor property (PIN 1702.03 13 9700); with an area parallel to Garden Creek Road extending 100 feet from the road being zoned C-2, General Business and the rest of the property being zoned R-2, General Residential.

PUBLIC HEARING – ZONING OF HILLCREST DRIVE ANNEXATION AREA:
Mayor Clark opened the Public Hearing.

There were no citizens present to discuss this zoning request.

City Planner Suzy Davis advised that the Planning Board recommends R-2, General Residential for the zoning of properties to be annexed on Hillcrest Drive effective June 30, 2004, including 440 Hillcrest Drive, 430 Hillcrest Drive, 414 Hillcrest Drive and 392 Hillcrest Drive. This zoning would be consistent with contiguous property.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to approve the recommendation of the Planning Board and zone the Hillcrest Drive Annexation Area R-2, General Residential, upon its annexation on June 30, 2004.

PUBLIC HEARING – ZONING OF BALDWIN AVENUE ANNEXATION AREA: Mayor Clark opened the Public Hearing.

There were no citizens present to discuss this zoning request.

City Planner Suzy Davis advised that the Planning Board recommends zoning of properties on Baldwin Avenue to be annexed on June 30, 2004 as follows:

Properties north of State Street would be recommended for C-2 zoning, to be consistent with contiguous commercial property on East Court Street.

Properties south of State Street would be recommended for R-2 zoning, to be consistent with residential uses farther south on Baldwin Avenue.

Ms. Davis advised that the R-2 zoning would make three businesses (the Friend's Café, Guffey's Appliances and the TV Dr.) non-conforming, meaning that the businesses could remain as long as they were in operation, but could not expand or change to another non-conforming use. If the business ceased to operate for 12 months, or if 50 percent of the building ever became damaged, the businesses could not be re-established.

A lengthy discussion followed. Councilman Owenby expressed concern with making long-standing businesses non-conforming and asked if there was a way to accommodate the business and residential uses. The City Manager noted that the Zoning Ordinance did not provide for mixed use zoning districts other than the Central Business Districts. He suggested that a new Neighborhood Business zoning district could perhaps be established and allow for residential uses and some commercial uses that would not be detrimental to residences.

Mayor Clark closed the Public Hearing.

It was the consensus of Council to delay action on this zoning and to refer the matter back to the Planning Board for further study and a recommendation on how to better accommodate existing businesses through the possible creation of a new zoning district.

PUBLIC HEARING – ZONING AMENDMENT : Mayor Clark opened the Public Hearing.

There were no citizens present to discuss this zoning amendment.

The City Manager advised that City Planner Suzy Davis, the City Attorney, the enforcement officer from Benchmark and he had discussed difficulties faced with enforcing parts of the original auto repair ship ordinance. One aspect of the ordinance that has created some problems

is a provision prohibiting any vehicles associated with an auto repair shop, sales lot, tire shop, etc. from being parked on a federal, state or local right of way. This provision was in addition to one requiring screening of junked cars, meaning that businesses that would now otherwise be in compliance are now violating the ordinance by virtue of displaying vehicles for sale in the right of way.

City Planner Suzy Davis advised that the Planning Board recommends amendments to prohibit parking of vehicles associated with auto repair shop/services/sales/towing and junkyards within four feet of a curb or street and to allow no more than 60 tires in a front yard of a tire shop as long as such tires are stacked in the "lacing technique". Junked cars would still have to be screened.

A discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII, Section 705, gasoline service and filling stations is amended to read as follows:

Section 705. Gasoline service or filling stations

The following regulations shall apply to all gasoline service or filling stations:

(1) All buildings shall be located at least forty (40) feet from any street or road right of way.

(2) Gasoline pumps and other appliances shall be located at least fifteen (15) feet from any street right-of-way.

(3) All service, storage or similar activities shall be conducted entirely on the premises.

(4) All major repair work, if any, shall be conducted within a building capable of being completely enclosed.

(5) Open storage of wrecked or junked motor vehicles, discarded tires, auto parts or similar materials shall not be permitted.

(6) Wrecked or junked motor vehicles, discarded tires, auto parts or similar materials may be stored within an enclosed structure which visually conceals such objects.

(7) In order to maintain safety for pedestrian and vehicle traffic, vehicles associated with automobile repair shops, automobile sales, tire sales and services, towing and wrecking service businesses may not be parked, displayed, stored or repaired within four feet of the curb or the edge of the road if no curb exists. (Amended 6-15-04)

(8) On-site traffic areas shall be provided and arranged in such a manner as to provide easily identifiable ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.

(9) Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.

(10) The provisions contained in Chapter 9, Article III concerning abandoned, nuisance or junked motor vehicles continue to apply.

(11) Gasoline service or filling stations must obtain a permit from the Zoning Office.
All gasoline service or filling stations within the city limits of Marion not in compliance with this Section 705 within six (6) months after the adoption of the ordinance adopting or amending this Section 705, shall be in violation. (Amended 10-21-03)

Section 3. Appendix A, Article VII, Section 708, Automobile Repair Shops, Automobile Sales, Tire Sales and Services, Towing Business or Combination Thereof is amended to read as follows:

Section 708. Automobile Repair Shops, Automobile Sales, Tire Sales and Services, Towing Business or Combination Thereof. The following regulations shall apply to all automobile repair shops, automobile sales, tire sales and services, towing and wrecking service businesses or combination thereof.

(1) Open storage of junked or inoperable motor vehicles, auto parts or similar materials shall not be permitted. Tires may be temporarily stored for no longer than thirty (30) days in the side or rear yard

and shall be neatly stacked at all times in an organized manner using the lacing techniques. Up to sixty (60) tires may be stored in the front yard provided the tires are also neatly stacked using the lacing technique. Tires in the front yard in excess of sixty shall be enclosed in approved screening. (Amended 6-15-04)

(2) Junked or inoperable motor vehicles, auto parts or similar materials may be stored within an enclosed structure which visually conceals such objects or stored on a site that is the subject of an approved screening plan, as defined herein and approved by the Zoning Administrator.

(3) In order to maintain safety for pedestrian and vehicle traffic, vehicles associated with automobile repair shops, automobile sales, tire sales and services, towing and wrecking service businesses may not be parked, displayed, stored or repaired within four feet of the curb or the edge of the road if no curb exists. (Amended 6-15-04)

(4) On-site traffic areas shall be provided and arranged in such a manner as to provide easily identifiable ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.

(5) Junked or Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.

(6) All service, sales, storage or similar activities shall be conducted entirely on the premises.

(7) All major repair work, if any, shall be conducted within a building capable of being completely closed.

(8) Certain businesses claiming to be auto repair shops, automobile sales, tire sales and services or towing and wrecking service businesses that do not meet the definitions in Section 400 of this ordinance may be deemed gasoline service or filling stations and, therefore, subject to the regulations governing Gasoline Service or Filling Stations.

(9) Certain businesses claiming to be automobile repair shops, automobile sales, tire sales and services, and towing and wrecking service businesses that do not meet the definitions in Section 400 of this ordinance may be deemed junk yards and, therefore, subject to the regulations governing Junk Yards.

(10) The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continues to apply. Automobile repair shops and automobile sales businesses, tire sales and services and towing and wrecking service businesses must obtain a permit from the Zoning Office.

(11) All automobile repair shops and automobile sales businesses, tire sales and services and towing and wrecking service businesses within the city limits of Marion not in compliance with this 708 within six (6) months after the adoption of the ordinance adopting or amending this 708, shall be in violation. (Amended 10-21-03)

Section 4. Appendix A, Article VIII, Section 805.3 (1) is amended to read as follows:

805.3 Special exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance:

(1) Automobile wrecking, junk and salvage yards provided that:

(A) All motor vehicles stored or kept in such yards shall be so kept that they will not catch and hold water in which mosquitoes may breed and so that they will not constitute a place or places in which rats, mice, or other vermin may be harbored, reared, or propagated.

(B) Because of the tendency for salvage yards to promote the breeding of vermin, such operation shall be permitted no closer than two hundred (200) feet from any established residential zone.

(C) All outdoor storage of salvage and wrecking operations shall be conducted entirely within an enclosed opaque fence, screen, or wall, excepting driveway area, from eight (8) to twelve (12) feet in height. Storage between the road and street and such fence, screen, or wall is expressly prohibited. Any fence, screen, or wall for screening purposes shall be properly painted or otherwise maintained in good condition.

(D) All such yards shall be so maintained as to be in sanitary condition and so as not to be a menace to the public health or safety.

(E) The number of vehicular access driveways permitted on any single street frontage shall be limited to:

1. One driveway where the parcel to be used as a maximum road or street frontage of one hundred (100) feet or less.
2. Two (2) driveways where the road or street frontage exceeds one hundred (100) feet. Driveways used for ingress and egress shall be limited to twenty-five (25) feet in width.

(F) For the purposes this section 805.3, an inoperable or junked motor vehicle shall not be deemed to be viewed from a public roadway if it is stored on a site that is the subject of an approved screening plan, as defined herein and approved by the body issuing the permit, or within an enclosed structure which visually conceals the inoperable motor vehicles.

(G) In order to maintain safety for pedestrian and vehicle traffic, vehicles associated with automobile repair shops, automobile sales, tire sales and services, towing and wrecking service businesses may not be parked, displayed, stored or repaired within four feet of the curb or the edge of the road if no curb exists. (Amended 6-15-04)

(H) On-site traffic areas shall be provided and arranged in such a manner as to provide easily identifiable ingress and egress, adequate customer and employee parking, access for emergency vehicles, and adequate turnarounds such that backward movement onto the public roadways is avoided.

(I) Inoperable motor vehicles shall not be stored in the customer or employee parking spaces required per the Off-Street Parking Requirements set out in Section 702.

(J) The provisions contained in Chapter 9, Article III concerning Abandoned, Nuisance or Junked motor vehicles continue to apply.

(K) Automobile graveyard, Automobile wrecking, junkyard and salvage yards must obtain a permit from the Zoning Office.

(L) Those junk yards or automobile graveyards lawfully existing at the time that sub-section (f) through (m) of Section 805.3(1) of this Ordinance is adopted shall have five (5) years from the adoption of the Ordinance to come into full compliance with the provisions in Section 805.3(1)(f) through (m).

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 15th day of June 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-06-15-04-03

AUTO REPAIR SHOP ENFORCEMENT EFFORTS UPDATE: The City Manager asked City Planner Suzy Davis to give an update on the auto repair shop enforcement effort. Ms. Davis noted that, out of over 30 original violations, all but a handful have been cleared. Any remaining violations will begin to have citations issued after July 1.

A brief discussion was held.

ADOPT ORDINANCE – WATER AND SEWER RATES AND CONNECTION FEES: The City Manager presented Council with a recommended Water and Sewer Rate and Connection Fee Ordinance. He advised that the ordinance would increase inside water and sewer rates from $1.40/1000 gallons for water and for sewer to $1.50/1000 gallons for water and for sewer. Outside rates would increase to remain at double the inside rates. The rate for flat rate sewer for residential unit on sewer without water service would increase from $12 to $20 per month, to be consistent with the minimum outside bill paid for sewer service. The rates would also increase slightly for metered private wells for commercial and industrial customers on sewer service without water service.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adopt the following Ordinance:

ORDINANCE

ESTABLISHING WATER/SEWER RATES, CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That new water/sewer rates, connection (tap fees) fees, cost recovery charges and other miscellaneous charges are hereby established as follows:

	INSIDE CITY	OUTSIDE CITY
Water Rates:	**$1.50 per 1,000 Gallons, plus $8.00 Service Charge per month**	**$3.00 per 1,000 Gallons, plus $16.00 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.00**	**$20.00**

Master Meter Rate	$1.50 per 1,000 Gallons, plus $6.40 Service Charge per month	$3.00 per 1,000 Gallons, plus $12.80 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.40	$16.80
	INSIDE CITY	OUTSIDE CITY
Sewer Rates:	$1.50 per 1,000 Gallons, plus $8.00 Service Charge per month	$3.00 per 1,000 Gallons, plus $16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate	$1.50 per 1,000 Gallons, plus $6.40 Service Charge per month	$3.00 per 1,000 Gallons, plus $12.80 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.40	$16.80
	INSIDE CITY	OUTSIDE CITY
Sewer Rates for Private Wells	$2.20 per 1,000 Gallons, plus $8.00 Service Charge per month	$4.40 per 1,000 Gallons, plus $16.00 Service Charge per month

Important Notices:

All sewer charges are based on water meter readings, unless a sewer metering device approved by the City has been installed.

When more than one unit is served by a Master Meter, such as a mobile home park, shopping center or apartment complex, the monthly service charge is $6.40 for water and $6.40 for sewer in the City, and $12.80 for water and $12.80 for sewer outside the City, whether said units are occupied or not.

Residence using a private well, with no water meter, shall pay a flat rate of $30.00 per month per residential unit for sewer service.

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1 ½"	1,400	7,120	2,100	7,120
2"	1,000	11,392	2,400	11,392
3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):
The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10.00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200
4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION. IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER	INSIDE CITY		OUTSIDE CITY	
SIZE	TAP FEE	CRC CHARGE	TAP FEE	CRC CHARGE
3/4"	$ 1,200	$ 820	$ 1,800	$ 820
1"	1,300	2,050	1,950	2,050
1 ½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,500
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999
12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY
RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	AT COST	COST PLUS 10%
INCREASE METER SIZE	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

	INSIDE CITY	OUTSIDE CITY
WATER DEPOSIT	$ 30.00	$ 60.00
SEWER DEPOSIT	$ 30.00	$ 30.00

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY:

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED

TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS FOR COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS SHALL BE AS FOLLOWS:

INSIDE CITY

	WATER	SEWER	WATER AND SEWER
FAST FOOD/PIZZA RESTAURANTS	$100.00	$100.00	$ 200.00
OTHER RESTAURANTS (WITH SEATING)	$150.00	$150.00	$ 300.00
GROCERY STORES	$150.00	$150.00	$ 300.00
APARTMENT COMPLEXES (MASTER METER)	$150.00	$150.00	$ 300.00
CAR WASHES	$150.00	$150.00	$ 300.00
LAUNDRIES	$200.00	$200.00	$ 400.00
NURSING/FAMILY CARE HOMES	$200.00	$200.00	$ 400.00
INDUSTRY (50 OR MORE EMPLOYEES)	$500.00	$500.00	$1,000.00
INDUSTRY (LESS THAN 50 EMPLOYEES)	$200.00	$200.00	$ 400.00
OTHER MASTER METER ACCOUNTS	$100.00	$100.00	$ 200.00
GENERAL BUSINESS	$ 50.00	$ 50.00	$ 100.00

OUTSIDE CITY

	WATER	SEWER	WATER AND SEWER
FAST FOOD/PIZZA RESTAURANTS	$ 200.00	$ 200.00	$ 400.00
OTHER RESTAURANTS (WITH SEATING)	$ 300.00	$ 300.00	$ 600.00
GROCERY STORES	$ 300.00	$ 300.00	$ 600.00
APARTMENT COMPLEXES (MASTER METER)	$ 300.00	$ 300.00	$ 600.00
CAR WASHES	$ 300.00	$ 300.00	$ 600.00
LAUNDRIES	$ 400.00	$ 400.00	$ 800.00
NURSING/FAMILY CARE HOMES	$ 400.00	$ 400.00	$ 800.00
INDUSTRY (50 OR MORE EMPLOYEES)	$1,000.00	$1,000.00	$2,000.00
INDUSTRY (LESS THAN 50 EMPLOYEES)	$ 400.00	$ 400.00	$ 800.00
OTHER MASTER METER ACCOUNTS	$ 200.00	$ 200.00	$ 400.00
GENERAL BUSINESS	$ 100.00	$ 100.00	$ 200.00

THE CITY MANAGER SHALL DETERMINE THE APPROPRIATE DEPOSIT FOR ANY COMMERCIAL, INDUSTRIAL OR MASTER METER CUSTOMER NOT LISTED IN THE PRECEDING SCHEDULE. AT THE END OF SIX MONTHS OF SERVICE, THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED. IF THE AVERGAE MONTHLY DEPOSIT IS LOWER THAN THE AMOUNT THE CITY HAS RECEIVED FROM THE INITIAL DEPOSIT, THE CITY WILL CREDIT THE WATER ACCOUNT OF THE CUSTOMER FOR THE AMOUNT OF THE DIFFERENCE IN THE INITIAL DEPOSIT AND THE AVERAGE MONTHLY BILL.

OTHER MISCELLANEOUS CHARGES

	INSIDE CITY	OUTSIDE CITY
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00

TEMPORARY SERVIC (SEVEN OR LESS DAYS) WATER USAGE	$ 15.00 PLUS ACTUAL WATER USAGE	$ 15.00 PLUS ACTUAL
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
RETURN CHECK SERVICE CHARGE	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER
BANK DRAFT CUSTOMER – CHARGE FOR CLOSED ACCOUNT	$ 25.00	$ 25.00
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY ¾" AND 1" METERS	$ 15.00	$ 15.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on April 15, 2003 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this ordinance, are rescinded upon the effective date of this ordinance.

Section 4. This Ordinance shall become effective upon its adoption

ADOPTED this the 15th day of June, 2004.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number O-04-06-15-1

ADOPT ORDINANCE – BUILDING AND INSPECTIONS FEES: The City Manager presented a recommended Building and Inspections Fee Ordinance that would building permit fees by five percent, to maintain consistency with McDowell County and other surrounding jurisdictions. Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to adopt the following Ordinance:

AN ORDINANCE ESTABLISHING FEES FOR THE

PLANNING AND INSPECTIONS DEPARTMENT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1.CERTIFICATE OF OCCUPANCY/COMPLIANCE. The City of Marion shall charge a fifty dollars ($50.00) fee for a certificate of occupancy/ compliance (C.O.) for a change of use for a building, land, or structure in the City of Marion. This fee includes Zoning and Building Code review as well as an initial and final inspection. If a building permit is required, the fee for the certificate of occupancy can be credited to the building permit.

SECTION 2. SIGN PERMITS. This section shall apply to advertising signs and billboards. The size and location of signs shall be in accordance with City Ordinances.

On Premise Signs. The permit fee for an on-premise sign that is twenty-four (24) square feet or less that requires a footing and/or electrical inspection shall be fifty dollars ($50.00) plus $.50 for each additional square foot over 24 square feet. The permit fee for an on-premise sign that is twenty-four (24) square feet or less that does not require a footing and/or electrical inspection shall be twenty-five dollars ($25.00) plus $.50 for each additional square foot over 24 square feet. The fee for a

temporary (2 weeks) spectacular sign permit or a directional sign permit shall be fifteen dollars ($15.00.) No fee shall be charged for a temporary (2 weeks) spectacular sign permit or a directional sign permit for non-profit organizations with offices or locations within the City Limits.

Off premise Signs. The initial fee for an off-premise sign permit shall be seventy-five ($75.00) plus $1.00 for each additional square foot over one hundred square feet.. The fee includes footing and/ or an electrical inspection. An annual fee will be charged for all off-premise advertising sign. The annual off-premise sign fee will be as follows:
0-100 square feet $20.00
101-200 square feet $35.00
201-300 square feet $50.00

SECTION 3. FEES FOR AMENDMENTS, VARIANCES, APPEALS AND SPECIAL EXCEPTIONS. A fee of seventy-five dollars ($75.00) will be charged for each application for an amendment, variance, appeal or special exception to the Marion Zoning Ordinance or Zoning Map.

SECTION 4. CELL TOWERS. A cell tower permit application fee shall be two thousand five hundred dollars ($2,500.00.)

SECTION 5. SUBDIVISION REVIEW. The fee for subdivision plat review is $20.00 per lot with a maximum fee of $500.00.

SECTION 6. GIS MAPS. The following fees shall be paid for the production of a city map.

Black and White	Color	Aerial
8.5" x 11"	$2.00	$4.00
11" x 17"	$4.00	$6.00	$8.00
17" x 22"	$6.00	$8.00	$10.00
22" x 34"	$8.00	$10.00	$12.00
34" x 44"	$10.00	$12.00	$14.00

SECTION 7. COPIES OF ORDINANCES. A copy of the zoning ordinance shall be $5.00. A copy of the sign ordinance shall be $2.00. A copy of the Subdivision Ordinance shall be $2.00.

SECTION 8. BUILDING PERMITS. Building permit fees for all new buildings and additions to existing buildings constructed in the City of Marion will be based on the total number of square feet in the building or addition by using the Permit Chart below. There will be a minimum fee of $50.00 per trade. Dwelling units in a multi-family structure are calculated individually. Building Permit Fee includes plan review for zoning compliance.

Chart Instructions:

A = Total Gross Building Area
B = Fee Per Square Foot
A x B = Fee

Homeowners Recovery Fund: The City shall charge all licensed general contractors a $5.00 fee for the construction and/or alteration of a single family residential dwelling unit, including townhouses and condominiums. The fee will be collected for each dwelling unit and will be in addition to the City's regular building permit. The City will forward $4.00 of each fee collected to the North Carolina Licensing Board for General Contractors. (G.S. 87-15.6)

Section 9. Renovation to existing buildings. Renovation and/ or alteration permits will be required for closing in porches or carports, installing or removing structural supports. The fee will be $1.00 per $1,000.00 of estimated costs. The minimum permit fee will be $50.00. Electrical, plumbing, and mechanical will be based on Permit Chart with a Minimum fee per trade of $50.00.

SECTION 10. ELECTRICAL INSPECTIONS. Fees for electrical inspections shall be determined by the Permit Chart.

SECTION 11. PLUMBING INSPECTIONS. Fees for plumbing inspections shall be determined by the Permit Chart.

SECTION 12. MECHANICAL INSPECTIONS. Fees for mechanical inspections shall be determined by the Permit Chart.

SECTION 13. MANUFACTURED HOMES. The permit fee for a manufactured home shall be seventy-five ($75.00.) The mobile home permit will include all trades. Modular home fees shall not be considered a manufactured home.

SECTION 14. MISCELLANEOUS INSPECTIONS. Fees for miscellaneous inspections will be as follows:

TYPE OF INSPECTION FEE
Fuel Storage Tanks $50.00
Swimming Pools $50.00
Insulation $50.00
Demolition $50.00
Other Required Inspection $50.00
Return Inspection $50.00

PERMIT CHART

SIZE	BUILDING	ELECTRIC	PLUMBING	HEATING	A/C	INSULATION	TOTAL
Assembly							
0-10,000sf	0.0714	0.03864	0.03276	0.00588	0.00588	0.01092	0.16548
10,001-50,000sf	0.063	0.02772	0.002184	0.0042	0.0042	0.00756	0.108864
Above 50,000sf	0.0546	0.02184	0.0168	0.00336	0.00336	0.001092	0.101052
Business							
0-10,000sf	0.063	0.03864	0.02772	0.02184	0.02184	0.01092	0.18396
10,001-50,000sf	0.05712	0.0336	0.02436	0.01848	0.01848	0.00588	0.15792
Above 50,000sf	0.05124	0.0252	0.01848	0.00588	0.00588	0.00336	0.11004
Educational							
0-10,000sf	0.0714	0.03276	0.03276	0.00588	0.00588	0.01092	0.1596
10,001-50,000sf	0.0546	0.02184	0.02184	0.00378	0.00378	0.00756	0.1134
Above 50,000sf	0.04956	0.01932	0.01932	0.00336	0.00336	0.00588	0.1008
Factory/Industrial							
0-10,000sf	0.03276	0.0168	0.01092	0.00588	0.00588	0.00588	0.07812
10,001-50,000sf	0.02184	0.01092	0.00588	0.00336	0.00336	0.00336	0.04872
Above 50,000sf	0.021	0.0084	0.00336	0.00252	0.00252	0.001092	0.038892
Hazardous							
0-5,000sf	0.03276	0.0084	0.0084	0.0084	0.0084	0.01092	0.07728
5,001 &: Above	0.02478	0.00672	0.00672	0.00672	0.00672	0.0084	0.06006
Institution							
0-10,000sf	0.1092	0.06048	0.06048	0.03276	0.03276	0.01092	0.3066
10,001-50,000sf	0.07644	0.03276	0.03612	0.02184	0.02184	0.0042	0.1932
Above 50,000sf	0.0546	0.02184	0.02184	0.0168	0.0168	0.00336	0.13524
Mercantile							
0-10,000sf	0.04704	0.02184	0.02184	0.0168	0.0168	0.01092	0.13524
10,001-50,000sf	0.04368	0.01932	0.01428	0.01092	0.01092	0.00756	0.10668

Above 50,000sf	0.03276	0.01344	0.00588	0.00756	0.00756	0.00336	0.07056
Storage							
0-10,000sf	0.03276	0.00756	0.00756	0.00756	0.00756	0.0042	0.0672
10,001-50,000sf	0.028392	0.00588	0.00588	0.00168	0.0042	0.0042	0.050232
Above 50,000sf	0.02184	0.0042	0.0042	0.00336	0.00109	0.00168	0.036372
Residential							
	0.06552	0.03276	0.03276	0.021	0.021	0.0084	0.18144

Section 3 This ordinance shall become effective upon its adoption.

Adopted this the 15th day of June 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-06-15-04-02

PUBLIC HEARING – ADOPTION OF 2004-2005 CITY BUDGET:

Mayor Clark opened the Public Hearing.

There were no citizens present to comment on the proposed 2004-05 City budget.

The City Manager provided a brief overview of the budget, which totals $8,219,161 in five funds, a decrease of 0.7%, or $59,630, over the original 2003-04 budget. The City Manager advised that the budget maintains the tax rate at 51 cents per $100 valuation, making the thirty-second consecutive year that the City has not raised the property tax rate. He noted that, other than the water and sewer rate and building permit fee adjustments already acted upon by City Council earlier in the meeting, the budget called for no other fee adjustments.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adopt the following Ordinance:

BUDGET ORDINANCE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the City Government and it's activities for the fiscal year beginning July 1, 2004 and ending June 30, 2005 in accordance with the chart of accounts heretofore established by the City:

Administration	$ 433,297
Purchasing and Warehousing	72,997
Inspection	135,758
Police Department	1,397,684
Fire Department	351,515

Public Works Administration	59,916
Fleet Maintenance	53,778
Street Department	685,775
Powell Bill	210,700
Sanitation	445,689
Recreation	142,569
Cemetery	37,000
Non-Departmental	556,142
TOTAL	**$ 4,582,820**

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Prior Year's Taxes	$ 25,000
Vehicle Tax-Collected by County	140,000
Current Taxes	1,515,604
Tax Penalties & Interest	15,000
Privilege License Sales	18,500
Interest Earned	30,000
Powell Bill Interest Earned	700
Rents and Concessions	19,000
Misc. Revenues	100
Drink Commissions	1,000
DBA Christmas Reimbursement	1,860
Recycling Bin Deposit	100
Mowing Reimbursement	500
Bad Check Fees	50
PD Ser Copies Fingerprints	100
Refunds/Reimbursement	2,000
Misc Parts & Labor	1,000
Utilities Franchise Tax	450,000
Beer/Wine Revenue	24,300
Powell Bill Allocation	175,000
Hold Harmless Funds	45,000
Sales Tax	1,110,000
Sales Tax Refund	25,000
Powell Bill Sales Tax Refund	5,000
ABC Revenues	140,000
ABC Officer Revenues	5,100
Court Costs, Fees & Charges	5,000
Parking Violations	4,000
County Fire Protection	115,000
State Fire Protection Reimbursement	750
County Contribution – Recycling	7,500
Cemetery Revenues	3,000
DOT Reimbursement-Grass	3,500
Garbage Fees	105,000
Zoning Income – Inspection Fees	18,000
Sale of Garbage/Leaf/Recycling Bags	800
Cable TV Revenues	45,000
Sales of Surplus Equipment	8,000
McDowell County Schools	17,500
Highway Safety Grant	23,000
Fund Balance	446,856
Powell Bill Fund Balance	30,000
TOTAL	**$4,582,820**

Section 3. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Reserve for future appropriations:	$ 521,000
TOTAL	**$ 521,000**

Section 4. It is estimated that the following revenues will be available in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Fund Balance Appropriated	$ 516,000
Interest on Investments	5,000
TOTAL	**$ 521,000**

Section 5. The following amounts are hereby appropriated in the Water/Sewer Fund for operation of Water and Sewer Utilities for the fiscal year beginning July 1, 2004 and ending on June 30, 2005 in accordance with the accounts heretofore approved for the City:

Utility Line Operation	$ 1,000,289
Water Filter Plant	446,957
Waste Treatment Plant	855,160
Non-Departmental	568,435
TOTAL	**$ 2,870,841**

Section 6. It is estimated that the following revenues will be available in the Water/Sewer Fund for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Fund Balance	$ 402,778
Interest Earned	12,000
Misc. Income	5,000
Property & Ins Reimbursement	100
Bad Check Fee	1,500
Time Payment Interest	2,000
Fire protection Taps	5,000
Transfer Fee	1,000
Line Extension	3,000
Reimbursement – Septic	6,000
Reimbursement – Pump Station	500
Reimbursement – Pretreatment	3,000
Water Sales	770,000
Cut on Fees/Late Penalties	50,000
Sewer Service	499,000
Water Taps	35,000
Sewer Taps	35,000
Delinquent Accounts Collected	500
Tank Truck Charges	1,200
Cost Recovery – water	35,000
Cost Recovery – sewer	35,000
Water Service Charge	552,000
Sewer Service Charge	290,000
Free Water Reimb- Annex Subsidy	115,000
McDowell Co. 221 N Water Sewer Debt	11,263
TOTAL	**$ 2,870,841**

Section 7. The following amounts are hereby appropriated in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Reserve for future appropriations:	$ 209,500	
TOTAL		**$ 209,500**

Section 8. It is estimated that the following revenues will be available in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Fund Balance Appropriated	$ 208,000
Interest on Investments	1,500
TOTAL	**$ 209,500**

Section 9. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Inventory (Supplies)	$ 150,000

TOTAL	**$ 150,000**

Section 10. It is estimated that the following revenues will be available in the Internal Service Fund for the fiscal year beginning July 1, 2004 and ending June 30, 2005:

Purchase by Other Funds	$ 150,000
TOTAL	**$ 150,000**

Section 11. There is hereby levied a tax at the rate of fifty-one ($ .51) per one hundred ($100) valuation of property as listed for taxes as of January 1, 2004 for the purpose of raising the revenue listed as "Current Year Property Taxes" in the General Fund in Section 2 of this Ordinance. These rates are based on estimated total valuation of property for the purpose of taxation of $ 312,818,215 and estimated rate of collection of 95%.

Section 12. The Budget Officer is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

A. He may transfer amounts between objects of expenditure within a department without limitation and without a report being required.

B. He may transfer amounts up to $1,000.00 between departments of the same fund with an official report on such transfers at the next regular meeting of the City Council.

C. He may not transfer any amounts between funds nor from any contingency appropriation within any fund.

Section 13. Copies of the Budget Ordinance shall be furnished to the Finance/Budget Officer of the City to be kept on file for direction in the disbursement of funds.

ADOPTED this the 15th day of June, 2004

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

SCHEDULE POLICE DEPARTMENT BUILDING DEDICATION:
A discussion was held regarding a date to have the dedication of the new/remodeled Police Department.
It was decided to set the dedication ceremony for August 7, 2004 at 10:00 A.M. The City Manager advised that this date would allow for the building to be totally complete.

APPROVE CONTRACT – US 221 NORTH SEWER PROJECT: The City Manager advised that Public Utilities/Projects Director Glen Sherlin has worked hard to obtain all easements needed for the US 221 North Water and Sewer project. In addition, property for a pump station site has been acquired from Gladys Hollifield.

The City Manager reported that McDowell County had awarded the contract for the Highway 221 North sewer extension to the low bidder, Ronnie Turner Construction, in the amount of $544,792.60. The County is awaiting grant paperwork to allow the water contract to be awarded. The extension will provide service to properties along and off of Highway 221 North Business from the Catawba River northward to Hankins Road.

The City Manager and McGill Associates recommended that City Council award the sewer contract to the low bidder, since this project is a joint City-County effort.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to award the contract for the US 221 North Sewer Project to Ronnie Turner Construction in the amount of $544,792.60.

GLENWOOD ELEMENTARY SCHOOL – WATER EXTENSION REQUEST: The City Manager presented Council with a letter from Dr. Sherron Crawford, McDowell County School Superintendent, requesting that the tap fee, but not the cost recovery charge, for the Glenwood water extension be waived if the service connection is made by the project contractor. The City Manager advised that Council has approved similar arrangements for other projects over the past few years.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to waive the tap fee, but not the cost recovery charge, for the Glenwood water extension, if service connections are made by the project contractor.

APPOINTMENT – ABC BOARD: The City Manager advised that the term of Mr. Robert Ayers on the ABC Board has expired. Mr. Ayers is willing to serve another term if appointed and ABC Board Chairman Robert Teeter has specifically requested that Mr. Ayers be reappointed to another three year term.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson those members of Council present voted to reappoint Mr. Robert Ayers to another term on the Marion ABC Board, said term to expire June 30, 2007.

REQUEST – MR. EDWARD BRYAN- PLEASANT MEADOWS: The City Manager presented Council with a memo from Mr. Glen Sherlin, Projects Manager advising that Mr. Edwin Bryan has requested to extend water service to Phase II of Pleasant Meadows Estates off of Old Greenlee Road. Mr. Bryan is asking for the City to extend the same terms for the water extension as was approved for Phase I, whereby the City would buy the materials and Mr. Bryan would pay for the engineering and labor for the installation.

By consensus, the Mayor and Council members agreed to approve the request of Mr. Bryan as stated above.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Edwards advised of the need for more regular watering of the hanging baskets on Main Street. The City Manager stated that he would have the Street Superintendent work out such a watering schedule.

Councilman Cuthbertson advised of complaints he has received with tree limbs encroaching onto Woodland Drive at the entrance of the Foxfire Development.

Councilman Cuthbertson asked if tree trimmers working inside the City were required to obtain privilege licenses. The City Manager stated that they were.

Councilman Owenby advised of a tree limb blocking a speed limit sign near Bud's Garage on Virginia Road.

Mayor Clark provided an update of the National League of Cities Small Cities Council meeting, held the previous week in Farragut, Tennessee. Mayor Clark noted that DBA Director Freddie Killough and City Manager Bob Boyette had attended a session on Best Practices for Small

Cities, at which Mrs. Killough had made a presentation on downtown revitalization efforts in Marion.

CLOSED SESSION: N.C.G.S.143.318.11 (a)(5) And N.C.G.S.143-318.11 (a)(9): Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143.318.11 (a)(5) to discuss the acquisition of real property, in accordance with N.C.G.S. 143.318.11 (a) (9) to discuss homeland security, and in accordance with N.C.G.S. 143.318.11(a)(3) to discuss a legal matter.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to go back into Regular Session.

Mayor Clark announced that no action was taken in Closed Session.

MEETING RECESSED - UNTIL JUNE 28, 2004 AT THE MARION POLICE DEPARTMENT: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to recess the meeting until 12:00 Noon on Monday, June 28, 2004 at the Marion Police Department.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion reconvened at 12:00 Noon at the Marion Police Department on Monday, June 28, 2004. This meeting carried over from the June 15, 2004 City Council Meeting.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen, Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little was not present for this meeting due to being out of the Country.

Councilman Mike Edwards was not present for this meeting due to prior engagements.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Sgt. Gaye Noblitt, Lt. Scott Spratt and Sara Vess, Marion Police Department; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: none

WELCOME/LUNCH: Mayor Clark welcomed everyone and advised that this meeting was being reconvened from the June 15, 2004 City Council Meeting.

Lunch was served.

APPROVE BUDGET AMENDMENTS: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the following Budget Ordinance Amendments:

CITY OF MARION, NORTH CAROLINA
WATER AND SEWER CAPITAL PROJECTS FUND ORDINANCE – U.S. 221 NORTH WATER AND SEWER IMPROVEMENTS PROJECT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows to include the expenditures associated with Water and Sewer Capital Projects by adopting the following Water and Sewer Capital Projects Fund Ordinance:

WATER AND SEWER CAPITAL PROJECTS FUND

a. Water and Sewer Capital Projects Fund Expenditures, U.S. 221 North Water and Sewer Improvements, Account Number 31-178-0000, is increased from $0 to $1,121,600.

b. Water and Sewer Capital Projects Fund Revenues, BB&T Loan Proceeds – U.S. 221 North Water and Sewer, Account Number 31-390-0000, is increased from $0 to $231,200.

c. Water and Sewer Capital Projects Fund Revenues, Revenues from McDowell County – U.S. 221 North Water and Sewer, Account Number 31-390-1000, is increased from $0 to $890,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 28th day of June, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-06-28-1

CITY OF MARION, NORTH CAROLINA
2003-2004 BUDGET ORDINANCE
(Tenth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2003-04 as adopted by the Marion City Council on the 17th day of June, 2003 is hereby amended as follows:

GENERAL FUND

a. **General Fund Expenditures, Street Department, Account Number 10-560-0200, Salaries, is decreased from $331,607 to $311,607.**

b. **General Fund Expenditures, Sanitation Department, Account Number 10-580-0200, Salaries, is decreased from $188,496 to $168,496.**

c. **General Fund Expenditures, Cemetery Department, Account Number 10-640-7400, Capital Outlay, is decreased from $15,000 to $5,000.**

d. **General Fund Expenditures, Non-Departmental, Account Number 10-660-9950, Special Projects, is increased from $100,000 to $140,000.**

e. **General Fund Expenditures, Administration, Account Number 10-420-7400, Special Projects, is increased from $78,740 to $88,740.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 28th day of June, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-06-28-2

APPROVE AMENDMENT – COMMUNITY BUILDING RULES AND REGULATIONS: The City Manager presented Council with a copy of the proposed amended Community Building Rules and Regulations, to set procedures for the use of the new Community Building permanent readerboard sign.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Owenby, those members of Council present voted to approve the Community Building Rules and Regulations as follows:

CITY OF MARION, NORTH CAROLINA
MARION COMMUNITY BUILDING
RULES AND REGULATIONS

ADDENDUM
TO RULES AND REGULATIONS

24. Persons or groups renting the Marion Community Building may request to place messages on the permanent sign in front of the building. In order to place a message, the person or group must legibly write out their desired message on a sheet of paper and turn it in to the front counter of City Hall. Such request must be received at City Hall no later than 48 hours prior to the scheduled date of the event. The person responsible for scheduling the Community Building will forward the message to the Public Works Secretary, who will issue a work order for the message to be spelled out on the Community Building sign.

The City reserves the right to edit any messages for length and/or content, in the case of language deemed obscene or objectionable. Messages shall contain only the purpose, date and location of the event and the name of the group sponsoring the event (for example: Downtown Business Association Annual Banquet Thursday night, 6:30 p.m.). Personal messages shall not be permitted. Messages advertising political events shall not endorse a specific candidate for any office, but may state the date and time and purpose of a campaign fundraising event held at the Community Building (for example: John Doe for Senate Campaign Dinner, Friday, 7:00 p.m.). In no case shall any message advertising an event not to be located at the Community Building be permitted, unless it is in conjunction with an event sponsored by the City of Marion.

In no case shall the City display a message more than three business days before an event. If two or more persons or groups renting the Community Building wish to have their message displayed at the same time, the person or group submitting their message to the front counter of City Hall first shall have priority in having their message displayed.

Letters and keys for the Community Building sign and keys to the Community Building are not to be given out to persons or groups renting the Community Building, except under unique situations approved by the City Manager.

No signs are permitted to be posted in front of or on the Community Building property, except for political signs posted on Election Day.

These new regulations shall be effective upon adoption.

Adopted this the 28th day of June, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DISCUSS REQUEST FOR VOLUNTARY ANNEXATION – GARDEN CREEK ROAD:
The City Manager advised that Mr. Robert McKinney had submitted a petition for voluntary annexation for a lot behind his apartments on Garden Creek Road.

The City Manager also presented Council with correspondence sent by the former City Manager in 1991 to Mr. McKinney regarding free sewer connections given for this apartment property that will be annexed effective June 30, 2004.

Mr. McKinney is requesting that he be allowed to use the sewer certificates for water and sewer connections for the property to be annexed behind the apartment parcel.

The City Manager advised that some of the previous sewer certificates had been allowed to be used for water connections. The City Manager stated that, in exchange for annexation of the property, this would seem to be a reasonable request.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to approve the request of Mr. McKinney as stated above.

AWARD CONTRACT – US 221 NORTH WATER EXTENSION: The City Manger advised that at the June 15th City Council meeting the sewer contract for the US 221 North Water and Sewer Extension had been awarded to the low bidder, Ronnie Turner Construction. At that time, the County had not yet received the grant paperwork from the State to allow the water contract to be awarded. The County has now received these documents, and the Country Commissioners have awarded the water contract to the low bidder, Ronnie Turner Construction. The project will extend water service to properties along and off of US 221 North Business, from the Catawba River northward to Hankins Road.

McGill Associates recommends approving this contract in the amount of $419,908, which represents the total water and sewer bid of $964,700.60 less than the contract award amount of $544,792.60 for the sewer project.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to award the contract for the US 221 North Water Extension to the low bidder, Ronnie Turner Construction, in the amount of $419,908. A copy of the contract can be found on file in the City Managers Office.

REVIEW/DISCUSS SKATEBOARD PARK AGREEMENT: The City Manager presented Council with a draft skateboard park agreement.

A discussion followed.

It was the consensus of those members of Council present to hold this agreement until the next City Council Meeting at which time Councilman Edwards and Little would be present.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

COUNCILMAN MARTIN advised of complaints about noise and criminal activity on Wilhemenia Street in the West Marion Area.

The City Manager and Police Chief Elliott advised that they are aware of the problems and that the Police department has been expanding its presence in the area, including regular patrols by the Chief.

COUNCILMAN OWENBY advised that he had some complaints about noise on Snipes Street coming from scooters.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to adjourn.

At the conclusion of the meeting, Police Chief Elliott led the Mayor and Council on a tour of the recently expanded Police Department.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, July 20, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Teresa Shuford Gardin 42 Mourning Dove Drive, Marion, NC; Henry & Bonita Effler, 1022 Old Fort NC; Louie & Armanda Shuford 565 Miller Avenue, Marion, NC; Bill Shuford 1865 Goose Creek Road, Marion, NC; Vickie & Bryan Osbon 43 Murray Street, Marion, NC; Jack & Violette Schmidt 519 Quail Hollow Drive, Marion, NC; Harvey Larry Wilson, 192 Crescent Drive, Marion, NC; Oscar Paquette, 225 Park Avenue, Marion, NC; Scotty Lewis, 34 Murray Drive, Marion, NC; Betty Coleates, 33 Bobcat Path, Marion, NC; Jason Hamrick, 206 Park Avenue, Marion, NC; Danny Bridges, P.E. and Marcus Barksdale, P.E., McGill Associates

CONSENT AGENDA - Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted to approve the consent agenda as follows:

A. Approval of Minutes June 15th and 28th Regular Session:
June 15th Closed Session

B. Approval of Resolution Directing Clerk to Investigate the Sufficiency of a Petition for Voluntary Annexation and a Resolution Scheduling the Date of the Public Hearing on the Question of Annexation – Property off of Garden Creek Road:

RESOLUTION
DIRECTING THE CLERK TO INVESTIGATE A PETITION
RECEIVED UNDER G.S. 160A-31 –
ROBERT L. MCKINNEY, SR.,
GARDEN CREEK ROAD

WHEREAS, a petition requesting annexation of an area described in said petition was received on July 20, 2004, by the City of Marion; and

WHEREAS. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 20th day of July 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

PETITION REQUESTING ANNEXATION –
ROBERT L. MCKINNEY, SR., GARDEN CREEK ROAD
Date: July 12, 2004

TO THE CITY COUNCIL OF THE CITY OF MARION:

We the undersigned owners of real property respectfully request that the area described in Paragraph 2 below be annexed to the City of Marion.
The area to be annexed is contiguous to the City of Marion and the boundaries of such territory are as follows:

Exhibit A

We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property.

Name/Address	Do you declare vested rights?	Signature
1. Robert McKinney PO Box 1305 Marion, NC 28752	Yes	_____
2. Sandra McKinney PO Box 1305 Marion, NC 28752	Yes	_____

CERTICATE OF SUFFICIENCY – ROBERT L. MCKINNEY, SR., . GARDEN CREEK ROAD

To the City Council of the City of Marion:

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition presented to Council and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 180A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 20th day of July 2004.

(Seal)

J. Robert Boyette, City Manager/Clerk

RESOLUTION
FIXING DATE OF PUBLIC HEARING
ON QUESTION OF ANNEXATION
PURSUANT TO
G.S. 160A-31 – ROBERT L. MCKINEY, SR.,
GARDEN CREEK ROAD

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, the City Council has be resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, August 3, 2004.

Section 2. The area proposed for annexation is described as follows:

Exhibit A

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at lease ten (10) days prior to the date of the public hearing.

Adopted this the 20th of July 2004.

A. Everette Clark Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

INTRODUCTION-NEW POLICE DEPARTMENT EMPLOYEE: Police Chief Mika Elliott introduced a recently hired Police Officer, Randy Cyr, who comes to the City from the Town of Carolina Beach with several years experience.

Mayor Clark and Council members welcomed Mr. Cyr to the Marion Police Department and the City of Marion.

POLICE ISSUES: The City Manager commended the Police Chief on his handling of the Police Department budget in 2003-04, noting that only 88 percent of the Police Department budget was spent.

Mayor Clark asked for an update of response to loitering and criminal activity around the Wilhemenia and Oak Street area of the West Marion Community. Chief Elliott advised that several of the drug offenders put in prison several years ago have been released and there is a growing problem with criminal activity and loitering. Officers are policing the area to the fullest extent possible, including the Chief himself, to create as much of a police presence as possible. The City Manager advised that the Police Department would be using some overtime to create even more of a presence in the area, since the activity represented close to an emergency situation for the nearby residents in West Marion that are subjected to the noise and activity. He added that the intent would be to move the activity to another location, hopefully outside the City. The Mayor and Council members urged continued strong action to eliminate the drug and loitering activity in West Marion.

Mayor Clark also commended the Police Department on the success in conducting recent Citizen Emergency Response Training (CERT) classes.

CITIZEN COMPLAINT – MILLER AVENUE – SAM FRADY JUNKYARD: Residents from Miller Avenue appeared before Council and presented a petition addressing the problems presented by Sam Frady's junkyard on Morehead Road and Miller Avenue. The petition, as presented by Ms. Teresa Gardin, stated that the presence of the junkyard presents several problems to those living in neighboring areas and is a health hazard to those who live nearby, especially children and the elderly.

Ms. Gardin stated that the presence of the junkyard has caused large numbers of mosquitoes, wolf rats, snakes and spiders. Some of these animals can carry disease, thus making it unsafe for those who reside in this proximity to spend time outside their homes.

The petition also stated that the junkyard depreciates property values for those who live in the area. The petition had sixty signatures on it.

Several families were present for this meeting representing this area and asked that Council please do something about this on going problem.

A lengthy discussion followed.

Mayor Clark noted that this issue had been discussed at the Council Budget Workshop and that he and the City Manager had been given the authority to talk to Mr. Frady about the possible acquisition and clean-up of his property. Councilman Little stated that the junkyard could rise to the level of a public nuisance, which could perhaps be ordered to be abated by a court of law. The City Manager advised that several other options existed for Council, ranging from acquiring the property and seeking Brownfield and Community Development Block Grant funds to clear and redevelop the property to adopting Zoning Ordinance amortization provisions to phase out the junkyard over a period of time. It was the consensus of Mayor Clark and Council that action will be taken as soon as possible to determine what can be done to solve this matter.

CITIZEN COMPLAINT – LARRY WILSON – POLICE DEPARTMENT: Mr. Larry Wilson appeared before Council advising that he had an issue with two employees of the Marion Police Department. He advised that they accused him of trying to fix a ticket.

Mr. Wilson stated that he received a traffic ticket some months ago did complain; however, he did not appreciate the way two employees in the Police Department talked to him. Mr. Wilson stated he spoke to the City Manager about the matter and that he was not given the apology he wanted. Mr. Wilson stated that he still wants an apology from the Police Department employees in question.

Mayor Clark thanked Mr. Wilson for speaking to Council.

CITIZEN COMPLAINT – PARK AVENUE – OSCAR PAQUETTE: Mr. Oscar Paquette of 225 Park Avenue appeared before Council with complaints about several structures across from his new home, involving persons loitering in and around these properties at all hours of the day and night. Mr. Paquette also noted the dilapidated condition of the three houses and urged that efforts be taken to tear down the houses and to clean the properties.

The former owner of this property, Mr. O'Buckley, also appeared before Council advising that there had always been some problems with these properties, however, the loitering and improper behavior and sightings are a new thing. Problems are worsening.

Mr. Jason Hamrick of 206 also appeared before Council with the same concerns.

The City Manager advised that the ultimate solution to the problem would be to condemn and tear down the three structures. The City Manager noted that the City was in the process of hiring a Fire Inspector to focus on issues such as dilapidated housing, but that he would ask the Fire Chief to begin the paperwork needed to condemn the three structures. The City Manager did state that one of the houses was boarded up and one was occupied, which may complicate the condemnation process. He advised that he would consult the City Attorney to obtain guidance on whether the City could condemn all three houses. The City Manager also stated that efforts were being made to tow a junked van from behind one of the houses and to cut down weeds in the yard of one of the houses, as authorized by the City's Nuisance Ordinances.

It was the consensus of Council to direct the City Manager to take any steps allowed by City Ordinance and State law to address the problems on Park Avenue.

PUBLIC APPEARANCE – ECO VAN PROJECT – BETTY COLEATES: Ms. Betty Coleates and Ms. Donna Stevens appeared before Council asking City Council to support the Eco Van Project. Ms. Coleates stated that this program is a one of a kind, hands-on interactive environmental education program, initiated by the education committee of Keep McDowell Beautiful. The Eco-Van Project has addressed the problems of waste and the responsible use of natural resources through education.

Ms. Coleates advised that McDowell County contributed $6,000 to this project, but over $40,000 is still needed. Ms. Coleates stated that she realized that cities are limited in their ability to fund education, but asked Council to consider ways that the City could help with the project.

A brief discussion followed.

No action was taken.

PUBLIC APPEARANCE – JASON BRYANT – DOWNTOWN TRAFFIC FLOW PARKING ISSUES: Mr. Bryant was not present for this meeting.

DISCUSS STREET CLOSING REQUEST – CROSS MILL: The City Manager presented Council with a petition from several property owners asking that an alleyway off of Carson Street in Cross Mill be closed. A second petition was presented from other property owners asking that the alleyway remain open. One owner has signed both petitions.

The City Manager advised that in the past, Council has not generally closed a street without a hundred percent petition. However, he was unable to find anything in State law to prohibit someone from asking Council to close a street, even without the hundred percent agreement.

The City Manager stated that Mr. Robert Palmer, a resident of Cross Street, had initiated this street closing request through his landlord, but had decided to withdraw the petition. Mr. Palmer was not present for this meeting.

Mr. & Mrs Bryon Osbon of Murray Street were present for this meeting and are opposed to the alleyway closing.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to take no action on this request.

PRESENTATION OF CITY DROUGHT EMERGENCY RESPONSE PLAN – MCGILL ASSOCIATES: Mr. Danny Bridges and Mr. Marcus Barksdale appeared before Council and presented the draft Drought Emergency Response Plan, which contained options and recommendations for creating one or more additional emergency water supplies for the City, along with recommendations on water restriction procedures in the event of a drought.

The recommended water supply option presented was to construct an emergency water intake on the Catawba River near the bridge over the river on Resistoflex Road. The cost of this option is estimated at $66,300, although the majority of the expense could not be undertaken until an actual drought event occurred and the State gave approval for this emergency water source to be used. McGill also recommended the installation of staff gauges to accurately measure water supply at the City's three water supplies on buck, Mackey and Clear Creek. The gauging devices could be installed for a cost of about $16,900.

McGill also presented the recommended water restriction procedures, involving four levels of water emergencies and listing appropriate City responses and either voluntary or mandatory water conservation measures for each level.

A copy of the response plan can be found on file in the City Manager's Office at City Hall.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to authorize McGill Associates to begin the design and permitting on the recommended Catawba River emergency water intake. Consideration will be given, as part of future budgeting processes or a mid-year appropriation, to constructing as much of the intake as is possible in advance of a future drought emergency. Council agreed by consensus to direct the City Manager to bring back for approval at a future meeting an ordinance containing the water restriction procedures. Mayor Clark suggested one change in the procedures involving seeking State approval for and construction of the emergency water intake on the Catawba River at an earlier stage of a water emergency than had been recommended by McGill.

PUBLIC HEARING – ZONING AMENDMENT: Mayor Clark opened the Public Hearing

City Planner Suzy Davis advised that the Planning Board recommends the approval of an amendment to the Zoning Ordinance to create a new zoning district, the B-1 Neighborhood Business District. The B-1 District would allow a mixture of residential and commercial uses, and would be suitable for areas such as Baldwin Avenue.

There were no citizens present for this Public Hearing.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following ordinance:

PUBLIC HEARING – ASSIGN ZONING BALDWIN AVENUE: Mayor Clark opened the Public Hearing

City Planner Suzy Davis advised that the Planning Board recommends that the Baldwin Avenue annexation area be zoned C-2 General Business north of State Street, and B-1 Neighborhood Business south of State Street. The B-1 district will better accommodate existing businesses on Baldwin Avenue and allow possible expansion. Ms. Davis did note that one business, Guffey's Appliance will be required to screen some of their appliances that are stored outside under the provisions of the B-1 district.

There were no citizens present for this Public Hearing.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to approve the Ordinance to zone the Baldwin Avenue annexation area C-2 General Business north of State Street, and B-1 Neighborhood Business south of State Street as follows:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII, Section 807, Neighborhood Business District is added to the Ordinance as follows:

Section 807. B-1 Neighborhood Business District

807.1 Intent. This district is established primarily to serve the needs of the surrounding residential neighborhoods by providing goods and services that are day-to-day needs, generally classed by merchants as convenience goods and services. Businesses that tend to be a nuisance to immediately surrounding residential developments are excluded, even though the goods or services offered are in the convenience classification. This district should be located at the intersection of major streets or where higher volume traffic patterns permit such development. In no case shall a structure that is greater than 2000 gross square feet be used for any purpose other than residential in the B-1 Neighborhood Business District.

807.2 Permitted Uses. Within the B-1 Neighborhood Business District, a building or land shall be used only for the following purposes:

(1) Antique shops.

(2) Automatic laundries.

(3) Bakeries.

(4) Banks.

(5) Barber and beauty shops.

(6) Bed and breakfast home

(5) Book store.

(7) Boutiques.

(8) Computer sales and services

(9) Churches

(10)Craft shops.

(11)Day Care

(9) Delicatessens.

(10) Drug stores.

(11) Flower shops.

(12) Gift shops.

(13) Convenience grocery stores.

(14) Hardware stores.

(15) Jewelry stores.

(16) Photographer's studios.

(17) Radio, appliance and television sales and repair

(18) Restaurant or Café

(19) Single-family dwellings (excluding mobile homes)

(20) Multi-family dwelling of eight of less units.

807.3 Open storage. The storage of materials, either raw materials, partly or completely finished products, scrap or waste, shall be prohibited unless such materials are completely screened from view from all adjoining streets, alleys or properties.

807.4 Special Exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance:

Section 3. Appendix A, Article IX, Dimensional Requirements is amended by added the following.

B-1 Neighborhood Business

Minimum Lot Size:

Lot Area: 7,000 sq. ft.

Lot Width: 80 ft.

Minimum Yard Requirements:

Front Yard Setback: 25 ft.

Side Yard Setback: 10 ft.

Rear Yard Setback: 10 ft.

Maximum Building Height: 35 ft

Maximum Gross Floor Space: 2000 sq. ft.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 20th day of July 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-04-07-20-02

PUBLIC HEARING – ASSIGN ZONING GREAT MEADOWS ANNEXATION : Mayor Clark opened the Public Hearing

City Planner Suzy Davis advised that the Planning Board recommends that the Great Meadows annexation area on Highway 70 West be zoned C-2, to match existing C-2 zoning found across the highway at the Wal Mart Shopping Center and at the new Lowe's store. The C-2 zoning would allow the existing Mayland Mobile Homes sales lot and the new Wash and Lube.

There were no citizens present for this Public Hearing.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the recommendation of the Planning Board and zone the Great Meadows Annexation area on Highway 70 West C-2 General Business.

REQUEST UNITED WAY – PLACEMENT OF PLAQUE – COMMUNITY BUILDING: The City Manager presented Council with a letter from Mr. Brian Price, Executive Director of the McDowell County United Way, requesting permission to place a plaque in the Community Building, to note contributors to the United Way. The City Manager advised that the City had never allowed such plaques to be displayed in City owned building, but that Mr. Price had wanted to ask for permission.

A discussion followed.

The Mayor and Council agreed by consensus that the granting of the request would set a precedent and could lead to every non-profit agency in the community wishing to display a similar plaque. The Mayor and Council members commended the United Way on their efforts to serve the community, but agreed by consensus to deny the request.

REVIEW SKATEBOARD PARK AGREEMENT: The City Manager presented Council with a copy of the draft Skateboard Park Agreement, as prepared by McDowell County.

Mayor Pro Tem Steve Little suggested several changes in the agreement.

A discussion followed.

Mayor Clark stated that he had a problem with the County listing the term of the agreement at only three years. He suggested a longer term of ten years, to ensure that the City and donors to the Skateboard Park, can receive a reasonable return on their investment. Council members agreed that a ten year term was appropriate and that the changes to the agreement could be negotiated with McDowell County.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following agreement and present it to McDowell County as follows:

McDowell County and City of Marion
Agreement
To Construct, Operate and Maintain a Skateboard Park

WHEREAS, the City of Marion and McDowell County acknowledge and agree that a large number of young people in our city and county enjoy the sport of skateboarding and these youth

would benefit greatly from a properly designed skateboard park being made available to all who participate in this sport; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that the absence of a skateboard park creates potential serious hazards for recreational skateboarders and potential liability for private property and business owners; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that a cooperative venture to construct, operate and maintain a skateboard park would more efficiently provide for such a facility; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that the most feasible and practical location for a skateboard park for our city and county is at the McDowell Recreational Facility on Academy Street in Marion, NC; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that the terms set out below are reasonable and appropriate to provide this recreational outlet to skateboarders from our city and county.

NOW, THEREFORE, BE IT RESOLVED AND AGREED AS FOLLOWS:

1. The City of Marion (City) and County of McDowell (County) will appoint a committee (Skateboard Park Committee) of interested persons to guide the design of the skateboard park (Park). The Skateboard Park Committee will also be charged with recommending policies and guidelines to be enacted by the County Commissioners regarding the operation of the Park. The Skateboard Park Committee will be comprised of ten (10) individuals, with equal numbers to be appointed by City and County. The County Recreational Director will direct the Skateboard Park Committee and will coordinate and facilitate the workings of this Committee.
2. The park will be constructed on the portion of the County Recreational Facility property (on Academy Street in Marion, NC) that was previously used as a tennis court.
3. The final design of the park must be approved by both the City and the County. The final design of the Park must bar the seal of a licensed professional engineer so as to provide assurances as to the safety of the design of the Park layout and of the structures to be used by skateboarders. As much as possible, the recommendations of the Skateboard Park Committee will be incorporated into the design and layout. It is acknowledge, however, that the safely of the skateboarders shall be of prime importance in regard to design issues.
4. After design approval by both the City and the County, the City will coordinate the bidding for the construction of the Park.
5. All of the cost related to the construction of the Park, including any cost overruns, shall be paid by the City. These costs are anticipated to include such categories as site preparation, fence repair, signage, resurfacing of the Park, and other necessary improvements needed to establish the skateboard park. During the construction. Inspections of the work shall be made by the County Building Inspector. All invoices shall be submitted to the City for payment consistent with the contract documents.
6. The County shall oversee the operation and perform necessary maintenance of the Park, consistently with the duties of the County Recreation Department and with significant input from the City and from the Skateboard Park Committee. The County will determine operating rules and procedures as well as hours when the Park will be available to public, but with awareness that a great deal of skateboarding activity takes place on weekends and during evening hours.
7. The County will provide sufficient liability insurance and shall be responsible for all related expenses for the Park. The and the County will each adopt an ordinance in accordance and consistent with the provisions of Section 99E-23(b)(1) of the North

Carolina General Statutes, which will require users of the Park to wear appropriate safety gear, including helmet, elbow pads and knee pads. The will post a sign giving users notice of the requirement of safely gear and thir responsibilities.

8. An appropriate area of the Park will be used to identify all donors to the Park and the identity of the members of the Skateboard Park Committee. The donor recognition area and signage will be established during the construction of the Park.
9. The City Police Department will patrol the Park in an effort to curtail and prevent trespass or vandalism of the Park and also to enforce the ordinance regarding safety equipment. The City shall also establish and promote an education and enforcement initiative to maximize utilization of the Park and to protect the interest of property owners and business owners who do not desire to have persons skateboarding on their property.
10. This agreement shall last for a term of ten years, at which time it shall be reviewed by the City and County. The ten-year term shall begin on the ____ day of _____, 2004.

IN WITNESS WHEREOF, we have set our hands and seals.

THE CITY OF MARION

BY:_____
A. EVERETTE CLARK, Mayor

ATTEST:_____
J. ROBERT BOYETTE, City Clerk

THE COUNTY OF MCDOWELL

BY:_____
DAVID N. WALKER, Chairman
Board of Commissioners

ATTEST:_____
CARRIE PADGETT, Clerk
Board of Commissioners

The City Manager suggested that a special City/County Utility Committee be held on Tuesday morning, August 3, to review the Skateboard Park Agreement, to discuss downtown parking issues and to discuss water and sewer projects. Mayor Clark, Councilman Little and Councilman Cuthbertson agreed to this meeting date. The City Manager will confirm the meeting date with the County Manager.

APPROVE RESOLUTION – SUPPORT OF AMENDMENT ONE, SELF FINANCING BONDS, ON NOVEMBER BALLET: The City Manager presented Council with a Resolution regarding an amendment of the November ballot that would authorize local governments to issue self financing bonds to finance public improvements and to pledge the increased tax revenues from development to pay for the improvements

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the following Resolution:

RESOLUTION
IN SUPPORT OF AMENDMENT ONE: SELF-FINANCING BONDS,

A LOCAL ECONOMIC DEVELOPMENT TOOL TO CREATE QUALITY JOBS, REVITALIZE COMMUNITIES AND ATTRACT NEW ECONOMIC OPPORTUNITIES IN NORTH CAROLINA:

WHEREAS, the City of Marion needs to attract more jobs and economic development; and

WHEREAS, self-financing development bonds will have a direct impact on creating new jobs, new investment, and strengthening the tax base in our state; and

WHEREAS, communities across the nation have used these bonds successfully to promote sound economic development; and

WHEREAS, the use of these bonds will make a difference for every community – urban, suburban and rural; and

WHEREAS, these bonds will give local governments flexibility to pursue multiple types of economic development projects including industrial site development, redevelopment of existing industrial and Brownfield sites, affordable housing and community revitalization; and

WHEREAS, these bonds allow North Carolina's local governments to use a new mechanism to invest in public improvements designed to attract private sector investment; and

WHEREAS, North Carolina is one of only two states in the nation that do not have this economic development tool; and

WHEREAS, self-financing development bonds have received broad bi-partisan support from the General Assembly and the business community, as well as municipal, county and state government and former Governors Holshouser, Martin and Hunt; and

WHEREAS, North Carolina will have some of the strongest safeguards in the country to ensure self-financing bonds are used for good purposes; and

WHEREAS, these bonds are subject to voter approval on the November 2004 ballot and deserve rightful consideration by the citizens of the State;

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. The City Council of the City of Marion strongly supports self-financing development bonds because now is the time to enhance our ability to create new jobs and investment in our municipality.

Section 2. The City Council of the City of Marion pledges to work to educate and inform the citizens of our state and community about self-financing development bonds and pledges to encourages voters to approve Amendment One in November 2004.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 20th day of July, 2004.

A. Everette Clark, Mayor

ATTEST:

L. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-04-07-20-1

REQUEST STREET LIGHTS WESTWOOD CHATEAU DRIVE: The City Manager advised that Westwood Chateau Townhouses have been paying for a streetlight near the end of their street, even though the City has had maintenance of this street for years. The development is requesting that the City take over the light and allow them to move a light that is currently shining into the windows of the development by turning it into a streetlight on Westwood Chateau Drive at the first entrance into the development.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council vote unanimously to approve this request for the City to begin paying for two streetlight on Westwood Chateau Drive.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The Street Committee agreed to meet Wednesday afternoon, July 28, to look at several drainage problems.

The Cemetery Committee agreed to meet Thursday afternoon, July 29, to look at a pending requests for a set of steps and a railing in Oak Grove Cemetery and to explore possible repairs and improvements in the Cemetery.

COUNCILMAN COMMENTS:

COUNCILMAN MARTIN reiterated that he wanted to see something done to clean up the junkyard on Morehead Road and the dilapidated houses on Park Avenue.

COUCNILMAN EDWARDS advised that there is an increasing amount of drivers not yielding at crosswalks or for pedestrians. Chief Elliott advised that his officers are attempting to be vigilant in looking for such violations.

COUNCILMAN LITTLE advised that Ms. Rhoda Norwood, an elderly lady with physical disabilities, received a parking citation while the City parking lot was closed on West Henderson Street the previous week for work on the Depot project.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to waiver the $10 penalty for this ticket, due to the fact that the adjacent off-street parking lot was closed.

Councilman Little also thanked Mayor Clark and Council Members for the beautiful flowers that were sent during the recent passing of his mother.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, those members of Council present voted to adjourn this meeting.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 3, 2004 at 7'00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Mike Edwards was not present for this meeting due to Court conflicts.

OTHERS PRESENT: Bob Boyette, City Manager; Suzy Davis, City Planner; Mika Elliott, Police Chief; Claudia Hill Tax Collector; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Ruth and Mike Williams, 19 Clay Street, Marion, NC; Don Ramsey, Hillcrest Drive, Marion, NC; Elizabeth Lytle and Rebecca Condrey, McDowell County Clerk of Court's Office; Bill Griffith, Main Street, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN LITTLE: Councilman Steve Little selected the Citizen of the month for August.

Ruth B. Williams

Councilman Little advised that Ms. Ruth Williams is married to Mike Williams. They have four sons, four granddaughters and one grandson.

Ms. Williams served as the elected Clerk of Superior Court for twenty-four year. She worked in the Clerk's office prior to being elected for a total of thirty four years service to McDowell County. This is a very impressive record of service. This tenure as an elected official surpasses that of any one who has ever served as Clerk of Court in McDowell County. She was also the first woman to serve in this position in McDowell County.

Ms. Williams has served as President of the Association of Clerks of Superior Court of North Carolina, was appointed as a committee member of the Rules of Record Keeping for the State of North Carolina and has been involved in many other professional and community activities through the years.

Ms. Williams has an Associate of Applied Science Degree in Business Accounting as well as an Associate Degree in Business Administration, She holds a Bachelor of Science Degree from Mars Hill College as well as various other honors.

Mayor Clark, Council Members and many friends all had kind words to share about Ms. Williams.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - July 20, 2004 Minutes as amended

APPROVAL OF ANNUAL TAX SETTLEMENT/ORDER OF COLLECTION OF TAXES: The City Manager presented Council with a copy of the 2003 Tax Settlement report prepared by Tax Collector Claudia Hill. The City Manager advised that the City achieved over 97 percent collection of 2003 taxes this past year, the highest collection percentage on record. Ms. Hill was also present for this meeting and went over the 2003 Tax Settlement. The City

Manager advised that the Order of Collection of Taxes gave staff the authority to mail out 2004 tax bills.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve this settlement/order of collection of taxes as follows:

2003 TAX SETTLEMENT

July 1, 2003 - June 30, 2004

CHARGES		CREDITS	
Real Property	$ 1,231,605.93	Tax Revenue	$ 1,557,355.39
Less Exemption	(31,770.30)	Less 1% Discount	(4,534.84)
Personal Prop.	261,634.45	Less Refunds - Principal	(3,020.81)
Utilities	77,531.35	Less Refunds - Interest	(6.98)
Discoveries	77,459.52	Late Listing	678.25
Total Tax	**$1,616,460.95**	Interest & Penalties	5,124.96
Late Listing	1,007.20	**Total Revenue**	**$ 1,555,595.97**
Interest & Penalties	5,256.60	**ADJUSTMENTS**	
		1% Discount	4,534.84
TOTAL	**$ 1,622,724.75**	Tax Releases - Principal	13,648.54
		Tax Releases - Late List	6.41
		Tax Releases - Interest	131.64
		Tax Refunds - Principal	3,020.81
		Tax Refunds - Interest	6.98
		Uncollected Late List	322.54
		Uncollected - Real	36,965.22
		Uncollected - Personal	8,491.80
		TOTAL	**$1,622,724.75**

ORDER OF COLLECTION OF TAXES

STATE OF NORTH CAROLINA

CITY OF MARION

To the Tax Collector of the City of Manon:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records for the year 2004 filed in the office of the Tax Collector and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the City of Marion, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand, and official seal, this 3rd day of August, 2004.

(Seal)
A. Everette Clark
Mayor, City of Marion

ATTEST:
J. Robert Boyette
City Manager/Clerk
of the City of Marion

PUBLIC APPEARANCE – MR. BILL GRIFFITH – DOWNTOWN PARKING/LANDSCAPE ISSUES: Mr. Bill Griffith appeared before Council to discuss several concerns he has with downtown parking and landscaping issues. He asked for greater parking enforcement and ways to increase penalties for violations, since these spaces are needed by retail businesses.

Mr. Griffith advised that he thinks the holly trees are too large. He noted that the trees are growing into the curb and are scratching cars and blocking views of his storefront. Mr. Griffith stated that his jewelry business was recently broken into and that he feels that the size of the holly trees aided in someone being able to break his front window and no one report the break-in until morning.

Mr. Griffith asked that something be done.

Mayor Clark advised that the City should soon be receiving the written report from the North Carolina Main Street Program, which should contain some recommendations regarding streetscape changes, including landscaping.

PUBLIC HEARING – APPROVAL OF ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION – ROBERT MCKINNEY PROPERTY – GARDEN CREEK ROAD: Mayor Clark opened the Public Hearing. There were no citizens present to discuss this item.

The City Manager advised that this request involved a voluntary annexation from Robert McKinney for a 4.41 acre parcel he owns behind his recently annexed apartment complex on Garden Creek Road. The annexation will become effective on August 31.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to adopt the following ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION, NORTH CAROLINA – ROBERT L. MCKINNEY, SR., GARDEN CREEK ROAD

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, July 20, 2004, after due notice by publication on Friday, July 23, 2004; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of August 31, 2004:

BEGINNING on an 3/4-inch iron pipe set near the Southern margin of Moore Drive (SR 1508) and in the line of the property owned by William R. Milovitz (McDowell Deed Book 603, Page 323, Tract I), a common corner of the property owned by Harry R. Phillips and wife, Patsy G Phillips (McDowell Deed Book 305, Page 552), the 2nd corner of Deed Book 633, Page 975, Tract 1; the 2nd corner of Deed Book 633, Page 975, Tract 2 and the 2nd corner of Deed Book 305, Page 552; said 3/4-inch iron pipe set also being located S 55□05'53" W 120.00 feet from an existing maple tree (marked and painted), the beginning corner of Deed Book 304, Page 692, the beginning corner of Deed Book 480, Page 917, the 2nd corner of Deed Book 603, Page 323, Tract 1 and the beginning corner of Deed Book 305, Page 552: AND FROM SAID BEGINNING running with the Southern margin of Moore Drive and with the Milovitz line S 55□05'53" W 154.54 feet to a 3/4-inch iron pipe set, a common corner of the property owned by Thomas Edward Whitson and wife, Lara Whitson (McDowell Deed Book 100, Page 23); then with the Whitson line and with the Southern margin of Moore Drive S 62□38'49" W 105.83 feet to a 3/4-inch iron pipe set, a common corner of the property owned by Robert L. McKinney, Sr. (McDowell Deed Book 475, Page 269); then with the McKinney Sr. line the following course for the following three distances: N 46□59'10" W 15.53 feet to the centerline of Moore Drive. N 46□59'10" W 22.10 feet to an existing 1-inch iron pipe (with a bearing of NAD 1983, N=220,586.8389 meters, E=335,978.8463 meters), and N 46'59'10" W 146.26 feet to an existing 3/4-inch iron pipe, a common corner of McKinney, Sr. (Deed Book 475, Page 269, Tract 2); then with McKinney, Sr. line the following three courses and distances: N 46□59'10" W 24.63 feet to an existing 1-inch iron rod near a junction box (the 4th corner of Deed Book 304, Page 692 and the 6th corner of Deed Book 475, Page 269), N 64□38'49" E 104.41 feet to an existing 3/4-inch iron pipe (the 5th corner of Deed Book 304, Page 692 and the 5th corner of Deed Book 475, Page 269), and N 45□26'16" W 344.86 feet to an existing 1-inch iron pipe in the line of the property owned by Thomas J. Eckenrod and wife, Janell E. Eckenrod (McDowell Deed Book 460, Page 977), said existing 1-inch iron pipe also being located N 47□18'51" E 83.42 feet from an existing 1-inch iron pipe, the beginning corner of Deed Book 460, Page 977; then with the Eckenrod line N 45□52'58" E 473.42 feet to an existing 1-inch iron rod, a common corner of the property owned by Paul C. Pittman and wife, Helen E. Pittman (McDowell Deed Book 92, Page 303), the 7th corner of Deed Book 304, Page 692, the 2nd corner of Deed Book 460, Page 977 and the 4th corner of Deed Book 92, Page 303; then with the Pittman line S 27□07'15" E 203.86 feet to a 3/4-inch iron pipe set in place of the 8th corner of Deed Book 304, Page 692 (the Southernmost corner of the Pittman property (Deed Book 152, Page 350) and the Westernmost corner of the Pittman property (Deed Book 184, Page 96); then with the Pittman line S 27□07'15" E 24.09 feet to an existing aluminum pipe, a common corner of the property owned by Eugene Joseph Pritchard and wife, Jessie Lucille Pritchard (Deed Book 494, Page 488); then with the Pritchard line S 27□07'02" E 84.12 feet to a 3/4-inch iron pipe set near a power pole, a common corner of the property owned by James Douglas Phillips (McDowell Deed Book 633, Page 975, Tract I); then with the Phillips line S 55□05'53" W 120.00 feet to a 3/4-inch iron pipe set in place of the 3rd corner of Deed Book 633, Page 975, a common corner of the Phillips property (Deed Book 633, Page 975, Tract II), said 3/4-inch iron pipe set also being located near an existing 1.5-inch iron pipe not used; then the Phillips line S 27□07'02" E 309.00 feet to an existing iron pipe near a well, a common corner of the property owned by Harry R Phillips and wife, Patsy G. Phillips; then with the Harry R. Phillips line crossing over Moore Drive S 27□07'02" E 140.56 feet to the point of BEGINNING, containing approximately 4.58 acres as shown on that certain unrecorded plat of survey by Suttles Surveying, P.A., Map File No. 11046G, dated 31 August 2001.

BUT NOT INCLUDING a New Tract One, containing 0.17 acres, conveyed to James Douglas Phillips and recorded in Deed Book 724, Page 294 and a New Tract Two, containing 0.15 acres, conveyed to James Douglas Phillips and recorded in Deed Book 724, Page 297, out of the property recorded in Deed Book 659, Page 445.

Section 2. Upon and after August 31, 2004, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 3rd day of August, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

DISCUSSION OF HOURS OF OPERATION – CITY PARKS: The City Manager presented Council with copies of sections of the City Code regarding hours of operation for the Community Building Park and for Oak Grove Cemetery.

He advised that persons are not permitted on the premises of Oak Grove Cemetery between sunset and sunrise.

Persons are not permitted in the community building playground, on the tennis courts or on the basketball courts from 11:00 PM until 6:00 PM.

When the mini-park park programs began, Council had expressed the desire to control hours of operations through the lack of lighting. The City Manager suggested that prohibiting entry into the West Marion and Cross Mill Parks between sunset and sunrise would be appropriate and would authorize the Police Department to remove anyone found in these parks after dark.

A lengthy discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following ordinance:.

ORDINANCE
AMENDING CHAPTER 12
PARKS AND RECREATION
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 12, Parks and Recreation, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 12 is amended by adding Section 12-2 as follows:

Sec. 12-2. Hours of Operation for Other City Park Facilities.

It shall be unlawful for any person to enter any City owned or maintained park facility other than the community building playground, tennis courts or basketball courts at any time between sunset and sunrise for any purpose without written consent from the City Manager.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 3rd day of August, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-08-03-2

RATE ORDINANCE – FLAT RATE FEE: The City Manager presented a proposed ordinance to reduce the flat rate fee for sewer service without water service for customers inside the City from $20 per month to $10 per month. The City Manager noted that Council had approved an increase in this fee in June from $12 to $20, to be consistent with the minimum outside sewer bill. However, about eight of the 48 customers in this rate category are located inside the City. The City Manager recommended the $10 rate for inside falt rate sewer to match the minimum inside sewer bill.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
ESTABLISHING WATER/SEWER RATES, CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That new water/sewer rates, connection (tap fees) fees, cost recovery charges and other miscellaneous charges are hereby established as follows:

	INSIDE CITY	OUTSIDE CITY
Water Rates:	$1.50 per 1,000 Gallons, plus $8.00 Service Charge per month	$3.00 per 1,000 Gallons, plus $16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate	$1.50 per 1,000 Gallons, plus $6.40 Service Charge per month	$3.00 per 1,000 Gallons, plus $12.80 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons		

Or less (per unit served)	$8.40	$16.80

	INSIDE CITY	OUTSIDE CITY
Sewer Rates:	$1.50 per 1,000 Gallons, plus $8.00 Service Charge per month	$3.00 per 1,000 Gallons, plus $16.00 Service Charge per month
Minimum Rate for 2,000 gallons or less	$10.00	$20.00
Master Meter Rate	$1.50 per 1,000 Gallons, plus $6.40 Service Charge per month	$3.00 per 1,000 Gallons, plus $12.80 Service Charge per month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	$8.40	$16.80

	INSIDE CITY	OUTSIDE CITY
Sewer Rates for Private Wells	$2.20 per 1,000 Gallons, plus $8.00 Service Charge per month	$4.40 per 1,000 Gallons, plus $16.00 Service Charge per month

Important Notices:

All sewer charges are based on water meter readings, unless a sewer metering device approved by the City has been installed.

When more than one unit is served by a Master Meter, such as a mobile home park, shopping center or apartment complex, the monthly service charge is $6.40 for water and $6.40 for sewer in the City, and $12.80 for water and $12.80 for sewer outside the City, whether said units are occupied or not.

A residence using a private well, with no water meter, shall pay a flat rate of $20.00 per month per residential unit for sewer service, if located outside the City Limits. If the residence using a private well, with no water meter, is located inside the City Limits, a flat rate of $10.00 per month per residential unit shall be charged for sewer service.

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1½"	1,400	7,120	2,100	7,120
2"	1,600	11,392	2,400	11,392
3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):

The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10 00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200
4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER

METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 1,200	$ 820	$ 1,800	$ 820
1"	1,300	2,050	1,950	2,050
1 ½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,500
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999
12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY
RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	AT COST	COST PLUS 10%
INCREASE METER SIZE	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER	DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

INSIDE CITY	OUTSIDE CITY

WATER DEPOSIT	$ 30.00	$ 60.00
SEWER DEPOSIT	$ 30.00	$ 30.00

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY.

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS FOR COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS SHALL BE AS FOLLOWS:

INSIDE CITY

	WATER	SEWER	WATER AND SEWER
FAST FOOD/PIZZA RESTAURANTS	$100.00	$100.00	$ 200.00
OTHER RESTAURANTS (WITH SEATING)	$150.00	$150.00	$ 300.00
GROCERY STORES	$150.00	$150.00	$ 300.00
APARTMENT COMPLEXES (MASTER METER)	$150.00	$150.00	$ 300.00
CAR WASHES	$150.00	$150.00	$ 300.00
LAUNDRIES	$200.00	$200.00	$ 400.00
NURSING/FAMILY CARE HOMES	$200.00	$200.00	$ 400.00
INDUSTRY (50 OR MORE EMPLOYEES)	$500.00	$500.00	$1,000.00
INDUSTRY (LESS THAN 50 EMPLOYEES)	$200.00	$200.00	$ 400.00
OTHER MASTER METER ACCOUNTS	$100.00	$100.00	$ 200.00
GENERAL BUSINESS	$ 50.00	$ 50.00	$ 100.00

OUTSIDE CITY

	WATER	SEWER	WATER AND SEWER
FAST FOOD/PIZZA RESTAURANTS	$ 200.00	$ 200.00	$ 400.00
OTHER RESTAURANTS (WITH SEATING)	$ 300.00	$ 300.00	$ 600.00
GROCERY STORES	$ 300.00	$ 300.00	$ 600.00
APARTMENT COMPLEXES (MASTER METER)	$ 300.00	$ 300.00	$ 600.00
CAR WASHES	$ 300.00	$ 300.00	$ 600.00
LAUNDRIES	$ 400.00	$ 400.00	$ 800.00
NURSING/FAMILY CARE HOMES	$ 400.00	$ 400.00	$ 800.00
INDUSTRY (50 OR			

MORE EMPLOYEES)	$1,000.00	$1,000.00	$2,000.00
INDUSTRY (LESS THAN 50 EMPLOYEES)	$ 400.00	$ 400.00	$ 800.00
OTHER MASTER METER ACCOUNTS	$ 200.00	$ 200.00	$ 400.00
GENERAL BUSINESS	$ 100.00	$ 100.00	$ 200.00

THE CITY MANAGER SHALL DETERMINE THE APPROPRIATE DEPOSIT FOR ANY COMMERCIAL, INDUSTRIAL OR MASTER METER CUSTOMER NOT LISTED IN THE PRECEDING SCHEDULE. AT THE END OF SIX MONTHS OF SERVICE, THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED. IF THE AVERGAE MONTHLY DEPOSIT IS LOWER THAN THE AMOUNT THE CITY HAS RECEIVED FROM THE INITIAL DEPOSIT, THE CITY WILL CREDIT THE WATER ACCOUNT OF THE CUSTOMER FOR THE AMOUNT OF THE DIFFERENCE IN THE INITIAL DEPOSIT AND THE AVERAGE MONTHLY BILL.

OTHER MISCELLANEOUS CHARGES

	INSIDE CITY	OUTSIDE CITY
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00
TEMPORARY SERVICE (SEVEN OR LESS DAYS)	$ 15.00 PLUS ACTUAL WATER USAGE	$ 15.00 PLUS ACTUAL WATER USAGE
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
RETURN CHECK SERVICE CHARGE	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER
BANK DRAFT CUSTOMER – CHARGE FOR CLOSED ACCOUNT	$ 25.00	$ 25.00
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY		
¾" AND 1" METERS	$ 15.00	$ 15.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on June 15, 2004 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this ordinance, are rescinded upon the effective date of this ordinance.

Section 4. This Ordinance shall become effective upon its adoption.

ADOPTED this the 3rd day of August, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-04-08-03-I

COUNCILMAN COMMENTS:

Councilman Martin thanked Council for allowing the SOS summer program to use the Community Building basement.

Councilman Cuthbertson asked why the Crooked Door Coffee Shop was not required to have a second exit. The City Manager stated he understood that the State Building Code allowed some sort of exception for this building or use, but that he would find out the reason from the Building Inspector.

Councilman Cuthbertson suggested that the City Manager send a letter of thanks to the YMCA for their hosting of the National Night event on July 27.

Mayor Clark advised that Mrs. Thelma Trinks had given him several items of railroad memorabilia for future display in the Depot.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 17, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Sandy Tallant, Duke Power Representative; Hendersonville, NC; Annie Butzen, University of North Carolina at Chapel Hill, Chapel Hill, NC; Chelsea Allen, Marion, NC; Dakota Valencia Marion, NC; Brooklyn Bagwell, Marion, NC; Meagan Isaacs, Marion, NC; Emily Laws, Marion, NC; Kara Dietrich, Marion, NC; Amanda King, Marion, NC; Whitney Gurley, Marion, NC; Mallory Flynn Marion, NC; Rachel Biddix, Marion, NC; Michael O'Buckley, Marion, NC; Oscar Paquette, Park Avenue, Marion, NC; Susan Dietrich, McDowell County Schools Tobacco Prevention Coordinator, Marion, NC; Madison Dietrich, Marion, NC; Mary Dodge, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Consent Agenda as follows:

A. Approval of Minutes – August 3, 2004

B. Approval of Ordinances:

ORDINANCE CONCERNING PARTICULAR ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the City of Marion enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes;

WHEREAS, this Ordinance provides for the repair, closure or demolition of any abandoned structure which the City Council finds to be a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities:

NOW, THEREFORE, the City of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the City Council finds as a fact that one or more abandoned structures are located on the real property which is located within the corporate limits of the City of Marion as hereinbelow described: 228 Park Ave., Marion, McDowell County, North Carolina, Tax I.D. 1701.08-89-0099.

2. That the City Council finds as a fact that the abandoned structure(s) referred to above constitutes a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities; and

3. That the public officer named in the Ordinance adopted on the 21st day of January, 2003, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein.

ADOPTED THIS the 17th day of August, 2004.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:
_____
J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-04-08-17-3

ORDINANCE CONCERNING PARTICULAR ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the City of Marion enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes;

WHEREAS, this Ordinance provides for the repair, closure or demolition of any abandoned structure which the City Council finds to be a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities;

NOW, THEREFORE, the City of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the City Council finds as a fact that one or more abandoned structures are located on the real property which is located within the corporate limits of the City of Marion as herein below described: 238 Park Avenue, Marion, NC, McDowell County Tax I.D. # 1701.08-89-1168, Deed Book 494 page 113.

2 That the City Council finds as a fact that the abandoned structure(s) referred to above constitutes a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities: and

3. That the public officer named in the Ordinance adopted on the 21st day of January, 2003, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein

ADOPTED THIS the 17th day of August, 2004.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:
_____
J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-04-08-17-4

ORDINANCE CONCERNING PARTICULAR ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the City of Marion enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes;

WHEREAS, this Ordinance provides for the repair, closure or demolition of any abandoned structure which the City Council finds to be a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities;

NOW, THEREFORE, the City of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the City Council finds as a fact that one or more abandoned structures are located on the real property which is located within the corporate limits of the City of Marion as herein below described; 234 Park Avenue, Marion, McDowell County, North Carolina, Tax I.D. 1701.08-89-1133, Deed Book 477 page 442.

2. That the City Council finds as a fact that the abandoned structure(s) referred to above constitutes a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities; and

3. That the public officer named in the Ordinance adopted on the 21st day of January, 2003, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein.

ADOPTED THIS the 17th day of August, 2004.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:

_____
J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-04-08-17-5

ORDINANCE CONCERNING PARTICULAR ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the City of Marion enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, Chapter 160A of the North Carolina General Statutes;

WHEREAS, this Ordinance provides for the repair, closure or demolition of any abandoned structure which the City Council finds to be a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities;

NOW, THEREFORE, the City of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the City Council finds as a fact that one or more abandoned structures are located on the real property which is located within the corporate limits of the City of Marion as herein below described: Ridge Street, Marion, McDowell County, North Carolina, Tax I.D. 1711.13-14-6884, Lot 35 Marion Manufacturing Co. Gift PB 2-48.

2. That the City Council finds as a fact that the abandoned structure(s) referred to above constitutes a health or safety hazard as a result of the attraction of insects, rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities; and

3. That the public officer named in the Ordinance adopted on the 21st day of January, 2003, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein.

ADOPTED THIS the 17th day of August, 2004.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:

J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-04-08-17-6

C. Budget Amendment

CITY OF MARION, NORTH CAROLINA
2004-2005 BUDGET ORDINANCE
(Second Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Non-Departmental, Account Number 10-660-9000, Transfer to General Capital Projects Fund, is increased from $0 to $3,861

b. General Fund Expenditures, Non-Departmental, Account Number 10-660-9950, Special Projects, is decreased from $50,000 to $46,139.

GENERAL CAPITAL PROJECTS FUND

a. General Capital Projects Fund Revenues, Account Number 11-380-0000, Transfer from General Fund, is increased from $125,000 to $128,861.

b. General Capital Projects Fund Expenditures, Police Department Expansion, Account Number 11-171-0100, is increased from $1,200,000 to $1,203,861.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 17th day of August, 2004.

A. Everette Clark, Mayor

D. ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-08-17-2

D. Proclamation

A Proclamation Designating September 2004 as Emergency Preparedness Month within the City of Marion

Whereas, the City of Marion received a grant in 2004 to create a Citizen's Emergency Response Training (CERT) Program to enhance emergency training and preparedness in McDowell County; and

Whereas, the City of Marion Police Department has worked with the American Red Cross, the McDowell County Sheriff's Department, McDowell County Emergency Medical Service, McDowell County Emergency Management, McDowell County Fire Departments, the Town of Old Fort, the McDowell Volunteer Center and the McDowell County Rescue Squad to carry out the CERT Program and to create a Citizens Corps Council to educate the public about the need for emergency preparedness; and

Whereas, the combined effort of the Police Department, other law enforcement and emergency agencies and local citizens have trained 28 volunteers in emergency preparedness and made the CERT Program a success; and

Whereas, September 2004 has been proclaimed National Preparedness Month all across the United States; and

Whereas, throughout the month of September, 2004, the United States Department of Homeland Security, the American Red Cross, the American Prepared Campaign, the National Association of Broadcasters, the United States Department of Education and other agencies and organizations will host a series of events to highlight the importance of citizen emergency preparedness; and

Whereas, the Marion City Council wishes to support the CERT Program and the national effort to train citizens to prepare for any disasters or emergencies that may occur.

Now Therefore, the City Council of the City of Marion does hereby proclaim September 2004 as Emergency Preparedness Month within the City of Marion and calls upon all citizens to undertake necessary steps to prepare for emergency situations.

Proclaimed this the 17th day of August, 2004

A. Everette Clark, Mayor

PUBLIC APPEARANCE – MS. SANDY TALLANT, DUKE POWER – CHECK PRESENTATION FOR DEPOT PROJECT: Ms Sandy Tallant, District Manager for Duke Power, appeared before Council.

On behalf of Duke Power, Ms. Tallant presented the City of Marion with a check in the amount of $2,500.00 for the Depot Project.

Ms. Tallant also advised that Duke Power is celebrating its 100th Anniversary. She presented the City with a plaque in commemoration of Duke Power's centennial. It has a photo of the first Hydro Station built in 1904 to serve the Carolinas.

Mayor Clark and Council Members thanked Ms. Tallant bringing the check in person on behalf of Duke Power and for the framed photo.

PUBLIC APPEARANCE – MS. SUSAN DIETRICH – MCDOWELL COUNTY SHCOOLS TOBACCO PREVENTION PROGRAM: The City Manager advised that he had spoken with Susan Dietrich, Tobacco Prevention Coordinator with McDowell County Schools, about an idea to make City parks smoke free. He noted that the City had a problem with cigarette butts being littered at City parks, particularly under picnic shelters and in areas where children were playing.

Ms. Dietrich appeared before Council with a number of youth advocating and requesting that City Officials consider banning smoking in all City Parks..

Ms. Annie Butzen also appeared before Council. She works with the University of North Carolina's Department of Family Medicine in Chapel Hill. Ms. Butzen presented facts about the dangers of second hand smoke and advised that other communities are passing regulations and enforcing policies with no ramifications.

It was the consensus of Mayor Clark and City Council Members that they are interested in making the City of Marion as smoke free as possible.

Ms. Butzen advised that she would compile more information regarding the regulations and enforcement policies of other cities and send it to the City Manager.

PUBLIC APPEARANCE – MR. JASON BRYANT – DISCUSS DOWNTOWN TRAFFIC FLOW AND PARKING ISSUES: Mr. Jason Bryant appeared before Council presenting his ideas on how to help the traffic flow and parking issues facing the City of Marion. Mr. Bryant stated that the current traffic and parking pattern should be maintained, instead of the revised patterns recently recommended by the North Carolina Main Street Program, to avoid negative consequences to businesses such as he has observed in other cities such as Greenville and Spartanburg. Mr. Bryant also stated that a parking garage at the gazebo located on North Main Street could benefit the City. He provided details on how the garage could be designed and financed.

A discussion followed. Mayor Clark stated that the idea of a parking garage at the gazebo site had been previously looked into by the City.

Mayor Clark and Council Members thanked Mr. Bryant for this interest and concern with this issue.

PUBLIC HEARING – ZONING AMENDMENT: Mayor Clark opened the Public Hearing.

There were no citizens present to discuss this item.

City Planner Suzy Davis advised that the Planning Board has discussed and recommends approval of an amendment that would state that political campaign signs could be placed on public right of ways no more than 30 days before any election, and that they must be removed within seven days after an election.

A discussion followed. Mayor Clark and Councilman Little stated that the portion of the recommendation calling on signs to be placed no more than 30 days prior to an election was too strict. Councilman Cuthbertson suggested that language be added to restrict the placement of political campaign signs on any City owned property or in a landscaped area.

It was also determined that the ordinance should include provisions that if signs are not removed within seven days after an election, the City will remove the signs and hold them for ten days.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council unanimously voted to modify the recommendation of the Planning Board and approve the zoning amendment as follows: (*Zoning Amendment inadvertently left out(see page 366a)

RECEIVE RECOMMENDATION FROM PLANNING BOARD: Ms. Suzy Davis advised that the Planning Board recommends that the City coordinate with local civic clubs to move the civic club signs currently found on Rutherford Road, West Henderson Street and North main Street to the location of our Welcome to Marion signs.

This recommendation would involve the civic clubs paying the expense of redoing and moving the signs, with the City coordinating the move.

The City Manager noted that the City was not involved in placing any civic club signs, other than the ones in front of the Community Building.

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII. General Provision. Section 706.12 (1) (L) is amended as follows:

(L) Portable political campaign signs, provided that such signs shall be removed no later than seven (7) days after an election day. Any signs that are not removed within seven days after an election day will be removed by the City of Marion. The City of Marion will hold the sign(s) for ten days before discarding them. Portable political signs are prohibited within landscaped areas and on property belonging to the City of Marion.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of August 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-04-08-17-07

A discussion followed.

The Mayor and Council members agreed by consensus that this would be a matter for the civic clubs to consider, not the City. Concern was expressed about allowing the signs of any organization to be placed at the Welcome to Marion signs since it could set a precedent for any group or organization to request a sign at these locations.

APPROVE REVISED SKATEBOARD PARK AGREEMENT: The City Manager reported that the Joint Utility Committee had recommended some minor revisions to the Skateboard Park Agreement tentatively approved by Council in July. The major change was to have the agreement be for a five year term, renewable for five year terms, with a provision that the agreement could be terminated at any time with the approval of both the City Council and the County Board of Commissioners. The City Manager stated that the County Board of Commissioners had approved the revised agreement the week before.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following revised skateboard agreement:

McDowell County and City of Marion

Agreement
To Construct, Operate and Maintain a Skateboard Park

WHEREAS, the City of Marion and McDowell County acknowledge and agree that a large number of young people in our city and county enjoy the sport of skateboarding and these youth would benefit greatly from a properly designed skateboard park being made available to all who participate in this sport; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that the absence of a skateboard park creates potential serious hazards for recreational skateboarders and potential liability for private property and business owners; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that a cooperative venture to construct, operate and maintain a skateboard park would more efficiently provide for such a facility; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that the most feasible and practical location for a skateboard park for our city and county is at the McDowell Recreational Facility on Academy Street in Marion, NC; and

WHEREAS, the City of Marion and McDowell County acknowledge and agree that the terms set out below are reasonable and appropriate to provide this recreational outlet to skateboarders from our city and county.

NOW, THEREFORE, BE IT RESOLVED AND AGREED AS FOLLOWS:

1. The City of Marion (City) and the County of McDowell (County) will appoint a committee (Skateboard Park Committee) of interested persons to guide the design of the skateboard park (Park). The Skateboard Park Committee will also be charged with recommending policies and guidelines to be enacted by the County Commissioners regarding the operation of the Park. The Skateboard Park Committee will be comprised of ten (10) individuals, with equal numbers to be appointed by the City and the County. The County Recreational Director will direct the Skateboard Park Committee and will coordinate and facilitate the workings of this Committee.
2. The Park will be constructed on the portion of the County Recreational Facility property (on Academy Street in Marion, NC) that was previously used as a tennis court.

3. The final design of the Park must be approved by both the City and the County. The final design of the Park must bear the seal of a licensed professional engineer so as to provide assurances as to the safety of the design of the Park layout and of the structures to be used by skateboarders. As much as possible, the recommendations of the Skateboard Park Committee will be incorporated into the design and layout. It is acknowledged, however, that the safety of the skateboarders shall be of prime importance in regard to design issues.

4. After design approval by both the City and the County, the City will coordinate the bidding for the construction of the Park.

5. All of the costs related to the construction of the Park, including any cost overruns, shall be paid by the City. These costs are anticipated to include such categories as site preparation, fence repair, signage, resurfacing of the Park, and other necessary improvements needed to establish the skateboard park. During the construction phase, the City and County shall cooperate with overseeing the construction. Inspections of the work shall be made by the County Building Inspector. All invoices shall be submitted to the City for payment consistent with the contract documents.

6. The County shall oversee the operation and perform necessary maintenance of the Park, consistent with the duties of the County Recreation Department and with significant input from the City and from the Skateboard Park Committee. The County will determine operating rules and procedures as well as hours when the Park will be available to the public, but with awareness that a great deal of skateboarding activity takes place on weekends and during evening hours.

7. The County will provide sufficient liability insurance and shall be responsible for all related expenses for the Park. The City and the County will each adopt an ordinance in accordance and consistent with the provisions of Section 99E-23(b)(1) of the North Carolina General Statutes, which will require users of the Park to wear appropriate safety gear, including helmet, elbow pads and knee pads. The City will post a sign giving users notice of the requirement of safety gear and their responsibilities.

8. An appropriate area of the Park will be used to identify all donors to the Park and the identity of the members of the Skateboard Park Committee. The donor recognition area and signage will be established during the construction of the Park.

9. The City Police Department will patrol the Park in an effort to curtail and prevent trespass or vandalism of the Park and also to enforce the ordinance regarding safety equipment. The City shall also establish and promote an education and enforcement initiative to maximize utilization of the Park and to protect the interests of property owners and business owners who do not desire to have persons skateboarding on their property.

10. This agreement shall last for a term of five years, at which time it shall be reviewed by the City and the County. The agreement may be renewed for additional five-year terms with the approval of both the Marion City Council and the McDowell County Board of Commissioners. The agreement may be terminated at any time with the approval of both the Marion City Council and the McDowell County Board of Commissioners. The first five-year term shall begin on the _____ day of _____, 2004.

IN WITNESS WHEREOF, we have set our hands and seals.

THE CITY OF MARION

BY: _____
A. EVERETTE CLARK, Mayor

ATTEST: _____
J. ROBERT BOYETTE, City Clerk

THE COUNTY OF McDOWELL

BY: _____
DAVID N. WALKER, Chairman
Board of Commissioners

ATTEST: _____
CARRIE PADGETT
Clerk to the Board of Commissioners

APPOINTMENTS TO SKATEBOARD PARK COMMITTEE: The City Manager advised that the Skateboard Park Agreement calls for Council and the Commissioners to each appoint five members. The Joint Utility Committee suggested that each board appoint three adults and two youth.

A discussion followed.

Several names were suggested for possible committee members.

Fred Moody, Asheville Savings Bank
Kim Thomas, Edward Jones
Tracy Fuller, Owner/Operator, Fuller's Action Cycles
Brian McMahan, youth appointment, Devonwood Drive
Thomas Martin, youth appointment, North Madison Street

The City Manager will contact these persons about their interest in the Skateboard Park Committee and report back to Council at the next meeting.

CONSIDER APPROVAL OF ORDINANCE: The City Manager advised that the owners of the Bridal Showcase at the corner of South Main and West Henderson Streets have requesting consideration of reclassifying the 15 minute parking space in the block in front of their business to a 2 hour parking space. The City Manager stated that he and the Police Chief had looked at the location and would recommend approval of an ordinance to redesignate the parking space in question to a 2 hour space.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
MAIN STREET (SOUTH) 15 MINUTE	PARKING 23 FT. NORTH OF THE LIMIT 8AM-6PM MON-SAT	WEST SIDE, BEGINNING NW CORNER OF W. HENDERSON CONTINUING 20 FT. NORTHERLY

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
MAIN STREET (SOUTH) 2 HR. LIMIT	PARKING 23 FT. NORTH OF THE	WEST SIDE, BEGINNING NW CORNER OF W. HENDERSON CONTINUING 20 FT. NORTHERLY

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of August, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-04-08-17-1

DISCUSS TRAFFIC FLOW ISSUES – FLEMING AVENUE/MARION ELEMENTARY SCHOOL: The City Manager advised that the area of Fleming Avenue around Marion Elementary School has long experienced a traffic flow problem. Since the beginning of the new school year, the problems have worsened. The previous day, Mayor Clark, Councilmen Martin and Owenby, Roger Estes, Chief Elliott and he met with School and DOT representatives to discuss solutions to the problems. The City Manager advised that School Officials have revised their parking arrangement for parents who drive and pick up their children. This has helped to a certain degree with the traffic flow issue. In addition, parents waiting to pick up children will be rearranged on School property to lessen the chance of vehicles backing up onto the street. In addition, DOT agreed to limit left hand turns into the School driveway off of the Fleming Avenue at peak hours in the morning and afternoon, and to study possible design changes to Fleming Avenue, to possibly accommodate a right turn lane into the School driveway.

The Police Chief will continue to monitor this situation for any improvements and/or further problems.

DISCUSS DOWNTOWN PARKING ISSUES: The City Manager advised that the County Commissioners have preliminarily endorsed the purchase of the Doris Hill property. The property can likely be acquired for $110,000. The property appraised for $117,700 and has a tax value of $110,980. The property could be developed into a parking lot for approximately $75,000.

The City Manager stated that the County Commissioners appear willing to split the cost of the purchase and development as long as they can pay back their share over seven years.

A lengthy discussion followed. Councilman Edwards inquired about the use of the parking lot. Mayor Clark stated that the lot could be used for jury parking, therefore allowing the current jury parking lot at East Court and Garden Streets to be used for other Courthouse parking.

When the new lot would not be needed for jury parking, it could be use for public parking. Councilman Edwards suggested that prominent signage would be needed to steer the Courthouse traffic off of Main Street, since many people would be unwilling to walk up Courthouse Hill.

It was the consensus of Council that this issue should be pursued.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to authorize the City Manager to work with the County Manager to negotiate the purchase price for the property with Mr. Hill Evans.

STORM WATER RUN OFF - PARKING LOT – RUSSELL NEIGHBORS: Councilman Edwards advised that there is red mud running from Russell Neighbors parking lot at Logan and West Henderson Streets, which is being leased by the City of Marion, onto the sidewalk creating a slick possibly hazardous situation. The problem is caused by a lack of ground cover on the bank above the sidewalk.

The City Manager advised that he would have the mud cleaned off the sidewalk and have the City's landscaper plant some ground cover on the bank.

DISCUSS MAUSOLEUM – COLUMBARIUM CHARGES: The City Manager advised that Council previously approved a $200 fee for opening and closing mausoleum vaults and to charge cost plus 10 percent for the purchase of plaques for the mausoleum.

The City Manager also advised that with the construction of the new columbarium, a similar charge is now needed. He recommended a charge of $100 to open and close a columbarium niche and that cost plus 10 percent be established for the purchase of plaques for the columbarium.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to charge a $100 opening and closing fee for the columbarium and to charge cost plus 10% for plaques for the columarium.

The City Manager also reported that several people had inquired about prepaying for plaques for the mausoleum. The City has not allowed prepayments to occur since the future cost of the plaques in unknown.

The Mayor and Council agreed by consensus that the prepayment of plaques would be not be in the best interest of the City, and that persons should instead contact funeral homes to see if the cost of the plaque could be worked into a prepayment of final expenses.

PARKING TICKET APPEAL: The City Manager presented Council with a written request for appeal of a parking citation.

Mrs. June Freeman of Kensington, MD advised that she received a parking citation for being outside the lines. She advised that she felt she was parked legally and as best the situation would allow.

Mrs. Freeman would also ask for an extension for payment due to living out of State.

The City Manager presented a written statement from the City Ordinance Enforcement Officer, Sara Vess, stating that Ms. Freeman's rear tire was on the line, but her bumper was extending 12 inches into the travel lane.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted to deny Ms. Freeman's appeal of this parking citation, but to allow a total of 14 days for the ticket to be paid.

APPEARANCE BY JACK SHAFER: Mr. Jack Shafer of Viewpoint Drive appeared before Council to discuss downtown parking issues. Mr. Shafer also suggested that a center line be painted on the portion of Viewpoint Drive near North Main Street, to designate the center of the road.

COUNCILMAN COMMENTS:

Councilman Edwards advised that he had recently visited the new Cross Mill Park. While walking the track, he noticed that it runs into the parking lot. He advised that there is a need to stripe the section of the track that runs into the parking area. The City Manager stated that the painting of this line had already been planned.

Councilman Edwards also suggested that the City look at placing some type of barbeque grill in each park, such as is present as Lake James State Park.

Councilman Cuthbertson advised that the shrubs immediately north of the Harvest are still a major traffic concern on North Main Street, as they bloc site visibility of vehicles exiting the Harvest. The City Manager stated that he and the Police Chief would personally look at this problem, since it had been mentioned before and pruning of the shrub in question had not solved the problem.

Councilman Cuthbertson also advised of a bump in the pavement on Fort Street, in the block between Main and Garden Streets.

Councilman Cuthbertson also suggested that a joint meeting with the County Commissioners be set up for late September. The Harvest was suggested as a location for the meeting.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSED SESSION – N.C.G.S. 143-318.11(a)(5) & N.C.G.S. 143-318.11 (a)(3): Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go into Closed Section in accordance with N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real estate and in accordance with N.C.G.S. 143-318.11 (a)(3) to discuss a legal matter.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to go back into Regular Session.

Mayor Clark announced that no action was taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

Attest:

Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 7, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Danny Braswell, Adam Honeycutt and Chad Walker, Marion Police Department; Freddie and Woody Killough, Holly Hill, Marion, NC; Barry McPeters, 441 East Court Street, Marion, NC; Max Baker, East Court Street, Marion, NC; Ronnie Burgin, North Main Street, Marion, NC; Jim Goldsmith, PO Box 1107 Marion, NC; Robert Yates, Dysartsville, NC; Robert Hensley, Marion, NC; Todd Bennett, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY MAYOR A. EVERETTE CLARK: Mayor Clark selected the Citizen of the Month for September.

Woody Killough

Mayor Clark advised that Mr. Woody Killough married Freddie Killough in 1977. Woody was born and raised in Marion. He graduated with the first class to attend McDowell High School.

He and his wife own and operate Killough's Music and Loan.

Woody has assisted with all the City Parades excluding one at which time he had a broken leg and has filmed all of Marion's events through the years.

He is a member of Mount Hebron Wesleyan Church, where he teaches the youth guitar lessons.

Woody has been a member of the Lion's Club for twenty years. He has served two terms as President.

Mayor Clark introduced Woody as a great example for others to follow.

Council Members all had kind words to share about Mr. Killough.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. **Approval of Minutes** - August 17, 2004 Minutes and Closed Session Minutes.

B. **Accept Local Law Enforcement Block Grant:** $10,000 grant to purchase equipment for the Police Department. The City Manager advised that the Police Chief proposed to put this funding toward security enhancements for the new Police Department building which was partially funded in the 2004-2005 budget.

INTRODUCTION OF NEW EMPLOYEES: Chief Mika Elliott introduced three new officers. Danny Braswell, Adam Honeycutt and Chad Walker.

Mayor Clark and Council members welcomed the Officers.

The City Manager commended Chief Elliott for the recent work that has been accomplished with a short staff.

PUBLIC APPEARANCE – JIM GOLDSMITH: Mr. Jim Goldsmith, appeared before Council on behalf of Mr. Max Baker. Mr. Goldsmith expressed his concerns with the City of Marion's Weed and Refuse Ordinance. Mr. Goldsmith made several suggestions regarding changes in the present Ordinance.

Mr. Goldsmith stated that Mr. Max Baker, of East Court Street, received a notice of violation from the City Manager regarding tall grass and weeds on his property. Mr. Baker's property included a garden. Mr. Goldsmith stated that City employees came in after the time given in the notice expired and destroyed Mr. Baker's Garden and also sprayed a weedkiller with no notice to property owner, which could have had serious repercussions. Mr. Goldsmith stated that Mr. Baker was particularly upset about receiving a bill for $87.50 from the City for the mowing.

The City Manager advised that upon noncompliance with the notice of violation, city officials scheduled the property to be brought into compliance. This Ordinance has been in effect for many years. He stated that this is the first instance of this type of complaint. The City Manager also stated that mowing of lots was performed by the City's mowing contractor, not by City employees.

Councilman Little expressed his embarrassment and concern that such a thing had taken place.

Councilman Edwards expressed that the City would not apologize for having a Weed Ordinance, as it was important for property owners to maintain their properties in an acceptable manner. Councilman Edwards also stated that there was no evidence in this case that any spraying of weedkiller had taken place. The City Manager advised that the City contractor had never been instructed to spray any type of pesticide or weed killer.

The City Manager stated that steps would be put into place to improve communication with the City's contractor regarding mowing of lots.
A lengthy discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to rescind the $87.50 bill for the mowing of Mr. Baker's property.

PUBLIC HEARING ZONING AMENDMENT: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that Mr. Ronnie Burgin has requested that auto repair shops and mini-storage be permitted in the newly created B-1 Neighborhood Business District on Baldwin Avenue.

The Planning Board recommends approval of a zoning amendment to allow auto repair shops and mini storage warehouses in the B-1 district as special exceptions with certain listed conditions.

Mr. Ronnie Burgin was present for this Public Hearing. He advised that this proposed amendment would meet his current needs for this property.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII. Use Requirements by District. Section 807.4 Special Exceptions is amended as follows:

807.4 Special Exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance:

(1) Auto repair shops up to 2,500 square feet in size provided that appropriate measures are taken to prevent noise from traveling to neighboring residential properties.

(2) Mini-storage units provided that appropriate measures are taken to prevent lighting from shining or reflecting on neighboring residential properties.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of September 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-04-09-07-03

PUBLIC HEARING – ZONING AMENDMENT: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that, as requested by Council, the Planning Board revisited the wording of the Sign Ordinance related to placement of signs on gasoline canopies.

The Board recommends an amendment to the Zoning Ordinance stating that portable signs be permitted if they are attached to a building or the supporting structures of gasoline canopies.

A lengthy discussion followed.

Councilman Edwards stated that allowing portable signs on gasoline canopies would not be attractive and would defeat the purpose of the Sign Ordinance to reduce visual clutter in the City. Councilman Cuthbertson also stated that the original intent of Council with the Sign Ordinance amendments of the past few years was to not allow portable signs except on buildings.

There were no citizens present to discuss this item.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the following ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII. General Provision. Section 706.1 Definitions.(10) is amended as follows

> (10) **Sign, portable.** A sign that is designed or has the potential to be relocated and which is not permanently installed or permanently anchored to either the ground or a pole. For the purpose of this article, directional signs and temporary signs shall not be considered portable signs. Portable signs attached to the ground or a pole are prohibited within the city limits of Marion. Portable signs are permitted if they are attached to a building, but not the supporting structures of gas station canopies.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of September 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-04-09-07-02

DISCUSSION – MILL VILLAGE DISTRICT: City Planner Suzy Davis also advised that the Planning Board has discussed the uniqueness of the Mill Villages in the City and would like to create a Mill Village District.

A brief discussion followed.

It was the consensus of Council that this proposal was a good idea and worthy of review by the Planning Board.

RURAL CENTER GRANT – DOWNTOWN BUILDING REDEVELOPMENT: The City Manager presented Council with information on a new grant program offered by the North Carolina Rural Center which could provide up to $400,000 to renovate vacant buildings for redevelopment.

This idea has been discussed with several persons interested in applying for the grant to redevelop the Plumbing Supply building on West Henderson Street and a small building next to the Depot owned by Dan Davis.

The Grant requires a matching amount from the developer, who would essentially receive 50 cents return on the dollar for their investment. Local Government is required to put 2.5% into the project, but we could explore whether the value of our Depot work, or a reimbursement from the developer to the City for our match would count.

A discussion followed.

It was the consensus of Council to proceed with this application, if an interested developer or property owner willing to renovate a downtown building could be found.

COMMUNITY BUILIDING PARK/SINKHOLE REPAIR CONTRACT: The City Manager advised that bids for the repair work for the sinkhole at the Community Building Tennis Courts, which includes the replacing the drainage pipe, filling in and compacting dirt and resurfacing the tennis court, have been received.

The initial bids received were much higher than the $50,000 estimate of McGill, with the low bid being $107,945. After the bid opening, McGill negotiated with the low bidder, Steppe Construction of Mill Spring, North Carolina, and removed items related to resurfacing of the tennis court and some of the smaller drainage pipe replacements. These changes reduced the bid to $71,299.80. The City Manager suggested that Council could either award the contract for the negotiated amount, or reject all bids and start the bidding process anew with revised specifications. Either way, the resurfacing of the tennis court and the replacement of the tennis court fence would not take place until Spring 2005.

A discussion followed.

Councilman Cuthbertson stated that with impending hurricane and flood damage, it would be best for the City to lock in the negotiated price for the sinkhole repair.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to award a contract for the Community Building Park Sinkhole Repairs to Steppe Construction for the negotiated amount of $71,299.80. The City Manager will bring a Budget Ordinance Amendment to fund this project to Council for approval at the September 21 meeting.

REQUEST BY MCDOWELL COUNTY SHCOOLS TOBACCO PREVENTION PROGRAM- COMMUNITY BUILDING BASEMENT: The City Manager presented Council with a memo from Ms. Susan Dietrich, Tobacco Prevention Program Coordinator for McDowell County Schools requesting to use the Community Building basement for the "Drag of Doom" event for three weeks from February 26th – until March 20th as they did last year. Ms. Dietrich requested that the Schools be charged the minimum rate of $20.00 per day for each weekday, for a total charge of $300.00 for the three week rental. Ms. Dietrich also requested that the Basement not be rented to any other person or group at any time during this three week period.

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to allow the McDowell County Schools Tobacco Prevention Program to use the Community Building Basement as requested, for a total rental charge of $300.00 for the three week rental and with the stipulation that the City not rent the Basement to any other person or group during this three week period.

APPOINTMENTS SKATEBOARD PARK COMMITTEE: The City Manager advised that the following persons have agreed to serve on the Skateboard Park Committee, as tentatively agreed by Council in August:

Kim Thomas
Fred Moody
Tracy Fuller
Brian McMahan
Thomas Martin

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint the persons listed above to serve on the Skateboard Park Committee. The County Commissioners will appoint five representatives to this Committee at their September 13 meeting.

ORDINANCE – PROHIBIT PARKING ON SOUTH MAIN STRET: The City Manager reported that Councilman Cuthbertson had previously pointed out the need to review the parking restrictions on South Main Street from south of Crawford Street to Morgan Street. The City Manager stated that this section of South Main Street allowed parking on both sides of the street between 7:00 p.m. and 7:00 a.m. Since the third lane was added a few years ago, such parking would encroach on the travel lanes. The City Manager stated that he and the Police Chief had reviewed the location and would recommend that parking be prohibited at all times on both sides of South Main Street from south of Crawford Street to Morgan Street.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION
MAIN STREET (SOUTH) PROHIBITED	PARKING 117 FT. NORTH OF 7AM-7PM	EAST SIDE, BEGINNING NW CORNER OF MORGAN AND S. MAIN CONTINUING 1009 FT. NORTHERLY
PROHIBITED	PARKING 175 FT. SOUTH OF THE 7AM-7PM	WEST SIDE, BEGINNING SW CORNER OF CRAWFORD AND S. MAIN CONTINUING 975 FT. SOUTHERLY

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
MAIN STREET (SOUTH) PROHIBITED	PARKING 117 FT. NORTH OF	EAST SIDE, BEGINNING NW CORNER OF MORGAN AND S. MAIN CONTINUING 1009 FT. NORTHERLY

PROHIBITED	PARKING	WEST SIDE, BEGINNING 175 FT. SOUTH OF THE SW CORNER OF CRAWFORD AND S. MAIN CONTINUING 975 FT. SOUTHERLY

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of September, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-09-07-1

CONSIDER ADOPTION OF RESOLUTION OF INTENT – STREET CLOSING – RIGHT OF WAY BEHIND OLD HEILIG MEYERS BUILDING: The City Manager reported that Jim Gibson of Westmoreland Funeral Home had requested last year the closing of an unopened right of way at the end of Crawford Terrace, behind the Old Heilig Meyers Building on South Main Street. Mr. Gibson is asking to close a portion of the right of way and then donate land to the City to relocate the right of way, while still preserving access to all property owners fronting on the right of way.

The City Manager stated that the first step in the street closing process would be the adoption of a resolution of intent to close the street, which then schedule a public hearing and notification of property owners regarding the street closing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following Resolution:

RESOLUTION OF MARION CITY COUNCIL
RELATIVE TO CLOSING A PORTION OF
AN UNNAMED STREET OFF RAILROAD STREET

BE IT RESOLVED THAT, pursuant to the provisions of North Carolina General Statutes 160a-299, the City Council of Marion, North Carolina, hereby declares its interest to permanently close that unopened portion of an unnamed street off Railroad Street as shown for identification and location purposes only, on a survey of property belonging to Family Services Holding Company, LLC as recorded in Deed Book 678, Page 177 in the Office of the McDowell County Register of Deeds.

A public hearing is called to be held in the City Council Chamber in the City Hall, Marion, North Carolina at 7:00 O'clock P.M. on Tuesday, October 19, 2004, at which hearing any person may be heard on the question of determining whether or not the closing of said portion of the street would be detrimental of the public interest or the property rights of any individual.

BE IT FURTHER RESOLVED that a copy of this Resolution shall be published once a week for four (4) successive weeks in The McDowell News, Marion, North Carolina, prior to the date of said public hearing and that a copy of the same shall be sent by registered or certified mail to Family Services Holding Company, LLC; Q. Harold Caviness, ET UX; Pak Wai Jong, ET UX, and Richard Allen Gurley, ET AL, who are the owners of property adjoining said portion of said street as shown in the McDowell County tax records.

BE IT FURTHER RESOLVED that a Notice of the closing and public hearing shall be prominently posted in at least two (2) places along that portion of said street which is to be closed.

ADOPTED at a regular meeting held on September 7, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

APPOINT VOTING DELEGATES AND ALTERNATE FOR NORTH CAROLINA LEAGUE OF MUNICIPALITIES AND NATIONAL LEAGUE OF CITIES CONFERENCES: The City Manager advised that Mayor Clark and he will be attending the North Carolina League of Municipalities conference in October in Raleigh, and that Mayor Clark will be attending the National League of Cities Conference in Indianapolis, Indiana in December. Voting delegates and alternates, if available, are needed for both Conferences.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to appoint Mayor Clark as Voting Delegate and the City Manager as Alternate for the N.C. League of Municipalities Conference to be held in Raleigh in October, and to designate Mayor Clark as the Voting Delegate for the National League of Cities Conference, to be held in Indianapolis, Indiana in December.

SCHEDULE JOINT MEETING WITH MCDOWELL COUNTY: A discussion was held regarding the scheduled joint meeting with McDowell County.

It was decided to hold the joint meeting on Tuesday, September 28, 2004 at 6:30 PM. Dinner will be catered and served during this meeting. Council directed the City Manager to notify the County Manager that the City wished to discuss at this meeting the need for the County to increase the Marion Area Fire District tax rate for Fiscal Year 2005-06.

APPOINTMENT – DOWNTOWN ADVISORY COMMITTEE: The City Manager advised that the Downtown Advisory Committee has recommended that Mr. Cliff McLarty be appointed to fill one of the two vacant positions on the DAC. Mr. McLarty would fill a vacant property owner slot on the Committee.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Mr. Cliff McLarty to the Downtown Advisory Committee.

REVIEW FINANCING ISSUES: The City Manager presented Council with information related to financing of several proposed projects, including a list of five possible projects and suggested funding mechanisms, along with detailed information on some of the projects.

The projects are as follows:

1. Purchase of Doris Hill Property on South Garden Street in conjunction with McDowell County for a parking lot – Council agreed that this project should be pursued, using

General Capital Reserve Fund money, with the one-half of the purchase and development costs to be paid by the County to be paid back to the General Capital Reserve Fund over a seven year period.

2. Purchase of MA District Tanker/Pumper – Council agreed that purchase of this truck should be pursued and funded using MA District tax revenues. Council did agree that the MA District tax rate would need to be increased by the County to ensure that adequate revenues are available for the truck purchase and for the operating expenses of City fire operations.

3. Acquisition/Redevelopment of Sam Frady Junkyard on Morehead Road – Council agreed that the City could not afford to outlay $250,000 or more to acquire the property, but directed the City Manager to include the possible acquisition of the property in grant applications. The needed City match for these grant applications will be determined at a future date.

4. Catawba River Wastewater Plant Improvements – Council agreed to make this project a priority, using the EPA grant available to the City on a matching basis, plus Water and Sewer Capital Reserve Fund and/or Water and Sewer Fund money if necessary.

5. Sugar Hill Road Water/Sewer Extension to I-40 – Council directed the City Manager to defer this project until a future time when State funds for job creation may be available.

CONSIDER PURCHASE OF REAL PROPERTY/APPROVE AGREEMENT: The City Manager advised that an agreement had been reached with Mr. Hill Evans for the City and County to jointly purchase the Doris Hill property on South Garden Street for $110,980 which is the tax value of the property and is below the appraised value of $117,700. Several layouts have been designed for the proposed parking lot needed which would yield between 47 and 64 spaces. The City Manager also presented a recommended agreement between the City and County regarding the purchase and development of this property for a parking lot.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously for the City and County to jointly purchase the Doris Hill property in the amount of $110,980, and to approve the following agreement concerning the purchase and development of the property:

McDowell County and City of Marion
Agreement
To Purchase, Construct, Operate and Maintain a Parking Lot

WHEREAS, the City of Marion, hereafter referred to as the "City", and McDowell County, hereafter referred to as the "County", acknowledge and agree that the McDowell County Courthouse, the County Administration building and other business and institutional uses in Downtown Marion generate a large volume of vehicular traffic; and

WHEREAS, the City and County acknowledge and agree that a need exists to create additional off-street parking in Downtown Marion, especially around the Courthouse, to allow on-street parking to be primarily used for patrons of businesses in Downtown Marion and for short-term parking; and

WHEREAS, the City and County acknowledge and agree that an opportunity exists to acquire property formerly owned by Ms. Doris Hill, hereafter referred to as the "Doris Hill Property", located on South Garden Street in the City of Marion, to create additional off-street parking to serve Downtown Marion and the Courthouse area; and

WHEREAS, the City and County acknowledge and agree that a cooperative venture to construct, operate and maintain a parking lot on the property listed above would help to efficiently meet the need for additional downtown parking; and

WHEREAS, the City and County acknowledge and agree that the terms set out below are reasonable and appropriate to provide this parking lot to citizens of and visitors to the Courthouse and Downtown Marion.

NOW, THEREFORE, BE IT RESOLVED AND AGREED AS FOLLOWS:

1. The City and County will jointly purchase the Doris Hill Property for an amount of $110,980, which is the tax value of the property according to the McDowell County Tax Department. After purchase, the City and County shall jointly own the Doris Hill Property.

2. The City and County will jointly develop the Doris Hill Property to create a parking lot. The costs to inspect and clear the house on the property and to grade, pave and install drainage, curbing, landscaping, lighting and signage, plus contingencies are estimated to be $75,000.

3. The cost to purchase and develop the Doris Hill Property shall be paid initially by the City, with the County paying the City for one-half of the total purchase and development costs over a period of seven years. Annual payments from the County to the City shall be no less than $12,500 per year, unless the total purchase and development costs are less than $175,000. The City and County agree to split any cost overruns for the purchase and development of the property on an equal basis, per the requirements of this section for County reimbursement of one-half of the total purchase and development costs.

4. The final design of the parking lot must be approved by both the City and the County, prior to construction. While the design is being finalized, the City may undertake clearance of the house and grading work on the parking lot property. After design approval by both the City and the County, the City will coordinate the construction of the parking lot, using any combination of City forces and contract labor deemed appropriate by the City. During the construction phase, the City and County shall cooperate with overseeing the construction. Inspections of the work shall be made by the City Public Utilities Director.

5. The City and County shall jointly maintain the parking lot after its initial development and agree to split all maintenance and repair costs and the costs of any improvements to the lot on an equal basis. Any maintenance, repair or improvement work needed after the initial development of the lot shall be completed by the City, with the County reimbursing the City for one-half the costs within 30 days after an invoice is submitted, unless some alternate payment schedule is approved by both the City Council and the County Board of Commissioners. It is hereby agreed by the City and County that maintenance and repairs shall include any work to ensure the safety of motorists or pedestrians using the parking lot and to keep the pavement, drainage system, curbs, site painting, site lighting, signage and landscaping in a manner consistent with the expectations and requirements of the City and County and consistent with the original parking lot after its initial construction and development. Improvement work shall include any other type of work to expand or materially change the arrangement or design of the parking lot. Maintenance and repair work shall be completed as needed by the City and shall require no prior approval by the County; however, any improvement work must be approved by both the City and the County prior to the work being completed.

6. The City and County agree that the parking lot shall be used for parking for jurors when Superior Court is in session, or when there is a need to provide parking for jurors. At times when the parking lot is reserved for jurors, the County shall provide for a large sign, the size and design of which is to be approved by both the City Council and the County Board of Commissioners and the costs of which shall be split on an equal basis by the City and County, to be displayed on the parking lot property to inform the public that the lot is reserved on that day for jury parking. The County also agrees to provide staffing, through the County Sheriff's Department, to monitor the parking in the lot on any days on which the lot is reserved for jury parking, to ensure that no person, other than those called for jury duty, parks in the lot. At any

time the parking lot is not needed for jury parking, the County shall provide for a large sign, the size and design of which is to be approved by both the City Council and the County Board of Commissioners and the costs of which shall be split on an equal basis by the City and County, to be displayed on the parking lot property to inform the public that the lot is open on that day for public parking. No reservations of the parking lot are permitted for any purpose other than jury parking, without the approval of both the City Manager and the County Manager.

7. The City and County will provide sufficient liability insurance for the parking lot.

8. This agreement shall last for an indefinite term. The agreement may be modified or terminated at any time with the approval of both the Marion City Council and the McDowell County Board of Commissioners. The agreement shall take effect on the _____ day of _____, 2004.

IN WITNESS WHEREOF, we have set our hands and seals.

THE CITY OF MARION

BY: _____
A. EVERETTE CLARK, Mayor

ATTEST: _____
J. ROBERT BOYETTE, City Manager/Clerk

THE COUNTY OF McDOWELL

BY: _____
DAVID N. WALKER, Chairman
Board of Commissioners

ATTEST: _____
CARRIE PADGETT
Clerk to the Board of Commissioners

Council further agreed that General Capital Reserve Fund money would be used to fund the purchase and development of this property, with one-half of the purchase and development costs to be paid by the County to be paid back to the General Capital Reserve Fund over a seven year period. The City Manager will bring a Budget Ordinance Amendment to fund this project to Council for approval at the September 21 meeting.

DISCUSS FIRE TRUCK PURCHASE: The City Manager presented information from Fire Chief Neal and the City Attorney advising that a piggybacking agreement to finance a fire truck from North Canton, Ohio would be permissible.

Fire Chief Jim Neal was present for this discussion.

Attorney Jennifer Jackson noted that in her opinion this contract would likely have to be restricted to the basic truck itself, and we would then have to informally bid our equipment. The benefit of using the contract from North Canton is that we could obtain a truck from a known supplier, KME, with whom we have dealt with favorably in the past.

A discussion followed.

Mayor Clark expressed the necessity of the County Commissioners increasing the MA District tax rate to fund the purchase of this truck. He reiterated that the City needed a commitment from the County concerning the tax rate at the September 28 joint meeting. Councilman Little stated that the City should push for an increase of the current two cent tax rate to four cents, to be comparable to other fire districts.

Council did endorse the concept of a piggyback contract, if adequate revenues from the MA Fire District are available.

It was the consensus of Council to hold this item until the October 5, 2004 City Council Meeting, after the joint meeting with the County is held on September 28.

DECLARE CITY OF MARION LOCAL STATE OF EMERGENCY: During this meeting, Mr. Carroll Hemphill called to advised that Governor Easley has declared a State of Emergency in North Carolina as a result of Hurricane Frances. Mr. Hemphill suggested that the City declare a Local State of Emergency, to make the City eligible for disaster assistance from FEMA.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Local State of Emergency for the City of Marion:

CITY OF MARION
COUNTY OF MCDOWELL
NORTH CAROLINA

PROCLAMATION

"LOCAL STATE OF EMERGENCY"

I, A. Everette Clark, Mayor, of the City of Marion, as authorized by the Marion City Council on September 7, 2004, and in accordance with the McDowell County Emergency Operational Plan, do hereby declare a "Local State of Emergency" for the City of Marion as a result of "Hurricane Frances" that is likely to produce flooding, utility outages and other hazards within the immediate future; and

WHEREAS, there is a high probability that the path of said hurricane will cause it to make landfall in North Carolina and pass through or near the City of Marion and the County of McDowell within the next twenty-four hours; and

WHEREAS, said hurricane is likely to be preceded, accompanied and followed by high winds and heavy rains of such severity as to be capable of causing widespread flooding, utility outages and other severe damages; and further, that such conditions are beginning to occur and are likely to worsen, and that such conditions may exist in the City of Marion and the County of McDowell for several days; and

WHEREAS, the weather conditions associated with the hurricane are such as to constitute an imminent threat of flooding, utility outages and widespread other severe damages, injury and loss of life or property;

NOW, THEREFORE, pursuant to the authority contained in Article 1 of N.C.G.S. Chapter 166A of N.C.G.S. Chapter 14 and the McDowell County Emergency Operational Plan for Multi-Hazards, I do hereby proclaim that a "Local State of Emergency" exists within the City of Marion.

I further proclaim that this Proclamation is necessary in order to maintain an acceptable level of public order, services and protection of lives, safety and property during this emergency, and that this Proclamation will remain in effect until rescinded. I hereby order all City employees to cooperate in the enforcement and implementation of this Proclamation and the Emergency Operational Plan for Multi Hazards.

I further proclaim that the Emergency Management Plan and all applicable mutual assistance agreements are in effect and shall remain in effect until this proclamation is rescinded.

RESTRICTIONS. (None)

This proclamation shall be effective immediately and shall remain in effect until rescinded pursuant to G.S 14-288.16.

Proclaimed this the 7th day of September 2004 at 21:30 hours.

APPROVED BY

A. Everette Clark, Mayor
City of Marion

ENDORSEMENT OF MAYOR CLARK FOR SECOND VICE PRESIDENT OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES: Mayor Clark advised that he would be running for Second Vice President of the North Carolina League of Municipalities in October. Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to enthusiastically endorse the candidacy of Mayor Clark for Second Vice President of the North Carolina League of Municipalities.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Edwards advised that he had the Citizen of Month for October and that he wished to present it at the second meeting in October instead of the first, due to scheduled surgery. Councilman Edwards stated that he would recognize all current and retired firemen at this meeting.

Councilman Martin asked that the Street Committee review a request for no parking restrictions on Ridley Street in West Marion. The Street Committee meeting was set for Monday, September 13, at 1:30 p.m.

Councilman Cuthbertson stressed the need for the City to assist with educating the public about Self Financing Bonds, Amendment One on the November ballot.

Councilman Cuthbertson also asked if information had been received as requested of the State regarding possible smoking and tobacco restrictions in City parks. The City Manager stated that the State Health Department representative had advised the McDowell County Schools Tobacco Prevention Coordinator that she was still working to compile the requested information on sample ordinances and information about the harmful effects of second hand smoke in outdoor environments.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 21, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards arrived for this meeting at 7:45 P.M. due to an emergency at his office.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Ethel and Chris Kanipe, 134 North Madison Street, Marion, NC; Diane Gaddy, 115 New Street, Marion, NC; Cliff and Sharon McLarty, 190 North Madison Street.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - September 7, 2004 Minutes
B. Approval of Resolution

Resolution Declaring Certain Items of Personal Property Owned by the City of Marion as Surplus and Authorizing Their Sale

WHEREAS, N.C.G.S. 160A-270 authorizes cities to dispose of personal property by auction; and

WHEREAS, N.C.G.S. 160A-270 requires that when a City Council proposes to dispose of property by auction, it adopt a resolution at a regular Council meeting authorizing an appropriate City official to dispose of the property by auction; and

WHEREAS, the City of Marion owns many items of personal property, as shown on the attached sheets, that are no longer needed by the City; and

WHEREAS, the City of Marion, McDowell County, and the McDowell County School Board have traditionally held an annual auction for surplus items during the fall of each year.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the personal property owned by the City and listed on the attached sheets to be surplus and authorizes the City Manager or his designee to dispose of said property by auction, with the designated minimum price where listed.

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (10) days after its publication.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 21st day of September, 2004.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-04-09-21-1

2004 Auction List

Street Department
1 Computer system
110 stacking chairs
Sanitation Department
Nothing
Purchasing Department
Nothing
City Hall
4 Telxon Hand-held units
1 Panasonic Printer KX-P1124 B-0085
1 Chicong Keyboard G-3583
1 Amdex 286 Computer F-3081
1 Monitor – Hyundai H-0382
1 Computer – Custom Built C-3586
1 Box Various cords, cables
1 Sanyo Calculator A-0006
1 NCR Keyboard G3686
1 Battery Backup APC Backups 400 G-3585
1 Printer HP Laser Jet G-3619
1 Portable - Cassette Recorder
Water Department
Nothing
Police Department

Item	Qty	Description	Serial #	Control #
Adding machine	2			
Battery back-up	1	APEX		
Bell	1	Driveway signal		
Cabinet	1	Oak with sink top		
Cabinet	1	Oak over head		
Cabinet	1	Oak		
Camera	3	Polaroid with carry bag		
chair	3	Metal		
Chair	1	Grey Desk		
Chairs	6	Cloth burgundy w/ roller		
Computer equipment	1	box of mix match cables and other		
Computer Monitor	1		12-772NS	
Computer Scanner	1	Visioneer		
Computer Tower	1	Dell		4852
Cork Board	1			
Desk	1	with Hutch (Oak Veneer)		
Desk	1	Computer		
Desk	1	Black metal with return		
Desk	7	Metal (Beige)		
Desk Hutch	1	(Oak Veneer)		
Dry erase board	1			
Fan	1	box style		
File Cabinet	1	Wood		
Flower Arrangement	1			
Label maker	1			
Leaf Blower	1	Weedeater		
Computer Monitor	1	ADC		
Table	1	Large conference		
Table	1	Printer		
Table	1	Wood kitchen		
TV	1	Magnavox	44046960	
Vacuum, Car	1	Hoover		
VCR	1	Gold Star (not sure if works)		
VCR	1	GE (not sure if works)		
Wheel Cover	1			
Vehicle 322 Ford		2FAFP71W8WX119450	Crown	
Vehicle 321 Chev		1G1BL52PXRR129565	Caprice	

List that proceeds go to the McDowell County Board of Education

Yellow Mountain Bike	1	Mongoose	
Blue Ten Speed Bike	1	Murry	
AM/FM Car stereo	1	Craig	
Knife w/ Sheath	1		
Various jewelry	1	bag with items	
Stereo System	1	Phillips w/CD, Tape deck, tuner and one speaker	
Various jewelry	1	bag with items	

C. Budget Amendments:

CITY OF MARION, NORTH CAROLINA
2004-2005 BUDGET ORDINANCE
(Third Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows:

GENERAL FUND

a. **General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated, is increased from $517,263 to $587,263.**

b. **General Fund Revenues, Account Number 10-334-1200, Local Law Enforcement Block Grant, is increased from $0 to $10,000.**

c. General Fund Expenditures, Recreation, Account Number 10-620-7400, Capital Outlay, is increased from $148,194 to $218,194.

d. General Fund Expenditures, Police, Account Number 10-510-7400, Capital Outlay, is increased from $150,181 to $160,181.

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues, Account Number 30-377-0300, Water and Sewer Asset Management Plan Grant, is increased from $0 to $40,000.

b. Water and Sewer Fund Expenditures, Non Departmental, Account Number 30-660-9850, Water and Sewer Asset Management Plan, is increased from $4,000 to $44,000.

GENERAL CAPITAL RESERVE FUND

a. General Capital Reserve Fund Expenditures, Account Number 75-491-0000, Transfer to General Capital Projects Fund, is increased from $0 to $200,000.

b. General Capital Reserve Fund Expenditures, Account Number 75-999-0000, Future Expenditures, is decreased from $521,000 to $333,500.

c. General Capital Reserve Fund Revenues, Account Number 75-391-0000, Transfer from General Capital Projects Fund, is increased from $0 to $12,500.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 21st day of September, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Royette, City Manager/Clerk

Ordinance Number: O-04-09-21-2

CITY OF MARION, NORTH CAROLINA
GENERAL CAPITAL PROJECTS FUND ORDINANCE – SOUTH GARDEN STREET PARKING LOT PROJECT

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows to include the expenditures associated with General Capital Projects by adopting the following General Capital Projects Fund Ordinance:

GENERAL CAPITAL PROJECTS FUND

a. General Capital Projects Fund Expenditures, South Garden Street Parking Lot Project, Account Number 11-171-0500, is increased from $0 to $200,000.

b. General Capital Projects Fund Expenditures, Transfer to General Capital Reserve Fund, Account Number 11-491-0000, is increased from $0 to $100,000.

c. General Capital Projects Fund Revenues, Transfer from General Capital Reserve Fund, Account Number 11-391-0000, is increased from $0 to $200,000.

d. General Capital Projects Fund Revenues, Revenues from McDowell County – South Garden Street Parking Lot, Account Number 11-390-0000, is increased from $0 to $100,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 21st day of September, 2004.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-09-21-1

D. Approve Reimbursement of Damages

Mr. John Robinson - 629 Rutherford Road – Damages from sewer backing up in house during Hurricane Frances event earlier on September 7, 2004:

1 Television Remote Control	$	16.82
1 Telephone		69.88
20 Rolls of Paper Towels		20.00
2 Upholstered Chairs		359.00
Subtotal	**$**	**465.70**
Sales Tax (7.0%)		32.60
Total Reimbursement for Damages	**$**	**498.30**

PUBLIC APPEARANCE – MR. DAVID BEAVER – DISUCSS NORTH MADISON STREET TRAFFIC: Mr. David Beaver was not present for this meeting due to being unexpectedly being called out of town.

Other persons present for this discussion asked that this item be held until the next meeting, so that Mr. Beaver could be present.

ORDINANCE – NO PARKING – RIDLEY STREET: The City Manager reported, that as discussed at the September 7 Council meeting, a complaint had been received from a citizen about parking along Ridley Street near the Addie's Chapel United Methodist Church property. The Street Committee reviewed this location on September 13 and recommended that parking be prohibited on the north side of Ridley Street between the Addie's Chapel United Methodist Church driveway and the curve where Ridley Street merges into Oak Avenue. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
RIDLEY STREET	PARKING PROHIBITED	NORTH SIDE, BEGINNING 312 FT. WEST OF THE SW CORNER OF PARKER DRIVE AND RIDLEY STREET AND EXTENDING WESTWARD 295 FEET

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of September, 2004.

A. Everette Clark, Mayor

ATTEST:

I. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-09-21-3

SCHEDULE CROSS MILL PARK DEDICATION: The City Manager advised that work has been completed on the Cross Mill Park, except for the installation of some fencing at the top of the park next to an adjacent property.

A discussion was held regarding the scheduling of a dedication for the park.

It was the consensus of those members of Council present to hold the park dedication on October 23, 2004 at 11:00 A.M. and to invite State Division of Parks and Recreation Trust Fund Board and local legislators.

APPROVE GUIDELINES: Police Chief Mika Elliott gave a presentation on the Citizen's Emergency Response Training (CERT) Program conducted by the Police Department. He advised that 28 people had been trained thus far through this program. Chief Elliott presented a set of guidelines for participants in the CERT Program, along with a hold harmless waiver. The guidelines and waiver will also be adopted by the Town of Old Fort for their use with this program.

Mayor Clark suggested that, as much as is allowed by law, that participants in the program should undergo a background check. The City Manager also suggested that the City Attorney could review the guidelines and suggest any needed changes.

Upon a motion by Councilman Little, seconded by Councilman Owenby the following guidelines for the CERT Program were adopted, subject to review by the City Attorney:

Marion Police Department
Old Fort Police Department
Citizens Emergency Response Team
Standard Operating Guidelines

The members of the Marion Citizen Corps and the Marion, Old Fort Citizens Emergency Response Teams are committed to improving the quality of life for the citizens of our communities.

We will work in partnership with our citizens, businesses, churches, schools, elected officials and other organizations in an attempt to educate our citizens, in order to make them more aware of the ways they can survive both man made and natural disasters.

We will strive to promote safe-neighborhoods, while treating all persons with dignity and respect.

We will remain open minded and will consistently seek to improve ourselves professionally as we serve our communities.

Citizen Emergency Response Members must be 18 years of age and must have completed the 21 hour class taught from the nationally recognized text, (Community Emergency Response Team) development by the Federal Emergency Management agency, the Emergency Management

Institute and the National Fire Academy. This will not be modified except to extend information on local disasters, those that are common to the geographical area in which the course is taught. Members will complete any additional training as deemed necessary by the Local Citizen Corps Council and the sponsoring agencies.

Before taking part in any activities the Citizens Emergency Team Members must sign the Hold Harmless agreement drawn up by the City of Marion and the Town of Old Fort. It will be the responsibility of the individual member to ensure that they understand this document (Hold Harmless Document).

The CERT members will assist in getting their community prepared for both man made and natural disasters by use of training obtained with the cooperation the local emergency organizations (LEO, EMS, Fire Rescue Squads and the American Red Cross).

Response of the CERT members is restricted to their neighborhood (or other locations of teams.) When an event takes place the team member may respond in their neighborhood or workplace just as any other citizen would.

The "Good Samaritan Law" protects the CERT members unless they are doing something outside the scope of the CERT training manual, or outside of their neighbor hoods or work place.

CERT members will respond only in-crisis during which professional medical, fire, or rescue cannot reach the area.

Upon arrival of Emergency management (EMS), Fire Department, or Rescue Squad the CERT member will advise them of the situation and assume the roll of helper where needed.

The Citizen Emergency Response Team will respond only in a crisis during which Fire, Rescue and EMS, and first responders cannot reach them. The CERT program was not organized to replace or perform the duties of these professionals.

CERT members will at no time attempt to operate outside the scope of their training (medical, fire, Etc.). The CERT member will at no time respond outside of their immediate neighborhood without being sent by the sponsoring agency.

CERT member will document all activities using the Damage Assessment survey form, Group Status Sheet, Message Form, Incident Status Record. Additional information such as date, time, who, what, when, where, and people involved including possible victims will be recorded on separate documentation.

When needed in event of a disaster the members of the CERT team will be notified by the appropriate official from the Marion Police Department.

They will respond in the following manner.

The CERT member must always operate his/her motor vehicle as set forth by the North Carolina General Statues. Members are not at any time allowed to break any traffic laws. They are not allowed to operate vehicles in the same manner as Emergency personnel, Etc, (EMS, Fire, Rescue Squads).

Members of the CERT will not operate or display any type of lights on their personal motor vehicle that are not allowed for use of the general public.

CERT members will make sure the needs of his/her family are met before responding. Safety for oneself will be the priority of each member. Members will not embark on a rescue or recovery

mission into a structure where fire or chemicals may be involved. Members will not enter a building where severe structural damage. etc is likely to cause harm to the member. Members will not be allowed to take part in a CERT mission without use of the proper safely equipment, each mission will determine the equipment needed (gloves, hared hat, glasses). Members must have some type of CERT identification on when involved in a mission.

The Team leader will be the first member on the scene. (leader may be changed after operation is up an going if nccessary) As other members arrive. the team leader makes team assignments, including Logistics team leader, whose responsibility is for maintaining the flow of CERT members into the staging area and tracking personnel and supplies. Other Team leaders and members will be assigned duties based on their capabilities and requirements of the incident as they arrive.

City of Marion, Town of Old Fort
Citizens Emergency Response Team
Hold Harmless Waiver

The undersigned, being at least 18 years of age, and in consideration for acceptance, approval and participation in the Community Emergency Response Teams (CERT) Program, sponsored by the City of Marion and the Town of Old Fort, do hereby agree to this waiver and relcasc.

I understand that the Community Emergency Response Team (CERT) Program will involve physical labor and may cause risk of personal injury to me as well as damage to personal property. I am also aware that other natural and manmade hazards, environmental conditions, diseases, and other risks, which in combination with my actions can cause injury to me. I hereby agree to assume all risks which may be associated with or may result from my participation in the program. There may be risks such as, but not limited to, transportation to and from volunteer sites, extinguishing small fire, providing disaster medical care. Examples, controlling bleeding, treating shock, treating sprains or fractures, opening airways, transporting patients, etc. At times I may be required to perform light search and rescue activities (e.g. cribbing and leveraging, victim extrication transportation, etc) and other similar activities.

Understanding that my participation at a Citizens Emergency Response Team Member will/may require strenuous physical activity and emotional discomfort or distress. I believe that my current physical and mental health status will allow me to participate with no restrictions or limitations except for the following:
(Leave blank if not applicable.)

I further agree to release The city of Marion, The Town of Old Fort, their agencies, departments, officers, employees, agents, and all sponsors and or/officials and staff of any said entity or person, their representatives, agents, affiliates, directors volunteer, and employees from any and all liability. I also release them of claims, demands, actions whatsoever for any loss claim, damage, injury, illness, attorney fees or harm of any kind or nature to me arising out of any activities associated with the aforementioned actions.

I further agree to hold harmless, and hereby release the above mentioned entities and persons from all liability, negligence. or breach of warranty associated with injuries or damages from any claim by me, my family, estate, heirs, or assigns from or in any way connected with the aforementioned activities.

I have carefully read and understand the contents of the foregoing Language and I specifically intend it to cover any participation in the Community Emergency Response Team Program sponsored by the City of Marion and the Town of Old Fort.

Participant's Name (print) _____ _____
Signature _____ Date _____/_____/_____

Wit: _____Date _____/_____/_____

STORM UPDATE: The City Manger advised that the City of Marion had been declared a State of Emergency and the following Proclamation was signed by Mayor Clark:

CITY OF MARION
COUNTY OF MCDOWELL
NORTH CAROLINA

PROCLAMATION
"LOCAL STATE OF EMERGENCY"

I, A. Everette Clark, Mayor, of the City of Marion, as authorized by the Marion City Council, and in accordance with the McDowell County Emergency Operational Plan, do herby declare a "Local State of Emergency" for the City of Marion as a result of "Hurricane Ivan" that is likely to produce flooding, utility outages and other hazards within the immediate future; and

WHEREAS, there is a high probability that the path of said hurricane will cause it to make landfall in North Carolina and pass through or near the City of Marion and the County of McDowell within the next twenty-four hours; and

WHEREAS, said hurricane is likely to be preceded, accompanied and followed by high winds and heavy rains of such severity as to be capable of causing widespread flooding, utility outages and other severe damages; and further, that such conditions are beginning to occur and are likely to worsen, and that such conditions may exist in the City of Marion and the County of McDowell for several days; and

WHEREAS, the weather conditions associated with the hurricane are such as to constitute an imminent threat of flooding, utility outages and widespread other severe damages, injury and loss of life or property,

NOW, THEREFORE, pursuant to the authority contained in Article 1 of N.C.G.S. Chapter 166A of N.C.G.S. Chapter 14 and the McDowell County Emergency Operational Plan for Multi-Hazards, I do hereby proclaim that a "Local Sate of Emergency" exists within the City of Marion.

I further proclaim that this Proclamation is necessary in order to maintain an acceptable level of public order. services and protection of lives, safety and property during this emergency, and that this Proclamation will remain in effect until rescinded. I hereby order all City Employees to cooperate in the enforcement and implementation of this Proclamation will remain in effect until rescinded. I hereby order all City employees to cooperate in the enforcement and implementation of this Proclamation and the Emergency Operational Plan for Multi-Hazards.

I further proclaim that the Emergency Management Plan and all applicable mutual assistance agreements are in effect and shall remain in effect until this proclamation is rescinded.

RESTRICTIONS: (None)

This proclamation shall be effective immediately and shall remain in effect until rescinded pursuant to G.S. 14-288.16.

Proclaimed this the 16th day of September 2004 at 12:00 hours.

APPROVED BY

A. Everette Clark, Mayor
City of Marion

The City Manager commended all departments for the hard work put forth during the recent storms. He have a review of damages suffered during both storms, with the biggest problems involving the loss of one Police car due to flooding, overflows at the Corpening Creek Wastewater Treatment Plant and two pump station, downed trees, power outages and some clogged water intakes.

A discussion followed. Mayor Clark suggested that agencies and businesses providing help and donations to City staff and volunteers during the storm, such as the Red Cross and McDonald's, which provided food to emergency workers, should be sent a proper thank you letter. The City Manager was directed to send such letters.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Owenby advised that 20-30 of the chairs listed for the auction from the Community building are needed in the basement of the Community Building, for use by the American Legion and other renters of the basement. The City Manager said he would make sure at least 30 chairs were reserved for the basement.

Councilman Martin advised that he had a call from Mr. Clarence Holtsclaw on Glenview Street regarding a sewer line crossing the creek behind his house. Mr. Holtsclaw believes that the sewer line is in a dangerous position to be hit by debris floating down the creek. The City Manager was instructed to check into this situation.

Councilman Little advised that the Street near the Railroad crossing on South Garden Street is in need of repair, as it has sunk in places.

Councilman Cuthbertson advised that a small section of the bank is sliding on Railroad Street.

Councilman Cuthbertson asked if the City Manager had found any evidence of weedkiller being sprayed on the Max Baker property on East Court Street, as alleged at the September 7 Council meeting. The City Manager stated that he had found absolutely no evidence of any type of chemical being sprayed, and that the City had made it clear to the mowing contractor that no type of chemical was ever to be sprayed on any lots that were mowed. He also noted that the City has developed a work order form with specific instructions for the contractor for lots to be mowed.

Councilman Edwards reported to Council that we would miss the October 5 meeting due to scheduled surgery, but that he would be ready to present his Citizen of the Month at the October 19 meeting.

Mayor Clark inquired about the milling being done on South McDowell Avenue. The City Manager stated that he would check with DOT, since South McDowell Avenue is a State maintained road.

The City Manager advised that Mayor Clark is running for 2nd Vice President of the North Carolina League of Municipalities and that the endorsement of City Council, as authorized at the September 7 meeting, had been mailed.

The City Manager also reported that Mayor Clark had been selected as Marion's Main Street Champion for 2004 by the Downtown Business Association.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manger/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a Special Meeting with the McDowell County Board of Commissioners on Tuesday evening, September 28, 2004 at 6:30 P.M. at the City of Marion Police Department located at 270 South Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

MCDOWELL COUNTY BOARD OF COMMISSIONER MEMBERS PRESENT: Chairman David Walker, Vice-Chairman Andy Webb, Commissioners Dean Buff and Michael Lavender.

OTHERS PRESENT: Bob Boyette, City Manager; Jim Neal, Fire Chief; Chuck Abernathy, McDowell County Manager; Ashley Wooten, Assistant to the County Manager; Carrie Padgett, Clerk to the Board of County Commissioners; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT: None.

WELCOME: Mayor Clark and Chairman Walker opened the meeting and gave some introductory remarks. After dinner was served, the following business was conducted:

MARION AREA FIRE DISTRICT ISSUES:

A. **Hankins-North Fork Fire Department** – The City Manager reported that the City staff and representatives from the new Hankins-North Fork Fire Department would soon be meeting to set a proposed boundary between the Marion Area Fire District and the new department. Chief Neal gave a description of the boundary, which would fall near the end of Hankins Road between Fish Hatchery Road and Cannon Road. The City Manager advised that the City was very supportive of the new department, as the new department would take the service of the north side of Lake James away from the City Fire Department. City Council has also voted to give an old City fire truck to the new department when it forms. The City Manager stated that the City would ask that the County Commissioners approve the boundary line agreed upon by the City and the new Hankins-North Fork Fire Department. Councilman Little described the formation of the new department as a "win-win-win" situation for the City, County and the new fire department.

   The idea of the County approving six mile fire districts for all interested fire departments in the County, to ensure that as many property owners as possible are falling within a fire district and paying their proportionate share of taxes was discussed. This matter will be considered after the Hankins-North Fork Fire Department is in operation.

B. **Purchase of New District Truck** – Chief Neal gave an overview of the two trucks currently serving the Marion Area Fire District. The older 1972 truck has considerable problems, including poor brakes, that have caused the truck to be parked and used only in emergency situations. Chief Neal reported that he and his staff have developed specifications for a new tanker-pumper that would match the existing District 1997 tanker-pumper, taking into account new National Fire Protection Association (NFPA) standards. The City Manager noted that in April both boards had agreed that the City would buy and own this new truck, as beginning in 2005-06, the City will receive all tax proceeds from the MA District. The City Manager stated that with a new truck taking nine months to be built and delivered, and with an immediate need, the City still could

not order the truck because adequate revenues were not in place with a two cent MA District tax rate. Chief Neal estimated the cost of the new truck, with equipment, at about $272,000. This figure was lessened by $15,000 over a previously reported estimate of $287,000 because the City obtained a Federal fire grant that paid for the some of the equipment needed on the truck. A discussion was held on the proposed financing of the truck. An eight year term is being considered. Commissioner Lavender asked why the City chose an eight year term for the 1997 truck. Mayor Clark stated that this truck was financed by the County, but that a longer term could cause problems with the Local Government Commission.

C. **District Tax Rate** – The City Manager presented information to support the City's request that the County Commissioners increase the MA District tax rate from two cents to four cents, to provide for greater equity between City and District taxpayers regarding the funding of the City Fire Department. The City Manager presented a spreadsheet showing that, using factors such as property value protected and call volume, the MA District should be funding well over 50 percent of the City Fire Department budget. Over the past few years, the District has been funding about 40 percent of the Fire Department budget, and this figure will dip to about 33 percent in 2005-06. To achieve the desired funding equity, the City Manager stated that the District tax rate must go up to four cents.

The County Manager presented figures showing that the MA District tax revenues were $14,000 higher than shown by the City for 2003-04. The City Manager noted that if these figures were correct, the gap between the City and MA District funding would close somewhat, but the City's overall argument for a four cent tax rate in the MA District would be unchanged.

Mayor Clark advised that the City taxpayers were paying at least six cents for their fire service, while the MA District taxpayers were paying two cents for the service. The County Commissioners asked several questions about the need for the increase and the timing of the request. Several City Council members stated that the request was justified, for equity reasons, and that they were asking the Commissioners for this request, because that was the mechanism set up for the MA District and because the new truck was needed now. It was pointed out that the City's staffing of the Fire Department fell well below NFPA standards and that the addition of a fifth staff person this year had impacted the budget, but was a first step toward improving compliance with NFPA standards.

The County Manager suggested that the City could look at improving the insurance rating of the MA District, which is currently 9, to more than offset the proposed tax increase. He noted that Glenwood, PG and Nebo all had insurance ratings of 5 to 7. The County Manager suggested that public input would be needed on the tax increase request, but that having the insurance rating improved for the MA District could negate most or all of the protest over any tax increase.
Councilman Martin advised that the tax rate increase would only be the equivalent of $20 per year on a $100,000 house and should be done because it is needed. Chief Neal stated that the last time the City's Fire Department was rerated by ISO, the City nearly achieved a 4 rating. Chief Neal said that the MA District may not have been rated at that time.

Commissioner Webb stated that this request should be handled by the County in line with any other budget request, when the County begins reviewing its budget in December.

After considerable discussion, the two boards agreed by consensus to meet again as soon as possible after early November to discuss the matter further. The City will explore the possibility of having the MA District rerated, with the hopes of having the ISO rating improved for residents and businesses. The City and County Managers will meet to

review their figures for MA District revenues to make sure the figures are accurate and match.

NEBO WATER EXTENSIONS/WATER SYSTEM

The County Manager noted that the County had received word from Congressman Taylor of a $1 million Federal appropriation to be used for water extensions in the Nebo area. The County is also applying for a $700,000 Community Development Block Grant funding for a water extension down Highway 70 East from Nebo to the Little Mountain Community near the Burke County line. Abernathy stated that the possibility of service down Harmony Grove Road to Exit 90 on I-40 was also being studied, along with a possible $400,000 Rural Center grant application. Abernathy suggested that an agreement is needed between the City and County regarding ownership and maintenance of these lines, whereby the City would initially provide service and maintain the lines, but would then transfer ownership and maintenance to the County and provide water wholesale, once a County water system or district was established. The County now owns a 65 acre tract purchased from Crescent Resources for a future water intake on Lake James and Water Treatment Plant site. Mayor Clark stated that these Nebo water improvements were a major step forward for the City.

Councilman Owenby stated that the City will have a difficult time continuing to maintain lines far out in the County under the previous arrangements whereby the City owned and maintained all lines.

The City Manager presented a draft letter to go with the County's grant application for the Little Mountain water extension down Highway 70 East of Nebo, stating that the City would provide water service for the water extension and would enter into an agreement with McDowell County concerning the short and long-term maintenance of the water line. Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted unanimously to approve the draft letter as presented by the City Manager concerning the Little Mountain water extension.

CLOSING COMMENTS:

Mayor Clark thanked the two boards for meeting and provided an opportunity for each member present to make some closing comments.

ADJOURNMENT: There being no further business, the meeting was adjourned.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, October 5, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Edwards was not present for this meeting due to scheduled surgery.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Ethel Kanipe, 134 North Madison Street, Marion, NC; Ted Remington, North Madison Street, NC; 28752

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. **Approval of Minutes** - September 21, 2004 Minutes

B. **Approval of Resolution – Accepting Governor's Highway Safety Program Grant**

North Carolina Governor's Highway Safety Program
LOCAL GOVERNMENTAL RESOLUTION
Form GHSP-04-A

WHEREAS, the Marion Police Department (herein called the "Agency") has completed an application contract for traffic safety funding; and that the City of Marion (herein call the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as described in the contract:

THEREFORE, NOW BE IT RESOLVED BY THE CITY OF MARION IN OPEN MEETING. ASSEMBLED IN THE CITY OF MARION, NORTH CAROLINA THIS 5TH DAY OF OCTOBER, 2004, AS FOLLOWS:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Chief Mika Elliott is authorized to file, on behalf of the Governing Body, an application contact in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of $19,100.00 to be made to the Governing Body to assist in defraying the cost of the project described in the contract application: and
3. That the Governing Boyd has formally appropriated the cash contribution of $0.00 as required by the project contact; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the Governor's Highway Safety Program: and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

DONE AND ORDERED in open meeting by

_____

A. Everette Clark, Mayor

ATTESTED:

J. Robert Boyette, City Manager/Clerk

October 5, 2004
Date

C. **Budget Amendment**

CITY OF MARION, NORTH CAROLINA
2004-2005 BUDGET ORDINANCE
(Fourth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows:

GENERAL FUND

a. **General Fund Revenues, Account Number 10-392-3000, Insurance Proceeds – Police, is increased from $0 to $16,313.**

b. **General Fund Revenues, Account Number 10-334-1300, Governor's Highway Safety Program Grant – Checkpoint Equipment, is increased from $0 to $19,100.**

c. **General Fund Expenditures, Police, Account Number 10-510-7400, Capital Outlay, is increased from $160,181 to $195,594.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 5th day of October, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-10-05-1

D. Approve Resolution – Designate Applicant's Agent – Hurricane Frances and Ivan Damage Claims:

Resolution Form can be found on file at City Hall

PUBLIC HEARING – COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION: Mayor Clark opened the Public Hearing.

The City Manager advised that Mayor Clark has been instrumental in lobbying the State of North Carolina to change the way the Community Development Block Grant Concentrated Application is distributed. These funds are now distributed on a geographic distribution basis, with the westernmost 26 counties guaranteed to received 17.9% of the distribution. The City Manager stated that the City had an opportunity to apply for these Concentrated Needs funds and that the first step would be this first public hearing.

Mayor Clark opened the public hearing.

Ms. Teresa Spires, Economic Development Coordinator with Isothermal Planning and Development Commission, gave Council an overview of the Community Development Block Grant Application and grant requirements.

She advised that funds for the Concentrated Needs Program come to North Carolina from the US Department of Housing and Urban Development. This grant category is part of the Community Development Block Grant (CDBG) program. It is managed at the state level by the NC Department of Commerce, Division of Community Assistance.

North Carolina receives approximately $45-48 million per year for the CDBG program.

Eighty percent of these funds are spent on housing and community development. The remaining 20% of funds are reserved for economic development activities.

The state has set aside approximately $9 million for Concentrated Needs projects in 2005. A similar amount will likely be set aside for 2006. These funds will be appropriated to each of the four designated regions in the state based on a formula established by DCA. The Western 26 counties of the state known as Region A for the purposes of the geographical allocation will be guaranteed 17.9% of the funds.

This translates to approximately $1.6 million each year for the 2005 and 2006 cycles, which will fund approximately 4.6 projects at the maximum funding level.

The Concentrated Needs program is designed to address multiple needs in a single project area of at least 6 houses or in two small sub-areas of at least 3 houses each.

Each area must have at least two needs with housing being one of those needs. Other needs include water, sewer, drainage, and streets. Housing includes rehabilitation, replacement, and clearance of units. All needs must to be addressed must be moderate to severe.

Concentrated Needs projects are competitive such that Marion's application would compete against other applications from other units of local government in the Western Counties. Scoring is based on a 1,000 point scale with the following items being considered: Severity of need (200 points), Benefit to low and moderate income persons (300 points), Local Commitment (200 points), Treatment of Needs (200 points), and feasibility (100 points).

To be competitive a project must address all identified needs, the needs identified must be documented as severe and the unit of local government must be committed to the project including providing a reasonable match to the project.

The Division of Community Assistance did not like the idea of including the acquisition and cleanup of the Frady Junkyard in the application. They felt that the Frady Property acquisition and cleanup was too much money and not enough benefit.

Ridge Street in East Marion was also considered. However, there is a limit of $30,000 that can be spent on each housing rehab and the Ridge Street properties would need $50,000 to $60,000 each.

Ms. Spires advised that she and the City Manager had settled on Morehead Road as a location that could meet the requirements for this application for housing rehab and clearance. The second need would likely be drainage improvements on Morehead Road.

There were no citizens present to discuss this issue.

A lengthy discussion followed.

Councilman Cuthbertson asked what type of local match would be needed for the City's application to be competitive. Ms. Spires stated that a competitive application would likely need to have at least 10 percent local match with the maximum grant award being $700,000. She added that McDowell County's status as a Tier 2 County may allow for a smaller local match.

Mayor Clark stated that the City and other local governments in Western North Carolina needed to apply for these funds, as they will be lost, if not enough applications are received.

Mayor Clark closed the Public Hearing. This is the first of two Public Hearings to be held regarding this Application.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to authorize Ms. Spires to proceed with the application for Community Development Block Grant funds, with the City's local match to be determined and presented at the time of the second application.

PUBLIC APPEARANCE – MR. TED REMMINGTON – NORTH MADISON STREET TRAFFICE CONCERNS: The City Manager advised that Mr. David Beaver had contacted him regarding the dangers in the amount of traffic, the speed of the traffic and the types of vehicles using North Madison Street. Several other Madison residents were present at the last City Council Meeting to discuss this issue.

Mr. Ted Remington appeared before Council on behalf of the residents of Madison Street including fourteen (14) children that live on the street. Requesting that Council consider the following suggestions.

1. Reduce the Speed limit from 25 MPH to 20 MPH
2. Make a three-way stop sign at the intersection of Madison and East Fort Street.
3. Prohibit large trucks from the street

A lengthy discussion followed.

Councilman Little suggested that the City may wish to consider speed humps in the future on certain streets such as North Madison Street. He noted examples of cities such as Charlotte that have allowed speed humps. Councilman Little noted the difference between speed humps and the steeper, more hazardous speed bumps often found in shopping center parking lots.

After discussion, Council agreed that the truck prohibition should also extend to blocks of Fort and New Streets between Garden and Madison Streets.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
N. MADISON ST.	SPEED 20 MPH	LENGTH OF STREET
	NO THRU TRUCKS	LENGTH OF STREET
	STOP SIGN	NORTH AND SOUTH AT E. FORT ST.
FORT ST. (EAST)	NO THRU TRUCKS	FROM N. GARDEN ST. TO N. MADISON ST.
NEW STREET	NO THRU TRUCKS TO END OF CITY	FROM N. GARDEN ST.
		MAINTENANCE NE OF N. MADISON ST.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 5th day of October, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-04-10-05-2

REQUEST BY CORPENING CENTER: The City Manager presented Council with a letter from the Corpening YMCA Center requesting that the City of Marion take over ownership of the pump station site servicing the YMCA and Senior Center The Center needs to have at least three property owners served by the access road into the property to qualify for an $80,000 reimbursement from DOT for expenses related to the entrance road. The three property owners would be the YMCA, the City of Marion and McDowell County.

Mr. Ray Buchanan was present for this meeting representing members of the YMCA.

The City Manager has told Ray Buchanan that this request would be much more attractive if the State would allow the YMCA to retain ownership of the actual pump station or if the YMCA would continue paying the monthly fee of $123 being charged for the City to maintain the pump station.

A lengthy discussion was held regarding this issue.

Councilman Little suggested that the City could accept ownership of the grassy strip next to the entrance road and the County could take over ownership of the pump station site as an alternate arrangement.

Another suggestion mentioned was the City taking ownership of the pump station property, but not the pump station itself, and then continuing to charge the maintenance fee to the YMCA.

It was the consensus of Council to refer this matter to the Utility Committee and report back at the next Regular City Council Meeting.

DISCUSS TOBACCO USE IN PARKS: The City Manager presented Council with information from Ms. Susan Dietrich and Ms. Annie Butzen, regarding how various cities and

towns are dealing with second hand smoke and tobacco use in parks in surrounding communities.

The City Manager asked Council for direction on whether they wished to designate City parks as tobacco free, either by ordinance or policy, or by designating a smoking are in each park.

A lengthy discussion was held regarding making a smoking area at each facility and whether or not the no smoking should be a policy or an Ordinance.

Councilman Little stated that it was not practical for the City to have a smoking area at each park and suggested that the parks should be smoke free.

Councilman Martin related that he had witnessed the smoking and tobacco use at the Community Building park and that it needed to stop and that the City needed to create a standard.

Councilman Owenby expressed concern about an ordinance to prohibit tobacco use in the parks and noted that he not received information he had requested from the State regarding health effects of smoking in outdoor environments. He suggested that designated smoking areas be set at each park.

Upon a motion by Councilman Martin, seconded by Councilman Little, those members of Council present voted to create a policy and place signs at each park asking people not to smoke or use tobacco products. Council members recognized that the policy will carry no enforcement penalty. McDowell County Schools will supply all needed signs to the City at no charge.

The policy will apply to the Community Building Park, the West Marion Community Park and the new Cross Mill Community Park. It will also apply to the city's two gazebo parks on Main Street. It becomes effective as soon as the signs are in place.

REVIEW PROPOSED POLICIES – POLICE & FIRE TRAINING ROOMS: The City Manager presented Council with a copy of the proposed policies for use of the Police and Fire Department Training Rooms.

The rooms would not be rented out to the public. They would however be used for training, for general City use and for non-profit organizations in McDowell County.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the following Policies:

Policy for use of the training/meeting room of the Marion Police Department

The primary purpose of the training/meeting facility located in the Marion Police Department is to provide classrooms and meeting space for the members of the Marion Police Department. This facilaty is not for rent nor is it intended to be use for non-public commercially related functions.

The priority for use of this facility will be as follows:

1. Training and meeting needs of the Marion Police Department.
2. Other police service related training and/or meetings.
3. Other public service agency training and/or meetings.
4. Any other City related business.

5. Any other use authorized by the Police Chief. Such use will to be primarily limited to McDowell County governmental units, McDowell County Schools, McDowell County non-profit organizations with the stipulations that religious services may not be held in the building.

Use of and procedures for reservation of the training room:

1. This room must be reserved by contacting the Police Chief at 652-3231.
2. Nothing can be attached to the walls nor can the photographs, plaques etc. belonging to the Marion Police Department be removed.
3. Equipment including tables, chairs and A.V. equipment shall not be removed from the room.
4. Each group using this room will be responsible for all damages to the room including the equipment in the room.
5. It is the responsibility of each group using the room to see that the room is cleaned and the trash emptied after each use. The tables and chairs are to be placed in their original position after each use.
6. The group using the room shall notify the on duty police official when they have finished their meeting and the police official will inspect the room with a representative of the group.

Adopted this the 5th day of October, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Policy for use of the training/meeting room of the Marion Fire Department

The primary purpose of the training/meeting facility located in the Marion Fire Department is to provide classroom and meeting space for the members of the Marion Fire Department. This facility is not for rent nor is it intended to be use for non-public commercially related functions.

The priority for use of this facility will be as follows:

6. Training and meeting needs of the Marion Fire Department.
7. Other fire service related training and/or meetings.
8. Other public service agency training and/or meetings.
9. Any other City related business.
10. Any other use authorized by the Fire Chief. Such use will to be primarily limited to McDowell County governmental units, McDowell County Schools, McDowell County non-profit organizations with the stipulations that religious services may not be held in the building.

Use of and procedures for reservation of the training room:

7. This room must be reserved by contacting the Fire Chief at 652-5201.
8. Nothing can be attached to the walls nor can the photographs, plaques etc. belonging to the Marion Fire Department be removed.
9. Equipment including tables, chairs and A.V. equipment shall not be removed from the room.
10. Each group using this room will be responsible for all damages to the room including the equipment in the room.
11. It is the responsibility of each group using the room to see that the room is cleaned and the trash emptied after each use. The tables and chairs are to be placed in their original position after each use.
12. The group using the room shall notify the duty fireman when they have finished their meeting and the duty fireman will inspect the room with a representative of the group.

Adopted this the 5th day of October, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DISCUSS AUTO REPAIR SHOP ENFORCEMENT: The City Manager presented Council with a copy of the report of the contracted code enforcement officer regarding the Auto Repair Shop Enforcement.

The City Manager advised that we started with thirty-five violations. As of September 18, 2004 Superior Tire on Highway 226 South is almost in compliance and the only three left not in compliance are the Berryhill properties, two of which are on North Main Street and one of which is on East Court Street. The City Manager suggested to Council that it may be time to discuss with the City Attorney taking appropriate legal action against those businesses not in compliance.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to authorize staff to turn over the properties in non-compliance with the Auto Repair Shop Ordinance to the City Attorney.

DISCUSS CITY LAND USE PLAN: The City Manager advised that, as Council was aware of, the City's Land Use Plan was last updated in 1978 when our boundaries and pattern of development were much different.

Isothermal Planning and Development Commission has submitted a proposal to assist the City Planner with compiling a Land Use Plan for a fee not to exceed $10,000. The City Planner has also talked with the N.C. Division of Community Assistance about providing assistance with the Lane Use Plan. DCA can provide some help but cannot assist to the degree of Isothermal; however, DCA's involvement will help to lessen the need for full involvement by Isothermal.

The City Manager asked for authorization for staff to proceed with the preparation of the Land Use Plan, using the combined resources of Isothermal Planning and Development Commission and the N.C. Division of Community Assistance.
Councilman Cuthbertson advised that Western Carolina University and Appalachian State University may have students that can come and assist with this type of project.

Mayor Clark stressed the need for the City to update the Land Use Plan as quickly as possible.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to authorize staff to complete the Land Use Plan, using the appropriate combination of resources listed above, for a total cost not to exceed $10,000, payable over two fiscal years.

REQUEST FOR COMMUNITY BUILDING BASEMENT RENTAL: The City Manager advised that the MCA Aid Group is requesting use of the Community Building for a dog obedience class.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to deny this request.

The City Manager suggested that Council may wish to adopt a policy prohibiting animals, other than seeing eye dogs from the Community Building and Depot.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to approve the following amendment to the Community Building and Depot Building Rules and Regulations:

CITY OF MARION, NORTH CAROLINA
MARION COMMUNITY BUILDING
RULES AND REGULATIONS

ADDENDUM
TO RULES AND REGULATIONS

25. Animals are not permitted inside any part of the Community Building, with the exception of seeing eye dogs for legally blind individuals.

These new regulations shall be effective upon adoption.

Adopted this the 5th day of October, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

CITY OF MARION, NORTH CAROLINA
MARION DEPOT BUILDING
RULES AND REGULATIONS

ADDENDUM
TO RULES AND REGULATIONS

20. Animals are not permitted inside any part of the Depot Building, with the exception of seeing eye dogs for legally blind individuals.

These new regulations shall be effective upon adoption.

Adopted this the 5th day of October, 2004.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

DISCUSS RETAINING WALL REPAIRS: The City Manager advised that the Cemetery Committee suggested that work needs to begin on some deteriorated retaining walls in the Oak Grove Cemetery. There is presently $10,000 budgeted in the Cemetery Capital Outlay.

A quote was received for one of the worst retaining walls at a cost of $7,239.
This would almost wipe out the budgeted Capital Outlay but would solve a problem in the Cemetery.

A discussion followed.

It was the consensus of Council to refer this item to the next Regular Scheduled City Council Meeting.

DISCUSS DRAINAGE WORK – SOUTH GARDEN STREET: The City Manager advised that the Street Committee had reviewed on several occasions a request by the Carriage Station Homeowner's Association for the City to undertake some drainage repairs on the alleyway beside Carriage Station between South Garden and South Madison Street.

Water runs off the higher ground beside Carriage Station at high speed onto the lower Carriage Station property, mainly because adequate precautions were not made at the time Carriage Station was developed

Street Superintendent Roger Estes obtained a quote from Kerlee's Construction in the amount of $27,373 to construct a retaining wall and storm drains in this area. Property owners are willing to contribute to this project. Further quotes can be sought.

It was the consensus of Council that this issue is not a matter for the City to undertake; instead, that Carriage Station can seek to solve the problem.

REVIEW STREET AND SIDEWALK PROJECT PRIORITY LIST:
The City Manager presented Council with the following Sidewalk Priority List:

Street and Sidewalk Priority List
October 2004

Priority	Project
1	Depot Street – Curb and gutter (both sides), sidewalk (east side or both sides)
1a	Glenview Street – Asphalt curb replacement where curb has become flattened (may be done before Depot Street project depending on Duke Power schedule)
2	Curb and gutter – Ann Hawkins Street next to old Senior Center
3	Curb, gutter, sidewalk – North Madison Street (must wait on needed water line replacement)
4	Sidewalk – New Street between North Garden and North Madison Street
5	Curb, gutter, sidewalk – East Wilhemenia Street (requested by property owners, church) – **Seek to contract**
6	Curb, gutter, sidewalk – Spring Street between South Main and South Garden Street – **Seek to contract**
7	Drainage, curb, gutter – North Garden, James Drive, New Street
8	Sidewalk repairs – Sections of Logan Street from North Main Street to West Court Street, including adding new section of sidewalk behind Wachovia Bank
9	Curb and gutter – Lail Street (also needs new water line)
10	Curb, gutter, sidewalk – Park Avenue (needs new water line)
11	Sidewalk repairs – Sections of State Street from Clay Street to old Railroad

12 Curb, gutter, sidewalk – Cross Street (Needs new water line, as existing water line is among the oldest in the City)

13 Curb and gutter – Morgan Terrace (Needs a small amount of sewer work)

14 Sidewalk section replacement – West Court Street

Unprioritized: Crescent Drive – Curb and gutter replacement (Needs a new water line)

A discussion followed.

Council agreed by consensus to endorse this list and authorize bids to be sought for the East Wilhemenia and Spring Street projects.

APPROVE TRANSPORTATION IMPROVEMENT PROGRAM PRIORITIES: The City Manager advised the each fall, Council reviews and endorses our TIP priorities for the upcoming year. The City Manager presented the adopted TIP priority list approved by Council in 2003.

It was the consensus of Council to again endorse the TIP priority list as follows for the next year:

	ROUTE	PROJECT	DESCRIPTION
1.	NC-226	R-2642 (UNFUNDED)	WIDEN ROADWAY TO MULTI-LANES FROM US 221 BYPASS TO SR 1794 (OLD GLENWOOD ROAD)

This project has been listed as an unfunded project, but needs to be extended southward to SR 1794 to include widening along NC 226 adjacent to McDowell Technical Community College and the road leading to Marion Correctional Institution (SR 1794). Traffic counts along NC 226 are beyond capacity, and traffic has increased substantially in recent years. The City of Marion has recently annexed most of this section of the highway, so its widening is extremely important to the City

2.	US-70	NOT ASSIGNED	FEASIBILITY STUDY OF A NORTHERN BYPASS OF US 70 AROUND MARION AND A CONNECTOR ROAD BETWEEN US 70 EAST OF MARION AND RUTHERFORD ROAD (US 221 BUSINESS) WITH PROJECTS FUNDED AND SCHEDULED BASED ON THE STUDY

The City of Marion Thoroughfare Plan listed both parts of this request as separate roads. The City of Marion would propose that they be studied together to provide a northern and eastern connector around the City, and to provide linkages between major highways in the area. Currently, all US 70 traffic must pass through the center of Marion, which has brought US 70 (East Court Street) to beyond capacity in sections.

3	US-221 BUSINESS (RUTHERFORD ROAD)	NOT ASSIGNED	WIDEN ROADWAY TO MULTI-LANE FACILITY WITH CURB & GUTTER FROM GEORGIA AVENUE TO THE HIGHWAY 221 BY-PASS

The City of Marion has been proposing this improvement for many years. A center turn lane is greatly needed on Rutherford Road to allow traffic to turn into the many commercial establishments along US 221 Business. Traffic counts have increased in recent years along this section of highway.

PARKING COMPLAINTS – PARK AVENUE: The City Manager advised that he had received complaints about on street parking on sections of Park Avenue around Cardinal Lane creating some sight visibility problems and a hazard for motorist, especially in the curve. The City Manager suggested review of the entire parking allowances and prohibitions on Park Avenue, to determine if the Traffic Schedule restrictions are properly signed, or if additional or changed restrictions on parking are needed.

A discussion followed.

It was the consensus of Council to refer this item to the Street Committee.

REQUEST – BOARD OF ELECTIONS: The City Manager advised that Mr. Roy Stepp, Chairman of the McDowell County Board of Elections, has requested that the County Board of Elections be allowed to re-designate a 15 minute parking space on Courthouse Hill next to the County Administration Building to a handicapped parking space during one-stop voting between October 14 and October 30 to allow two locations for handicapped persons to access curbside voting. The City Manager noted that without the adoption of an ordinance, tickets could not be written, but that Mr. Stepp understand this fact and simply wanted permission to change the signs on a temporary basis.

A discussion followed.

Upon a motion by Councilman Little seconded by Councilman Martin, those members of Council present voted to approve this request for the two week period. The Board of Elections will take care of remarking the sign during this time period.

DISCUSS MEETING/ HOLIDAY SCHEDULE: The City Manager advised that Councilman Edwards had requested that we hold a brief ceremony prior to our October 19 Council Meeting to dedicate the new gas lantern at the Community Building and to honor our current and retired firemen as the Citizens of the Month. The ceremony will begin at 6:00 PM and then follow up at City Hall with refreshments, with the regular meeting beginning at 7:00 PM. Council agreed by consensus to start the October 19 meeting at 6:00 PM for the Citizen of the Month ceremony, with the regular meeting to begin at 7:00 PM.

December 7th was scheduled for the only City Council meeting in December to begin at 6:00 PM instead of 7:00 PM followed with the annual City Council Christmas Party.

The City Manager advised that the City usually follows the same schedule as the County during holidays. However, this year the County will be off two days for Christmas Holiday and allow staff to be off a third day with half working the day before the holiday and the other half working the day after the holiday. The City Manager proposed that the City observe Thursday, December 23, Friday, December 24 and Monday, December 27 as City holidays.

A discussion followed including the purchase of turkeys for City Employees again this year.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to designate Thursday, December 23, Friday, December 24 and Monday, December 27 as the City observed Christmas holidays for 2004 and for the City to purchase a turkey for each employee, to be given out at Thanksgiving.

PARKING TICKETS: The City Manager presented Council with copies of a memo from the Police Chief relating to a new $1.00 fee to be charged by the State Division of Criminal Information (DCI) each time we run a tag number for ordinance violations such as parking tickets.

The Police Chief noted it would be more expensive to collect the needed information on a vehicle owner through DCI with this extra charge. The City's cost would not be massive, but could run a few hundred dollars per year, which has caused concern over the impact to the Police Department budget.

A discussion followed.

Mayor Clark stated that the City should object to this charge, since the City was already paying an annual user fee to DCI and since it cost the State nothing for the City to access this information.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to register a complaint with DCI and to suggest to the North Carolina League of Municipalities that legislation be sought to overturn this charge.

The City Manager also presented Council with information from the County' Sheriff's Department regarding a parking ticket written to a grand jury foreman who had parked in the gazebo parking lot on North Main Street on September 28. The Police Chief had verified that the ticket was written to a grand jury member. Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to waive the penalty for this parking ticket.

COMMUNITY BUILDING SIGN: The City Manager advised that members of the Rotary Club are suggesting that no cover is needed on the front of the Community Building sign. The original plans for the sign called for a cover.

A discussion followed.

It was the consensus of Council to not require the cover to be placed on the Community Building sign unless problems arise with theft of letters or vandalism at a later date.

SCHEDULE UTILITY COMMITTEE MEETING: A discussion was held regarding the City Utility Committee Meeting.

It was decided to hold the meeting on Tuesday, October 12, 2004 at 5:00 PM, to review the YMCA pump station issue and a request to purchase part of the Water Plant property.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

ADD ON – HALLOWEEN SCHEDULE: The City Manager advised that he had several calls regarding what day the City would observe Halloween. In the past, when Halloween has fallen on Sunday, the public has typically observed Saturday evening as Halloween.

It was the consensus of Council to suggest that persons trick-or-treat on Saturday evening, October 30 instead of Sunday, October 31. This will be a suggestion only, as the City cannot require people to trick-or-treat on a certain day.

COUNCILMAN COMMENTS:

Mayor Clark advised that the Skate Park Committee met for the first time today and that the meeting went well. The Committee is working toward a goal of having the Park constructed by July 1, 2005.

Councilman Cuthbertson advised that he had received a complaint that the City was holding up water service to Glenwood Elementary School due to the requirement of a valve to be installed for the Glenwood Fire Department. The City Manager advised that the School should be ready to connect once a water service application is submitted and the connection fee is paid. The City Manager stated that the Fire Department has made no contact with the City regarding water service, but that he would check to make sure there was no hold up of the School's water service.

Councilman Cuthbertson presented information regarding a recent Court ruling in a Western Circuit finding random drug testing of municipal employees unconstitutional.

Councilman Cuthbertson advised that water at his houses on Broad Street was discolored. The City Manager stated that he would have the water crews check out and correct the problem.

Councilman Owenby asked if Blue Ridge Tree Service had a privilege license. The City Manager stated that he believed that they did, but that he would verify whether the company had a license with the Tax Collector.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, November 2, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Steve Basney and Scott Costner, Utility Maintenance Department.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - October 19, 2004 Minutes

B. Approve Annual Longevity Pay for City Employees

Administration	$ 2,642.28
Purchasing	501.00
Inspections	1,107.80
Police	8,137.32
Fire	1,856.40
Public Works/Administration	176.16
Fleet Maintenance	742.80
Street	3,554.12
Sanitation	2,704.48
Water Utilities	7,421.64
Water Filter Plant	3,231.44
Waste Treatment Plant	1,802.16
GRAND TOTAL	**$ 33,876.60**

B. Approve City Funding - Rental of Community Building:

Appreciation Lunch – Community Inmate Work Program
Wednesday – January 12, 2005

INTRODUCTION OF NEW EMPLOYEE: Water Superintendent Steve Basney introduced Mr. Scott Costner, the new Assistant Water Superintendent. Mr. Costner comes to the City of Marion's Water Department with over fourteen years experience and many certifications.

PUBLIC APPEARANCE – MR. RAY McCALL – AWARD PRESENTATION: The City Manager advised that Mr. Ray McCall could not be present for this meeting for the presentation of an award to the City's Water Plant. He will reschedule this presentation at a later date.

DISCUSSION – EASTFIELD WATER CONNECTIONS: The City Manager gave an update on the Eastfield Water Connections and Improvements. The City Manager reported that the City and County had entered into an Interlocal Agreement, adopted by both City Council and the County Commission, in April 2001. The Interlocal Agreement acknowledged that the City would require water service for any structures connected to sewer as part of the Eastfield Project and that property owners would pay all applicable connection fees. The County

Manager clarified this agreement in a letter dated April 11, 2001 to state the County's grant agencies would pay for the required water connections.

The City Manager stated that the City, County and the County's grant administrator, Isothermal Planning and Development Commission had operating with the understanding since 2001 that the grants for the Eastfield project would pay the City for the water connections. The City Manager stated that on June 16, 2004, he, the County Manager and Teresa Spires, the Isothermal Grant Coordinator met and developed the method by which the City would invoice for the water connections. Ms. Spires reported that the grant agencies would not fund water connections as part of the project, but would pay the City for administrative costs incurred for the project. Subsequently, City staff totaled the time devoted by the City to the Eastfield project through June 30, 2004. The City Manager presented Council members with documentation showing that the City of Marion invoiced McDowell County on June 30, 2004 the amount of $62,115.83 for administrative services provided by the City for the Eastfield Sewer project from April 1, 2002 through June 30, 2004.

McDowell County paid this invoice in full with check #147449 dated July 30, 2004. Unfortunately, when the reimbursement of the money was requested from the N.C. Department of Environment and Natural Resources, it was denied due to the fact that administrative fees cannot be paid with these particular grant funds.

The Clean Water Management Trust Fund, however, pay $9,510.03 of the administrative fees, leaving a balance of $52,605.80 owed to McDowell County. McDowell County is requesting that the City refund the $52,605.80 amount that was not reimbursed by the grant agencies.

The City Manager reported that he and Mayor Clark had met with representatives from the County and Isothermal to discuss how this matter should be resolved and how the 34 needed water connections for existing structures hooked up to sewer, but with water service available, would be made. Several options were developed to provide the City with the water connection fees needed for these 34 structures.

Councilman Cuthbertson requested that he be excused from the discussion of this item due to the fact that he owns property in the area and may be entitled to one or more water connections as part of the project.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to excuse Councilman Cuthbertson from this discussion and any action that may be taken on the matter.

Mayor Clark stated that the City, County and Isothermal had all acted in good faith with this project and that cost overruns with the Eastfield project had led to money not being directly available from the grant agencies to pay the City's water connection/administrative fees. Mayor Clark suggested that the money should be refunded to the City.

Councilman Martin asked if the County had backed off their earlier statement that they demanded the money to be returned. Mayor Clark stated that the meeting with the County and Isothermal was civil and that all parties were truly seeking a solution to allow the 34 needed water connections to be made.
Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to refund McDowell County $52,605.80 for the unreimbursed administrative fee payment for the Eastfield project and that the City through the City Manager and Mayor work with the County and Isothermal to develop a solution to the situation to allow the City to be paid for the needed 34 water connections for the project.

DISCUSS SEWER BLOCKAGE – 6TH STREET: The City Manager presented Council with copies of receipts totaling $1,988.82 for repairs due to a sewer blockage at Ms. Nora Arrowood's home on 6th Street in Clinchfield during Hurricane Ivan on September 16.

A memo from Waste Water Plant Operator Larry Carver advised that during hurricane Ivan on the night of September 16, 2004, Robert Hooper of the Wastewater Plant staff received a blockage call at the Arrowood residence on 6th street. When Mr. Carver and Mr. Hooper arrived at the location, they discovered a sewer blockage and jet rodded the line clean. Prior to cleaning the line, the flow in the sewer line entered the Arrowood home and damaged her furnace and other items.

The City Manager stated that this matter could be turned over to insurance, but would likely be denied, since the City has never had a problem at this location previously. Councilman Little stated that he saw no reason to prolong the situation by waiting for an inevitable insurance denial.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to reimburse Ms. Nora Arrowood the amount of $1,988.82 for damage to her property on 6th Street Clinchfield due to a sewer blockage.

CONSIDER PURCHASE OF COMMERCIAL GARBAGE VEHICLE:
The City Manager presented Council with a memo from Mr. Tommy Wilson, Sanitation Supervisor, advising that due to the uncertain legal ramifications of tagging and insuring a new Cushman refuse hauler, he proposes that the City purchase a small truck with a dump hopper bed for commercial garbage service. This purchase would be a cost effective way to free up one of the current Cushman units as a spare vehicle for residential garbage service.

The cost of a small truck would be approximately $15,000 and a dump hopper plus the installation would cost $4,793.00.

The City Manager stated that, in the meantime, he was submitting a letter to the North Carolina Commissioner of Motor Vehicles to obtain a ruling regarding whether new four wheel Cushman units could be driven on public streets and highways for residential garbage service.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to authorize the purchase of a pickup truck with a dump hopper for commercial garbage service. The City Manager will direct staff to obtain bids for the purchase of this vehicle.

ORDINANCE – PARK AVENUE PARKING: The City Manager reported that the Street Committee had reviewed parking complaints on Park Avenue and the current parking regulations for the street, and recommended the adoption of an ordinance to create parking restrictions for two areas on Park Avenue that are marked with no parking signs, and to remove one area of no parking that is not needed. The City Manager stated that in other locations on Park Avenue, signs simply needed to be placed to allow for proper parking enforcement by the Police Department.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

ORDINANCE

AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by deleting the following:

STREET NAME	REGULATION	REG. APPLICATION	
PARK AVENUE	PARKING	EAST SIDE, FROM TURNER ST. 300 FT. NORTHERLY	PROHIBITED

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION	
PARK AVENUE	PARKING PROHIBITED	EAST SIDE, BEGINNING 260 FT. NORTH OF THE NE CORNER OF PARK AVENUE AND EAST COURT CONTINUING NORTHERLY AROUND CURVE	
		EAST SIDE, BEGINNING IMMEDIATELY ACROSS FROM THE NW CORNER OF PARK AVENUE AND TURNER STREET CONTINUING 105 SOUTHERLY	

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of November, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-11-02-1

DISCUSS POLICE DEPARTMENT BUILDING ISSUES: The City Manager advised that there are a few final issues being dealt with regarding the new Police Department building. One problem is excess humidity in the stairwell area. The City Manager stated that the HVAC contractor for the Police Department project, Pyatt Heating and Air Conditioning, had proposed to solve this problem through the installation of a thermostat for the back stairwell area and by starting up the basement heat pump. The costs of this work will be $2,457. The City Manager stated that he would propose that this work be done to solve the humidity problem. Council agreed by consensus for this work to be done to address the humidity problem.

The City Manager related a second problem involving stained concrete on the front porch area of the new building. He stated that G.E.M. had agreed to pay to correct this problem and that G.E.M. had proposed to put a concrete stain on this area, to create a uniform color. The City Manager showed Council possible color choices and it was agreed that a color to complement one of brick colors on the front of the building should be pursued. Councilman Cuthbertson suggested that a company on Morgan Street be contacted that does concrete print. This

company has recently completed a project at the Western Sizzlin on North Main Street. Mayor Clark suggested that a sturdy outdoor carpet could be considered for the area of the front porch under the rotunda.

By consensus, the Mayor and Council agreed that the City Manager should work with G.E.M. to explore all alternatives for addressing the stained concrete problem.

REVIEW POTENTIAL CITY FESTIVAL ORDINANCE: The City Manager presented Council with a copy of an Ordinance from the Town of Smithfield that sets rules and regulations for Town festivals. The City Manager stated that DBA Director Freddie Killough had proposed that the City consider to such an ordinance to address several problems experienced at the City of Marion's Mountain Glory Festival and other downtown parades and events. Such an ordinance could address topics such as outside vendors, animals and bicycle riding

A discussion followed.

It was the consensus of Council that the City Manager draft a Festival Ordinance and bring it back for consideration at a future meeting.

DISCUSSION – STREET COMMITTEE – CHAD TONEY OFFICE BUILDING – MAIN/FORT STREETS:

The City Manager stated that Chad Toney had developed plans for his driveway cuts at his new office building at Main and Fort Streets. Mr. Toney is requesting consideration for the City to waive some of the normal charges for driveway approaches since he will be eliminating many of the driveways constructed for the former convenience store on the site. The City Manager suggested that the Street Committee could review the location and make a recommendation to Council at the next meeting. A Street Committee meeting was established for Wednesday, November 10, at 9:00 a.m.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Martin advised that there is what appears to be a cable line lying on the side of Logan Street. The City Manager stated that he would see that the type of line is identified and that the proper utility company is contacted to correct this situation.

Councilman Martin also advised that a fire hydrant on Holly Hill Drive behind the Express Lube building is leaking.

CLOSED SESSION – DISCUSS ACQUISITION OF REAL ESTATE UNDER N.C.G.S. 143-318.11(A)(5) AND PERSONNEL UNDER N.C.G.S 143-318.11(A)(6): Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to go into Closed Session to discuss a matter involving the acquisition of real estate in accordance with N.C.G.S. 143-318.11(A)(5) and to discuss a personnel matter in accordance with N.C.G.S. 143-318.11(A)(6).

REGULAR SESSION: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session.

Mayor Clark announced that no action was taken in the Closed Session.

COUNCILMAN COMMENTS: Councilman Owenby congratulated Mayor Clark on his recent election as Second Vice President of the North Carolina League of Municipalities. All the other Council members also congratulated Mayor Clark on this achievement. Mayor Clark stated that this election would necessitate a great deal of travel to Statewide meetings and to National League of Cities functions, but that most, if not all, of the travel costs would be paid by the League of Municipalities and not be an obligation of the City.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manger/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, November 16, 2004 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Freddie Killough, Executive Director, Marion Downtown Business Association; Patti Hart, Chairperson, Downtown Advisory Committee; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Amanda Campbell and Kisha Boston of Lees-McRae College.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. **Approval of Minutes** - November 2, 2004
   Closed Session Minutes – November 2, 2004

B. **Approve Budget Amendment**

CITY OF MARION, NORTH CAROLINA
2004-2005 BUDGET ORDINANCE
(Fifth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows:

GENERAL FUND

a. **General Fund Revenues, Account Number 10-398-0410, Safe Neighborhood Grant, is increased from $0 to $500.**

b. **General Fund Expenditures, Police, Account Number 10-510-3300, Department Supplies, is increased from $17,000 to $17,500.**

WATER AND SEWER FUND

a. **Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated, is increased from $444,018 to $496,624.**

b. **Water and Sewer Fund Expenditures, Non-Departmental, Account Number 30-660-9880, Reimbursement to McDowell County-Eastfield Water, is increased from $0 to $52,606.**

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 16th day of November, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-11-16-1

C. Approve Purchase of for Wheel Drive Vehicle – Police Department: 4x4 Chevrolet Suburban $3,100.00 – from DOT out of Seized Funds – to be used in inclement weather.

D. Approve Amendment to Inter-local Agreement with McDowell County

Amendment to the Interlocal Agreement for US 221 North Water and Sewer Improvements Between the City of Marion, North Carolina and the County of McDowell, a North Carolina Municipal Corporation

This amendment is made and entered into this _____ day of November, 2004.

Whereas, the City of Marion and the County of McDowell (the "Parties") entered into an interlocal agreement on December 2, 2003, that provides for the construction and operation of certain water and wastewater infrastructure improvements,

Whereas, subsequent to the execution of the interlocal agreement referenced above, the City of Marion has received a Special Appropriations Grant, EPA # ____ through Representative Charles Taylor's office for water and/or sewer infrastructure improvements.

Whereas, the City of Marion has decided to use the Special Appropriations Grant for the following four components of a much needed project:

1. Highway 221 N. to Hankins Road Water Extension (construction only)
2. Highway 221 N. to Hankins Road Sewer Extension (construction only)
3. Hankins Road to Scotty's Mobile Home Park Water and Sewer (construction)
4. WWTP Equalization Basin Improvements

Whereas, the City of Marion and County of McDowell desire to amend the interlocal agreement pursuant to 40 C.F.R.§ 31.36 (b) (5) to also include the improvements to the WWTD Equalization Basin Improvements under the provisions of the interlocal agreement which provides that McDowell County will construct the wastewater improvements contemplated in that agreement.

Whereas, the City of Marion would like to handle the regulatory and administrative requirements of EPA under the auspices of this interlocal agreement.

Now therefore, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound, agree as follows:

1. The City of Marion will retain responsibility for all federal accountability provisions related to this Special Appropriations Grant, including reporting requirements, compliance with National Environmental Policy Act and other statutes applicable to this grant as explained in the grant agreement;

2. McDowell County will oversee the construction of the wastewater infrastructure improvements contemplated by this amendment and keep accurate and comprehensive records pursuant to these projects components to assist the City of Marion in seeking reimbursement for allowable expenditures under the grant; and

3. McDowell County agrees that all procurement activities conducted with EPA grant funds and the local match will comply with 40 C.F.R. § 31.36, the EPA regulations which govern procurement activities under EPA grants and that it will maintain adequate documentation to demonstrate compliance with that regulation.

IN WITNESS WHEREOF, the parties have executed this amendment to the December 3, 2003, Interlocal Agreement on the day and year first above written.

COUNTY OF McDOWELL, NORTH CAROLINA

By: _____
County Commission Chairman

(Seal)
Attest:

By: _____
McDowell County Clerk

CITY OF MARION, NORTH CAROLINA

By: _____
Mayor

(Seal)
Attest:

By: _____
City Clerk

PUBLIC HEARING – REZONING – STROUD STREET: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis presented Council with an application from Mr. Robert McKinney and Mr. Allen Gurley requesting that vacant property on Stroud Street (PIN 1700.05-29-1741) be rezoned from C-2 General Commercial to R-2 General Residential. The property double fronts on Sugar Hill Road and on Stroud Street. The front part of the property will remain in C-2 zoning, while the Stroud Street frontage is proposed for rezoning to R-2. Ms. Davis noted that the Planning Board had voted unanimously to recommend the approval of this request.

Mr. McKinney was present for this meeting and asked that his request be approved.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to approve the request by Mr. Robert McKinney and Mr. Allen Gurley to rezone the back portion of their property fronting on Stroud Street (PIN 1700.05-29-1741) from C-2 General Commercial to R-2 General Residential.

PRESENTATION – DOWNTOWN ADVISORY COMMITTEE: Ms. Patti Hart appeared before Council and noted that the Downtown Advisory Committee (DAC) had met to review the North Carolina Main Street Program report. Ms. Hart stated that the DAC had suggested several implementation priorities, which Ms. Hart presented as follows:

ECONOMIC RESTRUCTURING

1. Conduct in house survey to confirm the need for residential rentals and the rent ranges. A cooperative property owner with vacant upper floor space should be identified and assistance should be provided in developing a financial package that can be presented to financial institutions.

A special information package should be produced outlining the benefits and use of the Historic Tax Credits.

2. Downtown businesses should understand their markets and focus their promotions efforts on the markets they are most likely to attract. Most downtown retail areas function in an "inside-out" manner with much of the retail trade being available from nearby neighborhoods and employees.

3. Additional potential could come from carefully identified "niche" markets. Where there is a large concentration of outside spending in a given category, possibilities may

exist to find a "niche" or additional potential within that category that is not represented widely in the trade area.

Additional "niche" markets my develop around the growth in second homes on Lake James, increased traffic along I 40 and tourism, particularly the hiking and camping market. The potential of these new markets may be hampered by the lack of ABC options in the Marion area.

PROMOTIONS

1. Create a new image for the downtown logo. Create a tag line or slogan. Use this image and tagline on everything printed. Create a color scheme along with logo and use it consistently.

2. Create an advertising budget that includes advertising downtown, not just events.

3. Create a new website. Include property listings with pictures, event schedules and pictures, history narrative, tax credit and facade grant information and business listings. Keep it maintained and updated all the time.

4. Work with the Chamber to create a specific place in the visitor center to market downtown. Combine historic photos with photos of recent events and activities and streetscapes. Make them large, poster size, attractive pieces. Supplement with walking tour brochures, event cards, lists of restaurant and shops, and possibly t shirts for sale. You should not pass up an opportunity to peak the interest of 26,000 visitors.

5. Schedule free press releases and informational photos in the newspaper. Print schedule of events, etc and distribute to businesses, hotels, restaurants as well as paper and radio.

We should continue all the promotions we are currently doing

DESIGN

1. Schedule a design workshop for business and property owners ASAP. Promote it heavily.

2. Create downtown, historic and directional signs that coordinate with our new logo identity.

3. Get professional advice on new trees that will provide much needed shade, and stop rigorous pruning of existing trees and shrubs.

4. Work with its landscape services to green up downtown wherever possible

Continue:

1. Keep baskets planted with season flowers
2. Façade grant program

CIRCULATION AND TRAFFIC (a sub committee of Design)

1. Hire a civil engineer to work with city and county to reroute traffic and complete all three recommendations

Freddie Killough, DBA Executive Director, presented the following priorities for organization, as follows:

ORGANIZATION

1. Reorganize DAC into a 501(c)(3) as soon as possible.
   Benefits: non –profit, may solicit tax deductible donations (cash or property) to support projects, has the independence to be an advocate of issues and the financial structure to take on projects with less red tape.

2. Attend City Council and County Commission meetings to update them on where we are, what out successes have been and where we are going.

3. Keep the DBA a 501(c)(4) with members.

The City Manager stated that he thought that City Council wished to retain an appointed Downtown Advisory Committee to recommend improvements and priorities for the downtown area. The 501(c)(3) could be under the DAC and be used for certain purposes, such as accepting donations and accepting and disposing of property.

Ms. Hart advised that the DAC would recommend seeking proposals from graphic artists for a downtown logo, as suggested in the presentation. Ms. Hart stated that the DAC was looking to incorporate a slogan "Where Main Street Meets the Mountains" into the logo.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to authorize the DAC to seek proposals from graphic artists to create a downtown logo and to bring the proposals back to Council for review at a later date.

Ms. Hart then suggested that proposals be taken to create a downtown website.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to authorize the DAC to obtain proposals for designing a web site for the Downtown and to bring these proposals back to Council for review at a later date.

Ms. Hart suggested that downtown parking signs be revised to eliminate confusing language noted by the Main Street staff. The City Manager stated that he was working with the Street Superintendent to develop new language for the signs, which would then be reviewed by the DAC prior to the signs being made.

Ms. Hart stated that the DAC would also recommend that proposals be sought from architects and/or engineers to develop a plan for revised downtown traffic flow, streetscape design and landscaping, per the recommendation of the North Carolina Main Street staff.

The City Manager outlined the steps required under State law to solicit and evaluate proposals from architects and engineers. He noted that DOT had offered to have Statewide Planning staff complete such a study at little or no cost. Mayor Clark stated that he would not like DOT to complete the study, based on past poor performance by DOT in completing Thoroughfare Plans for the City in a timely manner.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council also authorized the DAC to seek proposals from architects and/or engineers to develop a plan for revised downtown traffic flow, streetscape design and landscaping, per the recommendation of the North Carolina Main Street staff.

MOUNTAIN GLORY FESTIVAL REVIEW: Ms. Freddie Killough was present for this meeting and gave the following review of Mountain Glory Festival Finances:

Year	Festival Profit	Funded Expenditures	Net Profit

1998	$2,597	$0	$2,597.00
1999	4,026	0	4,026.00
2000	6,524	0	6,524.00
2001	4,217	2,953.00	1,264.00
2002	6,909	2,119.00	4,790.00
2003	3,569	2,500.00	1,069.00
2004	5,617	500.00	5,117.00
Total	$33,459	$8,072.00	$25,387.00

Current Balances as of 11-07-04 were as follows:

Checking $13,649.10
CD $10,613.65
Total $24,262.75

Ms. Killough outlined that the Festival generated a profit of over $5,000 this year and continued to be successful.

The DBA will receive one half of the 2004 Festival profits once all revenues and expenditures are figured, which should reduce the actual Mountain Glory Funds to about $21,704.25.

DISCUSS RETAINING WALL REPAIRS – OAK GROVE CEMETERY: The City Manager advised that the Cemetery Committee had suggested that the City begin work on some deteriorated retaining walls in the Oak Grove Cemetery. He stated that $10,000 is budgeted in the Cemetery Capital Outlay line item.

The City Manager stated that two bids had been received to repair one retaining wall in Oak Grove Cemetery recommended for improvement by the Cemetery Committee.

The low bids was received in the amount o $7,239.00 from Kerlee's Construction Inc., that would include all labor and equipment to repair the retaining wall in question. The City Manager suggested using available Cemetery Capital Outlay to fund this proposal.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to accept the bid from Kerlee's Construction, Inc. in the amount of $7,239 for repairs to a retaining wall in Oak Grove Cemetery.

DISCUSS DRIVEWAY APPROACH CHARGES – FORT/MAIN STREETS: The City Manager advised that the Street Committee has reviewed the plans of Mr. Chad Toney for driveways for his new office building at the intersection of Fort and Main Street. Mr. Toney will need to relocate one driveway closest on Main Street to Main Street Exxon a few feet southward and close up the rest of the drive cuts on Main Street. This will necessitate Duke Power moving one streetlight southward a few feet and the City doing some concrete work and putting in some additional brick sidewalk. On the Fort Street side, Mr. Toney wishes to close the driveway cut closest to Main Street and put in an approach near the back of his property, where there is an existing driveway. The Street Committee noted that the curb on Fort Street is in poor shape and needs to be replaced, even if Mr. Toney was not doing his building project.

It is the recommendation of the Street Committee that the City not charge for any of the moved driveway approaches or closing existing driveway cuts, with the only charge being passing on actual cost charged by Duke Power for moving the streetlight and to complete all needed curb replacement on Fort Street.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the recommendation of the Street Committee as stated above for driveway charges at Fort and Main Streets.

SCHEDULE TOWN MEETING/PLANNING SESSION: The City Manager suggested that Council set a date for next year's Annual Town Meeting and Planning Session.

A discussion followed.

It was the consensus of Council that the Town Meeting be held at 7:00 p.m. on Thursday, January 20, 2005, with an inclement weather date set for Monday, January 24. Council agreed to hold the annual Planning Session on Saturday, February 5, 2005.

The City Manager stated that he would like to have each department make a presentation on the City's highlights for 2004, with the duties and responsibilities of each department listed and progress on projects mentioned. The Mayor and Council agreed that this idea would be a good addition to the Town Meeting.

DISCUSS JOINT MEETING WITH COUNTY – MARION AREA FIRE DISTRICT ISSUES: The City Manager advised that he had been communicating with the County Manager to determine a meeting date with the County Commissioners in mid-December to discuss issues involving the Marion Area Fire District. Some possible dates were discussed and will be communicated to the County.

DISCUSS WATER PLANT PROPERTY SALE: The City Manager advised that that Utility Committee had met and recommended that the City declare a corner of the Water Plant property as surplus and sell it by negotiated offer and upset bid.

Ms. Annette Bryant is interested in this property and has determined, through her engineer, that the mobile home, adjacent to this corner property would not interfere with the placement of a WBRM tower.

It is the recommendation of the Utility Committee that an appraisal and survey be commissioned and the costs added to the sale price.

A discussion followed.

Councilman Little advised that Ms. Bryant had talked to him about a part of the property more toward the middle of the parcel. He stated that he would have no objections to selling this part of the property. Mayor Calrk and Councilman Owenby stated their concerns about selling anything other than the identified corner of the property adjacent to the private Waycross Road. After discussion, Council agreed to seek to sell this corner of the property, but to authorize the City Manager to be flexible to accommodate the needs of Ms. Bryant in locating the radio tower.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the Utility Committee to sell the identified corner of the City's Water Plant property adjacent to Waycross Road by negotiated offer and upset bid, after first having the proposed parcel appraised and surveyed, with the costs of the appraisal and survey added to the sale price.

MARION FIRE DEPARTMENT – GIFT TO VOLUNTEER FIREMEN WHO WORK RELIEF SHIFTS: The City Manager advised that each year Council authorizes honorariums to volunteer firemen who work relief shifts for the City. The City Manager requested approval of these gifts, not to exceed the budgeted amount of $8,000.00.

PARK AVENUE - STREET COMMITTEE: The City Manager stated that he had received another complaint about parking on Park Avenue in the area of Cardinal Lane. The Street Committee agreed to meet the following day to review the complaint.
CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Edwards advised that it is his understanding that a lawsuit has been filed against the City of Marion Police Department.

The City Manager advised that he is aware of an alleged lawsuit and will give Council further information when he receives it.

Councilman Little advised that Council may need to revisit the YMCA Pump Station maintenance agreement. The City Manager stated that he had given Ray Buchanan with the Corpening Center a draft agreement for review but had not received back any comments. After discussion, Council directed the City Manager to remove from the agreement any mention of liabilities or the possibility of fines being incurred by the YMCA, since the City will be assuming ownership and maintenance of the pump station in question. The City Manager will discuss the revised agreement with Mr. Buchanan and is authorized to negotiate the agreement as long as the following core points are retained:

1. The YMCA must pay the City a monthly maintenance fee for the pump station, to include labor and teledialer costs.

2. The YMCA must directly pay the monthly power bill for the pump station.

3. The YMCA must provide the City with needed easements for the force main sewer line running between the pump station and Sugar Hill Road.

Councilman Cuthbertson noted the item in the City Manager's report concerning the proceeds from the annual City/County/School System auction being extremely low. A discussion was held on options for future auctions, including the City holding its auction.

Councilman Owenby advised that a section of the railroad property behind the Ledbetter house on East Court Street has a severe drainage problem and needs to be looked at by the Street Committee. The City Manager noted that City staff had determined this matter to be the responsibility of Norfolk Southern Railway and had communicated the problem to railroad personnel. The Street Committee will look at the situation at their meeting on November 17.

Mayor Clark provided an update of his first North Carolina League of Municipalities board meeting and an overview of some of the legislative priorities for the League for 2005, including seeking to fight any attempts to undermine annexation laws.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manger/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, December 7, 2004 at 6:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, The McDowell News.

GUESTS PRESENT:

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve the Consent Agenda as follows:

A. **Approval of Minutes** - November 16, 2004
   Closed Session Minutes – November 16, 2004

B. **Ordinance – Authorizing Criminal History Checks**

ORDINANCE AUTHORIZING CRIMINAL HISTORY CHECKS ON ALL FINAL APPLICANTS APPLYING FOR POSITIONS WITH THE CITY DEFINED AS FULL AND PART TIME REGULAR EMPLOYMENT OR VOLUNTEER POSITIONS

WHEREAS, North Carolina General Statute Section 160A-164 authorizes municipal governments to establish personnel rules by ordinance or policy; and

WHEREAS, the North Carolina General Assembly has enacted various laws mandating that employers conduct criminal history checks on certain employment positions including but not limited to: N.C. Gen. Stat. Sec. 110-90.2, relating to child care providers; N.C. Gen. Stat. Sec. 114-193 relating to employees in the area of mental health, developmental disabilities and Chapter 122C of the North Carolina General Statutes relating to substance abuse authorities; and

WHEREAS, on October 23, 2001, the City Council of the City of Marion adopted an ordinance to authorize statewide criminal history checks on all final applicants for regular full and part-time City positions; and

WHEREAS, it is in the City's best interest to adopt an ordinance extending the authorization for state-wide criminal history checks to all final applicants for full and part time volunteer City positions; and

WHEREAS, a copy of this ordinance will be provided to the North Carolina State Bureau of Investigation for approval;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARION THAT:

Section 1. That Article IV, Division 1., of Chapter 2 of the Code of Ordinances of the City of Marion be amended by deleting Section 2-54 in its entirety, and replacing it with the following:

2-54. Criminal History Checks

In order to protect the citizens of Marion and their properties, the procedures herein are established to provide for fingerprinting and criminal history checks on all final applicants for regular and volunteer full and part time positions in the Marion City Government. Subject to subsection (c) of this section, employment with the City of Marion may be denied for those persons convicted of any crime against a person, or crimes against property where intent is an element, or any drug or gambling related offense.

(a) The City Manager, or designee, shall conduct an investigation of any final candidate for a regular or volunteer full or part time position with the City of Marion government and it shall be a precondition of employment that an applicant for such a position shall upon request, provide fingerprints and all other necessary personal identification including a birth certificate, social security number and driver's license, if available, so that the City's City Manager, or designee, may cause a thorough search to be made of local and state criminal records to determine if the applicant has a history of criminal convictions or the crimes enumerated above by use of the Police Information Network (PIN).

(b) The Marion Police Department, shall provide the findings from the use of the PIN to the City Manager or designee, provided that all necessary agreements with the State Bureau of Investigations Division of Criminal Information have been executed.

(c) An evaluation of any crime for purposes of employment will take into account the nature and the circumstances of the offense, the time frame of the offense as it relate to the essential job functions for the position applied.

(d) No action to deny employment will be taken until the Police Department confirms the identity of the applicant by a match of the applicant's fingerprints to the State Bureau of Investigation and a certified true copy of the public document is retrieved.

Section 2. That this Ordinance shall become effective upon adoption.

Adopted this the 7th day of December, 2004.

A. Everette Clark, Mayor

ATTEST: _____
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-12-07-1

C. Approve Pay and Classification Plan as Amended and Revised Job Description for the Finance Director Position:

SALARY GRADE	MINIMUM SALARY	MAXIMUM SALARY	POSITION TITLE
1	$15,031	$23,452	
2	$15,797	$24,645	
3	$16,608	$25,904	General Maintenance Worker I
4	$17,439	$27,204	Police Aide/Ordinance Enforcement Officer
			Administrative Secretary I
5	$18,314	$28,589	Billing and Collections Clerk
			General Maintenance Worker II
			Warehouse Storekeeper
6	$19,230	$30,040	Police Telecommunicator
			Equipment Operator
			Meter Reader
7	$20,211	$31,554	Wastewater Plant Operator
			Water Plant Operator
8	$21,234	$33,153	Fleet Mechanic
			Account/Records Clerk
			Administrative Secretary II
			Police Telecommunications Supervisor
9	$22,321	$34,837	Tax Collector
			Public Works Crew Leader
			Wastewater Plant Maintenance Technician/ Operator
			Wastewater Plant Laboratory Technician/ Operator
			Fire Suppression Officer

			Head Billing and Collections Clerk
			Accounting Assistant/Bookkeeper
			Fire Inspector
10	$23,452	$36,606	Fleet Mechanic Supervisor
			Police Officer I
11	$24,645	$38,461	Fire Lieutenant
			School Resource Officer
			Wastewater Plant Assistant ORC
			Water Plant Assistant Chief Operator
			Water Distribution Assistant Superintendent
			Purchasing Agent
			Police Officer II
12	$25,904	$40,401	
13	$27,204	$42,447	Grants Administrator
			Sanitation Supervisor
			Fire Captain
			Police Sergeant
			Police Detective
14	$28,589	$44,601	Personnel Officer
			Police Lieutenant
15	$30,040	$46,861	Water Distribution Superintendent
			Street Superintendent
			Assistant Fire Chief
16	$31,554	$49,228	Water Plant Superintendent
			Wastewater Plant Superintendent
			Police Major
17	$33,153	$51,722	City Planner
			Building Inspector
18	$34,837	$54,344	
19	$36,606	$57,095	
20	$38,461	$59,994	Fire Chief
			Public Utilities/Projects Director
			Finance Director
21	$40,401	$63,021	Police Chief
			Public Works Director
22	$42,447	$66,219	
23	$44,601	$69,588	
24	$46,861	$73,128	
25	$49,228	$76,837	
26	$51,722	$80,717	
27	$54,344	$84,811	
28	$57,095	$89,096	
29	$59,994	$93,595	
30	$63,021	$98,349	

Approved by City Council - December 7, 2004

Finance Director Job Description

CLASS TITLE: Finance Director

PURPOSE OF CLASS: Under general direction, performs responsible professional work in directing the City's financial and personnel management operations including general accounting, accounts receivable and payable, tax collection, water and sewer billing and collection, purchasing, payroll and employee benefits; performs related work as required.

PRIMARY TASKS: (The examples listed below are representative of the requirements of the position, but are not intended to be all inclusive.)

*Plans, organizes, directs and participates in the overall financial management functions of the City to include general accounting, payroll, accounts receivable and payable, tax collection, purchasing, treasury management, utility billing and customer services, and revenue collections.

*Ensures the maintenance of a central accounting system for the City government in a manner consistent with established and accepted municipal accounting principles and practices and in

sufficient detail to produce adequate cost, financial and statistical data for management purposes and to meet statutory requirements.

*Plans, supervises, coordinates, and evaluates the work of finance office and personnel; determines and communicates priorities as required; trains staff in proper methods, procedures and duties.

*Advises the City Manager, department heads and others on matters pertaining to finance, expenses and budget administration; provides recommendations on finance and budget related policies to the City Manager.

*Invests idle funds to provide the highest interest yield.

*Maintains Taxes Receivable Ledger.

*Validates the disbursement of all City funds in accordance with officially established procedures; signs all checks and purchase orders.

*Prepares financial statements, cost reports and statements of receipts and expenditures at regular intervals for use by the City Manager prepares required monthly, quarterly and annual reports pertaining to the City's financial program.

*Supervises the City's Purchasing and Warehouse operations.

*Monitors and assists in payroll system and employee benefits administration to include 401 (k), health, life and disability insurance; review benefit plans and recommend changes; assist employees with benefit problems.

*Manages City's personnel operations and advises City Manager of recommended policy changes; assists departments with the hiring process.

*Assists in preparation and maintenance of the annual budget.

*Provides assistance and works with CPA in conducting annual independent audit; performs other duties as required.

*Maintains schedule of fixed assets.

*Handles sensitive citizen complaints and problems.

EQUIPMENT OPERATED: Computer, typewriter, calculator, and other assigned equipment.

REPORTING RELATIONSHIP: This position reports to the City Manager

WORKING CONDITIONS: Work is of a sedentary nature requiring some physical activity such as walking, reaching, stooping and repetitive motion of the wrists, hands and fingers. Exposure to atmospheric conditions normally associated with office type work.

QUALIFICATIONS OF CLASS:

Education: Graduation from an accredited college, with a degree in finance, accounting, business management, or related field; completion of advance courses in financial management or IOG certificate in local government finance preferred.

Experience: Considerable financial management experience including experience in administrative financial and supervisory capacities; or any equivalent combination of education and experience that provides the required knowledge, skills and abilities.

Knowledge, Skills and Abilities:

Thorough knowledge of general laws, ordinances and administrative policies governing municipal financial practices and procedures.

Thorough knowledge of the City's financial program, policies, records and related practices.

Thorough knowledge of the principles and accepted practices of accounting and budgeting in local governments.

Skill in the operation of assigned office machines.

Ability to formulate and install standard accounting methods, procedures, forms and records, including internal auditing.

Ability to supervise and evaluate work performed by subordinates.

Ability to prepare informative financial reports.

Ability to plan, organize and direct the work of subordinate employees in the specialized fields of accounting and other financial management activities.

Ability to establish and maintain effective working relationships with other department heads and government officials.

Ability to perform fiscal planning and to advise the City Manager on the formulation of fiscal and personnel policy

Ability to communicate well and to maintain good relations with the general public.

Special Requirements: None

Special Note: This generic class specification gives a sound overview of the job class, its essential functions (indicated by an *), and necessary job requirements. However, for each individual position assigned to this class, there is available a completed job questionnaire with a physical abilities checklist providing lengthy details about the one specific position. These documents should be reviewed before initiating a selection process. They can provide additional detailed information on which to base various personnel actions and can assist management in making legal and defensible personnel decisions.

D. Approve Delay of Late Fees – December/January Water & Sewer Bills

Each year the Thanksgiving and Christmas holidays typically cause the water and sewer bills to go out late.

Extension of water and sewer payments, without the $5.00 late fee being imposed, was approved until the 20th of December and January.

PUBLIC HEARING – COMMUNITY DEVELOPMENT BLOCK GRANT CONCENTRATED NEEDS APPLICATION: Mayor Clark opened the Public Hearing.

There were no citizens present for discussion of this Application.

The City Manager advised that Ms. Teresa Spires, Grant Administrator with Isothermal Planning and Development Commission, has worked to prepare this Community Development Block Grant (CDBG) application. However, due to a death in her family, Ms. Spires was unable to attend this meeting.

The City Manager gave a report on the Community Development Block Grant Concentrated needs application.

He advised that in preparation for the submission of a CDBG Concentrated Needs grant by December 15th for the Morehead Road area, we are required to hold two public hearings. The first one was held in October.

The City Manger presented Council with a copy of the proposed grant application summary. The application involves housing rehabilitation, clearance and drainage (curb and gutter) activities along Georgia Avenue Morehead Road from behind the Servco station on Rutherford Road across the old railroad tracks and down Morehead Road. The proposed grant application should not exceed $400,000, plus a local option. The City Manager suggested a local option project of around $50,000, involving funding water and sewer connections for low income individuals or either an urgent needs housing program. The proposed City match for the grant was listed at ten percent. The City Manager stated

that the local match could perhaps be less, but would take points off of the application, since local commitment is a factor in the scoring of the grant.

Councilman Lloyd Cuthbertson asked if Powell Bill money could be used toward this project. The City Manager advised that Powell Bill money could fund the City share of the sidewalk/curb and gutter portion of the project; however, use of these funds could take away from other street and sidewalk projects.

Mayor Clark advised that large entitlement cities do not have to match CDBG funds this grant and that Marion should not have to either.

A discussion followed.

Council directed the City Manager to have the local option component of the grant consist of water and sewer connections for low income individuals, with first priority to City residents. Council also directed the City Manager to consult with Ms. Spires and to reduce the local match amount, preferably from ten percent to five percent, if it is felt that such a reduction will not significantly harm the City's application.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the following Resolution to authorize the submission of the CDBG Grant application, with the changes listed above:

RESOLUTION

BE IT RESOLVED, That the City of Marion has authorized the submission of a Community Development Block Grant, Concentrated Needs category grant application to the Department of Commerce to address multiple needs in the Georgia Avenue and Morehead Road areas of the City. Activities involved include housing rehabilitation, clearance, and drainage improvements.

BE IT FURTHER RESOLVED that the City of Marion will contribute 10% of the project costs not to exceed $50,000 to the project.

BE IT FURTHER RESOLVED that the City of Marion will administer this grant in accordance with the rules and regulations of the Department of Commerce.

BE IT FURTHER RESOLVED that the City will contract with the Isothermal Planning and Development Commission for grant preparation and administration.

BE IT FURTHER RESOLVED that the grant will be monitored quarterly to assure compliance with this proposal and the Department of Commerce regulations.

ADOPTED this 7th day of December, 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

R-04-12-07-1

PUBLIC HEARING – ADOPTION – ORDINANCE – STREET CLOSING OFF RAILROAD STREET: Mayor Clark opened the Public Hearing.

There were no citizens present for this discussion.

The City Manager advised that this request involved the closing of an alley at the end of Crawford Terrance behind the old Heilig Meyers building, as requested by Mr. Jim Gibson of Westmoreland Funeral Home. Council had previously adopted a resolution of intent to close the street. The City Manager stated that all adjoining property owners were notified of the street closing and that only one owner, Mr. Harold Caviness, had commented on the street closing. Mr. Caviness had stated that he had no problem with the street closing. The City Manager also stated that notice of the street closing was published in The McDowell News and posted in two places on the alley itself. The City Manager advised that, after the public hearing, Council could adopt the ordinance to close the street and then could immediately accept an offer for property for a relocated street right of way to preserve access from Crawford Terrace to the Caviness, Jong's and McDowell Development properties.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to adopt the following Ordinance:

ORDINANCE PERMANENTLY CLOSING
A PORTION OF AN UNNAMED STREET
OFF RAILROAD STREET

BE IT RESOLVED by the City Council of Marion, North Carolina:

Section I. THAT, WHEREAS the City Council of Marion, North Carolina, at its regular meeting on October 19, 2004, adopted a Resolution declaring its intent to permanently close a portion of an unnamed street off Railroad Street, hereinafter described, and calling for a public hearing on the question; and

WHEREAS, the Resolution was published and posted, and copies thereof were sent by registered mail to all owners of property adjoining that portion of the street which was described in the Resolution, as required by the provisions of North Carolina General Statutes, Section 160A299; and

WHEREAS, a public hearing was duly held in the Council Chamber on December 7, 2004, at which no owner of property adjoining the portion of the unnamed street off Railroad Street intended to be closed appeared to express opposition to the closing; and

WHEREAS, after the hearing, it appears to the satisfaction of the City Council that closing the described portion of the unnamed street off Railroad Street which description is attached hereto as Exhibit A, is not contrary or detrimental to the public interest or the property rights of any individual, and that no individual owning property in the vicinity thereof would thereby by deprived of a reasonable means of ingress and egress to and from the property of such owner.

SECTION II. IT IS, THEREFORE, ORDAINED AND ORDERED that the portion of an unnamed portion off Railroad Street as shown on Exhibit A, which is attracted hereto, be, and it is hereby, permanently closed;

PROVIDED, HOWEVER, that the City of Marion reserves the permanent right and easement to maintain, repair and replace all water and sewer and utility lines of the City of Marion which are now located upon or under, or which pass through or over, the portion of the unnamed street off Railroad Street described herein.

SECTION III. IT IS FURTHER ORDERED that a certified copy of this Ordinance and Order shall be filed in the Office of the Register of Deeds for McDowell County, North Carolina, as required by the provisions of North Carolina General Statutes 160A-299.

SECTION IV. This Ordinance and Order shall be in full force and effect from and after the date of its adoption.

Adopted this 7th day of December 2004.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

Exhibit A

BEGINNING at a railroad spike set located at the southernmost corner of that property either now or formerly owned by Q. Harold Caviness et ux as described in Book 464, Page 733 and the westernmost corner of that property either now or formerly owned by Family Services Holding Company, LLC as described in Book 678, Page 180, Par. 1, Tr. I, said railroad spike set being also located in the eastern margin of a street which is shown on that plat recorded in Plat Book 2, Page 5, McDowell County Registry, and running from said BEGINNING along and with the margin of said street and the boundary of the Family Services Holding Company, LLC property (Book 678, Page 180, Par. 1, Tr. I) South 21 deg. 50 min. 42 sec. East 108.00 feet to an iron pin set; thence continuing with the margin of the street and running along and with the boundary of that property either now or formerly owned by Family Services Holding Company, LLC as described in Book 678, Page 177, the following three (3) courses and distances: South 72 deg. 39 min. 10 sec. West 25.10 feet to an existing iron pin set, North 21 deg. 50 min. 42 sec. West 34.99 feet to an existing iron pin set, and South 56 deg. 52 min. 11 sec. West 47.13 feet to an unmarked point; thence crossing the said street and running North 09 deg. 57 min. 44 sec. East 35.94 feet to an unmarked point in the southernmost boundary of the property either now or formerly owned by Family Services Holding Company, LLC as described in Book 678, Page 180, Par. 1, Tr. II; thence along and with the margin of the street and the boundary of the Family Services Holding Company, LLC property (Book 678, Page 180, Par. 1, Tr. II) North 56 deg. 56 min. 28 sec. East 27.81 feet to a pk nail set and North 21 deg. 50 min. 42 sec. West 38.57 feet to an unmarked point; thence leaving the Family Services Holding Company, LLC property and crossing the street North 09 deg. 57 min. 44 sec. East 8.65 feet to an unmarked point and North 72 deg. 39 min. 19 sec. East 20.36 feet to the point and place of BEGINNING;

REFERENCE: Being a portion of the street shown on the plat recorded in Plat Book 2, Page 5. The above-described property being also shown on a survey entitled "Proposed Street Change" prepared by R.L. Greene Surveying and Mapping identified as Map No. 04-038.

Mr. Jim Gibson arrived for this Public Hearing at 7:00 PM. He was advised that the Ordinance had been approved.

ACCEPTANCE OF NEW STREET RIGHT OF WAY – END OF CRAWFORD TERRACE: The City Manager advised that owners of Westmoreland Funeral Home have offered for the City to receive property for a new street right of way between the end of Crawford Terrace and the back of the old Service Pharmacy Building. This right of way is needed to preserve access to the property of Jong's, the Harold Caviness law office and the old Service Pharmacy Building (owned by McDowell Development).

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept this offer for a new street right of way from Westmoreland Funeral Home.

REQUEST FOR COMMUNITY BUILDING REFUND - FAMILY SERVICES OF McDOWELL COUNTY: The City Manager presented Council with a letter from Family Services requesting a refund of payment made for the rental of the Community Building on November 20. Family Services was planning a silent auction, but canceled the event less than one week before the scheduled rental.

City policy permits the rescheduling of the building, but not a refund, if a rental is canceled less than 60 days before an event.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to deny the request for a refund to Family Services, but to also increase the City's contribution to Family Services for the 2004-05 Fiscal Year by $150.00, to compensate Family Services for the amount of the rental fee.

COMPLAINT – NORTON STREET PARKING: The City Manager advised that Ms. Flynn of Norton Street has expressed concern over parking on Norton Street. The City Manager also reported recent complaints about parking on Euclid Avenue and on First Street, East Marion.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted to refer this item to the Street Committee.

DISCUSS REQUEST FOR WATER EXTENSION – AIRPORT ROAD: The City Manager presented Council with information from Mr. Howard DeGarde of Somerset Place off of Airport Road, including a petition with 55 signatures, requesting that water service be extended down Airport Road. The requested extension would involve installing water lines from the Garden Creek Road/Holly Street intersection a distance of over 2,000 feet down Holly Street and Airport Road. The extension would be even longer considering that service would need to be run down each individual side streets

The City Manager advised that normal City Policy encourages us to work with one person, typically a developer, who would pay for the customer's share of the extension less the City's contribution. The City Manager stated that asking Mr. DeGarde to coordinate payment from 55 residents may be difficult, and asking him to pay the entire extension cost seems unreasonable.

A discussion followed.

It was the consensus of Council to refer this request to McDowell County.

DISCUSSION – JOINT MEETING WITH COUNTY – MARION AREA FIRE DISTRICT ISSUES: The City Manager advised that the County would be unable to meet with City Council in December to discuss the MA Fire District tax issues, but was willing to host a Joint Meeting in January to discuss this matter.

AWARD CONTRACT – VAN PURCHASE: The City Manager presented Council with a memo from the City's Purchasing Agent, Kathy Shook, with the following proposals:

Jim Cook Chevrolet, Marion – 2005 Chevrolet Astro	$17,117.00
Jim Cook Chevrolet, Marion – 2005 Chevrolet Venture	$18,982.00
Legendary Ford, Marion – 2004 Ford Freestar	$19,199.95
Legendary Ford, Marion 2005 Ford Freestar	$21,914.95

Ms. Shook advised that considering the difference in cost, she believes the Chevrolet Venture would offer many up-to-date options and enhancements for the money. The City Manager recommended that Council award the contract for the Purchasing Department van to Jim Cook Chevrolet for the Chevrolet Venture.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to accept the bid of $18,982.00 from Jim Cook Chevrolet for the 2005 Chevrolet Venture.

DISCUSSION WATER PLANT PROPERTIES: The City Manager presented Council with a memo advising that the City Attorney has prepared an easement for the City's Water Plant property that will involve the City granting and receiving an easement across the private Waycross Road that provides access to two houses beyond the City Property in the area of the parcel proposed for sale to Mrs. Annette Bryant. The City Manager advised that the City Attorney believes that the City has no choice but to grant this

easement, since the two properties in question have crossed City property for decades to access their properties.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the easement as prepared by City Attorneys for the City's Water Plant property that will involve the City granting and receiving an easement across the private Waycross Road that provides access to two houses beyond the City Property in the area of the parcel proposed for sale to Mrs. Annette Bryant.

DISCUSSION - DEPOT STREET – BRICK: The City Manager stated that Council, at the November 16 meeting, had requested information on the cost of making Depot Street a brick street, to enhance the appearance of the primary entrance to the renovated Depot. The City Manager presented a memo from Public Utilities Director Glen Sherlin, advising that the brick alone for this 200 foot street would cost $30,000 and that the total project cost could be $80,000 to $100,000. After discussion, Council directed the City Manager to explore other options for improving the appearance of Depot Street, such as concrete or brick print. Information will be gathered and presented to Council at a future meeting.

DOT UPDATES: The City Manager gave a brief update on the following DOT Projects, based on a recent meeting with Division Traffic Engineer Mark Teague:

A. Traffic Signal at West Henderson/Logan Streets – The Depot contractor has done the necessary work in order for DOT to complete the installation of the signal heads facing the City's West Henderson Street parking lot. DOT has agreed to complete this work, possibly by Christmas.

B. West Henderson Street/Wilhemenia Street Pedestrian Crossing – DOT has agreed to install a flashing signal activated when a pedestrian pushes a button to cross the street. The intersection will include a crosswalk and prominent signage to warn motorists when a pedestrian is crossing the street.

C. Main Street Traffic Flow – DOT recommended that the City hire a private engineer/architect to design the City's desired traffic flow and parking changes on Main Street. This design can then be presented to DOT for consideration. City staff are working on a Request for Qualifications for architectural/engineering services for this traffic flow/streetscape design.

D. Traffic Signal Issues – DOT provided two options for the City to address traffic signal concerns. One would involve the City submitting a detailed list of the problems and desired solutions at as many traffic signal locations as the City wishes. All locations would be studied by DOT, as time allowed, and improvements would be made as funding allows. The City would run the risk of isolated improvements being made that could affect other intersections. A second option is one recently pursued by the City of Asheville, where DOT and the City jointly hired a consultant to study all 200+ signalized intersections in the City. The cost of the study was over $100,000, but DOT funded 80 percent of the cost. Each intersection was studied in detail, with deficiencies noted and solutions developed. DOT can potentially fund the improvements at the same 80 percent level. A study for a City the size of Marion might run $50,000-$60,000, with the City's 20 percent share being $10,000-$12,000.

The City Manager stated that DOT Division Traffic Engineer Mark Teague:
Had offered to come to a meeting to show the proposed flashing signal and pedestrian crossing signal for the West Henderson/Wilhemenia Street intersection. Council directed the City Manager to invite Mr. Teague to the Town Meeting on January 20 to make this presentation.

DISCUSS LAPTOP PURCHASE: The City Manager advised that Finance Officer Robert Parker has done a great deal of work to obtain quotes from several companies for laptops. The City Manager presented several quotes for various laptop computers.

The low quote came from Tiger Direct for a Systemax system. However, of the major companies, Dell came in with the best price, at $1,664.30 per notebook, plus $240 per computer for the Microsoft Small Business package, which includes Word, Excel and Power Point.

It is the recommendation of the City Manager and Finance Officer Robert Parker to purchase Dell laptops with the Microsoft Small Business package for a cost of $1,904.30 per computer, for a total cost of $15,234.40 for eight computers, plus $1,539.80 for a projector.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to accept the bid of Dell to purchase eight laptop computers for $15,234.40, plus $1,539.80 for a projector.

FESTIVAL ORDINANCE: Council agreed to hold this item until the January 4, 2004 meeting.

CITY MANAGER'S REPORT:

The City Manager advised that the City had a successful closeout meeting that morning for the Cross Mill Park PARTF Grant. The City Manager stated that the State Parks and Recreation Division had stated that the City would stand a good chance of being funded for a similar grant for the proposed Skate Park. The City Manager stated that the grant process could delay the project from getting started until July or later, but that it could reduce the amount of City funds needed for the project. The County will need to sign on to the grant as well, as the owner of the property on which the Skate Park will be located. After discussion, Council agreed by consensus for the City Manager to see that a PARTF grant application is prepared for the proposed Skate Park.

CITY COUNCIL COMMENTS:

Councilman Little stressed the need for the City and County to enter into an Interlocal Agreement before any work was done on the proposed relocation of the City's Mackey Creek raw water line, to make room for a proposed expansion of the Crane Resistoflex plant. Councilman Little stated that such an agreement needs to be written to avoid any possible misinterpretation or misunderstanding.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn this meeting and proceed to Carolina Chocolatiers for Council's Annual Christmas Dinner and Party.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 4, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor A. Everette Clark was not present for this meeting due to sickness.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News; Suzy Davis, City Planner.

GUESTS PRESENT: Dr. Suzanne Sewell 522 Star Crest Drive, Nebo, NC; Harold Bragg 1155 North Main Street, Marion, NC; Nancy Worley, Marion NC; June and Regina Milligan, Marion, NC; Mia Lorenz, City Attorney, Marion, NC; Katie Trent, Marion, NC; Ken Gaddis, Marion, NC; Doris and Chris Buff, Marion, NC; Patti Hart, 1040 Forest Lake Heights, Nebo, NC; Roy Finley 60 Euclid Avenue, Marion, NC; Mickey Poteat 50 Euclid Avenue, Marion, NC; John Witherspoon PO Box 1000 Jefferson, NC 28640; Kay Sinclair 23 Westwood Terrace, Marion, NC; Patrick Rivers 312 Watson Road, South Carolina 29692.

PRESENTATION – MEMORIAL RESOLUTIONS: Mayor Pro Tem Steve Little presented two resolutions from the North Carolina League of Municipalities honoring former City of Marion Employees who had passed away in the past year:

Mrs. Katie Trent was present and accepted the following Resolution in memory of former Police Chief Henry Trent:

WHEREAS, during the past year death has taken from our midst Henry H. Trent, who served the City of Marion faithfully and well for 23 years; and

WHEREAS, Henry H. Trent contributed materially over these years to the advancement of good municipal Government in North Carolina;

NOW, THERFORE, BRE IT RESOVED by the North Carolina League of Municipalities, in Annual Conference assembled this 25th day of October 2004, that the delegates do hereby express their sorrow at the passing o Henry H. Trent, former Police Chief of the City of Marion, who made lasting contributions to good municipal government, and whose memory we are proud to honor.

BE IT FURTHER RESOLVED that this resolution be made a part of the permanent records of the North Carolina league of Municipalities, and that copies be forwarded to the family of Henry H. Trent and to the City of Marion.

Asst. Executive Director NC League of Municipalities	President NC League of Municipalities

Ms. June Milligan, Ms. Regina Milligan and Ms. Nancy Worley were present and accepted the following Resolution in memoray of former Fiore Chief Tom Milligan:

WHEREAS, during the past year death has taken from our midst Thomas S. Milligan, who served the City of Marion faithfully and well for 30 years; and

WHEREAS, Thomas S. Milligan contributed materially over these years to the advancement of good municipal Government in North Carolina;

NOW, THERFORE, BRE IT RESOVED by the North Carolina League of Municipalities, in Annual Conference assembled this 25th day of October 2004, that the delegates do hereby express their sorrow at the passing o Thomas S. Milligan, former Fire Chief of the City of Marion, who made lasting contributions to good municipal government, and whose memory we are proud to honor.

BE IT FURTHER RESOLVED that this resolution be made a part of the permanent records of the North Carolina league of Municipalities, and that copies be forwarded to the family of Thomas S. Milligan and to the City of Marion.

Asst. Executive Director NC League of Municipalities	President NC League of Municipalities

Council members expressed their appreciation to the families for the service provided to the City by Chief Trent and Chief Milligan and gave their best wishes to the families.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - December 7, 2004 Minutes
B. Approve Resolution Directing Clerk to Investigate the Sufficiency of Petition for Voluntary Annexation/Fixing Date of Public Hearing:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 – GREAT MEADOWS, INC.

WHEREAS, a petition requesting annexation of an area described in said petition was received on Tuesday, January 4, 2005, by the City of Marion; and

WHEREAS, 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 4th day of January 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

PETITION REQUESTING ANNEXATION

Date: December 28, 2004

TO THE CITY COUNCIL OF THE CITY OF MARION:

1. We the undersigned owners of real property respectfully request that the area described in Paragraph 2 below be annexed to the City of Marion.

2. The area to be annexed is contiguous to the City Marion

and the boundaries of such territory are as follows:

Beginning at a point at the intersection of the current Marion Corporate Limits and the eastern boundary of U.S. Highway 221 By-Pass, said point also being in the center of the Catawba River; thence following the eastern boundary of said U.S. 221 By-Pass in a northerly direction approximately 540 feet to a point, said point being at the intersection of the eastern boundary of said U.S. 221 By-Pass and the northern boundary of Lot 0568 in Block 32 on McDowell County Tax Map 0793; thence following the northern boundary of said Lot 0568 in an easterly direction approximately 831 feet to a point, said point being at the intersection of the northern boundary of said Lot 0568 and the western boundary of old U.S. Highway 221; thence following the eastern boundary of said Lot 0568 and the western boundary of said old U.S. 221 in a southerly direction approximately 645 feet to a point, said point being at the intersection of the southeastern corner of said Lot 0568 and the western boundary of said old U.S. 221, said point also being on the northern margin of the Catawba River; thence following the western boundary of said old U.S. 221 in a southerly direction approximately 35 feet to a point, said point being at the intersection of the western boundary of said old U.S. 221 and the current Marion Corporate Limits, said point also being in the center of the Catawba River; thence following the current Marion Corporate Limits in a westerly direction approximately 1040 feet to the point of BEGINNING.

3. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

NAME/ADDRESS	DO YOU DECLARE VESTED RIGHTS? (Yes or No)	SIGNATURE
_____	No	_____

CERTIFICATE OF SUFFICIENCY –
GREAT MEADOWS, INC.

To the City Council of the City of Marion:

I, J. Robert Boyette, City Clerk, do hereby certify that I have investigated the petition attached herein and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-58.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 4th day of January 2005.

(Seal)

J. Robert Boyette, City Clerk

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31 – GREAT MEADOWS, INC.

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marion, North Carolina:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at City Hall at 7:00 P.M. on Tuesday, January 18, 2005.

Section 2. The area proposed for annexation is described as follows:

Beginning at a point at the intersection of the current Marion Corporate Limits and the eastern boundary of U.S. Highway 221 By-Pass, said point also being in the center of the Catawba River; thence following the eastern boundary of said U.S. 221 By-Pass in a northerly direction approximately 540 feet to a point, said point being at the intersection of the eastern boundary of said U.S. 221 By-Pass and the northern boundary of Lot 0568 in Block 32 on McDowell County Tax Map 0793; thence following the northern boundary of said Lot 0568 in an easterly direction approximately 831 feet to a point, said point being at the intersection of the northern boundary of said Lot 0568 and the western boundary of old U.S. Highway 221; thence following the eastern boundary of said Lot 0568 and the western boundary of said old U.S. 221 in a southerly direction approximately 645 feet to a point, said point being at the intersection of the southeastern corner of said Lot 0568 and the western boundary of said old U.S. 221, said point also being on the northern margin of the Catawba River; thence following the western boundary of said old U.S. 221 in a southerly direction approximately 35 feet to a point, said point being at the intersection of the western boundary of said old U.S. 221 and the current Marion Corporate Limits, said point also being in the center of the Catawba River; thence following the current Marion Corporate Limits in a westerly direction approximately 1040 feet to the point of BEGINNING.

Section 3. Notice of the public hearing shall be published once in The McDowell News, a newspaper having general circulation in the City of Marion at least ten (10) days prior to the date of the public hearing.

Adopted this the 4th of January 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

PUBLIC APPEARANCE – HAROLD BRAGG AND DR. SUZANNE SEWELL – MAINTENANCE OF BRADLEY STREET: Ms. Mia Lorenz (who also serves as City Attorney) appeared before Council on behalf of her clients Mr. Harold Bragg and Dr. Suzanne Sewell requesting that City Council assume maintenance of Bradley Street off of North Main Street.

Mr. Harold Bragg and Dr. Suzanne Sewell were also present and addressed Council stating the need for the City of Marion to assume ownership and maintenance of this road.

Mr. Bragg stated that he had made many repairs through the years to this road and would like to see the City take over maintenance as it would benefit the City and his property.

Dr. Sewell advised that her new business on North Main Street would generate much traffic and that she felt the City would want to maintain this road to enhance this section of the City and her property.

The City Manager noted that Council has addressed this issue about 15 years prior and had stated that the City would consider accepting the road and extending sewer into the residential area of Westwood Village that uses Bradley Street for access, if the owners of the lots in Westwood Village petitioned for annexation. The City Manager stated that the owners of these lots had chosen not to request annexation, so the road had remained private. The City Manager noted several concerns about the section of Bradley Street from Yamasa Japanese Steakhouse extending behind Lady Marian Plaza, including the poor condition of the pavement, the condition of the wall behind Lady Marian Plaza, the narrow width of the road and the possibility that part of the street may be outside the City. The City Manager suggested that taking over the section of Bradley Street between North Main Street and the entrance into Lady Marian Plaza and the new Crestview Animal Hospital might be considered, as this part of the street was in much better condition and was wide enough to meet Powell Bill standards.

Councilman Martin advised that he had observed the condition of the Street for years and agrees with Mr. Bragg and Dr. Sewell that the City should take over this road.

Ms. Kay Sinclair, a property owner on Bradley Road was present and also expressed her desire to see the City take over this road. Ms. Sinclair stated that she would be willing to contact her neighbors and to work on a petition for annexation of the Westwood Village area.

Councilman Little stated that he would like to see this item referred to the Street Committee.

Councilman Cuthbertson advised that Bradley Road has in the past had a serious problem with water standing and freezing in the winter months that comes from the Restaurant on Bradley Road.

Councilman Cuthbertson also advised that he has a problem using City tax dollars to maintain property that may be located outside the City, since the street might not qualify to be on the Powell Bill Map and the State would therefore not allow the use of Powell Bill Funds to repair and/or resurface the road.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to refer this request to the Street Committee.

Councilman Martin stated that, under no circumstances, was he advocating taking City Money to be used in the County.

Councilman Owenby stated that the City also had to remain conscious of the liability of the retaining wall located behind the Lady Marian shopping center.

PUBLIC APPEARANCE – PATTI HART/DAC: Ms. Patti Hart, Chairperson of the Downtown Advisory Committee (DAC), appeared before Council with several recommendations from the DAC.

Ms. Hart advised that the committee was established by City Council in 2002 for a three year period as an ad hoc committee. She noted that this three year period was nearly over and that the recommendation of the DAC would be for Council to give permanent designation by ordinance to the Downtown Advisory Committee. Ms. Hart presented a ordinance drafted by City Planner Suzy Davis to designate the DAC as an official advisory board to City Council.

Ms. Hart stated that the North Carolina Main Street Program recommends that the City avoid formula boards that require a certain number of property owners/business owners, etc. and allow the appointment of any interested party. Ms. Hart stated that the DAC would recommend the appointment of nine voting members plus ex officio members, as follows:

Regular Members
Patti Hart
Gina DeGrechie (MACA Director)
Mike Rabb
Dean Kanipe
Bobbie Young
Donna Stevens (Keep McDowell Beautiful)
Gil Masters
Cliff McLarty
Mayor Everette Clark
Councilman Mike Edwards
Carol Price (TDA Director)
Bob Boyette (City Manager)
Freddie Killough (DBA Director)
Ashley Wooten (County Representative)

Staff:

Suzy Davis (City Planner)

Ms. Hart suggested three year staggered terms for the DAC membership.

Councilman Edwards advised that he had not been able to attend the last few meetings and he felt with the Mayor and City Manager's involvement with this DAC, a Council Member was not necessary on the Committee. Councilman Edwards added that he hoped that the City's presence at the DAC meeting did not discourage the free flow of ideas. Ms. Hart stated that the Mayor and City Manager had been very supportive and had guided the DAC in their work.

A discussion followed.

It was agreed that the Mayor, City Manager, DBA Director and County representative would be designated as ex-officio members, with the nine remaining persons being voting members.

It was the consensus of Council that the DAC bring back the finalized ordinance permanently designating the DAC as an official advisory board to the City Council and that the DAC recommend the terms of the members to be proposed.

APPROVE FESTIVAL ORDINANCE: The City Manager presented a draft Festival ordinance, to establish rules for various downtown festivals and events sponsored by the City. Councilman Cuthbertson suggested some technical corrections and revisions to the ordinance.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to table consideration of the ordinance until a future date, when the corrections noted by Councilman Cuthbertson could be incorporated into the ordinance.

REQUEST – JEMSITE DEVELOPMENT/LOWE'S: The City Manager advised that Jemsite Development, the company that built the Lowe's store on US 70 West, has requested that the City assume ownership and maintenance of the gravity sewer line running from the 221 Bypass across the Great Meadow's property behind McDonald's to behind Wendy's. This section of line is 8 inch PVC. Beyond Wendy's, the line size is 6 inch, which is below City and State specifications and therefore not eligible for City maintenance.

Mr. Patrick Rivers and Mr. John Witherspoon were present for this meeting.

These lines have been owned and maintained by Great Meadows.

Tests have been preformed and the line meets specifications of the City of Marion. The grade of the last manhole has been checked and the line can serve additional development in the vicinity of the new Lowe's store.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to accept ownership and maintenance of this sewer line contingent upon the necessary property owners signing an easement providing the City of Marion with the authority to maintain the sewer line.

ORDINANCE – EUCLID AVENUE PARKING: The City Manager advised that the Street Committee met and reviewed complaints regarding parking on Euclid Avenue between State Street and Greenlee Street. The Street Committee had recommended prohibiting parking on the east side of Euclid Avenue between State Street and Greenlee Street, to alleviate problems with school buses not being able to proceed down the street when traffic is parked on both sides of the street.
Mr. Mickey Poteat and Mr. Roy Finley, residents of Euclid Avenue, were present for this meeting. Mr. Poteat and Mr. Finley stated that they agreed with restricting parking on the east side of Euclid Avenue to address the problems with traffic flow on the street.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION	
EUCLID AVENUE	PARKING AT NE CORNER OF	EAST SIDE, BEGINNING EUCLID AVENUE AND STATE STREET AND CONTINUING in a SE DIRECTION TO GREENLEE STREET	PROHIBITED

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 4th day of January, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-01-04-1

DISCUSS – US 221 SOUTH SEWER EXTENSION: The City Manager advised that the sewer extension on US 221 South had been completed for several months and that no connections had been made.

The Contractor made sewer connections for existing development in the area.

The City Manager recommended that Council waive the tap fee for a six month period as an incentive for property owners to connect. This waiver will not include the Cost Recovery Charge and will be consistent with Council action for other grant projects completed over the past few years.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the recommendation of the City Manager and waive the tap fee, not to include the Cost Recovery Charge, for the US 221 South Sewer Extension for a period of six months.

RESCIND PRIOR CONTACT AWARD/AWARD NEW CONTRACT VAN PURCHASE: The City Manager advised that Jim Cook Chevrolet had notified the City that the

2005 Chevrolet Venture that was approved for purchase on December 7, 2004 by City Council, is no longer available to Jim Cook's due to production problems with General Motors.

However, a Venture LS model, in white, with anti-lock brakes, is for $1,330 more than was originally bid, for a total price of $20,312.

The City Manager noted that the next lowest bid would have been a 2004 Ford Freestar, bid by Legendary Ford, at $19,199.95, but this vehicle is also no longer available.

The City Manager recommended that Council consider award of the contract for the Purchasing Department van to Jim Cook Chevrolet for the 2005 Chevrolet Venture LS, unless Council wished to re-bid the van. The City Manager noted that the $20,312 price for the 2005 Venture LS would still be well below the $24,500 budgeted for the Purchasing Department van.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, Council voted unanimously to accept the $20,312 bid from Jim Cook Chevrolet for the 2005 Venture LS for the Purchasing Department.

DEPOT PROJECT: The City Manager provided Council with an update of the Depot renovation. The City Manager advised that the revised completion date for the Depot would likely extend into February. The City Manager reported several change orders needed for the project, that he would sign without objection. He also presented a revised project budget, listing a project $1,480,000 cost for the entire project. The Depot project budget had included $1,250,000 in funding for the project, after it was determined a few years ago that the Depot did not need to be relocated from the current site. The City's share of the project had been estimated at $125,000, or ten percent. The City Manager stated that close to $60,000 had been paid to the project architects before the project budget for the Depot was established and that a $25,000 payment to the contractors for added expenses due to brick delays had been rejected, so about $15,000-$20,000 in additional City funds may be needed for the project.

Council members stated no opposition to the City Manager approving the change orders presented for the project or for the revised project budget.

ANNUAL CERTIFICATION OF FIREMEN: The City Manager presented the Annual Fireman's Roster/Fireman's Certification for approval. Upon a motion by Councilman Edwards, seconded by Councilman Owenby, Council voted unanimously to approve the following certified roster of the Marion Fire Department:

CERTIFIED ROSTER

MARION FIRE DEPARTMENT

2004

Active	Retired
Donald R Anderson	John W Beck
Chirstopher N Burnette	Clyde W Bobo

James M Coward

Durwood Creson

Douglas A Crisp

Jacob F Crowder

Adam L Davis

Terry L Depoyster

Bradley W Depoyster

John G Fox

Jay S Goins

Charles S King

James Y Laughridge

John C Laughridge

Dennis Laws

Roger W McCarthy

Raymond N McDaniels

Jimmy W Morrris

John M Morrow, III

Fredrick C Nanney

Joseph L Neal

James E Neal, III

Kevin W Owenby

Amanda G Peters

Kenny W Poteat

Kevin W Poteat

Charles L Presnell, Jr.

Scotty W Radford

William R Smith, III

Michael J Williams

Fred T Brown

Ralph M Dark, Jr.

Ralph M Dark, III

Bruce Edwards

Marvin E Hall

Tommy W Harris

James R Hollifield

Millard Hollifield

John M Laughridge, Jr.

James D Parker

Billy R Poteat

Jerry W Poteat

Dennis M Price

John Reese

Jerry C Stevens

Charles G Suttles

James D Willis

William J Young, Jr.

COMMUNITY BUILDING RENTAL RATES: The City Manager advised that the Girl Scout room in the Community Building was nearly ready to be used by outside groups. The City Manager proposed a rental fee similar to that used for the basement.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to adopt the following ordinance, establishing rates for the Girl Scout room in the Community Building:

CITY OF MARION, NORTH CAROLINA
ORDINANCE
COMMUNITY BUILDING RATES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following rates shall be charged for the use of the Marion Community Building effective January 4, 2005.

PER DAY, PER EVENT CHARGE: MAIN OR STREET LEVEL:

ASSEMBLY ROOM USE ONLY	$100.00
KITCHEN AND ASSEMBLY ROOM	$150.00
DEPOSIT FOR EACH USE:	
A. PERSONS HAVING USED THE BUILDING IN THE PAST WITHOUT INCIDENT	$100.00
B. FIRST TIME USERS/OTHERS (ALL DEPOSITS WILL BE IN CASH, NO EXCEPTIONS)	$200.00

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATIONS AUTHORIZED BY THE CITY COUNCIL TO USE THE BUILDING
ON A REGULAR SCHEDULE AND AT SPECIAL RATE:

A. PER DAY, PER EVENT CHARGE $25.00
NO DEPOSIT IS REQUIRED.

PER DAY, PER EVENT CHARGE: BASEMENT:

A. $10.00 PER HOUR OR PORTION THEREOF, WITH A MINIMUM CHARGE OF $20.00 AND A MAXIMUM CHARGE OF $100.00 PER USE, NOT TO EXCEED ONE DAY.
A CASH DEPOSIT OF $50.00 IS REQUIRED FOR EACH USE.

PER DAY, PER EVENT CHARGE: GIRL SCOUT ROOM:

B. $10.00 PER HOUR OR PORTION THEREOF, WITH A MINIMUM CHARGE OF $20.00 AND A MAXIMUM CHARGE OF $50.00 PER USE, NOT TO EXCEED ONE DAY.
A CASH DEPOSIT OF $25.00 IS REQUIRED FOR EACH USE.

ADOPTED this the 4th day of January, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Cuthbertson asked if the City was going to be able to get the wireless connections for the laptops from Charter.

The City Manager advised that City staff were exploring options with Charter and the City's computer consultant.

Councilman Cuthbertson also advised that there were large stainless steel posts on the bypass and wondered if this was part of a widening process.

Councilman Cuthbertson reported that Carriage Station on South Garden Street had experienced flooding during recent rainfalls and that a clogged storm drain behind the Post Office had contributed to the problem. The City Manager stated that he would mention this problem to the Street Superintendent, but that this is one of the first storm drains checked regularly since it does clog frequently.

Councilman Cuthbertson also noted brick discoloration on the front of the new Police Department building.

Councilman Cuthbertson advised of a complaint received from First United Methodist Church about police response to a call about skateboarding activity at the Church. The City Manager stated that he and the Police Chief would explore the complaint.

Councilman Owenby advised that the curb on West Henderson Street does not meet the sidewalk and that he felt this would create unnecessary mowing.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manger/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, January 18, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News; Suzy Davis, City Planner.

GUESTS PRESENT: April Westmoreland and Beth Burleson, Johnson Price and Sprinkle; Scott Suttle 41 Creson Drive, Marion, NC; Erick Schooley 272 Plantation Drive, Marion, NC; Jonathan Braswell 1185 Mud Cut Road, Marion, NC; Stan Braswell PO Box 2034, Marion, NC; Bryan McMahan 59 Devonwood Drive, Marion, NC; Melanie and Rachel McMahan 59 Devonwood Drive, Marion, NC; Kim Thomas 87 Dewey Lanes Drive, Marion, NC 28752; Ashley Wooten 160 Spring Street, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - January 4, 2005 Minutes
B. Approve Refund Community Building
The City of Marion scheduled the 2005 Town Meeting for Thursday, January 20, 2005, not realizing that the Lion's Club was meeting that night and had already paid their rent. The rental amount of twenty-five dollars will be refunded or credited to the Club.

C. Approve Tax Refund
A discovery scroll from McDowell County Tax Department for 2004 discovery tax bills showed McDowell Cornerstone Credit Union had been audited and billed for 1999, 2000, 2001,2002 and 2003. Two bills for each year were created, mailed and paid.

Ms. Judy Pittman, who handles the business personal property listing for McDowell County, advised that there was an error in the Audit and that five of the ten bills generated were incorrect.

Cornerstone Credit Union – Refund amount - $316.08

INTRODUCTION OF NEW EMPLOYEE – FINANCE DIRECTOR: The City Manager introduced Ms. Harriett Thomas as the City of Marion's New Finance Director. Ms. Thomas is a CPA with 24 years of experience in public accounting, including the last five as the City's auditor for Johnson, Price & Sprinkle. Ms. Thomas began work on January 3, replacing retired Finance Officer Robert Parker.

Mayor Clark and the Council Members all welcomed Ms. Thomas.

PUBLIC HEARING – RE-ZONING – EAST COURT STREET: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that Mr. Randy Parker, owner of City Tire on East Court Street, submitted an application to rezone the property that City Tire is located on and the vacant property across the street,(where a house was recently torn down)

For some unknown reason the City Tire property is zoned residential.

Mr. Parker would like both properties to be re-zoned from R-2 General Residential to C-2, General Commercial.

It is the recommendation of the Planning Board that this request be approved.

There were no Citizens present opposing this request.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to approve the request from City Tire to rezone two parcels at East Court and Clay Streets from R-2 General Residential to C-2 General Commercial as recommended by the Planning Board.

PUBLIC HEARING – ADOPT ANNEXATION ORDINANCE – VOLUNTARY ANNEXATION: Mayor Clark opened the Public Hearing.

The City Manager advised that this Public Hearing is for the annexation request of a thirteen (13) acre parcel owned by Great Meadows Property, located immediately across the Catawba River from the Legendary Ford property on US 221 North.

A brief discussion followed.

There were no citizens present to discuss this Ordinance.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION, NORTH CAROLINA – GREAT MEADOWS, INC.

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, January 18, 2005, after due notice by publication on Friday, January 7, 2005; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of January 31, 2005:

Beginning at a point at the intersection of the current Marion Corporate Limits and the eastern boundary of U.S. Highway 221 By-Pass, said point also being in the center of the Catawba River; thence following the eastern boundary of said U.S. 221 By-Pass in a northerly direction approximately 540 feet to a point, said point being at the intersection of the eastern boundary of said U.S. 221 By-Pass and the northern boundary of Lot 0568 in Block 32 on McDowell County Tax Map 0793; thence following the northern

boundary of said Lot 0568 in an easterly direction approximately 831 feet to a point, said point being at the intersection of the northern boundary of said Lot 0568 and the western boundary of old U.S. Highway 221; thence following the eastern boundary of said Lot 0568 and the western boundary of said old U.S. 221 in a southerly direction approximately 645 feet to a point, said point being at the intersection of the southeastern corner of said Lot 0568 and the western boundary of said old U.S. 221, said point also being on the northern margin of the Catawba River; thence following the western boundary of said old U.S. 221 in a southerly direction approximately 35 feet to a point, said point being at the intersection of the western boundary of said old U.S. 221 and the current Marion Corporate Limits, said point also being in the center of the Catawba River; thence following the current Marion Corporate Limits in a westerly direction approximately 1040 feet to the point of BEGINNING.

Section 2. Upon and after January 31, 2005, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 18th day of January 2005.

A. Everette Clark, Mayor

ATTEST: **Approved As To Form:**

J. Robert Boyette, City Clerk City Attorney

PUBLIC HEARING – SKATE PARK/PARTF GRANT APPLICATION: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis gave an overview of Skate Park Grant Application as follows:

- Site Preparation will include the demolition of existing tennis court by City staff. The City has received a quote of $41,000 for a concrete slab conducive to skateboarders and skaters. The equipment costs could range from $65,000 to $109,000. The overall estimated cost would be around $130,000.

Ms. Davis advised that McDowell's Recreation Director, Stan Braswell, and members of the Skate Park Committee had visited other skate parks in the area to get advice and ideas on elements to include in the Skate Park. Other communities encouraged the involvement of skaters themselves to insure the park "flows" well and is used.

The Skate Park Committee was previously formed by the Marion City Council and the McDowell County Board of Commissioners and includes several of the skaters, along with downtown merchants. This Committee was given the task to develop a site plan and design for a Skate Park that would be adequately used by youth. The committee requested bids from companies that sell Skate Park equipment. The quotes were higher than expected.

At that point the City decided to apply for the Parks and Trust Fund Grant (PARTF) to cover half of the costs.

Mayor Clark advised that he along with Council Members are committed to this project. Council members expressed their interest in moving ahead with the Skate Park as soon as grant contracts are signed, if the PARTF grant is received.

The City Manager advised that the $130,000 budget for the park was higher than initially forecasted, but noted that $48,525 had already been raised, and that the possible $65,000 in PARTF funding could make the project possible, with some additional fundraising.

Some of the youth present explained their involvement in the design of the park this far. They advised that the youth had helped to develop the design for the park and would give input into the rules and regulations for this park. The youth asked Council if there was any thing that they could do to help with the project, while the grant application was reviewed by the State.

Council members suggested some fundraising ideas.

Committee Members Stan Braswell, McDowell County, Recreation Director; Kim Thomas, Representing Edward D. Jones and Ashley Wooten, Assistant to County Manager were among those present for this Public Hearing.

There were many skaters present for this meeting, including Scott Suttle, Erick Schooley, Jonathan Braswell and Bryan McMahan.

Several interested parents supporting the park was present for this meeting as well.

A lengthy discussion followed.

There were no citizens present in opposition of this proposed park.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to authorize staff to submit a PARTF grant application in the amount of approximately $130,000 for the proposed Skate Park.

PRESENTATION OF 2003-04 CITY AUDIT REPORT: Ms. April Westmoreland CPA of Johnson, Price & Sprinkle appeared before Council and presented the City of Marion's 2003-04 Audit Report. Ms. Westmoreland reported that the City had again received an unqualified, or clean opinion, and that the City's finances were in good condition.

Ms. Westmoreland introduced the new Managing Partner for the Marion Johnson, Price & Sprinkle office, Beth Burleson. Ms. Burleson replaces Roger Sprinkle, who recently retired as the local Managing Partner.

A copy of this report can be found on file at City Hall.

A brief discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the 2003-04 Audit Report as presented.

AWARD CONTRACT – PURCHASE OF PICKUP TRUCK – SANITATION: The City Manager presented Council with a memo from Kathy Shook, Purchasing Agent, with the following proposals for a new pickup truck to be used in the Sanitation Department for commercial garbage collection as follows:

Jim Cook Chevrolet 2005 Colorado $11,381.25
Legendary Ford 2005 Ford Ranger 15,272.95

The truck would also be outfitted with a dump hopper. The total amount budgeted for the truck and hopper is $25,000. The Hopper has been quoted at $4,878.00.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to accept the low bid of Jim Cook Chevrolet in the amount of $11,381.25 for the 2005 Chevrolet Colorado for the Sanitation Department.

AWARD CONTRACT – PURCHASE OF POLICE VEHICLES: The City Manager presented Council with a memo from Kathy Shook, Purchasing Agent, with the following proposals for new Police Department vehicles as follows:

Vic Bailey Ford: Three marked cars @ $30,961.00 each = $92,883.00
One unmarked car @$23,823.00
Total Bid **$116,706.00**

Phillips Ford: Three marked cars @ 31,996.00 each = $95,988.00
One unmarked car @ 24,128.00
Total Bid **$120,116.00**

The City Manager advised that these vehicles came fully equipped, which had proven to be less expensive the past two years than the City buying a basic patrol car and equipping it through other vendors.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the low bid of $116,706.00 from Vic Bailey Ford as stated above, to purchase three marked and one unmarked car for the Police Department.

STREET COMMITTEE RECOMMENDATION – BRADLEY STREET MAINTENANCE: The City Manager advised that the Street Committee met on January 5th and reviewed the request of Mr. Harold Bragg and Dr. Suzanne Sewell for the City to assume maintenance of Bradley Street beside and behind Lady Marian Plaza.

The City Manager stated that the Street Committee was concerned by several factors, including the current poor condition of the street, some parts of the street that had sunk due to unknown reasons and the wall adjacent to the street.

The City Manager reported that the recommendation of the Street Committee was that the City not assume maintenance of Bradley Street from Yamasa Japanese Steakhouse to Westwood Chateau Drive, but instead focus on the part of the street from North Main Street to the driveways into Lady Marion Plaza and the new Crestview Animal Hospital.

The City Manager advised that Mr. Harold Bragg had verbally withdrawn his request for the City to maintain Bradley Street behind Lady Marian Plaza.

The City Manager presented information on the projected costs to resurface the 150 foot section of the street from North Main Street to the driveways into Lady Marian Plaza and Crestview

Animal Hospital. The resurfacing estimate is $4,000 and the City Manager stated that this work could be done when other streets are resurfaced by the City in the Spring.

A discussion followed.

Councilman Little expressed concern about the City taking over even a portion of Bradley Street.

Councilman Cuthbertson stated that the drainage situation on the road, resulting from water leaking from the Yamasa Japanese Steakhouse, would have to be addressed, for public safety reasons.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted to assume maintenance of the 150 foot section of Bradley Street from North Main Street to the driveways into Lady Marian Plaza and the new Crestview Animal Hospital.

The voted was as follows:

Councilman Cuthbertson	Yes
Councilman Edwards	Yes
Councilman Martin	Yes
Councilman Owenby	Yes
Councilman Little	No

Council members agreed that left turns should be prohibited from Bradley Street onto North Main Street and that the City Manager should present the intention of Council to make this prohibition to Mr. Bragg and Dr. Sewell.

SCHEDULE FIRE COMMITTEE MEETING: The City Manager suggested that the Fire Committee, composed of Mayor Clark, Councilman Little and Councilman Edwards, meet prior to the February 2 joint meeting with the County Commissioners to discuss the City's position regarding the Marion Area Fire District tax rate. Council agreed that the Fire Committee should meet to review the City's position for the meeting with the County. A meeting date of Tuesday, January 25, at 4:30 p.m. at the Fire Department was agreed to by the Committee.

SCHEDULE STREET COMMITTEE MEETING: The City Manager advised that a complaint had been received about parking on Ridgecrest Drive. Council agreed to refer this matter to the Street Committee for review. A Street Committee meeting was scheduled for Monday, January 24, at 1:00 p.m.

US 221 NORTH WATER/SEWER EXTENSION: The City Manager reported that the County had agreed to jointly and evenly fund with the City the estimated $25,000 cost to elevate the pump station controls and generator platform for the wastewater pump station being installed as part of the US 221 North Water and Sewer Improvements Project. The elevation is needed due to observed flooding the previous September during Hurricane Frances that exceeded the 100 Year Base Flood Elevation. The City Manager stated that the County would attempt to fund the entire cost for the elevation through a request to the State of North Carolina for Disaster Relief Funding. If this funding is not received from the State, then the City and County can evenly split the $25,000 cost. Council agreed by consensus with this method of funding the elevation of the pump station controls and the generator platform.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

COUNCILMAN COMMENTS:

Councilman Edwards reported that he had received complaints about the flag at the Fire Department not being taken down prior to sunset. The City Manager stated that the Street Department would be installing a spotlight on this flag in the near future, so that the flag could fly at all times, as is done at all other City facilities.

Councilman Little stated that he believed a guard rail was needed on Rutherford Road at the point where Young's Fork runs under the road. The Mayor and Council agreed that the City Manager should contact the Department of Transportation to stress the need for this guardrail to be installed as soon as possible.

Councilman Little also advised of several railroad cars blocking the South Garden Street railroad crossing for a period of time the day before. Chief Elliott was asked to look into this matter with Norfolk Southern Railway.

CLOSED SESSION – DISCUSS THE ACQUISITION OF REAL PROPERTY UNDER N.C.G.S. 143-318.11(a)(5): Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to go into Closed Session under N.C.G.S. 143-318.11(a)(5) to discuss a matter involving the acquisition of real property.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to return to Regular Session. Mayor Clark announced that no action had been taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manger/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held its Annual Town Meeting on Thursday January 20, 2005 at 7:00 P.M. at the Marion Community Building.

BOARD MEMBERS PRESENT: Mayor Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Steve Little, Billy Martin and Cecil Owenby.

OTHERS PRESENT: J. Robert Boyette, City Manager; Debi Sherlin, Secretary; Freddie Killough, Downtown Business Association Director; Suzy Davis, City Planner; Kathy Shook, Purchasing Agent; Jay Suttles, Building Inspector; Harriett Thomas, Finance Director; Buck Byrd, Water Plant Superintendent; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Glen Sherlin, Public Utilities/Projects Director; Roger Estes, Street Superintendent; Steve Basney, Water Superintendent; Tommy Wilson, Sanitation Supervisor; Larry Carver, Wastewater Treatment Superintendent; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Kit Alverson, 240 Crescent Drive, Marion, NC; Elsie Logan, Marion, NC; Patricia McNeil PO Box 1316 Marion, NC; Mrs. Orea Goode 20 West Henderson Street, Marion, NC; Cliff McLarty 242 North Main Street, Marion, NC; James Lindsey PO Box 881, Marion, NC; Will McAdams 145 Highland Drive, Marion, NC; Marilyn Foreman 773 Peppers Creek Road Marion, NC; Garland Franklin 186 Spring Street, Marion, NC; Brady Brooks, 20 Meredith Lane, Marion, NC 28752; Woody Killough 275 Holly Hill Drive Marion, NC; Dean Walker 148 North Garden Street, Marion, NC.

UTILITY REPRESENTATIVES:

PSNC ENERGY:
Don Hallingse

UNITED STATES POSTAL SERVICE:
No Representative

CHARTER COMMUNICATIONS:
Kenny Parker

MCDOWELL COUNTY EMERGENCY MANAGEMENT – 911 ADDRESSING SYSTEM:
Carroll Hemphill

DUKE ENERGY COMPANY:
Don Hollifield
Jason Hollifield
Sandy Tallant

VERIZON PHONE COMPANY:
Chris Vaughn
Joe Taylor

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION:
Mark Teague
Anna Henderson

TOWN MEETING:

Mayor Clark opened the meeting and thanked everyone present for attending. Council members also stated their appreciation to the invited guests and the public for their presence.

The City Manager introduced City staff and the invited guests.

Mr. Mark Teague presented an update on the City's request for a traffic and/or pedestrian crossing signal at West Henderson Street and Sugar Hill Road. He advised that the request for a traffic signal did not meet the North Carolina Department of Transportation guidelines. Mr. Teague presented slides showing a possible flashing signal to assist pedestrians with crossing the street at this location.

There were many citizens present for this discussion from the West Marion Community who voiced their concerns for safety and human life. Ms. Orea Goode, Mr. James Lindsey, Ms. Elise Logan and Ms. Patricia McNeil all stated that the proposed flashing signal was not adequate to provide for pedestrian safety at West Henderson Street and East Wilhemenia Street.

Councilman Martin stressed the need for a traffic signal at this intersection and stated that human life should be the paramount concern of DOT.

Mayor Clark suggested the placement of a pedestrian crossing or signal that would force traffic to stop.

Other Council members stated their opinion that the plans presented by DOT were not adequate to protect pedestrians.

Mr. Teague stated that he would discuss this matter further with the City and explore possible options.

Mr. Kit Alverson provided the Department of Transportation with a list of several traffic signals that he believed were not properly timed.

Mr. Brady Brooks complimented City Officials for the way the City looks and is maintained.

Ms. Orea Goode inquired about billing and metering issues involving Verizon and Duke Power. Ms. Goode also requested that the City completely clear the right of way behind her house on West Henderson Circle.

Mr. James Lindsey advised Duke Power of concerns about billing issues.

Ms. Marilyn Foreman informed City Council of the work of a committee attempting to develop a "No Kill" Animal Shelter. She inquired about available property.

Mr. Alverson complimented the City on the pleasant taste of the water, the cleanup of streets and about trash pickup.

Ms. Orea Goode mentioned the burden imposed on citizens by various utilities such as Verizon that charge $1.50 for customers paying their bill in person. The City Council directed the City Manager to work with the different utility companies to develop a list of authorized payment locations in and around the City and the charges required to pay a bill in person.

City Manager Bob Boyette presented a Power Point Presentation featuring the City's 2004 highlights and the work of the various departments of the City of Marion.

ADJOURNMENT: The town meeting adjourned at 9:00 P.M.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Pages 459 and 460 were inadvertantly skiped. However, no minutes are missing.

DWS

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 1, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Dr. Suzanne Sewell 522 Starr Crest Drive, Marion, NC 28752; Charlene Wilson, 124 Trouble Drive, Marion, NC; Jean Carson, 85 California Avenue, Marion, NC; Stephen, Tawanna and Darren Carson 146 Stephens Road, Morganton, NC; Adriana Morris, 508 Riverside Drive, Morganton, NC; Jermaine, Lisa and Tre' Carson, 203 Smithville Hollow Road, Spruce Pine, NC.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN BILLY MARTIN:
Councilman Martin selected the Citizen of the month for February:

William "Bill" Carson, Jr.

Councilman Billy Martin advised that in memory of Mr. Bill Carson who passed away last year, he wanted to present this honor to Mr. Carson's Family. Mr. Carson's wife Wilma, their two sons, Stephan and Jermaine and their families were present to accept this honor.

Mr. Carson was born and raised in McDowell County and graduated from Hudgins High School in 1955. He was married to Ms. Wilma Jean Silver for forty-six years. The Carson family has ties that dates back to the Carson House located here in McDowell County.

Mr. Carson was a member of the Mt. Moriah Baptist Church and set a wonderful example of what a family man should be. He was a kind, considerate and compassionate man that was admired and loved by many.

Council Members and family members all shared kinds word about Mr. Carson.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council members voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - January 18, 2005 Regular and Closed Session
B . Approve Main Street Car Show Request – MOPAR Club
Saturday, October 1, 2005
4:00 P.M. – 8:00 P.M.
Main Street will be blocked off between Fort and Henderson Streets.
C. Receive Report of Unpaid Taxes and Request to Advertise
Council received a report of unpaid 2004 Real Property Taxes in the amount of $156,782.28.

Council approved the advertisement of delinquent taxes in The McDowell News on Wednesday, May 4, 2005

PUBLIC APPEARANCE – DR. SUZANNE SEWELL – BRADLEY STREET MAINTENANCE: Dr. Sewell appeared before Council and thanked Council for accepting the maintenance of part of Bradley Street off of North Main Street. She advised that she appreciated everything Council has done; however, she has concerns about the City's intentions to restrict left hand turns from Bradley Street onto North Main Street. Dr. Sewell stated that she is

concerned that tractor trailers delivering to her hospital and/or Lady Marian Plaza will not be able to easily enter and exit Bradley Street if a physical barrier is placed on Bradley Street to prevent left turns onto North Main Street. She also stated that this restriction would be an inconvenience to her customers.

Dr. Sewell asked that if Council decides to enforce this no left turn, that they use signage only and not a physical barrier.

A lengthy discussion followed.

Police Chief Elliott advised that, in his opinion, a no left turn sign restriction should be adopted.

The City Manager suggested that an ordinance to establish no left turns at the location, without a physical barrier, would be a compromise and would be consistent to the left turn prohibition on Montevista Avenue at North Main Street.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following ordinance to place a stop sign at the intersection of Bradley Street and North Main Street, to prohibit left hand turns from Bradley Street onto North Main Street and to mark the left turn restriction with signage and painted markings on the street:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
BRADLEY STREET	STOP SIGN	AT NORTH MAIN STREET
	LEFT TURN PROHIBITED	ONTO NORTH MAIN STREET

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of February, 2005.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-05-02-01-2

REQUEST – SEWER CONNECTION OUTSIDE THE CITY – 157 CLARK STREET:
The City Manager advised that the Eastfield Sewer Project has been completed.

An application from Mr. Pedro Lopez has been received for water & sewer service at 157 Clark Street. This location is outside the City Limits.

The City Manager stated that City policy requires City Council approval of all sewer connections outside the City Limits, but suggested that Council may want to give blanket approval to any sewer connections in the Eastfield project area, since all existing structures in this area are now connected to City sewer as part of the recently completed project.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve this request and to provide the City Manager with authorization to approve any other requests for sewer service from the Eastfield area, provided that all applicable fees are paid.

ORDINANCE – PARKING – RIDGECREST DRIVE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
RIDGECREST DRIVE	PARKING PROHIBITED	SOUTH SIDE, BEGINNING AT SE CORNER OF RIDGECREST DRIVE AND MILLER AVENUE AND CONTINUING 35 FEET IN A NE DIRECTION
		NORTH SIDE, BEGINNING AT NE CORNER OF RIDGECREST DRIVE AND MILLER AVENUE AND CONTINUING 35 FEET IN A NE DIRECTION

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of February, 2005.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-05-02-01-1

CITY COUNCIL MEETING DATE DISCUSSION: The City Manager advised that Mayor Clark, Councilman Little, Councilman Edwards and himself would be attending the National League of Cities conference in Washington D.C. from March 11 to 15, which would conflict with the scheduled Council meeting on March 15.

It was the consensus of Council to hold its Regular Scheduled meetings in March on March 1 and 22.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSING COMMENTS:

Councilman Cuthbertson advised that news reports indicate that much of the FEMA Funds are being directed to Eastern North Carolina, despite great needs in Western North Carolina. Mayor Clark advised that efforts are being made by several groups to bring attention to this matter and that funds should soon be coming to Western North Carolina.

Councilman Cuthbertson advised that there are some sections of broken curb on South Main Street between Westmoreland Funeral Home and the old Heilig Meyers building.

Councilman Martin advised that he had attended a Leadership Training Institute Seminar in Savannah, Georgia the prior week and that he would be getting more involved in N.C. League of Municipalities and National League of Cities meetings.

Mayor Clark advised that he had attended the North Carolina Main Street Conference in New Bern the week before, and had accepted an award for Best Public Project for the Police Department expansion. Mayor Clark also received an award as the 2004 Main Street Champion for Marion.

Mayor Clark advised that some anti-annexation bills had been submitted in the General Assembly and that the City may need to be ready to lobby legislators to preserve annexation authority for municipalities.

Councilman Owenby congratulated the City Manager and Police Chief for their recent receipt of awards as Region C City Manager of the Year and Police Chief of the Year, respectively. Mr. Owenby also noted that McDowell News Assistant Editor Richelle Bailey was selected as News Media Person of the Year for Region C.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a special Meeting with the McDowell Board of Commissioners on Wednesday morning, February 2, 2005 at 7:00 A.M. in the Commissioners Board Room located at 60 East Court Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

McDOWELL COUNTY BOARD OF COMMISSIONERS MEMBERS PRESENT: Andy Webb, Chairman, David Walker, Vice Chairman, Commissioners Dean Buff, Michael Lavender and Barry McPeters.

OTHERS PRESENT: Bob Boyette, City Manager; Chuck Abernathy, County Manager; Jim Neal, Fire Chief; Carroll Hemphill, County Emergency Services Director; Carrie Padgett, Clerk to the McDowell County Board of Commissioners; Terry Depoyster, County Maintenance Director/City Volunteer Fireman; Mike Conley, News Reporter, McDowell News.

OPENING OF MEETING/WELCOME:

Chairman Webb called the meeting to order and welcomed the City Council. Mayor Clark thanked the Board of Commissioners for their hospitality in hosting the meeting and in discussing issues involves the Marion Area Fire District. Chairman Webb gave an opening statement regarding MA District tax issues and the general position of the Commissioners.

MARION AREA FIRE DISTRICT ISSUES:

County Manager Chuck Abernathy presented information about the contract between the City and County for fire service to the MA District. Mr. Abernathy went over various issues regarding service to the district, the purchase of a new fire truck for the District and funding of City fire operations and tied these issues to the contract. Mr. Abernathy also presented historical information related to funding of City fire operations from the County General Fund and the MA District tax.

The City Manager stated that City Council has requested since the fall of 2003 that the County Commissioners increase the MA District tax from the current rate of $.02 per $100 valuation to $.04 per $100 valuation to ensure for greater equity between funding of the City Fire Department by the City taxpayers and the MA District taxpayers. The City Manager presented several measures showing that the District's share of property value, population, structures and call volume exceeded that of the City, yet the District was funding only about 33 percent of the City's Fire Department operations in 2004-05.

Mayor Clark stressed the need for equity between the City and District taxpayers and noted that the City was providing a contracted service to the MA District. Mayor Clark suggested that the MA District could be asked to vote on the tax increase, as had been done in other fire districts.

Mayor Pro Tem Little presented a graphic showing that City taxpayers were paying at least $.06 per 100 valuation for fire service, that other fire districts around the north, east and south of the City were paying fire district taxes of $.03 to $.04 per $100 valuation, while the MA District, located in the middle of these other areas, was paying only $.02 per $100 valuation.

Councilman Martin noted that the City could not continue to provide fire protection to the MA District at the current rate. He stated that the County needed to make a decision, as this issue had been discussed for a long time.

Councilman Owenby stated that the City Council was concerned about maintaining equity between City taxpayers and District taxpayers and that the numbers reflected the justification for a tax increase.

The County Commissioners asked several questions about the proposed tanker/pumper needed to serve the District, about the budget/equity measures discussed by the City Manager and about service and tax issues.

A discussion was held about options to increase the tax rate or to schedule a vote in the district on the increased tax rate.

Mayor Clark suggested that the entire fire service agreement between the City and County should be rewritten or amended as necessary to reflect the desires of the City and County. Chairman Webb stated that the County agreed on the need for the purchase of a new tanker/pumper for the District and that the County would work to see that this need was met. He stated that the tax issue would take more time to discuss and resolve.

Commissioner Lavender made a motion that the County purchase the tanker/pumper shown in the specifications prepared by the City, finance the truck for a 10 year term and take any payments for the truck out of the MA District proceeds if the tax rate is increased.

Chairman Webb stated that he would not accept this motion.

Further discussion was held on the truck and MA District tax issues, with agreement by both the City Council and the Board of Commissioners to try to develop solutions to the issues presented.

ADJOURNMENT:

There being no further business, the meeting was adjourned by Chairman Webb.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met for a Special Called Meeting (Planning Session) on Saturday Morning February 5, 2005 at 7:00 A.M. starting at Country Side Barbeque for breakfast, then at the City Hall Conference Room located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager

The following Topics were discussed during the Planning Session:

I. Finance/Budget
II. Planning and Development
III. Wastewater Operations
IV. Water Operations
V. General Administration/Ordinance/Policies

The Mayor and City Council gave general guidance on the preparation of the 2005-06 budget and on priorities for City projects.

The Planning Session will continue at a later date.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, February 15, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Lt. Scott Spratt, Police Department; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Howard & Faye Degarde, Somerset Place Marion, NC; Freddie Killough, Marion Downtown Business Association, Marion, NC; Joyce Tyler, Marion, NC; Mae Bryson, Marion, NC; Mark Wise, Hospice of McDowell County; Virginia Edney; Airport Road, Marion; NC; Frances Brookshire, Airport Road, Marion, NC; Patti Hart, Downtown Advisory Committee, Nebo, NC, Caroline Moore, McDowell Rotary Club President, Marion, NC; Dan Smith, Marion Rotary Club President, Nebo, NC; Harold Walker, Marion, NC; Becky Cross, Marion, NC; Richard and Ruby Cox Marion, NC; Jim Butler, Marion, NC; Dean Kanipe, Marion, NC; Mia Lorenz and Jennifer Jackson City Attorneys.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council members voted unanimously to approve the consent Agenda as follows, excluding item B. Rotary Proclamation:

A. Approval of Minutes - January 20, 2005 Town Meeting
February 1, 2005 Regular Minutes
February 2, 2005 Special meeting
February 5, 2005 Planning Session Minutes

B . Approve Proclamation – 100th Anniversary of Rotary International.

C. Approve Resolution – Treatment of Over or under Payments of Taxes:

RESOLUTION
REGARDING TREATMENT OF SMALL UNDERPAYMENTS OR OVERPAYMENTS OF TAXES

WHEREAS, the Tax Collector has determined certain taxpayer accounts may have an underpayment or overpayment of less than one dollar ($1.00); and

WHEREAS, these payments are usually the result of taxpayers making payments in incorrect amounts; and

WHEREAS, the cost to the tax office of collecting the balance or making a refund is usually larger than the amount of the refund or balance itself; and

WHEREAS, G.S. 105-357(c) permits the Tax Collector to treat all underpayments and overpayments of one dollar ($1.00) or less as accurate payments; and

WHEREAS, the Tax Collector must keep an accurate record of underpayments and overpayments, by receipt number and amount, and this record must be included in any settlement required of the Tax Collector.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Marion does hereby adopts this resolution pursuant to G.S. 105-357(c) permitting the Tax Collector to treat all underpayments and overpayments of one dollar ($1.00) or less as accurate payments.

ADOPTED this the 15th day of February, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

R-05-02-15-1

D. Approve City Funding of Community Building – DBA Easter Egg Hunt: DBA Annual Easter Egg Hunt/Easter Bonnet Parade – Rental fees to be paid from DAC budget

APPROVE PROCLAMATION – 100TH ANNIVERSARY OF ROTARY INTERNATIONAL: Mayor Clark asked that this Proclamation be pulled from the Consent Agenda.

Ms. Caroline Moore and Mr. Dan Smith, Presidents of the two Rotary Clubs in McDowell County, were present for this meeting in support of the Proclamation. Ms. Moore and Mr. Smith spoke briefly on the upcoming 100th Anniversary of Rotary International.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adopt the following Proclamation:

Rotary International Proclamation

WHEREAS, Rotary International, founded on February 23, 1905 in Chicago, Illinois USA, is the world's first and one of the largest non-profit service organizations; and

WHEREAS, there are over 1.2 million Rotary club members comprised of professional and business leaders in over 31,000 clubs in more than 165 countries; and

WHEREAS, the Rotary motto "Service Above Self" inspires members to provide humanitarian service, encourage high ethical standards, and promote good will and peace in the world; and

WHEREAS, Rotary funds club projects and sponsors volunteers with community expertise to provide medical supplies, health care, clean water, food production, job training, and education to millions in need, particularly in developing countries; and

WHEREAS, Rotary in 1985 launched Polio Plus and spearheaded efforts with the World Health Organization, U.S Centers for Disease Control and Prevention, and UNICEF to immunize the children of the world against polio; and

WHEREAS, polio cases have dropped by 99 percent since 1988 and the world stands on the threshold of eradicating the disease; and

WHEREAS, Rotary is the world's largest privately-funded source of international scholarships and promotes international understanding through scholarships, exchange programs and humanitarian grants; and

WHEREAS, more than 35,000 students from 110 countries have studied abroad since 1947 as Rotary Ambassadorial Scholars; and

WHEREAS, Rotary's Group Study Exchange program has helped more than 46,000 young professionals explore their career fields in other countries; and

WHEREAS, 8000 secondary-school students each year experience life in another country through Rotary's Youth Exchange Program; and

WHEREAS, Rotary International was first established in this city over 66 years ago; and.

WHEREAS, there are over 96 Rotary club members in the two clubs in this city sponsoring and supporting service projects to address such critical issues as poverty, health, hunger, illiteracy, education, and the environment here and abroad; and

WHEREAS, these projects include, Christmas gifts for deserving children, scholarships, park beautification, adopt a highway, food for the hungry, Relay for Life, a picnic shelter, Habitat for Humanity, The Corpening YMCA, playground equipment, National Night Out, support of foster parents and foster children and many others.

NOW THEREFORE BE IT PROCLAIMED that I, A. Everette Clark, Mayor of the City of Marion, do hereby proclaim February 23, 2005, as Rotary International Day in Marion, North Carolina, and encourage all citizens to join us in recognizing Rotary International for 100 years of service to improving the human condition in local communities around the world.

PROCLAIMED this 15th day of February, 2005

A. Everette Clark, Mayor

PUBLIC APPEARANCE – HOSPICE: Mr. Mark Wise appeared before Council requesting funding for the Hospice Capital Campaign.

Mr. Wise thanked Council for taking the time to hear about Hospice of McDowell County's Center of Hope project, to include construction of a new facility in the City Limits at Airport Road and Bakersville Road.

The purpose of this presentation is to communicate the important points of our project. Those are 1) Growth; 2) Need; and 3) Hope.

1st Important Point of our Project is Growth

In the early 1990's Hospice of McDowell County was founded in a Sunday School at First Baptist Church in Marion. In 1995 we became Medicare/Medicaid certified and moved to our present location on Logan Street, the former Hagna House, provided by First Baptist Church.

At that time I don't think anyone could have imagined the growth we would see – 300% in the last six years, and almost 500% since that first year. Our average daily census went from 9.8 patients per day in 1998 to 32 patients per day in 2004. The last quarter of 2004 we averaged 40 patients per day. Hospice now serves more than ¼ of all deaths in McDowell County. These graphics are shown on your handout. The number of staff and volunteers has grown along with the census to 21 regular employees.

2nd Important Point of our Project is Need

This **growth trend** is projected to continue as the **baby boomers age** and more people realize the **benefits of end-of-life planning, earlier Hospice care**, and understand that Hospice can be **provided in nursing homes**. Nationally Hospice continues to expand into total end-of-life care **beyond our current restrictions** of six months or less to live.

Locally, we have **maximized our space** at the offices on Logan Street, making numerous changes and revisions including closing in the carport to add space for the nurses and dividing the front room with a wall to add a separate room for the Certified Nursing Assistants.

Seeing this growth and after careful consideration of various options over an 18-month period, the Board of Directors decided to build a **facility** that will serve the needs of the community for years to come. It will include room to expand services for more patients, space to offer outreach programs for the entire community during times of grief and room to provide education on end-of-life planning and other issues, as well as increased administrative and operational space. A long-term goal of providing a dedicated building for inpatient care is also included in the plans.

The $1.4 million **campaign** is underway and is to-date over halfway completed. We need the City's help.

We were anticipating larger grants from two foundations and help from a number of businesses in the county. Some of these expectations have not been realized. For example, we requested $350,000 from one foundation and received $75,000.

We have a number of needs, but we believe the Center of Hope will be a reality.

3rd Important Point of our Project is Hope

Someone once said, "Hope is faith, holding out its hand in the dark." Hospice was founded on faith and hope. Our mission statement reflects the value of hope: "Hospice seeks to inspire hope to those facing end-of-life." At Hospice one of the greatest rewards is to see tears of relief and joy when Hospice is able to step in and help.

Mr. Wise advised that his purpose was to communicate the important points of their project. Those are 1) Growth (300% in 6 years); 2) Need (space, room to grow and financial support); and 3) Hope - For years Hospice has stepped in and helped those in need by inspiring hope. It is their hope that the City of Marion will be very generous in financially supporting their project.

A discussion followed.

Mayor Clark stated that the City had to prudent and follow State law in the use of tax money, but that other revenue sources, such as ABC funds, were used by Council to fund outside agencies and programs benefiting the entire community.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously for the City to donate $10,000 per year for a period of three years, for a total of $30,000, to Hospice. This money will be allocated from the ABC Revenues.

PUBLIC APPEARANCE – HOWARD DEGARDE: Mr. Howard Degarde appeared before Council to discuss the need for a water extension to Airport Road. He lives at Sunset Place off of Airport Road. Mr. Degarde advised that he has a significant investment in his property as do other persons in this area who are in need for water service.

The City Manager had previously sent Mr. Degarde a letter advising City Policy on Water Extensions and referring this matter to McDowell County.

A lengthy discussion followed.

The City Manager advised that McGill Associates could provide a cost estimate of the extension for a reasonable price.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to direct the City Manager to obtain a preliminary cost estimate for the proposed water extension from McGill Associates.

APPROVE ORDINANCE – DOWNTOWN ADVISORY COMMITTEE: The City Manager presented a proposed ordinance to designate the Downtown Advisory Committee as an official advisory board to the City Council. The City Manager noted some minor changes made to the ordinance since the first review by Council in January. Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 13
PLANNING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 13 of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 13 of the Code of Ordinances, City of Marion, North Carolina, is amended to add Article III. Downtown Advisory Board, §§ 13-51--13-55 as follows:

ARTICLE III. DOWNTOWN ADVISORY COMMITTEE, §§ 13-51--13-55

Sec. 13-51. Composition; terms; vacancies; compensation; attendance.

The Downtown Advisory Committee, referred to throughout this article as the committee, shall consist of nine (9) regular members. All regular committee members shall be appointed by the city council. Initial appointments to the committee shall be made as follows: three (3) members for a term of three (3) years; three (3) members, each for a term of two (2) years; and three (3) members, each for terms of one (1) year. As the terms of these nine (9) members expire, new appointments for overlapping terms of three (3) years each shall be made. Vacancies occurring for reasons other than expiration of appointed terms shall be filled as they occur by the City Council for the period of the un-expired term. Members shall serve without pay, but may be reimbursed for any expenses incurred while representing the committee, with the approval of the City Manager. Regular attendance of the meetings of the committee is considered a prerequisite for maintenance of membership of the committee. The City Council may appoint ex officio members at its discretion to include, but not be limited to the Mayor or a City Council member, the City Manager, the Marion Downtown Business Association Executive Director, a McDowell County representative and a Chamber of Commerce representative. The City Planner shall be designated as the Downtown Advisory Committee/City staff liaison, to coordinate information gathering from other staff and agencies and meeting scheduling and agendas.

Sec. 13-52. Officers.

Within thirty (30) days after appointment, the committee shall meet and elect a chairman and vice-chairman from among its regular members, both of whom shall serve for terms of one (1) year or until re-elected or until their successors are elected. The committee may create and fill other offices as it may determine.

Sec. 13-53. Rules; records; meetings.

The committee shall adopt rules for the transaction of its business which are consistent with this article as well as the general statutes of the state and shall keep a record of its members' attendance, and of its resolutions, discussions and recommendations, which record shall be a public record.

Sec. 13-54. Fiscal policy.

The expenditures of the committee, exclusive of gifts or grants, shall be within the amounts appropriated for the purpose by the City Council, and no indebtedness for which the City shall be liable shall be contracted or incurred by such committee unless an appropriation is made by the City Council for such purpose as authorized by law and then only to the extent of such appropriation. The Downtown Advisory Committee shall not expend any funds without the approval of the City, to ensure that funds are spent in accordance with the goals of the City Council. The committee is authorized to accept gifts and donations for the exercise of its functions and may expend the money received from such gifts and donations in a manner, which in the judgment of the committee is consistent with the roles of the Downtown Advisory Committee, with the approval of the City.

Sec. 13-55. Duties.

The Downtown Advisory Committee shall have the power to perform the following duties:
(1) Make studies of the downtown area within its jurisdiction and surrounding areas;
(2) Determine objectives to be sought in the design, promotion and economic restructuring of the downtown area;
(3) Prepare and recommend plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the City Council on issues concerning Downtown Marion and make recommendations on projects and programs pertaining to Downtown;
(6) Perform any other related duties in the Downtown that Council may direct.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 15th day of February 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-05-02-15-01

APPROVE APPOINTMENTS – DOWNTOWN ADVISORY COMMITTEE: Patti Hart, Chairperson of the Downtown Advisory Committee presented the recommendations of the DAC to appoint regular and ex officio members.

Ms. Hart stated that the DBA Director, the Mayor, a County representative, a Chamber representative and the City Manager will serve as ex officio members, and the City Planner will serve as staff. The DAC would recommend staggered terms, with one-third of the board serving three-year terms, one-third serving two-year terms and one third serving one-year terms. The DAC requests that Council appoint the following members to the DAC.

Recommended Regular Members:

3 year term	Gina DeGrechie	Expires June 30, 2008
3 year term	Patti Hart	Expires June 30, 2008
3 year term	Cliff McLarty	Expires June 30, 2008
2 year term	Carol Price	Expires June 30, 2007
2 year term	Mike Rabb	Expires June 30, 2007
2 year term	Dean Kanipe	Expires June 30, 2007
1 year term	Donna Stevens	Expires June 30, 2006
1 year term	Gill Masters	Expires June 30, 2006
1 year term	Bobbie Young	Expires June 30, 2006

Ex-officio

Bob Boyette (City Manager)
Freddie Killough (DBA Director)
Ashley Wooten (County Representative)
Chad Toney (Chamber Representative)
Mayor Clark

Staff:

Suzy Davis (City Planner)

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the recommendation of the Downtown Advisory Committee as listed above.

RECEIVE RECOMMENATION – DOWNTOWN ADVISORY COMMITTEE: Ms. Patti Hart, Downtown Advisory Committee Chairperson, was present for this meeting and advised that the Main Street Resource Team recommends that the DAC develop an image (logo/tag line) for Downtown Marion. The Team suggests that an image be created that is interesting, exciting and unique to Marion

The Design Committee received four proposals.

Of the four, Arnett Muldrow & Associates from Greenville, SC, stood out the most. Ms. Hart stated that their sample work was impressive, good quality and professional.

The total expense for the logo design, charrettes and a variety of implementation examples will be $3,850. Ms. Hart stated that the DAC has the money in their budget to cover this expense.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request and authorize Arnett Muldrow & Associates to design a Logo for the Downtown Advisory Committee for the bid price of $3,850, including expenses.

APPROVE APPOINTMENTS – PLANNING BOARD: The City Manager presented Council with a memo from City Planner Suzy Davis advising that the followings terms of office on the Planning Board need to be re-appointed.

REGULAR MEMBERS:

KIT ALVERSON
TERM EXPIRES JAN. 31, 2005

BOB ELLEDGE
TERM EXPIRES JAN. 31 2005

ALTERNATE MEMBER:

VIRGINIA WILLIAMS
TERM EXPIRES JAN. 31, 2005

The City Manager requests that Council change the term dates to expire June 30, 2008, as he would like to get all Advisory Board Terms beginning and ending in the same month.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to reappoint the Planning Board Members with expired terms. Terms of office will be as follows:

CRAIG ORANGE
TERM EXPIRES JAN. 31, 2007

GARY WALKER
TERM EXPIRES JAN. 31, 2007

GLENYS GILBERT
TERM EXPIRES JAN. 31, 2007

KIT ALVERSON
TERM EXPIRES JUNE 30, 2008

BOB ELLEDGE
TERM EXPIRES JUNE. 30 2008

ALTERNATE MEMBER:

CONNIE MARTIN
TERM EXPIRES JAN. 31 2007

JOAN KEUPER
TERM EXPIRES JAN. 31, 2007

VIRGINIA WILLIAMS
TERM EXPIRES JUNE. 30, 2008

APPROVE APPOINTMENT – ABC BOARD: The City Manager presented Council with a memo advising that the term of Mr. Robert Teeter on the ABC Board will be expiring in April. If reappointed, City Manager suggests that this term also end June 30th.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to re-appoint Mr. Robert Teeter to another term on the ABC Board, said term to end June 30, 2008.

APPROVE APPOINTMENT – TREE COMMITTEE: The City Manager presented Council with a memo advising that two terms of office on the Tree Committee, that of Joan Hensley and Walton Clapp, have expired and will need to be re-appointed. As with the other Boards, he requests that the terms be set to end June 30th.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to re-appoint Ms. Joan Hensley and Mr. Walton Clapp to another term on the Tree Committee, said terms to expire June 30, 2008.

ADOPT RESOLUTION OF INTENT – US 221 NORTH BUSINESS ANNEXATION: The City Manager presented Council with a Resolution of Intent to begin the annexation procedures for the US 221 North Business area. The City Manager advised that the water and sewer extension to the area was nearly complete and that the annexation would take effect on June 30, 2005. Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to adopt the following Resolution of Intent:

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Marion that:

Section 1. It is the intent of the City Council of the City of Marion to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

BEGINNING at a point on the current Marion Corporate Limits, said point also being at the intersection of the southwestern corner of Lot 9725 in Block 86 on McDdowell County Tax Map 0792 and the eastern boundary of the right-of-way of US HIGHWAY 221 By-pass; thence following said right-of-way boundary in a northerly direction approximately 1,145.00 feet to a point, said point being at the intersection of said right-of-way boundary and the northern most corner of Lot 7699 in Block 87 on McDowell County Tax Map 0792; thence crossing the right-of-way of US 221 By-pass and old US Highway 221in a straight line in a northeasterly direction approximately 240 feet to a point, said point being at the intersection of the eastern boundary of the right-of-way of old us hwy 221 and the western most corner of Lot 0800 in Block 97 on McDowell County Tax Map 0792, said point also being the southern most point of Lot 0015 in bloc 98 McDowell County Tax Map 0792; thence following the western boundary and then the northern boundary of said Lot 0015, first approximately 365 feet in a northerly direction then approximately 558 feet in a generally easterly direction to a point, said point being at the northern most corner of said Lot 0015, said point also being the southwestern corner of Lot 6921 in Block 98 on McDowell County Tax Map 0792; thence following the western boundary of said Lot 6921, first approximately 344 feet in a northerly direction, then approximately 74 feet in a westerly direction, then approximately 321 feet in a northerly direction to a point, said point being at the northwestern corner of Lot 6921; thence following the northern boundary approximately 1,040.00 feet in a easterly direction to a point, said point being the eastern most corner of said Lot 6921, said point also being on the northwestern boundary of the Catawaba River; thence following in a straight line in a southeasterly direction approximately 50 feet to a point, said point being in the center of the Catawaba River; thence following the center line of the Catawaba River in a southerly direction approximately 2,780.00 feet to a point on the current Marion Corporate Limits thence following the current Marion Corporate Limits in a generally westerly direction approximately 1,836 feet to the point of BEGINNING.

Section 2. A public informational meeting on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on April 5, 2005, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A pubic hearing on the question of annexing the above described territory will be held at City Hall at 7:00 P.M. on May 3, 2005, at which time plans for extending services to said territory will be explained and all residents and property owners in said territory and all residents of the City of Marion will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above described territory shall be made available for pubic inspection at the office of the City Clerk at least thirty (30) days prior to the date of the pubic informational meeting. The statement of financial impact contained in the report shall be delivered to the McDowell County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed who have been identified shall be posted in the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail, as required by G.S. 160A-49.

ADOPTED the 15th day of February 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

DISUCSS SUGAR HILL ROAD STREET LIGHTING: The City Manager presented Council with a letter from Mr. Gary Massey of Duke Energy advising the estimated cost to install Street Lights on Sugar Hill Road from the YMC entrance southward to Shady Lane. If the lights are installed with overhead cable, there will be no up front cost to the City. If they are installed with underground cables, the City will be required to pay the sum of $6240.57 before this project begins. This cost would be to restore and reseed the shoulder per NCDOT requirements.

The City Manager advised that this cost could be drastically reduced if the City restores and reseeds the shoulder. The existing poles with street lights would continue to be served overhead, but several new poles would be served by underground cable.

Mayor Clark stated that the appearance of the Sugar Hill Road corridor would be improved with underground street lighting. He urged Council to consider opportunities for underground service whenever possible.

Council agreed by consensus for the City Manager to proceed with signing a contract for underground street lighting on Sugar Hill Road. Mayor Clark asked the City Manager to verify that wood poles would not be used for the street lights.

SCHEDULE CONTINUATION OF PLANNING SESSION: The City Manager advised that he would estimate at least three more hours for Council's Planning Session.

A discussion followed.

It was the consensus of Council to continue the Planning Session on Thursday, February 24th at 5:00 P.M. Dinner will be provided.

STREET COMMITTEE – VALE STREET: The City Manager advised that he had received a complaint about a drainage issue on Vale Street that the Street Committee may need to examine.

It was the consensus of City Council to refer this matter to the Street Committee.

REQUEST – FIRE CHIEF - HOUSE BURNING: The City Manager presented Council with a memo from Fire Chief Jim Neal requesting permission to burn the former Doris Hill House on South Garden Street and the house on the site owned by the Waffle House on 226 South for Fire Training purposes in conjunction with this year's Fire College.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve this request to authorize the burning of the two houses listed above.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

Council agreed to direct the City Manager to hold an Appreciation Dinner for the members of the various City Advisory Boards in March or April, as was done last year.

Council also directed the City Manager to hold the Third Annual City Open House in April for all Third Graders in McDowell County.

CLOSING COMMENTS:

Councilman Edwards asked if the laptops were ready to use. The City Manager answered that they were.

Councilman Little inquired about a wireless network for City Hall, to improve the usage of the laptops. The City Manager stated that he would see that the wireless network was installed.

CLOSED SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(3) to discuss a legal matter with the City Attorney and in accordance with N.C.G.S. 143-318.11(a)(4) to discuss a matter involving the location of business or industry.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to go back into Regular Session. Mayor Clark announced that no action had been taken during the Closed Session.

TAX FORECLOSURE: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to direct the City Attorney to proceed with the mortgage style foreclosure of property on Park Avenue, PIN 1701.08-89-0099, for unpaid tax liens.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met for a Special Called Meeting (Planning Session) on Thursday Evening, February 24, 2005 at 5:00 P.M. at City Hall located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager

The following Topics were discussed during the Planning Session:

VI. Streets and Sidewalks

VII. Sanitation

The Mayor and City Council gave general guidance on the preparation of the 2005-06 budget and on priorities for City projects.

The Planning Session will continue at a later date.

A . Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 1, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT:

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council members voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - February 15, 2005 Regular and Closed Session

B . Approve Refund – Water Connection: Refund to Jose Figueroa and Luz del Carmen Martinez - $2,324.00 – Water Connection could not be made due to property being inhabitable.

C. Approve Resolution – Extend Governor's Highway Safety Program Grant Through 2005-06 Fiscal Year:

North Carolina Governor's Highway Safety Program
LOCAL GOVERNMENT RESOLUTION

WHEREAS, the City of Marion Police Department, (herein called the "Agency") has completed an application contract for traffic safety funding; and that the City Council (herein called the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as subscribed in the contract;

THEREFORE, NOW BE IT RESOVED BY THE City Council in open meeting assembled in the City of Marion North Carolina,

This 1st day of March, 2005, AS FOLLOWS:

1. That the project referenced above is tin the best interest of the Governing Body and the general public; and
2. That Mika V. Elliott, Chief of Police is authorized to file, on behalf of the Governing Body, an application contact in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of $9,579.00 to be made to the Governing Body to assist in defraying the cost of the project described in the contract; and
3. That the Governing Body has formally appropriated the cash contribution of $66279.00 as required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

DONE AND OREDERED in open meeting by

A. Everette Clark, Mayor

ATTESTED:

J. Robert Boyette, City Manager

APPROVE AMENDMENT TO INTERLOCAL AGREEMENT – US 221 NORTH WATER AND SEWER IMPROVEMENTS: The City Manager presented Council with an amendment to the US 221 North Water Sewer Improvements Interlocal Agreement between the City and the County reflecting the additional $25,000 cost to elevate the pump station controls and generator platform.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following Agreement and present it to County Commissions for their approval as follows:

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

Amendment to the Interlocal Agreement for US 221 North Water and Sewer Improvements Between the City of Marion, North Carolina and the County of McDowell

THIS CONTRACT AMENDMENT is made and entered into this _ day of March 2005 by and between the County of McDowell, a North Carolina Municipal Corporation, hereinafter referred to as "the County", and the City of Marion, a North Carolina Municipal Corporation, hereinafter referred to as "the City".

WITNESSETH

WHEREAS, the City and the County have entered into an agreement dated December 2, 2003 that provides for the construction and operation of certain water and sewer improvements in the vicinity of US 221 North and Hankins Road; and

WHEREAS, said water and sewer improvements were damaged prior to completion of construction, from serious weather resulting from two hurricanes in September 2004; and

WHEREAS, the City and County agree that said damages should be repaired in such a manner as to prevent such damage in the future, by elevating the wastewater pump station constructed as part of the project, to protect the pump station controls and generator platform from future flooding events; and

WHEREAS, the project engineer has estimated the cost of the repair and improvements to be $25,000; and

WHEREAS, the City and County anticipate receiving certain funds to apply to the cost of said damages from FEMA.

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained in the December 2, 2003 agreement and also contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The City and County agree that the County will apply to FEMA for any applicable reimbursements for the costs associated with the repair of storm damages and that such reimbursements would be applied to the total cost of repairs and modifications to the water and sewer improvements which are the subject of the original agreement and this amendment thereto.

2. The parties further agree that the City would be responsible for managing the repairs and modifications to the water and sewer improvements which are the subject of the original agreement and this amendment thereto, to include retaining McGill Associates to design said repairs and modifications, negotiating with contractors to effect said repairs and modifications, overseeing and approving contractors' work, and compensating the engineers and contractors for the costs associated with said repairs and modifications.

3. Subsequent to completion of the subject repairs and modifications, the City will present to the County a complete accounting of the associated cost, less the FEMA reimbursements that are applicable to said repairs and modifications.

4. The City and County agree to share equally in the net costs of said repairs and modifications, considering the FEMA reimbursements, with the County advancing its share of said costs to the City upon receipt of the City's accounting of said costs, within 30 days after the submission of said net costs.

5. The City and County agree that all of the terms and conditions contained in the December 2, 2003 agreement and any subsequent amendments shall remain in full effect and shall govern the parties' actions with regards to this amendment to said agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF McDOWELL, NORTH CAROLINA

By:_____
County Commission Chairman

(SEAL)
Attest:

By:_____
McDowell County Clerk

CITY OF MARION, NORTH CAROLINA

By:_____
Mayor

(SEAL)
Attest:

By:_____
City Clerk

REQUEST FROM McDOWELL COUNTY – EASTFIELD SEWER PROJECT: The City Manager advised that after completion of the Eastfield Sewer Project, County officials presented the City with a list of 350 plus properties that had been connected to the City Sewer system, at which point the City would start invoicing the residents.

The City Manager presented Council with a letter from McDowell County advising that their contractor had not connected one property correctly and that they should not have been paying for City sewer service for the past eleven months.

The property in question is located on Carolina Avenue is owned by Ms. Zelda Kirby. The amount paid by Ms. Kirby from March 2004 through January 2005 is $267.27

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to credit Ms. Kirby's account for the $267.27, for the period of March 2004 through January 2005, during which time she did not receive City sewer service.

APPROVE US 221 NORTH BUSINESS ANNEXATION REPORT AND PLAN OF SERVICES: The City Manager presented Council with a copy of the US 221 North Business Annexation Report and Plan of Services. The City Manager provided a brief overview of the report and plan of services for this annexation area and note that the required public informational meeting and public hearing would be held in April and May, respectively.

A discussion followed.

A copy of this report can be found on file in the City Clerk's Office.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the US 221 North Business Annexation Report and Plan of Services as presented.

APPROVE FESTIVAL ORDINANCE: The City Manager presented Council with a revised copy of the Festival Ordinance that includes two sections, one for Mountain Glory Festival and one for other festivals and events. The City Manager highlighted changes made to the ordinance, after review in January by City Council.

A discussion followed. Councilman Cuthbertson noted some needed technical corrections and suggested modification in the language to reflect approval of certain items, where required by

the ordinance, by the City Manager or designee. After discussion, Council also agreed to list 12:00 Midnight as the ending time for all festivals and events, unless specifically approved otherwise by City Council.

Upon a motion by Martin, seconded by Councilman Owenby, Council voted unanimously to adopt the revised Ordinance as follows:

ORDINANCE
AMENDING CHAPTER 12
PARKS AND RECREATION

MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 12, Parks and Recreation, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 12 is amended by adding Article III as follows:

ARTICLE III. FESTIVALS AND EVENTS

Sec. 12-51. Mountain Glory Festival; activities prohibited.

(a) Purpose. The Mountain Glory Festival (hereafter referred to as "Mountain Glory") is an event of the City of Marion that attracts a large number of people and which often continues for a longer time period than most organized events. Due to the congestion and the length of Mountain Glory, the City enacts this ordinance to promote the public health, safely and welfare, and to provide orderly recreation at Mountain Glory. The City believes that pistols or other projectiles, such as silly string, and the throwing of frisbees and balls could create undue risk of injury to person and damage property.

Additionally, the City desires to permit and regulate the vendors appearing at the events to protect the public safely. Mountain Glory frequently features organized activities, live entertainment, food concessions and many authorized exhibitors who display and offer for sale artwork, crafts, food and related items. The Marion Downtown Business Association (hereafter referred to as "DBA") issues permits to persons desiring to place or maintain booths or concession stands at Mountain Glory. The exhibition or offering for sale of merchandise or food and beverages by unauthorized vendors poses a threat to the public safety and welfare, interferes with planned traffic flow and the maintenance of order, frequently violates the City Zoning Ordinance and detracts from the authorized exhibits and concessions.

(b) Applicability. This section shall apply from 6:00 a.m. on the first day of Mountain Glory through 12:00 midnight on the last day of Mountain Glory, or the rain dates, if necessary, to cover all of the period of time encompassed by the event.

The area and boundaries of Mountain Glory to which these provisions shall be made to apply shall be determined by the DBA, with the approval of the City Manager or his or her designee, and shall include any public street, sidewalk or other publicly owned area that is within or constitutes the boundary of that event.

(c) Unlawful to operate bicycle or other wheeled vehicle. It shall be unlawful for any person to operate a bicycle, tricycle, unicycle, moped, skateboard or any other wheeled vehicle, roller skates or roller blades (all hereafter referred to as "wheeled vehicle") on or within the boundaries of Mountain Glory. For purposes of this section, "operate" shall mean the use, putting into action, or causing to function of a wheeled vehicle by a person mounted thereon. This section shall not apply to wheelchairs, baby strollers, or baby carriages.

(d) Unlawful to throw balls, shoot projectiles, etc. except as otherwise permitted herein as part of a permitted or approved activity. It shall be unlawful for any person to shoot projectiles, toss or throw a ball, Frisbee, model airplane or similar object on or within the boundaries of Mountain Glory.

(e) Unlawful to use fireworks. It shall be unlawful for any person to purchase, sell, deal in, transport, possess, receive, use or cause to be used or discharged, any fireworks on or within the boundaries of Mountain Glory. For the purpose of this section, "fireworks" shall include all devices that are legal or illegal in the State of North Carolina, including items that explode and non-exploding items that produce heat, smoke, noise, light or movement. This section shall not apply to fireworks displays conducted by a licensed professional pyrotechnician contracted by the City or the DBA as part of Mountain Glory.

(f) Unlawful to conduct outside sales. It shall be unlawful for any person to exhibit, display, offer for sale or to sell any merchandise or other item, any service, food or beverage from any outside location (hereafter referred to as "outside sales") on public property in or within one hundred (100) feet of the boundaries of Mountain Glory, without the issuance of a permit or permission by the City of Marion or the DBA.

(g) Failure to cease activities. It shall be unlawful for a person on or within the boundaries of Mountain Glory to fail to obey the command of a law enforcement officer to:

(1) Cease the operation of a wheeled vehicle;

(2) Cease the shooting or throwing of a ball, Frisbee, model plane, or other projectile; or

(3) Cease exhibiting, displaying, offering for sale or selling any merchandise, service, food or beverage, on public property in or within one hundred (100) feet of the boundaries of Mountain Glory without a valid permit or written permission from the City of Marion or the DBA.

(h) Exception. This section shall not apply to the operation of a wheel chair for the benefit of the handicapped or to the operation of any wheeled vehicle or the throwing or tossing of any ball, Frisbee or other object if the otherwise prohibited activity is part of an authorized exhibit, activity or display. The Director of the Marion Downtown Business Association or his or her designee or the City Manager or his or her designee as it relates to Mountain Glory shall have the authority to specify the conditions under which wheeled vehicles may be operated and balls, Frisbees, or objects may be thrown or tossed for the protection of the public.

(i) Animals. Pursuant to Section 3-4 of the City Code, which requires animal owners to keep their dog or cat under restraint, animals, except leashed dogs, or cats or dogs carried by their owners, are prohibited at Mountain Glory. This section shall not apply to animals in a petting zoo or animal rides if the otherwise prohibited animals are part of an authorized exhibit, activity or display. Dogs or cats designated under Section 3-5 of the City Code as "fierce, dangerous, or vicious" are not permitted within the boundaries of the festival unless they are securely muzzled.

(j) Enforcement. A violation of this ordinance is a misdemeanor or infraction as provided by G.S. 14-4 and G.S. 160A-175. As an alternative or additional measure of enforcement, any law enforcement officer may issue a citation for a civil penalty for violation of this section in the amount of fifty dollars ($50.00). This authority shall be in addition to any other authority and shall not preclude in any way any law enforcement officer from exercising any authority or carrying out the duties of a law enforcement officer nor preclude the City from any other available legal enforcement procedure. Enforcement of an unpaid citation may be by issuance of a criminal summons or by the filing of a civil complaint to collect the unpaid debt owned to the City.

Sec. 12-52. Other specially designated City or DBA sponsored events; activities prohibited.

(a) Purpose. Specially designated City of Marion or DBA sponsored parades, concerts and Festivals and events of the City of Marion (hereafter jointly referenced as "City Events") are events that attract a large number of people and which continue for variable time periods. Due to the congestion and the duration of such events, the City enacts this ordinance to promote the public health, safely and welfare, and to provide orderly recreation at City Events to which these provisions are made to apply. The City believes that pistols or other projectiles, such as silly string, and the throwing of frisbees and balls could create undue risk of injury to person and damage property.

Additionally, the City desires to permit and regulate the vendors appearing at the events to protect the public safely. City Events frequently feature organized activities, live entertainment, food concessions and many authorized exhibitors who display and offer for sale artwork, crafts, food and related items. The DBA or the appropriate City Department, depending on the event, issues permits to persons desiring to place or maintain booths or concession stands and the City of Marion issues itinerant business licenses to peddlers or roving-type vendors. The exhibition or offering for sale of merchandise or food and beverages by unauthorized vendors poses a threat to the public safely and welfare, interferes with planned traffic flow and the maintenance of order, frequently violates the City zoning code and detracts from the authorized exhibits and concessions.

(b) Applicability. This section shall apply to City Events other than the Mountain Glory Festival.

This section shall apply during the times listed on an approved City of Marion Application Permit for Parades, Picket Lines and Group Demonstrations, or on the rain dates, if necessary, to cover all of the period of time encompassed by the event, provided that no event shall extend beyond 12:00 midnight without the approval of the City Council.

The area and boundaries of any City Event to which these provisions shall be made to apply shall be determined by the appropriate City Department or the Downtown Business Association as designated by the City Manager or his or her designee, depending on the event, and shall include any public street, sidewalk or other publicly owned area that is within or constitutes the boundary of that event.

(c) Unlawful to operate bicycle or other wheeled vehicle. It shall be unlawful for any person to operate a bicycle, tricycle, unicycle, moped, skateboard or any other wheeled vehicle, roller skates or roller blades (all hereafter referred to as "wheeled vehicle") on or within the boundaries of any City Event to which these provisions have been made to apply. For purposes of this section, "operate" shall mean the use, putting into action, or causing to function of a wheeled vehicle by a person mounted thereon. This section shall not apply to wheelchairs, baby strollers, or baby carriages.

(d) Unlawful to throw balls, shoot projectiles, etc. except as otherwise permitted herein as part of a permitted or approved activity. It shall be unlawful for any person to shoot projectiles, toss or throw a ball, Frisbee, model airplane or similar object on or within the boundaries of any City Event to which these provisions have been made to apply.

(e) Unlawful to use fireworks. It shall be unlawful for any person to purchase, sell, deal in, transport, possess, receive, use or cause to be used or discharged, any fireworks on or within the boundaries of any City Event. For the purpose of this section, "fireworks" shall include all devices that are legal or illegal in the State of North Carolina, including items that explode and non-exploding items that produce heat, smoke, noise, light or movement. This section shall

not apply to fireworks displays conducted by a licensed professional pyrotechnician contracted by the City or the DBA as part of a City Event.

(f) Unlawful to conduct outside sales. It shall be unlawful for any person to exhibit, display, offer for sale or to sell any merchandise or other item, any service, food or beverage from any outside location (hereafter referred to as "outside sales") on public in or within one hundred (100) feet of the boundaries of a City Event, without the issuance of a permit or permission by the City of Marion or the Marion Downtown Business Association. Any person issued a permit to conduct outside sales shall display the permit issued by the City of Marion in a conspicuous place at the location of the outside sales.

(g) City Exhibit permits. Upon the request of a law enforcement officer, a City employee or a member of the Marion Downtown Business Association, any person shall produce or exhibit any permit from the DBA or the City of Marion for outside sales or permitted activities at a City Event so that the City may ensure compliance with this section. The permit may include limits on hours of display issued by the DBA and the City of Marion.

(h) Failure to cease activities. It shall be unlawful for a person on or within the boundaries of a City Event to which these provisions have been made to apply, to fail to obey the command of a law enforcement officer to:

(1) Cease the operation of a wheeled vehicle;

(2) Cease the shooting or throwing of a ball, Frisbee, model plane, or other projectile; or

(3) Cease exhibiting, displaying, offering for sale or selling any merchandise, service, food or beverage, on public property in or within one hundred (100) feet of the boundaries of the City Event without a valid permit or written permission from the DBA or the City of Marion.

(i) Exception. This section shall not apply to the operation of a wheel chair for the benefit of the handicapped or to the operation of any wheeled vehicle or the throwing or tossing of any ball, Frisbee or other object if the otherwise prohibited activity is part of an authorized exhibit, activity or display. The Director of the DBA or his or her designee or the City Manager or his or her designee as it relates to the City Event shall have the authority to specify the conditions under which wheeled vehicles may be operated and balls, Frisbees, or objects may be thrown or tossed for the protection of the public.

(j) Animals at City Events. Pursuant to Section 3-4 of the City Code, which requires animal owners to keep their dog or cat under restraint, animals, except leashed dogs, or cats or dogs carried by their owners, are prohibited at City Events. This section shall not apply to animals in a petting zoo or animal rides if the otherwise prohibited animals are part of an authorized exhibit, activity or display. Dogs or cats designated under Section 3-5 of the City Code as "fierce, dangerous, or vicious" are not permitted within the boundaries of the festival unless they are securely muzzled.

(k) Enforcement. A violation of this ordinance is a misdemeanor or infraction as provided by G.S. 14-4 and G.S. 160A-175. As an alternative or additional measure of enforcement, any law enforcement officer may issue a citation for a civil penalty for violation of this section in the amount of fifty dollars ($50.00). This authority shall be in addition to any other authority and shall not preclude in any way any law enforcement officer from exercising any authority or carrying out the duties of a law enforcement officer nor preclude the City from any other available legal enforcement procedure. Enforcement of an unpaid citation may be by issuance of a criminal summons or by the filing of a civil complaint to collect the unpaid debt owned to the City.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of March, 2005.

A. Everette Clark, Mayor

ATTEST:

J.. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-03-01-1

ORDINANCE AMENDMENT – PARADES/DEMONSTRATIONS:

The City Manager presented Council with a memo from City Attorney Mia Lorenz regarding the issue raised at the Planning Session concerning requiring parade and demonstration permits to be signed by an adult. Ms. Lorenz was present and stated that Council could require such permit applications to be signed by an adult, defined under North Carolina law as an individual 18 years of age or older.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Little Council voted to approve the following Ordinance:

ORDINANCE
AMENDING CHAPTER 15
STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 15, Streets, Sidewalks and Other Public Places, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 15 is amended by deleting Section 15-158 in its entirety and replacing it with the following:

Sec. 15-158. Requirements for issuance of permit.

The city manager is authorized to issue permits as required in section 15-157, and in the issuance thereof he shall:

(1) Require a written application for permit to be filed not less than twelve (12) hours in advance of such parade, picket line, or group demonstration. Such application shall be on a form prescribed by the city manager, shall require the application to be signed by the adult applicant or applicants, shall require that the adult applicant show the proposed time, place, purpose and size of such parade, picket line or group demonstration.

(2) Refuse to issue such permit when the activity or purpose stated in the application would violate any ordinance of the city or statute of the state, or when the activity or purpose would constitute a clear and present danger to the public health or safety or would hinder or prevent the orderly movement of pedestrian or vehicular traffic on the streets, alleys, or sidewalks;

(3) Require that the application for a permit shall specify and the permit shall designate the adult person in charge of the activity. Such adult person shall be required to accompany the parade, picket line, or group demonstration and shall carry such permit with him at that time. Such permit shall not be valid in the possession of any other person;

(4) The permit may:

a. Set the starting time, duration, speed of travel, and space between persons or vehicles in the parade, picket line, or group demonstration;

b. Prescribe the portions or areas of streets, alleys, sidewalks, or other public places to be used; and

c. Impose such other reasonable requirements as the city manager may prescribe for the control and free movement of pedestrian or vehicular traffic, or for the health, safety and property rights of the participants and the general public.

(5) Among other considerations, he shall consider and find as a requisite to issuance that the activity:

a. Will not require excessive diversion of the police from other necessary duties;

b. Will not interfere with the right of property owners in the area to enjoy peaceful and lawful occupancy and use of their property;

c. Can be conducted without unreasonable interference with normal pedestrian or vehicular traffic in the area;

d. Will not prevent normal police and fire protection to the public; and

e. Will not be likely to cause injury to persons or property, to provoke disorderly conduct or to create a public disturbance.

(Code 1982, § 6-2023)

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of March, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-03-01-2

STREET COMMITTEE RECOMMENDATIONS: The City Manager advised that the Street Committee met on February 23, 2005 to review a drainage complaint received from Ms. Charlotte Reel of Vale Street. This drainage problem can be resolved with an asphalt curb. It is the recommendation of the Street Committee that an asphalt curb be placed in front of this residence after the completion of the Depot and Fort Street Projects.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the recommendation of the Street Committee as stated above.

The City Manager advised that Ms. Dorothy McCall of Ridgecrest Drive is still experiencing problems with parking on the street near her residence. The Street Committee has looked into this matter and does not feel that further parking restrictions are necessary. The City Manager presented a letter from Ms. McCall, requesting additional parking restrictions on Ridgecrest Drive. The City Manager noted that the Sgt. Fox with the Police Department had made contact with the owner of a truck causing problems for Ms. McCall and that this individual had agreed to park the truck elsewhere.

A lengthy discussion followed.

It was the consensus of Council to delay any action on this matter until it was determined if the problem noted by Ms. McCall had been solved by the contact with the Police Department. No action was taken.

AWARD CONTRACT – WASTEWATER PLANT TRUCK: The City Manager presented Council with a memo from Ms. Kathy Shook, Purchasing Agent, with the following proposals for a new truck for the Waste Water Treatment Plant.

	Two Wheel Drive	Four Wheel Drive
Phillips Ford, Carthage NC	$14,396.00	$16,797.00
Bobby Jones Ford, Augusta GA	**15,496.65**	**17,807.65**
Everette Chevrolet, Hickory NC	17,400.00	20,200.00
Legendary Ford, Marion NC	19,007.95	21,920.95

The City Manager noted that $19,000 had been included in the 2004-05 budget for this truck and recommended that Council approved the purchase of the four wheel drive truck from Phillips Ford.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the low bid of Phillips Ford, for the purchase of a four wheel drive pickup truck for the Wastewater Plant, in the amount of $16,797.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager asked for authorization from Council to send a letter of support for the Rural Water Association to Congressman Taylor. Council authorized the sending of this letter.

The City Manager noted that the Isothermal Rural Transportation Planning Organization was asking member jurisdictions to update their primary and alternate appointments to the Transportation Advisory Committee (TAC) and the Technical Coordinating Committee (TCC). The City Manager noted that TAC members must be elected officials, while TCC members were local government staff. By consensus, Council endorsed the following appointments to the TAC and TCC:

TAC:

Primary City of Marion Appointment: Councilman Cuthbertson
Alternate City of Marion Appointment: Councilman Martin

TCC:

Primary City of Marion Appointment: City Manager Bob Boyette
Alternate City of Marion Appointment: City Planner Suzy Davis

CLOSING COMMENTS:

Councilman Martin asked when the bids would be in for the sidewalk and curb installation on East Wilhemenia Street. The City Manager advised that the final bids should be by the end of March, for Council review by early April.

Councilman Little advised that the Citizen of the month on the City's Web Page was not current. Ms. Debi Sherlin outlined problems with the current web page design software that were no longer allowing parts of the web page to be updated. The City Manager noted that recently purchased software should allow for web page content that is easier to maintain and change.

Councilman Cuthbertson advised that the concrete cover over a storm drain on Willow Street has been knocked loose.

Councilman Owenby advised that there are rocks falling from one of the walls in the cemetery.

Mayor Clark advised that he would like to see something done at the lower section of the Cemetery to enhance its appearance and to fill in the ditch between the cemetery and the Duke Power sub station.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adjourn and to continue the City Council Planning Session.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on March 1, 2005 at 7:00 P.M. At the end of this meeting, Council continued into their Planning Session. This meeting was held at City Hall located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager

The following Topics were discussed during the Planning Session:

VIII. Fleet Maintenance

IX. Public Works Administration

X. Parks and Recreation

The Mayor and City Council gave general guidance on the preparation of the 2005-06 budget and on priorities for City projects.

The Planning Session will continue at a later date.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, March 22, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, and Cecil Owenby.

Councilman Martin arrived for this meeting and had to leave due to an emergency.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Lt. Scott Spratt, Police Department; Jim Neal, Fire Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Barry Stepp 130 Idlewood Drive, Marion, NC; Brian Kelley 392 Biggerstaff Loop Nebo, NC; David Kelley, 2876 Landis Lane, Nebo, NC.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - March 1, 2005 Regular Minutes
March 1, 2005 and February 24, 2005 Planning Session Minutes

B . Approve Lease of Depot to Marion Downtown Business Association:
Approve lease of Depot Passenger Waiting Room Area to Marion Downtown Business Association (DBA). The DBA will pay no rent, electric bill or water and sewer bill in exchange for providing a physical presence in the Depot. The DBA will be responsible for telephone, internet service, furniture, supplies and equipment.

C. Endorse Governor's Proclamation – Spring 2005 Liter Sweep April 16th – 30th : Endorse Proclamation of the Governor regarding the Statewide Litter Sweep scheduled in April.

D. Approve Waiver of Charges – Clean Sweep – April 18-25
Approve waiver of charges for collections of bulky items during the period of April 18-25, 2005, as part of Clean Sweep 2005.

PUBLIC APPEARANCE – MR. BARRY STEPP: Mr. Barry Stepp with the Hankins/North Fork Fire Department appeared before Council requesting approval of the boundaries for the Hankins/North Fork Fire Department.

The boundaries presented by Mr. Stepp match what Chief Neal and the City Manager had worked out with McDowell County and Mr. Stepp two years ago.

Chief Neal advised that the City would be giving up an area along Hankins Road roughly between Fish Hatchery Road and Lentz and Cannon Roads, including a few dozen houses and the Deerfield Lakes Campground.

More importantly, the new department would cover the entire north side of Lake James all the way to the Burke County line, eliminating a major service burden for the City's Fire Department.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the boundaries for the Hankins/North Fork Fire Department as presented. Approval of the new district lines must also come from the McDowell County Board of Commissioners and the North Carolina Department of Insurance.

A copy of a amp showing the approved district boundaries is on file at City Hall.

AWARD CONTRACT – STREET RIGHT OF WAY MOWING: The City Manager presented Council with a memo from Kathy Shook, Purchasing Agent with the following bids for the City right-of-way mowing:

M & H Lawncare & Tree Service	$1,050 per week
Kelley's Landscaping & Lawn Care	$1,275 per week

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to accept the low bid of $1,050 from M & H Lawncare & Tree Service for City street right of way mowing.

AWARD CONTRACT – CEMETERY MOWING: The City Manager presented Council with a memo from Kathy Shook, Purchasing Agent with the following bids for the Oak Grove cemetery mowing:

M & H Lawncare & Tree Service	$800.00 per week
Landworx	$800.00 per week
McClure Nursery & Landscaping	$900.00 per week

With a tie for the low bid, the City Manager advised that City Council must find a way to separate the bids. The City Manager noted that both M & H Lawncare and Brian Kelley, owner of Landworx, had worked successfully with the City in the past mowing Oak Grove Cemetery. Mr. Kelley has actually mowed the cemetery for more years in the past, while M & H has mowed the cemetery for the past two years.

Councilman Little suggested that Council could continue the arrangement of having the same two contractors perform mowing services for the City, although in different capacities.

Council members noted that they wanted the selected contractor to take care to keep grass clippings off of headstones.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to accept the $800.00 per week bid from Landworx for the Oak Grove Cemetery mowing.

AWARD CONTRACT – LANDSCAPING SERVICES: The City Manager presented Council with a memo from Kathy Shook, Purchasing Agent with the following bids for the City Landscaping services:

L.L. Landscape & Lawn Service	$425.77 per week

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to accept the bid of $425.77 from L.L. Landscape & Lawn Service for City landscaping services.

PUBLIC HEARING – ZONING AMENDMENT: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that the Downtown Advisory Committee (DAC) is working on encouraging upper floor residential in our central business district. Residential units in a downtown area encourage a 24-hour presence in downtown. They also allow for the adaptable

re-use of underused space in historic buildings, thus encouraging investments and preserving buildings. The current Zoning Ordinance permits upper floor residential units in the C-1 Central Business District as a special exception. The special exception process provides an additional hurdle and time lag for downtown property owners with interested tenants. The Planning Board has recommended that upper flow residential units be designated as a permitted use, rather than as a special exception, in the C-1 Central Business District.

Ms. Davis stated that the Planning Board does not feel that upper residential units should be encouraged in the C-2 General Commercial District. These areas, such as North Main Street and Rutherford Road, are not conducive for upper-story residential and should be permitted only as a special exception on a case-by-case basis. The Planning Board also discussed whether the same provisions required in C-1 District should also be required in C-2 District. The Board made the following recommendations.

Delete 803.4 (1) as follows:

803.4 Special exceptions. *The following uses are permitted as special exception as provided for in Article XII, Section 1204.2 of this Ordinance not provided in C-2.*

(1) ***Single or multi-family residential dwellings units in existing structures provided that all units are located on floor levels above or below the adjacent street level, or a single residential owner-occupied dwelling unit located in the back forty percent (40%) of the street level when the front sixty (60%) percent is commercial and provided that there is a minimum of 400 square feet living space. There shall be no apparent evidence of residential living from within the commercial establishment, and the dwelling units shall have a separate ingress and egress. In lieu of any other parking requirements of this ordinance, each dwelling unit shall be provided one off-street parking space. Such space may be located on property separate from the dwelling unit but shall be with a reasonable walking distance of such unit." (Amended 1-8-02)***

Add the following section to 803.3

803.2 Permitted uses. *Within the C-1 Central Business District the following uses shall be permitted:*

(47) Single or multi-family residential dwellings units in existing structures provided that all units are located on floor levels above or below the adjacent street level, or a single residential owner-occupied dwelling unit located in the back forty percent (40%) of the street level when the front sixty (60%) percent is commercial and provided that there is a minimum of 400 square feet living space. There shall be no apparent evidence of residential living from within the commercial establishment, and the dwelling units shall have a separate ingress and egress. In lieu of any other parking requirements of this ordinance, ~~each dwelling unit shall be provided one off-street parking space~~ *the property owner shall provide each dwelling unit with one off-street parking space.* ***Such space may be located on property separate from the dwelling unit but shall be with a reasonable walking distance of such unit. (Amended 1-8-02)***

Edit the following section as indicated:

804.3 Special exceptions. *The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance.*

(2) Single or multi-family residential dwellings units in existing structures; provided all units are located on floor levels above or below the adjacent street level. ***There shall be no apparent evidence of residential living from within the commercial establishment, and the dwelling units shall have a separate ingress and egress. In lieu of any other parking requirements of this ordinance, the property owner shall provide each dwelling unit with one off-street parking space.*** ~~*In lieu of any other parking requirements of this ordinance, each dwelling unit shall be provided*~~

~~one off-street parking space.~~ *The off-street parking shall be in addition to other required parking for the existing structure and its uses.*

A discussion followed. Mayor Clark noted that the one parking space per residential unit, while a good idea, could pose a problem for some property owners. The consensus of Council was to pass the ordinance and see if the parking problems presented a problem in any specific case. The City Manager noted that the variance procedure could allow the Board of Adjustment to review hardship situations.

There were no citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, Seconded by Councilman Little, those members of Council present voted to adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VIII, Section 803.4 (1) is deleted.

Section 3. Appendix A, Article VIII, Section 803.2 (47) is added to read as follows:

(47) Single or multi-family residential dwellings units in existing structures provided that all units are located on floor levels above or below the adjacent street level, or a single residential owner-occupied dwelling unit located in the back forty percent (40%) of the street level when the front sixty (60%) percent is commercial and provided that there is a minimum of 400 square feet living space. There shall be no apparent evidence of residential living from within the commercial establishment, and the dwelling units shall have a separate ingress and egress. In lieu of any other parking requirements of this ordinance, the property owner shall provide each dwelling unit with one off-street parking space. Such space may be located on property separate from the dwelling unit but shall be with a reasonable walking distance of such unit. (Amended 1-8-02) (Amended 3-22-05)

Section 4. Appendix A, Article VIII, Section 804.3 (3) is amended to read as follows:

(3) Single or multi-family residential dwellings units in existing structures; provided all units are located on floor levels above or below the adjacent street level. There shall be no apparent evidence of residential living from within the commercial establishment, and the dwelling units shall have a separate ingress and egress. In lieu of any other parking requirements of this ordinance, the property owner shall provide each dwelling unit with one off-street parking space. The off-street parking shall be in addition to other required parking for the existing structure and its uses.

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 22nd day of March 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-05-03-22-1

DISCUSSION LOGO: City Planner Suzy Davis presented the downtown logo recently recommended by Arnett Muldrow & Associates. The Mayor and Council members provided comments on the logo and some minor suggested changes, but stated their approval of the overall design. The comments of the Mayor and Council will be reviewed further by the Downtown Advisory Committee and a final logo design developed.

APPROVE SPRING 2005 STREET RESURFACING SCHEDULE: The City Manager presented the following recommended Spring 2005 Street Resurfacing Schedule:

1) Depot Street – from Henderson Street to Depot
2) Fort Street – from Main Street to North Garden
3) Granby Street – entire street
4) Hoyle Street – from Tate Street to Roane Street
5) East Oak Street – from curve to Lamar Street – 430 ft.
6) Virginia Road – from Lamar Street 262 ft. down Virginia Road
7) Bradley Street – 150 ft. from Five Lane
8) Clay Street – from East Court Street to East Oak Street

If sidewalk and curb and gutter are contracted out:

9) East Wilhemenia – from Henderson Street to dead end
10) Spring Street

If water line project completed:

11) Lail Street

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the schedule as listed above with work to begin in May or June. Bids will be solicited for the paving of the streets listed above and will be presented to Council for consideration.

DISCUSSION – CITY INVESTMENTS/AUTHORIZE ADDITIONAL DEPOSITORIES: The City Manager presented Council with a memo from Harriett Thomas, Finance Director, advising that the City currently has excess monies in Business Interest Maximizer accounts earning from .9% to 1.5%, depending on the balance in the account. Since interest rates are now increasing and most of these are "savings accounts" that are not being used for operations, Ms. Thomas would like to move some of this money to CDs ranging from 3 – 13 months. She is requesting that Council designate any of the banks in McDowell County that is listed on the Department of State Treasurer's list of Pooling Method of Financial Institutions as the City's official depositories. By doing so, we would be able to utilize the bank with the highest interest rates. The City Manager noted that Council needed to give direction on the geographic restrictions of banks to be designated as official depositories, whether it be banks located in the City, in the County, or beyond.

The City Manager advised that Finistar, is a new cash management company recently approved by the Local Government Commission, is also recommended as an official depository for the City. Finistar is currently offering better rates than the N.C. Capital Management Trust, where the City has traditionally invested most of its money, while offering an investment that is just as liquid.

A discussion foliowed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to approve the following resolution to designate Finistar as an official cash management depository for the City of Marion and to also designate any bank in the State of North Carolina as an official depository for the purpose of short term investments.

RESOLUTION
CITY OF MARION

WHEREAS, the City Council has approved a Custodial Agreement among the Finance Officer of the City of Marion, Finistar, Inc. ("Finistar"), and Gateway Bank & Trust Company, 1145 North Road Street, Elizabeth City, North Carolina 27909-3334 ("Fiscal Agent"); and,

WHEREAS, the Finance Officer has been authorized and directed by the City Council to deposit funds of $200,000 in a custodial account at Fiscal Agent for disbursement and deposits in North Carolina financial institutions, the deposits of which are insured by funds of the Federal Deposit insurance Corporation ("FDIC") and which are Participating Banks (as defined in the Custodial Agreement), as provided in the Custodial Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Fiscal Agent, a North Carolina chartered, commercial bank the deposits of which are insured by funds of the FDIC, be and hereby is designated as an official depository of the City of Marion; and,

BE IT FURTHER RESOLVED that each Participating Bank, the name and address of which is listed on Attachment "A", be and hereby is designated as an official depository of the City of Marion, such List being deemed incorporated by reference into this Resolution for the purpose of making deposits in accordance with this agreement with Finistar, Inc.; and

BE IT FURTHER RESOLVED, that the Finance Officer shall report the Fiscal Agent and each Participating Bank on the List as required by GS 159-33 and 20 NCAC 7.

The foregoing Resolution were adopted and approved by the City Council as of the 22nd day of March, 2005.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-05-03-22-1

APPROVAL OF INTERLOCAL AGREEMENT AMENDMENT – MCDOWELL COUNTY INDUSTRIAL PARK: The City Manager presented Council with a proposed amendment to the Industrial Park Interlocal Agreement with McDowell County. The amendment transfers 100,000 gallons per day of designated water capacity from the McDowell County Industrial Park to the Nebo Water Improvements project.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to approve the following amendment to the McDowell County Industrial Park Interlocal Agreement with McDowell County:

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

AMENDMENT TO MARCH 8, 1995 AGREEMENT BETWEEN MARION AND McDOWELL COUNTY FOR THE McDOWELL COUNTY INDUSTRIAL PARK

THIS CONTRACT AMENDMENT is made and entered into this ____ day of _____ 2005 by and between the County of McDowell, a North Carolina Municipal Corporation, hereinafter referred to as "the County", and the City of Marion, a North Carolina Municipal Corporation, hereinafter referred to as "the City".

WITNESSETH

WHEREAS, the City and County entered into an agreement on March 8, 1995 that provided for the City to supply treated water to the McDowell County Industrial Park in quantities not to exceed 500,000 gallons per day; and

WHEREAS, the City and County agree that the actual consumption of treated water within the industrial park is substantially lower that the prescribed maximum of 500,000 gallons per day and is anticipated to be substantially lower than the maximum when all of the industrial lots are finally developed; and

WHEREAS, the County is planning to extending water lines into the Nebo Community of McDowell County which would also require an allocation of treated water from the City of Marion's water system in the amount of 200,000 gallons per day; and

WHEREAS, the City and County propose to execute an agreement that would provide for the City to operate and maintain the Nebo water system and to provide treated water for said water system in quantities not to exceed 200,000 gallons per day.

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree to amend the March 8, 1995 agreement as follows:

1. The City of Marion and McDowell County agree that 100,000 gallons of the 500,000 allocation of treated water provided for in the March 8, 1995 agreement for the McDowell County Industrial Park would be reallocated to the proposed AGREEMENT FOR OPERATING NEBO WATER IMPROVEMENTS and, when combined with another 100,000 gallons of presently unallocated City water, would total the 200,000 gallons per day maximum provided for in the proposed AGREEMENT FOR OPERATING NEBO WATER IMPROVEMENTS.
2. Further, that the maximum not to exceed limit of water supply provided for in the March 8, 1995 agreement for the McDowell County Industrial park would be reduced to a maximum not to exceed of 400,000 gallons per day.

3. Finally, that the City and County may find cause to reallocate additional water from the 400,000 gallons per day maximum not to exceed limit of water supply provided for in the March 8, 1995 agreement, as herein amended, for the McDowell County Industrial park, in the event that the City and County agree that portions of this amended water allocation would better serve the objectives of the City and County by being reallocated to other purposes. As such situations arise, the City and County would agree by resolution of the Marion City Council and the McDowell County Commission to make such reallocations of said water supply.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF McDOWELL, NORTH CAROLINA

By:_____
County Commission Chairman

(SEAL)
Attest:

By:_____
McDowell County Clerk

CITY OF MARION, NORTH CAROLINA

By:_____
Mayor

(SEAL)
Attest:

By:_____
City Clerk

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

By:_____
Harriett Thomas, Finance Director
City of Marion

APPROVAL OF INTERLOCAL AGREEMENT NEBO WATER IMPROVEMENTS:

The City Manager presented Council with a recommended Interlocal Agreement with McDowell County for the Nebo Water Improvements project. The City Manager stated that Dennie Martin of Martin-McGill had worked with he and the County Manager to develop the 10 year agreement, which provides for County ownership of water lines east and south of Nebo,

for the City to provide meter reading, billing and maintenance services for a cost of $21,000 per year and for the City to designate up to 200,000 gallons per day of water capacity for the project, with 100,000 gallons per day of water capacity being transferred from the McDowell County Industrial Park.

A discussion followed. Mayor Clark suggested that the agreement should specifically stated that the County's water customers would never pay water rates less than the outside customer. Councilman Little suggested some minor adjustments to the language of the agreement to reflect this change.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Interlocal Agreement with McDowell County for the Nebo Water Improvements project as amended:

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

AGREEMENT FOR OPERATING NEBO WATER IMPROVEMENTS

THIS CONTRACT is made and entered into this _____ day of _____ 2005 by and between the County of McDowell, a North Carolina Municipal Corporation, hereinafter referred to as "the County", and the City of Marion, a North Carolina Municipal Corporation, hereinafter referred to as "the City".

WITNESSETH

WHEREAS, McDowell County and City of Marion are political subdivisions of the State of North Carolina, both having the power and authority to enter into this agreement and the signatories hereto have been authorized to execute this document on behalf of the McDowell County Commission and the Marion City Council; and

WHEREAS certain areas of McDowell County, including the Nebo and Little Mountain areas East of Marion, have demonstrated needs for water services due to inadequate water supplies and/or well contamination; and

WHEREAS, the County has an interest in providing public water services to the residents and businesses in these areas, and

WHEREAS, the City presently has water supply and treatment capacity available to provide water to such areas, and

WHEREAS, the County is seeking grant funds to develop the water system improvements necessary to provide public water services to the Little Mountain area, and

WHEREAS, the City is agreeable to providing water and operational assistance to the County for such areas, and

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The County and the City mutually agree that this agreement shall become effective on_____, 2005 and it shall continue in effect for ten years or until this agreement is terminated by either party. The term of the contract may be extended with the consent of both parties.

2. McDowell County hereby agrees to the following responsibilities:
   - The County agrees to provide funding for any extensions or improvements subject to this agreement, and to fully administer any grant programs providing funding for extensions or improvements under this agreement.
   - The County agrees to secure a state water system operator identification number for its water system and to assume the responsibility for complying with state laws and regulations that apply to the ownership of the water system, including all violations and fines resulting from its failure to comply with said laws and regulations, except for violations that are the result of the City's negligence or violations that occur within the City's water system or result from the City's operation of the County's water system.
   - The County agrees to contract with an engineer, registered in North Carolina, to complete the plans and specifications for all proposed water system improvements, secure the requisite governmental permits and approvals, secure necessary easements, provide construction phase inspection services, and administer contractor warranties subsequent to construction.
   - The County agrees to submit plans and specifications for proposed water system improvements to the City for its review and comment and to consider said comments as modifications to the final plans and specifications.
   - The County agrees to own any improvements subject to this agreement.
   - The County shall compensate the City for services as follows:
     - County water customers shall pay directly to the City monthly water bills which are equal to but no less than the City's outside water rates as they appear on the City's then current schedule of rates and charges, which rates and charges are the City's sole prerogative.
     - County water customers shall pay appropriate water tap fees and other charges assessed by the City, in accordance with the City's policies governing the provision of water services to customers of the City.

- The County shall pay to the City an annual water operation and maintenance assessment of $21,000, which shall be due and payable on or before June 1 for the City's fiscal year beginning on July 1 after each due date. The first of said assessments shall be payable to the City upon completion of the construction of the Nebo water system improvements, with the first annual payment being pro-rated for that remaining portion of the fiscal year during which the City actually provides operation and maintenance services for the County's system.
- In the event that any action by the County results in costs to the City that are not considered in the calculations that resulted in this annual assessment, the City shall be allowed to re-calculate the assessment and present it to the County for approval.
- The County shall pay for the actual cost associated with any capital costs or major repairs to its system over and above what the City considers to be routine system operation and maintenance. Capital cost or major repairs shall include, but not be limited to water line breaks or failures, replacement of fire hydrants, line relocations or extensions, replacement of valves, replacement or overhaul of pumps or storage facilities, addition or reconstruction of vaults, enclosures or meter boxes, and the addition or replacement of chemical additive equipment or facilities.

- The County agrees to pay all invoices submitted by the City for capital costs or major repairs within 30 days of the date of said invoices.

- The County agrees that if the average daily usage of the area subject to this agreement exceeds two hundred thousand gallons per day for any one month period, no further connections shall be allowed, without the approval of the City. The County agrees that City approval of additional connections shall take into account the City's water demand and available supply and treatment capacity for its entire system.

- The County agrees that it will not connect with other water sources, thereby creating cross-connections that might result in mixing the City's water with water from other purveyors.

- The County agrees to administer grants for proposed improvements to its water system, to manage the construction of the water and sewer improvements and to obtain any necessary easements. Said construction shall include the installation of service connections and water meters. Water meters installed must be approved by the City and be compatible with the City's automated water meter reading system.

3. The City of Marion hereby agrees to the following responsibilities:
   - The City agrees to provide up to two hundred thousand gallons per day of treated water to the County under this agreement through the placement of individual water meters to measure the water being provided to the County's customers. If the average daily usage by County customers subject to this agreement exceeds two hundred thousand gallons per day for any one month period, no further connections shall be allowed, without the approval of the City, taking into account the City's water demand and available supply and treatment capacity for its entire system.

   - The City shall maintain water pressures and water quality, at the point(s) of delivery of water into the McDowell County water system, that are consistent with acceptable engineering standards and consistent with the regulations of the State of North Carolina.

   - The City shall charge the County's customers on a monthly basis for their metered water usage, in the same manner as is done for any other City outside water customer.

   - The City shall provide water meter reading and billing, system operation, and system maintenance services for the County water system, in exchange for the County's payment of compensation as outlined in this agreement.

4. The City and County agree that the area to be covered by this agreement does not include any properties served by, or with access to City water service, as of the effective date of this agreement, nor does the agreement cover any areas currently within the corporate limits of the City of Marion, or within the area of any Resolution of Consideration for annexation as approved by the Marion City Council.

5. The County and the City both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.

6. The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to design, construction or monetary compensation said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of both parties that pursuit of legal action shall be a remedy of last report and that a negotiated resolution, including the use of outside experts or arbitrators, shall be the preferred means of resolving disputes hereunder. It is further agreed that in the event such disputes cannot be resolved within sixty (60) days from the date they first arise, either party may seek such other remedies as may be available to them.

7. Default and Termination. This agreement may be terminated for cause prior to its stated expiration date by either party in accordance with the terms and conditions set forth herein. The rights of the parties to terminate this agreement shall be strictly construed in accordance with the provisions contained herein. Upon the happening of any of the following events of default by either party, the aggrieved party shall have the right to terminate this agreement:

a) The failure of either party to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
b) The determination that any representation, warranty or covenant made by either party is false and/or misleading in any material respect.
c) The commencement of any bankruptcy, insolvency, liquidation and / or similar proceeding against either party, which materially and adversely affects its ability to perform its duties or obligations under this agreement,
d) The failure of the County to make any payment required to be made by it pursuant to the terms of this agreement within thirty (30) days of its receipt of notice from the City that any such payment is overdue.

e) Any action by the City to divest itself of its water and / or sewer systems.

f) Any action by the County to construct a water treatment plant and to serve the area under this agreement with water from the County water treatment plant.

8. Upon the happening of any event described in the preceding section, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within ten (10) days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution. If either patty fails to fully perform or comply with all of the conditions, provisions and covenants of this agreement, and if the nonperformance or failure shall continue for more than thirty (30) days after written notice thereof by the other party, or if the nonperformance or failure cannot be reasonably remedied within the same thirty (30) day period and the party which is in violation of the agreement has not proceeded with or commenced the remedy in good faith, within fifteen (15) days of the receipt of such notification, that party will be considered to be in default of this agreement. If the alleged default continues or the parties disagree as to whether the matter has been resolved, the aggrieved party may send written notice to the party committing the alleged default declaring an impasse and proceed to enforce all rights and remedies available to it either in equity or at law.

9. Each of the parties to this agreement shall be entitled to pursue a claim against the other for any non-monetary remedies available and any additional actual damages suffered as a result of any default by the other party, in addition to attorney's fees. Notwithstanding anything in the agreement to the contrary, neither party shall be responsible to the other for any indirect, third-party or consequential damages arising from a breach of this agreement.

10. To the extent allowed by law, each party shall indemnify, defend and hold harmless the other party, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from its breach of this agreement or the negligent or willful acts of omission of the party in breach of the agreement or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of the other party.

11. NOTICES: For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

<u>To McDowell County:</u>

County of McDowell
60 East Court Street
Marion, NC 28752
Facsimile Number; (828) 659-3484
Attention: County Manager

<u>To City of Marion:</u>

City of Marion
Post Office Drawer 700
Marion, NC 28752-0700
Facsimile number. (828) 652-1983
Attention: City Manager

12. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement.

13. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.

14. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provision.

15. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.

16. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

17. Time shall be of the essence in this agreement and each and every term and condition thereof.

18. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

19. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

20. In the event of litigation between the County and the City as to the terms, performance, or any other aspect of this agreement, this agreement shall remain in force and effect during such litigation.

21. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

22. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any tights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF McDOWELL, NORTH CAROLINA

By:_____

County Commission Chairman

(SEAL)
Attest:

By:_____
McDowell County Clerk

CITY OF MARION, NORTH CAROLINA

By:_____
Mayor

(SEAL)
Attest:

By:_____
City Clerk

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

By:_____
Harriett Thomas, Finance Officer
City of Marion

APPROVAL OF AMENDED WATER LINE EXTENSION POLICY OUTSIDE THE CITY LIMITS: The City Manager presented Council with a rewritten Water Line Extension Policy for Outside the City Limits. The City Manager stated that the Policy, which had been reviewed and endorsed by the City Attorney, allowed City crews to install water lines on roads for which right of way had been dedicated to the public but which were not publicly maintained. The City Manager stated that this policy change would allow the City to complete a water extension to Devonwood Drive off of Shady Lane, once property owners on the road dedicated the road to public use. Council members agreed by consensus to have the City Attorney assist the Devonwood Drive property owners with this work and for the City to bill all property owners on the road for the actual legal expenses incurred by the City Attorney.

A discussion followed:

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to approve the amended Water Line Extension Policy Outside the City Limits as follows:

WATER LINE EXTENSION POLICY
OUTSIDE THE CITY LIMITS

It shall be the policy of the City of Marion to extend its water system, outside the City Limits, in accordance with the terms and conditions of this Policy. The City of Marion shall not be bound or otherwise obligated to participate in the cost of any water system extension which may be proposed under the terms of this policy.

A. APPLICATION FOR EXTENSION:

All persons desiring extension(s) to the water system of the City of Marion shall make application in writing to the City Manager. The application shall specify the following:

1. The name, address and telephone number of the applicants(s).
2. The location of the property and geographic area for which water service is desired.
3. The total number of residential units, commercial establishments or industrial facilities to be served with a description of each type.
4. The total volume of water requested in terms of gallons per day and gallons per minute after full development of the property or properties for which service is desired.
5. A schedule or date by which the applicant desires to begin receiving water service as a result of the requested extension(s).
6. Any other information requested by the City.

B. EXTENSIONS ALONG PUBLIC ROADS MAINTAINED BY THE N.C. D.O.T.:

The City of Marion will extend, up to a six inch (6") diameter water line, along any public road maintained by the North Carolina Department of Transportation for a distance up to one hundred feet (100'), per lot fronting on the road and requesting water service, without charge to the applicant(s), provided such extension does not

cross a river, railroad tracks, interstate or major highway and further provided no rock removal is required. In the event that is necessary, the applicant(s) will pay, in advance of construction, the total estimated cost for larger diameter water pipe, and for such crossing or rock removal. Should the water line extension exceed one hundred feet per lot requesting water service, the applicant(s) shall pay, in advance of construction, an amount per lineal foot, as may be established from time to time by City Council, to cover the additional costs.

In addition, the applicant(s) requesting water service must sign an agreement that they will use City water or pay the minimum monthly water charges based on availability of service at their request(s).

Should the applicant(s) individually pay from their personal funds, for a water line extension, an amount in excess of the difference between the outside tap fee and the inside tap fee, then the city will charge that applicant the inside tap fee for connection. Under no circumstances shall any applicant outside the city limits receive a water tap at less than the inside tap fee. This provision does not apply to fire hydrants or fire connections. Applicant(s) requesting fire hydrants shall pay the entire cost for same in advance of installation. Applicant(s) requesting fire connections shall pay the established fees.

Under no circumstances will the city reimburse any applicant(s) for any funds contributed for any water line extensions.

C. EXTENSIONS ALONG ROADS NOT PUBLICLY MAINTAINED BUT FOR WHICH RIGHT OF WAY HAS BEEN DEDICATED TO THE PUBLIC:

The City of Marion will extend, up to a six inch (6") diameter water line, along any road not publicly maintained but for which right of way has been dedicated to the public, for a distance of up to one hundred feet (100'), per lot fronting on the road and requesting water service, without charge to the applicant(s), provided such extension does not cross a river, railroad tracks, interstate or major highway and further provided no rock removal is required. In the event that is necessary, the applicant(s) will pay, in advance of construction, the total estimated cost for larger diameter water pipe, and for such crossing or rock removal. The right of way dedicated must be of a sufficient width to allow for the City to install a six inch (6") diameter water line wholly within the dedicated right of way. Should the water line extension exceed one hundred feet per lot requesting water service, the applicant(s) shall pay, in advance of construction, an amount per lineal foot, as may be established from time to time by City Council, to cover the additional costs.

In addition, the applicant(s) requesting water service must sign an agreement that they will use City water or pay the minimum monthly water charges based on availability of service at their request(s).

Should the applicant(s) individually pay from their personal funds, for a water line extension, an amount in excess of the difference between the outside tap fee and the inside tap fee, then the city will charge that applicant the inside tap fee for connection. Under no circumstances shall any applicant outside the city limits receive a water tap at less than the inside tap fee. This provision does not apply to fire hydrants or fire connections. Applicant(s) requesting fire hydrants shall pay the entire cost for same in advance of installation. Applicant(s) requesting fire connections shall pay the established fees.

Under no circumstances will the city reimburse any applicant(s) for any funds contributed for any water line extensions.

D. EXTENSIONS AND PRIVATE DEVELOPMENTS:

City forces will not install water lines on private property or along private roads. Developers of private developments such as shopping centers, mobile home parks, and apartment complexes shall be responsible for both installation and maintenance of water lines on private properties. The City Manager and Public Works Director will review and approve, prior to construction, the plans and specifications for any water lines to be connected to the city's water system. A main valve will be installed by city forces, at the developers expense, at the property line so the entire private system can be turned off in the event of a water leak on a water line not metered. Tap fees will be charged by the city and city forces will install meters. Should the developer(s) be required to install a private water line two inches (2") or greater in diameter to serve the project, the city will reduce the tap fees, for the total number of meter services to be initially installed at the same time, by the developers cost for installation of the private water line; however, the city will not charge less than the sum of the total individual inside tap fees. All other meters installed at a later date will be at the outside tap fees.

Under no circumstances will the city reimburse any applicant(s) for any funds contributed for any water line extensions.

E. EXTENSIONS AND PRIVATE DEVELOPMENTS WITH STREETS DESIGNED TO MEET N.C. D.O.T. STANDARDS:

The city will provide up to one hundred (100') feet of water pipe (size to be determined by the city) for each lot to be served by the City Water System in a new subdivision and the materials for the service lines from the main water line to the property lines, based on the following requirements:

The owner(s) and/or developer(s) must:

1. Install streets that meet N.C. D.O.T. requirements for acceptance, and include street paving, concrete curb and gutter and storm drainage and request D.O.T. to take over the streets for maintenance.
2. Prohibit private wells, except for yard sprinkling systems only.
3. Provide the city with an easement at least twenty (20') feet wide, ten feet (10') on each side of the main water line, for city maintenance of the water line.
4. Pay the city for the materials and labor to connect to the main water line.
5. Pay a private contractor to have the water line and service lines installed according to plans and specifications furnished by the city.
6. Pay for all fire hydrants and appurtenances and the installation of same.
7. Deed all water lines and appurtenances located within the street right of way to the City of Marion.

The city will install all water meters at the then current outside tap fee(s).

F. ENGINEERING SERVICES: The city will pay for engineering services on D.O.T. maintained roads, on roads not publicly maintained but for which right of way has been dedicated to the public, and on roads designed to be accepted by D.O.T. Developers will pay for engineering services on private properties, including private roads not designed to D.O.T. standards and approved by the city.

G. CITY SYSTEM STANDARDS: All water line extensions shall be completed in accordance with all city specifications and construction standards as they exist at the time of the extension.

This policy replaces the "Water Extension Policy Outside City" adopted by the City Council on November 3, 1998.

ADOPTED this the 22nd day of March, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

P-05-03-07-01

DISCUSSION OF CARRIAGE STATION DRAINAGE ISSUE: The City Manger advised that the Street Committee has explored on many occasions drainage complaints at the Carriage Station Townhouses on South Garden Street.

The Committee met again several weeks ago with Mr. Bill Howle of Carriage Station to discuss this drainage issue. A retaining wall behind these townhouses was previously quoted at $27,000. Mr. Howle has obtained another quote to place a drainage pipe, fabric, rip rap and timbers along this area at a cost of $7,650. Mr. Howle is requesting that the City pay half of this amount.

A discussion followed. Councilman Little stated that he thought that the City had no responsibility for any drainage problems coming from private property across the 10 foot alleyway next to Carriage Station.

The City Manager advised that the City would be scheduling to add another drain on South Garden Street, which would help the drainage problem somewhat.

Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to respectfully decline the request by Carriage Station for the City to spend any money on this drainage issue.

REQUEST TO APPROVE PLACEMENT OF TABLES ON SIDEWALK – WINE RUELS: The City Manager presented Council with a request from Ms. Cindy Ruel, owner of the new Wine Ruels store on South Main Street, requesting approval to place tables on the sidewalk in front of her business.

The City Manager advised that under the City Code, Ms. Ruel could have the tables outside; however, her customers would not be permitted to consume any alcoholic beverage on a public sidewalk. Ms. Ruel has already completed proper forms requesting the placement of these tables and has stated that she understands the prohibition on consumption of alcohol on a public sidewalk or property. The City Manager stated that, according to a sketch of the table and chairs provided by Ms. Ruel, she is proposing to locate the tables and chairs immediately next to her building, thereby preserving a clear path for pedestrians on the sidewalk.

A discussion followed. Councilman Edwards advised that he had recently spoken to Ms. Ruel and that she understands that her customers will not be allowed to consume alcohol on the sidewalk.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to approve the request by Ms. Cindy Ruel to place table and chairs on the sidewalk in front of the Wine Ruels store on South Main Street, on the condition that said tables and chairs are located immediately next to the building and do not interfere with pedestrian traffic on the sidewalk.

CONSIDER APPROVAL OF CONTRACT – EAST WILHEMENIA STREET SIDEWALK/CURB AND SPRING STREET SIDEWALK: The City Manager presented Council with a memo from Mr. Roger Estes, Street Superintendent, with the following bids for the construction of a sidewalk, curb and cul-de-sac on East Wilhemenia Street and for the replacement of the sidewalk on Spring Street between Main and Garden Streets:

Wilson Concrete	
Wilhemenia Street	$ 44,261.25
Wilhemenia cul-de-sac	11,500.00
Spring Street	44,551.40
Total	**$100,312.65**

Valdese Concrete	
Wilhemenia Street	$ 80,536.24
Wilhemenia cul-de-sac	16,793.32
Spring Street	51,205.60
Total	**$148,535.16**

The City Manager advised that the City's Powell Bill Fund had an adequate fund balance to allow the full contract to be awarded to the low bidder, Wilson Concrete, in the amount of $100,312.65. The City Manager noted that the City had worked successfully with Wilson Concrete on the installation of a sidewalk and curb and gutter on Fern and Montevista Avenues last year.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to accept the low bid of Wilson Concrete, in the amount of $100,312.65,

to construct a new sidewalk, curb and cul-de-sac on East Wilhemenia Street and to replace the sidewalk on Spring Street between Main and Garden Streets.

DEPOT STREET DISCUSSION: Mayor Clark asked if the Depot would be finished by the dedication.

The City Manager advised that the dedication was tentatively set for Friday, April 29 and that the final inspection of the Depot the next day would reveal how close the contractors were to completing the project. The City Manager also stated that City crews were working to complete the installation of a brick sidewalk on both sides of Depot Street by the date of the dedication, but that Duke Power still had work to do to bury overhead power lines on the street and to install decorative street lighting on the street.

The City Manager stated that efforts were still being made to price out a brick or concrete print sidewalk on Depot Street. The City Manager asked for guidance from Council on how much could be spent on this project.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to authorize the City Manager to spend up to $10,000 to install brick or concrete print decorative crosswalks across Depot Street. If the projected costs of the crosswalks exceed $10,000, the City Manager will bring the matter back to Council for further consideration.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSING COMMENTS:

Councilman Cuthbertson made mention of a parking complaint issue at the intersection of Fern and Montevista Avenue. Lt. Scott Spratt stated that he would contact the residents creating the problem and take care of the situation.

Councilman Cuthbertson also advised that Arbor Day held earlier that day was a huge success, with five large nuttal oaks planted by Marion Elementary School students at Cross Mill Community Park.

Councilman Owenby made mention of a complaint about a tree on School Street. The City Manager stated that he would look into the complaint and determine if the tree in question is on the right of way.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a Planning Session on March 1, 2005 at 5:30 P.M. and again at 8:30 P.M. at the conclusion of the regular City Council meeting. This meeting was held at City Hall located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Councilman Martin arrived for this meeting and had to leave due to an emergency.

OTHERS PRESENT: Bob Boyette, City Manager

The following Topics were discussed during the Planning Session:

XI. Police

XII. Fire

XIII. Purchasing

XIV. Public Buildings and Grounds

XV. Other Discussion Issues/Priorities for 2005-06 and Beyond

The Mayor and City Council gave general guidance on the preparation of the 2005-06 budget and on priorities for City projects.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 5, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor A. Everette Clark was not present for this meeting due to being out of State.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Lt. Scott Spratt, Marion Police Department; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Cliff McLarty, Madison Street, Marion, NC; Mia Lorenz, City Attorney; Bryan McMahan, Marion, NC; Frank & Debra Boldon, Marion, NC, 28752.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Owenby selected the citizens of the month for April.

FRANK AND DEBRA BOLDON

Councilman Owenby advised that Mr.& Mrs. Frank Boldon were married in 1988. Between them they have three children and five grandchildren.

They have lived in Marion since 1992 and are active members of the First United Methodist Church.

Mr. Bolden was born and raised in McDowell County and attended the Clinchfield School through the ninth grade at which time his family moved to Hickory.

He served in the U.S. Air Force, attended Lenoir Rhyne College and graduated with a business degree.

He retired from Corning Cable Systems as Chief Financial Officer.

Ms. Debra Boldon was born and raised in Atlanta, Ga. She graduated from the University of Georgia with a degree in Psychology.

Ms. Boldon lived in Oklahoma for ten years before moving to Hickory.

They now live in Marion and are developing "South Creek Vineyards and Winery" in Nebo.

The Boldons have supported the City with donations toward a community park in Clinchfield and to support the purchase of hanging flower baskets for Main Street.

Council members thanked the Boldons for their service to the community.

CONSENT AGENDA: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to to approve the consent Agenda as follows:

A. Approval of Minutes – May 22, 2005 Regular Minutes and Planning Session Minutes

B. Approve Budget Amendments

2004-2005 BUDGET ORDINANCE
(Sixth Amendment)

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-334-1000, Hwy. Safety Grant, is increased from $23,000 to $48,000.
b. General Fund Expenditures, Police, Account Number 10-510-7400, Capital Outlay, is increased from $195,594 to $220,594.
c. General Fund Revenues, Account Number 10-370-0000, Powell Bill Allocation, is increased from $175,000 to $195,335.
d. General Fund Revenues, Account Number 10-370-0100, Powell Bill Sales Tax Refund is reduced from $5,000 to $-0-
e. General Fund Revenues, Account Number 10-370-0100, Powell Bill DOT Reimbursement, is increased from $-0- to $45,000.
f. General Fund Revenues, Account Number 10-399-0100, Powell Bill Fund Balance Appropriated is decreased from $30,000 to $-0-
g. General Fund Expenditures, Powell Bill, Account Number 10-570-4500, Contracted Services is increased from $150,200 to $178,735.
h. General Fund Expenditures, Powell Bill, Account Number 10-570-0400, Contracted Services is increased from $500 to $2,300.
i. General Fund Revenues, Account Number 10-334-1500, Bullet Proof Vest Grant is increased from $-0- to $4,599.
j. General Fund Expenditures Police, Account Number 10-510-3600, Uniform is increased from $15,500 to $20,099.
k. General Fund revenues, Account Number 10-545-1500, Property and Insurance Reimbursement is increased from $-0- to $4,860.
l. General Fund Expenditures, Public Works, Account Number 10-545-1500, Maintenance Building/Grounds is increased from $1,200 to $6,060.
m. General Fund Revenues, Account Number 10-392-2500, Storm Damage Reimbursement is increased from $-0- to $18,437.
n. General Fund Revenues, Account Number 10-390000, Fund Balance Appropriated is decreased from $587.263 $568,826.

Section 2, Copies of this Budget Amendment shall be furnished to the funds.

Adopted this the 5th day of April 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-04-05-1

REQUEST- WAIVE LATE FEE FOR PARKING TICKET: The City Manager presented Council with a letter from Ms. Shelia Adams requesting that Council waive the $25.00 late fee for a unpaid parking ticket she received on October 13, 2004.

Ms. Adams does not dispute the ticket, however, she claims she did not see the ticket placed under her windshield. When she became aware of the ticket she immediately paid the $10.00 charge.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to waive the $25.00 late fee for the parking ticket issued to Ms. Adams.

APPROVE CONTRACT WITH ISOTHERMAL PLANING & DEVELOPMENT COMMISSION – COMPLETION OF LAND USE PLAN: The City Manager advised that as discussed at the last Planning Session, Council approved last fall for staff to spend up to $10,000 to complete the Land Use Plan, with the prospect of hiring an intern for the summer, using the N.C. Division of Community Assistance. The City Manager presented a contract for Isothermal Planning and Development Commission to assist with the completion of the Land Use Plan for a fee not to exceed $5,000.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted to approve the following Agreement:

JRB

SERVICE AGREEMENT MEMORANDUM

Upon the request of the City of Marion (the "City"), the Isothermal Planning and Development Commission (IPDC") agrees to perform the services described in the attached Scope of Services related to the proposed development of a Comprehensive Plan. It is anticipated that these services will be completed during the period from ____to _____. IPDC anticipates that its role in this project will focus primarily on decision support information, as other members of the project team – Planning Board leadership committee, City staff, Division of Community Assistance, student intern – will assume various other project roles.

IPDC agrees to provide appropriate personnel to the City to accomplish the enumerated services. The billing rate for services provided under this Agreement will range from $30.00 to $50.00 per hour depending upon the staff member involved (salary, fringe benefits and indirect costs), pus actual expenses, such as travel and supplies, incurred in the performance of the Scope of Services, IPDC anticipates that the costs incurred under this Agreement will not exceed $5,000.00. If additional services are requested by the City, and it appears that the costs of these services will exceed the estimated total, IPDC will notify the City. The City may then approve the additional costs or reduce the scope of the project.

The parties acknowledge that IPDC is an independent entity and that IPDC staff performing services under this Agreement shall not be considered as employees of the City.

By the signatures of their authorized representatives below, the parties acknowledge acceptance of this Agreement this 5th day of April, 2005.

A. Everette Clark, Mayor

Paul D. Hughes, Executive Director

Witness

Witness

REVIEW DOWNTOWN LOGO: The City Manager presented Council with additional options for the Downtown Logo, plus the original designs. The City Manager noted that the

revised logo included a capital "N" and "C" on North Carolina, as opposed to the original design which had a lower case "n" and "c" in North Carolina. The revised design also has open windows in the cupola and a greater variety of colors.

The DAC needs direction on the desired logo so that Arnett Muldrow and Associates can finalize the design and show us specific applications of the design. DAC member Cliff McLarty was present and asked Council to approve the design.

A discussion followed.

Councilman Edwards stated that he still supported the original recommendation of Arnett Muldrow to go with the lower case "n" and "c" in North Carolina, to draw more attention to the word "Marion".

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted to approve the following revised City logo:



The voted was as follows:

Councilman Cuthbertson	Yes
Councilman Little	Yes
Councilman Martin	Yes
Councilman Owenby	Yes
Councilman Edwards	No

REVIEW WATER/SEWER PROJECT LIST: The City Manager advised that residents of Crescent Drive have recently requested that consideration be given to moving their water line and curb work higher on the priority list so that the street can be resurfaced.

A discussion followed.

The Water and Street Priority List were presented as follows:

Water Department Project List
Updated January 2005

1. Replace 6" AC water line on Clay & Oak Street
1a. Install new 6" water line on Devonwood Drive. This project will likely begin in April.
2. Replace 4" AC water line under Henderson Street that feeds Holly Hill Drive. When done, the 4" AC line on Lail Street can be abandoned, then Lail Street will be ready fro resurfacing.
3. Replace 4" AC water line on Hudgins Street
4. Replace 6" cast iron water line on State Street from Garden Street to Rescue Squad
5. Replace 4" water line on Teal Street
6. Finish looping in water line on Virginia Road to Lamar Street where

line ends on Virginia Road.
7. Install new 6" water line on 6th Street in Clinchfield and add fire hydrants.
8. Replace 4" water line on New Street
9. Replace 4" water line on Park Avenue
10. Install new water line on North Garden Street to Crescent Drive
11. Install new water line on Crescent Drive from North Garden Street to Fleming Avenue

There are 28 other un-prioritized projects

Street and Sidewalk Priority List
Approved March 2005

Priority	Project
1	Depot Street – Curb and gutter (both sides), sidewalk (east side or both sides) – Near completion
1a	Glenview Street – Asphalt curb replacement where curb has become flattened - Completed
1b	Fort Street/North Main Street – Curb replacement/sidewalk replacement around new State Farm building – Near completion
1c	Vale Street – Asphalt curb installation
2	Curb and gutter – Ann Hawkins Street next to old Senior Center
3	Curb, gutter, sidewalk – North Madison Street (must wait on needed water line replacement)
4	Sidewalk – New Street between North Garden and North Madison Street
5	Curb, gutter, sidewalk – East Wilhemenia Street (requested by property owners, church) – Being completed by contractor
6	Curb, gutter, sidewalk – Spring Street between South Main and South Garden Street – Being completed by contractor
7	Drainage, curb, gutter – North Garden, James Drive, New Street
8	Sidewalk repairs – Sections of Logan Street from North Main Street to West Court Street, including adding new section of sidewalk behind Wachovia Bank
9	Curb and gutter – Lail Street (also needs new water line)
10	Curb, gutter, sidewalk – Park Avenue (needs new water line)
11	Sidewalk repairs – Sections of State Street from Clay Street to old Railroad
12	Curb, gutter, sidewalk – Cross Street (Needs new water line, as existing water line is among the oldest in the City)
13	Curb and gutter – Morgan Terrace (Needs a small amount of sewer work)
14	Sidewalk section replacement – West Court Street
Unprioritized:	Crescent Drive – Curb and gutter replacement (Needs a new water line)

Councilman Cuthbertson made a motion to move Water Project item eleven, Crescent Drive, to number four, this motion was seconded by Councilman Martin.

Councilman Owenby and Councilman Edwards voted against this motion creating a tie vote.

Mayor Pro Tem Steve Little was serving as Mayor and broke the tie voting with Councilman Owenby and Edwards against the motion to revise the list as presented.

It was the consensus of Council that the Street Committee look at this list more closely and bring back to Council any recommended changes.

APPROVE PLACEMENT OF TABLES AND CHAIRS ON SIDEWALK – SOUTH MAIN STREET: The City Manager presented Council with a request from Ms. Jamie Granger, owner of Julie's Subs on South Main Street, requesting approval to place tables on the sidewalk in front of her business.

This City Manager advised that the table and chairs would be placed next to the business, as was recently done for Wine Ruels.

A discussion followed.

Upon a motion by Councilman Martin, Seconded by Councilman Cuthbertson, Council voted unanimously to approve this request, subject to the signing of a liability waiver by the business owner and the tables and chairs not blocking the sidewalk.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that Charter Cable Company has announced plans to drop WBTV (CBS-Charlotte) from the Marion channel lineup. He noted that Mayor Clark had suggested that the City go on record opposing this change.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to send a letter of strong protest to Chater Communications, requesting to keep WBTV on the current cable line up.

COUNCILMAN COMMENTS:

COUNCIMAN EDWARDS advised that trees at the City's leased parking lot at West Henderson and Logan Streets were unsightly and needed to be removed.

The trees are adjacent to the parking lot leased by the City of Marion from Mr. Russell Neighbors. Mr. Neighbors has advised that he would not mind if the City removed these trees.

The City Manager suggested that the Tree Committee could be consulted about the trees, or Council could direct that the trees be removed. Council agreed to look at the trees in question individually and to discuss the matter at a future meeting.

COUNCILMAN CUTHBERTSON advised that the sign located at the City parking lot on Henderson Street has the time for parking listed wrong.

Councilman Cuthbertson also advised that the wind had moved the mirror on Willow Street.

COUNCILMAN OWENBY extended his personal thanks and gratitude to all City personnel and volunteers who assisted in various ways during the wind storm this past weekend.

CLOSED SESSION UNDER N.C.G.S. 143-318.11 (a)(6) and (a)(3): The City Manager advised that a closed session was needed to discuss a personnel matter and a legal matter.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted to go into Closed Session under N.C.G.S. 143-318.11(a)(6) to discuss a personnel matter and

under N.C.G.S. 143-318.11 (a)(3) to discuss a legal matter in consultation with the City Attorney.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted to go back into Regular Session.

Mayor Pro Tem Steve Little announced that no action was taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, April 19, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Margaret Lynch, PO Box 3065 Marion; J. Earl Daniels, Garden Street, Marion; SSG James Davis 845 Spaulding Road, National Guard Unit, Marion; Ken Harris 70 North Main Street, Marion; Mona Cochran 26 Highland Drive, Marion; Steve Jones, 135 Forest Heights, Marion; Matt Smith 1105 Airport Road, Marion; Grace & Bell Webb 882 Deepwoods Estate, Marion,

PERSONAL APPEARANCE – SSG. JAMES DAVIS: Staff Sergeant James Davis appeared before Council and extended an invitation to Mayor Clark and Council Members to attend a welcome home ceremony for the members of the local National Guard Unit who had served in Iraq for the last year. The ceremony will held at McDowell High School on Saturday May 7, 2005. After the ceremony, a small parade will take place from the High School to the Armory.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - April 5, 2005 Regular & Closed Session Minutes

B. Approval of Downtown Business Association Sidewalk Sale: Saturday, May 7, 2005

C. Approve Inter-local Agreement Amendment with McDowell County/Memorandum of Understanding with McDowell County – Eastfield Water and Sewer Project:

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

EASTFIELD SEWER EXTENSION PROJECT
INTERLOCAL COOPERATION AGREEMENT AMENDMENT

This amends the agreement made and entered into on April 9, 2001 by and between the City of Marion and the County of McDowell, political bodies within McDowell County and the State of North Carolina, pursuant to applicable State law and the duly adopted resolutions of the respective parties as set forth more fully in the original agreement.

WHEREAS, the City and County have agreed to a higher price per unit for sewer capacity in order to accommodate all of the City's policy requirements;

THEREFORE, the City of Marion and McDowell County agree to amend their original agreement from $820 per unit to a price of $974.50 per unit for all of the 359 units connected to the sewer system for this project only. The total compensation for the City will not exceed $349,845.50.

IN WITNESS THEREOF, the parties hereto have caused the execution of this Amendment to the originally approved agreement.

ENTERED into this day, the 19th of April, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Andrew K. Webb, Chairman
McDowell County

ATTEST:

Carrie Padgett, Clerk to the Board
McDowell County

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

EASTFIELD SEWER EXTENSION PROJECT
MEMORANDUM OF UNDERSTANDING REGARDING
WATER AND SEWER CONNECTIONS AND COSTS

The intent of this agreement is to clarify the costs and responsibilities of the City of Marion and McDowell County in regards to the Water and Sewer extensions in the East Marion project area as delineated on the project as-built drawings developed by Mattern & Craig Engineering.

WHEREAS, the City and County have cooperated on the development and implementation of the East Marion Sewer project; and

WHEREAS, the grant funds have paid or will pay all of the Cost Recovery Charges for the sewer services and all sewer service lines are complete and have been paid for with grant funds obtained by McDowell County; and

WHEREAS, sewer service to all units in the project area is provided by the City of Marion and the City receives the monthly revenues from these residences; and

WHEREAS, City policy requires that a residence be connected to water, if available, in order to receive sewer service from the City; and

WHEREAS, there are 39 residences in the project area that have been connected to the sewer system and have water service available, but which are not connected to the City's water system; and

WHEREAS, McDowell County agrees to pay a higher per unit cost recovery charge for each sewer service in the project area at a special project rate;

THEREFORE, the City of Marion agrees to waive the Cost Recovery Charge for water service to each of the 39 affected units that have been connected to the sewer system and have water service available, but which are not connected to the City's water system, in exchange for the higher sewer fee. The City will provide a tap and meter at no charge to each of the 39 units, in exchange for the higher sewer fee. Both parties agree that the owners of the 39 affected units will be solely responsible for the plumbing work necessary to physically connect each unit to the City's water system and that neither the City nor the County shall have any responsibility to any individual residence beyond providing a water tap and meter.

IN WITNESS THEREOF, the parties hereto have caused the execution of this agreement.

ENTERED into this day, the 19th of April, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Andrew K. Webb, Chairman
McDowell County

ATTEST:

Carrie Padgett, Clerk to the Board
McDowell County

PUBLIC HEARING – ZONING AMENDMENT – REAL ESTATE SIGNS: Mayor Clark opened the Public Hearing.

Mayor Clark stated that several real estate agents were present for this Public Hearing. Mayor Clark stated that he had heard from many agents who wished to provide their input on any restrictions on real estate signs before the adoption of an ordinance. Mayor Clark suggested that Council refer the zoning amendment regarding real estate signs back to the Planning Board and ask for the Planning Board to receive the input of real estate agents. Councilman Little noted that he had come to the meeting prepared to make the same recommendation.

A discussion followed.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to refer this item back to the Planning Board.

PUBLIC HEARING – ZONING AMENDMENT: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis presented a recommendation from the Planning Board to limit the size of on-premise signs to 100 square feet, and to set rules for the display of building and projecting signs.

Mayor Clark asked what prompted this change. Ms. Suzy Davis advised that the Planning Board felt that the maximum size for on-premise signs was too large. The current restrictions for freestanding on-premise signs include a thirty-foot maximum height and a fifty-foot maximum width, allowing for on-premise signs the size of billboards.

Ms. Davis stated that, currently, there are no size restrictions for building attached signs. There is a restriction on the placement of signs on the roof. After some discussion, the Planning Board decided that there should be no size restrictions for building attached signs provided that they do not extend above the roof or off the side of the wall. The Board also suggested a definition for a "projecting" sign, a sign that is attached to a building but extends perpendicular from the wall of a building. The Board also recommended that Council limit the size of projecting sign to ten square feet and also limit them to a height of eight feet above ground level.

Councilman Owenby noted that he didn't like to see too many restrictions placed on business, but stated that reasonable guidelines were acceptable.

Councilman Edwards advised that if businesses were given any loophole in the sign regulations, they would take advantage of it.

Mayor Clark asked how many signs would be non-conforming under the new regulations. Ms. Davis stated that several signs in the City would be made non-conforming.

The City Manager suggested that the maximum sign size could be related to the amount of street frontage, so that larger lots could have larger signs.
A discussion followed. Council members expressed no opposition to the proposed rules for building attached and projecting signs, but suggested that the Planning Board review the maximum size for on-premise signs. The Mayor and Council members expressed concern that 100 square feet would be too restrictive. A maximum size amount of around 400 square feet was suggested.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to refer this item back to the Planning Board for further review.

PUBLIC HEARING – ZONING AMENDMENT – PLACEMENT OF SIGNS ON VEHICLES: Mayor Clark opened the Public Hearing.

Ms. Suzy Davis, City Planner, advised that staff had recently noticed businesses attaching signs to automobiles. The City's regulations for these types of signs are not clear. The proposed regulations would prohibit business from hanging (on-premise) signage on motor vehicles outside of their business, if said vehicles are used solely for the purpose of displaying signs.

Ms. Davis stated that the Planning Board had recommended the following amendments:

706.11 The regulations for On-premises signs and other advertising structures are enumerated below:
(1) In any zoning district the following general regulations shall apply:
(P) *Vehicles shall not be used for the sole purpose of displaying signs.*

A discussion followed.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted to unanimously approve the recommendation of the Planning Board by approving the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII. General Provision. Section 706.11(1) is amended by addition section (P)

(P) Vehicles shall not be used for the sole purpose of displaying signs.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 19th day of April 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-05-04-19-01

APPROVE RETIREMENT INCENTIVE PLAN: The City Manager presented Council with a copy of the retirement incentive plan that was discussed at the last meeting. The City Manager stated that this plan, which was based on a similar plan in Buncombe County, would provide for the provision of a Medicare Supplement or equivalent monthly payment to employees eligible for retirement, upon becoming eligible for Medicare, if said employee agrees to retire between May 1, 2005 and December 31, 2005.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the following retirement incentive plan:

City of Marion
2005 Retirement Medicare Supplement Incentive Plan

1. Any full-time regular employee of the City of Marion meeting the qualifications listed below are eligible to participate in this plan.

2. To participate in this plan, an employee must be eligible to receive an early, service or disability retirement benefit from the North Carolina Local Government Employees' Retirement System.

3. Any employee who has previously received a retirement incentive payment from the City shall not be eligible for this plan.

4. Any employee accepting the Retirement Medicare Supplement Incentive Plan shall not be eligible for re-employment with the City of Marion in any and all capacities.

5. The employee must sign the Retirement Medicare Supplement Incentive Agreement Form.

6. Upon the attainment of age 65 or eligibility for Medicare, there shall be two plans from which the retiree may choose:

   Medicare Supplement Purchase Plan: Upon the attainment of age 65 or eligibility for Medicare, the City of Marion shall purchase for any qualified employee opting to accept the Retirement Medicare Supplement Incentive a monthly Medicare Supplement Plan J coverage or a similar Medicare Supplement Policy from the City's insurance carrier for the remainder of the retiree's life. As future Medicare revisions and reforms take effect, should the current benefits of Medicare Supplement Plan J or of the Medicare Supplement Policy from the City's insurance carrier no longer be offered, the City of Marion shall provide the Medicare Supplement Plan that most closely mirrors the benefits of Medicare Supplement Plan J, which includes a drug benefit, including a combination of a Medicare Supplement and drug benefit that may be offered directly from a Medicare chosen carrier. Purchase of all coverage shall be from an authorized Medicare Supplement Carrier of the City's choice.

   Medicare Supplement Payment Plan: Upon the attainment of age 65 or eligibility for Medicare, the City of Marion shall pay to the retiree a monthly sum of $375.00 for the purpose of purchasing a Medicare Supplement and assisting in prescription drug cost. This amount shall be paid to the retiree for the remainder of the retiree's life. The

amount of $375.00 shall not be decreased or increased as future Medicare reforms and revisions take effect. Any and all payments shall terminate upon the retiree's death.

7. The plan will become effective on May 1, 2005 and continue through December 31, 2005 and require those accepting the offer to retire on or before December 31, 2005. **The Application for Retirement form and the Retirement Medicare Supplement Payment Incentive Agreement form must be signed on or before June 15, 2005.**

8. The City Manager is directed to evaluate any position vacated due to acceptance of the Retirement Medicare Supplement Incentive Plan for possible position elimination or cost cutting salary pay grade classification reduction. Any changes deemed necessary by the City Manager shall be reflected in a recommended revised City of Marion Allocation of Position Classes to Salary Grades and presented to City Council for approval.

9. The actions of this Retirement Medicare Supplement Incentive Plan shall not be retroactive to employees who retired prior to May 1, 2005.

10. The actions of this Retirement Medicare Supplement Incentive Plan shall not apply to employees retiring after December 31, 2005.

11. This plan supercedes any provisions of the City Personnel Policy in conflict therewith in relation to retiree insurance coverage for employees participating in this plan during the time period covered by this plan.

Adopted by the City Council of the City of Marion this the 19th day of April, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DISCUSS DEPOT STREET BRICK CROSSWALKS: The City Manager advised that Projects Manager Glen Sherlin has looked at options for the brick crosswalks on Depot Street previously endorsed by Council, up to a limit of $10,000. The City Manager stated that Mr. Sherlin had determined that brick crosswalks could be installed for a price under the $10,000 limit. However, Mr. Sherlin has been unable to obtain a sample of the brick to be used. The City Manager suggested that he, Mr. Sherlin and Mayor Clark review the color of the brick to make sure the crosswalk brick matches that of the Depot Street sidewalks.

A discussion followed.

It was the consensus of Council to proceed with using brick for the crosswalks and to allow the City Manager, Mayor Clark and Glen Sherlin to select the color for the brick crosswalks that most closely matches the brick sidewalks installed on Depot Street .

Further discussion was held regarding the paving of Depot Street. The City Manager noted that Depot Street needed to be paved prior to the brick crosswalks being installed. The City Manager asked Council for permission to allow the low bid paving company to complete the paving work on Depot Street prior to the anticipated Spring 2005 Street Resurfacing Project contract award.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to authorize the City Manager to allow the low bid paving company to complete the paving work on Depot Street prior to the anticipated Spring 2005 Street Resurfacing Project contract award.

REQUEST – CHAD TONEY – CLOSE A SECTION OF MAIN STREET – OPEN HOUSE CELEBRATION: The City Manager advised that Mr. Chad Toney has completed his new building located at North Main and Fort Streets. Mr. Toney is requesting permission to close the block of North Main Street between Fort and Court Streets between 1:00 p.m. and 5:00 p.m. on Saturday, May 14 for an open house celebration he is planning. The City Manager stated that Mr. Toney was planning to provide music and food for the public on the street at this time and that Mr. Toney had agreed to coordinate the street closing with surrounding businesses in the block.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the request of Mr. Chad Toney to close the block of North Main Street between Fort and Court Streets between 1:00 p.m. and 5:00 p.m. on Saturday, May 14 for an open house celebration.

Mayor Clark suggested that Council invite Mr. Toney to a City Council Meeting to congratulate him with his success of his new office building that adds class to Downtown and to all of the City.

DISCUSSION - RENTAL OF DEPOT: The City Manager advised that the completion of the Depot is not on schedule and that rentals have been reserved that the City may not be able to honor. Ms. Margaret Lynch had reserved the Depot on Saturday, April 30 to honor her father with a retirement celebration and had sent dozens of invitations out of state. The City Manager stated that the City could certainly refund Ms. Lynch for the Depot rental and pay her expenses, but that a solution was needed to guarantee that Ms. Lynch could hold the party for her father on April 30.

Mayor Clark suggested that City Hall be used as a location for the party in the event the Depot is not ready on April 30. Council members agreed that this would be an acceptable solution.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby Council voted unanimously that, in the event the Depot is not ready by April 30, Ms. Lynch may hold her retirement party for her father at City Hall at no charge.

LETTER OF SUPPORT FROM MARION FIRE DEPARTMENT VOLUNTEERS: The City Manager presented Council with a letter from the Volunteers of the Marion Fire Department to Council and to McDowell County in reference to the M.A. Fire District Fire Tax.

The letter stated that the volunteers of the Marion Fire Department would respectfully request that the Marion City Council and the McDowell County Board of Commissioners work to schedule as soon as possible an election on the $.04 tax rate for the Marion Area Fire District. The volunteers of the Marion Fire Department feel that the City's request for a $.04 tax rate in the MA District is reasonable and would help provide more funding for the Marion Fire Department in the MA District.

The volunteers believe that a $.04 tax rate could be approved by the MA District voters and pledged to communicate to the public using the media the need for the tax increase. The volunteers proposed that if the tax increase passes by any margin, even 50 percent plus one vote, the County Board of Commissioners should agree to accept the wishes of the district voters.

In closing, the volunteers stated that they believe the MA District would best be served by having the Marion Fire Department serve the MA district. The volunteers stated that they believe in this fact so much that they are willing to work for the tax increase. The volunteers

asked for both boards to agree to schedule the election as soon as possible, under the conditions listed above.

Councilman Cuthbertson suggested that a petition signed by 50 percent of the MA District property owners would serve the same purpose as an election, and might actually be a preferable alternative to an election.

A discussion followed.

The Mayor and Council members stated publicly that they appreciated the support and input from the volunteers of the Marion Fire Department. The Mayor and Council members agreed that they should respect the wishes of the firefighters and work on an election or petition, to achieve a positive resolution to the MA District tax situation.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to endorse and support the letter presented by the Marion volunteer firefighters and to work with the County on an election or petition regarding the MA District tax increase, with a preference being given to the petition process.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

DISCUSSION - FUTURE FORWARD: The City Manager asked Council if the City should become a member of the Future Forward group in Hickory. It was the consensus of Council for the City of Marion to join Future Forward. Membership dues are $500.00 for one year.

DISCUSSION – INTERLOCAL AGREEMENT WITH MCDOWELL COUNTY – US 221 NORTH WATER AND SEWER IMPROVEMENTS PROJECT: The City Manager stated that, at the Joint Utility Committee meeting that morning, the County had stated that the Interlocal Agreement between the City and County for the US 221 North Water and Sewer Improvements project had not yet been approved by the County Commissioners. County Commission Chairman Webb had proposed that the City fund 60 percent of the $25,000 cost for elevating the pump station for the project, with the County funding the remaining 40 percent cost, if FEMA and/or State Disaster Relief funds were not received to cover this cost. The County had agreed to use any remaining project contingency funds (currently about $6,000) for the additional costs, so the 60-40 City-County split would be based on any remaining net costs.

The Mayor and Council agreed to the concept of this revised proposal. The revised Interlocal Agreement will be presented for formal approval by Council at the next meeting.

DISCUSSION – PARTICIPATION – EASTFIELD WATER EXTENSION: The City Manager stated that the County had presented a proposal at the Joint Utility Committee meeting that morning regarding the extension of water service to 28 homes and three unserved streets in Eastfield. The County stated that the State of North Carolina had agreed to fund $130,000 of the total $190,000 project cost, on the condition that a local match for the remaining $60,000 amount. The County proposed that the City eliminate the cost recovery charges for the water connections at a cost of $40,000 and that the City and County split the remaining $20,000 cost.

After discussion, Council agreed that the City could fund $40,000 of the $60,000 local match by eliminating the cost recovery charges for the 28 water customers, on the condition that the County's contractor make all water connections and the County pays the remaining $20,000 local match.

Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to participate with McDowell County to extend water lines to three unserved streets in Eastfield by funding $40,000 of the $60,000 local match through eliminating the cost recovery charges for the 28 water customers, on the condition that the County's contractor make all water connections and the County pays the remaining $20,000 local match.

WBTV DISCUSSION: The City Manager provided an update on the effort to keep WBTV on the City's cable lineup, despite apparent efforts by Charter Communication and WSPA to remove WBTV from the cable lineup.

PRISON PUMP STATION – DOT HIGH BID: The City Manager reported on efforts to repair then replace the Prison Pump Station Bridge on NC 226 South. The bridge, which serves the Smith family, has been deemed unsafe by the North Carolina Department of Transportation due to September storm damage. The City Manager stated that he was working with the State Division of Emergency Management to obtain funding for the projected $50,000 cost to construct a new bridge.

RUSSELL NEIGHBORS PARKING LOT LEASE- TREE REMOVAL:
It was the consensus of Council that the two trees adjacent to the parking lot leased by the City of Marion from Russell Neighbors should be removed.

CLOSING COMMENTS:

Councilman Edwards advised that there was a new bakery downtown on Main Street.

Councilman Cuthbertson advised that City Crews had worked on the bank behind Mr. Walton Clapp's home on Rutherfordton Road and that the bank had washed out and is in need of repairs. Councilman Cuthbertson stated that Mr. Clapp's yard also needed to be resown, as it had been damaged by City equipment. The City Manager pledged to have City personnel look at the location the following day.

Councilman Cuthbertson asked if the Street Committee had met and made any recommendations to change the placement of Crescent Drive on the Street and Water Project priority list. The City Manager advised that the Street Committee had recommended no changes to the Street and Water Project priority list.

Councilman Owenby asked about the status of the Skate Park. The City Manager stated that the City would receive word about the PARTF Grant in May (first cycle) and July (second cycle).

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 3, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little and Councilman Mike Edwards were absent from this meeting due to being out of Town.

Councilman Cuthbertson contacted the City Manager and advised that he would be late for this meeting.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Scott Spratt, John Taylor, Randy Cyr, Marion Police Department; Mia Lorenz, City Attorney.

GUESTS PRESENT: Allen, Donnette and Jamie Medford; Marion, NC, 28752.

COUNCIL QUORUM: Mayor Clark welcomed all persons present and advised that due to unforeseen circumstances, the Regular City Council Meeting could not begin due to a lack of a quorum.

PRESENTATION – CHIEF ELLIOTT: Chief Elliott introduced Officer Chad Walker and presented him with a Meritorious Award for the job he did for the citizens of Marion on March 14th, 2005 by locating a murder suspect within minutes of the crime.

Chief Elliott also credited him with being instrumental in the department's ability to make a quick arrest.

The Mayor and Council Members Commended Officer Walker and stated that he was an asset to the Marion Police Department.

CITY MANAGER'S REPORT: While a quorum was not present for this meeting, City Manager Bob Boyette gave a report on current projects.

The City Manager also noted that Water Plant Superintendent Buck Byrd has retired effective May 1, 2005 due to health reasons.

He also advised that Ms. Linda Suttles who retired from the City several years ago due to illness, passed away this week.

PUBLIC APPEARANCE – MS. DOROTHY MCCALL: The City Manager advised that Ms. McCall withdrew her request to appear before Council and would not be present for this meeting.

WELCOME TO MARION SIGN: The City Manager advised that the Welcome to Marion signs are in need of repairs or and/or replacement.

It has been suggested that a committee be formed and consideration be given to using the new City logo for the Welcome to Marion signs.

A discussion followed. Council members directed that the City Manager seek persons from the Downtown Advisory Committee and Downtown Business Association to serve on the Committee, along with a Council member.

The City Manager will bring back to Council a list of possible Committee Members at a future meeting.

COUNCIL MEETING RECESS: Mayor Clark called a recess until Councilman Cuthbertson arrived for this meeting.

COUNCIL MEETING RECONVENED: Councilman Cuthbertson arrived for this meeting at 9:00 PM. Mayor Clark reconvened the City Council Meeting.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN CUTHBERTSON: Councilman Cuthbertson apologized for his late arrival, which was due to circumstances out of his control, and presented his selection of the citizen of the month for May.

ALLEN MEDFORD

Councilman Cuthbertson advised that Allen is the son of Bill and Ruth Medford and has been married to his wife Donnette for thirty-one years. They have two daughters, Casey and Jamie Medford.

Allen is an active member of the United Methodist Church and retired from the Department of Transportation as Maintenance Supervisor.

He has coached countless Little League games and is a tremendous asset to the youth in our community. He has coached and worked with the youth for over thirty years.

Mayor Clark and Council Members all had kind words to share regarding Mr. Allen Medford and his family.

CONSENT AGENDA: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes – April 19, 2005 Regular Minutes

B. Approve use of Community Building basement for SOS Program 10 weeks – June 6th – August 18th except for the week of the 4th.

C. Approve Interlocal Agreement Amendment with McDowell County – US 221 North Water and Sewer Improvements Project

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

Amendment to the Interlocal Agreement for US 221 North Water and Sewer Improvements Between the City of Marion, North Carolina and the County of McDowell

THIS CONTRACT AMENDMENT is made and entered into this ___ day of _____ 2005 by and between the County of McDowell, a North Carolina Municipal Corporation, hereinafter referred to as "the County", and the City of Marion, a North Carolina Municipal Corporation, hereinafter referred to as "the City".

WITNESSETH

WHEREAS, the City and the County have entered into an agreement dated December 2, 2003 that provides for the construction and operation of certain water and sewer improvements in the vicinity of US 221 North and Hankins Road; and

WHEREAS, said water and sewer improvements were damaged prior to completion of construction, from serious weather resulting from two hurricanes in September 2004; and

WHEREAS, the City and County agree that said damages should be repaired in such a manner as to prevent such damage in the future, by elevating the wastewater pump station constructed as part of the project, to protect the pump station controls and generator platform from future flooding events; and

WHEREAS, the project engineer has estimated the cost of the repair and improvements to be $25,000; and

WHEREAS, the City and County anticipate receiving certain funds to apply to the cost of said damages from FEMA and/or the North Carolina Division of Emergency Management.

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained in the December 2, 2003 agreement and also contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The City and County agree that the County will apply to FEMA and/or the North Carolina Division of Emergency Management for any applicable reimbursements for the costs associated with the repair of storm damages and that such reimbursements would be applied to the total cost of repairs and modifications to the water and sewer improvements which are the subject of the original agreement and this amendment thereto.

2. The parties further agree that the City would be responsible for managing the repairs and modifications to the water and sewer improvements which are the subject of the original agreement and this amendment thereto, to include retaining McGill Associates to design said repairs and modifications, negotiating with contractors to effect said repairs and modifications, overseeing and approving contractors' work, and compensating the engineers and contractors for the costs associated with said repairs and modifications.

3. The City and County agree that any remaining project contingency funds will be used to pay the additional costs, considering the FEMA and or North Carolina Division of Emergency Management reimbursements.

4. Subsequent to completion of the subject repairs and modifications, the City will present to the County a complete accounting of the associated cost, less the FEMA/North Carolina Division of Emergency Management reimbursements and project contingency funds that are applicable to said repairs and modifications.

5. The City and County agree to share in the net costs of said repairs and modifications, considering the FEMA/North Carolina Division of Emergency Management reimbursements and project contingency funds, with the City paying 60 percent of said net costs and the County paying 40 percent of said net costs, and with the County advancing its share of said costs to the City upon receipt of the City's accounting of said costs, within 30 days after the submission of said net costs.

6. The City and County agree that all of the terms and conditions contained in the December 2, 2003 agreement and any subsequent amendments shall remain in full effect and shall govern the parties' actions with regards to this amendment to said agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF McDOWELL, NORTH CAROLINA

By:_____
County Commission Chairman

(SEAL)
Attest:

By:_____
McDowell County Clerk

CITY OF MARION, NORTH CAROLINA

By:_____
Mayor

(SEAL)
Attest:

By:_____
City Clerk

D. Approve Use of Old Wastewater Plant Property on College Drive – NC Forest Service

All Terrain Vehicle (ATV) training school – May 25th and 26th from 9:00 AM – 4:00 PM

E. Approve Resolution to Authorize Mowing Contract with NC DOT:

CONSIDER APPROVAL OF RESOLUTION TO AUTHORIZE THE SALE OF CITY PROPERTY BY NEGOTIATED OFFER AND UPSET BID: The City Manager presented Council with a resolution authorizing the sale of 3.99 acres of the City's Water Plant property

off of Roby Conley Road by negotiated offer and upset bid to Ms. Annette Bryant. Ms. Bryant presented a bid of $22,500 for the 3.99 acre tract, just under the $5,900 per acre appraised value of the property. The City Manager advised that the cost for the survey and appraisal of the property would be added to the sale price and that the property would have to be subdivided prior to sale. The City Manager also explained how the upset bid process worked under State law. Ms. Bryant was present for this meeting.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to adopt the following Resolution:

Resolution Authorizing the Sale of Certain Property Owned by the City of Marion by Negotiated Offer and Upset Bid

WHEREAS, the City Council of the City of Marion desires to dispose of certain surplus property of the City; and

WHEREAS, N.C.G.S. 160A-269 authorizes a city to convey by negotiated offer and upset bid any real or personal property; and

WHEREAS, Ms. Annette Bryant has submitted a bid in the amount of $22,500 for the purchase of 3.99 acres of property owned by the City of Marion located on Waycross Drive, part of the City's larger Water Plant parcel, as described below:

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Marion that:

1. The following described property is hereby declared to be surplus to the needs of the City of Marion:

Being a parcel containing 3.99 acres according to that certain unrecorded plat of survey prepared by R. L. Greene Surveying and Mapping, and which survey is dated April 8, 2005 and which survey has a map file number of 4-168R and from which survey the following metes and bounds description is taken:

BEGINNING AT an existing iron pipe which is the Northeastern most corner of the property herein described and which pipe is identified as the thirty first corner of that tract described at Deed Book 129, Page 334, McDowell County Public Registry and which BEGINNING point is in the line of lands now or formerly owned by Dennie L. Hall, et. ux., see Deed Book 583, Page 599, McDowell County Public Registry and which BEGINNING point is located South 86 degrees 18 minutes 53 seconds East 989.04 feet from an existing solid iron pin which is identified as the thirtieth corner of Deed Book 129, Page 334, McDowell County Public Registry and which solid iron pin is located in the line of Dianne P. Corbett; thence from said BEGINNING point, and with the line of the aforementioned Hall, tract, South 23 degrees 55 minutes 48 seconds West 311.19 feet to an existing axle which is identified as the thirty second corner of Deed Book 129, Page 334, McDowell County Public Registry; thence with the line of lands now or formerly owned by Iris Burleson Addison, see Deed Book 383, Page 346, McDowell County Public Registry South 32 degrees 52 minutes 12 seconds West 114.37 feet to an existing solid iron pin which is a corner with lands now or formerly owned by Charles P. Greene, et. ux., see Deed Book 149, Page 408, McDowell County Public Registry; thence with a new line and with the centerline of Waycross Drive, a private drive, South 84 degrees 25 minutes 27 seconds West 101.83 feet to an unmarked point, a point in a curve to the left and which curve has a radius of 215 feet, a tangent of 56.33 feet; a length of 110.19 feet; a delta of 29 degrees 21 minutes 55 seconds, a degree of 26 degrees 38 minutes 57 seconds and a chord bearing and distance of North 80 degrees 53 minutes 35 seconds West 108.99 feet to an unmarked point; thence North 66 degrees 12 minutes 37 seconds West 232.90 feet to an unmarked point; thence leaving the Waycross Drive, and with a new line, North 28 degrees 26 minutes 35 seconds East 350.03 feet (passing a five eighths inch iron rebar set at 30 feet) to a five eighths inch rebar set which is located in the line of Dianne P. Corbett, see Deed Book 767, page 704, McDowell County Public Registry; thence South 86 degrees 18 minutes 53 seconds East 444.55 feet to the point and place of BEGINNING.

2. The City Council accepts the offer of Ms. Annette Bryant to purchase the above described property for $22,500, subject to the upset bid process being followed as required by N.C.G.S. 160A-269. In addition, costs associated with the survey and appraisal of the 3.99 acre parcel to be created shall be added to the sale price.

3. The City Clerk shall notify Ms. Annette Bryant of the acceptance of this offer, receive a five percent bid deposit from the bidder, and cause a notice of this resolution to be published in accordance with G.S. 160A-269. Such notice shall state that prospective bidders have ten days from the date the notice is published to offer an upset bid, pursuant to G.S. 160A-269.

4. Once the upset bid process is completed, in accordance with G.S. 160A-269, the City Manager is designated to dispose of the above described property to the bidder selected by City Council, for a minimum price of $22,500, plus survey and appraisal costs. The sale in contingent on the City obtaining subdivision approval for the 3.99 acre parcel to be created.

Adopted this the 3rd day of May, 2005.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-05-05-03-1

REVIEW GREAT MEADOWS/LOWE'S/WALMART SEWER EASEMENT: The City Manager advised that a few months ago, Council agreed to accept maintenance and ownership of the sewer line serving the Wal Mart Shopping Center and the new Lowe's store (the 8" sewer line portion) subject to the City receiving an easement from all applicable property owners.

City Attorney Mia Lorenz was present for this meeting and has been negotiating with attorneys representing Wal Mart, McDonald's, Lowe's and Great Meadows.

McDonald's and Wal Mart have objected to some of the wording in the easement regarding environmental issues and language.

Mr. Jeff Flagerty, President of Jemsite and Mr. George Hollodick , attorney for Jemsite were both present for this meeting.

A discussion was held regarding a sewer indemnity that both parties could agree on. The City Attorney and Council agreed that the revised language proposed by McDonald's and Wal Mart would serve the City's needs for this easement.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to accept the revised easement document as presented by the City Attorney and the attorney for Jemsite Development.

PUBLIC HEARING – US 221 NORTH ANNEXATION: Mayor Clark opened the Public Hearing.

The City Manager gave an overview of the annexation report and the City's plan of services for the annexation area. The City Manager advised that the adoption of the annexation ordinance is scheduled for May 17, with the effective date of the annexation being June 30, 2005.

There were no citizens present to discuss this annexation.

Mayor Clark closed the Public Hearing.

A discussion followed.

No action was necessary for this item.

AWARD CONTACT – STREET PAVING BIDS: The City Manager presented Council with a memo from Purchasing Agent Kathy Shook with bids for the annual Street Paving as follows:

APAC, Rutherfordton

1.25" asphalt	$4.48 per square yard	$62,966.40
1.5" asphalt	$5.12 per square yard	$71,961.60

Boggs, Monroe

1.25" asphalt	$4.70 per square yard	$66,058.50
1.5" asphalt	$5.30 per square yard	$74,491.50

Maymead, Mountain City, Tenn

1.25" asphalt	$5.37 per square yard	$75,475.35
1.5" asphalt	$6.38 per square yard	$89,670.90

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to accept the low bid of APAC as stated above.

The City Manager stated that all 11 streets on the approved street paving list would be paved at some point by the end of summer, but that Lail and Clay Streets required some water line work to be completed first, which may cause a delay of between a few weeks and a few months for both streets to be paved.

DISCUSS ECONOMIC DEVELOPMENT PROPOSAL – MARION DOWNTWON BUSINESS ASSOCIATION: The City Manager advised that he met with the Downtown Business Association (DBA) Board in April to discuss Council's proposal to increase the DBA Funding by $20,000 in exchange for DBA Director Freddie Killough working more hours and the DBA taking over retail/commercial recruitment activities for the City and some grant writing responsibilities. The Board unanimously endorsed the concept of the proposal and presented a counterproposal which requests a total of $26,000 in additional funding advising that Ms. Killough would be working thirty-two (32) hours per week, with secretarial support filling the difference to provide an average of 40 hours of staff support per week.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the proposal by the DBA Board and for the City to enter in to a three year contract with the DBA for $26,000 per year in additional funding for the provision of retail/commercial recruitment activities for the City and targeted grant writing responsibilities, effective July 1, 2005. The City Manager will prepare a draft contract for review and approval by Council and the DBA Board in June.

CIVIL CITATION APPEAL PARKING TICKET: The City Manager presented Council with a request to appeal a parking ticket from Ms. Christen Jones. Ms. Jones was given a ticket for parking partially in the yellow striped no parking area of North Main Street adjacent to Brown Drive. In her appeal letter, the City Manager stated that Ms. Jones essentially admitted to guilt, but requested that Council waive the $10.00 penalty.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to deny the appeal of the parking ticket civil citation requested by Ms. Christen Jones.

REVIEW COMMUNITY BUILIDING TENNIS COURT RULES: It was the consensus of Council present to hold this item until the May 17 meeting, so that Councilman Edwards could be present.

DISCUSS WATER AND SEWER RATES:

The City Manager and Finance Director Harriett Thomas reviewed the current financial picture of the Water and Sewer Fund and presented six options for rate adjustments. The City Manager advised that Option 6, involving the highest increase (a little over 9% for an average inside water and sewer customer and higher for an outside customer), would bring in about $303,000 in new revenue and would be recommended in the 2005-06 budget. The City Manager stated that the cash in the Water and Sewer Fund would be depleted within three years unless some changes were made, since a loss of $280,000-$300,000 in the Water and Sewer Fund was projected this year and since the City has a little over $800,000 in cash in this fund (down from over $1.2 million just two years ago), due to continued erosion of utility sales to manufacturing plants. The City Manager stated that the recommended Water and Sewer Fund budget would call for the elimination of three positions (the elimination of a vacant General Maintenance II position in Utility Maintenance and no replacement of retired operator's positions at the Water Plant and the Wastewater Plant). Total budget cuts in Water and Sewer, including no replacement for Buck Byrd's position will exceed $250,000. In order to put the Water and Sewer Fund back in good financial condition, The City Manager stated that he will propose a Fund Balance Appropriation of about $200,000 as opposed to $400,000+ the past few years. This smaller Fund Balance Appropriation will hopefully allow for close to a break even year and for the City to eventually build the Water and Sewer Fund Balance back to Council's goal of $1 million. The City Manager further noted that the rate increases will minimize the impact on inside water and sewer customers, while disproportionately affecting outside customers, with outside rates going from 2 times to 2.5 times inside rates. Council agreed to discuss the proposal more at the budget workshop(s) once the budget was presented to Council at the May 17 meeting.

Ms. Thomas passed out a draft Water and Sewer Capital Improvements Plan that staff has been working on for a Water and Sewer study being completed by Dennie Martin. Staff has quantified over $50 million of water and sewer capital needs in the next 20 years. Mayor Clark noted the age of the City's Water and Wastewater Plants and that the City may need to look at some sizable debt issuance to complete many or all of the projects in the plan after the main water and sewer debt ($277,000 payment per year) is paid off in 2008.

DISCUSS SALARY SURVEY: The City Manager advised that he had completed a salary survey of all City positions, comparing city salaries to those of 17 other cities in Western North Carolina with an average population of 5,529, which is 800 less than our projected 2005 population of about 6,330. The City Manager reported that the survey revealed that the City was over $200,000 short of "average" for all positions, an amount close to 8% of total payroll. The City Manager noted that this figure was impossible to budget in one year, but that he would propose in the 2005-06 budget a combination of cost of living, merit and market adjustments. The City Manager reported the good work done by our employee to lower our worker's compensation and medical insurance premiums in past years and that he would propose to return these savings to the workforce. The City Manager stated that he had conducted many conversations with other cities and counties and had determined that nearly all bring in an outside consultant every few years to complete a pay plan and then make necessary adjustments. The City Manager advised that he would propose funding of such a study in the next year's budget, for a cost of $12,000. The City Manager stated that the City's salary shortfalls were very heavily a General Fund problem, so the need for Water and Sewer rate increases was not connected to the need for higher salaries, since most of the Water and Sewer Fund positions were being paid a salary that is fairly competitive in the market. The City Manager and Police Chief Mika Elliott highlighted high turnover rates in our Police Department as an example of the problems the City is having retaining employees.

Councilman Owenby stated that he would like to see alternatives other than paying a consultant to conduct a Pay and Classification study.

Council agreed to discuss the proposal more at the budget workshop(s) once the budget was presented to Council at the May 17 meeting.

SCHEDULE BUDGET WORKSHOP: The City Manager proposed May 24, 2005 and Tuesday May 31, 2005 as dates for Budget Workshops. It was the consensus of City Council to schedule the budget workshops at the May 17 meeting, when all Council members could be present.

APPROVE HOUSE BURNING – STATE STREET: The City Manager advised that the Fire Department and Fire College had requested permission to burn the old R.L. James Mill on State Street adjacent to the Rescue Squad during a training session on Friday evening, May 13, 2005. Part of State Street will be closed for the house burning between 6:00 p.m. and 12:00 Midnight.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to approve the request of the Fire Department and Fire College to burn the old R.L. James Mill on State Street adjacent to the Rescue Squad during a training session on Friday evening, May 13, 2005.

CHARTER/WBTV ISSUES: The City Manager advised that his research and that of City cable consultant David Harris revealed that Charter Communications had full discretion regarding whether to return WBTV (CBS-Charlotte) to the City cable line-up. The City Manager advised that Mr. Harris could be present on the evening of Tuesday, May 10 at 6:00 p.m. to meet with City Council, McDowell County, the public and Charter Communications to discuss the situation and the City's 2006 cable franchise renewal.

The Mayor and City Council agreed to hold a special meeting on Tuesday, May 10, at 6:00 p.m. in the Marion Depot and to invite Mr. Harris, the County Commissioners, Charter Communications and the general public to be present to discuss the on-going issues involving the City's cable system and WBTV.

COUNCILMAN COMMENTS:

Councilman Cuthbertson advised that the mirror at Willow Street and Railroad Street is out of alignment again.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to adjourn the meeting in memory of retired City employee Linda Suttles, who passed away earlier in the week.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a Special Meeting on Tuesday evening, May 10, 2005 at 6:00 P.M. in the Depot at 58 Depot Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; David Harris, Consultant, Piedmont Triad Council of Governments; Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio

GUESTS PRESENT: Woody and Freddie Killough, Holly Hill Drive, Marion, NC; Ann Harkey, Marion, NC; Alice Little, Marion, NC; Kevin Estes, Marion, NC, Mickey Poteat, Marion, NC; Margaret Hughes, Marion, NC.

CHARTER COMMUNICATIONS ISSUES:

Mayor Clark opened the meeting and announced that the only scheduled topic of business was to discuss issues involving the City's cable franchisee, Charter Communications.

Mayor Clark opened the floor for public comment. The following persons spoke to thank the Mayor and Council for their work to keep WBTV on the City's cable lineup and to strongly protest the removal of WBTV by Charter Communications:

Mickey Poteat
Ann Harkey
Freddie Killough
Margaret Hughes
Kevin Estes
Woody Killough

Councilman Little stated that he had heard from countless citizens who were upset about the removal of WBTV. He noted that the removal of WBTV takes away the community's only television link to North Carolina State Government. Councilman Little stated that students, teachers and parents also rely on WBTV for weather related closings. He stated that he is highly upset that the only option given by Charter to solve the current problem is for the City and County to give up one of their negotiated government access channels and that a Charter representative has not agreed to attend a City Council meeting.

Councilmen Edwards and Martin stated that they completely agreed with the statements of Councilman Little.

Councilman Owenby stated that Charter is in effect blackmailing the City and County and that his answer to Charter's proposal to combine the City and County channels to get WBTV back on the air is "no".

Mayor Clark advised that the City has had very poor communication from Charter over this issue. He noted that the City's cable franchise is up for renewal next year and that this issue and the franchise renewal process will generate considerable discussion and negotiation. Mayor Clark stated that he does not understand why Charter would pull off the best channel on the City's cable lineup and then offer only to combine the City and County channels in return.

Mayor Clark introduced David Harris, a consultant retained by the City since 1996 to advise on cable television issues.

David Harris discussed the City's cable franchise with Charter. He stated that the 10 year nonexclusive franchise expires in 2006. The franchise guarantees a City government access channel and allows the City to perform a performance review every three years. The franchise also provides the City with a five percent franchise fee. Mr. Harris stated that the franchise renewal process involves a public hearing, determination of community needs and negotiation between Charter and the City on how best to meet the community needs.

Regarding the WBTV issue, Mr. Harris stated that McDowell County was in the Greenville-Spartanburg-Asheville-Anderson market and, as such, Charter was bound to carry broadcast stations located within the marker. Charter is not required to carry out of market stations such as WBTV in Charlotte. Mr. Harris stated that Charter is removing duplicate channels such as Charter all over their system. He stated that he understood that the current offer by Charter to combine the City and County channels in order to put WBTV back on the air was not acceptable to the City.

Councilman Little asked how the City's market area could be changed. Mr. Harris stated that cable operators or, in this case, WBTV could petition to change the market area. Mr. Harris has been told that Charter will not seek to change the market area. Mr. Harris stated that he could send a letter to the FCC on the City's behalf, seeking to change the County to the Charlotte market area.

Mayor Clark asked about the fact that the City's cable franchise is non-exclusive and whether a competing cable provider could be brought in. Mr. Harris responded that Federal law required all cable franchises to be non-exclusive, but that economics did not make it practical for a second cable provider to be brought into a small market. Mayor Clark stated that the City should talk to any possible alternate providers and look into the possibility of a City run cable system.

The City Manager inquired about the likelihood for Charter to remove cable channels to make room for WBTV. Mr. Harris stated that this is rarely done by cable systems, but that all options could be requested of Charter.

Mayor Clark inquired into what would happen if the City refuses to renew Charter's franchise. Mr. Harris stated that he was aware of only one local government in the nation that had denied renewal of a cable franchise in the past 28 years. He stated that this denial ended up in court. Mr. Harris stated that the FCC sets fairly rigorous standards that guide franchise renewals.

Councilman Martin asked if Charter violated their franchise by removing WBTV. Mr. Harris stated that the City, through the franchise process, is not allowed to dictate specific programming or channels.

Mr. Harris stated that the best solution to the WBTV issue would be to work within the current franchise and to seek to negotiate the best possible deal with Charter.

Councilman Edwards stated that the franchise process appears to be one-sided and in favor of the cable provider and that fighting Charter would be useless; instead, the City should negotiate the best possible deal.

Councilman Little inquired about the definition of community needs. Mr. Harris stated that community needs do have some general parameters under Federal law and FCC rules.

Councilman Cuthbertson asked why Channel 18 on the Charter lineup cannot be used for WBTV or for another channel. The City Manager advised that Charter claims that all current blank channels on the lineup are reserved for bandwidth for high speed internet and cannot be used for cable channels.

Councilman Martin stated that Council should seek to follow the will of the City and negotiate to get WBTV back on the air.

In response to a question by Councilman Edwards, the City Manager provided an overview of why the City and County channels were not compatible and could not be easily combined, due to technical differences in the two channels and philosophical differences between the City and County regarding what is put on both channels. The City Manager further advised that the County Manager had said that the County Commissioners had directed, at their meeting the night before, that County staff retain a cable expert to investigate the WBTV issue. If the County determines that Charter has options other than combining the City and County channels, the County will expect Charter to pursue such options. If it is found that Charter has no other options, the County may consider combining the City and County channels; however, the County recognizes that the City Council does not support dropping the City channel.

Councilman Cuthbertson stated that Charter has a credibility problem and has not been truthful about the WBTV issue. He noted that the majority of the basic cable lineup was now sales and shopping channels.

Councilman Little made a motion to authorize David Harris to negotiate on behalf of the City with Charter Communications, the FCC, the County's cable consultant and any other applicable parties to place WBTV back on the City's cable lineup and to bring back all to the City Council all viable options for consideration. The motion was seconded by Councilman Edwards. All members voted in favor and the motion was passed.

Mr. Harris stated that a contract for his services in this matter would be included in a proposal to include the City's entire franchise renewal.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, May 17, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Chad and Cheneil Bailey 110 Hillview Drive Apartment 8, Marion, NC; Steve and Gail Bailey 334 French Mountain Drive, Marion, NC.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - May 17, 2005 Regular City Council Meeting

B. Approve Resolution – Direct Clerk to Investigate the Sufficiency of a Request for Voluntary Annexation

RESOLUTION
DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 – STORY MEMORIAL PRESBYTERIAN CHURCH, SHADY LANE

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 17, 2005, by the City of Marion; and

WHEREAS, 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Marion deems it advisable o proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council of his investigation.

Adopted this the 17th day of May 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

C. Approve 2004-05 Audit Contract – JP&S:
Johnson Price and Sprinkle - $15,000.00 - 2004-05 City Audit

D. Approve Amendment to Retirement Incentive Plan:

City of Marion

2005 Retirement Medicare Supplement Incentive Plan
Revised – May 17, 2005

1. Any full-time regular employee of the City of Marion meeting the qualifications listed below is eligible to participate in this plan.

2. To participate in this plan, an employee must be eligible to receive an early, service or disability retirement benefit from the North Carolina Local Government Employees' Retirement System.

3. Any employee who has previously received a retirement incentive payment from the City shall not be eligible for this plan.

4. Any employee accepting the Retirement Medicare Supplement Incentive Plan shall not be eligible for re-employment with the City of Marion in any and all capacities.

5. The employee must sign the Retirement Medicare Supplement Incentive Agreement Form.

6. Upon the attainment of age 65 or eligibility for Medicare, there shall be two plans from which the retiree may choose:

   Medicare Supplement Purchase Plan: Upon the attainment of age 65 or eligibility for Medicare, the City of Marion shall purchase for any qualified employee opting to accept the Retirement Medicare Supplement Incentive a monthly Medicare Supplement Plan J coverage or a similar Medicare Supplement Policy from the City's insurance carrier for the remainder of the retiree's life. As future Medicare revisions and reforms take effect, should the current benefits of Medicare Supplement Plan J or of the Medicare Supplement Policy from the City's insurance carrier no longer be offered, the City of Marion shall provide the Medicare Supplement Plan that most closely mirrors the benefits of Medicare Supplement Plan J, which includes a drug benefit, including a combination of a Medicare Supplement and drug benefit that may be offered directly from a Medicare chosen carrier. Purchase of all coverage shall be from an authorized Medicare Supplement Carrier of the City's choice.

   Employees who retire under this Retirement Medicare Supplement Incentive Plan through the disability retirement benefit of the North Carolina Local Government Employees' Retirement System shall receive medical insurance provided at no cost to the employee by the City for up to 24 months after the effective date of retirement until the employee becomes Medicare eligible, at which time the medical insurance shall switch to a Medicare Supplement Policy as described above.

   Medicare Supplement Payment Plan: Upon the attainment of age 65 or eligibility for Medicare, the City of Marion shall pay to the retiree a monthly sum of $375.00 for the purpose of purchasing a Medicare Supplement and assisting in prescription drug cost. This amount shall be paid to the retiree for the remainder of the retiree's life. The amount of $375.00 shall not be decreased or increased as future Medicare reforms and revisions take effect. Any and all payments shall terminate upon the retiree's death.

7. The plan will become effective on May 1, 2005 and continue through December 31, 2005 and require those accepting the offer to retire on or before December 31, 2005. **The Application for Retirement form and the Retirement Medicare Supplement Payment Incentive Agreement form must be signed on or before June 15, 2005.**

8. The City Manager is directed to evaluate any position vacated due to acceptance of the Retirement Medicare Supplement Incentive Plan for possible position elimination or cost cutting salary pay grade classification reduction. Any changes deemed necessary by the City Manager shall be reflected in a recommended revised City of Marion Allocation of Position Classes to Salary Grades and presented to City Council for approval.

9. The actions of this Retirement Medicare Supplement Incentive Plan shall not be retroactive to employees who retired prior to May 1, 2005.

10. The actions of this Retirement Medicare Supplement Incentive Plan shall not apply to employees retiring after December 31, 2005.

11. This plan supercedes any provisions of the City Personnel Policy or the Retirement Incentive Plan adopted by City Council on April 19, 2005 in conflict therewith in relation to retiree insurance coverage for employees participating in this plan during the time period covered by this plan.

Adopted by the City Council of the City of Marion this the 17th day of May, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

E . Approve Tax Refund: Benny Bowen – PIN 170203129978 – Garden Creek Road – 2003 – $28.05 – Property located outside the City Limits

SPECIAL PRESENTATION FROM SGT. CHAD BAILEY OF DETACHMENT 2 OF THE 1451ST TRANSPORTATION COMPANY OF THE NATIONAL GUARD: Sgt. Chad Bailey, of the 1451st Transportation Company of the National Guard, who recently returned from Iraq, appeared before Council and presented Marion Police Chief Mika Elliott an American Flag, which he carried to Iraq, signed by troops in Iraq and a Plaque, from the National Guard Committee for Employer Support recognizing the City as a patriotic employer for contributing to national security and protecting liberty and freedom by supporting employee participation in America's national guard and reserve force.

The City of Marion has received the first five star employer award issued in McDowell County by the National Guard Committee for Employer Support.

PUBLIC HEARING – ZONING AMENDMENT – SIZE OF ON-PREMISE SIGNS: Mayor Clark opened the Public Hearing.

Ms. Suzy Davis, City Planner, noted that City Council had referred this matter back to the Planning Board last month. Ms. Davis gave an overview of the Planning Board's recommendation to this amendment and stated that the Planning Board voted unanimously to again recommend that the maximum size of off-premise signs be set at 100 square feet. Ms. Davis also provide other options for Council to consider, such as larger maximum sizes for signs and variable sign sizes based on the road frontage of a property or the front footage of a building. Ms. Davis noted the size of several large signs in the City, such as the new Lowe's sign, which is 200 square feet.

A discussion followed.

There were no citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Planning Board and adopt the following Ordinance:

ORDINANCE
AMENDING APPENDIX A
ZONING
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Appendix A, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Appendix A, Article VII, Section 706.11 (1)(D) of the Ordinance is amended as follows:

706.11 The regulations for On-premises signs and other advertising structures are enumerated below:
(1) In any zoning district the following general regulations shall apply:
(D) No freestanding on-premises sign attached to the ground shall be erected to exceed thirty (30) feet above ground level. No freestanding on-premise sign shall exceed two hundred (200) square

feet in sign area as defined in section 706.1(3) of this ordinance. If two or more businesses are located on the same property, one freestanding sign shall be permitted an additional six (6) square feet to advertise for each additional business.

Section 3. Appendix A, Article VII, Section 706.1 is amended to include the following definitions:

Building-attached Sign. A sign which is mounted flush to a building wall with the face of the sign parallel to the wall. Such sign shall be attached to the building wall throughout its entire length and shall not extend above the highest point of the building wall.

Projecting Sign. A sign which is attached to a building wall with the face of the sign perpendicular to the building wall. Such signs shall not project into any street right-of-way and shall be at least eight (8) feet above ground.

Section 4. Appendix A, Article VII, Section 706.11 (3) is amended as follows:

(3) In the C-1 Central Business District, B-1 Neighborhood Business District and C-2 General Business District, in addition to all other requirements of this ordinance, the following regulations for permanent signs shall also apply:

(A) There shall be no more than two freestanding signs permitted per property in the C-1, B-1 or C-2 District. If the property has multiple road frontages, one additional sign may be permitted for each additional road frontage. No freestanding sign shall be erected without a sign permit. (Amended 10-19-04)
(B) Building attached signs shall be permitted with a sign permit.
(C) Projecting signs shall be permitted with a sign permit provided that the display surface shall not exceed ten (10) square feet, and shall maintain a clear distance of eight (8) feet from ground level.

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of May 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance number: O-05-05-17-02

ADOPT ANNEXATION ORDINANCE – US 221 NORTH BUSINESS AREA: The City Manager reported that the final stage in the annexation process for the US 221 North Business Area, to take effect on June 30, 2005, was the adoption of the annexation ordinance. Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICDLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA

WHEREAS, all of the prerequisites to adoption of this ordinance prescribed in Chapter 160A, Article 4A, Part 2 of the General Statutes of North Carolina, have been met; and

WHEREAS, the City Council has taken into full consideration of statements presented at the public hearing held on May 3, 2005 on the question of this annexation; and

WHEREAS, the City Council has concluded and hereby declares that annexation of the area described herein is necessary to the orderly growth and development of the City of Marion;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion that:

Section 1. From and after the effective date of this annexation, the following territory shall be annexed to and become a part of the City of Marion, and the corporate limits of the City

of Marion shall be extended to include said territory more particularly described by metes and bounds as follows:

BEGINNING at a point on the current Marion Corporate Limits, said point also being at the intersection of the southwestern corner of Lot 9725 in Block 86 on McDdowell County Tax Map 0792 and the eastern boundary of the right-of-way of US HIGHWAY 221 By-pass; thence following said right-of-way boundary in a northerly direction approximately 1,145.00 feet to a point, said point being at the intersection of said right-of-way boundary and the northern most corner of Lot 7699 in Block 87 on McDowell County Tax Map 0792; thence crossing the right-of-way of US 221 By-pass and old US Highway 221in a straight line in a northeasterly direction approximately 240 feet to a point, said point being at the intersection of the eastern boundary of the right-of-way of old us hwy 221 and the western most corner of Lot 0800 in Block 97 on McDowell County Tax Map 0792, said point also being the southern most point of Lot 0015 in bloc 98 McDowell County Tax Map 0792; thence following the western boundary and then the northern boundary of said Lot 0015, first approximately 365 feet in a northerly direction then approximately 558 feet in a generally easterly direction to a point, said point being at the northern most corner of said Lot 0015, said point also being the southwestern corner of Lot 6921 in Block 98 on McDowell County Tax Map 0792; thence following the western boundary of said Lot 6921, first approximately 344 feet in a northerly direction, then approximately 74 feet in a westerly direction, then approximately 321 feet in a northerly direction to a point, said point being at the northwestern corner of Lot 6921; thence following the northern boundary approximately 1,040.00 feet in a easterly direction to a point, said point being the eastern most corner of said Lot 6921, said point also being on the northwestern boundary of the Catawaba River; thence following in a straight line in a southeasterly direction approximately 50 feet to a point, said point being in the center of the Catawaba River; thence following the center line of the Catawaba River in a southerly direction approximately 2,780.00 feet to a point on the current Marion Corporate Limits thence following the current Marion Corporate Limits in a generally westerly direction approximately 1,836 feet to the point of BEGINNING.

Section 2. The City Council hereby finds and declares that the above described territory meets the requirements of G.S. 160A-36, in that:

The area is adjacent and contiguous, as defined by G.S. 160A-41(1) as of the 15th day of February, 2005, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 8753.00 feet, of which 1836.00 feet (20.98%) coincides with the City boundary. Therefore, at least one eight (or 12.5%) of the said external boundary coincides with the City boundary.

No part of the area to be annexed is included within the boundary of another incorporated municipality.

The area to be annexed is developed for urban purposes in that 91.30% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 100% of the total residential and vacant acreage consists of lots and tracts three (3) or less in size.

Section 3. It is the purpose and intent of the City of Marion to provide services to the area being annexed under this ordinance, as set forth in the report of plans for services approved by the City Council on March 1, 2005 and filed in the office of the Clerk for public inspection on March 1, 2005.

Section 4. The City Council hereby finds and declares that, on the effective date of annexation prescribed in Section 8 hereof, the City of Marion will have sufficient funds approved, in the amount of $0.00, to finance the estimated cost of construction of water and

sewer facilities found necessary in the report of plans for services to extend the basic sewer and water system of the City of Marion into the area to be annexed under this ordinance.

Section 5. From and after the effective date of this annexation, the territory annexed and its citizen and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City.

Section 6. The newly annexed territory described above shall be subject to City taxes according to G.S 160A-58.10.

Section 7. The mayor the City of Marion shall cause an accurate map of the annexed territory described in Section 1 hereof, together with a duly certified copy of the ordinance, to be recorded in the office of the register of deeds of McDowell County, and to the office of the Secretary of State in Raleigh. Such a map shall also be delivered to the McDowell County Boards of Elections, as required in G.S. 163-288.1.

DWS

Section 8. This ordinance shall become effective on June 30, 2005.

As to qualified tracts of agricultural land, horticultural land and forestland, the annexation will become effective on the last day of the month in which the tract or part thereof becomes ineligible for present-use classification under G.S 105-227.4 or no longer meets the requirements of G.S 160A-37(f1)(2).

Section 9. Notice of Adoption of this ordinance shall be published once in a newspaper having general circulation in the City of Marion.

17th may 2005 DWS

Adopted this 19th day of ~~November~~ May 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

APPROVED AS TO FORM:

City Attorney

REVIEW COMMUNITY BUILDING TENNIS COURT RULES: SCHEDULE BUDGET WORKSHOP(S): The City Manager advised that Councilman Edwards had previously requested that Council review the rules for the Community Building tennis courts, so that signs can be placed on the new fence when the new tennis courts are reopened.

Sections of the City Code currently state that

- No persons may be on the courts between 11:00 PM and 6:00 PM
- Pay is restricted to one hour when others are waiting to play
- No money making activities, such as tennis lessons or tournament play, are allowed without approval of the City Council
- No swearing, fighting or consumption of alcoholic beverages is allowed

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to amend the rules and regulations for the Community Building Tennis Courts by adopting the following ordinance:

ORDINANCE

AMENDING CHAPTER 12
PARKS AND RECREATION
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 12, Parks and Recreation, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 12 is amended by adding Section 12-26.1 as follows:

Sec. 12-26.1. Prohibitions on certain activities.

No objects with wheels shall be allowed on the tennis courts, except for wheelchairs. No games of any sort other than tennis are allowed to be played on the tennis court.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of May, 2005

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-05-17-1

SET DATE - BUDGET WORKSHOP: Council agreed to schedule a workshop to review the proposed 2005-06 City budget on Tuesday, May 31, at 6:00 p.m. at City Hall.

CONSIDER APPROVAL OF CONTRACT – POLICE DEPARTMENT GENERATOR: The City Manager advised that one bid had been received on May 6 for the Police Department generator purchase and installation. The City Attorney authorized the one bid to be opened, since it was for the purchase of equipment. The bid price was $110,530, within the awarded grant amount of just over $112,000.

Finance Officer Harriett Thomas suggested several options for either awarding the contract to the low bidder, or rejecting the bid and re-advertising.

The City Manager advised that if we re-advertise, the City may be able to obtain additional quotes and a better price. However, the current low bidder met all City requirements and is within the budgeted amount.

A discussion followed.

Councilman Little called for the question.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to accept the low bid of Nixon Power Services, in the amount of $110,530, for the purchase and installation of a generator for the Police Department.

DISCUSS EASTFIELD WATER EXTENSION – UN-SERVED STREETS: The City Manager advised that in April, Council approved the complete waiver of all connection fees for 28 units to be connected to water on three unserved street in the Eastfield Community (part of Tunnel Road and Pine and Westmoreland Streets), as part of a grant being sought by the

County from the State. The City waiver of connection fees would reduce the County's funding gap from $60,000 to $20,000. Council had directed that the County fund the remaining $20,000 cost in exchange for the City's $40,000 contribution.

The City Manager stated that Mr. Dennie Martin of McGill has been attempting to salvage this project after the County Manager indicated that the County would find it difficult to put up almost any amount of cash for the project.

Mr. Dennie Martin and the County Manager Chuck Abernathy worked out a proposal for the City to devote the first year water receipts for the 28 units to be connected to water as part of the project. At the minimum bill of $20 per month for outside water, 12 months of revenues would amount to $6,720. The average bill (5,000 gallons per month) of $31 per month at current rates for outside water totals $10,416 for 12 months of revenues, which is just about equal to the County's previous proposal that the City and County split the $20,000 funding gap.

The City Manager advised that it would be hard to justify Council approving any better deal than they already authorized for this project, but the project would eliminate 28 sewer-only customers and meet a definite need in providing water to unserved streets in Clinchfield.

After discussion, Council agreed to offer to McDowell County for the City to finance the County's required $20,000 local match over four years at no interest. The City Manager will present this revised proposal to Dennie Martin.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSING COMMENTS:

Councilman Edwards advised that there was a new bakery downtown on Main Street.

Councilman Edwards stressed the need to repair the bank above the Community Building basketball court next to Logan Street.

Councilman Owenby reported a compliment he had received regarding the Police Department's investigation of an animal cruelty incident.

CLOSED SESSION – DISCUSS A PERSONNEL MATTER UNDER N.C.G.S. 143-318.11(a)(6):

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(6) to discuss a personnel matter.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to return to Regular Session. Mayor Clark announced that no action had been taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a Special Meeting on Tuesday evening, May 31, 2005 at 6:00 P.M. in the Conference Room located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Mike Edwards arrived for this meeting at approximately 6:45 p.m., due to work conflicts.

OTHERS PRESENT: Bob Boyette, City Manager; Harriett Thomas, Finance Director

BUDGET WORKSHOP: Mayor Clark stated that the purpose of this meeting was to review the proposed 2005-06 City budget. The City Manager provided an overview of his proposed 2005-06 City budget. The budget was reviewed in detail by the Mayor and City Council, and the City Manager and Finance Director Harriett Thomas presented the City's current financial picture and outlook. The City Manager also presented proposed water and sewer rate increases and increases in commercial garbage fees.

After discussion and review, Council directed no changes to be made to the budget and endorsed the proposed water and sewer rate increases, due to the financial condition of the Water and Sewer Fund and increases in commercial garbage fees, to make the commercial garbage operation closer to self supporting.

The public hearing on the budget and consideration of adoption of the 2005-06 City budget will be held on Tuesday, June 21, at 7:00 p.m. at City Hall.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

AMENDMENT TO MARCH 8, 1995 AGREEMENT BETWEEN MARION AND McDOWELL COUNTY FOR THE McDOWELL COUNTY INDUSTRIAL PARK

THIS CONTRACT AMENDMENT is made and entered into this ____ day of _____ 2005 by and between the County of McDowell, a North Carolina Municipal Corporation, hereinafter referred to as "the County", and the City of Marion, a North Carolina Municipal Corporation, hereinafter referred to as "the City".

WITNESSETH

WHEREAS, the City and County entered into an agreement on March 8, 1995 that provided for the City to supply treated water to the McDowell County Industrial Park in quantities not to exceed 500,000 gallons per day; and

WHEREAS, the City and County agree that the actual consumption of treated water within the industrial park is substantially lower that the prescribed maximum of 500,000 gallons per day and is anticipated to be substantially lower than the maximum when all of the industrial lots are finally developed; and

WHEREAS, the County is planning to extending water lines into the Nebo Community of McDowell County which would also require an allocation of treated water from the City of Marion's water system in the amount of 200,000 gallons per day; and

WHEREAS, the City and County propose to execute an agreement that would provide for the City to operate and maintain the Nebo water system and to provide treated water for said water system in quantities not to exceed 200,000 gallons per day.

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree to amend the March 8, 1995 agreement as follows:

1. The City of Marion and McDowell County agree that 100,000 gallons of the 500,000 allocation of treated water provided for in the March 8, 1995 agreement for the McDowell County Industrial Park would be reallocated to the proposed AGREEMENT FOR OPERATING NEBO WATER IMPROVEMENTS and, when combined with another 100,000 gallons of presently unallocated City water, would total the 200,000 gallons per day maximum provided for in the proposed AGREEMENT FOR OPERATING NEBO WATER IMPROVEMENTS.
2. Further, that the maximum not to exceed limit of water supply provided for in the March 8, 1995 agreement for the McDowell County Industrial park would be reduced to a maximum not to exceed of 400,000 gallons per day.

3. Finally, that the City and County may find cause to reallocate additional water from the 400,000 gallons per day maximum not to exceed limit of water supply provided for in the March 8, 1995 agreement, as herein amended, for the McDowell County Industrial park, in the event that the City and County agree that portions of this amended water allocation would better serve the objectives of the City and County by being reallocated to other purposes. As such situations arise, the City and County would agree by resolution of the Marion City Council and the McDowell County Commission to make such reallocations of said water supply.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF McDOWELL, NORTH CAROLINA

By:_____
County Commission Chairman

(SEAL)
Attest:

By:_____
McDowell County Clerk

CITY OF MARION, NORTH CAROLINA

By:_____
Mayor

(SEAL)
Attest:

By:_____
City Clerk

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

By:_____
Harriett Thomas, Finance Director
City of Marion

COMMUNITY BUILDING SCHEDULE
Week of
September 21, 2008– September 27, 2008

Sept. 21 Not Scheduled

Sept. 22 Not Scheduled

Sept. 23 Not Scheduled

Sept. 24 Not Scheduled

Sept. 25 Rotary – 7:00am-2:00pm

Sept. 26 Not Scheduled

Sept. 27 Ball Room Dancers 1:00pm-11:00pm

(extra cleaning) 1 tables. $15.00 Chair 4 Chairs
CBill invoice)

Cc: Marion Police Department
Public Works Dept
Janitorial Service

JCB

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 7, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Suzy Davis, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Mia Lorenz, City Attorney; Mickey Poteat, 50 Euclid Avenue, Marion, NC; Glenn & Cher Page, 11 North Main Street, Marion, NC; Phillip Sealy, 170 Viewpoint Drive, Marion, NC; Ellen & Mike Ornberg 1565 Peppers Creek Road, Marion, NC; Cpl. Charles Oliver, Marion Police Department.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM STEVE LITTLE: Mayor Pro Tem Steve Little selected the citizen of the month for June.

DONALD R. RAMSEY

Mayor Pro Tem Little advised that Mr. Ramsey was born in Asheville and is married to Jan Ramsey. The have one daughter Anna, who recently graduated from Appalachian State University.

Mr. Ramsey had a distinguished career with the McDowell County Sheriff's Department. He is now serving his second term as Clerk of Superior Court in McDowell County.

He is an active member of the First Baptist Church, and has served in many capacities including Sunday School Teacher, Deacon, Choir Member and much more.

Mr. Ramsey has helped with River Blast for our local youth and with Project Challenge. He assists with many projects that assist the elderly in our community on the weekends.

Mr. Ramsey also enjoys playing a saxophone.

Mayor Clark and Council members all had kind words to share about Mr. Ramsey.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - May 17, 2005 Regular and Closed Session Council and May 31, 2005 Budget Workshop Minutes

B. Approve Agreement with McDowell Tech for the use of City Firing Range (Copy of Agreement can be found on file in the legal documents at City Hall)

C. **Approve Rental of Community Building Basement – McDowell County Schools Tobacco Prevention Program** – Basement Rental $20.00 per week – for three weeks – From October 1st – 24th for the Drag of Doom program

D. Approve Budget Amendment:

CITY OF MARION, NORTH CAROLINA
GENERAL CAPITAL PROJECTS FUND ORDINANCE – SKATE PARK PROJECT

BE IT ORDAINED by the City Council of the city of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June 2004 is hereby amended as follows to include the expenditures associated with General Capital Projects by adopting the following General Capital Projects Fund Ordinance:

GENERAL CAPITAL PROJECTS FUND

a. General Capital Projects Fund Expenditures, Skate Park Project, Account Number 11-171-0900, is increased from $-0- to $130,140.

b. General Capital Projects Fund Revenues, Transfer from General Fund - Skate Park Contributions, Account Number 11-380-1000, is increased from $-0- to $31,525.

c. General Capital Projects Fund Revenues, Transfer from General Fund – Skate Park Fundraisers, Account Number 11-380-1100, is increased from $-0- to $181.

d. General Capital Projects Fund Revenues, Transfer from General Fund, Account Number 11-380-0000, is increased from $-0- to $33,364.

e. General Capital Projects Fund Revenues, PARTF Grant, Account Number 11-370-0000, is increased from $-0- to $65,070.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 7th day of June 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O – 05 – 06 – 07 – 1

INTRODUCTION OF NEW EMPLOYEE: The City Manager introduced Mr. Steve Miller, who recently replaced Mr. Buck Byrd as Water Plant Superintendent. Steve has served the City of Marion for over 23 years and has his "A" level operator's certification, the highest certification provided by the State of North Carolina.

PUBLIC APPEARANCE- MS. PATTI HART: Ms. Patti Hart appeared before Council and advised that she was going to be taking a leave of absence for several months as Chairperson of the Downtown Advisory Committee and that she wanted to personally thank Council for all they have done to support the DAC and for all the accomplishments that have been made in the Downtown area.

PUBLIC APPEARANCE – MIKE ORNBERG – SKATEBOARDING ACTIVITY: Mr. Mike Ornberg appeared before Council and advised that, as a downtown merchant, he is witnessing an on going problem that consists of destruction of City Property involving skateboarders.

Mr. Ornberg stated that he, his wife and employees attempt to keep an eye out for problems around their business, but that he cannot control destruction to the City's Gazaebo Park on North Main Street adjacent to his property Mr. Ornberg further stated that most of the youth who engage in skateboarding downtown are extremely good kids; however, a few youth are intent on destruction and on breaking the rules.

Mr. Ornberg suggested more Police Department presence as a solution to the problem and offered other ideas to cut down on skateboarding activity.

A discussion followed.

Mayor Clark suggested that the Gazebo be removed and more needed parking spaces be made.

Mayor Pro Tem Steve Little advised that he recently went into the Gazebo and was shocked at the vandalism and filth being created by the youth.

Police Chief Mika Elliott stated that he and his officers attempt to provide as much patrol for the Gazebo as possible and to respond promptly when called, but that there are multiple locations downtown and around the City that are victimized by skateboarding activity in addition to the Gazebo.

Councilman Edwards advised that the City needs to have a plan that can do more about this problem than has been done in the past. He suggested that the City Manager and Police Chief find ways to provide more Police Department presence at the Gazebo. Councilman Edwards stated that he would support funding more money to combat this problem if necessary.

The City Manager advised that the Gazebo site has long been a target of vandalism, noting the public restrooms that previously stood on the site which had to be torn down for the same reasons. The City Manager stated that he, Police Chief Elliott and City Attorney Mia Lorenz had discussed strengthening the City's skateboarding ordinances and had brainstormed additional enforcement strategies.
City Attorney Mia Lorenz briefly outlined some enforcement strategies and possible changes to the City's skateboarding ordinances.

Police Chief Elliott advised that the Police Department had been informed that day for the first time that Juvenile Court officials would take out petitions against juveniles who violated municipal ordinances, such as riding skateboards in prohibited areas.

A lengthy discussion followed.

It was the consensus of Council that the City Manager would work with City Attorney Mia Lorenz on providing recommendations to strengthen the City's skateboarding ordinances and to work with Chief Elliott to identify opportunities for increased enforcement, including costs for providing more police presence downtown. The City Manager will present recommendations at the June 21 Council meeting.

PUBLIC HEARING – REZONING BALDWIN AVENUE: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis gave an overview of the rezoning Request for the property located on Baldwin Avenue recently acquired from Mr. Ford Miller by McDowell Technical Community College.

Ms. Davis advised that McDowell Technical Community College submitted an application to rezone properties at 316 Baldwin Avenue (the former mill offices) from M-1, Industrial District to O-I Office Institutional District. At the June 2, 2005 Planning Board meeting, the Board recommended that City Council rezone the property as requested.

A discussion followed.

There were no citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the recommendation of the Planning Board to rezone property owned by McDowell Technical Community College at 316 Baldwin Avenue from M-1, Industrial to O-I, Office and Institutional.

PUBLIC HEARING ASSIGN ZONING TO US 221 NORTH ANNEXATION AREA: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that on June 30, 2005, property on US 221 North will be annexed into the City Limits. The Planning Board reviewed the existing uses within the annexation area and made a recommendation to City Council that they assign two zoning districts to the area.

Ms. Davis stated that the Planning Board recommended that Council zone all properties that abut 221 North as C-2 General Business.

Ms. Davis reported that the Planning Board also recommended that properties down Riverbreeze Road towards the old Danny's restaurant be zoned C-2 General Business and that all other properties (to the north) be zoned R-2 General Residential.

A discussion followed.

There were no citizens present to discuss this item.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the Planning Board as stated above to zone the US 221 North annexation area a combination of C-2 General Business and R-2 General Residential.

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE STORY MEMORIAL CHURCH AREA: Mayor Clark opened the Public Hearing.

The City Manager advised that the final step in the voluntary annexation process for the Story Memorial Presbyterian Church and School property located on Shady Lane is the public hearing and adoption of the annexation ordinance.

There were no citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF MARION, NORTH CAROLINA – STORY MEMORIAL PRESBYTERIAN CHURCH, SHADY LANE

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, June 7, 2005, after due notice by publication on Friday, May 27, 2005; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of June 30, 2005:

TRACT NO. 1: 1700.05-17-4576, Deed Book 536, Page 629

BEGINNING at an iron pin set which as coordinates N=215,706.822 meters and E=335,731..921 meters and which BEGINNING point is located South 31 degrees 56 minutes 41 seconds East 265.41 feet from N.C.G.S. Monument Lukin which has coordinates of N=215,775.456 meters and E=335,689.126 meters and which BEGINNING point is located at the North Westernmost corner of the property herein described and conveyed and which BEGINNING point is in the line of lands now or formerly owned by the McDowell Board of Education, see Deed Book 63, page 12, McDowell County Public Registry, and which BEGINNING point is located South 14 degrees 13 minutes 28 seconds West 40.57 feet from an existing iron pin which is located South 43 degrees 47 minutes 35 seconds East 99.94 feet from an existing concrete monument, thence from the said BEGINNING point and with a new line, South 76 degrees 09 minutes 32 seconds East 150.69 feet to an iron pin set which is located in the margin of the right of way for State Road 1164, also known as Shady Lane; thence running parallel to the asphalt for State Road 1164 and in the margin of the right of way for Shady Lane, South 05 degrees 18 minutes 47 seconds East 105.23 feet to an existing iron pin; thence with the line of lands owned by Story Memorial Presbyterian Church, see Deed Book 81, page 226, McDowell County Public Registry, South 87 degrees 13 minutes 55 seconds West 194.37 feet to an existing concrete monument; thence with the line of the McDowell County Board of Education, North 14 degrees 13 minutes 28 seconds East 154.97 to the point and place of BEGINNING.

TRACT NO. 2: 1700.09-17-2361, Deed Book 466, Page577

BEGINNING on an existing iron pin set in the Northern right of way of State Road No. 1169, Steppe Street, the same being the Southeast corner of Lot No. One of Subdivision recorded in Map Book 1 at Page 22 and runs thence, on a line in the right of way of Steppe Street, North 86 degrees 86 minutes 29 seconds West 85.77 feet to an iron pin set; thence North 12 degrees 19 minutes 20 seconds West 125.07 feet to an iron pin set; thence, North 59 degrees 39 minutes 12 seconds East 145.72 feet to an iron pin set; thence, North 43 degrees 12 minutes 40 seconds East 32.88 feet to an iron pin set; thence, North 34 degrees 07 minutes 41 seconds East 62.66 to an existing concrete monument; thence, South 14 degrees 13 minutes 53 seconds West 285.09 feet to the BEGINNING, containing 0.517 acres.

TRACT NO. 3: 17000.09-17-4364, Deed Book 82, Page 15

Being Lots Number Eleven (11) and Twelve (12), Number Eleven fronting 100 feet on the Public Road, and Number 12 fronting 105 feet on the Pubic Road, according to map of subdivision of the M. G. Poteat Property, Map Book Number 1, page 31 of the Public Records of McDowell County, North Carolina, being the same property deeded to the said G. E. Pickens by V. C. Elliott by deed registered in Deed Book 64 at page 144, in the office of the Register of Deeds for McDowell County, reference to which deed is hereby made for a full and adequate description.

TRACT NO 4: 1700.09-17-6388, Deed Book 471, Page 529

BEGINNING on a railroad spike set in the centerline of State Road No. 1164, Shady Lane, the same being the beginning corner of tract recorded in McDowell County Deed Book 422 at Page 230 and runs thence, with the Morgan line (Book 146, Page 581), South 84 degrees 56 minutes 34 seconds East 174.97 feet passing an iron pin set on line at 16.34 feet to an iron pin found, the 2nd corner of tract recorded in Deed Book 422 at Page 230 and being the 3rd corner of tract recorded in Deed Book 146 at Page 581; thence, with the western line of tract one and tract two of that certain deed recorded in McDowell County Deed Book 294 at Page 328, South 02 degrees 02 minutes 13 seconds West 137.90 feet to an iron pin found, the 3rd corner of Book 422 at Page 230; thence, with the Story Memorial line (Book 323, Page 438), North 85 degrees 15 minutes 10 seconds West 154.75 feet passing an axle found on line at 141.00 feet to a railroad spike set in the centerline of State Road No. 1164; thence, with said centerline, North 06 degrees 09 minutes 53 seconds West 141.25 feet to the BEGINNING, containing 0.52 acres.

TRACT NO. 5: 1700.09-17-7204, Deed Book 323, Page 438

BEGINNING on an existing iron which is located South 03 degrees 27 minutes 18 seconds East 140.77 feet from the northwest corner of the property conveyed to Ronald Revis (See Deed Book 227 at page 791); said beginning point also being the southwest corner of said Revis property and running thence from said beginning point South 83 degrees 31 minutes 23 seconds East 133.82 feet to and iron pin set which is the fifth corner as set out in Deed Book 202 at page 36; thence still continuing the same course, South 83 degrees 32 minutes 23 seconds East 33.05 feet to an iron pin set; thence with the line of Howard Westmoreland (See Deed Book 206 at page 1205) South 03 degrees 26

minutes030 seconds West 127.09 feet to an iron pin set which is located South 56 degrees 47 minutes 18 seconds East 30.46 feet from the southeastern corner of the house located on the property herein described and conveyed and being further located South 24 degrees 43 minutes 10 seconds East 51.46 feet from the northeast corner of said house; thence South 03 degrees 26 minutes 30 seconds West 31.35 feet to a point in center of Burma Road (State Road #1169); thence with the center of said road North 81 degrees 56 minutes 03 seconds West 45.07 feet and North 84 degrees 32 minutes 06 seconds West 92.45 feet to a point in the center of Shady Lane (State Road #1164) and being at the point where Burma Road (State Road $1169) intersects said Shady Lane; thence with the center line of Shady Lane the following four courses and distances: North 15 degrees 42 minutes 08 seconds West 47.96 feet, North 12 degrees 54 minutes 56 seconds West 50.02 feet, North 08 degrees 49 minutes 03 seconds West 52.60 feet, and North 05 degrees 19 minutes 33 seconds West 17.37 feet; thence crossing said Shady Lane South 83 degrees 32 minutes 23 seconds East 17.19 feet to the point of BEGINNING, containing 0.59 acres by DMD as shown on that certain plat of survey prepared by R. L. Greene Surveying and Mapping, 10 South Logan Street, Marion, North Carolina 28752, dated January 31, 1979.

Section 2. Upon and after June 30, 2005, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Marion and shall be entitled to the same privileges and benefits as other parts of the City of Marion. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Marion.

ADOPTED this the 7th day of June 2005.

_____
A. Everette Clark, Mayor

ATTEST: Approved As To Form:

J. Robert Boyette, City Clerk City Attorney

APPROVE RESOLUTION – AUTHORIZE FINAL ACCEPTANCE OF OFFER TO PURCHASE CERTAIN PROPERTY OWNED BY THE CITY OF MARION: The City Manager presented a resolution to authorize final acceptance of the offer by Ms. Annette Bryant to purchase 3.99 acres of the City's Water Plant property for $22,500, plus actual appraisal and surveying costs, given that no upset bids were received for said property.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to adopt the following Resolution:

Resolution Authorizing Final Acceptance of Offer to Purchase Certain Property Owned by the City of Marion After Solicitation of Upset Bids

WHEREAS, N.C.G.S. 160A-269 authorizes a city to convey by negotiated offer and upset bid any real or personal property; and

WHEREAS, Mrs. Annette Bryant, has submitted a bid in the amount of $22,500 for the purchase of 3.99 acres of City property, as described below; and

WHEREAS, the City Council of the City of Marion adopted a resolution on May 3, 2005, in accordance with N.C.G.S. 160A-269, accepting the offer of Mrs. Bryant to purchase the property, as described below, for a sum of $22,500, plus survey and appraisal costs; and

WHEREAS, in accordance with N.C.G.S. 160A-269, the City of Marion received a five percent bid deposit from Mrs. Bryant; and

WHEREAS, in accordance with N.C.G.S. 160A-269, the City of Marion, on May 9, 2005, caused notice of the proposed sale of the property, as described below, to be published in The McDowell News; and

WHEREAS, the City of Marion has completed the ten day upset bid period required by N.C.G.S. 160A-269, without the receipt of any upset bids; and

WHEREAS, the City Council of the City of Marion desires to complete the sale of the property described below to Mrs. Bryant.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Marion that:

1. The following described property is hereby declared to be surplus to the needs of the City of Marion:

Being a parcel containing 3.99 acres according to that certain unrecorded plat of survey prepared by R. L. Greene Surveying and Mapping, and which survey is dated April 8, 2005 and which survey has a map file number of 4-168R and from which survey the following metes and bounds description is taken:

BEGINNING AT an existing iron pipe which is the Northeasternmost corner of the property herein described and which pipe is identified as the thirty first corner of that tract described at Deed Book 129, Page 334, McDowell County Public Registry and which BEGINNING point is in the line of lands now or formerly owned by Dennie L. Hall, et. ux., see Deed Book 583, Page 599, McDowell County Public Registry and which BEGINNING point is located South 86 degrees 18 minutes 53 seconds East 989.04 feet from an existing solid iron pin which is identified as the thirtieth corner of Deed Book 129, Page 334, McDowell County Public Registry and which solid iron pin is located in the line of Dianne P. Corbett; thence from said BEGINNING point, and with the line of the aforementioned Hall, tract, South 23 degrees 55 minutes 48 seconds West 311.19 feet to an existing axle which is identified as the thirty second corner of Deed Book 129, Page 334, McDowell County Public Registry; thence with the line of lands now or formerly owned by Iris Burleson Addison, see Deed Book 383, Page 346, McDowell County Public Registry South 32 degrees 52 minutes 12 seconds West 114.37 feet to an existing solid iron pin which is a corner with lands now or formerly owned by Charles P. Greene, et. ux., see Deed Book 149, Page 408, McDowell County Public Registry; thence with a new line and with the centerline of Waycross Drive, a private drive, South 84 degrees 25 minutes 27 seconds West 101.83 feet to an unmarked point, a point in a curve to the left and which curve has a radius of 215 feet, a tangent of 56.33 feet; a length of 110.19 feet; a delta of 29 degrees 21 minutes 55 seconds, a degree of 26 degrees 38 minutes 57 seconds and a chord bearing and distance of North 80 degrees 53 minutes 35 seconds West 108.99 feet to an unmarked point; thence North 66 degrees 12 minutes 37 seconds West 232.90 feet to an unmarked point; thence leaving the Waycross Drive, and with a new line, North 28 degrees 26 minutes 35 seconds East 350.03 feet (passing a five eighths inch iron rebar set at 30 feet) to a five eighths inch rebar set which is located in the line of Dianne P. Corbett, see Deed Book 767, page 704, McDowell County Public Registry; thence South 86 degrees 18 minutes 53 seconds East 444.55 feet to the point and place of BEGINNING.

2. The City Council accepts the offer of the Mrs. Annette Bryant to purchase the above described property for $22,500 and directs the City Manager to proceed with the sale of said property, as authorized by N.C.G.S. 160A-269. In addition, costs associated with the survey and appraisal of the 3.99 acre parcel to be created shall be added to the sale price. The sale is contingent on the City obtaining subdivision approval for the 3.99 acre parcel to be created, pursuant to the City of Marion Subdivision Ordinance.

Adopted this the 7th day of June, 2005.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-05-06-07-1

The City Manager stated that Ms. Annette Bryant had been unable to attend the meeting, but had wanted to extend her gratitude to Council in working with her on this property sale.

REVIEW ECONOMIC DEVELOPMENT CONTRACT WITH DOWTNOWN BUSINESS ASSOCIATION: The City Manager presented Council with a copy of the proposed Economic Development Contract with the Downtown Business Association (DBA). The City Manager advised that Council had previously agreed to enter into a three year agreement to pay the DBA $26,000 per year to provide economic development and targeted grant writing services for the City, on the condition that an agreement was adopted by Council and the DBA Board. The City Manager noted that the agreement had been reviewed by DBA Executive Director Freddie Killough, who saw no problem with the wording of the agreement.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to accept the Agreement as follows:

CITY OF MARION
FUNDING AGREEMENT FOR
ECONOMIC DEVELOPMENT SERVICES

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

This agreement made and entered into the 1st day of July, 2005 by and between the City of Marion, North Carolina, hereinafter referred to as the "CITY" and the Marion Downtown Business Association, hereinafter referred to as the "AGENCY".

WHEREAS, the CITY has requested services from the AGENCY to carry out its programs and activities; and

WHEREAS, the City Council has agreed to appropriate the sum of $26,000.00 in funding for the three fiscal years ending June 30, 2006, June 30, 2007 and June 30, 2008 to support this purpose; and

WHEREAS, is desirable and necessary to enter into this Agreement in order to set forth the terms and conditions for receiving said funds from the CITY.

NOW, THEREFORE, in consideration of the following parties hereto d mutually agree as follows:

1. The AGENCY agrees to use the funds appropriated by the CITY in a manner and for the purposes specified in Attachment A, a copy of which is attached hereto and incorporated by reference as if to set forth fully herein.
2. In consideration for the performance by the AGENCY of the services outline in its application, the CITY agrees to pay the AGENCY up to the amount of money authorized in the City of Marion budget for the year and as specified above. Payment of such amount shall be made in quarterly allotments requested by the AENCY.
3. If the AGENCY fails to perform its obligation under this Agreement, of if the AGENCY shall violate any of the provisions of this Agreement, the CITY shall have the right to terminate this Agreement by giving written notice to the AENCY of such termination at least thirty (30) days before the effective date of such termination. In such event, all unexpended funds at the time of such termination shall remain with the CITY.
4. The AGENCY shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement without prior written approval of the CITY.
5. In connection with the performance oaf this Agreement, the AGENCY shall not discriminate against any employee, applicant for employment, or program participant because of race, religion, color, sex, age, handicap, or national origin.
6. The AGENCY shall maintain all accounts, books ledgers, journals, and records in accordance with generally accepted accounting principles, practices and procedures.
7. The AGENCY shall submit to the CITY an annual status report of all program activities including a summary of the accomplishment of stated goals and objectives.
8. The AGENCY shall provide an account of CITY funds to the CITY to demonstrate that funds allocated to the AGENCY have been used for the purpose(s) specified herein. The accounting report shall be submitted to the CITY within 30 days of the end of each Fiscal Year. Further, the CITY shall be entitled to audit the financial records and operations of the AGENCY at the CITY's discretion. Any excess funds or funds not used for the expressed purpose(s) stated herein must be returned to the CITY within thirty (30) days of the CITY's request for said funds.
9. The CITY shall be entitled to conduct a evaluation of the AGENCY's programs and activities particularly as it relates to the accomplishments of established goals and objectives and the measurement of services being delivered.
10. All books and records shall be maintained by the AGENCY for a period of at least three years from the date of the final payment under this Agreement and shall be made available for audit or evaluation upon request during regular business hours of the AGENCY.
11. The AGENCY must adopt a Drug-Free Workplace Policy in accordance with the Drug-Free Workplace Policy of 1988 (41U.S.C. 701).
12. As a condition of receiving funds from City of Marion, the AGENCY agrees to fully indemnify all claims, demands, payment, suits, actions, costs, recoveries, and judgments of every kind and description brought out of or occurring in connection with, directly or indirectly activities funding in part or in whole with funds made available under this Agreement.
13. The CITY is in no way responsible for the administration and supervision of the AGENCY's officers, employees, and agents, which persons it is agreed are not offices, employees, and agents, which persons it is agreed are not officers, employees, or agents, of the CITY.
14. The Agreement may only be amended by written amendments mutually agreed upon b and between the CITY and the AGENCY.
15. The City Manager is designated as a non-voting ex-officio member on the Governing Board of the AGENCY and will receive regular written updates, on at least a monthly basis, of activities related to this agreement.
16. Pursuant to the CITY Budget Ordinance, the CITY will release approved non-profit allotments in quarterly installments.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their name by their duly authorized officers, their seals to be hereto affixed the day and year first above written.

ATTEST: CITY OF MARION

6/8/05

City Manager/Clerk Date By: Mayor Date

ATTEST:

Executive Director Marion DBA	Date	By: President Marion DBA	Date

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

City Finance Director Date

ATTACHMENT A
DUTIES AND RESPONSIBILITIES AND
PROJECTED BUDGET OF THE MARION DOWNTWON BUSINESS ASSOCIATION UNDER THE FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES

Duties and Responsibilities

1. Serve as the designated economic development agency of the City of Marion in relation to all commercial, retail service, tourism and governmental facility related development (not to include industrial development).
2. Maintain up-to-date files on all available properties within the Marion Cit Limits or in areas considered for annexation by the City of Marion.
3. Assist prospective new businesses with providing information about the community and local requirements such as permits, licensee, ordinances and other pertinent information
4. Maintain current information of available financial assistance and sources of capital for small businesses and seek opportunities for new programs.
5. Actively recruit new businesses in the areas listed under Item 1 above with primary focus in Downtown Marion and then throughout the existing or prospective City Limits.
6. Pursue grant writing opportunities in the areas of downtown and economic development and beautification for the City of Marion.

Projected Budget – Economic Development Duties and responsibilities

Salaries (additional 12 hours of scheduled work per week)	$14,000
Retirement Contribution	1,000
Clerical Support	2,000
Travel/Training	2,000
Printing/Postage/Supplies	2,000
Advertising	3,500
Web Site Development/Maintenance	1,500
Total Budget	$26,000

Major changes in budget categories (greater than 10 percent of the listed budget) shall be presented by the DBA to the City Manager for review and, at the discretion of the City Manager, referred the City Council for approval.

REVIEW SIDEWALK DISPLAY ORDINANCE: The City Manager presented a memo from City Planner Suzy Davis, advising that amendments need to be made to the Street and Sidewalk Ordinance to authorize the construction of a balcony above the Main Street sidewalk on property owned by Mr. Mike Ornberg. Ms. Davis outlined some of the proposed changes.

The balcony would be constructed to be similar in appearance to one that was once located on this building many years ago, when a hotel was in the building.

A discussion followed.

Council members suggested some minor changes to the wording of the ordinance. The Mayor and Council members stated their desire to make whatever changes were reasonably necessary to allow Mr. Ornberg to reconstruct his balcony.

It was the consensus of Council to place this ordinance on the June 21 agenda for approval.

APPOINT COMMITTEE TO STUDY CITY GATEWAY SIGNS: The City Manager advised that several meetings ago Council asked him to bring back names for a committee to study the possible redesign of the "Welcome to Marion" signs, located at the City Limits.

The City Manager suggested the following names:

Kathy Rabb, to represent the Downtown Business Association
Gil Masters, to represent the Downtown Advisory Committee

Councilman Cuthbertson agreed to serve on this Committee.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to appoint the three persons listed above to serve as the Committee and to meet with City staff to study the gateway signs and to present a recommendation back to Council at an upcoming meeting.

REVIEW INFORMATION FROM RAILROAD/DOT – RAILROAD GRADE CROSSINGS IN THE CITY: The City Manager presented Council with information received from a consultant working for DOT to study grade crossings and their impact on future passenger rail service. The consultant specifically looked at the Clay and Garden Street crossings. Their recommendation is to close the Clay Street crossing and for no change at the Garden Street Crossing.

A discussion followed.

It was the consensus of Council that Passenger Rail Service would not be made available to Western North Carolina for many years and therefore to decline the recommendation of DOT to close the Clay Street crossing. The City Manager will make DOT aware of Council decision by sending a letter to the project consultant.

REVIEW PROPOSAL FROM CUSTOM COMMUNICATIONS – CABLE FRANCHISE RENEWAL/DISCUSS CHARTER COMMUNICATIONS AND WBTV ISSUES: The City Manager presented Council with a proposal from Mr. Dave Harris stating that he would complete the City's cable franchise renewal with Charter Communications for $7,000.

Councilman Martin stated that he does not feel that spending $7,000, at this time, for Mr. Harris' services would benefit the City, given that Council had little power, under FCC regulations, to influence Charter.

No action was taken by Council on the proposal by Mr. Harris regarding the City's cable franchise renewal.

The City Manager also presented Council also received information from Mr. Harris regarding the possible return of WBTV (CBS-Charlotte) to the City's cable lineup. Mr. Harris feels that the offer from Charter to combine the County and City Government Access Channels and placing WBTV on one of those channels is the only alternative the City has to place WBTV back on the air, given that Charter has no open channels or channel capacity, that Charter has no legal requirement to return WBTV back on the air and since Charter refuses to remove any revenue producing channel in order to return WBTV back to the air.

Councilman Martin advised that he was in favor of getting WBTV back on the air, even if it meant losing the City's channel.

Councilman Little stated that he had recently had a change of opinion on this matter and had determined that, since the City could do nothing to force Charter to return WBTV to the air, the City should accept Charter's offer to combine the City and County channels.

Mayor Clark stated that he was absolutely opposed to combining the City and County channels. He noted that the City had received this channel as part of a franchise agreed to by City Council and Charter and that under no circumstances would he support combining the two channels. Mayor Clark stated that other cable providers should be contacted and invited to come into the City to compete with Charter.

It was the consensus of Council to discuss this matter further at the June 21 meeting and to direct the City Manager to contact Mediacom, and perhaps other cable providers, about coming into the City to overbuild Charter's cable system and to provide competition.

DISCUSS PARKING ISSUES: The City Manager advised that, on May 27th, the School System held its annual retirement program at East McDowell High School Junior High School, with hundreds of employees in attendance. The parking in association with this event caused traffic flow problems, particularly in the block of State Street between Clay Street and South McDowell Avenue. The Police Chief and City Manager witnessed this parking and the City's Ordinance Enforcement Officer went into the auditorium to attempt to clear the block. The City Manager suggested that the Street Committee could look at the parking in this location to recommend possible changes. The City Manager stated that the Police

Chief had directed the School Resource Officer to work with School personnel on future large events at East Junior High, to make sure that future parking problems did not occur.

A discussion followed. Councilman Cuthbertson stated that he did not think that parking restrictions were needed for events that happened, at most, a few times per year.

It was the consensus of Council to take no action on this item. City staff will communicate with School personnel to be aware of and to assist with future large events at East Junior High.

REVIEW MARION AREA FIRE DISTRICT AGREEMENT WITH MCDOWELL COUNTY: The City Manager presented Council with a copy of a proposed revised Marion Area Fire District Agreement with McDowell County.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to table consideration of this Agreement until the next meeting so that the Fire Committee, composed of Councilmen Little and Edwards, could review the agreement and provide any comments.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager stated that the pastor of Mt. Moriah Baptist Church had expressed concern about the recent curb and approach work in front of the Church on East Wilhemenia Street. The City Manager suggested that the Street Committee and City staff meet with church representatives to look at the location. Council agreed by consensus to have the Street Committee explore this concern.

COUNCILMAN COMMENTS:

COUNCIMAN EDWARDS advised that the unsightly bus on East Court Street with the sign adverting mulch is still out of compliance.

The City Manager advised that he would get City Planner Suzy Davis to pursue this matter in accordance with action recently taken by Council.

COUNCILMAN LITTLE advised that the railroad crossing on Garden Street is in need of repairs.

The City Manager advised that City staff would check the location and contact the railroad.

COUNCILMAN LITTLE also requested that the downtown hanging baskets be redone to remove unsightly grass from the baskets and to add color.

The City Manager stated that he would work with Street Superintendent Roger Estes and the City's landscaping contractor, Lawrence Moore, to rework the baskets.

COUNCILMAN CUTHBERTSON advised that he recently seen skateboarders on the tennis courts at the Marion Community Building.

The Police Chief advised that he would contact his officers regarding this matter.

COUNCILMAN OWENBY advised that he had received several complaints regarding the ditch lines along Rutherfordton Road between Marion Street and Fern Street.

The City Manager advised that he would contact DOT about cleaning the ditch lines in this area.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in a Special Called Session on Monday, June 20, 2005 at 1:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Councilman Mike Edwards was absent due a prior work commitment.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Mickey Poteat, 50 Euclid Avenue, Marion, NC; Barry McPeters, County Commissioner, McDowell County, Marion, NC

CABLE FRANCHISE/CHARTER/WBTV ISSUES: Mayor Clark advised that it had become apparent that Charter Communications was not going to return WBTV back to the City's cable channel lineup, unless additional capacity was freed up on the basic tier. Mayor Clark stated that technical reasons would make it difficult for the City and County to share a government access channel; therefore, it would be better to eliminate one of the channels.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted for the City to relinquish its government access channel 14, contingent upon Charter restoring WBTV to the basic tier lineup within sixty (60) days, along with a request that WBTV be placed back on Channel 3 if at all possible, with the City reserving the right to reclaim the government access channel in the future if WBTV is not put back on the air or is ever removed from the air in the future.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 21, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Mickey Poteat, 50 Euclid Avenue, Marion, NC; Elizabeth House, 35 James Drive, Marion, NC

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. **Approval of Minutes** - June 7, 2005 Regular City Council Meeting

B. **Approve Budget Amendments:**

CITY OF MARION, NORTH CAROLINA
2004-2005 BUDGET ORDINANCE
(Seventh Amendment)

BE IT ORDAINED by the City Council of the city of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-342-1200, DARE Fund Revenue, is increased from $-0- to $6,324.

b. General Fund Expenditures, Police, Account Number 10-510-3310, DARE Supplies, is increased from $-0- to $6,324.

c. General Fund Revenues, Account Number 10-342-1300, National Night Out Revenue, is increased from $-0- to $925.

d. General Fund Expenditures, Police, Account Number 10-510-3330, National Night Out Supplies is increased from $ -0- to $925.

e. General Fund Revenues, Account Number 10-342-1350, Explorer Post Revenue, is increased from $-0- to $416.

f. General Fund Expenditures, Police, Account Number 10-510-3320, Explorer Post Supplies is increased from $ -0- to $416.

g. General Fund Revenues, Account Number 10-334-1600, Federal Drug Asset Revenue is increased from $-0- to $3,242.

h. General Fund Expenditures, Police, Account Number 10-510-3300, Supplies and Materials is increased from $17,500 to $20,742.

i. General Fund Revenues, Account Number 10-334-1700, State Controlled Substance Revenue is increased from $-0- to $3,742.

j. General Fund Expenditures, Police, Account Number 10-510-7400, Capital Outlay is increased from $220,594 to $224,336.

k. General Fund Revenues, Account Number 10-335-0300, Mountain Glory Revenues is increased from $-0- to $15,376.

l. General Fund Expenditures, Recreation, Account Number 10-620-6000, Mountain Glory Expenses is increased from $-0- to $15,376.

m. General Fund Revenues, Account Number 10-392-2000, Property and Insurance Reimbursement is increased from $4,860 to $ 21,850.

n. General Fund Expenditures, Recreation, Account Number 10-620-7400, Capital Outlay is increased from $218,194 to $235,184.

o. General Fund Expenditures, Administration, Account Number 10-420-0200, Salaries and Wages is increased from $220,795 to $223,795.

p. General Fund Expenditures, Administration, Account Number 10-420-0600, Insurance is increased from $24,588 to $29,588

q. General Fund Expenditures, Administration, Account Number 10-420-1400, Travel and Training is increased from $10,000 to $15,600.

r. General Fund Expenditures, Administration, Account Number 10-420-3300, Supplies and Materials is increased from $7,000 to $11,000.

s. General Fund Expenditures, Administration, Account Number 10-420-7400, Capital Outlay - Equipment is increased from $19,000 to $21,000.

t. General Fund Expenditures, Non-Departmental, Account Number 10-660-9950, Special Projects is decreased from $46,139 to $26,539.

u. General Fund Expenditures, Recreation, Account Number 10-620-8100, Transfer to Skate Park is increased from $-0- to $46,525

v. General Fund Expenditures, Recreation, Account Number 10-620-7400, Capital Outlay is decreased from $218,194 to $198,194.

w. General Fund Revenues, Account Number 10-399-000, Fund Balance Appropriated is increased from $568,826 to $595,351.

WATER AND SEWER FUND

a. Water and Sewer Expenditures, Water Filter Plant, Account Number 30-812-0200, Salaries and Wages is increased from $163,343 to $166,843.

b. Water and Sewer Expenditures, Water Filter Plant, Account Number 30-812-1000, Postage is increased from $-0- to $2,000.

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c. Water and Sewer Expenditures, Water Filter Plant, Account Number 30-812-3300, Materials and Supplies is increased from $54,000 to $58,500.
d. Water and Sewer Expenditures, Non-Departmental, Account Number 30-660-9600, Insurance, Bonds and Workers Compensation is decreased from $130,000 to $120,000.

CAPITAL RESERVE FUND

a. Capital Reserve Fund Revenues, Account Number 75-398-1000, Transfer from US 221N Water and Sewer Improvement Project is increased from $-0- to $5,000.

b. Capital Reserve Fund Revenues, Account Number 75-399-0000, Fund Balance Appropriated is decreased from $724,000 to $719,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 21st day of June 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O – 05 – 06 – 21 – 7

C. Approve Amended Pay Grade Plan: A copy of the approved Amended Pay Grade Plan can be found on file with the Finance Officer at City Hall.

D. Approve Memorandum of Agreement with North Carolina League of Municipalities Pay and Classification: A copy of the approved Pay and Classification Plan can be found on file in the legal documents at City Hall.

E. Approve Budget Amendment:

CITY OF MARION, NORTH CAROLINA
2004-2005 BUDGET ORDINANCE
(Eighth Amendment)

CITY OF MARION, NORTH CAROLINA
2004-2005 BUDGET ORDINANCE
(Eighth Amendment)

BE IT ORDAINED by the City Council of the city of Marion, North Carolina as follows:

Section 1. That the Budget Ordinance for the City of Marion, North Carolina for the fiscal year 2004-05 as adopted by the Marion City Council on the 15th day of June, 2004 is hereby amended as follows:

GENERAL FUND

x. General Fund Expenditures, Non-Departmental, Account Number 10-660-9000, Transfer to General Capital Projects Fund, is increased from $3,861 to $18,861.

y. General Fund Revenues, Account Number 10-399-000, Fund Balance Appropriated is increased from $595,351 to $610,351.

GENERAL CAPITAL PROJECT FUND

c. General Capital Project Fund Revenues, Account Number 11-380-000, Transfer from General Fund, is increased from $128,861 to $143,861.

d. General Capital Project Fund Expenditures, Account Number 11-171-0800, Depot Renovation, is increased from $1,250,000 to $1,265,000.

Section 2. Copies of this Budget Amendment shall be furnished to the Budget Officer to be kept on file for direction in the disbursement of funds.

Adopted this the 21st day of June 2005.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number O – 05 – 06 – 21 – 6

PUBLIC APPEARANCE – MR. MICKEY POTEAT: Mr. Mickey Poteat was present for this meeting and thanked Mayor Clark and City Council for their determination in trying to get WBTV back on the air through Charter Cable TV. He commended them for the lengths they were willing to take to get and advised that he was sure he was speaking for the majority of the citizens of Marion.

PUBLIC HEARING – ADOPTION OF 2005-06 BUDGET ORDINANCE: Mayor Clark opened the Public Hearing.

The City Manager gave an overview of the 2005-06 Budget.

Finance Officer Harriett Thomas was also present for this meeting to answer questions.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to adopt the 2005-06 Budget Ordinance as follows:

BUDGET ORDINANCE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the City Government and it's activities for the fiscal year beginning July 1, 2005 and ending June 30, 2006 in accordance with the chart of accounts heretofore established by the City:

Administration	$ 443,164	Purchasing and Warehousing	53,379
Inspection	153,960		
Police	1,365,355		
Fire	357,743		
Public Works Administration	61,914		
Fleet Maintenance	46,739		
Street	878,845		
Powell Bill	222,500		
Sanitation	475,979		
Recreation	140,100		

Cemetery	37,000
Non-Departmental	641,918
Total	**$ 4,878,596**

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Prior Year's Taxes	$ 30,000
Vehicle Tax-Collected by County	140,000
Current Taxes	1,528,886
Tax Penalties & Interest	16,000
Privilege License Sales	18,500
Peddler's Permit	200
Interest Earned	36,000
Powell Bill Interest Earned	600
Rents and Concessions	20,500
Misc. Revenues	100
Drink Commissions	500
Mowing Reimbursement	500
Bad Check Fees	50
P/D Ser Copies Fingerprints	100
Refunds/ Reimbursements	2,000
Miscellaneous Parts & Labor	1,000
Utilities Franchise Tax	480,000
Beer/Wine Revenue	26,500
Powell Bill Allocation	200,000
Hold Harmless Funds	7,550
Sales Tax Distribution	1,270,000
ABC Revenues	140,000
ABC Officer Revenues	5,100
Court Costs, Fees & Charges	5,000
Parking Violations	4,000
County Fire Protection	130,000
State Fire Protection Reimbursement	750
County Contribution – Recycling	7,500
Recycling Bin Deposit	100
Cemetery	3,000
DOT Reimbursement Grass Mowing	3,500
Garbage Fees	143,750
Zoning Income - Inspection Fees	20,000
Sale of Garbage/Leaf/Recycling Bags	800
Cable TV Revenues	45,000
Sales of Surplus Equipment	6,000
McDowell County Schools	18,500
Highway Safety Grant	7,500
Mountain Glory Revenues	16,000
Debt Proceeds – Street Sweeper	140,000
Fund Balance	380,610
Powell Bill Fund Balance	22,500
TOTAL	$4,878,596

Section 3. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Reserve for Future Appropriations	$ 385,250
TOTAL	**$385,250**

Section 4. It is estimated that the following revenues will be available in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Fund Balance Appropriated	$ 325,750
Interest on Investments	9,500
Transfer from General Fund	50,000
TOTAL	**$ 385,250**

Section 5. The following amounts are hereby appropriated in the Water/Sewer Fund for operation of Water and Sewer Utilities for the fiscal year beginning July 1, 2005 and ending on June 30, 2006 in accordance with the accounts heretofore approved for the City:

Utility Line Operation	$ 997,752	
Water Filter Plant	426,190	
Waste Treatment Plant	904,165	
Non-Departmental	559,866	
TOTAL		**$ 2,887,973**

Section 6. It is estimated that the following revenues will be available in the Water / Sewer Fund for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Fund Balance	$ 201,621	
Interest Earned	10,000	
Miscellaneous Income	5,000	
Property & Insurance Reimbursement	100	
Bad Check Fees	1,500	
Time Payment Interest	2,000	
Fire Protection	2,500	
Transfer Fee	1,000	
Reimbursement – Septic	8,000	Reimbursement - Pump Stations
	1,500	
Reimbursement – Pretreatment	3,500	
Water Sales	880,000	
Cut on Fees/Late Penalties	60,000	
Sewer Service	549,000	
Water Taps	25,000	
Sewer Taps	25,000	
Delinquent Accounts Collected	1,000	
Tank Truck Charges	4,000	
Cost Recovery – Water	25,000	
Cost Recovery – Sewer	25,000	
Water Service Charge	592,000	
Sewer Service Charge	335,000	County Reimbursement – 221N
	14,252	
Free Water Reimbursement - Annex Subsidy	115,000	
Gain on Sale of Assets	1,000	
TOTAL	**$ 2,887,973**	

Section 7. The following amounts are hereby appropriated in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Reserve for Future Appropriations:	$ 215,000	
TOTAL		**$ 215,000**

Section 8. It is estimated that the following revenues will be available in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Fund Balance Appropriated	$ 210,000
Interest on Investments	5,000
TOTAL	**$ 215,000**

Section 9. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Inventory (Supplies)	$ 125,000	
TOTAL	**$**	**125,000**

Section 10. It is estimated that the following revenues will be available in the Internal Service Fund for the fiscal year beginning July 1, 2005 and ending June 30, 2006:

Purchase by Other Funds	$ 125,000
TOTAL	**$ 125,000**

Section 11. There is hereby levied a tax at the rate of fifty-one ($ .51) per one hundred ($100) valuation of property as listed for taxes as of January 1, 2005 for the purpose of raising the revenue listed as "Current Year Property Taxes" in the General Fund in Section 2 of this Ordinance. These rates are based on estimated total valuation of property for the purpose of taxation of $ 323,400,000 and estimated rate of collection of
93%.

Section 12. The Budget Officer is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

A. He may transfer amounts between objects of expenditure within a department without limitation and without a report being required.

B. He may transfer amounts up to $1,000.00 between departments of the same fund with an official report on such transfers at the next regular meeting of the City Council.

C. He may not transfer any amounts between funds nor from any contingency appropriation within any fund.

Section 13. Copies of the Budget Ordinance shall be furnished to the Finance/Budget Officer of the City to be kept on file for direction in the disbursement of funds.

ADOPTED this the 21st day of June, 2005

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

COUNCILMAN EDWARDS arrived for this meeting at 7:30 PM.

ADOPT AMENDED WATER/SEWER RATE ORDINANCE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the amended water/sewer rate ordinance as follows:

ORDINANCE

ESTABLISHING WATER/SEWER RATES, CONNECTION FEES, COST RECOVERY CHARGES AND OTHER MISCELLANEOUS CHARGES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That new water/sewer rates, connection (tap fees) fees, cost recovery charges and other miscellaneous charges are hereby established as follows:

	INSIDE CITY	**OUTSIDE CITY**

Water Rates:	**$1.60 per 1,000 Gallons, plus $9.00 Service Charge per month**	**$4.00 per 1,000 Gallons, plus $18.00 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.00**	**$20.00**
Master Meter Rate	**$1.60 per 1,000 Gallons, plus $7.20 Service Charge per month**	**$4.00 per 1,000 Gallons, plus $14.40 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.40**	**$16.80**

	INSIDE CITY	**OUTSIDE CITY**
Sewer Rates:	**$1.60 per 1,000 Gallons, plus $9.00 Service Charge per month**	**$4.00 per 1,000 Gallons, plus $18.00 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.00**	**$20.00**
Master Meter Rate	**$1.60 per 1,000 Gallons, plus $7.20 Service Charge per month**	**$4.00 per 1,000 Gallons, plus $14.40 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.40**	**$16.80**

	INSIDE CITY	**OUTSIDE CITY**
Sewer Rates for Private Wells	**$2.30 per 1,000 Gallons, plus $9.00 Service Charge per month**	**$5.75 per 1,000 Gallons, plus $16.00 Service Charge per month**

Important Notices:

All sewer charges are based on water meter readings, unless a sewer metering device approved by the City has been installed.

When more than one unit is served by a Master Meter, such as a mobile home park, shopping center or apartment complex, the monthly service charge is $7.20 for water and $7.20 for sewer in the City, and $14.40 for water and $14.40 for sewer outside the City, whether said units are occupied or not.

A residence using a private well, with no water meter, shall pay a flat rate of $20.00 per month per residential unit for sewer service, if located outside the City Limits. If the residence using a private well, with no water meter, is located inside the City Limits, a flat rate of $10.00 per month per residential unit shall be charged for sewer service.

WATER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 600	$ 1,424	$ 900	$ 1,424
1"	700	3,560	1,050	3,560
1 ½"	1,400	7,120	2,100	7,120
2"	1,600	11,392	2,400	11,392
3"	3,400	21,360	5,100	21,360
4"	4,100	35,601	6,150	35,601
6"	6,600	85,441	9,900	85,441
8"	9,000	106,802	13,500	106,802
10"	12,000	142,402	18,000	142,402
12"	16,000	178,003	24,000	178,003

Tap Fees (Domestic Water Service):
The Charge listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

THE CHARGE TO ADD A ¾" BACK-FLOW PREVENTOR TO AN EXISTING DOMESTIC SERVICE IS AS FOLLOWS:

INSIDE CITY	OUTSIDE CITY
$ 10.00	$ 20.00

CHARGES FOR CONNECTIONS FOR FIRE PROTECTION/SPRINKLER LINES IN RESIDENTIAL AND/OR COMMERCIAL DEVELOPMENTS.

SIZE SERVICE	INSIDE CITY	OUTSIDE CITY
2" SERVICE	$ 1,100	$ 1,650
3" SERVICE	2,800	4,200
4" SERVICE	3,200	4,800
6" SERVICE	4,400	6,600
8" SERVICE	6,000	9,000
10" SERVICE	8,200	12,300
12" SERVICE	11,600	17,400

ALL CONNECTIONS TO THE CITY WATER SYSTEM SHALL BE EQUIPPED WITH A PROPER CHECK-VALVE AND/OR BACK-FLOW PREVENTOR APPROVED BY THE CITY PUBLIC WORKS DIRECTOR OR CITY ENGINEER PRIOR TO INSTALLATION. IT SHALL BE THE RESPONSIBILITY OF THE OWNER TO HAVE THE APPROVED CHECK-VALVE OR BACK-FLOW PREVENTOR INSTALLED. IN ADDITION, THE OWNER OF ALL PROPERTIES CONNECTED TO THE CITY WATER SYSTEM AND USING WATER FOR OTHER THAN DOMESTIC SERVICES, SHALL SUBMIT A LETTER TO THE CITY WATER DEPARTMENT ON OR BEFORE THE FIRST DAY OF JULY EACH YEAR CERTIFYING THAT THE CHECK-VALVE AND/OR BACK-FLOW PREVENTOR HAS BEEN CHECKED AND IS OPERATING PROPERLY.

SEWER SERVICE CONNECTION FEES (TAP FEES) AND COST RECOVERY CHARGES (CRC):

WATER

METER SIZE	INSIDE CITY TAP FEE	INSIDE CITY CRC CHARGE	OUTSIDE CITY TAP FEE	OUTSIDE CITY CRC CHARGE
¾"	$ 1,200	$ 820	$ 1,800	$ 820
1"	1,300	2,050	1,950	2,050
1 ½"	1,400	4,100	2,100	4,100
2"	1,500	6,560	2,250	6,560
3"	1,600	12,300	2,400	12,300
4"	1,700	20,500	2,550	20,500
6"	1,800	49,200	2,700	49,200
8"	1,900	61,500	2,850	61,500
10"	2,000	81,999	3,000	81,999
12"	2,100	102,499	3,150	102,499

	INSIDE CITY	OUTSIDE CITY

RELOCATE WATER/ SEWER CONNECTION, (OWNERS REQUEST)	**AT COST**	**COST PLUS 10%**
INCREASE METER SIZE	**DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER**	**DIFFERENCE IN TAP FEE AND COST RECOVERY CHARGES FOR WATER/SEWER**

DEPOSIT AND/OR PREPAYMENT FOR NEW ACCOUNTS:

RESIDENTIAL ACCOUNTS

	INSIDE CITY	OUTSIDE CITY
WATER DEPOSIT	**$ 30.00**	**$ 60.00**
SEWER DEPOSIT	**$ 30.00**	**$ 30.00**

IN CASES WHERE AN EXISTING RESIDENTIAL WATER AND/OR SEWER CUSTOMER HAS BEEN A WATER AND/OR SEWER CUSTOMER OF THE CITY OF MARION FOR A PERIOD OF NO LESS THAN FIVE CONSECUTIVE YEARS, AND HAS MADE NO LATE PAYMENTS IN THE PREVIOUS TWELVE MONTHS, AND MOVES TO ANOTHER LOCATION ON THE CITY'S WATER AND/OR SEWER SYSTEM, THE FOLLOWING PROCEDURE SHALL APPLY:

ANY INCREASE IN THE DEPOSIT REQUIRED TO BE PAID TO BRING THE CUSTOMER'S DEPOSIT UP TO THE CURRENT LEVEL LISTED ABOVE MAY BE PAID IN THREE EQUAL INSTALLMENTS, TO BE ADDED TO THE CUSTOMER'S FIRST THREE WATER AND/OR SEWER BILLS IN THE NEW LOCATION. IF THE CUSTOMER FAILS TO MAKE ANY OF THE REQUIRED PAYMENTS, THEIR SERVICE MAY BE CUT OFF PURSUANT TO CITY POLICY.

COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS

THE WATER AND/OR SEWER DEPOSIT FOR COMMERCIAL, INDUSTRIAL, AND MASTER METER ACCOUNTS SHALL BE AN AMOUNT EQUAL TO THE AVERAGE MONTHLY CHARGE FOR WATER AND/OR SEWER SERVICE, BUT NOT LESS THAN THE RESIDENTIAL DEPOSITS. THE INITIAL DEPOSITS FOR COMMERCIAL, INDUSTRIAL AND MASTER METER ACCOUNTS SHALL BE AS FOLLOWS:

INSIDE CITY

	WATER	SEWER	WATER AND SEWER
FAST FOOD/PIZZA RESTAURANTS	**$100.00**	**$100.00**	**$ 200.00**
OTHER RESTAURANTS (WITH SEATING)	**$150.00**	**$150.00**	**$ 300.00**
GROCERY STORES	**$150.00**	**$150.00**	**$ 300.00**
APARTMENT COMPLEXES (MASTER METER)	**$150.00**	**$150.00**	**$ 300.00**
CAR WASHES	**$150.00**	**$150.00**	**$ 300.00**
LAUNDRIES	**$200.00**	**$200.00**	**$ 400.00**
NURSING/FAMILY CARE HOMES	**$200.00**	**$200.00**	**$ 400.00**
INDUSTRY (50 OR MORE EMPLOYEES)	**$500.00**	**$500.00**	**$1,000.00**
INDUSTRY (LESS THAN 50 EMPLOYEES)	**$200.00**	**$200.00**	**$ 400.00**
OTHER MASTER METER ACCOUNTS	**$100.00**	**$100.00**	**$ 200.00**
GENERAL BUSINESS	**$ 50.00**	**$ 50.00**	**$ 100.00**

OUTSIDE CITY

	WATER

	WATER	SEWER	AND SEWER
FAST FOOD/PIZZA RESTAURANTS	$ 200.00	$ 200.00	$ 400.00
OTHER RESTAURANTS (WITH SEATING)	$ 300.00	$ 300.00	$ 600.00
GROCERY STORES	$ 300.00	$ 300.00	$ 600.00
APARTMENT COMPLEXES (MASTER METER)	$ 300.00	$ 300.00	$ 600.00
CAR WASHES	$ 300.00	$ 300.00	$ 600.00
LAUNDRIES	$ 400.00	$ 400.00	$ 800.00
NURSING/FAMILY CARE HOMES	$ 400.00	$ 400.00	$ 800.00
INDUSTRY (50 OR MORE EMPLOYEES)	$1,000.00	$1,000.00	$2,000.00
INDUSTRY (LESS THAN 50 EMPLOYEES)	$ 400.00	$ 400.00	$ 800.00
OTHER MASTER METER ACCOUNTS	$ 200.00	$ 200.00	$ 400.00
GENERAL BUSINESS	$ 100.00	$ 100.00	$ 200.00

THE CITY MANAGER SHALL DETERMINE THE APPROPRIATE DEPOSIT FOR ANY COMMERCIAL, INDUSTRIAL OR MASTER METER CUSTOMER NOT LISTED IN THE PRECEDING SCHEDULE. AT THE END OF SIX MONTHS OF SERVICE, THE CITY WILL DETERMINE THE AVERAGE USE BY AVERAGING THE THREE HIGHEST MONTHS. THE CUSTOMER WILL BE BILLED FOR ANY ADDITIONAL AMOUNT FOR THE PROPER DEPOSIT. IF THE AMOUNT IS NOT RECEIVED IN THIRTY DAYS, THE UTILITY BILL WILL BE INCREASED EACH MONTH FOR TWELVE CONSECUTIVE MONTHS UNTIL THE PROPER DEPOSIT HAS BEEN RECEIVED. IF THE AVERGAE MONTHLY DEPOSIT IS LOWER THAN THE AMOUNT THE CITY HAS RECEIVED FROM THE INITIAL DEPOSIT, THE CITY WILL CREDIT THE WATER ACCOUNT OF THE CUSTOMER FOR THE AMOUNT OF THE DIFFERENCE IN THE INITIAL DEPOSIT AND THE AVERAGE MONTHLY BILL.

OTHER MISCELLANEOUS CHARGES

	INSIDE CITY	OUTSIDE CITY
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 15.00
TEMPORARY SERVICE (SEVEN OR LESS DAYS)	$ 15.00 PLUS ACTUAL WATER USAGE	$ 15.00 PLUS ACTUAL WATER USAGE
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
RETURN CHECK SERVICE CHARGE	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER	$ 25.00 OR 10% OF CHECK, WHICHEVER IS GREATER
BANK DRAFT CUSTOMER – CHARGE FOR CLOSED ACCOUNT	$ 25.00	$ 25.00
CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY ¾" AND 1" METERS	$ 15.00	$ 15.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW		

AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on August 3, 2004 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this ordinance, are rescinded upon the effective date of this ordinance.

Section 4. This Ordinance shall become effective upon its adoption.

ADOPTED this the 21st day of June, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-05-06-21-2

ADOPT AMENDED COMMERCIAL GARBAGE RATE ORDINANCE: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance:

ORDINANCE

COMMERCIAL GARBAGE / RECYCLING COLLECTION RATES

BE IT ORDAINED by the City Council of the city of Marion, North Carolina as follows:

Section 1. That new rates for Commercial Garbage / Recycling Collections are hereby established as follows:

Plan "A"
Industrial / Commercial Dumpsters

Pickups per Week	Monthly Charge
1	$ 101
2	245
3	390
4	535
5	679

Pickups per Month	Monthly Charge
1	$ 28
2	49
3	71

Plan "B"
Apartment Complexes

Pickups per Week	Monthly Charge
1	$ 6 (minimum charge)
2	56
3	106
4	155
5	206

Plan "C"
Commercial Can Services (3 – 35 gallon cans)

Pickups per Week	Monthly Charge
1	$ 13 (minimum charge)

Plan "D"
Commercial Recycling Services (see description in contract)

Flat Monthly Charge $ 13

Section 2. The Ordinance adopted on May 21st, 1996 is rescinded upon the effective date of this Ordinance.

Section 3. All other ordinances, in conflict with this Ordinance, are rescinded upon the effective date of this Ordinance.

Section 4. This Ordinance shall become effective July 1, 2005.

Adopted this the 21st day of June 2005.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number O – 05 – 06 – 21 – 3

REQUEST – FOOTHILLS COMMUNITY THEATRE: Ms. Elizabeth House appeared before Council requesting that Council discount the rate for the rental of the Depot for a dinner theatre murder mystery to be presented later in the summer by the Foothills Community Theatre. They will be utilizing the depot for one rehearsal and three performances. The newly renovated depot will be perfect for this type of theatre function.

Councilman Little advised that this should be treated as one event lasting four days and one rehearsal night and with that said made a motion that Council accept 200.00 for the rental of the depot for the foothills community theatre and Councilman Martin seconded the motion.

A brief discussion followed.

Councilman Owenby advised that Council would be setting a precedence if they reduced the rates for one entity.

Councilman Cuthbertson advised that in the past the city has made contributions to various functions with this type of request.

Councilman Little withdrew his motion and Councilman Martin withdrew his second.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to make a contribution in the amount of 300.00 to the Foothills Community Theatre to off-set the cost of using the Depot.

CIVIL CITATION APPEAL: The City Manager presented Council with a civil citation appeal ad photographs submitted by Peggy Rowe regarding a ten dollar parking ticket she received while parking on State Street across from East Junior High School.

It was the consensus of Council that the signs posted in this area are confusing to the public.

A brief discussion followed.

Upon a motion By Councilman Little, seconded by Councilman Edwards Council voted unanimously to forgive this parking citation.

RECEIVE RECOMMENDATION FROM DOWNTOWN ADVISORY COMMITTEE – SELECTION OF MOST QUALIFIED FIRM – DOWNTOWN STREETSCAPE PLAN: The City Manager advised that the DAC Design Committee had met and interviewed four firms on June 6th, 2005 regarding the Downtown Streetscape/Traffic Flow Plan.

Mr. Cliff McLarty, President of DAC was present for this meeting and advised that the DAC Board reports that Hayes Seay Mattern & Mattern(a Raleigh firm with a Hickory Office) and McGill Associates out of Asheville are equally qualified to complete the plan based on past experience with small towns

For the benefit of the news media the City Manager Bob Boyette advised that to date, no money has been budgeted for this project. This procedure was necessary continent upon City Council wishing to proceed with this type of plan.

The Committee systematically graded these firms.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to accept the recommendation of the DAC Committee.

ADOPT AMENDED SIDEWALK DISPLAY ORDINANCE: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 16
STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 15 of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 15, Article III Sidewalks, Section 15-137, Structures and appurtenances over sidewalks is amended as follows:

Sec. 15-137. Structures and appurtenances over sidewalks.
No person shall erect over any sidewalk or street any part of a building except marquees and signs which are approved by the building inspector. Awnings may be attached to buildings provided they are supported upon metallic frames and at least eight (8) feet above the level of the sidewalk. Reconstruction of porches and balconies of historic significance shall be permitted to extend ten (10) feet over the sidewalk and eight (8) feet above the sidewalk, provided that the structure is five (5) feet from the vehicular traveled way. Reconstruction shall be permitted only if evidence of historic features exists in photos and when features are noted in the U.S. Department of Interior description of "Historic and Architectural Resources in Downtown Marion." Reconstruction of historic features shall be comparable to original construction.

Section 3. Chapter 15, Article III Sidewalks, Section 15-132, Construction is amended as follows:

Sec. 15-132. Construction.
No sidewalk of any description shall be built by any person of any brick, wood, or other material without a written permit from the city. Nor shall any permanent structure be installed in a city sidewalk without permission from City Council.

Section 4. This ordinance shall become effective upon its adoption.
Adopted this the 21st day of June 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance number: O-05-06-21-04

PRESENTATION – FIRE CHIEF JIM NEAL – FIRE DEPARTMENT CAPITAL/STAFFING NEEDS : City Manager advised that the County has set in place the 2 percent fire tax for the Marion Area Fire District.

Fire Chief Jim Neal appeared before Council to present the following items that he would like considered for my capital expenditure budget for next year:

1. Replace tanker 306 – estimated cost $290,000.
2. Purchase new 4x4 crew cab pick-up for fire inspector - $22,000.
3. Replace ½ of the department pagers & one hand-held radio - $7,000

4. 10 50ft sections of 1 ¾" hose - $2,200

5. Five 4500 psi air bottles - $3,000

6. If a grant can be obtained – one instasign as demonstrated today - $9,400

Supporting comments:

The fire inspector currently has no vehicle and must ride with the building inspector or use our brush truck for his inspections. Kevin must also use his own personal vehicle when he goes out of town to Asheville for training. In addition to inspection use, a pick-up is needed to haul hose and other equipment back to the station that has been used in fire suppression. A pick-up is needed for testing hydrants. We seem to be answering more weather related calls. A crew cab is needed to carry several firemen who can clear trees, check downed power lines, etc. rather than putting private vehicles on the road.

The pagers we are currently using are close to 10 years old and maintenance is becoming a problem. I would like to replace our pagers over the next two years. Charles's handheld radio is giving problems and needs to be replaced.

The air bottles that are used with the SCBA must be hydrostatically tested every three to five years depending on the type of bottle. The bottles must be taken out of service after five tests. We need to plan in advance for taking bottles out of service so that we won't have to replace a lot of bottles in one year. Most of our bottles were bought as a group and will roll out of service at the same time.

We need to fund the depreciation on the tower. It is **the** most expensive piece of equipment to city owns and it is old. At some point in time the tower will need to be replaced.

The Instasign is needed for our work on I-40 and can also be used at structure fires, blocked road ways and flooded areas just to name a few uses.

Also, as previously discussed the SAFER Grant has been funded. The grant period ends on June 30, 2005. I would like to apply for funding for three positions under the grant. This would bring out staffing to four people during the day in a work week and two on each 24 hr. shift and over the weekends.

It is getting harder to attract quality volunteers. In addition with our call volume increasing at such a rapid rate (50% in the last two years), our volunteers are being called on more often. It is a fact of life that requests for our services are raising.

Our department would be able to add additional services if we had the extra personnel. For instance we would initiate a hydrant inspection and testing program which we do not currently do. It takes at least two persons to properly test hydrants since two hydrants are used during a test. We could also initiate a formal pre-plan program in conjunction with our inspection program.

Having another fireman per shift would improve our response effectiveness. On structure fires two trucks could leave the station instead of one. NFPA and Department of Insurance standards are changing. D.O.I. wants to see at least two units from our station at all structure fires. NFPA standards now require two firemen outside a structure when two firemen go in, the 2 in 2 out standard.

A discussion followed.

The City Manager advised that he and Harriett had put together the following figures for Council to review:

Annual Truck Payment - 1997 Tanker	$22,896
"Projected Truck Payment - 2005 Tanker ($290,000) - 6%"	$46,700
Additional MA District Funds Needed	$23,804
2005-06	
Additional MA District tax expected from 4 cent tax rate	$80,000
Expected amount of leftover capital outlay $ in original 05-06 Budget (Federal Grant match reduced from 10% to 5% and cost of truck projected at lower than budgeted for)	$15,000
Total Possible Additional Funds	$95,000
Money Needed for Additional Cost of Tanker Truck Payments	$23,804
New 4x4 Crew Cab for Fire Inspector	$22,000
Replace Half of Department Pagers and One Hand Held Radio	$7,000

"Purchase 10 50' Sections of 1 3/4"" Hose"	$2,200
Purchase 5 Air Bottles	$3,000
Purchase Programmable Message Board - 1/2 Grant Funded)	$4,700
1st Year Cost of Grant Match for 3 New Firefighter Positions	$10,697
Fund Depreciation on Aerial Truck	$21,599
Total Possible Additional Expenditures	$95,000

2006-07

Additional MA District tax expected from 4 cent tax rate	$80,000
Include same level of capital outlay funding as in 2005-06	$40,000
Total Possible Additional Funds	$120,000
Money Needed for Additional Cost of Tanker Truck Payments	$23,804
Replace Half of Department Pagers and One Hand Held Radio	$7,000
"Purchase 10 50' Sections of 1 3/4"" Hose"	$2,200
2nd Year Cost of Grant Match for 3 New Firefighter Positions	$21,518
Fund Depreciation on Aerial Truck	$69,759
Total Possible Additional Expenditures	$65,478

2007-08

Additional MA District tax expected from 4 cent tax rate	$80,000
Include same level of capital outlay funding as in 2005-06	$40,000
Total Possible Additional Funds	$120,000
Money Needed for Additional Cost of Tanker Truck Payments	$23,804
"Purchase 10 50' Sections of 1 3/4"" Hose"	$2,200
3rd Year Cost of Grant Match for 3 New Firefighter Positions	$56,485
Fund Depreciation on Aerial Truck	$37,511
Total Possible Additional Expenditures	$120,000

2008-09

Additional MA District tax expected from 4 cent tax rate	$80,000
Include same level of capital outlay funding as in 2005-06	$40,000
Total Possible Additional Funds	$120,000
Money Needed for Additional Cost of Tanker Truck Payments	$23,804
"Purchase 10 50' Sections of 1 3/4"" Hose"	$2,200
4th Year Cost of Grant Match for 3 New Firefighter Positions	$83,036
Fund Depreciation on Aerial Truck	$10,960
Total Possible Additional Expenditures	$120,000

2009-10

Additional MA District tax expected from 4 cent tax rate	$80,000
Include same level of capital outlay funding as in 2005-06	$40,000
Total Possible Additional Funds	$120,000
Money Needed for Additional Cost of Tanker Truck Payments	$23,804
"Purchase 10 50' Sections of 1 3/4"" Hose"	$2,200
5th Year Cost of Grant Match for 3 New Firefighter Positions	$124,548
Fund Depreciation on Aerial Truck	$0
Total Possible Additional Expenditures	$150,552

Personnel Costs - Fire Grant - 5% Annual Increase

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5

3 POSITIONS:					
SALARY	69,000	72,450	76,073	79,876	83,870
FRINGE	12,192	12,802	13,442	14,114	14,820
INSURANCE	16,236	17,048	17,900	18,795	19,735
MERIT / OT	4,140	4,347	4,564	4,793	5,032
TURNOUT GEAR	4,500	-	-	-	-
UNIFORMS	900	945	990	1,045	1,091
	106,968	107,592	112,969	118,623	124,548
GRANT %	90%	80%	50%	30%	0%
GRANT PORTION	96,271	86,073	56,485	35,587	-
CITY PORTION	10,697	21,518	56,485	83,036	124,548

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to proceed with applying for the SAFER Grant.

REVIEW MARION AREA FIRE DISTRICT AGREEMENT WITH MCDOWELL COUNTY: The City Manager presented Council with a draft agreement for service to the MA District. This agreement has been reviewed by Councilman Little and Councilman Edwards.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to enter into an understanding with one item, item being paragraph five (5), of the proposed agreement, so that the purchase of the Tanker Truck can be moved on as quickly as possible.

Paragraph 5 reads as follows:

Any tanker trucks needed for use in the Marion Area Fire District shall be purchased by the City, based on specifications and bids developed by the City, and subject to any financing terms deemed appropriate by the City Council. Such trucks shall be designated for use in the Marion Area Fire District (except it will be available for Mutual Aid purposes to assist with fires in other areas of McDowell County.) The words "Marion Area Fire District" shall be pained on the new truck. Should this agreement be terminated by either party, any and all fire trucks labeled Marion Area Fire District shall be transferred to McDowell County upon such termination, with the County assuming remaining payments owed as of the date of termination. It is agreed and understood that the City of Marion will own the equipment purchased by the Special Fire District Tax, subject to the reversion clause listed above. It is also agreed and understood, that upon termination of this agreement, the City shall have no further obligation to provide fire protection services to the Marion Area Fire District.

APPROVE SKATEBOARD ORDINANCE AMENDMENTS/DISCUSS CHANGES TO GAZEBO PARK ON NORTH MAIN STREET: The City Manager presented and reviewed with Council an Ordinance relating to the Skateboard Ordinance.

The City Manager noted that he has observed that the effort of Police Presence has made a difference in the downtown area in the past two weeks.

Councilman Edwards advised that he did not feel the need for signs to be necessary.

The current Ordinance regarding skateboards reads as follows:

ARTICLE V. REGULATIONS FOR BICYCLES AND SKATEBOARDS*

***State law reference(s)**--North Carolina Bicycle and Bikeway Act of 1974, G.S. § 136-71.6 et seq.

Sec. 18-186. Effect of regulations.

(a) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.

(b) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or upon any public path set aside for the exclusive use of bicycles, subject to those exceptions stated in this article.

(Code 1982, § 7-1121)

Sec. 18-187. Traffic laws apply to persons riding bicycles.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state declaring rules of the road applicable to vehicles or by this chapter applicable to the driver of a vehicle, except as to special regulations in this article and except as to those provisions of laws and ordinances which by their nature can have no application.

(Code 1982, § 7-1122)

Sec. 18-188. Obedience to traffic-control devices.

(a) Any person operating a bicycle shall obey the instructions of official traffic-control signals, signs, and other control devices applicable to vehicles, unless otherwise directed by a police officer.

(b) Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

(Code 1982, § 7-1123)

Sec. 18-189. Riding on bicycles.

(a) A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one (1) time than the number for which it is designed and equipped.

(Code 1982, § 7-1124)

Sec. 18-190. Riding on roadways and bicycle paths.

(a) Every person operating a bicycle upon a roadway shall ride as near to the right-hand side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

(Code 1982, § 7-1125)

Sec. 18-191. Speed.

No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

(Code 1982, § 7-1126)

Sec. 18-192. Emerging from alley or driveway.

The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on such sidewalk or sidewalk area, and

upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(Code 1982, § 7-1127)

Sec. 18-193. Carrying articles.

No person operating a bicycle shall carry any package, bundle, or article which prevents the rider from keeping at least one (1) hand upon the handlebars.

(Code 1982, § 7-1128)

Sec. 18-194. Parking.

No person shall park a bicycle upon a street other than upon the roadway, against the curb, upon the sidewalk in a rack to support the bicycle, against a building or at the curb, in such a manner as to obstruct pedestrian traffic.

(Code 1982, § 7-1129)

Sec. 18-195. Riding on sidewalks.

(a) No person shall ride a bicycle upon a sidewalk within a business district.

(b) The chief of police is authorized to erect signs on any roadway prohibiting the riding of bicycles thereon by any person and when such signs are in place no person shall disobey them.

(c) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

(Code 1982, § 7-1130)

Cross reference(s)--Sidewalks generally, § 15-131 et seq.

Sec. 18-196. Lamps and other equipment on bicycles.

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of headlamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

(b) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred (100) feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(c) Every bicycle shall be equipped with a brake which will enable the operator to make the brake wheel skid on dry, level, clean pavement.

(Code 1982, § 7-1131)

Sec. 18-197. Skateboards restricted to play streets.

It shall be unlawful for any person to ride any skateboard on any public street within the city unless such street shall be set aside as a play street for specific lengths of time by the city council.

(Ord. of 10-6-77, § 1)

Sec. 18-198. Riding skateboards on certain sidewalks prohibited.

It shall be unlawful for any person to ride a skateboard on any sidewalk or portion of sidewalk described below:

(1) Rutherford Road

(2) Main Street

(3) East Court Street

(4) West Court Street

(5) Old and New West Henderson Streets

(6) Burgin Street

(7) Railroad Street

(8) Madison Street

(9) Blue Ridge Street

(10) Logan Street

(11) Academy Street

(Ord. of 10-6-77, § 2)

Sec. 18-199. Riding skateboard in downtown area prohibited.

It shall be unlawful for any person to ride a skateboard on any sidewalk or portion of sidewalk in the downtown area. The downtown area shall be described as follows: bounded on the south by Crawford Street; on the north by Fort Street; on the east by Garden Street; and on the west by Logan Street.

(Ord. of 10-6-77, § 3)

Sec. 18-200. Penalty.

The violation of any provision of this article shall constitute a misdemeanor punishable in accordance with the provisions of section 1-10.

(Ord. of 10-6-77, § 4)

Secs. 18-201--18-215. Reserved.

ARTICLE VI. STOPPING, STANDING OR PARKING*

***State law reference(s)**--Stopping and parking, G.S. § 20-161 et seq.

This ordinance was adopted on May 17, 2005:

ORDINANCE
AMENDING CHAPTER 12
PARKS AND RECREATION

MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 12, Parks and Recreation, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 12 is amended by adding Section 12-26.1 as follows:

Sec. 12-26.1. Prohibitions on certain activities.

No objects with wheels shall be allowed on the tennis courts, except for wheelchairs. No games of any sort other than tennis are allowed to be played on the tennis court.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of May, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-05-17-1

****

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, the following two Ordinances was amended and adopted as follows:

ORDINANCE
AMENDING CHAPTER 18
TRAFFIC

MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 18, Traffic, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 18 is amended by deleting Sections 18-197 – 18-215 in their entirety and replacing it with the following:

Sec. 18-197. Skateboards, roller skates and roller blades restricted to play streets.

It shall be unlawful for any person to ride any skateboard, roller skates or roller blades on any public street within the city unless such street shall be set aside as a play street for specific lengths of time by the city council.

(Ord. of 10-6-77, § 1)

Sec. 18-198. Riding skateboards, roller skates or roller blades on certain sidewalks prohibited.

It shall be unlawful for any person to ride a skateboard, roller skates or roller blades on any sidewalk or portion of sidewalk described below:

(1) Rutherford Road

(2) Main Street

(3) East Court Street

(4) West Court Street

(5) Old and New West Henderson Streets

(6) Burgin Street

(7) Railroad Street

(8) Madison Street

(9) Blue Ridge Street

(10) Logan Street

(11) Academy Street

(12) Depot

(Ord. of 10-6-77, § 2)

Sec. 18-199. Riding skateboards, roller skates or roller blades in downtown area prohibited.

It shall be unlawful for any person to ride a skateboard, roller skate or roller blades on any sidewalk or portion of sidewalk in the downtown area. The downtown area shall be described as follows: bounded on the south by the intersection of South Main and Morgan Streets; on the north by the intersection of North Main and Logan Streets; on the east by Garden Street; and on the west by Logan Street and Morgan Street.

(Ord. of 10-6-77, § 3)

Sec. 18-199.1. Riding skateboards, roller skates or roller blades in public vehicular areas prohibited.

It shall be unlawful for any person to ride a skateboard, roller skates or roller blades in any public vehicular area owned or maintained by a governmental unit, with the exception of play streets designated under Section 18-197 above. It shall be unlawful for any person to ride a skateboard in any public vehicular area or on any property owned by a private property owner, where signs are posted stating that the riding of skateboards, roller skates or roller blades on said property is prohibited.

Sec. 18-199.2. Possessing or riding skateboard, roller skates or roller blades on certain City properties prohibited.

It shall be unlawful for any person to possess or ride a skateboard, roller skates or roller blades on any portion of the following City properties:

(1) City Hall
(2) Community Building and Community Building Park, to include the playground area, basketball court, tennis court, upper and lower parking lots, all picnic shelter areas and all other portions of the property
(3) Gazebo Parking Lot at North Main Street and Brown Drive
(4) Depot
(5) West Henderson Street Parking Lot
(6) South Main Street Parking Lot
(7) Logan Street Parking Lot
(8) Brown Drive Parking Lot
(9) South Garden Street Parking Lot
(10) Gazebo Park at South Main and Morgan Streets
(11) Fire Department
(12) Police Department

Sec. 18-200. Penalty.

The violation of any provision of this article shall constitute a misdemeanor punishable in accordance with the provisions of section 1-10.

(Ord. of 10-6-77, § 4)

Secs. 18-201--18-215. Reserved.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of June, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-06-21-5

AMENDING CHAPTER 12
PARKS AND RECREATION

MARION CITY CODE

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 12, Parks and Recreation, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 12 is amended by adding Section 12-26.1 as follows:

Sec. 12-26.1. Prohibitions on certain activities.

No objects with wheels shall be allowed on the tennis courts, except for wheelchairs. No games of any sort other than tennis are allowed to be played on the tennis court.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of May, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-05-17-1

DISCUSS CITIZEN COMPLAINT: The City Manager presented Council with a copy of a citizen's complaint from a resident in Clinchfield.

A discussion followed.

It was the consensus of Council that the City Manager send one letter to Mr. Jarrett advising that we have discussed the issues he mentioned adequately, and to have a nice day.

DISCUSS MAUSOLEUM REQUEST: The City Manager presented Council with a request from Ms. Flossie Sparks requesting permission to place a plaque on her deceased husband's mausoleum at Oak Grove that is not in uniform with the other plaques and in accordance with our City Policy.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted respectfully to decline this request.

DISCUSS CABLE FRANCHISE/CHARTER/WBTV ISSUES:

REQUEST – MOPAR CLUB CAR SHOW: The City Manager advised that he had received a request from members of the Mopar Club to hold its next car show on Saturday, August 6, 2005.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSING COMMENTS:

CLOSED SESSION – DISCUSS ISSUE INVOLVING HOMELAND SECURITY PURSUANT TO N.C.G.S. 143-318.11(a)(9):

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11(a)(6) to discuss a personnel matter.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to return to Regular Session. Mayor Clark announced that no action had been taken during the Closed Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, July 19, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Sergeant Gaye Noblitt, Marion Police Department; Jim Neal, Fire Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Clara Andrews, 60 Doyle Street, Marion; Christine Austin, 143 Matilda Avenue, Marion; Mallory and Melinda Martin, North Madison Street, Marion.

Boy Scouts and Troop Leaders from Mecklenburg County: John Dick, Brian Palmer, Allen Palmer, Brendan Lawson, Taylor Evans, Grant Weldon, Philip Warshouse, Spencer Dickenson, Rickie Bingier, Cameron Cathey, Clyde Darrel, Ryan Nix, Joey Koomen, Lee Butler, Matt Butler, Chris Newey, Forrest Hopper, Robbie Iannuai, Jayson Green, Chris Gray, Max Darr, Everett Harian, Nick Givens, B.J. Taylor, David Rogers, Andrew Hutes, Jacob Legrene, Steven Hickson, Nathaniel Gren, Andy Hendelman, Taylor MacBain, Nick Smith, Ehan Packey, Steven Newman, Matt Tarney, Scott Moshier, Patrick O'Donell., Billy Osgorne, Ryan Minick, Brian Onstot and Roger Epps.

RECOGNIZE -BOY SCOUT TROOPS: Mayor Clark recognized and welcomed Scout Leaders Mr. John Dick and Mr. Roger Epps and over thirty Boy Scouts from Mecklenburg County representing various troops.

The Scouts were in attendance working toward their Citizenship in the Community Badge.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the consent Agenda as follows:

A . Approval of Minutes - June 20, 2005 Special Called Meeting
June 21, 2005 Regular and Closed
City Council Meeting

B. Approve Resolution to Approve New Membership Agreement with North Carolina Inter-local risk Management Agency:

CITY OF MARION
RESOLUTION

WHEREAS, certain municipalities and other units of local government of the State of North Carolina, as defined in G.S. 160A-460(2), have agreed to create the NORTH CAROLINA INTERLOCAL RISK MANAGEMENT AGENCY and have agreed to pool the risks of their workers' compensation liabilities and payment of claims for employers' liability coverage pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460-460 et seq. (Part 1 of Article 20 of Chapter 160A):

NOW, THEREFORE, BE IT FURTHER RESOLVED that the above named unit of local government elects to become a member of the NORTH CAROLINA INTERLOCAL RISK MANAGEMENT AGENCY upon the terms and conditions stated in the "Interlocal Agreement for a Group Self-Insurance Pool For Workers' Compensation Risk Sharing, "with such future policy renewals constituting a continuing ratification of this decision to be a member of the Agency and to abide by the terms and conditions of the Interlocal Agreement.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the duly authorized officials of the above named unit of local government are directed to execute in the name of said unit the "Interlocal Agreement for a Group Self-Insurance Pool for Workers Compensation Risk Sharing," a copy of which is attached to and made a part of this Resolution. (Copy on file in legal documents at City Hall)

I certify that this is a true and correct copy of this Resolution, duly adopted by the governing body on the 19th day of July, 2005, as it appears of record in its official minutes.

City of Marion
(Name of Unit of Local Government)

By: _____
Mayor

Attest: _____
Clerk

C. Approve Amendment to Retirement Medicare Supplement Incentive Plan:

City of Marion
2005 Retirement Medicare Supplement Incentive Plan

Revised – July 19, 2005

1. Any full-time regular employee of the City of Marion meeting the qualifications listed below is eligible to participate in this plan.

2. To participate in this plan, an employee must be eligible to receive an early, service or disability retirement benefit from the North Carolina Local Government Employees' Retirement System.

3. Any employee who has previously received a retirement incentive payment from the City shall not be eligible for this plan.

4. Any employee accepting the Retirement Medicare Supplement Incentive Plan shall not be eligible for re-employment with the City of Marion in any and all capacities.

5. The employee must sign the Retirement Medicare Supplement Incentive Agreement Form.

6. Upon the attainment of age 65 or eligibility for Medicare, there shall be two plans from which the retiree may choose:

   Medicare Supplement Purchase Plan: Upon the attainment of age 65 or eligibility for Medicare, the City of Marion shall purchase for any qualified employee opting to accept the Retirement Medicare Supplement Incentive a monthly Medicare Supplement Plan J coverage or a similar Medicare Supplement Policy from the City's insurance carrier for the remainder of the retiree's life. As future Medicare revisions and reforms take effect, should the current benefits of Medicare Supplement Plan J or of the Medicare Supplement Policy from the City's insurance carrier no longer be offered, the City of Marion shall provide the Medicare Supplement Plan that most closely mirrors the benefits of Medicare Supplement Plan J, which includes a drug benefit, including a combination of a Medicare Supplement and drug benefit that may be offered directly from a Medicare chosen carrier. Purchase of all coverage shall be from an authorized Medicare Supplement Carrier of the City's choice.

   Employees who retire under this Retirement Medicare Supplement Incentive Plan through the disability retirement benefit of the North Carolina Local Government Employees' Retirement System shall receive medical insurance provided at no cost to the employee by the City for up to 24 months after the effective date of retirement until the employee becomes Medicare eligible, at which time the medical insurance shall switch to a Medicare Supplement Policy as described above.

   Medicare Supplement Payment Plan: Upon the attainment of age 65 or eligibility for Medicare, the City of Marion shall pay to the retiree a monthly sum of $375.00 for the purpose of purchasing a Medicare Supplement and assisting in prescription drug cost. This amount shall be paid to the retiree for the remainder of the retiree's life. The amount of $375.00 shall not be decreased or increased as future Medicare reforms and revisions take effect. Any and all payments shall terminate upon the retiree's death.

7. The plan will become effective on May 1, 2005 and continue through December 31, 2005 and require those accepting the offer to retire on or before January 1, 2006. The Application for Retirement form and the Retirement Medicare Supplement Payment Incentive Agreement form must be signed on or before August 31, 2005.

8. The City Manager is directed to evaluate any position vacated due to acceptance of the Retirement Medicare Supplement Incentive Plan for possible position elimination or cost cutting salary pay grade classification reduction. Any changes deemed necessary by the City Manager shall be reflected in a recommended revised City of Marion Allocation of Position Classes to Salary Grades and presented to City Council for approval.

9. The actions of this Retirement Medicare Supplement Incentive Plan shall not be retroactive to employees who retired prior to May 1, 2005.

10. The actions of this Retirement Medicare Supplement Incentive Plan shall not apply to employees retiring after December 31, 2005.

11. This plan supercedes any provisions of the City Personnel Policy or the Retirement Incentive Plan adopted by City Council on April 19, 2005 in conflict therewith in relation to retiree insurance coverage for employees participating in this plan during the time period covered by this plan.

Adopted by the City Council of the City of Marion this the 19th day of July, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

D. Approve 2004-05 Tax Adjustments:

YEAR	REAL PROP	PERS PROP		LATE LIST	INTEREST	TOTAL
1984	00.00	51.16	5.12	103.19	159.47	
1985	36.13	.32	0.00	61.67	98.12	
1986	276.63	90.47	0.00	616.09	983.19	
1987	16.64	19.94	0.00	55.70	92.28	
1988	157.05	0.00	11.27	217.91	386.23	
1989	16.64	0.00	6.83	310.65	334.12	
1990	84.90	30.15	0.00	372.55	487.60	
1991	589.36	0.00	4.04	876.75	1,470.15	
1992	634.00	222.45	2.51	968.72	1,827.68	
1993	180.78	42.60	0.00	630.58	853.96	
1994	481.62	0.00	0.00	457.01	938.63	
1995	2,140.38	0.00	0.00	1,744.11	3,884.49	
1996	0.00	8.25	1.00	7.19	16.44	
1997	0.00	11.02	1.00	8.19	20.21	
1998	0.00	8.25	0.00	4.73	12.98	
1999	0.00	8.25	1.00	4.67	13.92	
2000	0.00	8.25	0.00	3.29	11.54	
2001	0.00	8.25	1.00	2.99	12.24	
2002	0.00	8.25	1.00	2.15	11.40	
2003	262.89	7.65	1.00	28.33	299.87	
2004	995.68	509.93	5.87	36.18	1,547.66	
TOTAL	**5,872.70**	**1,035.19**	**41.64**	**6,512.65**	**13,462.18**	

PUBLIC APPEARANCE – MS. EVANGELINE EDWARDS – CITY DEBT SETOFF PROGRAM:
Ms. Edwards was not present for this meeting. The City Manager noted that he and Finance Director Harriett Thomas had each spoken to Ms. Edwards on several occasions about her complaint about having her State Income Tax refund taken to satisfy an outstanding water bill owed to the City.

PUBLIC APPEARANCE – MS. CLARA ANDREWS: Ms. Clara Andrews appeared before Council to discuss possible annexation of the Eastfield Community. She stated that she is very interested in the City of Marion annexing her property located at 60 Doyle Street. Ms. Andrews advised that she understands all aspects of the annexation, including increased taxes and service benefits. She stated that she has only one problem, it being the water rate schedule, which charges high amounts for water usage over the minimum amount of 2,000 gallons per month.

Mayor Clark advised that if the Eastfield area is annexed, Ms. Andrews'water bill would be reduced by more than half.

Mayor Clark thanked Ms. Andrews for her appearance.

Ms. Andrews asked when the Eastfield area is scheduled to be annexed.

The City Manager advised that the City has not set a schedule for the annexation of the Eastfield Community, but that Council had asked property owners in the area to demonstrate through signed petitions that the majority of the Community desired to be annexed. He suggested that Ms. Andrews work with Ms. Lovina Smith at City Hall on a petition form that could be used in the Community.

Councilman Owenby stated that Council had to consider the service impacts of the annexation, including police and garbage service, and whether such expenses would hurt the City as a whole.

Councilman Edwards advised that a petition would need to specify whether the signatures on a petition were owners or tenants of the property.

Councilman Cuthbertson advised that a husband cannot sign for a spouse and visa versa.

PUBLIC APPEARANCE – MS. SHEREMY FINLEY: Ms. Finley was not present for this meeting. The City Manager advised that Ms. Finly was concerned about the length of time being taken on the foreclosure, and eventual condemnation, of a dilapidated house on Park Avenue. Council directed the City Manager to seek an update from the City Attorney on the projected timeline of this process.

PUBLIC HEARING – REZONE – RUTHERFORD ROAD: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis presented a request from Mr. Richard Buchanan requesting that property at 2301 Rutherford Road be rezoned from R-2 General Residential to C-2 General Business. The property is across the street from the Gas House and abuts Paul Simpson's Auto on the north side. Both of these businesses are zoned C-2 General Business. The property abuts R-2 General Residential on the south side.

Ms. Davis stated that the Planning Board reviewed this rezoning application at their July 7, 2005 meeting and recommended approval of the request. The property had originally been zoned C-2 in 2003, but had been rezoned to R-2 at a later date, at the request of Mr. Buchanan.

Mr. Buchanan was present for this meeting.

There were no other citizens present to speak on this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the recommendation of the Planning Board to rezone the property located at 2301 Rutherford Road to C-2 General Business.

PUBLIC HEARING – ASSIGN ZONING TO ANNEXED PROPERTY – US 221 NORTH BUSINESS: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis advised that several months ago, the City annexed property belonging to Great Meadows. The property was a vacant tract on 221 North Business, just over the Catawba River.

The City has not assigned a zoning district to this property.

Ms. Davis stated that, at their July 7, 2005 meeting, the Planning Board recommended that City Council zone this property to C-2, General Business. The C-2 District abuts the property on three sides.

There were no citizens present to speak on this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to accept the recommendation of the Planning Board and to zone the property owned by Great Meadows on US 221 North Business as C-2 General Business.

PUBLIC HEARING ASSIGN ZONING TO ANNEXED PROPERTY – SHADY LANE: Mayor Clark opened the Public Hearing.

City Planner Suzy Davis stated that the recently annexed property on Shady Lane and Steppe Street owned by the McDowell County Board of Education and Story Memorial Presbyterian Church and Trustees needed to have zoning assigned.

Ms. Davis stated that the Planning Board recommended that the City Council zone these properties R-2 General Residential, which would allow for existing church and school uses in the area.

There were no citizens present to speak on this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Planning Board to zone the annexed property on Shady Lane and Steppe Streets as R-2 General Residential.

PUBLIC COMMENT PERIOD – HOUSE BILL 635: The City Manager advised that House Bill 635 had recently been approved by the North Carolina General Assembly and signed into law by Governor Easley. This bill requires local City Council, County Boards of Commissioners and School Boards to set aside on their agenda a public comment period at a regular meeting at least once per month,

The City Manager advised that Council had always set aside time for a public comment period, although not formally on the agenda. The City Manager recommended that Council place this item on every agenda, although the House Bill required a public comment period only once per month.

Councilman Owenby suggested that Council set some guidelines on the public comment period, as allowed by the legislation.

Mayor Clark asked that Council wait and see how the public comment period works before setting any guidelines or restrictions on speakers.

APPROVE 2004 TAX SETTLEMENT: The City Manager advised that, under State law, each year the City Tax Collector must submit a tax settlement balancing billed and collected taxes.

Finance Director Harriett Thomas presented the 2004 Tax Settlement to Council. Ms. Thomas reported tax collection of 94.22% for 2004-05, which is very good considering that the City's largest taxpayer, representing over 3.5% of billed taxes, is in bankruptcy and paid no taxes in 2004-05.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the Tax settlement as follows:

2004 TAX SETTLEMENT

July 1, 2004 - June 30, 2005

CHARGES		CREDITS	
Real Property	$ 1,270,525.20	Tax Revenue	$ 1,510,222.32
Less Exemption	(31,270.77)	Less 1% Discount	(4,960.12)
Personal Prop.	269,967.90	Less Refunds - Principal	(248.83)

Utilities	75,904.33
Discoveries	19,354.22
Total Tax	**$1,604,480.88**
Late Listing	4,021.12
Interest & Penalties	4,157.90
TOTAL	**$ 1,612,659.90**

Less Refunds - Late List	(67.25)
Late Listing	3,790.59
Interest & Penalties	4,121.72
Total Revenue	**$ 1,512,858.43**

ADJUSTMENTS

1% Discount	4,960.12
Tax Releases - Principal	1,505.61
Tax Releases - Late List	5.87
Tax Releases - Interest	36.18
Tax Refunds - Principal	248.83
Tax Refunds - Late List	67.25
Uncollected Late List	224.66
Uncollected - Real	55,926.35
Uncollected - Personal	36,826.60
TOTAL	**$1,612,659.90**

Council Members commended Tax Collector Claudia Hill for her efforts in tax collections this year.

Mayor Clark also commended Ms. Thomas for her work this year in improving the City's finance and accounting functions.

APPROVE ORDER OF COLLECTION FOR 2005 TAXES: The City Manager reported that, after the approval of the 2004 tax settlement, Council must approve the Order of Collection for 2005 taxes to allow the tax bills to be mailed. Finance Director Harriett Thomas reported that tax bills would be mailed by early August. She noted a slightly different format to be used for the bills this year. Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to approve the order of collection for 2005 taxes as follows:

ORDER OF COLLECTION OF TAXES

STATE OF NORTH CAROLINA

CITY OF MARION

To the Tax Collector of the City of Marion:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records for the year 2005 filed in the office of the Tax Collector and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the City of Marion, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand, and official seal, this 19th day of July, 2005.

(Seal)
A. Everette Clark
Mayor, City of Marion

ATTEST:
J. Robert Boyette
City Manager/Clerk
of the City of Marion

DISCUSS FIRE DEPARTMENT CAPITAL NEEDS: The City Manager presented a copy of a five year projection of the Fire Department Capital and Staffing Needs. This spreadsheet was handed out at the last meeting and briefly discussed.

The City Manger advised that the requested items of the Fire Department, including three additional paid staff and several capital items, could be funded, but that over $30,000 in new funds would be needed by Year 5 in 2009-10. The City Manager also noted that this scenario only saved about $135,000 toward the purchase of a new aerial truck, which could cost over $400,000. Mayor Clark stated that such a truck could be financed over a long term, to spread out the costs.

Council took no action but agreed to consider the items once word was received regarding whether the Federal SAFER Grant had been awarded which would authorize the hiring of three additional paid Fire Department staff and once the financing arrangements for the new Marion Area (MA) Fire District tanker truck were set.
Fire Chief Jim Neal advised that as of late June, over 3000 fire departments nationwide had applied for the SAFER Grant, meaning that competition for the grant would be intense.

Mayor Clark asked when the ladder truck would need to be purchased.

Chief Neal advised that the current truck would probably serve them five or six more years.

Chief Neal also gave a report on the proposal by the Fire Department volunteers to establish a First Responder Program, which has also been requested by McDowell County. Chief Neal stated that such a program would involve mainly departmental volunteers responding in their own vehicles to all accidents and medical emergencies in the City and MA Fire District. He advised that it would not be his intention to roll out large fire trucks to all such calls, unless these trucks were needed. Chief Neal further advised that McDowell Insurance had indicated that the insurance impact of establishing a First Responder Program would be negligible. Chief Neal discussed certification requirements needed for First Responders and EMT's.

The City Manager asked if the volunteer departments have guidelines set up for their First Responder Programs. Chief Neal advised that the volunteer departments have adopted the County-wide policy.

Chief Neal further stated that the County Commissioners have requested a timetable on when the MA Fire District will have its insurance rating lowered. Chief Neal stated that the MA Fire District currently has a split rating of 5/9. Homeowners and businesses in the district that are within 1,000 feet of a fire hydrant receive a Class 5 rating, the same as the City enjoys, while other homeowners and businesses in the district receive a Class 9 rating. Chief Neal stated that he felt that the MA District's rating could be reduced to a Class 6 or 7. Under this scenario, homeowners and businesses currently rated as a Class 9 would see insurance premiums lowered, while those currently rated as Class 5 would actually pay higher insurance premiums.

An assessment in the MA Fire area is needed.

Chief Neal recommended that an assessment be made of the MA District to determine how many properties would benefit from the rerating versus how many might pay more. Chief Neal also stated that it would be preferable to wait until the Hankins-North Fork Fire Department was in operation before rerating the MA District, so that exact district boundaries could be set.

Mayor Clark recessed for a few moments, to allow the Boy Scouts to exit.

Mayor Clark reconvened the meeting.

The City Manager asked for direction for staff regarding the First Responder Program and the rerating of the MA District.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to direct the City Manager to obtain a copy of the County's First Responder Policy and to forward it for Council for review and possible future action.

It was the consensus of Council to direct staff to complete an assessment of the Marion Area Fire District, to determine how many properties would benefit from the rerating versus how many might pay higher insurance premiums, before formally requested the North Carolina Department of Insurance to rerate the MA District.

DISCUSS SKATE PARK: The City Manager advised that the North Carolina Parks and Recreation Trust Fund (PARTF) Board would be meeting by late July to select second round recipients. The City Manager noted that if the City's $65,000 grant is approved, then the recommended Skate Park designed by the Skate Park Committee can be built for a cost of around $130,000.

The City Manager advised that he asked City Planner Suzy Davis to study a possible "Plan B" option for the Skate Park with the Skate Park Committee, in the likely event that the PARTF Grant is not awarded.

Ms. Davis advised that the Skate Park Committee met yesterday and discussed various ways of how the Skate Park could be scaled back if the PARTF Grant is not received. The Committee will develop one or more options for a scaled back design by early August for presentation to City Council. Ms. Davis also reported that the Committee had discussed ways to raise additional funds or to sell advertising opportunities at the Skate Park by having companies buy sign space inside the Park to hang signs advertising their company for $500.00 to $1000.00.

Finance Director Harriett Thomas advised that the City Skate Park Capital Project Fund has $51,746, including $31,525 in individual and business contributions, $221of funds raised by the Skate Park Committee and
$20,000 of City contributions.

Councilman Little asked if we have money earmarked for another possible park that could be devoted to the Skate Park.

The City Manager advised that there is $25,000 included in the 2005-06 budget for mini-park projects.

Councilman Little advised that he would like to see this put toward the Skate Park project if the PARTF grant is denied. Councilman Little stated that the City should seek to provide a place for young people to skate who are respectful, since Council has discussed the project for more than one year.

Councilman Edwards advised that he is there are still questions with the proposed Skate Park that need to be addressed: if the Skate Park is not built as the youth have designed, will they use it and, if a scaled back park is built, will the City have to go back in and spend additional funds in the future to add more equipment or levels to the park? Councilman Edwards also stated that he did not think that businesses would spend money to advertise inside a Skate Park.

There were no citizens present to discuss this item.

Mayor Clark stated that the City should know by the next Council meeting if the PARTF grant has been funded.

Councilman Little stated that, at the next meeting, if the PARTF grant has not been received, he would propose that the City add $25,000 in budgeted mini-park funding to the Skate Park project. Councilman Little reported that he would not be present for this meeting.

Councilman Owenby advised that he supported the proposed Skate Park but that Council had to be careful with spending money.

By consensus, Council directed that this item be placed on the next Council agenda.

REQUEST – FORT STREET PARKING/REQUEST - KEY GAS - CROSSWALKS – CLAY STREET: The City Manager reported that Mr. Chad Toney had requested that Council open up some no parking area on Fort Street near the Garden Street intersection for parking and that Key Gas had made a request to authorize three crosswalks to be painted across Clay Street between their parking lots and plant. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to refer these items to the Street Committee for review.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

Councilman Owenby advised that he is hearing a lot of complaints from the Morehead Area regarding the water run off problems during all the recent rainfall. The City Manager advised that drainage issues on Georgia Avenue and Morehead Road were to have been addressed by a Community Development Block Grant application, but that the City's application had been turned down for funding by the State for 2005 and 2006.

Mayor Clark advised that he had suggested to the County at the Joint Utility Committee meeting that morning that the County assume the City's Muazk service for the County channel, once the City channel is removed from the cable lineup to make room for WBTV.

It was discussed and agreed by Council that, before the Planning Session is held in January, Council schedule one or more dates, likely on Saturdays, to visit various City facilities, since such visits have not taken place for several years.

CLOSING COMMENTS:

Councilman Martin would like for the Recreation Committee, composed of Councilman Little and himself to meet with the City Manager and look at possible upgrades to the basement of the Community Building, since $30,000 of funding is included in the 2005-06 City budget for this project. This meeting will be scheduled in August after Councilman Little returns from a trip abroad.

Councilman Edwards advised that there is a tree with limbs overhanging the basketball courts at the Community Building that needs attention.

Councilman Cuthbertson advised that he had heard on the radio that a restoration company in Asheville will relocate to Marion.

Councilman Owenby suggested that a time be set for the Street Committee to meet to look at the items designated by Council. It was agreed by Councilman Martin and Councilman Owenby that a date would be set for a meeting the following week.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 2, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little was absent from this meeting due to being out of State.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Edwin Rankin, Marion, NC; Jed Rankin Marion, NC

CITIZEN OF THE MONTH – SELECTED BY MAYOR A. EVERETTE CLARK: Mayor Everette Clark selected the Citizen of the Month for August.

EDWIN E. RANKIN

Mayor Clark advised that Mr. Rankin was a person that should have been recognized years ago. He moved to the lake and recently moved back into the City.

Edwin Rankin has done many things through the years and never stops going places and doing things. He is a Kentucky native and grew up on the Ohio River and worked on river boats at the age of sixteen.

Upon graduation, he served in the Navy during the end of World War II and met his wife Lois. They married and eventually settled in Marion in 1960 when Mr. Rankin was transferred by Home Credit. Mr. Rankin later opened his own business, Marion Credit, on Main Street and has been there since.

Mr. Rankin recently lost his wife Lois. They had three children: Jamie, Margo and Jed and two grandchildren.

Mr. Rankin has been involved with the Chamber of Commerce, served on the Marion General Hospital Board of Trustees and the McDowell Hospital Board of Trustees. He served as Chairman of the Building Committee for the McDowell Hospital and assisted in raising over one million dollars to build the hospital. The road leading into the Hospital is named Rankin Drive in honor of Mr. Rankin. Mr. Rankin has been instrumental over the years in recruiting doctors to McDowell County.

Mr. Rankin was later important in the development of the Medical Park.
He currently serves on the Hospice Board and is working to raise money for the new Hospice facility.

Mr. Rankin is an active member of the First Baptist Church, has served as Deacon for 45 years and has done a great deal for his church and community. He has given of his time and made a significant difference in our community

Council members all had kind words to share about Mr. Rankin.

CONSENT AGENDA: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. **Approval of Minutes** - July 19, 2005 Regular City Council Meeting

B. **Approval of Donation of City's One-Third Interest in Former Recreation Commission Properties to McDowell County:**

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Warning: IllegalMediaSize

(Excise Tax $ NTC)

NORTH CAROLINA GENERAL SPECIAL WARRANTY DEED

Mail after recording to:

This instrument was prepared by: **DAMERON, BURGIN & PARKER, P.A., Attorneys at Law, Marion, NC**/mlm

THIS DEED made this the _____ day of JULY, **2005**, by and between **CITY OF MARION, a Municipal Corporation GRANTOR and COUNTY OF McDOWELL, a Municipal Corporation, GRANTEE**:

The designation of Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple a 1/3 undivided interest in and to that certain lot or parcel of land situated in City of **N/A, MARION** Township, **McDowell** County, North Carolina and more particularly described as follows:

BEGINNING on an existing nail set in the centerline of the Greenlee Road State Road #1214, said nail being located two courses and distances from a railroad spike found in the center line of Deer Branch and the centerline of Greenlee Road, courses are as follows: North 44 degrees 12 minutes 58 seconds East 195.09 feet; North 22 degrees 42 minutes 41 seconds East 632.98 feet to the true point of beginning, and runs thence with the centerline of Greenlee Road, South 78 degrees 05 minutes 49 seconds West 32.39 feet to a point in the centerline; thence leaving the centerline of the road and running with the proposed McDowell County River Park access road along the Western right of way of the proposed road the following five courses and distances: North 31 degrees 55 minutes 56 seconds East 54.10 feet; North 10 degrees 47 minutes 26 seconds West 29.65 feet; North 35 degrees 44 minutes 58 seconds West 25.32 feet; north 60 degrees 42 minutes 30 seconds West 33.49 feet; North 34 degrees 43 minutes 58 seconds West 44.67 feet to a point; thence leaving the proposed roadway, South 87 degrees 45 minutes 08 seconds West 41.84 feet to a point in the center of the Catawba River; thence with the thread of Catawba River the following fifteen courses and distances: North 01 degree 20 minutes 46 seconds West 104.33 feet; North 06 degrees54 minutes 18 seconds West 103.37 feet; North 00 degrees 47 minutes 22 seconds West 230.44 feet; North 19 degrees 15 minutes 48 seconds West 139.04 feet; North 29 degrees 57 minutes 08 seconds West 178.29 feet; North 18 degrees 48 minutes 23 seconds West 152.67 feet, North 11 degrees 06 minutes 28 seconds East 131.15 feet; North 21 degrees 01 minute 31 seconds East 68.05 feet; North 62 degrees 23 minutes 10 seconds East 124.01 feet; North 42 degrees 51 minutes 24 seconds East 184.92 feet; North 46 degrees 55 minutes 34 seconds East 117.63 feet; North 49 degrees 58 minutes 42 seconds East 167.20 feet; North 40 degrees 33 minutes 09 seconds East 157.94 feet; North 52 degrees 39 minutes 29 seconds East 169.80 feet; North 45 degrees 49 minutes 56 seconds East 312.13 feet to a point in the centerline of Catawba River; thence leaving the centerline of Catawba River a new line; South 44 degrees 10 minutes 04 seconds East 157.73 feet to a point thence with the following eighteen new courses and distances: South 37 degrees 31 minutes 14 seconds West 152.20 feet; South 41 degrees 39 minutes 56 seconds West 144.04 feet; South 31 degrees 02 minutes 17 seconds West 88.13 feet; South 31 degrees 15 minutes 15 seconds West 97.11 feet; South 35 degrees 27 minutes 45 seconds West 113.34 feet; South 38 degrees 07 minutes 57 seconds West 140.75 feet; South 46 degrees 38 minutes 16 seconds West 120.45 feet; South 19 degrees 03 minutes 15 seconds West 187.16 feet; South 31 degrees 08 minutes 06 seconds West 80.95 feet; South 03 degrees 21 minutes 37 seconds West 82.25 feet; South 63 degrees 15 minutes 57 seconds West 20.28 feet; South 10 degrees 47 minutes 26 seconds East 212.92 feet; South 04 degrees 35 minutes 22 seconds West 37.06 feet; South 19 degrees 49 minutes 35 seconds West 437.32 feet; South 04 degrees 31 minutes 04 seconds West 26.14 feet; South 10 degrees 47 minutes 26 seconds East 174.20 feet; South 58 degrees 04 minutes 04 seconds East 55.88 feet to a point in the centerline of Greenlee Road; thence with the centerline of Greenlee Road South 77 degrees 41 minutes 29 seconds West 66.40 feet to the point of BEGINNING, containing 13.24 acres, as shown on map by Suttles Surveying, P.A. and as designated as Lot #1.

Deed reference: Deed Book 432 Page 110, McDowell County Public Registry.

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Warning: IllegalMediaSize

THIS DEED WAS PREPARED WITHOUT A REVIEW OR EXAMINATION OF THE ABOVE DESCRIBED PROPERTY AND NO OPINION OR REPRESENTATIONS ARE BEING MADE EITHER EXPRESSLY OR IMPLIEDLY BY DAMERON, BURGIN & PARKER, P.A.

TO HAVE AND TO HOLD the aforesaid 1/3 undivided interest in a lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions: NONE

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

CITYOF MARION, NORTH CAROLINA
BY: _____[Seal]
Mayor

ATTEST:
_____
Clerk to the Board

[SEAL]

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

I, _____, Notary Public for said County and State, do hereby certify that **J. Robert Boyette**, personally appeared before me this day and acknowledged that he is the Clerk of the City of Marion, a Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing agreement was signed in its name by its **Mayor, A. Everette Clark**, sealed with its Corporate Seal and attested by himself as its Clerk.

WITNESS my hand and notarial seal this the _____ day of _____, 2005.

_____
Notary Public

****

NORTH CAROLINA SPECIAL WARRANTY DEED

Mail after recording to:

This instrument was prepared by: **DAMERON, BURGIN & PARKER, P.A., Attorneys at Law, Marion, NC/mlm**

THIS DEED made this the _____ day of JULY, **2005**, by and between **CITY OF MARION, a Municipal Corporation GRANTOR and COUNTY OF McDOWELL, a Municipal Corporation, GRANTEE**:

PCL XL error
Warning: IllegalMediaSize

The designation of Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple 1/3 undivided interest in that certain lot or parcel of land situated in City of **N/A, NORTH COVE** Township, **McDowell** County, North Carolina and more particularly described as follows:

BEGINNING on a point in the centerline of US #221, said point lying South 35 degrees 27 minutes 19 seconds East 18.83 feet from an existing iron pin, said iron pin being the 14th corner of the 2nd tract described in Deed Book 416 at Page 153, McDowell County Register of Deeds (Appalachian Holding Co. property), and runs thence from said beginning point and with the centerline of US #221, the following ten bearings and distances: North 44 degrees 46 minutes 09 seconds East 158.46 feet to a point; thence North 45 degrees 16 minutes 42 seconds East 69.38 feet to a point; thence North 45 degrees 59 minutes 47 seconds East 54.72 feet to a point; thence North 47 degrees 51 minutes 34 seconds East 57.57 feet to a point; thence North 49 degrees 50 minutes 23 seconds East 41.61 feet to a point; thence North 50 degrees 53 minutes 32 seconds East 35.67 feet to a point; thence North 52 degrees 41 minutes 04 seconds East 39.20 feet to a point; thence North 53 degrees 17 minutes 25 seconds East 45.54 feet to a point; thence North 54 degrees 20 minutes 35 seconds East 49.51 feet to a point; thence North 55 degrees 06 minutes 05 seconds East 56.24 feet to a point; thence leaving said US #221, and running with the line of Wachovia Bank (Deed Book 401 Page 421 – Lot #6), South 36 degrees 45 minutes 18 seconds East 387.20 feet, passing an iron pin at 24.77 feet and 345.24 feet, to the center of the North Fork of the Catawba River; thence down and with the center of said River the following four bearing and distances: South 10 degrees 01 minute 44 seconds East 151.11 feet to a point; thence South 02 degrees 47 minutes 47 seconds West 223.08 feet to a point; thence South 01 degree 45 minutes 14 seconds West 72.34 feet to a point; thence South 23 degrees 48 minutes 16 seconds West 425.24 feet to a point; thence leaving said river, North 35 degrees 27 minutes 19 seconds West 913.24 feet, passing an iron pin at 37.42 feet and 887.07 feet, to the point of BEGINNING, containing 10.31 acres, dmd, description furnished by R. L. Greene Surveying and Mapping, License #L-1517, based on survey dated November 15, 1991.

Deed reference: Deed Book _____ Page _____ and re-recorded in Book _____, Page _____, McDowell County Public Registry.

THIS DEED WAS PREPARED WITHOUT A REVIEW OR EXAMINATION OF THE ABOVE DESCRIBED PROPERTY AND NO OPINION OR REPRESENTATIONS ARE BEING MADE EITHER EXPRESSLY OR IMPLIEDLY BY DAMERON, BURGIN & PARKER, P.A.

TO HAVE AND TO HOLD the aforesaid 1/3 undivided interest in a lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions: NONE

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

CITY OF MARION, NORTH CAROLINA

BY: _____ (Seal)
Mayor

ATTEST:

_____
Clerk to the Board

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(seal)

STATE OF NORTH CAROLINA
COUNTY OF McDowell

I, _____, Notary Public for said County and State, do hereby certify that **J. Robert Boyette**, personally appeared before me this day and acknowledged that he is the Clerk of the City of Marion, a Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing agreement was signed in its name by its **Mayor, A. Everette Clark**, sealed with its Corporate Seal and attested by himself as its Clerk.

WITNESS my hand and notarial seal this the _____ day of _____, 2005.

_____
Notary Public

****

NORTH CAROLINA SPECIAL WARRANTY DEED

Mail after recording to:

This instrument was prepared by: **DAMERON, BURGIN & PARKER, P.A., Attorneys at Law, Marion, NC**/mlm

THIS DEED made this the _____ day of JULY, **2005**, by and between **CITY OF MARION, a Municipal Corporation GRANTOR and COUNTY OF McDOWELL, a Municipal Corporation, GRANTEE**:

The designation of Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple a 1/3 undivided interest in that certain lot or parcel of land situated in City of **N/A, GLENWOOD** Township, **McDowell** County, North Carolina and more particularly described as follows:

BEGINNING on an iron pin set, being a corner common with Gleichman (see Deed Book 105 at Page 368) and further being the second corner as set out in Deed recorded in Book 109 Page 431 and running thence from said beginning corner and with the line of Gleichmann, South 03 degrees 18 minutes 00 seconds East 56.07 feet to an existing iron pin; thence South 40 degrees 08 minutes 06 seconds East 82.42 feet to an existing iron pin; thence South 12 degrees 24 minutes 30 seconds East 163.73 feet to an existing iron pin; thence South 12 degrees 21 minutes 30 seconds West 330.41 feet to an existing iron pin, the sixth corner as set out in Deed Book 145 at Page 409, and being further located North 7 degrees 34 minutes 06 seconds West 271.60 feet from a Dogwood, the 7th corner as set out in Book 105 at Page 638 and the 5th corner as set out in Book 145 at Page 409; thence leaving the line of Gleichmann, and traveling with the line of McDowell County Board of Education (see Deed Book 145 Page 409), South 73 degrees 48 minutes 06 seconds West 866.68 feet to an iron pin set, located North 36 degrees 22 minutes 36 seconds West 289.78 feet from a planted stone, the 22nd corner as set out in Deed Book 145 at Page 409, and the 4th corner as set out in Deed Book 176 at Page 179; thence leaving the line of McDowell County Board of Education and traveling with the line of Beulah D. Martin (see Deed Book 176 at Page 179), North 36 degrees 22 minutes 36 seconds West 159.22 feet to an iron pin set; thence parallel with State Road #1786, known as Old US 221, North 4 degrees 37 minutes 24 seconds East 139.38 feet to an existing iron pin, a corner common with Jimmie Lewis Condrey (see Deed Book 202 at Page 642); thence with the line of Condrey, North 67 degrees 46 minutes 54 seconds East 100.21 feet to an existing

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iron pin; thence North 49 degrees 44 minutes 00 seconds East 107.52 feet to an existing iron pin; thence North 53 degrees 05 minutes 30 seconds East 82.30 feet to an existing iron pin; thence North 64 degrees 10 minutes 24 seconds East 90.19 feet to an existing iron pin; thence North 52 degrees 59 minutes 30 seconds East 82.19 feet to an existing iron pin; thence North 34 degrees 55 minutes 42 seconds East 46.35 feet to a persimmon, the 3rd corner as set out in Deed Book 202 at Page 642, and being a corner common with the McDowell County Board of Education (see Deed Book 141 at page 383); thence with the line of McDowell County Board of Education, North 25 degrees 15 minutes 48 seconds East 233.16 feet to an existing iron pin; thence North 35 degrees 16 minutes 24 seconds East 52.55 feet to an existing iron pin; thence North 65 degrees 43 minutes 36 seconds East 101.50 feet to an existing iron pin in the Southern boundary of the McDowell County Board of Education (see Deed Book 109 at Page 431); thence South 87 degrees 31 minutes 24 seconds East 252.76 feet to the point of BEGINNING. Containing 11.03 acres, more or less, as shown on that unrecorded plat of survey prepared by R. L. Greene Surveying and Mapping, Marion, NC, dated August 8, 1985.

Deed reference: Deed Book 359 Page 717, McDowell County Public Registry.

THIS DEED WAS PREPARED WITHOUT A REVIEW OR EXAMINATION OF THE ABOVE DESCRIBED PROPERTY AND NO OPINION OR REPRESENTATIONS ARE BEING MADE EITHER EXPRESSLY OR IMPLIEDLY BY DAMERON, BURGIN & PARKER, P.A.

TO HAVE AND TO HOLD the aforesaid 1/3 undivided interest in a lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions: NONE

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

CITY OF MARION, NORTH CAROLINA

BY: _____ (Seal)
Mayor

ATTEST:

_____
Clerk to the Board
(seal)

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

I, _____, Notary Public for said County and State, do hereby certify that **J. Robert Boyette**, personally appeared before me this day and acknowledged that he is the Clerk of the City of Marion, a Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing agreement was signed in its name by its **Mayor, A. Everette Clark**, sealed with its Corporate Seal and attested by himself as its Clerk.

WITNESS my hand and notarial seal this the _____ day of _____, 2005.

_____
Notary Public

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PUBLIC COMMENT PERIOD – HOUSE BILL 635: There were no citizens present for this meeting.

REQUEST FROM DISTRICT ATTORNEY'S OFFICE T0 WAIVE PARKING TICKETS: The City Manager presented Council with a request from the District Attorney's Office requesting that Council waive the penalty for two parking tickets issued on July 19th and 20th to the mother of a victim in a First Degree Murder Case in Superior Court.

A brief discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to waive the $10 penalty for each of the two parking citations.

DISCUSS LEASE OF CITY PROEPRTY – RECREATION FIELD PARKING LOT: The City Manager advised that a few years ago, City Council leased to McDowell County the City property used as a parking lot adjacent to the County Recreation Department on West Court Street. This agreement was done from year to year lease for two years, but nothing has been in effect since 2003, when the City sent a lease to the County that was never returned. The purpose for the year to year lease was to avoid the expense of a legal ad typically required to be published for longer leases of City property.

The City Manager stated that he recently discovered that City Council may lease City property to another governmental unit without restriction. Therefore, if Council wishes, the property could be leased to McDowell County for a longer period of time, without the adoption of any resolution or the publication of any legal ad.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to enter into a lease of the City property on West Court Street adjacent to the McDowell County Recreation Department with McDowell County for a period of five years.

DISCUSS SKATE PARK: City Planner Suzy Davis reported that the Committee met on Wednesday July 27th, 2005 to discuss the next steps towards building a skate park in Marion. Unfortunately, the City did not receive the requested $65,000 PARTF Grant for the Skate Park. Ms. Davis stated that, at this point in time, the City has $51,746.00 earmarked for the Skate Park project. The original budget was $130,140.00. At the meeting, the committee discussed ways to get the price down. The skaters selected out a reduced park design. The original design was estimated to cost $84,000.00. The revised design is now estimated to cost $54,000.00 (although prices may have increased). The other large expense is site preparation. The original quote for a concrete surface, from a company with experience building skate parks, was $41,000.00. Ms. Davis reported that City Street Superintendent Roger Estes was able to get a quote for $36,000.00. Mr. Estes also calculated a cost of approximately $10,000.00 to pave the surface instead of a concrete surface. A concrete surface is more desirable and also requires less maintenance. Pavement also cracks easier than concrete.

Summary:
$54,000.00 - Park Equipment (ramps, etc.)
$41,000.00, $36,000.00 or $10,000.00 - Site Preparation (depending on quality)

Concrete Park:
Total Cost - Approximately $95,000.00
(Includes two to five thousand dollars for various needs and unforeseen circumstances)

Current Funds- $51,706.00
Needed Funds- $43,294.00

Fundraising Ideas:
Ask local businesses and people to sponsor the Park.
Advertising in skate park on individual signs or one large sign. (With Council and Commissioners' permission)
Donation centers

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Raffle

Mayor Clark suggested that the City could finance the $80,000 in additional funds needed to build the Skate Park, as originally proposed, if it was financed over a period of eight years.

The City Manager advised that if the City puts up the entire amount of money needed to build the Skate Park, it would jeopardize the chance of getting any funding.

Mayor Clark stated that Council has talked many times about a Skate Park and that the time has come to move on with the project and build a facility of which the community can be very proud.

Councilman Edwards advised that Forest City built a skate park utilized by local skaters for under $50,000. Councilman Edwards stated that he is now willing to commit $25,000, but no more, in additional City funds toward the Skate Park, as suggested by Councilman Little at the last City Council Meeting. Councilman Edwards stated that he is not against the park, but hears often from citizens who do not feel that the Skate Park is a good use of City tax dollars.

Councilman Edwards stated that he feels that a park can be built for a lot less money than is being proposed. He suggested that the Skate Park Committee look at the park in Rutherford County to see how it was built for a smaller budget.

Councilman Owenby advised that Dr. Amy Ende raised over $30,000 a few years ago by herself to purchase equipment for the Community Building Park, and that the City should be able to do so as well. He stated that he also supports using the $25,000 that was included in the 2005-06 budget for mini-parks to be used for the Skate Park.

Councilman Martin stated that at one point we set aside $50,000 a year for the Community Parks and now it is $25,000, and asked where the other $25,000 was going. The City Manager advised that the $25,000 a year went to the YMCA for four years.

Councilman Martin suggested that the Skate Park Committee go to Forest City and look at their park, since it may be that the City could build one like theirs for less money than has been proposed.

Mayor Clark advised that he is not trying to waste City money by building a skate park; however, building something the skaters will not use will be a waste of money.

Ms. Davis advised that the skaters have indicated that they will use the revised $95,000 park.

Councilman Martin stated that he also feels that the skaters would use the new park, since they have nothing now.

Councilman Owenby suggested that the $95,000 proposed park should include equipment for beginners.

Councilman Edwards asked how many skaters there are in the area that could use the park. Ms. Davis stated that there were approximately 50 to 100.

The City Manger asked if the park equipment is mobile. Ms. Davis advised that the pieces are bolted into the ground and could be moved at a later date if necessary.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to table this item until the next meeting so that the Forest City Skate Park can be visited by the Skate Park Committee.

Councilman Edwards stated that he wants to make sure that whatever the City does solves the problem of skating activity downtown and creates a facility that is used by skaters.

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Ms. Davis advised that there are persons on the Skate Park Committee prepared to go out and start raising money for this project. Council agreed that this is a good idea.

RECEIVE STREET COMMITTEE RECOMMENDATIONS: The City Manager advised that the Street Committee met last week and looked at the following three items:

The City Manager advised that the Street Committee explored a request for parking be opened up on the south Side of Fort Street adjacent to Garden Street behind Chad Toney's new State Farm Insurance building. The City Manager stated that there is physical room to create three to four legal parking spaces in this area, but that the Street Committee wanted to look at the street again after Fort Street is restriped by DOT.
The City Manager stated that the Street Committee also looked at a request by Key Gas for the City to paint or repaint a total of three pedestrian crosswalks across Clay Street. The Street Committee suggested that the two existing crosswalks be repainted, but that the third crosswalk not be permitted, since it provides access to a parking lot level not needed by the few employees working at Key Gas.

The City Manager stated that the third request looked at by the Street Committee was on Forest Heights Drive and involved problems with the street pavement and drainage near the top of the road. The Street Committee recommended that this project be placed on the priority list. The City Manager presented Council with a reprioritized Street and Sidewalk project priority list which substitutes Forest Heights Drive for Lail Street on the Paving List, since the listed curb and gutter project on Lail Street is not needed to resurface the road this year.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, those members of Council present voted to approve the following reprioritized Street and Sidewalk Project priority list as recommended by the City Manager and Street Committee, as follows:

Street and Sidewalk Priority List
August 2005

Priority	Project
1	Depot Street – Curb and gutter (both sides), sidewalk (east side or both sides) – **Completed**
1a	Glenview Street – Asphalt curb replacement where curb has become flattened - **Completed**
1b	Fort Street/North Main Street – Curb replacement/sidewalk replacement around new State Farm building – **Completed**
1c	Vale Street – Asphalt curb installation – **Completed**
2	Curb and gutter – Ann Hawkins Street next to old Senior Center/Sidewalk Replacement – Crawford Street – **In Progress**
3	Curb, gutter, sidewalk – North Madison Street (must wait on needed water line replacement)
4	Sidewalk – New Street between North Garden and North Madison Street
5	Curb, gutter, sidewalk – East Wilhemenia Street (requested by property owners, church) – **Being completed by contractor**
6	Curb, gutter, sidewalk – Spring Street between South Main and South Garden Street – **Being completed by contractor**
7	Sidewalk repairs – Sections of Logan Street from North Main Street to West Court Street, including adding new section of sidewalk behind Wachovia Bank
8	Street repair, drainage work, asphalt curb additions – top of Forest Heights Drive
9	Drainage, curb, gutter – North Garden, James Drive, New Street
10	Curb, gutter, sidewalk – Park Avenue (needs new water line)

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11 Sidewalk repairs – Sections of State Street from Clay Street to old Railroad

12 Curb, gutter, sidewalk – Cross Street (Needs new water line, as existing water line is among the oldest in the City)

13 Curb and gutter – Morgan Terrace (Needs a small amount of sewer work)

14 Sidewalk section replacement – West Court Street

Unprioritized: Crescent Drive – Curb and gutter replacement (Needs a new water line)

Councilman Owenby asked that the Morehead Road/Georgia Avenue area be looked at and some attention be given to the need for curb and gutters in this area, given poor drainage on the street.

The City Manager advised that the addition of curb and gutter on this street had been included in a Community Development Block Grant application, which was recently turned down for funding by the State.

A discussion was held regarding the possibility of contracting this project out, using Powell Bill money.

By consensus, Council directed the City Manager to obtain bids from contractors to install asphalt curbs on Georgia Avenue and Morehead Road between Rutherford Road to a point near the top of the hill above the old railroad tracks on Morehead Road. These bids will be presented to Council for review at a future meeting.

PUBLIC APPEARANCE – MRS. KEITH BIDDIX: (This item was withdrawn by Mrs. Biddix)

REQUEST – TOM JOHNSON CAMPING CENTER: The City Manager presented Council with a request from Mr. Tom Johnson advising that he had purchased the land west of Resistoflex Road known as the Miller Property. He advised that Phase I of his business expansion is under way. Tom Johnson Camping Center will be adding a 52,000+ square foot building which will house thirty-three new service bays and another building with 7000+ square feet for office and warehousing which will be sprinkled. The facility is also adding seventy (70) camp sites which are already booked for large camping rallies.

A quote of $29,278.00 for water, sewer and fire protection connection fees for this project has been given by the Public Works Department.

Mr. Johnson suggested in his letter that it is common knowledge that the City and County have offered prospective industries incentives to locate in the Industrial Park including land, water, sewer, etc. As an existing business which, with the new expansion, will not only create fifty to sixty new jobs on site, but will also generate additional business for our local economy, Mr. Johnson requests water and sewer service be provided to his expansion at no charge.

A discussion followed.

The City Manager advised that he had felt that this matter should be presented to City Council. He noted that the City had previously only participated in two incentive projects, one for Spectrum and one for Key Gas. The common thread of these two projects is that both are industries and both are located outside the City Limits, while Mr. Johnson's business is retail in nature and is outside the City Limits.

Mayor Clark stated that the County should look at Mr. Johnson's request through their incentive program since Mr. Johnson's property is outside the City.

It was the consensus of Council that the City could not help Mr. Johnson with his request and that this request be referred to the County.

GOVERNOR'S HIGHWAY SAFETY PROGRAM-RESOLUTION:

The City Manager presented Council with a resolution to extend for a final year the City's Governor's Highway Safety Program Traffic Safety Grant. Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the following Resolution:

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North Carolina Governor's Highway Safety Program
LOCAL GOVERNMENTAL RESOLUTION
Form GSHP-02-A
(To be completed, attached to and become part of Form GHSP-02, Highway Safety Project Contract.)

WHEREAS, the Marion Police Department (herein called the "Agency") has completed an application contract for traffic safety funding; and that the City (herein called the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as described in the contract;

THEREFORE, NOW BE IT RESOLVED BY THE City Council IN OPEN MEETING ASSEMBLED IN THE CITY OF Marion NORTH CAROLINA, THIS 2ND DAY OF August, 2005, as follows:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Mika V. Elliott, Chief of Police is authorized to file, on behalf of the Governing Body, and application contract in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of $5327.00 to be made to the Governing Body to assist in defraying the cost of the project described in the contract application; and
3. That the Governing Body has formally appropriated the cash contribution of $40093,00 as required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

DONE AND ORDERED in open meeting by:

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

SEAL

DATE: August 2, 2005

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that he and Police Chief Mika Elliott had spoken about the possibility of an Ordinance banning registered sex offenders from entering City parks. The City Manager presented a copy of such an ordinance from the Town of Canton and noted that the Town of Fletcher also had a similar ordinance.

Councilman Cuthbertson suggested that this ordinance be drawn up and presented for the next City Council Meeting.

Councilman Edwards suggested that the City Manager contact the Institute of Government and obtain an expert opinion regarding the legality of such an ordinance. The City Manager agreed to do so and report back to Council at a future meeting.

A brief report was given regarding the projected timetable for the Hendrix property foreclosure on Park Avenue and how the process is currently progressing. The City Manager stated that neighbors are upset regarding the time this that this issue is taking.

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The City Manager advised that Mr. Greg Daniels of Blue Ridge Monuments has offered to donate a granite sign (up to $1,500.00) to be located at the entrance to Oak Grove Cemetery. The Cemetery Committee agreed to meet on site with the City Manager and Mr. Daniels on Wednesday, August 10, 2005 at 11:00 A.M. to review this request. Mayor Clark advised that there is much work that needs to be done in the cemetery regarding drainage issues and beautification.

Police Chief Mika Elliott reported on a program to be held on Wednesday, August 17 at 2:00 p.m. on scams and frauds. The program will be conducted by the North Carolina Attorney General's Office.

CLOSING COMMENTS:

Councilman Cuthbertson requested that prisoners be utilized to clean out the creek banks on Broad Street, as was done years ago. The City Manager agreed to contact the prison to see if using the inmates to complete this work was possible.

Mayor Clark complimented the Police Department for this year's National Night Out at the YMCA which appeared to be a great success earlier that evening.

CLOSED SESSION TO DISCUSS A LEGAL MATTER: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(3) to discuss a legal matter.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to go back into Regular Session.

Mayor Clark announced that no action was taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 16, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Mika Elliott, Police Chief; Harriett Thomas, Finance Director; Mike Conley, News Reporter, McDowell News; Jennifer Jackson, City Attorney.

GUESTS PRESENT: Diane Curd, 89 Perry Street, Marion, NC; Paul Lingerfelt, Eastfield Area

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - August 2, 2005 Regular and Closed Session
City Council Meeting

B. Approve Amendment to Audit Contract with Johnson, Price & Sprinkle:

Original negotiated Contract	$15,000
Amended audit contract increased audit fee to	$16,500

The cost of the audit increased due to requirement for Single Audit due to City receiving more than $5000,000 in Federal funds in 2004-05.

A Copy of Contract can be found on file in the Finance Director's Office

PUBLIC APPEARANCE – MS. EVANGELINE EDWARDS: The City Manager presented Council with letter from Ms. Evangeline Edwards requesting that she not be held responsible for a water account balance from her previous residence at 4361 NC 226 South.

Ms. Edwards moved leaving a large balance owed on this account, and subsequently had her income tax refund, in the amount of $112, seized through the City's Debt Setoff Program to pay a portion of the balance.

Ms. Evangeline Edwards was present for this meeting and advised that she lived at this residence until April 14, 2004 and contacted the water department to turn the water off on April 9, 2004. The final bill covered the period of March 18, 2004 – April 10, 2004. Ms. Edwards feels that she should not have to pay this bill because she used no water while moving out.

The City Manager advised that it is City Policy to allow for two adjustments per year, and that Ms. Edwards had already requested two adjustments.

Council Little explained to Ms. Edwards that the City's water accounts run a month behind

Ms. Edwards advised that she had fixed the leaks she had in the past and does not feel that she used this water.

The City Manager advised that from time to time people will ask, where did the water go, and that all the City knows for sure is the amount of water that went through the meter.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to deny this request in accordance with City Policy.

PUBLIC COMMENT PERIOD – HOUSE BILL 635: There were several persons present from the Eastfield area for this meeting.

Mr. Paul Lingerfelt appeared before Council and advised that if the Eastfield Area in not going to be annexed he is going to go back on his private septic tank. He is having to pay a combined water and sewer bill of over

fifty dollars a month. Mr. Lingerfelt stated that persons in the Eastfield area were under the impression that they were going to be annexed when they signed easements to allow the sewer line to come into their area.

Mayor Clark encouraged Council to start annexing small areas in this community.

Councilman Martin advised that Mr. Lingerfelt makes a valid point. If the community is annexed, water and sewer bills would be cut by more than half.

Ms. Diane Curd from Perry Street, advised that she does not care if the community is annexed or not. Ms. Curd stated that she could pay taxes cheaper than she can pay water and sewer.

Councilman Owenby advised that he wanted the community to understand that the Eastfield sewer extension was a project administered by McDowell County.

The City Manager advised that there were still three or four streets in Eastfield not being served by water that could not be annexed, due to not having full City services available. He suggested that, if Council were interested, that staff could develop feasibility study for two or three options for annexing part or most of the Eastfield Community.

Mayor Clark stated that he hoped that Council will direct staff to start looking at options for annexing part of the Eastfield Community.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to instruct the City Manager to have staff prepare feasibility studies exploring options for annexing portions of the Eastfield Community, ranging form a few streets including Bostic, Perry, Doyle and Leach Streets to a larger segment of the Community. The City Manager will present the studies back to Council at a future meeting for further direction.

ADOPT ORDINANCE – AUTHORIZE DEMOLITION OF DILAPIDATED HOUSE ON RIDGE STREET: The City Manager advised that Fire Chief Jim Neal has gone through the condemnation process for a house on Ridge Street. He stated that the final step was for Council to adopt an ordinance to authorize the demolition of the house.

A brief discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted to adopt the following Ordinance as the final action needed for this demolition:

CITY OF MARION
ORDINANCE
CONCERNING PARTICULAR UNINHABITABLE DWELLINGS AND/OR HAZARDOUS ABANDONED STRUCTURES

WHEREAS, on the 21st day of January, 2003, the Marion City Council enacted an Ordinance pursuant to and in compliance with Part 6, Article 19, chapter 160A of the North Carolina General Statutes, which provides for the repair, closure or demolition of dwellings that have been found to be unfit for human habitation and abandoned structures which have been found to be a health or safety hazard;

WHEREAS, pursuant to and in compliance with the said Ordinance a certain dwelling(s) structures(s) located on property described on the attached Exhibit A was found to be unfit for human habitation or hazardous; and

WHEREAS, the owners(s) of the above-described property is as follows: Devaun Charles Burnette

WHEREAS, on the 26th day of October; 2004, the public officer designated in the above referenced Ordinance issued an order to the owner(s) to demolish by the 26th day of April, 2005 (a copy of the order is attached hereto as Exhibit B);

WHEREAS, the owners have failed to comply with the above-stated order;

NOW, THEREFORE, the city of Marion, by action of the City Council, **HEREBY ORDAINS** the following:

1. That the public officer designated in the above-referenced Ordinance is hereby ordered to proceed to effectuate the above-referenced Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina

General Statutes by taking such action as is necessary to carry out the repair, removal or demolition of the dwelling or structure as indicated in the attached order; and

2. That the public officer shall comply with all applicable provisions and procedures contained within the Ordinance and Part 6, Article 19, Chapter 160A of the North Carolina General Statutes.

ADOPTED THIS the 16th day of August, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-08-16-1

The City Manager advised that if the costs of asbestos removal and the demolition was unreasonably high, he would bring the cost estimates back to Council for discussion.

DISCUSS SKATE PARK: The City Manager advised that he along with City Planner, Suzy Davis Street Superintendent Roger Estes and McDowell County Recreation Director Stan Braswell went to Rutherfordton on August 8th to view their skate park that was developed for 10,000. This park was developed with grant money and equipment was bolted on the ground onto an abandoned tennis court.

The City Manager stated that staff research has shown that all other skate parks in Western North Carolina that could be located were built on concrete surfaces and contain equipment that can be moved around and other pieces of equipment added if later desired.

Councilman Little advised that he has many thoughts about this issue and feels that the Skate Park needs to be finished. He stated that he felt the Skate Park Committee, composed of youth and adults, has done what Council asked them to do in recommending a reasonably designed Skate Park with a cost estimate of $95,000. Councilman Little stated that the City should contribute the $43,000 different between current funds available and the recommended Skate Park with the understanding that the Skate Park Committee still continue to explore contributions necessary to start and finish this park as soon as possibly.

Councilman Edwards advised that he would vote for Councilman Little's motion, but that he still believed that the project was costing too much. He stated that he hoped the Skate Park was used by the skaters.

Upon a motion by Councilman Little seconded by Councilman Owenby, Council voted unanimously to approve the recommendation and design of the Skate Park Committee to construct a 95,000 Skate Park and for the City to commit an additional $43,000 to construct this Skate Park with the understanding that the Committee members work to raise additional funds.

The City Manager advised that contacts have been made about additional contributions.

The City Manager advised that a budget amendment will be presented at an upcoming meeting to appropriate the additional money for the Skate Park Project.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised of the upcoming N.C. League of Municipalites conference in Hickory in October and the National League of Cities conference in Charlotte in December.

The City Manager reported that the newly renovated Community Building tennis and basketball courts are open.

The City Manager advised that, some time ago, Mayor Clark had suggested that the City note Marion as the birthplace of University of North Carolina basketball coach Roy Williams. The City Manager advised of a possibility to invite Coach Williams to an Institute of Government function at the Depot next Spring or Fall and asked if Council was truly interested in honoring Coach Williams with a sign at the City Limits and/or a "Roy Williams Day".
The Mayor and Council expressed interest in honoring Coach Williams in some kind of fashion and agreed to consider the matter further.

CLOSING COMMENTS:

Councilman Martin advised that he would like the Street Committee to look at two items. Council agreed to have the Street Committee to meet to explore these items.

Councilman Edwards advised of the recent Cemetery Committee meeting and that the entrance sign at Oak Grove is aging, needs work and may also needs to be lowered. Councilman Edwards also stated that he has concerns with the proposal of Blue Ridge Monuments to put an new entrance sign in among the old beautiful rock work at Oak Grove. Councilman Edwards also stated that more effort needs to be taken to control the growth of weeds in the cemetery.

Councilman Cuthbertson advised that his mother commended the City for the beautiful work that had been done on the depot.

Councilman Cuthbertson also advised that the tree committee is looking at planting more Kwanson Cherry Trees on the Cemetery property and that there has also been some discussion regarding the large ditch line along the east side of the cemetery and possibly piping and filling in this ditch. The City Manager advised that Street Superintendent Roger Estes has a price for storm water pipe to install in this ditch line.

Councilman Little advised that a guardrail is needed at the rear portion of Oak Grove where the property drops off dramatically onto the old railroad tracks. Councilman Little stated that he felt that this guardrail was more critical than filling in the ditch.

The City Manager stated that he would compile price comparisons on both the piping of ditch and the guardrail for the back of the Cemetery and present them to Council for direction.

Councilman Owenby asked about the status of the curbing on Morehead Road. The City Manager advised that bids would be sought from contractors for this project soon.

CLOSED SESSION TO DISCUSS A LEGAL MATTER: Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(3) to discuss a legal matter in consultation with the City Attorney, in order to preserve the Attorney-Client privilege .

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to go back into Regular Session.

Mayor Clark announced that no action was taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Edwards, seconded by Councilman Little, Council voted unanimously to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Special Called Session on Tuesday evening, August 24, 2005 at 1:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Billy Martin and Cecil Owenby.

Mayor Clark could not attend this meeting due to being out of State.

Councilman Edwards could not attend this meeting due to being in Court.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Charles Burgin, City Attorney.

GUESTS PRESENT:

AWARD CONTRACT FOR NEW STREET SWEEPER: The City Manager presented Council with a memo from Ms. Kathy Shook, Purchasing Agent, containing the following bids received for a new street sweeper for the City:

Carolina Industrial Equipment, Inc. Charlotte	$135,200.00
Public Works Equipment & Supply, Inc, Monroe	$139,578.00

The Johnson Street Sweeper Model VT650, as quoted by Carolina Industrial, can be equipped with an optional bonded inlet duct and seat for an additional $1,068. It is staff's recommendation that this option be selected, yielding a total price for the sweeper of $136,268.00.

The City Manager advised that the Johnston sweeper had been demonstrated for the Mayor and City staff and had performed well. The City Manager stated that Council could award a contract for a vehicle based on the receipt of two bids.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council presented voted to accept the recommendation of staff and award the contract for the purchase of a new street sweeper with a bonded inlet duct and seat to Carolina Industrial Equipment, Inc. in the amount of $136,268.00.

ADOPT RESOLUTION TO APPROVE FINANCING TERMS FOR NEW STREET SWEEPER: The City Manager presented Council with proposals for the five year financing of the new street sweeper, as follows:

Bank of America	3.06%
BB&T	3.47%
Carolina First	3.00%
Wachovia	5.75%

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to approve the following resolution, approving the financing of the street sweeper for a five year term with the Bank of America:

CITY OF MARION
RESOLUTION
APPROVING FINANCING TERMS

WHEREAS: The City of Marion ("City") has previously determined to undertake a project for a street sweeper, and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Bank of America, in accordance with the proposal dated June 29, 2005. The amount financed shall not exceed $160,000.00, the annual interest rate (in the

absence of default or change in tax status) shall not exceed 3.06%, and the financing term shall not exceed five (5) years from closing.

All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. The Mayor , City Manager/Clerk and Finance Officer are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement as Bank of America may request.

2. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

3. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).
4. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 24th day of August 2005

J. Robert Boyette, City Manager

Steve Little, Mayor Pro Tem

SEAL

CLOSED SESSION TO DISCUSS A LEGAL MATTER: Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(3) to consult with City Attorney in order to preserve the attorney-client privilege.

REGULAR SESSION: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to go back into Regular Session.

Mayor Pro Tem Steve Little announced that no action was taken in Closed Session.

ADJOURNMENT: Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to adjourn.

Steve Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Special Called Session on Wednesday, August 31, 2005 at 5:30 P.M. in the City Hall Conference Room located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Pro Tem Steve Little, Councilmen Billy Martin and Cecil Owenby.

Councilmen Lloyd Cuthbertson and Mike Edwards could not attend this meeting.

OTHERS PRESENT: Bob Boyette, City Manager; Mia Lorenz, City Attorney.

GUESTS PRESENT:

Mayor Clark opened the Meeting.

CLOSED SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to go into Closed Session in accordance with N.C.G.S. 143-318.11 (a)(3) to consult with City Attorney in order to preserve the attorney-client privilege.

REGULAR SESSION: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to go back into Regular Session.

Mayor Clark announced that action taken was instructions given to City Attorney under attorney client privilege.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 6, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little could not be present due to recent surgery.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Suzy Davis, City Planner; Gaye Noblitt, Marion Police Department; Charlie Oliver, Marion Police Department; Jim Neal, Fire Chief; Mike Conley, News Reporter, McDowell News; Mia Lorenz, City Attorney.

GUESTS PRESENT:

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson , seconded by Councilman Martin, those members of Council present voted to approve the consent Agenda as follows:

A . Approval of Minutes - August 16, 2005 Regular & Closed Session
City Council Meeting
August 24th and 31th Special Called Meetings
August 24th and 31st Special Called Meetings Closed Session Minutes

B. Approve Resolution to Designate Applicant's Agent – State Emergency Management Claim:

DESIGNATION OF APPLICANT'S AGENT

RESOLUTION

BE IT RESOLVED BY the City Council OF the City of Marion
(Governing Body) *(Public Entity)*

THAT _____ , Public Works/Utilities Director
**(Name of Incumbent)* *(Official Position)*
OR
_____ , Governor's Authorized Representative,
**(Name of Incumbent)*
is hereby authorized to execute for and in behalf of the City of Marion, a public entity established under the laws of the State of North Carolina, this application and to file it in the appropriate State office for the purpose of obtaining certain Federal financial assistance under the Disaster Relief Act (Public Law 288, 93rd Congress) or otherwise available from the President Disaster Relief Fund.

THAT the City of Marion , a public entity established under the laws of the State of North Carolina, hereby authorizes its agent to provide to the State and to the Federal Emergency Management Agency (FEMA) for all matters pertaining to such Federal disaster assistance the assurance and agreements printed on the reverse side hereof.

Passed and approved this 6th day of September, 2005.

A. Everette Clark, Mayor

CERTIFICATION

I, J. Robert Boyette, duly appointed and City Manager of the City of Marion,
(Title)
do hereby certify that the above is a true and correct copy of a

resolution passed and approved by the City Council of the City of Marion
(Governing Body) *(Public Entity)*

on the 6th day of September, 2005.

Date: September 6, 2005

City Manager/Clerk
(Official Position)

(Signature)

C. Adopt Resolution to Endorse Candidacy of Mayor Clark for First Vice President for the N.C. League of Municipalities and Candidacy of Scotland Neck Mayor Robert Partin for Second Vice President of the N.DC. League of Municipalities:

CITY OF MARION
RESOLUTION OF
SUPPORT FOR NOMINATION OF MAYOR A. EVERETTE CLARK
TO THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES
BOARD OF DIRECTORS AS FIRST VICE PRESIDENT

WHEREAS, it is important that Western North Carolina have representation on the executive boardl that can understand and will advocate for the interest of small cities; and

WHEREAS, Mayor A. Everette Clark has a distinguished record of service as an elected official to the City of Marion for over thirty three (33) years; and

WHEREAS, Mayor Clark currently serves as a member of the North Carolina League of Municipalities Board of Directors, as Chairman of the Small Cities Council; and

WHEREAS, Mayor Clark serves as Vice Chairman of the Western North Carolina Local Government Caucus; and

WHEREAS, Mayor Clark has been a tireless advocate for municipal authority and autonomy for many years, and has not been afraid to make his opinions known on local and state levels; and

WHEREAS, Mayor Clark's knowledge and experience in Raleigh and Washington can continue to help move the NC League of Municipalities forward to achieve positive results regarding municipal authority and finances.

NOW, THEREFORE, BE IT RESOVED that the City Council for the City of Marion, North Carolina endorses the candidacy of Mayor A. Everette Clark as First Vice President for the North Carolina League of Municipalities Board of Directors.

Adopted this the 7th Day of September, 2005.

Steven Little, Mayor Pro Tem

Attest:

J. Robert Boyette, City Manager

CITY OF MARION
RESOLUTION OF
SUPPORT FOR NOMINATION OF MAYOR ROBERT B. PARTIN
TO THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES
BOARD OF DIRECTORS AS SECOND VICE PRESIDENT

WHEREAS, it is important that Eastern North Carolina have representation on the executive council that understands and will advocate for the interest of small towns; and

WHEREAS, Mayor Robert B. Partin has a distinguished record of service to the Town of Scotland Neck as a commissioner from 1979-1997; and

WHEREAS, Mayor Partin has provided invaluable leadership as Mayor of Scotland Neck from 1997-present; and

WHEREAS, Mayor Partin currently serves as a member of the North Carolina League of Municipalities Board of Directors representing District 5; and

WHEREAS, Mayor Partin currently serves on the NCLM Risk Management Services Board of Trustees; and

WHEREAS, Mayor Partin has demonstrated regional leadership by serving on the Board of Directors of Upper Coastal Plain Council of Governments from 1982-present and as Chairman of the Board from 1990-1992; and

WHEREAS, Mayor Partin's love of his community and strong sense of dedication have made him a highly effective local and state leader.

NOW, THEREFORE, BE IT RESOVED that the City Council for the City of Marion, North Carolina endorse the candidacy of Mayor Robert B. Partin as Second Vice President for the North Carolina League of Municipalities Board of Directors.

Adopted this the 7th Day of September, 2005.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager

D. Adopt Resolution to Approve Municipal Agreement with N.C. Department of Transportation Authorizing Inspection of City Bridges:

RESOLUTION

The following Resolution was introduced, and Council Member Cuthbertson moved that it be adopted. The motion was seconded by Councilman Martin, and, upon being put to a vote, the resolution was unanimously carried;

WHEREAS, the CITY OF MARION has requested the Department of transportation to perform certain work under the federal-Aid Highway Bridge Replacement and Rehabilitation Program, said work to consist of the inspection and analysis of all public bridges on the Municipal Street System in the CITY OF MARION; and

WHEREAS, the CITY OF MARION proposes to enter into an agreement with the North Carolina Department of Transportation for said work wherein the Department of Transportation or a Consulting Engineering firm retained by the Department of transportation will inspect and prepare the necessary reports for all public bridges on the municipal Street System in accordance with the National B ridge Inspection Standards; and

WHEREAS, under the proposed agreement the Federal Highway Administration shall reimburse the Department of transportation for eighty (80) percent of the cost of the work subject to compliance with all applicable federal policy and procedural rules and regulations; and

WHEREAS, under the proposed agreement the CITY OF MARION shall reimburse the Department of Transportation for all costs of the work incurred by the Department of transportation not paid by the Federal Highway Administration.

NOW, THEREFORE, BE IT RESOLVED that the agreement for the hereinabove referenced bridge inspection work is hereby formally approved Municipality are hereby empowered to sign and execute the required agreement between the CITY OF MARION and the Department of Transportation.

This Resolution was passed and adopted the 7th day of September, 2005.

I, J. Robert Boyette, Clerk (or Manager) of the CITY OF MARION, North Carolina, do hereby certify that the foregoing is a true and correct copy of excerpts form the minutes of the City Council of this Municipality;

WITNESS, my hand and the official seal of the CITY OF MARION on this the 7th day of September, 2005.

SEAL OF
MUNICIPALITY

Clerk (or Manger)
City of Marion
North Carolina

PUBLIC COMMENT PERIOD – HOUSE BILL 635: There were no unscheduled guests at this meeting.

APPROVE REVISED MEMORANDUM OF UNDERSTANDING WITH McDOWELL COUNTY: The City Manager presented a proposed Memorandum of Understanding with McDowell County, as recommended by the Fire Committee, that amends the City's 1996 fire district agreement with the County to allow the City to bid, purchase, finance and own fire trucks for the District, subject to review and approval of specifications by the County. Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the Memorandum of Understanding as follows:

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
MEMORANDUM OF UNDERSTANDING

WHEREAS, the City of Marion ("City") and the County of McDowell ("County") entered into an agreement in February 1996 providing for the City to provide a contracted service for fire protection and suppression for the area known as the Marion Area Fire District ("Marion Area"); and

WHEREAS, the City and County desire to continue the current arrangement whereby the City provides a contracted service for fire protection and suppression for the Marion Area; and

WHEREAS, the City and County are currently working to prepare a new contract for fire protection and suppression for the Marion Area and intend to have said new contact approved in the near future; and

WHEREAS, the County has approved a tax rate of $.04/$100 valuation for the Marion Area to allow the City to continue providing fire protection and suppression service for the Marion Area; and

WHEREAS, there is an immediate need for a new tanker truck to be purchased for use in the Marion Area out of the tax proceeds generated by the new tax rate for the Marion Area of $.04/$100 valuation; and

WHEREAS, both the City and County agree that it would be in the best interest of all involved parties to enter into this Memorandum of Understanding to modify the terms by which tanker trucks and equipment designated for use in the Marion Area are purchased so that the City can
immediately begin efforts to purchase the new tanker truck.

NOW THEREFORE it is mutually agreed to and understood by the City and County that:

1. The agreement referenced in the first paragraph above is amended by deleting Section 5 in its entirety and replacing it with the following:
"5. Fire trucks, such as tankers, and other fire suppression equipment needed for use in the Marion Area shall be purchased, maintained and insured by the City, based on specifications and bids developed and implemented by the City, after review and approval by the County, and subject to any financing terms deemed appropriate by the City. These trucks and equipment shall be plainly labeled with the words "Marion Area Fire District" and shall be designated for use in the Marion Area, subject to being available for mutual aid to other fire departments. In the event this contract is terminated, the ownership of these fire trucks and equipment shall be transferred to the County. In such event, the County shall assume total responsibility for paying any balance owed on such trucks and equipment and shall hold harmless the City from any such balance remaining unpaid."

2. This Memorandum of Understanding shall be superceded and replaced immediately upon approval of a new contract by the City and County providing for fire protection and suppression for the Marion Area.

Adopted this the 6th day of September, 2005 by the City Council of the City of Marion, North Carolina.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manger/Clerk

Adopted this the _____ day of _____, 2005 by the County Commissioners of the County of McDowell, North Carolina.

Andrew Webb, Chairman

Attest:

Carrie Padgett, Clerk

REQUEST – FIRE DEPARTMENT – PURCHASE GENERATOR: The City Manager presented Council with a memo from Fire Chief Jim Neal advising that their fifty-five year old generator had stopped working and cannot be repaired.

Chief Neal was present for the meeting and presented a proposal to replace the generator, in the amount of $15,875.45, using part of the $32,000 in back Fire District funds that were recently refunded by the County.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to approve this request.

Chief Neal advised that the generator will run the majority of the Fire Department in the event of a power outage, just as the previous generator did.

The City Manager will have the budget amendment to formally appropriate these funds for Council's approval at a future City Council Meeting.

CIVIL CITATION APPEAL – CLAY: The City Manager presented Council with a request from Mr. John Clay requesting that a parking ticket he received on August 22nd 2005 for over time parking be waived as his handicap parking card was displayed on his rear view mirror. The Ordinance Enforcement Officer was unable to state for sure if the placard was displayed by Mr. Clay, but the City Manager noted that the placard had been verified as valid and that Council had waived parking tickets in past similar situations.

A discussion followed.

Upon a Motion by Councilman Cuthbertson, Seconded by Councilman Martin, those members of council present voted to waive the penalty for mr. Clay's parking ticket.

CIVIL CITATION APPEAL – MACA: The City Manager presented Council with a letter from Ms. Gina DeGrechie, Executive Director of the McDowell Arts Council Association advising that Mr. Tom Raab, an instructor at McDowell Technical Community College, was parked in the loading zone in front of the MACA Building on Thursday morning, August 4th, 2005. She stated that Mr. Raab was loading and unloading the current exhibit on display for the month of August in the MACA Gallery.

Ms. DeGrechie is requesting that Council reconsider the parking violation.

The City Manager presented a statement from the Ordinance Enforcement Officer, noting that she saw no evidence of loading activities at the vehicle nor any persons around the vehicle during the 10-15 minutes she was on the scene.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to deny the request of MACA for Council to waive this parking ticket.

CIVIL CITATION APPEAL – DIETRICH: The City Manager presented Council with a request from Mr. David Dietrich requesting that a parking ticket he received on July 19, 2005 be waived due to the citation being issued to a tag that did not belong to him.

The City Manager noted that the Police Department had checked with the N.C. Division of Motor Vehicles and verified that the vehicle issued the parking ticket was not owned

by Mr. Dietrich. The vehicle had initially been reported, due to an error, as being owned by Mr. Dietrich.

A discussion followed.

Upon a Motion by Councilman Martin, Seconded by Councilman Edwards, those members of council present voted to waive the penalty for Mr. Dietrich's parking ticket.

APPROVE VOTING DELEGATE/ALTERNATE – N.C. LEAGUE OF MUNICIPALITIES CONFERENCE: The City Manager advised that the NCLM Annual Business Meeting will be held at the Hickory Metro Convention Center on October 18, 2005. To date, Mayor Clark and Councilman Martin are planning to attend this meeting.

The City Manager stated that Council needs to appoint a voting delegate and an alternate for the business meeting.

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to appoint Mayor Clark as the voting delegate and Councilman Martin as the alternate voting delegate.

STREET COMMITTEE RECOMMENDATION:
The City Manager advised that the Street Committee had reviewed in August the request of Chad Toney to open up additional areas on the south side of Fort Street between Main and Garden Streets for parking. The City Manager stated that the Street Committee had recommended that parking not be allowed at all on the south side of this block of Fort Street, and that parking on the north side of the street be limited to two hour parking and restricted to the area between the Bank of America driveway and Garden Street (with appropriate setbacks). The Street Committee had instructed the City Manager to present their recommendation to Council prior to drawing up the actual ordinance.

After brief discussion, Council members agreed by consensus to direct the City Manager to present the ordinance recommended by the Street Committee for action at the next regular scheduled meeting.

REVIEW – PROPOSED CITY EMERGENCY OPERATION PLAN:
The City Manager advised that he and Fire Chief Jim Neal have been working for some time on a City Emergency Operations Plan. The City Manager presented the outline of the Plan and asked Council members if they had any comments or proposed corrections.

Councilman Cuthbertson advised that he remembers the Prison fire some years ago, and suggested that prisons be included in a list of possible disasters.

A breach of the dam at Lake Tahoma was also discussed as a possible disaster.

The City Manager advised that much discussion has went into this plan.

It was the consensus of Council to hold this plan until the next meeting, at which time the Plan can be reviewed further by Council.

DISCUSS CITY GATEWAY SIGNS: Ms. Suzy Davis advised that the

Gateway Sign Committee had met and presented Council with a final draft for the gateway signs, which was included in the Council packet. The Gateway Sign Committee recommends that the five current "Welcome to Marion" signs be replaced with new signs containing the new City logo. The committee has researched price and materials for the new signs. The committee was concerned with the durability of the material and received two estimates for two types of material.

Graphics Warehouse proposed a material called alumacorr. The material is made of aluminum on both sides with corrugated plastic in the middle. Graphics would use vinyl for the image. This would provide a sign with an 8 to 10 year life span. The costs are as follows:

(4) 8'x 12' signs @	$1,617.53 each	+$452.91 tax
(1) 4' x 8' sign @	$885.68	+ $62.00 tax
Total		**$7,870.71**

M&H Marketing proposed a ½" comaseal/ PVC material. M&H would basically screen print the sign directly on the material. The estimated life span of this product would be 7 to 10 years. The Committee liked this material. However, the cost was much higher:

(4) 8'x 12' signs @	$2,900.00 each
(1) 4' x 8' sign @	$950.00
	Plus $300.00 set up fee
Total	**$12,850.00**

Ms. Davis reported that the Committee therefore recommended the alumacorr materials and the quote from Graphics Warehouse. The vinyl had an eight-year life expectancy, and the sign material had a ten-year warranty.

The price difference is $4,980.00.

A lengthy discussion followed.

It was the consensus of Council to direct staff to obtain a small sample of each sign from each company.

Councilman Cuthbertson also noted that back side of the signs would need to be a complimentary color.

DISCUSS DOWNTOWN STREETSCAPE/TRAFFIC FLOW PLAN:

City Planner Suzy Davis presented Council with a quote from HSMM to complete the Downtown Streetscape/Traffic Flow Plan for a cost of $50,809.40. The City Manager asked Council for guidance on the cost.

Mayor Clark suggested that N.C. Main Street Director Rodney Swink examine the proposal and provide comments.

Councilman Edwards noted that the City must start somewhere and has to produce a plan for DOT to review, since DOT will not discuss any revised Main Street traffic flow plans until a plan has been done.

It was the consensus of Council to have staff seek the opinion of Main Street Director Rodney Swink on the proposal and for the matter to be discussed again at a future Council meeting.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that, with gasoline prices rising dramatically and with gasoline supply being in question, due to Hurricane Katrina's impact on the Gulf Coast, he has put in place some precautionary measures with each department to save on gasoline usage. The City Manager stated that the City had a 6-7 week of supply of gasoline and a three month supply of diesel, so the savings are primarily designed to lessen costs. The City Manager outlined some preliminary measures that had been put in places and some more restrictive measures, affecting City services to some degree, that could be put in place if the situation worsened.

Preliminary measures include:

Stopping the idling of vehicles, unless absolutely needed for public safety or to operate equipment
Eliminating out of town travel, unless for events already paid for or involving necessary training or certifications
Encouraging carpooling to job sites and seeking to decrease the number of vehicles needed at job sites
Cutting back on in-town travel where possible

Further measures could be taken if necessary at a later date to save on fuel costs and reduce fuel usage:

Stop running the flusher truck
Cut back on right of way mowing
Go to four ten-hour days for maintenance crews
Limit grass mowing and unnecessary trips
Stop brush pick up
Park the recycling truck
Fire trucks could run for emergency only, no idling
Fire Chief's car could be used for meals instead of a fire truck
Two Police officers per car and limiting patrol if necessary
No Police Department take home cars

CLOSING COMMENTS:

Councilman Edwards advised that the Community Building Park and tennis/basketball court area looks great. He advised of the need to get in center straps for the tennis court nets. The City Manager advised that these had been ordered.

Councilman Cuthbertson advised that he has mixed feelings regarding the Annual City/County/School Board Auction, since he does not feel that the City is getting the highest possible price for auction items. Councilman Cuthbertson stated that the City is not being responsible to taxpayers top dollar is not received for items.

Councilman Owenby advised that the crosswalk flashing lights have flashed all summer on Robert Street in front of at Marion Elementary School. The City Manager stated that these lights were being repaired.

Mayor Clark advised that something is going to have to be done regarding the Smith Bridge on Highway 226 South. This family is even willing to move out while this project is being done. The family wants something done now due to winter coming.

It was the consensus of Council to direct the City Manager to have Ford Miller immediately start work on this project and to arrange for the Smith family to be relocated during the construction of the bridge.

ADJOURNMENT: Upon a motion by Councilman Martin seconded by Councilman Cuthbertson, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, September 20, 2005 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor A. Everette Clark, Mayor Pro Tem Steve Little, Councilmen Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

Councilman Martin was not present for this meeting, due to being out of town to visiting a sick family member.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Mike Conley, News Reporter, McDowell News; Mia Lorenz, City Attorney.

GUESTS PRESENT: Bill Scantland, Winston Salem, NC; Bill Smith, 141 Dogwood Lane, Marion, NC; Mark Wise 218 Logan Street, Marion, NC

CITIZEN OF THE MONTH – SELECTED BY A. MICHAEL EDWARDS:
Councilman Mike Edwards selected the Citizen of the Month for September:

Earl Duncan

Councilman Edwards advised that Mr. Earl Duncan is married to Sylvia and between them they have seven children, nine grandchildren and one great grandchild.

Mr. Duncan was born in Hickory, went to Hickory High School and then attended Lenoir Rhyne College where he majored in History and minored in English.

Mr. Duncan came to Marion 41 years ago and worked with Retail Credit. He later taught at Marion High School as a Vocational Teacher, then at Western Piedmont as the Financial Aid Director.

Mr. Duncan came to the Baptist church in 1964. He has taught Sunday school classes for over sixty years and has served in various capacities for the church.

Mayor Clark and Council members all shared kinds words about Mr. Duncan.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - September 6, 2005 Regular Meeting

B. Approval Resolution to Declare Certain Personal Property Owned by the City as Surplus and Authorize Sale by Auction

Resolution Declaring Certain Items of Personal Property Owned by the City of Marion as Surplus and Authorizing Their Sale

WHEREAS, N.C.G.S. 160A-270 authorizes cities to dispose of personal property by auction; and

WHEREAS, N.C.G.S. 160A-270 requires that when a City Council proposes to dispose of property by auction, it adopt a resolution at a regular Council meeting authorizing an appropriate City official to dispose of the property by auction; and

WHEREAS, the City of Marion owns many items of personal property, as shown on the attached sheets, that are no longer needed by the City; and

WHEREAS, the City of Marion, McDowell County, and the McDowell County School Board have traditionally held an annual auction for surplus items during the fall of each year.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The City Council of the City of Marion does hereby declare the personal property owned by the City and listed on the attached sheets to be surplus and authorizes the City Manager or his designee to dispose of said property by auction, with the designated minimum price where listed.

Section 2. A notice summarizing the contents of this resolution shall be published once after its adoption, and no sale shall be consummated until ten (10) days after its publication.

Section 3. This resolution shall be effective upon its adoption.

Adopted this the 20th day of September, 2005.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-05-09-20-1

City of Marion
2005
Auction List

Administration/City Hall

2	A 600 Performax Printers	H-0388 C-0581
1	Panasonic KX P11801 Printer	00154
1	Computer Keyboard	G-3629
2	Komodo Monitors	G-3680 G-3628
1 Set of Computer Speakers		
1 IBM Selectric Typewriter		00142

Marion Police Department		**Funds Go To**
1 Mega Phone	4838	City
1 Radio Console	C-1382	City
1 Large Cork Board (with small hole)		City
1 Microwave - Roper		School
1 Typewriter- Smith Cornona	4846	City
1 Microphone (From Old Drive Through)		City
1 Flashlight – Mag Lite (Does not work)		City
1 Locker – 3 Door	D4840	City
2 Locker – 6 Door	E-2734	City
	E-2733	City

1 Locker – 6 Door	E-2735	City
1 First Alert Radio		City
1 Lap Top - # 3		City
1 CD Holder – Wooden		City
4 Lapel Mics – Maxon		City
2 Lapel Mics - Page Com		City
1 Spot Light – Night Guard Lamp		City
1 Box of Charger Parts		City
1 Box Misc. Leather Gear		City
1 Three Hole Punch		City
1 Box Misc. Computer Parts		City
4 Computer Mounts (for vehicles)	2932	City
1 Vehicle 334 – 1995 Chev Caprice	1G1BL52P55SR183118	City
2 Shot Gun Racks		City
2 Vehicle Blue Lights (w/out Lens)		City
2 Siten Box		City
3 Consoles (vehicle)		City
1 Dell Computer Server	4852	City
5 Cage Protectors (In vehicles)		City
Misc. Christmas Decorations		City

Waste Water Treatment Plant

1 1992 F150 Ford Pick Up	Vin# 1FTDF15Y9NNB05053
1 Kubota Yard Tractor	Model #B7100
1 1988 Ford F350 Utility Truck	Vin# 1FDJF37M0JNB25643
1 1989 Ford F700 Dump Truck	Vin# 1 FDNK74P3LVA06720
1 1997 Chevrolet Lumina	Vin # 2G1WL52M4V9293681

Sanitation Department

No Items

Water Plant

No Items

Street Department

1 1998 Tennant Street Sweeper	65508159
1 Billy Goat Vacuum	62298050
1 Central Air Cooling Unit	
1 Fuel Furnace	

Marion Fire Department

9 - 50ft. Sections of rubber 1 ¾ inch fire hose
2 - 50ft. Sections of cotton 1 ½ inch fire hose
3 - 50ft. Sections of Hy Combat 1 2/3 inch fire hose
2 - 50ft. Sections of Cotton 2 ½ inch fire hose
4 - Computer Key Boards
2 - Computer Monitors
1 - Dot Matrix Printer

Utility Maintenance Department

1 1993 Ford F-350 Crew cab utility Truck – 7.3 liter diesel engine
1 1989 Ingersoll Rand 185 portable diesel air compressor
1 1992 Ford F-150 Pickup
3 Makasa Dirt Tamping Machines
1 2" Ditch Witch – Pierce Arrow Air Powered Underground Punch

Purchasing Department

1	1987 Chevrolet Van	Lic#13662-R	1GNDM1529HB232137
1	Okidata printer	Property # E-2675	SN 104C0306454
1	Computer monitor	Property #E-2880	SN HD80J6017259
1	Computer monitor	Property # E-2897	SN (not available)
1	BackUPS-300	Not assigned	SN PB9821602225
2	Keyboard/mouse	Not assigned	
6	Brass cleaner	001-032	
20	Protective shield	001-078	
2	Contact cleaner	015-055	
4	Plastic-safe cleaner	015-056	
19	Air freshener	001-036	
17	Liquid drain opener	001-055	
2	Air filter	014-074	
1	Tire chains	N/A	
4	Police evidence form	010-050	
2	Printout binder	011-072	
85	Sanicare spray	001-037	
26	Cinnamon air spray	001-036	
17	Arrive cleaner	001-019	
10	Swell Smell	001-044	
21	Degreaser	014-039	
26	Dry air spray	001-035	
5	Light mercury vapor	003-003	

Qty	**Item Description**	Inventory Item Number (if applicable)
28	Atomizer refill	001-043
29	Carpet spotter	001-010
2	2-hole Punch	011-354

6	30-minute cassette	Not in inventory
10	3M mini-cartridge	Not in inventory
19	Visual enhancement	001-008

PUBLIC COMMENT PERIOD – HOUSE BILL 635: There were no unscheduled citizens present for this meeting.

CONSIDER REQUEST BY HOSPICE: Mr. Mark Wise, Executive Director of Hospice, appeared before Council with an update on Hospice's Capital Campaign and building project for their planned facility on Airport Road. Mr. Wise advised that Hospice still needs funds for this building project.

Mr. Wise advised that Hospice appreciates the City Council's support and previous generous pledge of $30,000, however, Hospice is now requesting that the City waive the water and sewer connection fees for the new facility, or make a donation to Hospice to cover the water and sewer connection fees.

The City Manager advised that the total water and sewer connection fees for a 1" meter comes to $7,610, $2,000 of which is tap fees and $5,610 of which is Cost Recovery Charge.

Councilman Owenby asked if the Hospice contractor would be willing to make this connection. Mr. Wise stated that he could ask whether the contractor could make the water and sewer connection.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted for the City to immediately contribute $7,610 to Hospice on the condition that the project contractor makes the water and sewer connection for the facility, to alleviate the need for City crews to do this work.

Mr. Wise also advised of a naming opportunity for the City for the $37,610 pledge made for the facility. After hearing options, Council agreed by consensus to select the Volunteer Area in the new building for the City's naming opportunity. Councilman Little suggested that the plaque list that the donation was made by the "Citizens of the City of Marion." Council agreed by consensus to this wording.

CONSIDER REQUEST BY LANDMARK ASSET SERVICES: Mr. Bill Scantland, of Landmark Asset Services, Inc., presented a request for City Council to approve a release deed for approximately ¼ of an acre that will be transferred from Spaulding Woods I (SW I) to Spaulding Woods II (SW II) on Spaulding Road. SW II is a separate development, with different property lines than SW I, due to different financing arrangements. Mr. Scantland indicated that SW II needs the property shown on a map he presented to be transferred from SW I, due to SW II not having the necessary 35 feet of public road frontage required in the City's Zoning Ordinance.

Mia Lorenz, City Attorney, was present for this meeting and advised of various issues that Council would want to consider regarding this request, such as whether the remaining property would be sufficiently collateralized to protect the City's third mortgage in the event of a future foreclosure by SW I.

Mayor Clark asked if the 1/4 of an acre to be transferred included any improvements. Mr. Scantland stated that the property to be transferred contained no buildings, parking areas or other space used to serve SW I.

Mayor Clark noted that the funding for SW I had included a Community Development Block Grant (CDBG) obtained by the City. He stressed the need for the City to determine if approval of the release deed would violate any CDBG provisions, as he was a member of the North Carolina Community Development Council that oversees CDBG funds and he therefore fully intended to follow all applicable laws and grant rules.

The City Manager stated that he had not spoken to the North Carolina Division of Community Assistance, the State agency that administers CDBG funds, but that he could seek a written opinion.

After discussion, Council agreed that compliance with CDBG rules was their main concern with this request and that a decision to approve the release deed could be made after a written opinion is received from the State.

Mayor Clark stated to Mr. Scantland that the City needed and would expect in the future to see different patterns of residential development, other than multi-family housing. Mayor Clark advised that the City had experienced a proliferation of multi-family housing over the past few years and that such development placed a strain on law enforcement resources while not creating a good environment for families.

It was the consensus of Council to hold this item until the next meeting, to allow the City Manager to obtain a written opinion from the State regarding the compliance of approval of the requested release deed with CDBG rules.

ADOPT ORDINANCE – FORT STREET PARKING: The City Manager advised that the Street Committee met on August 19th to review the request of Mr. Chad Toney for additional parking on the south side of Fort Street between Main and Garden Streets. The Street Committee recommended that parking be prohibited on the south side of Fort Street between Main and Garden and in areas on the north side of the block between Main Street and the Bank of America Driveway and near the intersection with Garden Street. The City Manager stated that the Street Committee further recommended that the marked parking spaces, where allowed on the north side of the block, be designated as two hour parking spaces, like all other marked parking spaces in Downtown.

Mr. Chad Toney was present for this meeting and advised that he understood the need to restrict parking on the south side of Fort Street, but that he had concerns with the proposed two hour parking limit on the north side of the street.

Mayor Clark advised that Mr. Toney could seek to purchase the grassy lot on Fort Street below his property. Mr. Toney advised that he had made an offer on the lot: however, the offer was not accepted.

A discussion followed.

Mayor Clark asked if Council did nothing regarding this proposed parking issue, would there be a problem? The City Manager suggested that there was a need to restrict parking in certain places in the block.

Councilman Owenby advised that he and Councilman Martin both looked at this issue, but that he was not comfortable speaking for Councilman Martin.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson those members of Council present voted to table this item and refer it back to the Street Committee for review and recommendation at the next meeting.

DISCUSS WASTEWATER TREATMENT PLANT IMPROVEMENTS: The City Manager advised that, as reported two weeks ago, the N.C. Division of Water Quality is expecting the City to correct problems at both of the City's wastewater plants. The problem at the Catawba River plant is grease, which will be corrected for the short term with the construction of equalization basins as part of the EPA grant, once go ahead is received from the Federal Government. The main issue at the Corpening Creek Plant appears to be inflow and infiltration (I&I), causing the plant to receive extremely heavy flow during heavy rainfall events.

The City Manager stated that he and Wastewater Treatment Superintendent Larry Carver have recently met with Danny Bridges and Forrest Westall of McGill Associates to discuss the problem with both wastewater plants and to develop a strategy to take to the State for a meeting within the next month, since the Regional Supervisor for the North Carolina Division of Water Quality has requested that the City present a strategy for correcting problems at both wastewater plants. The City Manager proposed, in the short term, isolating sub-basins of the City's wastewater system suspected to have I&I problems (Cross Mill, East Marion and Clinchfield) and to start a concentrated program of flow monitoring and smoke testing. The cost of studying these three areas is estimated to be $20,000. This program could be supplemented by a system wide I&I study, through a Clean Water Management Trust Fund (CWMTF) grant application in January. If I&I problems are found, the City will need to repair the appropriate sections of wastewater lines and incur any necessary costs.

The City Manager further stated that the best bet for the City may be entering into a Special Order of Consent (SOC) with the State whereby we would receive relaxed discharge limits in exchange for solving the problems at both plants within a specified period of time (18-24 months). The situation is more critical at Corpening Creek, since a plant of this size attracts the attention of EPA, unlike the smaller Catawba Plant. The City Manager stated that McGill's assistance with the SOC process could cost $6,000-$10,000. The City Manager further advised that, recognizing that Corpening Creek does not operate at the efficiency it once did, and that repairs and upgrades will be needed at some point in the next few years, Danny Bridges of McGill Associates recommends a full evaluation of the Corpening Creek Plant. The City Manager stated that some of this evaluation could be done for the SOC process; however, the full scale plant evaluation could cost $30,000. Therefore, the City Manager recommended doing only the portion of the Corpening Creek plant evaluation needed to satisfy the State and then budgeting for the full plant evaluation in the 2006-07 budget. The City Manager stated that he does not recommend this evaluation as part of a possible agreement/SOC with the State, since the City could be binding itself to repairs/upgrades at Corpening Creek costing hundreds of thousands of dollars or more.

In regards to the Catawba Plant, the City Manager stated that the City could focus on the planned plant improvements as part of the EPA grant received that will allow the addition of equalization tanks that can better handle the high amounts of grease coming into the Catawba Plant.

Mayor Clark and Council members noted that the City had an aging wastewater system and no choice but to abide by State and Federal rules. Mayor Clark noted that the City had been on the EPA watch list for several years, since being one of only about five cities in North Carolina selected for evaluation under the MOM program years ago.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to authorize the City Manager to spend money to make necessary improvements to the City's wastewater facilities or to conduct necessary studies or evaluations to prevent further wastewater violations and to satisfy the North Carolina Division of Water Quality and the EPA.

Mr. Larry Carver, Wastewater Treatment Superintendent, was present for this meeting and advised of specific problems being experienced at both wastewater plants. He also noted that a transfer switch has been ordered and should be installed at the Corpening Creek Wastewater Plant in about three weeks, to allow the elimination of the third shift at that facility.

Councilman Owenby advised that it is his understanding that Subway and Domino's at Marion City Square do not have a grease trap. He stated that both establishments should be required to install a grease trap, like all other food service establishments.

APPROVE SUBDIVISION PLAT/VARIANCE – CITY WATER PLANT PROPERTY: The City Manager advised that several months ago Council agreed to sell a section of property at the Water Plant to Ms. Annette Bryant. A subdivision plat of this property was prepared by Larry Greene and presented to Council. The survey removes 3.99 acres from a corner of the Water Plant Property along Waycross Drive off of Roby Conley Road.

In order to approve the plat and comply with our Subdivision Ordinance, the City Manager stated that Council needs to approve the preliminary and final subdivision plat, to approve a variance from the lot frontage requirement to allow a lot to be created that does not have at least 35 feet of frontage on a publicly dedicated or maintained street and also to approve any and all other variances needed for the subdivision plat, as presented, to comply with the City's Subdivision Ordinance.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the preliminary and final subdivision plat, to approve a variance from the lot frontage requirement to allow a lot to be created that does not have at least 35 feet of frontage on a publicly dedicated or maintained street and also to approve any and all other variances needed for the subdivision plat, as presented, to comply with the City's Subdivision Ordinance.

DILAPIDATED HOUSING UPDATE – FIRE CHIEF JIM NEAL: Fire Chief Jim Neal presented an update on dilapidated housing activities in the City since 2002, as follows:

1. **45 Circle Street, Clinchfield, - Demolished by the property owner on September 2, 2002.**

2. **115 Wilhemenia Street – House is in very poor condition and is completely covered by kudzu. Some complaints have been received. Burned by Fire College on March 16, 2003.**

3. **East Court Street – Berryhill House – Burned in 2002. Burned again and demolished by owner on February 21, 2005.**

4. **South Main Street - Caviness Building – Back of building was falling in. This structure is separate from front of building that was renovated in 2002. Repaired by owner in 2003.**

5. **Wilhemenia Street – Old house torn down by City in 2002.**

6. **Wilhemenia Street – Old house torn down by City in 2002.**

7. Mitchell Street – Old house burned by Fire College on March 29, 2003.

8. 222 Park Avenue – House torn down on May 27, 2003.

9. 326 Tate Street – House is in visible location in poor condition. House is ready to demolish. Doug McCormick should demolish by September.

10. House on Grayson Street Extension – House in very deteriorated state. House is ready to demolish. Doug McCormick should demolish by September.

11. 830 Ridge Street, East Marion – House is falling in and one wall may be a hazard to an adjoining house. Due to space constraints, house would have to be taken down by hand. Jim Neal has mailed notices and time has expired for the house to be demolished. Council will need to adopt an ordinance to authorize demolition of this house. The target date for demolition would be December, 2005.

12. 140 Lincoln Avenue – Burned in 2004 – Complaints received from neighbors. Condemnation proceedings to begin in August 2005. Hearing on September 15, 2005. Seek to have demolished by end of December 2005.

13. 238 Park Avenue – House is boarded up, partially burned and in a deteriorated state. A notice has been sent to the property owner and a hearing has been held. Jim must now issue an order to repair or demolish this house. Seek to demolish by the December 2005.

14. 201 Morehead Road – House is open, in poor condition, and is serving as a hangout for drug activity. This house, along with two others on Georgia Avenue, was included in a CDBG Grant application to be demolished. Condemnation proceeding to begin in September 2005.

15. California Avenue (large house near Sugar Hill Road) – Roof is caving in, house is in very poor condition. Condemnation proceedings to begin by September 2005.

16. Corner of 4th and Morehead – House is in poor condition and is part of Frady junkyard. Condemnation proceedings to begin by September 2005.

17. 207 Grayson Street – House is off the street some distance, but is deteriorated. Condemnation proceedings to begin by September 2005.

18. California Avenue (small house near Winningham Village/California Arms) – House is in a deteriorated state and is vacant. Condemnation proceedings to begin by September 2005.

19. High Street – House is boarded up, has been occupied in past few years. This house is a good candidate for burning. Jim Neal will explore the possibility of burning this house.

20. 228 Park Avenue – House has been occupied in recent past. This house is being foreclosed on, which will allow notices to be sent to the new owner, if the City does not end up with the property.

21. 234 Park Avenue – House is boarded up, and is currently occupied. A notice has been sent to the property owner and a hearing has been held. Jim must now issue an order to repair this house. Jim and Jay do not feel that the house needs to be demolished, just repaired. Seek to have repaired by December 2005.

22. East Court Street/Baldwin Avenue – The house that recently burned behind Marion Oil (accessed from Baldwin Avenue) will need to be demolished. This house is not very visible, so it may be a lower priority.

23. Blue Ridge Street – House partially burned in 2004. Being repaired by property owner.

<u>Summary</u>

23 total structures	
Number Removed	7 (Mitchell, 222 Park, 45 Circle St., 3 on Wilhemenia, East Court St.)
Number Repaired	1 (Caviness-South Main Street)

To be demolished by City in September	**3 (Tate St.,Grayson St. Extension)**
To be demolished by the City by December 2005	**2 (238 Park, 140 Lincoln, Ridge St.)**
To be repaired by owner by Fall 2005	**1 (234 Park)**
Under foreclosure proceedings to precede demolition	**1 (228 Park)**
Notices to be sent out by September 30, 2005	**5 (2 on California, 1 on Grayson, 2 on Morehead)**
Burning to be explored	**1 (High Street)**
Future Action	**1 (Baldwin Ave./East Court St.)**
Being Repaired by Owner	**1 (Blue Ridge St.)**

The City Manager stated that staff would continue to seek to make progress with this list, to reduce the backlog of houses within the City that need to be condemned and demolished. The Mayor and Council members advised of other houses in East Marion and on North Main Street next to the Berryhill property that need to be examined.

SELECT VOTING DELEGATES – NLC CONFERENCE: The City Manager advised that the National League of Cities Conference will be held in December in Charlotte. Council will need to select a voting delegate and alternate for this conference.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to appoint Mayor Clark as the City's Voting Delegate and Councilman Little as the City's Alternate Voting Delegate for this conference.

REVIEW PROPOSED CITY EMERGENCY OPERATIONS PLAN: The City Manager advised that Council had discussed the draft City Emergency Operations Plan at the September 6 Council meeting and asked that the Emergency Plan be placed back on this agenda with a slight modification to list major prison fires as a potential disaster.

The City Manager stated that the Emergency Plan had been prepared by Fire Chief Neal and himself and been reviewed by all City departments. It includes sections on establishing an Emergency Operating Center (EOC) at the Police Department, general emergency response in relations to contacts and setting up the EOC, a description of City emergency services and support agencies and their respective duties and response priorities a warning and alert list, a listing of media outlets for emergency broadcasts and specific disaster procedures.

Mayor Clark stated that he had reviewed the Plan and found it to be very detailed, appropriately setting out the role of various City departments, but that a section may be needed outlining the role of Mayor and Council in making necessary decisions during a disaster.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adopt the City Emergency Operations Plan as follows:

CITY OF MARION EMERGENCY OPERATIONS PLAN

This Emergency Operations Plan is designed to provide a rapid and professional response to unusual occurrences or emergencies which would require the City of Marion to react with immediate readiness. The Plan is designed to either stand alone when the City is the primary jurisdiction involved, or to be interfaced with other agencies responding to the same incident.

The Plan is intended to provide precise and accurate information to the public and to provide the best coordinated response and communication possible to those municipal participants involved.

This Plan is consistent with the McDowell County Emergency Operating Plan; however the City Emergency Operations Plan shall take precedence in regards to emergency situations taking place within the City of Marion.

Adopted by City Council this the 20th day of September, 2005.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

INTRODUCTION

EMERGENCY OPERATIONS PLAN
CITY OF MARION, NORTH CAROLINA

Emergency Management and Disaster Relief Plan:

Purpose: The purpose of this plan is to provide a plan of action to meet the need of handling emergencies requiring the coordinated efforts of the city departments, other government agencies, and support organizations to quickly and effectively deploy personnel, equipment, and resources to minimize the effects of a disaster and to provide assistance to the citizens of the City of Marion.

Types of Potential Disaster:

As a result of its geographic location, topography, air traffic systems, and growing community, the City of Marion can assume itself vulnerable to the following types of natural and man-made disasters.

A. Tornadoes
B. Flooding
C. Ice/Snow
D. High Winds
E. Earthquakes
F. Hazardous Materials and Transportation Accidents
G. Highway Accidents
H. Utility Problems
   1. Water Contamination
   2. Power Interruptions
   3. Communication Interruptions
I. Nuclear Accidents
   1. Warfare
   2. Power and other Commercial
J. Chemical Spills
   1. Farm Supplies
   2. Water Treatment
   3. Light Industry
K. Major Fires
   1. Commercial Downtown Area
   2. Large Manufacturing Plants
   3. Bulk Storage (Flammable Liquids)
   4. Prisons
L. Terrorist Activities
   1. Bomb
   2. Chemical/Biological
   3. Radiological
M. Civil Disturbances
N. Others

In the event of any of the above disasters occurring in the City of Marion or surrounding areas, the city can expect to face the need for restoring order, repairing the City's infrastructure, major cleanup, and assisting with the provisions of shelter, food for a large number of evacuees or casualties. The City can be isolated for an extended period of time in the event of a nuclear accident or attack. Parts or all of the City can be isolated for several days as a result of disasters, such as wind/ice/ snow storms, earthquakes, and major fires or explosions.

CITY OF MARION

EMERGENCY OPERATIONS PLAN

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PART I — MARION EMERGENCY OPERATING CENTER (EOC)
- EMERGENCY OPERATION RESPONSE

PART II — MARION EMERGENCY SERIVES
- POLICE DEPARTMENT
- FIRE DEPARTMENT
- PUBLIC WORKS/UTILITIES DEPARTMENTS

PART III — SUPPORT SERVICES
- SUPPORT SERVICES IN DISASTER OPERATIONS
- MCDOWELL RESCUE SQUAD/EMS
- CITIZENS EMERGENCY RESPONSE TEAM (CERT)
- MCDOWELL COUNTY SCHOOLS
- AMERICAN RED CROSS
- DUKE POWER COMPANY
- VERIZON
- MCDOWELL HOSPITAL

PART IV — WARNING AND ALERT LIST
- EMERGENCY BROADCASTS
- DISASTER PREPAREDNESS PROCEDURES

THE EMERGENCY OPERATING CENTER

PART I

PART I

MARION EMERGENCY OPERATING CENTER

(EOC)

STATEMENT:

The Marion Emergency Operating Center (EOC) is the Key Location from which coordination of responses to and the recovery from a disaster condition originate.

UNDERSTANDINGS:

It should be understood that the Marion EOC is the emergency operational command headquarters during disaster mitigation. The flow of information both into and out of the EOC during emergency operations is critical to the coordination of the total response effort. The Chief Administrative Officer (the City Manager) is the responsible coordinating agent. The Department Heads (Emergency Staff) command and control field operations.

The Marion EOC will be located at the Police Department in an area protected from the potentials of flooding, high winds, etc. The EOC will be provided with emergency generator power and life support facilities. Telephone and radio communications equipment are an integral part of the EOC capability. The EOC may well serve as a multipurpose, dual-use facility for local government and as a back-up for the McDowell County EOC.

Administratively, the EOC will house key emergency documents including City maps, charts, resources, files, and copies of the Marion Disaster Preparedness Plan (DPP).

The Marion EOC will also be the Key Communications Center in Marion. The city provides radio base station units that are maintained and operational for Police, Fire, Public Works and other City operations. In the event of disaster, it will be essential that the Marion EOC be able to communicate by radio with the County EOC, the sheriff's department, and the county fire radio and Highway Patrol Dispatch Centers. It will also be necessary for the Marion EOC to maintain radio contact with local emergency service units at work in the field.

Alerting: SOP's for warning and/or mobilizing the City Manager and the department heads should be documented in the Marion DPP. The City dispatchers will be assigned the responsibility of alerting key personnel.

Mobilization: The EOC staff will immediately follow notification of a disaster occurrence. EOC operational *readiness* has been reached when:

1. The EOC is activated and operational.
2. The City Manager and department heads are mobilized.
3. Reference materials (maps, SOPs, files) are being reviewed.

EOC operational *response* is in effect when:

1. Reconnaissance by police & fire units have been initiated.
2. Emergency service teams and equipment are at the scene.
3. Disaster missions have been assigned to all department heads.

EOC OPERATIONS:

1. The chief administrative office (City Manager) is responsible for managing response and recovery missions.
2. The Marion department heads are responsible for the Command and Control of emergency teams and/or support units in the field.
3. The department heads in the EOC must receive a continuous flow of information form the disaster scene in order to make valid judgments and decisions
4. Major problems incoming from the disaster scene will be visually posted in the EOC for all department heads to view.
5. Decisions made in the EOC will need to be logged down for action or reference.
6. Decisions made by department heads in the EOC will need to be transmitted to operational units at the disaster scene.
7. All personnel (both management and workers in the field) who will be under pressure of an emergency need to be relieved every 8 to 12 hours.

8. A Declaration of a State of Emergency may need to be proclaimed by the Mayor and/or City Council once the Emergency condition is known to affect most (or all) of the City.
9. EOC staff will be required to sign in and sign out when entering or leaving the EOC.
10. The City Manager shall serve as Public Information Officer, or designate appropriate staff to communicate with the media. This duty shall include sending news releases and communicating with the public, news media and communicating needs for State assistance to the McDowell County Emergency Management Director. The City Manager shall consult with department heads and the Mayor and City Council to determine when and if press conferences are to be held and who will address the media and public at the press conference.

PART I

THE EMERGENCY OPERATIONS CENTER RESPONSE

MISSION(S):

PRIMARY: Public Warning & Disaster Coordination
SECONDARY: Disaster Mitigation & Recovery

LEADERSHIP:

Chief Administrative Officer: Bob Boyette, City Manager

Disaster Coordinators:
Mika Elliott, Police Chief
Jim Neal, Fire Chief
Roger Estes, Street Superintendent
Steve Basney, Water Superintendent
Steve Miller, Water Plant Superintendent
Larry Carver, Wastewater Treatment Superintendent
Dean Ollis, Sanitation Supervisor
Glen Sherlin, Public Utilities/Projects Director
David Cable, Rescue Squad Chief
Carroll Hemphill, County Emergency Management Director

Finance Director: Harriett Thomas

ALERTING & MOBILIZATION

Alerting: Radio, TV, Police PA Systems, Siren
Who Alerts Leadership: City Dispatchers, Leadership Itself
Mobilization: Police Department Conference Room

EMERGENCY RESPONSE:

Task #01: Warn the Public
Task #02: Mobilize EOC Staff
Task #03: Insure operational readiness of EOC
Task #04: Dispatch police & fire investigation units
Task #05: Initiate community disaster scene
Task #06: Locate perimeters of disaster scene
Task #07: Identify routes of Ingress and Egress
Task #08: Coordinate emergency services at the scene
Task #09: Establish Key Emergency Installation, as required
Task #10: Insure effective disaster scene management by EOC staff
Task #11: Insure full use of community resources
Task #12: Inform public of disaster operations
Task #13: Announce a "Declaration of State of Emergency" by Mayor and/or City Council, if required
Task #14: Prepare with EOC Staff Recovery Plans

EMERGENCY SERVICES

PART II

PART II

MARION EMERGENCY SERVICES

STATEMENT:

Marion Emergency Services include – Police, Fire, and Public Works/Utilities Departments.

UNDERSTANDING:

It should be understood that the emergency services (teams, equipment, and manpower) will automatically respond to a disaster scene immediately upon notification that an emergency condition exists in the City.

The department heads of the Marion Emergency Services Units are key staff officers on the Chief Administrative Officer's (City Manager's) Emergency Operating Center Staff. The City Manager is responsible for coordination of disaster operations with department heads in the EOC during emergency conditions.

The Police Department and Fire Department will take the responsibility of establishing radio communications between the EOC and the disaster scene and will in addition insure the capability of communicating with the EOC during emergency conditions.

The call up of mutual aid of any kind by a department head or an emergency service unit will be done with the clear knowledge and understanding of the Chief Administrative Officer (City Manager). Mutual aid teams, equipment and manpower will be directed to a staging area and will be re-assigned to disaster duty upon orders of the City Manager or his designee.

Finally, the City Manager, through the department heads, will have full responsibility for commitment, command and control of service teams and equipment at work at the disaster scene, including personnel, rest periods, feeding and replacement workers in order to insure maximum effective response to the emergency situation.

PART II

POLCE DEPARTMENT

MISSION(S):

PRIMARY: Reconnaissance & Traffic/Crowd Control
SECONDARY: Security of key locations

LEADERSHHIP:

Police Chief: Mika Elliott
Patrol Lieutenant: Scott Spratt

ALERTING & MOBILIZATION: Police radio & telephone

Alerting: Police radio & telephone
Mobilization: To EOC

EMERGENCY RESPONSE:

Task #01: Warn public
Task #02: Mobilize EOC Staff
Task #03: Insure Operational readiness of EOC
Task #04: Dispatch police & fire inspection units
Task #05: Initiate Community Disaster Plan
Task #06: Locate perimeters of disaster scene
Task #07: Identify routes of Ingress & Egress
Task #08: Coordinate emergency services at scene
Task #09: Establish key emergency location
Task #10: Insure effective disaster scene management by EOC staff
Task #11: Insure full use of community resources
Task #12: Inform the public of disaster operations
Task #13: Announce a "Declaration of State of Emergency" by Mayor and/or City Council, if required

Task #14: Prepare with EOC recovery plans

RESOURCES:

Manpower: 21 sworn full-time personnel, 5 non-sworn full-time personnel, 5 reserve personnel
Equipment: 16 patrol vehicles 3 enclosed trailer 1 light tower/generator
Communications: 16 mobile radios 29 portable radios, 1 base station

PART II

FIRE DEPARTMENT

MISSION(S):
PRIMARY: Fire/Hazardous Material containment/Rescue
SECONDARY: Assist in Evacuations, Traffic Control, EMS

LEADERSHIP:
Fire Chief: Jim Neal
Assistant Chief: Charles Presnell

Alerting: Pager and/or radio

Mobilization: To fire station or EOC as requested by City Manager

EMERGENCY RESPONSE:
Task #01: Reconnaissance of disaster scene
Task #02: Rescue
Task #03: Fire extinguishment
Task #04: Identification of hazardous materials
Task #05: Assist in evacuation operations
Task #06: Maintain working liaisons with outside agencies
Task #07: Coordinate with City Manager need for a Declaration of State of Emergency

SERVICE RESOURCES:

Manpower: 28 volunteer and 5 paid firefighters

Equipment: 2 Pumpers, 1 pumper-tanker, 1 tanker, 1 85' aerial, 1 brush unit (4 x 4), 1 support unit, 1 chief's car

Communication: 11 Handheld radios, 2 base stations, 8 mobile radios All multi-channel capable

PART II

PUBLIC WORKS/UTILITIES DEPARTMENTS

MISSION(S):
PRIMARY: Debris Clearance & Restoration of roadways

SECONDARY: Emergency vehicle maintenance and maintenance of utilities such as drinking water and waste treatment facilities

LEADERSHIP:

Street Superintendent:	Roger Estes
Water Superintendent:	Steve Basney
Water Plant Superintendent:	Steve Miller
Wastewater Treatment Superintendent:	Larry Carver
Sanitation Supervisor:	Dean Ollis
Public Utilities/Projects Director:	Glen Sherlin

ALERTING & MOBILIZATION:

Alerting Telephone or pager by Police Department

Mobilization: EOC, or Public Works facility, as directed by City Manager

EMERGENCY RESPONSE:

Task #01: Investigation of disaster scene
Task #02: Locate blocked roadways, damaged bridges etc.
Task #03: Open roadways, damaged bridges, etc.
Task #04: Close roadways & bridges deemed unsafe or that lead into disaster scene.
Task #05: Rescue disabled emergency service vehicles
Task: #06: Maintain a liaison with area construction agencies
Task #07: Provide City with portable drinking water, if required

SERVICE RESOURCES: (Manpower, Equipment, Communications)

Manpower: 26 skilled, including 4 backhoe operators and 3 mechanics

Equipment: 4 backhoes, 2 eight ton dump trucks, 2 one ton dump trucks, 1 flat bed dump truck, 2 tractors, 2 chippers, 2 air compressors, 3 2000 watt portable generators, 1 9000 watt portable generator/welder, 3 chain saws, 3 utility saws, 1 6" water pump, 1 gas monitor, 1 tripod and harness, 1 trench box, 3 sets of portable lights, 1 nine ton equipment trailer, 2 sets of cutting torches

Communications: 8 handheld radios

SUPPORT SERVICES

PART III

PART III

SUPPORT SERVICES IN DISASTER OPERATIONS

STATEMENT:

Marion Support Services include: Schools, Churches, the Citizens Emergency Response Team (CERT), the Red Cross, McDowell County EMS, McDowell County Rescue Squad, Duke Power Company, Verizon and The McDowell Hospital.

UDNERSTANDINGS:

It should be understood that the Marion Support will provide "support: or "back-up" for emergency teams operating in the field, or provide primary response in their areas of expertise. Primarily the Support Services will be operating out of installations like schools, churches, or municipal buildings or their own quarters.

The chiefs and directors of the Marion Support Services are key staff officers on the Emergency Operating Center Staff. Contact between the Chief or director of support service agencies or his/her deputy will be maintained as needed by the Marion EOC or through McDowell County Emergency Management.

McDowell County Emergency Management is responsible for the preparation and management of a Reception Center (generally a school or church) for the purpose of sheltering evacuees or a secondary aid station for the handling of casualties requiring medical aid or treatment.

It should be understood that the Chiefs or directors of support service agencies will need to work closely as a team with other members of the City's EOC staff in order to provide adequate "support" during disaster operations.

The Chief or director of support service agencies will need to be available for contact by the Marion EOC or through McDowell County Emergency Management.

NOTE : The City Emergency Operating Plan shall take precedence in regards to emergency situations taking place within the City of Marion.

PART III

MCDOWELL RESCUE SQUAD/EMS

MISSION(S)

PRIMARY: Search, Rescue, and Transportation of Injured.
SECONDARY: Evacuation Operations and EMS related.

LEADERSHIP:

EMS/Emergency Management Director: Carroll Hemphill
Rescue Squad Chief: David Cable

ALERTING & MOBILIZATION:

Alerting: Paging System
Mobilization: To EMS and Rescue Squad Buildings, respectively, with available contact by EOC

EMERGENCY RESPONSE:

Task #01: Establish and maintain contact with the EOC.
Task #02: Investigation of Disaster Scene.
Task #03: Rescue and Transport of Injured.
Task #04: Provide First Aid.
Task #05: Assist in Evacuation Operations.
Task #06: Maintain Working Liaison with Outside Agencies.
Task #07: Will be the ultimate authority in the field for medical treatment and evaluation.

SERVICE RESOURCES:

Manpower: 39 EMS, 30 Rescue Squad

Equipment: 8 Ambulances (EMS), 2 Ambulances, 2 Crash Trucks and 3 Boats (Rescue Squad)

Communications: 52 handheld radios, one base station for emergency communications

PART III

CITIZENS EMERGENCY RESPONSE TEAM (CERT)

MISSION(S)

PRIMARY: Search and Rescue and Traffic Control.
SECONDARY: Evacuation Operations and other assigned duties.

LEADERSHIP:

Police Chief: Mika Elliott
Lieutenant: Scott Spratt

ALERTING & MOBILIZATION:

Alerting: Paging System, Telephone
Mobilization: To EOC, or location directed by Police Chief

EMERGENCY RESPONSE:

Task #01: Establish and maintain contact with the EOC.
Task #02: Investigation of Disaster Scene.
Task #03: Search and Rescue.
Task #04: Traffic Control.
Task #05: Any Other Assigned Duties.

SERVICE RESOURCES:

Manpower: 19 active members

Equipment: 2 enclosed trailers with hand tools, tarps, cleaning supplies, gloves, fire extinguishers

Communications: Through Police Department

PART III

MCDOWELL COUNTY SCHOOLS

MISSION(S):

PRIMARY: Shelter and/or evacuation of school population
SECONDARY: Facilities & Equipment as reception center

LEADERSHIP:

Superintendent: Dr. Ira Trollinger

ALERTING & MOBILIZATION:

Alerting: Telephone from police dispatch or County Emergency Management
Mobilization: Available for contact by EOC or through County Emergency Management

EMERGENCY RESPONSE:

Task #01: Protection (shelter or evacuation) of school population
Task #02: Prepare the school facility for use as a community reception center.
Task #03: Provide initial manpower (staffing) supervision, maintenance, feeding & housing.
Task #04: Coordinate with proper organizations for extended mass feeding and personal services to evacuees.
Task #05: Insure an active communications link between the school and EOC.

PART III

AMERICAN RED CROSS

MISSON(S):

PRIMARY: Shelter and feeding of evacuees or stranded motorists
SECONDARY: Support and feeding of emergency personnel.

LEADERSHIP:

Executive Secretary: Sidney Wilson

ALERTING & MOBILIZATION:

Alerting: Telephone from EOC or through County Emergency Management
Mobilization: Available for contact by EOC or through County Emergency Management

EMERGENCY RESPONSE:

Task #01: Protection & shelter of evacuees and stranded motorist

Task #02: Feeding emergency workers
Task #03: Manning & supervising evacuation and reception centers
Task #04: Insure an active communication link between school, Red Cross and EOC.

AMERICAN RED CROSS RESOURCES AVAILABLE:

Manpower: Local Red Cross volunteers and if needed volunteers from the state or region.
Equipment: Two disaster trailers available locally plus many more available from the state or national level.

PART III

DUKE POWER

MISSION:

PRIMARY: Restoration of electrical service

LEADERSHIP:

All hours		1-800-769-3766
Special municipal emergencies		1-800-729-7475

ALERTING & MOBILIZATION:

Alerting: By telephone for the EOC

Mobilization: A representative needed available for contact by EOC

EMERGENCY RESPONSE:

Task #01: Restoration of electrical power to EOC
Task #02: Restoration of power to water and wastewater treatment facilities
Task #03: Restoration of electrical power to medical facilities
Task #04: Restoration of power to City

DUKE POWER RESOURCES AVALIABLE LOCALLY:

Manpower: All crews available
Mutual Aid: Many crews available

SERVICE RESOURCES:

Equipment: Local, Regional and State resources are readily available.

PART III

VERIZON

MISSION:

PRIMARY: Emergency telephone capability in EOC
SECONDARY: Restoration of telephone service in city

LEADERSHIP:

Liaison: On call supervisor

ALERTING & MOBILIZATION:

Alerting: By telephone (land line or mobile) or police patrolman
Mobilization: A representative needed available for contact by EOC

EMERGENCY RESPONSE:

Task #01: Restoration of telephone service in the EOC
Task #02: Installation of emergency telephone service into field command post from EOC

Task #03: Restoration of telephone service to key locations, including water and wastewater treatment facilities and medical facilities
Task #04: Restoration of telephone service in the City

VERIZON TELEPHONE RESOURCES AVAIALBLE LOCALLY:

Manpower: All crews available
Mutual Aid: Many crews available

PART III

MCDOWELL HOSPITAL

MISSION:
PRIMARY: Medical care for injured persons

LEADERSHIP: CEO, or On-site Leadership 659-5000
ALERTING & MOBILIZATION:

Alerting: By telephone for the EOC

Mobilization: A representative needed available for contact by EOC

EMERGENCY RESPONSE:
Task #01: Medical care for injured persons

RESOURCES AVALIABLE LOCALLY:

Full service hospital with trained staff

OTHER RESOURCES:

Additional resources available through affiliation with Mission Hospitals.

WARNING AND ALERT LIST

PART IV

PART IV

WARNING AND ALERT LIST

City Administration

Bob Boyette	City Manager	(H) 659-9988 (M) 442-6977
Harriett Thomas	Finance Director	(H) 652-5516
Debi Sherlin	Secretary to City Manager	(H) 652-7297
Jay Suttles	Building Inspector	(H) 652-4471

Additional Staff shall be contacted at discretion of department head or his or her designee.

Public Works/Utilities Department

Roger Estes	Street Superintendent	(H) 738-4221 (M) 442-4580
Steve Basney	Water Superintendent	(H) 738-4610 (M) 442-4581
Steve Miller	Water Plant Superintendent	(H) 652-4369 (M) 442-0762
Larry Carver	Wastewater Treatment Supt.	(H) 724-9675 (M) 925-0338
Glen Sherlin	Public Utilities/Projects Dir.	(H) 652-7297 (M) 442-6986
Dean Ollis	Sanitation Supervisor	(H) 659-2296
Tommy Wilson	Chief Fleet Mechanic	(H) 668-7355

Additional Staff shall be contacted at discretion of department head or his or her designee.

Police Department

Mika Elliott	Chief	(H) 684-9332 (M) 442-4942
Scott Spratt	Patrol Lieutenant	(H) 738-8558 (M) 442-0663

Additional Staff shall be contacted at discretion of department head or his or her designee.

Fire Department

Jim Neal	Chief	(H) 659-7028 (M) 442-7189
Charles Presnell	Assistant Chief	(H) 652-6201
Jim Morris	Captain	(H) 652-9075
Durwood Creson	Lieutenant	(H) 652-6209

Additional Staff shall be contacted at discretion of department head or his or her designee.

McDowell County Emergency Management

Carroll Hemphill	Director	(H) 738-4491 (B) 652-3982
Mavis Lavender	Admin. Assistant	

McDowell County Rescue Squad

David Cable	Chief	(H) 659-3312

PART IV

EMERGENCY BROADCASTS

News releases and public information about disaster related information and response will be provided by the City Manager or his designee to the following media outlets and sources:

City of Marion Website (www.marionnc.org)
The McDowell News
WBRM Radio
WLOS-TV
Other regional media outlets as warranted

PART IV

DISASTER PREPAREDNESS PROCEDURES

To ensure proper readiness for a disaster situation, the City will observe the following procedures:

MARION PREPAREDNESS PLAN

The most likely disasters to occur in the City of Marion with advance warning are a hurricane or ice storm. Therefore, this plan is prepared to cope with such.

Should a hurricane or Ice Storm strike McDowell County and the City of Marion, the Disaster Readiness plan would go into effect. This plan provides guidance to government officials, emergency services and other agencies within McDowell County, and would include the City of Marion. It includes the makeup and operation of the Emergency Operating Center (EOC, handling the media, requesting assistance from State and Federal agencies, etc.)

The City of Marion's plan is, therefore a supplement to the County plan and deals with the responsibilities of the various departments within the City should a disaster strike. The City's Manager also serves as the City's Emergency Management Coordinator.

I. Hurricane Procedures

<u>Steps the City's Emergency Management Coordinator Needs to Take at the Beginning of Each Hurricane Season (July)</u>

1. Review Disaster Plan for correctness.
2. Check all emergency equipment—generators, chain saws, etc. for operability.
3. Check operability of the City Emergency Operations Center (EOC) located in the Police Department including communications.

Alert (72 hours before strike)

1. Convene the EOC Staff to review procedures and reaffirm responsibilities of individuals.
2. Review evacuation zones, traffic control points and public shelter locations.
3. Provide awareness information to the public.
4. Advise the public, and particularly construction projects, to secure loose materials, and to not put out trash if strike is expected.
5. Charge up all spare batteries.
6. Begin running water plant up to 24 hours per day to fill up tanks

Hurricane Watch (48 hours prior to strike)

1. Staff and actuate the EOC in the Police Department.
2. Maintain an update on the storm status and forecast.
3. Test communication equipment and EOC procedures.
4. Inform all Departments to top off fuel tanks of City Vehicles and emergency stand-by tanks.
5. Begin Consideration of possible evacuation.
6. Coordinate planned steps with the County Emergency Management Coordinator, including having the City Manager or his designee maintain frequent communication with the County's EOC.
7. Coordinate with the County for fuel supply.
8. Identify all sources of ice in City.

Hurricane Warning (24 hours before the strike)

1. Fully activate the City EOC.
2. Determine if evacuation is desirable.
3. Check on "special needs" citizens for status.
4. Stock the City EOC with food, water, ice, and supplies.
5. Place City personnel on call or assigned duties as required.
6. Warn/Notify the public of the threat and any planned action, using PA systems in police cars if necessary.
7. Complete the payroll process.

Strike Expected

1. When a strike is expected, the Mayor and/or City Council shall have the authority to declare a State of Emergency.
2. In cases where power outages occur the Mayor and/or City Council shall have the authority to impose a curfew. This curfew will be enforced by the Police Department.
3. No City personnel shall be allowed outside of established shelters at winds at or above 40 mph sustained, except in emergency situations or as authorized by the department head.

Recovery from the Strike

1. Dispatch the damage assessment team as quickly as conditions permit.
2. Working with the EOC control group, determine the plan to establish access to hospital and other public service facilities.
3. Organize the search teams necessary to enter damaged homes and buildings to look for victims.
4. There will be four established one for each of the four quadrants of City. The first priority of each team will be to clear the roads. Each team will be provided with the following equipment if available: a backhoe (with a 4 in 1 bucket preferable), a large work truck, an electric lines specialist, wire cutters, chain saws, fuel mates, and police tape for marking which houses have been checked.
5. Implement water restrictions, if necessary.

Police Department Procedures

Alert (72 hours before strike)

1. Chief to attend meeting called by the Emergency Management Coordinator.
2. Chief to review evacuation zones, traffic control points, public shelters and evacuation times as needed.
3. Place police personnel on call.

Hurricane Watch (48 hours before strike)

1. Chief or his designee joins Emergency Operations Center at Police Department.
2. All vehicles will be checked and fueled.
3. Chief will file a request with the City EMC, if needed, for personnel assistance.

Hurricane Warning (24 hours before strike)

1. Continue presence at Police Department EOC.
2. Continue patrol of City.
3. Inform public of danger, using media sources in coordination with McDowell County Emergency Management.
4. Ensure all vehicles are fueled and operable.
5. Have all officers on call.

Strike Expected

1. After State of Emergency is declared, put police personnel on 12 hour shifts with at least two (2) officers on duty at all times.
2. If evacuation is ordered, set up road blocks as needed, other officers assist with evacuation. Notify residents using PA systems.
3. After evacuation, check City for remaining residents.
4. After the above are complete, all City functions will cease, and the Chief and one officer will set up an interim command post.
5. When winds reach 40 mph sustained, police personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.

Recovery

1. Police will assist in damage assessment and building searches as required.
2. Road blocks will be maintained until damage assessment teams declare the City safe to re-enter.
3. During re-entry, one officer will remain at the road block, if needed and others will return to City.
4. After re-entry, officers will resume patrol and check the City.

*** The Mayor and/or City Council have the authority to set curfew times when necessary due to any event, such as power outages or high winds, that may endanger citizens or his officers and rescue efforts.**

Fire Department Procedures

Alert (72 hours before strike)

1. Chief to attend meeting called by the Emergency Management Coordinator.
2. Plans are revised with personnel regarding housing of personnel during the emergency, placing of fire fighting equipment during the emergency.
3. Persons responsible for the above are designated.

Hurricane Watch (48 hours before strike)

1. All trucks and other equipment are refueled and checked for readiness.
2. The department will continue to answer calls coming in.
3. Personnel are placed on call, and if requested, will assist in warning the public.
4. Chief or his designee joins Emergency Operations Center at Police Department.

Hurricane Warning (24 hours before strike)

1. Maintain fire fighting readiness.
2. Continue to assist in warning the public.
3. Continue presence at Police Department EOC.

Strike Expected

1. Call in personnel needed and house them.
2. Procure supplies as required.
3. Fill all SCBA bottles.
4. When winds reach 40 mph sustained, fire personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.

After Strike

1. Inspect the City for potential fire or health hazards.
2. Assist in clearing streets.
3. Search and rescue.
4. Assist in marking street names and buildings.

Administrative/Finance Department Procedures

Alert (72 hours before strike)

1. Finance Director and other designated staff to attend meeting called by the Emergency Management Coordinator.
2. Organize materials that will be needed if a strike occurs, including documents necessary to keep track of expenses during the emergency.
3. Plan for proper retention of vital records, including backup of computer files.

Hurricane Watch (48 hours before strike)

1. Answer phones as usual, reporting to callers as directed by the City Manager.
2. The City Manager begins acting as the Public Information Officer (PIO).
3. Render assistance to other departments as required.

Hurricane Warning (24 hours before strike)

1. Make all equipment secure.
2. Assist in preparing in house personnel in the City Hall.
3. Answer phones.

Strike Expected

1. Make sure vital records are safe and secure.
2. Disperse as directed by the City Manager.
3. Issue disaster time sheets and expenditure requisitions to all departments.
4. Answer phones.
5. Stockpile maps and information for distribution to volunteers.
6. When winds reach 40 mph sustained, all City personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.

After Strike

1. Coordinate preliminary damage assessment and report results to County.
2. Issue applicable news releases and public information.
3. Answer phones at City Hall.
4. Communicate with Duke Power and other utilities and County.
5. Document and maintain records of all storm related expenditures for possible FEMA reimbursement.

Public Works/Water Plant/Wastewater Treatment Department Procedures

Alert (72 hours before strike)

1. Public Works supervisors to attend meeting called by the Emergency Management Coordinator.
2. Review plans and procedures with personnel.
3. Refuel all vehicles an ensure operability.
4. Begin running water plant up to 24 hours per day to fill up tanks

Hurricane Watch (48 hours before strike)

1. Refuel all vehicles and fill all fuel containers.
2. Check all storm drainage canals and culvert inverts for blockages.
3. Place all personnel on stand-by.
4. Test all generators and make sure they are fueled to capacity.
5. Create holding capacity for waste sludge.
6. Ensure vegetative debris collection site is cleared and ready for use.
7. Ensure adequate supply of High Water and temporary STOP signs.

Hurricane Warning (24 hours before strike)

1. Double check the water and sewer supply system.

Strike Expected

1. Have designated personnel come in, rest on stand-by.
2. Assist other departments as required.
3. Place generators at vulnerable locations.
4. When winds reach 40 mph sustained, public works personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.

Recovery

1. Return the water and wastewater treatment plants to normal operation as quickly as possible, once damage is complete.
2. Repair damaged water and sewer facilities and pump stations and water and sewer lines.
3. Maintain power as able at vulnerable water and wastewater facilities and pump stations.
4. Start clearing streets.
5. Implement water restrictions, if necessary.
6. Notify the City Manager of procedures for garbage, street trash, recycling, and yard debris collection, so the public can be informed.
7. Public Utilities Director to document and maintain records of all storm related expenditures for possible FEMA reimbursement.

II. Ice Storm Procedures

<u>Steps the City's Emergency Management Staff Needs to Take at the Beginning of Each Winter Season (late November)</u>

1. Review Disaster Plan for correctness.
2. Check all emergency equipment—generators, chain saws, etc. for operability.
3. Check operability of the City Emergency Operations Center (EOC) located in the Police Department including communications.

Alert (72 hours before strike)

1. Convene the EOC Staff to review procedures and reaffirm responsibilities of individuals.
2. Review likely traffic and slick road trouble spots, evacuation zones, traffic control points and public shelter locations.
3. Provide awareness information to the public.
4. Charge up all spare batteries.
5. Begin running water plant up to 24 hours per day to fill up tanks

Watch (48 hours prior to strike)

1. Staff and actuate the EOC in the Police Department.
2. Maintain an update on the storm status and forecast.
3. Test communication equipment and EOC procedures.
4. Inform all Departments to top off fuel tanks of City Vehicles and emergency stand-by tanks.
5. Coordinate planned steps with the County Emergency Management Coordinator, including having the City Manager or his designee maintain frequent communication with the County's EOC.
6. Identify all sources of ice in City.

Warning (24 hours before the strike)

1. Fully activate the City EOC.
2. Determine if evacuation is desirable.
3. Stock the City EOC with food, water, ice, and supplies.
4. Place City personnel on call or assigned duties as required.
5. Warn/Notify the public of the threat and any planned action, using PA systems in police cars if necessary.
6. Complete the payroll process.

Strike Expected

1. When a strike is expected, the Mayor and/or City Council shall have the authority to declare a State of Emergency.
2. In cases where power outages occur the Mayor and/or City Council shall have the authority to impose a curfew. This curfew will be enforced by the Police Department.
3. No City personnel shall be allowed outside of established shelters at winds at or above 40 mph sustained, except in emergency situations or as authorized by the department head.

Recovery from the Strike

1. Dispatch the damage assessment team as quickly as conditions permit.
2. Working with the EOC control group, determine the plan to establish access to hospital and other public service facilities.
3. Organize the search teams necessary to enter damaged homes and buildings to look for victims.
4. There will be four established one for each of the four quadrants of City. The first priority of each team will be to clear the roads. Each team will be provided with the following equipment if available: a backhoe (with a 4 in 1 bucket preferable), a large work truck, an electric lines specialist, wire cutters, chain saws, fuel mates, and police tape for marking which houses have been checked.
5. Implement water restrictions, if necessary.

Police Department Procedures

Alert (72 hours before strike)

1. Chief to attend meeting called by the Emergency Management Coordinator.
2. Chief to review evacuation zones, traffic control points, public shelters and evacuation times as needed.
3. Place police personnel on call.

Watch (48 hours before strike)

1. Chief or his designee joins Emergency Operations Center at Police Department.
2. All vehicles will be checked and fueled.
3. Chief will file a request with the County EMC, if needed, for personnel assistance.

Warning (24 hours before strike)

1. Continue presence at Police Department EOC.

2. Continue patrol of City.
3. Inform public of danger.
4. Ensure all vehicles are fueled and operable.
5. Have all officers on call.

Strike Expected

1. After State of Emergency is declared, put police personnel on 12 hour shifts with at least two (2) officers on duty at all times.
2. If evacuation is ordered, set up road blocks as needed, other officers assist with evacuation. Notify residents using PA systems.
3. After evacuation, check City for remaining residents.
4. After the above are complete, all City functions will cease, and the Chief and one officer will set up an interim command post.
5. When winds reach 40 mph sustained, police personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.

Recovery

1. Police will assist in damage assessment and building searches as required.
2. Road blocks will be maintained until damage assessment teams declare the City safe to re-enter.
3. During re-entry, one officer will remain at the road block, if needed and others will return to City.
4. After re-entry, officers will resume patrol and check the City.

* The Mayor and/or City Council have the authority to set curfew times when necessary due to any event, such as power outages or high winds, that may endanger citizens or his officers and rescue efforts.

Fire Department Procedures

Alert (72 hours before strike)

1. Chief to attend meeting called by the Emergency Management Coordinator.
2. Plans are revised with personnel regarding housing of personnel during the emergency and placing of fire fighting equipment during the emergency.
3. Persons responsible for the above are designated.

Watch (48 hours before strike)

1. All trucks and other equipment are refueled and checked for readiness.
2. The department will continue to answer calls coming in.
3. Personnel are placed on call, and if requested, will assist in warning the public.
4. Chief or his designee joins Emergency Operations Center at Police Department.

Warning (24 hours before strike)

1. Maintain fire fighting readiness.
2. Continue to assist in warning the public.
3. Continue presence at Police Department EOC.

Strike Expected

1. Call in personnel needed and house them.
2. Procure supplies as required.
3. Fill all SCBA bottles.
4. When winds reach 40 mph sustained, fire personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.

After Strike

1. Inspect the City for potential fire or health hazards.
2. Assist in clearing streets.
3. Search and rescue.

4. Assist in marking street names and buildings.

Administrative/Finance Department Procedures

Alert (72 hours before strike)

1. Finance Director and other designated staff to attend meeting called by the Emergency Management Coordinator.
2. Organize materials that will be needed if a strike occurs, including documents necessary to keep track of expenses during the emergency.
3. Plan for proper retention of vital records, including backup of computer files.

Watch (48 hours before strike)

1. Answer phones as usual, reporting to callers as directed by the City Manager.
2. The City Manager begins acting as the Public Information Officer (PIO).
3. Render assistance to other departments as required.

Hurricane Warning (24 hours before strike)

1. Make all equipment secure.
2. Assist in preparing in house personnel in the City Hall.
3. Answer phones.

Strike Expected

1. Make sure vital records are safe and secure.
2. Disperse as directed by the City Manager.
3. Issue disaster time sheets and expenditure requisitions to all departments.
4. Answer phones.
5. Stockpile maps and information for distribution to volunteers.
6. When winds reach 40 mph sustained, all City personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.

After Strike

1. Coordinate preliminary damage assessment and report results to County.
1. Issue applicable news releases and public information.
3. Answer phones at City Hall.
4. Communicate with Duke Power and other utilities and County.
5. Document and maintain records of all storm related expenditures for possible FEMA reimbursement.

Public Works/Water Plant/Wastewater Treatment Department Procedures

Alert (72 hours before strike)

1. Public Works supervisors to attend meeting called by the Emergency Management Coordinator.
2. Review plans and procedures with personnel.
3. Refuel all vehicles and ensure operability.
4. Begin running water plant up to 24 hours per day to fill up tanks

Watch (48 hours before strike)

1. Refuel all vehicles and fill all fuel containers.
2. Check all storm drainage canals and culvert inverts for blockages.
3. Place all personnel on stand-by.
4. Test all generators and make sure they are fueled to capacity.
5. Create holding capacity for waste sludge.
6. Ensure vegetative debris collection site is cleared and ready for use.
7. Ensure adequate supply of High Water and temporary STOP signs.

Warning (24 hours before strike)

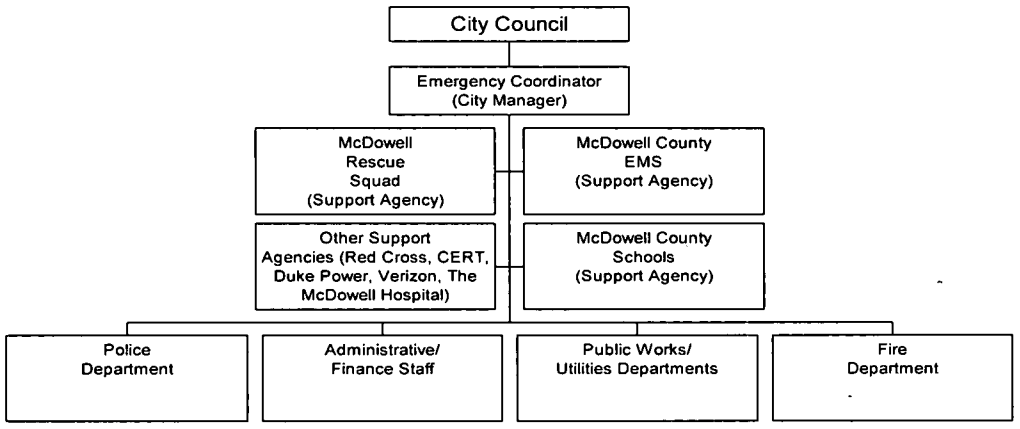
1. **Double check the water and sewer supply system.**
2. **Make sure all snow plows are in operating condition.**

Strike Expected

1. **Have designated personnel come in, rest on stand-by.**
2. **Assist other departments as required.**
3. **Place generators at vulnerable locations.**
4. **When winds reach 40 mph sustained, public works personnel will relocate to the EOC or shelter, except in emergency situations or as authorized by the department head.**

Recovery

1. **Return the water and wastewater treatment plants to normal operation as quickly as possible, once damage is complete.**
2. **Repair damaged water and sewer facilities and pump stations and water and sewer lines and maintain power as able at vulnerable water and wastewater facilities and pump stations.**
3. **Start clearing streets.**
4. **Implement water restrictions, if necessary.**
5. **Notify the City Manager of procedures for garbage, street trash, recycling, and yard debris collection, so the public can be informed.**
6. **Public Utilities Director to document and maintain records of all storm related expenditures for possible FEMA reimbursement.**



REVIEW CEMETERY COMMITTEE RECOMMENDATIONS: The City Manager advised that the Cemetery Committee had discussed the proposed offer from Greg Daniels, owner of Blue Ridge Monuments, to donate a new sign for Oak Grove Cemetery. Councilman Edwards stated that he appreciates the offer of Mr. Daniels, but that the City should seek to preserve the existing wooden entrance sign for Oak Grove, instead of installing a new sign. Councilman Owenby stated that he agreed with Councilman Edwards and that the City should politely decline the offer of Mr. Daniels.

Councilman Little stated that he also agreed with this recommendation and reminded Council of what happened with a donated rock sign at the Community Building that ended up not matching the rock work on the building.

Council held a brief discussion on how to preserve the existing wooden sign and make it look better. Council directed the City Manager to develop ways to preserve the sign, without drastically changing the appearance of the historic sign.

The City Manager advised that the City has $10,000 in the 2005-06 Cemetery Capital Outlay budget earmarked for projects in Oak Grove Cemetery. He advised that two

projects have been suggested by the Mayor and Council, starting an effort to pipe the ditch between Oak Grove and the adjacent Duke Power substation and installing a guard rail across the rear portion of Oak Grove, where the property drops off dramatically onto the old Peavine Railroad tracks. The City Manager stated that estimates obtained by Street Superintendent Roger Estes showed that the guardrail installation could be done for the budgeted amount of $10,000 and that the drainage work could begin with about $7,000 being spent on the design and construction of a box to connect the new drainage pipe to the State's culvert under Rutherford Road, leaving $3,000 to be spent to install 60 feet of drain pipe this year.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to authorize the installation of the guardrail for the back of Oak Grove Cemetery, using budgeted 2005-06 Cemetery Funds and then to begin work on piping the ditch between Oak Grove and the Duke Power substation in future years.

Councilman Little advised that he had been contacted by a person who asked him to bring up if two persons, including caskets and/or urns could be buried in same plot, or if a family owns a plot that they be allowed to place more than one urn in each plot. Council members expressed concerns with changing the longstanding City policy limiting burial plots to one body.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSING COMMENTS:

Councilman Edwards advised that, on West Henderson Street, between Main Street and the City parking lot at Depot Street Extension, a large amount of trash is being thrown on the sidewalk. He suggested that the City place trash cans in this area. The City Manager stated that he would look at this area and the possibility of placing trash cans.

Councilman Little advised that on South Garden Street, next to Carriage Station, a pit bull is tied up in the yard and is frightening people. Councilman Little asked if vicious dogs such as pit bulls were prohibited in the City. The City Manager stated that the City Code required muzzles for such vicious dogs, deemed in the past by Council to include specific breeds such as pit bulls and Rottweilers, but that there was no outright ban on such breeds. Council members asked the City Manager to place review of the City's Vicious Dog Ordinance on the next Council agenda. The City Manager stated that the Police Department would address the situation with the pit bull on South Garden Street and fully apply existing City Ordinances.

Councilman Owenby advised that there is a water leak on North Garden Street. The City Manager reported that City crews were in the process of repairing this leak.

Councilman Cuthbertson advised that Charter Communication needs to change the TV Guide Channel to reflect the listing of WBTV, instead of the City Government Access Channel, on Cable Channel 14. The City Manager stated that he would contact Charter to make this change.

Councilman Cuthbertson advised of a possible mixed use residential/commercial development Downtown. A brief discussion was held about Zoning and Building Code regulations for such developments.

ADJOURNMENT: Upon a motion by Councilman Owenby, seconded by Councilman Edwards, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager