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 4, 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. Bryan Wilson, President, McDowell Technical Community College; Ms. Terry Menard 185 Park Avenue, Marion, NC; Harold and Hazel Sluder, Cardinal Lane, Marion, NC, J. Matt Smith and John Cook, McDowell Technical Community College Board of Trustees; Mamie Hill, 494 Riverside Park, Marion, NC; Russell Jo Fischer, Marion, NC; Tonya Fischer, Marion, NC; Dr. Suzanne Sewell, Marion, NC; Steve Dillingham, Marion, NC; Francine Dillingham, Marion, NC; Jim Edwards, Isothermal Planning and Development Commission, Rutherfordton, NC; Heather Kaderik, Marion, NC; Dr. Contessa Thomas, Marion, NC; Jannessa Fairchild, Marion, NC.

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 20, 2005 Regular Meeting

B. Approve Budget Amendments

CITY OF MARION, NORTH CAROLINA
2005-2006 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 2005-06 as adopted by the Marion City Council on the 21st day of June, 2005 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Recreation, Account Number 10-620-7400, Capital Outlay is increased from $65,000 to $101,255.

b. General Fund Expenditures, Fire Department, Account Number 10-530-7400, Capital Outlay is increased from $40,000 to $72,000.

c. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is increased from $384,116 to $452,371.

WATER AND SEWER

a. Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated, is increased from $201,621 to $217,321.

b. Water and Sewer Fund Expenditures, Non – Departmental, Account Number 30-660-9850, Water and Sewer Asset Management Plan, is increased from $ -0- to $15,700.

GENERAL CAPITAL PROJECTS FUND

a. General Capital Projects Fund Expenditures, Skate Park Project Construction, Account Number 11-171-0900 is decreased from $130,140 to $95,000.

b. General Capital Projects Fund Revenues, PARTF Grant, Account Number 11-370-0000 is decreased from $65,070 to $ -0-.

c. General Capital Projects Fund Revenues, Skate Park Fundraisers, Account Number 11-380-1100 is increased from $181 to $ 221.

d. General Capital Projects Fund Revenues, Transfer from General Fund, Account Number 11-380-0000 is increased from $33,364 to $63,254.

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 October 2005.

A.Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O–05–10–04–1

C. Approve Flu Shots For City Employees:

D. Approve Purchase of Turkeys for City Employees:

PUBLIC COMMENT PERIOD – HOUSE BILL 635: There were no unscheduled citizens present for this meeting.

APPEAL CIVIL CITATION – JUNKED VEHICLE – MS. MAMIE CARSON HILL: The City Manager advised that Ms. Mamie Hill had received a civil citation on August 26, 2005 for a junked vehicle on her property. The vehicle does not belong to Ms. Hill; however it was parked on her property.

Since the citation was written, the vehicle has been brought into compliance by covering the vehicle. The City Manager stated that staff does not have a problem with this citation being waived since compliance with the Junked Vehicle Ordinance has been met.

A brief discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to waive the $50 penalty for this citation on the condition that the junked vehicle remains in compliance with City Ordinances.

Ms. Carson was present for this meeting and requested a letter of Council's disposition of this citation.

REQUEST – OAK GRAOVE CEMETERY: The City Manager presented Council with a request from Mr. H. G. Freeman to place an above ground crypt on this burial plot in the Oak Grove Cemetery.

The City Manager presented a memo from Street Superintendent Roger Estes showing photos of examples of such crypts already in the cemetery. Given this precedent, staff recommends that Council approve this request.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the request by Mr. H.G. Freeman to place an above ground crypt in Oak Grove Cemetery.

CONSIDER REQUEST BY LANDMARK ASSET SERVICES: The City Manager advised that this item was placed on the agenda as was at the last City Council Meeting. However, the City Manager stated that he was still awaiting a written opinion from the North Carolina Division of Community Assistance (NCDCA) concerning whether the release deed for Spaulding Woods I will be in compliance with Community Development Block Grant rules.

Mayor Clark advised that he had spoke with NCDCA staff while in Raleigh at a North Carolina Community Development Council meeting and that the opinion from the State would be forthcoming. Council agreed to take no action on the request until the written opinion is received from NCDCA.

REQUEST – McDOWELL TECHNICAL COMMUNITY COLLEGE – WATER CONNECTION: Dr. Bryan Wilson, President of McDowell Technical Community College (MTCC), appeared before Council, requesting that Council waive the water connection fees for the new building to be built by MTCC. Dr. Wilson explained that if Council would consider waiving the connection fees for the new building, MTCC would be closer to achieving a long range goal is to hook up the entire campus to City Water in the near future.

Dr. Wilson advised that the College's water tower is in need of repairs in the next few years and that the costs of the repairs could run fifty to eighty thousand dollars for the repairs. Dr. Wilson stated that one unknown at this point is the size of the water connection that is needed. The MTCC engineers have not yet calculated the projected water usage for the College to determine if a three inch line will be sufficient to serve the whole college.

Dr. Wilson stated that he could supply the City with information in the near future on projected water usage and the needed water connection size. Dr. Wilson reported that no sprinkler system is planned for the new building and that there is no sprinkler system in the existing buildings on campus either.

Mayor Clark advised that the City has a Utility Committee that could look further into this request.

Dr. Wilson advised that MTCC has a bit of urgency regarding this request due to the project contractors needing to know where to install the water lines.

Mayor Pro Tem Steve Little asked if a two week delay would be acceptable to MTCC. Dr. Wilson stated that such a delay would pose no problem to MTCC.

A discussion followed.

Mr. Matt Smith advised that a lack of money is an issue for this project and that the City waiving the connections fees would be a great service while the College builds the new $2.6 million dollar building. He advised that the County had been helpful in supporting the College financially in the last year.

Mayor Clark advised that the City's Water and Sewer Fund is also facing considerable budget pressures. Mayor Clark also noted that the City values the College, but that State law restricts the ability of cities to provide funding for community colleges, since State law considers community colleges to be State and County functions.

County Commission Chairman Andy Webb advised that the County was happy to assist McDowell Tech with funding this year, and he is sure that the City will do what it can.

Council agreed by consensus to refer this request to the City Utility Committee for discussion and a recommendation at the next Council meeting.

ADOPT ORDINANCE – FORT STREET PARKING: The City Manager advised that the Street Committee, as directed by Council, has further discussed the Fort Street parking ordinance and recommended the adoption of an ordinance to prohibit parking on the south side of the street between Main and Garden Streets, to restrict parking on the north side of the street in the same block near the Garden Street intersection and from Main Street to east of the Bank of America driveway, but to allow on-street parking on the north side of the street between a point east of the Bank of America driveway to near the Garden Street intersection. Such parking would be provided without restrictions, on the condition that the City would not have to take the time to paint parking spaces on the street. 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
FORT STREET (EAST)	PARKING	NORTH SIDE, BEGINNING AT THE NE CORNER OF FORT AND N. MAIN AND CONTINUING 100 FT. EAST — PROHIBITED
		NORTH SIDE, BEGINNING AT THE NW CORNER OF FORT AND N.GARDEN AND CONTINUING 30 FT. WEST
		SOUTH SIDE, BEGINNING AT THE SE CORNER OF FORT AND N. MAIN AND CONTINUING TO THE SW CORNER OF FORT AND N. GARDEN

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 4th day of October, 2005.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-05-10-04-2

Councilman Edwards suggested that the Police Department keep a close look at this issue to make sure parking does not become a problem on Fort Street.

REVIEW CITY ANIMAL ORDINANCE: The City Manager presented Council with a copy of the current Animal Ordinance for review, as had been requested at the last Council meeting. The City Manager stated that the only limits listed on dangerous or vicious dogs or cats was found in Section 3-5, which stated that such dogs or cats must be kept in a building or secure enclosure and not be taken out of such building or enclosure unless securely muzzled. The City Manager stated that Council had directed several years ago that this section be interpreted to apply to any pit bull or Rottweiler.

Councilman Little and Councilman Edwards stated that they thought that Council had taken additional action in the past concerning dangerous or vicious dogs or cats.

There were several persons present to discuss the issue of Council looking at the present Animal Ordinance.

Dr. Contessa Thomas, of Crestview Animal Hospital, advised that a client had called her stating that he wanted his dogs killed because of a notice he had received from the City giving him twenty-four hours to make arrangements to accommodate his pit bulls in an enclosed pen, as to not be a threat to the public. Dr. Thomas advised that she strongly opposes Council's action and that she feels this is discriminatory toward large dogs. She stated that an alternative to killing these dogs would be to teach them positive social habits by sending them to a canine school. Dr. Thomas also feels that this type of action by Council has more to do with this type of dog (a pit bull) more than with dogs in general.

The City Manager advised that the City would provide more than twenty-four notice for compliance, and that compliance could be achieved simply by placing the dogs in an enclosure.

Dr. Susanne Sewell of Crestview Animal Hospital stated that she agreed with Dr. Thomas and understands Council's interest in protecting the public's safety. Dr. Sewell said she had compiled information on dog bite statistics and what dog breeds had committed vicious acts. Different surveys show different breeds listed as biting and vicious dogs, and do not indicate pit bulls and Rottweilers to be more likely to attack. Dr. Sewell stated that she does not feel that a law banning pit bulls or Rottweilers would be enforceable.

Mayor Pro Tem Steve Little advised that he was most impressed with the networking of the local veterinarians and the turn out for this meeting. He noted that Council Members did not have a clue why these persons are here tonight and about what they are talking.

Mayor Pro Tem Little advised that he had prepared a proposal for Council's consideration as follows:

"No pit bull dog, Rotweiller dog or other animal with vicious tendencies (either inherent or acquired) shall be kept at any time on any property within the city limits of the City of Marion.

As an exception, a licensed veterinarian affiliated with an animal hospital or other similar facility located within the City of Marion, and the staff of such veterinarian, shall have the right to examine and treat any animal at the veterinarian's facility without being in violation of this ordinance. Any person who transports a pit bull dog, rotweiller dog or other animal with vicious tendencies within the city limits of the City of Marion for the purpose of going to or from a veterinarian facility for the purpose of examination or treatment of such animal shall not be in violation of this ordinance."

Mayor Pro Tem Little advised that statistics show that children mauled by dogs indicate that certain breeds of dogs are more likely to attack. Mayor Clark stated that such breeds can be a real problem and that property owners have to be responsible for their pets

Councilman Edwards advised that his research of State law shows the need for the City to follow the State's definitions for dangerous and potentially dangerous dogs, to take into account a dog's past record and to possibly have to create a Board that can address these issues or at least hear appeals.

Several citizens voiced their concerns about Council's attempt to solve this problem and expressed their love and devotion to their dogs. Some citizens stated that the main problem in the City was dogs running at large and irresponsible pet owners.

The City Manager stated that the City has only a part-time equivalent Animal Control Officer and that the City relies on the public to help in enforcing our leash law and reporting violations. He urged anyone who is experiencing problems with any type dog to let the Police Department know.

Mayor Clark stated that this type of hearing was grass roots local government in action.

Councilman Cuthbertson noted that he was the only dog owner represented among the Mayor and City Council members.

After discussion, Council decided by consensus to invite interested citizens to work with the City Manager and any interested Council members on some draft ordinance provisions, to be presented to Council at a future meeting.

PREVIEW – APPROVE ISOTHERMAL COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY (CEDS): Mr. Jim Edwards of Isothermal Planning and Development Commission appeared before Council and gave an overview of the Comprehensive Economic Development Strategy (CEDS) prepared for the four county Isothermal region through a grant obtained by the City of Marion from the North Carolina Division of Community Assistance.

This document provides guidance on improving the economy, transportation network, water and sewer resources and quality of life in the region.

Mayor Clark pointed out that on page 18 of this report, the statistics on those graduating high school and going on to college are low for McDowell County compared to surrounding counties.

Mayor Clark advised that no action was necessary by Council, since the Federal Government only required approval of the document by Boards of County Commissioners.

ANIMALS – CITY PARKS: The City Manager presented a memo to Council regarding dog waste being deposited in grassy areas and in sand box areas being used by children in the City Parks, particularly at Cross Mill Park.

City Staff has suggested one option could be banning dogs from City parks.

A discussion was held regarding fencing in the parks and placing signage stating to clean up after pets in each park.

Councilman Edwards suggested that containers be placed in each park with bag type disposal containers to clean up after the dogs.

Mayor Pro Tem Little stated that he believed that vandalism is so widespread throughout the City, this type of disposal system would soon be destroyed.

The City Manager advised that fencing around Cross Mill Park would be a major cost.

It was the consensus of Council to place signs in the parks as a first step requesting that pet owners clean up after their dogs.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that Village Bakery on North Main Street had inquired about allowing an artist, once a month, on the sidewalk in front of their business to do sketches of persons and buildings. The City Manager stated that he would approve this request, subject to a release being signed by the business owner, since it would help to draw more people downtown.

CLOSING COMMENTS:

Councilman Little was asked if permission could be granted for persons to walk across City property near the City's water intake on Mackey Creek to get to National Forest Land to fish. Mayor Clark advised that the properties that would be crossed to get to the National Forest property would be private properties and that the person would need to contact the individual property owners.

Councilman Edwards requested that the City contact Community Service to get assistance for litter clean up on Fern/Montevista Avenue beside of Bi-Lo, as this section of street is littered with trash and unsightly.

Councilman Edwards commended City Staff and contractors for the work that has been done on the Tennis Courts at the Community Building.

Councilman Martin stated that the Community Building Park does look nice, but questioned why the small basketball court was not striped. The City Manager stated that the size of the small basketball court did not allow for a lane and key to be painted, unlike the larger court.

Mayor Clark asked the City Manager to get the street flusher out more to wash down streets until such time as the new street sweeper arrives.

Councilman Martin also advised that speeding is a problem on Wilhemenia and needs to be monitored, with speed limit signs being placed. The City Manager stated that speed limit signs could be placed on the street.

Councilman Owenby advised that the no left hand turn on Bradley Street onto North Main Street is being abused and needs to be monitored.

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 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; Police Lieutenant Scott Spratt, Police Corporal Charlie Oliver; Mike Conley, News Reporter, McDowell News; Mia Lorenz, City Attorney.

GUESTS PRESENT: Terry Menard 85 Park Avenue, Marion, NC; J. Michelle Harrison 75 Turner Street, Marion, NC; Mike O'Buckley 201 Park Avenue, Marion, NC; Denise Sluder Stidham 51 Lamplighter Circle, Marion, NC; Harold & Hazel Sluder, 14 Cardinal Lane, Marion, NC; Megan & Jerrod Mace 823 Isaac Drive, Marion, NC; Russell J. Fischer 66 Executive Estate, Old Fort, NC; Contessa Thomas 160 Estate Drive, Marion, NC; Suzanne Sewell, Marion, NC; Charles Elkin, 136 Montevista Avenue, Marion, NC; Brittany McIntosh 357 Highland Drive, Marion, NC; Heather Kaderlik, PO Box 2002, Old Fort, NC.

SPECIAL RECOGNITON – BY MAYOR PRO TEM STEVE LITTLE: Mayor Pro Tem Steve Little stated that with great honor he wished to announce that Mayor A. Everette Clark has been installed as President of the North Carolina League of Municipalities (NCLM) earlier that day. NCLM is an organization made up of small, medium and large towns all over North Carolina. At the NCLM Annual Conference, a person is elected to serve as President. Mayor Clark was serving as 2nd Vice President when he was elected and installed as President.

Mayor Pro Tem Little advised the he publicly wanted to say that this honor is well deserved by Mayor Clark, who will make a great ambassador for the City of Marion and for municipalities across North Carolina.

Mayor Clark advised that he feels honored to serve in this capacity and to represent over 530 cities as President of the NCLM. Mayor Clark advised that this position should help the City of Marion in many capacities; however, the needs of the City will always be his first priority. He thanked Council for its support and stated that he could do nothing without having a City Council and staff that support him.

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 4, 2005 Regular Meeting

B. Enter Terms of Lawsuit Settlement Agreement into Minutes:

On September 27, 2005, the Plaintiff in the lawsuit entitled *Gary Dean Revis v. City of Marion et. al.* filed a Stipulation of Dismissal with prejudice. Prior to this filing, the City of Marion entered into an out of court settlement upon the recommendation of its attorneys and insurance carrier. Pursuant to the settlement terms, the City's insurance carrier paid the Plantiffs $7,000.00 in exchange for the Plaintiff's full release regarding all claims and for the Plantiff's dismissal of the lawsuit. The City of Marion required that the settlement agreement state that despite the payment by the insurance carrier, the City of Marion expressly denied wrongdoing and liability with respect to the matter.

C. Resolution – Consideration for Annexation:

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 October 2005.

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 City Clerk.

ADOPTED this the 18th day of October, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-05-10-18-1

D. Approve Policy – Release of Public Enterprise Billing Information:

A RESOLUTION OF THE CITY OF MARION SETTING THE POLICY REGARDING RELEASE OF PUBLIC ENTERPRISE BILLING INFORMATION

WHEREAS, the Mayor and City Council of the City of Marion recognizes the importance of confidentiality of personal information of Water and Sewer customers; and

WHEREAS, N.C.G.S 132-1.1(c) in defining public records, does not include "public enterprise billing information", defined as any information a local government has about individual customers of its enterprises, as a public record; however, the statute does not prohibit releasing such information; and

WHEREAS, the Mayor and City Council recognize the necessity of occasionally releasing this information to the County tax department to assist in the maintenance of tax records, to City employees in the performance of their official duties and to State and Federal agencies in the performance of the duties and responsibilities of said agency.

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

1. Release of public enterprise billing information of the City of Marion is authorized to City employees or contractors in the performance of their official duties and to official units and agencies of Federal, State and Local Government in the furtherance of the duties and responsibilities of the particular unit or agency.

2. Release of public enterprise billing information of the City of Marion is not permitted to the general public or to any individual, organization, business or agency not covered under paragraph 1 above.

ADOPTED this the 18th day of October 2005.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Resolution Number: R-05-10-18-2

E. Approve Resolution Requesting the North Carolina Department of Transportation to Install a Traffic Signal at West Henderson and Wilhemenia Streets:

A RESOLUTION REQUESTING THE NORTH CAROLINA DEPARTMENT OF TRNASPORTATION TO INSTALL A TRAFFIC SIGNAL AT THE INTERSECTION OF WEST HENDERSON AND WILHEMENIA STREETS IN THE CITY OF MARION

WHEREAS, the City Council of the City of Marion has great concern for public safety for all neighborhoods and for all modes of transportation, especially including pedestrians; and

WHEREAS, the City of Marion has long supported expanding the City's pedestrian network to create additional sidewalks and linkages between residential and commercial areas, particularly along busy highways; and

WHEREAS, the North Carolina Department of Transportation and the City of Marion partnered several years ago to construct a sidewalk along West Henderson Street in the area of the West Marion Community; and

WHEREAS, the West Marion Community remains split by the US 221 Bypass and West Henderson Street/Sugar Hill Road, making pedestrian access to different streets in the community difficult and dangerous; and

WHEREAS, West Henderson Street/SugarHill Road is in the final stages of being widened from two to five lanes, including the portion of the street that runs through the West Marion Community which will make it extremely hazardous for pedestrians to cross at the Wilhemenia Street intersection; and

WHEREAS, many pedestrians rely on crossing West Henderson Street in the area of the Wilhemenia Street intersection to attend church, to visit family and friends and to walk to shopping and commercial areas; and

WHEREAS, the City of Marion has studied alternatives for pedestrian safety in the West Henderson Street/Wilhemenia Street area and the City Council has determined that the installation of a traffic signal at the West Henderson Street/Wilhemenia Street intersection is the preferred way to protect pedestrian safety.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES THAT:

The City Council of the City of Marion hereby requests the North Carolina Department of Transportation to immediately install a traffic signal at the intersection of West Henderson Street and Wilhemenia Street, in time for the traffic signal to be operational when the Sugar Hill Road Transportation Improvement Program project is completed.

Adopted this the 18th day of October, 2005.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-05-10-18-3

PUBLIC APPEARANCE – MS. TERRY MENARD – PARK AVENUE – PARKING ISSUE: Ms. Terry Menard appeared before Council with a petition asking City Council to restrict parking on the east side of Park Avenue in the area of a curve between Cardinal Lane and Turner Street. Ms. Menard advised that Park Avenue is a residential neighborhood with a great deal of traffic, and that a few individuals who park in the street, instead of the driveway create safety hazards for those turning into Cardinal Lane or driving around the curve past Cardinal Lane. Ms. Menard expressed concerns about emergency vehicles being able to get in and out of the driveways, due to the cars that use the street for parking.

There were several residents present from the Park Avenue area who asked Council to consider further parking restrictions on the street.

The City Manager advised that the entire left side of the street is prohibited parking and that the Street Committee had previously looked at parking in the curve between Cardinal Lane and Turner Street, but recommended no action, after this issue came up a year ago.

A discussion followed.

It was the consensus of Council to refer this item to the Street Committee.

Councilman Owenby advised that he travels on Park Avenue daily and that persons using this street need to exercise patience. He stated that people have to realize that these days many families have two or three vehicles and often need to utilize the Street for parking.

Councilman Edwards asked if the street was wide enough to accommodate parking. The City Manager stated that technical standards exist that can gauge whether a street is wide enough to contain parking, but that most of the streets in the City were built well before such standards existed. Therefore, most streets in the City would not be wide enough, technically, to support any parking, including every street in East Marion, Cross Mill and Clinchfield.

Mr. Mike O'Buckley, a Park Avenue Resident, advised that the curve on Park Avenue past Cardinal Lane is a particular hazard. Mr. O'Buckley stated that he has lived on the street since 1975 and that parking on the street in this area forces motorists to the left side of the road, against oncoming traffic.

PUBLIC HEARING – ZONING AMENDMENT – ALLOW SATELLITE PARKING AREAS: Mayor Clark opened the Public Hearing.

The City Manager presented Council with a proposed Zoning Amendment, as proposed by staff, to allow and set standards for satellite parking lots in cases where a commercial lot does not have enough space to accommodate parking, but where adjacent land may be available for parking. The

City Manager advised that this Zoning Amendment had been unanimously recommended by the Planning Board for approval at their meeting on October 6.

There were no citizens present to discuss this issue.

Mayor Clark closed the Public Hearing.

A brief discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following ordinance, as recommended by the Planning Board:

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 by deleting Section 702, Off-street parking requirement, in its entirety and replacing it with the following:

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.

(a) Location of Parking. All required off-street parking spaces shall be located on the same lot as the principal structure or use or on a contiguous lot which has the same zoning classification and is under the same ownership. The Zoning Administrator may authorize an alternative satellite parking location provided that the required parking spaces are located within 500 feet of the building entrance of the principal structure or use, are located in a zoning district that permits the principal use and provided that ownership arrangements are made so as to assure the permanent availability of such spaces to the satisfaction of the Zoning Administrator.

(b) Shared Parking. Required off-street parking spaces may be provided cooperatively for two or more uses, subject to arrangements that will assure the permanent availability of such spaces to the satisfaction of the Zoning Administrator. The number of such combined parking spaces shall equal the sum of the parking spaces required for the separate uses. However, the Zoning Administrator may reduce the total number of parking spaces required if it is determined that some or all of the spaces may serve two or more uses by reason of the daily hours of operation or seasonal activity of such uses.

Section 3. Appendix A, Article VIII, Section 804.2 is amended by adding the following use permitted within the C-2 General Business District

(33) Satellite parking lots

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of October, 2005.

A. Everette Clark
Mayor

ATTEST: _____

J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-05-10-18-1

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

DISCUSS DANGEROUS DOG ORDINANCE: The City Manager gave an overview of the last Council meeting, where Council had directed staff to work with a volunteer committee to develop recommendations for amendments to the City's Animal Ordinance. The City Manager stated that he and Councilman Cuthbertson had met with volunteers, including veterinary staff and dog owners, and developed the following recommended ordinance (additions are underlined and deletions are struck through):

Chapter 3 ANIMALS*

***Cross reference(s)**--Human and animal waste, § 9-4; location of animal pens, § 9-7; removal of dead animals, § 9-42; animals and chicken fights prohibited, § 11-10.

Sec. 3-1. Definitions.

The following words and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shelter means any premises designated by action of the city for the purposes of impounding and caring for any animal found running at large in violation of this chapter.

City animal control officer means the person designated by the city as its enforcement officer.

County animal warden means the person designated by the county as its enforcement officer.

Dangerous dog means a dog that:

1. Without provocation has killed or inflicted severe injury on a person; or
2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed under the definition of "potentially dangerous dog"; or
3. Is owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or
4. Has inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

At large means any dog or cat when it is off the property of its owner and not under physical control of a competent person.

Kennel means any person engaged in the commercial business of breeding, buying, selling or boarding five (5) or more dogs or cats.

Owner means any person that owns, keeps or harbors a dog or cat.

Owner's real property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or townhouse development.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Potentially dangerous dog means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

1. Inflicted an unprovoked bite on a person that resulted in medical attention; or
2. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or
3. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Restraint means a dog or cat that is:

(1) Controlled by a leash;

(2) Within a vehicle being driven or parked on the street and unable to bite or scratch persons outside the vehicle; or

(3) Within the property limits of its owner or keeper.

Severe injury means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery, hospitalization or medical attention.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

(Ord. of 2-4-86, § 8-2001)

Cross reference(s)--Definitions and rules of construction generally, § 1-3.

Sec. 3-2. Rabies vaccination required.

No person shall own, keep or harbor any dog or cat over the age of six (6) months within the city limits unless it has been vaccinated for rabies and the rabies vaccination is current, meaning that the animal has received its first rabies vaccination within the preceding 12 months or its second or subsequent rabies vaccination within the previous 36 months.

(Ord. of 2-4-86, § 8-2002)

State law reference(s)--Rabies, G.S. § 130A-184 et seq.

Sec. 3-3. Enforcement.

The provisions of this chapter shall be enforced by the designated city animal control officer or the police department or both, under the organizational arrangement deemed appropriate by the City Manager; provided that the City shall at all times maintain a person designated as animal control officer.

(Ord. of 2-4-86, § 8-2003)

Sec. 3-4. Restraint.

(a) The owner shall keep his dog or cat under restraint at all times and shall not permit the dog or cat to be at large.

(b) For a first violation of this Section, the owner of a dog or cat at large will receive a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code. In addition to the civil citation, the owner of the dog or cat at large shall be required to implant a microchip on the animal, for future identification purposes. The City Council may choose to waive the civil penalty, at its discretion, if proof is given through the filing of a civil citation appeal under Sec. 1-20 of the City Code that a microchip has been implanted on the animal.

(c) For a second violation of this Section, the owner of a dog or cat at large will receive a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code. In addition to the civil citation, the owner of the dog or cat at large shall be required to have the dog or cat spayed or neutered. The City Council may choose to waive the civil penalty, at its discretion, if proof is given through the filing of a civil citation appeal under Sec. 1-20 of the City Code that the animal has been spayed or neutered.

(Ord. of 2-4-86, § 8-2004)

State law reference(s)--Dogs running at large at night, G.S. § 67-12.

Sec. 3-4.1. Tethering of animals.

(a) At no time shall a dog or cat deemed dangerous or potentially dangerous be fastened, chained or tied on any property within the City Limits of the City of Marion.

(b) All dogs, cats, horses or other domesticated animals, except for those described in subsection (a) above, may be houses, fenced or tethered. All dogs, cats, horses or other domesticated animals that are tethered shall be tethered in such a manner as to prevent said animal from being within ten (10) feet of any public or private street, sidewalk or pedestrian walkway. All dogs, cats, horses or other domesticated animals shall be tethered at least five (5) feet from any property line not adjacent to a public or private street, sidewalk or pedestrian walkway.

Said animals shall be tethered with a metal chain or cable of a size appropriate to the size of the animal and not harmful to the animal.

Sec. 3-4.2. Creation of Dangerous Animal Appeals Board.

In accordance with N.C.G.S. 67-4.1 (c), a Dangerous Animals Appeals Board is hereby created. The Dangerous Animals Appeals Board shall consist of no fewer than three (3) and no more than five (5) members. The members of the Dangerous Animal Appeals Board shall be appointed for three (3) year terms by the City Council, shall be residents of McDowell County and shall have demonstrated knowledge about animals or training in veterinary medicine. The members of the Dangerous Animals Appeals Board shall serve without pay, but may be reimbursed for expenses incurred in the performance of their official duties, with the approval of the City Manager. A majority of the members of the Dangerous Animals Appeals Board shall constitute a quorum at any meeting or hearing.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-4.3. Determination of dangerous or potentially dangerous dog or cat; appeal.

(a) Upon receipt of a complaint or observation that a dog or cat may have exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog", as found in Section 3-1 of this Chapter, sufficient to designate such dog or cat as dangerous or potentially dangerous, the animal control officer shall investigate the specific charges. If the animal control officer determines that the dog or cat is dangerous or potentially dangerous, the owner of the dog or cat shall be notified in writing by certified mail, return receipt requested, or by personal service. The notice shall state that the owner's dog or cat has been determined by the City to be dangerous or potentially dangerous, list the reasons for the determination and list the steps that must be taken under this ordinance, including confinement requirements listed under Section 3-5, for the animal to remain in the City. The notice shall state that the owner will be required to implant a microchip in the animal for identification purposes and to have the animal spayed or neutered. Upon receipt of the notice of determination, the owner may appeal the determination by filing a written appeal stating his or her objections to the determination with the City Manager within three (3) days. Upon receipt of the appeal, the City Manager or his designee shall schedule a hearing with the Dangerous Animal Appeals Board within a reasonable time. The Dangerous Animal Appeals Board shall be required to issue a decision upholding or overturning the determination of the animal control officer within thirty (30) days from the date the appeal is filed. Any appeal from the Dangerous Animal Appeals Board shall be taken to Superior Court, in accordance with N.C.G.S. 67-4.1(c).

(b) Upon receipt of a complaint or observation that a dog or cat previously determined to be dangerous or potentially dangerous may have again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall investigate the charges. If the animal control officer determines that a dog or cat previously determined to be dangerous or potentially dangerous has again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall transfer and impound the animal at the shelter designated as the McDowell County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner, or if the owners can be contacted through the implanted microchip described in Section 3-4(b). The owner will not permitted to keep the animal within the City Limits of the City of Marion at any point in the future.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-5. Confinement of ~~vicious~~ dangerous or potentially dangerous dog or cat; muzzles.

The owner of every ~~fierce,~~ dangerous~~,~~ or potentially dangerous ~~or vicious~~ dog or cat shall confine the animal within a secure building or secure enclosure and not take it out of the secure building or secure enclosure into a public domain unless it is securely muzzled with a wire or cage muzzle. Such secure building or secure enclosure must be locked with a childproof locking device, must be of a height appropriate for the size of the animal to keep the animal confined inside and must be constructed of a material sufficient to keep the animal restrained (screen doors, windows, porches and other screen materials are not deemed sufficient for purposes of this subsection). In addition, the owner must prominently display in public view on the property a sign stating "Beware of Dog".

(Ord. of 2-4-86, § 8-2005)

State law reference(s)--Confinement or leashing of vicious animals, G.S. § 130A-200; Dangerous Dogs, G.S. § 67-4.1 et seq..

Sec. 3-6. Complaint procedures and impoundment.

When the police department receives a complaint that a dog or cat is at large, the person making the complaint shall be asked for permission to locate an animal cage on their property. If permission is granted, city

employees will place a baited animal cage on the property of the person making the complaint. When a dog or cat is caught in the cage, the animal will be transferred and impounded at the shelter designated as the McDowell County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner. If the complaining party refuses to allow the cage to be located on their property no further action will be taken unless the animal has attacked someone or appears to be vicious, dangerous, or sick, in which case the police department will ~~apprehend or destroy~~ transport the animal to the McDowell County Animal Shelter and refer the case to the Dangerous Animals Appeal Board. Pending a decision by the Dangerous Animals Appeal Board, the City shall request the Animal Shelter not to euthanize the animal in question.

(Ord. of 2-4-86, § 8-2006)

Sec. 3-7. Redemption of impounded animals.

The owner may reclaim his impounded dog or cat when he complies with regulations established by the McDowell county commissioners and City Ordinances as found in this Chapter and pays the necessary impoundment fees imposed by the county.

(Ord. of 2-4-86, § 8-2007)

Sec. 3-8. Barking dogs.

It shall be unlawful for any dog owner to keep or have within the city a dog that habitually or repeatedly barks in such a manner or to such extent that it is a public nuisance.

(Ord. of 2-4-86, § 8-2008)

Sec. 3-9. Investigation.

To discharge the duties imposed by this chapter and to enforce its provisions the city animal control officer, any agent of the city animal control officer or any police officer may obtain an administrative search warrant to enter any premises where a dog or cat is kept or harbored and may require the animal's owner to show proof the animal has ~~been vaccinated for rabies~~ a current rabies vaccination, as described in Section 3-2.

(Ord. of 2-4-86, § 8-2009)

State law reference(s)--Administrative search and inspection warrants, G.S. § 15-27.2.

Sec. 3-10. Interference with animal control officer.

No person shall interfere with, hinder, or molest any agent of the city animal control officer in performing any of his duties or seek to release any animal from the custody of the city animal control officer, his agents or the instrument of capture except as provided in this chapter.

(Ord. of 2-4-86, § 8-2010)

Sec. 3-11. Records.

(a) The police department shall keep or cause to be kept accurate and detailed records of the impoundment of all animals that come into its custody.

(b) The police department shall keep or cause to be kept accurate and detailed records of all bite cases reported and of the investigation of the bites.

(Ord. of 2-4-86, § 8-2011)

Sec. 3-12. Fowl running at large prohibited.

It shall be unlawful for any person to permit turkeys, geese, ducks, chickens, or other domestic fowl to run at large upon any land in the city.

(Ord. of 2-4-86, § 8-2012)

Sec. 3-13. Grazing prohibited.

No person shall permit any cattle, sheep or other animals to graze, or tie such animal up, on any vacant lot or within fifty (50) feet of any dwelling or street within the city.

(Ord. of 2-4-86, § 8-2013)

Sec. 3-14. Hitching animals.

No person shall hitch any horse or other animal to any of the trees, lampposts, electric lights, power, telephone or telegraph poles, mailboxes, wires or hydrant on any of the streets, sidewalks, squares or parks in the city.

(Ord. of 2-4-86, § 8-2014)

Sec. 3-15. Hogs prohibited.

It shall be unlawful for any person to keep a hog within the corporate limits of the city.

(Ord. of 2-4-86, § 8-2015)

Sec. 3-16. Restriction as to certain animals in public places.

No person shall permit his horse, mule, donkey, hog, sheep, goat, or cattle of any kind, to run at large in the streets, sidewalks, parks, squares or cemeteries of the city. Horses or mules which are being used for riding or driving may be fastened to hitching posts or blocks, but no person shall stake or otherwise fasten any such animal, for grazing purposes, in any of the streets, sidewalks, parks, squares, or cemeteries of the city, nor shall any person feed any such animal in any of the streets, sidewalks, parks or squares of the city.

(Ord. of 2-4-86, § 8-2016)

Cross reference(s)--Streets, sidewalks and other public places, Ch. 15.

Sec. 3-17. Cleanliness and location of animal enclosures.

(a) Every stable and place where cattle, horses, chickens, geese or other animals are kept, shall be maintained in a clean and healthy condition at all times. No person shall erect upon any lot any cow, horse, mule, sheep or goat stable or any coop or pen for the keeping of any chickens, geese, turkeys, ducks, or any other gallinaceous birds, within one hundred (100) feet of any street or dwelling.

(b) This section shall not apply to animals located within the city prior to the date of adoption of the ordinance from which this section derives. However, the number of animals shall not be increased nor shall the animals be replaced or relocated to some other property in violation of this section.

(Ord. of 2-4-86, § 8-2017)

Cross reference(s)--Health and sanitation, Ch. 9.

Sec. 3-18. Bird sanctuary; eradication of pests.

(a) The entire area embraced within the corporate limits of the city is hereby designated as a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, however, that if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the city council, then the city council may bring the matter to the attention of the state commissioner of agriculture or state pesticide board which shall make such disposition of the matter as may be appropriate pursuant to the provisions of G.S. section 113-300.2.

(Ord. of 2-4-86, § 8-2018)

State law reference(s)--Declaring wild animal or bird a pest, G.S. § 113-300.2; bird sanctuaries, G.S. § 160A-188.

The City Manager summarized the ordinance changes listed above.

Councilman Little thanked the committee for its work in developing the recommendations, and advised that he has been persuaded that the alternate ordinance he had presented two weeks ago to ban specific breeds of dogs from the City Limits was not the best solution. Councilman Little stated that the suggestions made by the committee were likely a better way to address problems with dangerous or potentially dangerous dogs. Councilman Little stated that he had not gone through the proposed ordinance in detail, but that he would withdraw his previously submitted breed specific ordinance.

Councilman Cuthbertson also advised that he too has learned a lot in the last two weeks about dangerous dogs. He went over some specifics over the ordinance and his research.

Councilman Edwards advised that he liked the ordinance; however, he stated that the ordinance was confusing in determining whether certain sections applied to all dogs or just to dangerous dogs or potentially dangerous dogs. Councilman Edwards suggested that the ordinance be broken into sections to clearly indicate which provisions apply to all dogs and which apply only to dangerous or potentially dangerous dogs.

Councilman Little suggested that Council take no action on the ordinance tonight and take time to review the proposal in greater detail.

A discussion followed.

Council agreed by consensus to table review of the ordinance until the next regularly scheduled meeting.

DISCUSS OPTIONS – EASTFIELD AREA ANNEXATION: The City Manager presented Council with a study showing three proposed options for the Eastfield area annexation:

Option 1 includes a few streets off of Baldwin Avenue, including Perry, Leach, Bostic, Doyle and Florence Streets, encompassing about 62 homes.

Option 2 includes all properties fronting on Yancey Street westward to Baldwin Avenue, including about 203 homes.

Option 3 includes virtually the entire Eastfield area, totaling about 361 homes.

The City Manager went over the projected service demands and expected revenues and expenditures for each option. He advised that Option 1 was the best option financially for the City, since staff felt the five streets to be annexed could be taken into the City without any staff additions.

Mayor Clark advised that it would be less impact on the City as a whole to annex the Eastfield area in increments.

Councilman Little stated that he would like to see Option 1 revised to include Clark Street, so that the boundaries made better sense on the ground. After discussion, Council members also suggested that the Option 1 boundary be squared off to include a few properties fronting on Yancey Street between Clark Street and Leach Street.

The City Manager advised that if Council agrees with Option 1 including the suggested additions, the annexation process could begin within the next few meetings and conclude with a June 30, 2006 effective date.

A discussion followed.

It was the consensus of Council to direct the City Manager to rerun the revenues and expenditures and service needs for the revised Eastfield Annexation Option 1 and then to bring back at a future meeting a Resolution of Intent to Annex to start the annexation process, with a targeted effective date for the annexation of June 30, 2006.

DISCUSS – DOWNTOWN STREETSCAPE/TRAFFIC FLOW PLAN:
The City Manager advised that Council had requested comments from North Carolina Main Street Director Rodney Swink regarding the proposal submitted by HSMM for the City's Downtown Streetscape/Traffic Flow Plan. The City Manager presented Council again with HSMM's proposal, which totals an estimated $50,809.40.

The City Manager stated that Mr. Swink felt that HSMM was proposing a bit much, and that the price could possibly come down, without compromising what Council wishes to accomplish with the study. Mr. Swink noted potential areas to save money with the study.

The City Manager stated that the Chamber of Commerce appears ready to commit $10,000 of funding toward the plan in the Sparing, and that staff has submitted a $25,000 grant application to the Community Foundation of Western North Carolina. The City Manager asked Council for guidance on a maximum figure for the study.

Councilman Martin advised that he feels that $50,000 is too much money to spend right now and that he does not see the importance of such a study. Councilman Little agreed that $50,000 is an unreasonable amount to spend on such a study.

Councilman Martin asked what the plan will accomplish and tell the City, that cannot already be understood.

Mayor Clark advised that the City has to have a plan in order to apply for any type of grant money and that DOT will not discuss any type of traffic flow modifications on Main Street without a study.

Council Edwards advised that the City of Marion was not well planned and developed, which has caused the traffic flow problems now experienced downtown. Councilman Edwards stated that he is also concerned about the money to be spent on the plan, and that we should try to reduce the costs if possible, but that he also believed that the City has to do something to improve the traffic flow in the downtown area and to plan for the future.

Councilman Edwards stated that if we determine that $50,000 is the going amount for such a study, then the City has to figure out how to pay it, because something has to be done to plan for downtown's future.

Mayor Clark advised that the City did not receive a State Parks and Recreation Trust Fund grant for the Skate Park, the reason being that the City did not have a Parks and Recreation Master Plan, and that this penalizes small cities. He reiterated that DOT will not discuss the traffic flow on Main Street until the City has a plan.

Councilman Owenby stated that he felt that DOT should help with the study.

The City Manager stated that the City could reject HSMM's proposal and begin negotiating with the next most qualified firm, McGill Associates, or stop the process altogether.

Mayor Clark advised that Council needs to give the City Manager a figure to work with for the study.

Councilman Edwards advised that with the Chamber of Commerce seemingly agreeing to fund $10,000 toward the study, the City could put in $30,000.

Councilman Martin suggests that we try to get the cost of the study lower if possible. While the Mayor is serving as President of the NCLM, the City could also seek to get the most out of his position.

Councilman Little stated that he could accept the City putting up to $30,000 in the study. Council members expressed agreement with this target figure.

The City Manager was directed to work with HSMM to see if the study cost to be lowered and to pursue all available grant options.

REQUEST – N.C. DOT - DONATE RIGHT OF WAY FOR NC 226 SOUTH WIDENING PROJECT: The City Manager advised that by January the North Carolina Department of Transportation may be letting the contract for the widening project on 226 South to add a third lane and curb and gutter.

The City Manager presented a letter from the North Carolina Department of Transportation requesting that the City donate a section of property (0.09 acres) at the Corpening Creek Wastewater Treatment Plant for the Highway 226 widening project scheduled to take place next year, along with necessary drainage and construction easements.

The City Manager suggested that the City seek additional guardrail along the edge of the road to protect the Corpening Creek office building from vehicles running off the highway and down the embankment onto the City's property. Mayor Clark stated that DOT should be required to demonstrate that stormwater will be adequately controlled during construction, to avoid any problems at the Wastewater Plant.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the request for the City to donate right of way and easements to DOT for the NC 226 widening project, on the condition that the City receives a guardrail to protect the Corpening Creek office building and adequate assurance is received from DOT that the City will be protected from stormwater run off during construction.

DISCUSS POSSIBLE FEDERAL FUNDING REQUESTS – WNC LOCAL GOVERNMENT CAUCUS: The City Manager advised that for several years the WNC Caucus has been going to Washington, D.C. to promote Federal funding requests from the region. Council was presented with information inviting local governments to submit requests for Federal funding to the WNC Local Government Caucus by November 4. The City has not submitted projects the past two years, but has supported the County's efforts to have the Nebo Water System/Ashworth Road Industrial Park infrastructure funded. The City Manager stated that the Caucus prefers projects with a regional benefit, although the project list clearly showed projects that would benefit just one community, such as a fire department or park. The City Manager stated that possible ideas for projects that the City could submit include the Sugar Hill Road water and sewer extension to I-40/Hospital Pump Station replacement (total cost of around $1.5 million), or unknown improvements to the Corpening Creek Wastewater Plant (these will become more clear as we continue our plant evaluation and meet with the State.)

The County Manager has indicated that the County will submit one or two projects, the Nebo Water Project and extension of water, sewer and roads into the Ashworth Road Industrial Park.

Councilman Cuthbertson asked if we submitted a project to extend water and sewer outside the City would that be considered a City project or County project. The City Manager advised that Federal funding requests were more lenient in allowing cities to extend infrastructure outside their borders.

Councilman Martin noted that the County's proposed projects would benefit the City in terms of increased water and sewer sales.

Mayor Clark suggested that the City should support the County's projects.

It was the consensus of Council that the City not submit a project for Federal funding to the WNC Caucus and to direct the City Manager to obtain more information about the County's specific requests, so that Council could determine if the City would endorse the County's requests.

REQUEST – MCDOWELL TECH – WATER CONNECTION: The City Manager advised that Dr. Byran Wilson, President of McDowell Tech, called him last week and advised that the College had spoken with David Lawrence of the Institute of Government about the College's previous request to Council for the City to waive connection fees to allow the College to connect to City water. Mr. Lawrence advised the College that the City is not permitted to waive fees and discriminate among customers of the same class of service and that the City was not permitted under State law to fund a Community College through a donation. The City Manager reported that Dr. Wilson stated that McDowell Tech likely had enough money to fund a 3" water connection, at a cost of $26,460, but that the College's architect had recommended that a 4"

[redacted]

connection was necessary to serve the entire campus. Dr. Wilson also reported that McDowell Tech would ask the Harold Smith Foundation for another $14,000 in funding for the difference between the 3" and 4" connection.

The City Manager stated that it certainly appears to be the goal of McDowell Tech to connect the entire campus to City water and Dr. Wilson seems to understand that the City has little ability to waive part or all of the water connection fees.

The City Manager advised that the City Utility Committee met on October 12 and recommends that Council continue past practice and waive the tap fee, but not the Cost Recovery Charge, if McDowell Tech can have their contractor install the tap. This will save the College $4,100 in fees to the City. The Utility Committee does not recommend pursuing any annexation at this time, due to the substantial utility revenue loss and added law enforcement responsibility, which the potential annexation of the old Georgia Pacific property would not make up.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to waive the tap fee, but not the Cost Recovery Charge, if McDowell Tech can have their contractor install the water connection to serve part or all of the College property.

REVIEW GATEWAY SIGN PROPOSALS: The City Manager presented Council with samples and price quotes from four companies that had submitted proposals for the replacement of the City's five Gateway Signs.

The Sign Proposals received for the four 8' x 12' signs and one 4' x 8' sign are summarized as follows:

Graphics Warehouse – Alumacorr (8-10 year life span) $7,870.71 Staff has concerns about this material which has holes in it to allow rain to run through the sign. It appears to be somewhat of a more flimsy material.

M&H Marketing – comaseal/PVC material (7-10 year life) $12,850.00

Custom Shirts & Embroidery – Komatex/PVC material $7,675 if top is squared off, or $8,175 if top of sign cut off around design (as other have bids), or $7,500 for Alumacorr squared off at top or about $8,000 for Alumacorr cut out around top of sign (it was stated that the vendor does not recommend cutting the Alumacorr). The estimated life for the Komatex sign is 10-15 years+, although the colors and printing on the sign may fade in 5-7 years. The sign vendor says he has never had any problem with this material warping in exterior conditions. The sign can be refaced upon fading if the material is still good, for a cost lower than that for the original sign.

Grace Design – Outdoor vinyl material $9,450 The vinyl itself is guaranteed for 3 years, but Grace designs states that the gloss laminate will extend the life of the sign "indefinitely". The vendor ended up settling on an expected life of 5-7 years. The sign can be made to not appear shiny. This is the same material used in billboards, so it should hold up to extreme weather conditions.

The City Manager advised that he and Roger Estes have looked closely at the materials submitted. They feel that the Alumacorr material is not desirable due to the holes that allow water to run through the sign. The ½" PVC type material seems much more substantial and Custom Shirts has submitted the best price for this type of material and has been most honest about the life of the sign (5-7 years before the colors and printing begins to fade). It appears that Council wants to have the sign cut out, rather than squared off, around the design, so the projected cost would be $8,175 for five signs. The City Manager stated that he could obtain further information, or review the proposals further with the Gateway Sign Committee if Council desires.

Council looked at the samples that had been prepared and discussed the proposals. After discussion, Council gave a preliminary indication that the proposal submitted by Custom Shirts & Embroidery with the Komatex/PVC material would be acceptable. Council directed the City

Manager to have Custom Shirts make a presentation on their proposal at the next meeting, and for the City Manager to obtain any final recommendations on the proposals from the Gateway Sign Committee.

DISCUSS COMMUNITY BUILDING BASEMENT IMPROVEMENTS: The City Manager advised that Council had previously approved $30,000 in Community Building basement improvements in the 2005-06 budget. As previously reported, Lowe's has agreed to assist with this project. The project components discussed by the Recreation Committee in August include the following:

Installing a drop ceiling in the basement

Installing a new heating and air conditioning system in the basement, since our recent energy audit determined that the current heating unit was extremely inefficient and needed to be replaced

Framing in walls around the stairways leading up to storage rooms above the basement

Painting the walks and framed in hallway area leading to the existing bathrooms

Sanding and refinishing the wood floor, which is the same floor as is upstairs in the Community Building

Removing the existing basketball goal

Exploring ways to install a small kitchen area and possibly a bathroom in the small rooms off of the basement, along with improving the existing basement bathrooms

These improvements would transform the current gym area into a meeting room area.

Lowe's has agreed to provide many of the items needed for the basement upgrade. Lowe's will provide all needed paint, all ceiling tiles and grids, light fixture covers, FRP board for a kitchen area in the small room off of the basement, sheet rock, replacement doors, epoxy coating for the bathroom floors if desired and new toilets for the existing bathrooms. Lowe's can also provide labor through volunteer store employees to help with painting. Lowe's would welcome a small sign marking this donation, as part of the Lowe's Heroes" project.

After further investigation, putting in a small kitchen in the room off of the basement appears doable, but new bathrooms may be a more expensive undertaking. Therefore, the recommendation of staff would be to accept the donations of Lowe's, to allow City funds to pay for the heating and air work, ceiling grid and tile installation, needed electrical work and for appliances and fixtures in the kitchen area. Other supplies may also be needed. We can also repaint and try to improve the existing basement bathrooms as much as possible, within budget limits. City crews could do much of the work that will not be done by Lowe's.

The City Manager stated that additional funds may be needed beyond the $30,000 budgeted, especially if Council does want new bathrooms off of the basement, if we do substantial work on the existing bathrooms and if we want tables and chairs to match the upstairs.

Even if we wanted to have further discussion on some details, I would request approval to accept the donations of Lowe's and to get started, pending receipt of prices, with the heating and air and new ceiling installation work. Lowe's needs to wrap up the donations by early December, but some of the labor provision and the actual completion of the project could be allowed to take longer.

Councilman Martin stated that even if Council must exceed the budget for the project, the basement must be upgraded and the bathrooms fixed.

Councilman Little stated that this project was badly needed and that the current basement and restrooms did not reflect well on the City.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve trhe plans for the Community Building basement as stated above and to

graciously accept the donation of materials and labor from Lowe's. If the project budget becomes a problem, the City Manager will report back to City Council to obtain additional funding.

REVIEW NOVEMBER/DECEMBER MEETING SCHEDULE: A discussion was held regarding the City Council Meetings for November and December.

Council agreed that the regularly scheduled meeting dates of November 1 and 15 and December 6 would not conflict with any other meetings or events. The December 6 meeting will conclude at Carolina Chocolatiers for Council's annual Christmas Dinner.

DISCUSS CITY MOWING CONTRACTS: The City Manager advised that he had received an unsolicited contract for City Street Right of Way and Cemetery Mowing from Landworx. The City Manager stated that he had previously intended to recommend re-bidding our mowing contracts at the end of this year or first of next year, since we had poor performance this year. Our street right of way mowing was sub-par last year (done for most of the year by M&H Landscaping before the company quit), and we had some complaints about the Cemetery mowing (done by Landworx/Brian Kelley). The City Manager stated that Landworx did respond when we had complaints and showed some improvement at the end of the year with his clean-up/keeping grass off of the tombstones. Mr. Kelley has submitted, unsolicited, two bids for the street right of way mowing and cemetery mowing contracts. He wishes to lock in a three year term with the City for both contracts and has an option for a second three year contract for only a two percent increase. The cost of the Cemetery mowing contract would be $800 per week, the same as was paid this year, while the cost of the street mowing contract is $1100 per week, $50 more per week than charged by M&H. The City Manager stated that Mr. Kelley has generally performed well with the street mowing contract in the past.

Councilman Edwards advised that he is nervous about Mr. Kelley's work. He has seen the cemetery looking unsightly on several occasions, and the grass on tombstones is unacceptable. However, Councilman Edwards stated he was willing to go with a good price if the City has a way out if performance is poor.

Councilman Cuthbertson noted that the City's previous contract allowed the City to terminate at any time for poor performance.

Councilman Little suggested that termination of the contract by either side, for reasons other than poor performance, be allowed only at the end of the mowing season.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to approve a contract with Landworx for a three year contract to perform street right of way mowing for $1100 per week and for a three year contract to perform Cemeteyr mowing for $800 per week, on the condition that the City may terminate the contract at any time for poor performance and that the contract state that either side may terminate at the end of mowing season.

SMITH BRIDGE CONTRACT – The City Manager advised that he had received a contract and grant agreement from the North Carolina Department of Crime Control and Public Safety that will provide the City a $25,000 grant for the newly constructed Smith Bridge off of NC 226 South. The contract and grant agreement require Council approval.

A discussion followed.

Upon a Motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve a contract and grant agreement from the North Carolina Department of Crime Control and Public Safety that will provide the City a $25,000 grant for the newly constructed Smith Bridge off of NC 226 South.

A copy of the contract can be found on file at City Hall.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSING COMMENTS:

Councilman Edwards stated that the Fall Scenes in front of City Hall look great.

Councilman Cuthbertson asked when the inmates start cleaning the creek banks, how far down are they going to go? The City Manager stated that he could check with the Prison on seeing how far the project could go.

Councilman Cuthbertson noted the recent trouble caused by the N.C. DOT regarding the issuance of a street closure permit for the High School Homecoming Parade. The issue was worked out with DOT.

CLOSED SESSION – DISCUSS LOCATION OF BUSINESS OR INDUSTRY UNDER N.C.G.S. 143-318.11 (A)(4) AND A PERSONNEL MATTER UNDER N.C.G.S. 143-318.11(A)(6): Upon a motion by Councilman Martin, seconded by Councilman Little, Council voted unanimously to go into Closed Session to discuss a matter involving the location of business or industry under N.C.G.S. 143-318.11(a)(4) and to discuss a personnel matter under 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 there was no action taken in 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

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 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, Councilmen Lloyd Cuthbertson, Mike Edwards, Billy Martin and Cecil Owenby.

Mayor Pro Tem Steve Little arrived for this meeting at 7:25 P.M., during the discussion of the Park Avenue Parking discussion, due to a medical appointment.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief, Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Tanisha & Zavia Conley 3616 US Hwy. 22 1 North Apt. H14, Marion, NC; Jean Conley 80 Mitchell Street, Marion, NC; Shania Conley 80 Mitchell Street, Marion, NC; Vonda Hooper 714 Arrowhead Trail, Marion, NC; Jamie Conley 74 Catawba Street, Marion, NC; Dean Conley 70 Francis Street, Marion, NC; Brent Conley 80 Mitchell Street, Marion, NC; Theodore Mack 254 West Hudgins, Marion, NC; Susan Westbrook 202 Brodes Road, Bostic, NC; Dr. Suzanne Sewell 1341 North Main Street, Marion, NC; Dean Ollis PO Box 2942 Marion, NC; Jeff Ayers 94 West Glenview Street, Marion, NC; Terry Menard 185 Park Avenue, Marion, NC; Harold & Hazel Sluder 14 Cardinal Lane, Marion, NC; Michelle Harrison 75 Turner Street, Marion, NC; Denise Stidham 51 Lamplighter Circle, Marion, NC; Heather Kaderlik, Marion, NC; Contessa Thomas, Marion, NC; Kendra Conley, Marion, NC

CITIZEN OF THE MONTH -SELECTED BY COUNCILMAN BILLY MARTIN: Councilman Martin selected the Citizen of the Month for November.

EULA JEAN CONLEY

Councilman Martin advised that he has known Ms. Eula Jean Conley most of his life and that she is very much deserving of the honor of Citizen of the Month.

Ms. Conley is the third of nine children. She was born in Buncombe County and attended Stephens-Lee High School.

She is a single mother, retired in 2003 from Drexel Heritage with over thirty (30) years of service. She has raised eight children, four of who graduated from Winston-Salem State University and one child received an Associate Degree from Blanton's Business College in Asheville.

Ms. Conley's Faith and her Family have been the center of her whole life. She is an active member Addie's Chapel United Methodist Church.

She is a loving mother, grandmother and friend to all who know her. All of her children are good citizens and are leading productive lives.

Council and Family Members all had kind words to share about Ms. Conley.

CONSENT AGENDA: Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes -October 18,2005 Regular City Council Meeting

B .Approve Longevity Pay:

DEPARTMENTAL SUMMARY – LONGEVITY PAY:

DEPARTMENT		GROSS AMOUNT
ADMIN	420	$4,261.76
PURCHASING	445	602.76
INSPECTIONS	500	770.60
POLICE	510	9,873.76

FIRE	530	2,307.96
PUBLIC WORKS	545	270.96
FLEET MAIN.	555	000.00
STREET	560	4,479.24
SANITATION	580	2,413.96
WATER UTILITIES	810	5,086.16
WATER PLANT	812	1,864.72
WWTP	816	2,340.00
GRAND TOTAL		**$34,271.88**

INTRODUCTION OF NEW EMPLOYEES: The City Manager introduced two new employees, Mr. Dean Ollis, Sanitation Supervisor and Ms. Susan Westbrook, Warehouse Clerk.

The City Manager advised that Mr. Ollis had done a good job for the City as the Warehouse Clerk and has recently been promoted to Sanitation Supervisor. Ms. Westbrook took Mr. Ollis's position as Warehouse Clerk.

Mayor Clark and Council members all welcomed both Mr. Ollis and Ms. Westbrook

PUBLIC COMMENT PERIOD: There were no unscheduled persons present for this meeting.

STREET COMMITTEE RECOMMENDATION -PARK AVENUE PARKING: The City Manager advised that the Street Committee had met on October 26, 2005 and reviewed the parking situation on Park Avenue between Cardinal Lane and Turner Avenue Street, in light of a petition presented at the October 18 meeting by residents in the Park Avenue area, asking Council to consider additional parking restrictions on the street.

The City Manager stated that the Street Committee looked again at this location and felt that no parking changes are necessary at this time. One of the main reasons is due to there not being any accidents in this area in the last several years. Also, the Street Committee felt that further parking restrictions on Park Avenue would create hardships on persons living on Park Avenue and currently parking on the street.

Ms. Menard asked what would be the next option of the neighborhood to change the parking restrictions on Park Avenue, given the Street Committee recommendation. She stated that the residents saw these problems every day want the requested changes made.

Councilman Martin advised that he served on the Street Committee and observed one area in the middle of the curve between Cardinal Lane and Turner Street as being a possible parking problem. Outside of that, he did not see a problem with the flow of traffic. Councilman Martin stated that it would appear that a few persons are trying to make it hard for a few others who park on the street.

Councilman Owenby advised that speed is another issue on Park Avenue and that if people obey the posted speed limit, then motorists can pass safely, even in the curve in question.

Councilman Little arrived for this meeting at 7:25PM during this discussion.

Several citizens expressed several reasons why they still what something done and are not satisfied with the Street Committee's decision.

Councilman Edwards asked if all persons on Park Avenue have driveways Ms. Menard stated that everyone on Park Avenue has a driveway.

Councilman Cuthbertson advised that he drove on Park Avenue going both directions yesterday. He stated that he could see a potential problem right in front of Cardinal Lane.

Councilman Owenby noted that parking is prohibited on the left (west) side of Park Avenue for the entire length of the street.

Chief Elliott advised that the only problem he is aware of is parking in the curve making visibility a problem.

Councilman Owenby advised that when the Street Committee visited Park Avenue, the members and staff witnessed several vehicles parked in various areas and did not have any trouble with visibility.
Mayor Clark advised that he values the Street Committee's recommendation and suggested that the Police Department continue to monitor the parking and traffic flow on Park Avenue.

Ms. Menard asked once again what the next step would be for the residents to get something done about their request. The City Manager stated that adoption of parking ordinances was the decision of City Council.

Councilman Edwards would request that this item be tabled so that he and other Council members could go and personally observe this area and study it further.

Upon a Motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to table this item until the November 15 City Council Meeting.

Councilman Little agreed that he too would like to personally visit this area.

DISCUSS DANGEROUS DOG ORDINANCE: The City Manager presented Council with the revisions to the City Animal Ordinance, as suggested by the volunteer citizens committee and advised that Council had asked for time to review the ordinance further at the last meeting.

Councilman Little advised that he had received a copy of a report from a kennel club and would suggest that Council consider making several changes including some different language for the ordinance.

Councilman Little advised that he would request that no action be taken to night so that he can put his suggestions in writing for the review of Council and the volunteer committee.

There were several persons who have been serving on the Committee present for this meeting.

The City Manager noted a few areas of concern that staff have about the enforceability of the ordinance. The City Manager suggested that the Appeals Board created by the ordinance act in only an appeals capacity, at most, and allow staff to continue enforcing the ordinance, as is done for all other City ordinances. Mayor Clark suggested that a group of experts could perhaps serve Council in an advisory role, while leaving final decisions about appeals of the ordinance to Council, as is done with all other City ordinances.

A discussion followed

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to table this item until a Council meeting in January.

PRESENTATION -CITY GATEWAY SIGNS: The City Manager stated that at the October 18 meeting, Council had reviewed four samples and proposals of City Gateway signs, as submitted by local firms.

The City Manager stated that the Gateway Sign Committee had reviewed the proposals and recommended a PVC, rather than an Alumacorr material. The Gateway Sign Committee had some different preferences about the company to be selected, based on the sign samples, but the City Manager noted that Custom Shirts had submitted the low bid for the five signs, at $8,175 for signs cut out around the design.

Jeff Ayers and Jim Gardner, representatives of Custom Shirts and Embroidery appeared before Council with a preview of their proposal. Mr. Gardner, owner of the company, stated that the contract would come with a five year warranty for the signs and a guarantee that the signs could be refaced for 65 percent of the original purchase price. Mr. Gardner and Mr. Ayers answered questions of Council about the signs.

A discussion followed

Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to award the contract for the five City gateway signs to Custom Shirts and Embroidery in the amount of $8,175 for signs with constructed of Komatex/PVC material with a five year warranty sign and with the signs cut out around the design.

REQUEST -LANDMARK ASSET SERVICES: The City Manager presented Council with a letter from Ms. Gloria Nance-Sims, with the North Carolina Department of Commerce Division of Community Assistance advising that she had received and reviewed the request seeking approval to sign a release deed associated with the Community Development Block Grant (CDBG) Housing Development (HD) Spaulding Woods II project awarded to Marion in 2000.

Ms. Sims stated that it is her understanding that the developer, Landmark Asset Services, Inc., is requesting that the City release approximately .25 acres from the Spaulding Woods I project. This deed release is needed in order for the developer to comply with City zoning issues related to the Spaulding Woods II

project. Ms. Sims stated that she further understands that no CDBG improvements resulting from the 00-C-0724 project are associated with this deed release and that the City is sufficiently collateralized in the event of a future foreclosure.

Ms. Sims stated in her letter that the State approves of the City signing the deed release. She noted that in the 2000 CDBG HD Guidelines, at least 51% of all units in the HD project area must remain affordable to and occupied by households at and below 80% of the local area median income for at least 20 years. As a result, units in this HD project must have low or moderate-income households living in them as their principal residence throughout this required period of affordability.

Ms. Sims also noted in her letter that the period of affordability that begins after project completion continues without regard to transfer of ownership.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the request from Landmark Asset Services for the City tosign a partial release deed to Spaulding Woods II as originally requested.

AWARD-CONTRACT - SKATE PARK EQUIPMENT: The City Manager presented Council with a memo from Ms. Kathy Shook, Purchasing Agent with the following bids for Skate Park equipment:

Armadillo Recreation Concord, NC	Equipment/Installation Supervision	$51,820.00
True Ride Duluth, MN	Equipment/Complete Installation	$53, 226.33
Playworld Fairview, NC	Equipment Installation Supervision	$54,000.00
Carolina Recreational Greensboro, NC	Equipment Installation Supervision	$61,953.00
Spohn Ranch, Inc City of Industry, CA	Equipment Installation Supervision	$67,573.68

The City Manager gave an overview of the bids and advised that members of the skate Park Committee recommended the True Ride equipment because they felt it was high quality equipment. The City Manager recommended that Council award the contract to True Ride also since the bid included installation, which had a value of more than the $1,406.33 difference between the low bid and True Ride.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to award the contract for the purchase of equipment for the Skate Park to True Ride in the amount of $53,226.33, said price to include installation.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that staff had received a price for the asphalt paving for Devonwood Drive:

$9,360 for the patching required for the water installation and $12,415 in additional costs to resurface the entire street. This amounts to $887 per property if all 14 property owners fronting on the road participate.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously contingent upon property owners paying in advance the resident's share of the paving costs to authorize the City Manager to proceed with resurfacing all of Devonwood Drive at the prices staed above.

The City Manager advised that there was a possibility of a park site in East Marion and presented a proposed park layout. Council agreed to review this possible location further at the Planning Session.

The City Manager also advised that this year's auction revenues were $21,871 gross, netting $19,903 for the City, an amount higher than staff had estimated the auctionn items would bring.

CLOSING COMMENTS: Councilman Cuthbertson advised that the flags would need to fly at half staff the following day at the order of the President in memory of the recent death of Civil Rights pioneer Ms. Rosa Parks.

Councilman Edwards requested that someone check Logan Street behind Wachovia Bank, as there had been a wreck and broken glass was present on the Stret. The City Manager stated that he would have this situation addressed.

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) to discuss a Personnel matter.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to go backinto Regular Session.

Mayor Clark announced that no action was taken in the Closed Session.

ADJOURNMETN: Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimsously 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 15, 2005 at 7:00P.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.

OTHER PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Larry Carver, Wastewater Treatment Superintendent; Mike Conley, News Reporter, McDowell News.

GUEST PRESENT: Terry Menard 85 Park Avenue, Marion, NC; J. Michelle Harrison 75 Turner Street, Marion, NC; Denise Sluder Stidham 51 Lamplighter Circle, Marion, NC; Harold & Hazel Sluder, 14 Cardinal Lane, Marion, NC; Dave Cook 34 Cardinal Lane, Marion, NC; Jim Edwards, Assistant Director, Isothermal Planning and Development Commission, Rutherfordton, NC; Ronnie Burgin, Post Office Box 1507, Marion, NC; Chuck Brown, 170 Morgan Street, Marion, NC; Steve King, Slagle Fire Equipment.

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 – November 1, 2005 Regular & Closed Session Meeting

B. Approve Relief Shift Honorariums

Marty Coward	143 Hrs. - $1,859.00
Terry Depoyster	213 Hrs - $2,769.00
Steve King	72 Hrs - $ 936.00
Craig Walker	84 Hrs - $1,092.00
Bradley Depoyster	39 Hrs - $ 507.00
Terry Young	39 Hrs - $ 507.00
Chris Powell	208 Hrs - $2,704.00
Ray McDaniel	24 Hrs- $ 312.00

C. Approve Contract Extension

Memorandum of Agreement
Between The City of Marion, North Carolina ("the City")
and
J. Robert Boyette ("the Manager")

1. The City agrees to employ the Manager and the Manager agrees to be employed by the City for a term of three (3) years, from January 1, 2007 until December 31, 2009. If neither party gives 90 days advance notice to the other of intent not to renew, this agreement will be extended for three (3) more years. This Memorandum of Agreement is intended to identify the salary and benefits payable to the Manager but is not intended to be an exhaustive or complete listing of all duties and areas of managerial responsibility in connection with serving as the Manager and Clerk of the City of Marion, North Carolina.

2. As of the effective date of this agreement, January 1, 2007, the City will pay the Manager an initial annual salary as set by City Council for his full-time services as the City Manager and City Clerk of the City of Marion, North Carolina. The employment provided for by this Agreement shall be the Employee's sole employment while serving as City Manager-City Clerk.

3. The City will pay severance pay of six (6) months' salary to the Manager in the event of termination of the Manager's employment by the City of Marion. Severance pay shall include accrued vacation leave paid in lump sum plus continuation of paid insurance coverage for six (6) month period after termination.

4. The Manager will be reviewed and evaluated annually by the City Council. The timing and amount of increases in salary shall be determined by the City Council.

5. The City will provide a City-owed automobile for the Manager's business use, including supplying gas, oil and maintenance. Automobile liability insurance shall be furnished by the City. The vehicle may be used for transportation to and from work and any business-related use, but not personal or family use.

6. Vacation will be earned at the same accrual and maximum accumulation schedule available to all City employees.

7. Sick leave will be earned at the same accrual and maximum accumulation schedule available to all City employees.

8. The City will pay the Manager's annual membership dues for the International City and County Management Association and the North Carolina City and County Management Association.

9. The City will pay Manager's travel and per diem expenses associated with conferences and professional meetings related to local government business and/or professional training. These expenditures will come from the amount allocated for this purpose in the City budget.

10. The City will provide insurance for the Manager in the same manner as is provided for all City employees. This does not include spousal or family coverage.

11. The City will pay the premium for life insurance on the Manger's life in keeping with the City's standard coverage.

12. The city will annually contribute the same percentage of the Manager's gross salary to 401 (k) as is provided for all City employees.

13. The City provide annual longevity pay for the Manager in the same manner provided for all City employees.

14. City will provide liability insurance coverage to the Manager to protect the Manager against personal loss in the execution of this duties as a result of legal action or claims.

15. The Manager must reside within the City Limits of the City of Marion during his employment with the City.

Accepted by:

J. Robert Boyette _____ **(seal)**
(signature)

Date accepted: 11/16/05

Accepted by:

The City of Marion, North Carolina: _____
A. Everette Clark, Mayor

Attest: _____

Date accepted: 11/16/05

(City Seal)

D. Approve Mileage Reimbursement Rate

CITY OF MARION
TRAVEL EXPENSE REQUISTION
IN STATE TRAVEL

NAME:_____ DEPARTMENT:_____

DATE:_____ACCOUNT NUMBER:_____

PURPOSE OF TRIP OR MEETING:_____
MEETING DATES: FROM: _____TO:_____

REGISTRATION FEE: (Attach Registration Form) $_____
(Do not record if paid directly by City)

MILEAGE EXPENSE:
Private Vehicle Required - _____ miles @ $.405 per mile = $ _____
Private Vehicle By Choice - _____ miles @ $. 14 per mile = $ _____
MEALS: _____ Breakfast @ $5.00 each = $ _____
_____ Lunch @ $7.00 each = $ _____
_____ Dinner @ $10.0 each = $ _____

LODGING: _____ Nights @ $ _____ each = $ _____
(Do not record if paid directly by City)
TAXI/BUS FARES: _____days @ $5.00 per day = $ _____

GRATUITIES: _____ days @ $3.00 per day = $ _____

TOTAL CASH REQUESTED: $_____

APPROVED BY DEPARTMENT HEAD – Signature: _____
___ APPROVED ___ DISAPPROVED ___ APPROVED AS CORRECTED

_____
CITY MANAGER

_____
DATE

PURCHASING DEPARTMENT USE ONLY
PURCHASE ORDER NUMBER: _____ DATE: _____
PURCHASING AGENT: _____

E . Approve Budget Amendments

CITY OF MARION, NORTH CAROLINA
2005-2006 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 2005-06 as adopted by the Marion City Council on the 21st day of June, 2005 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Police, Account Number 10-510-7400 Capital Outlay is increased from $61,475 to $179,060.

b. General Fund Revenues, Account Number 10-365-0400 Police Generator Grant is increased from $-0- to $110,530.

c. General Fund Revenues, Account Number 10-392-3000, PD Property Insurance Reimbursement is increased from $-0- to $7,055.

d. General Fund Expenditures, Non Departmental, Account Number 10-660-6300, Hospice Contribution is increased from $10,000 to $17,610.

e. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is increased from $452,371 to $459,981.

f. General Fund Expenditures, Non Departmental, Account Number 10-660-9950, Special Projects is increased from $50,000 to $59,081.

g. General Fund Revenues, Account Number 10-349-1000, CDBG Grant is increased from $-0- to $9,081.

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 November 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O-05-11-15-01

PUBLIC HEARING – ZONING AMENDMENT REQUEST: Mayor Clark opened the Public Hearing.

The City Manager gave an overview of the zoning amendment request advising that Mr. Ronnie Burgin had came before the Planning Board requesting that the B-2 Neighborhood Business District, currently located only on Baldwin Avenue, be amended to allow the manufacture and sales of septic tanks as a permitted use. The City manager stated that the Planning Board had voted unanimously to recommend the denial of t his request, due to their feeling that the request was not consistent with the intent of the B-2 district and not compatible with surrounding residential properties.

Mr. Ronnie Burgin was present for this meeting and gave an overview of the proposed business.

Councilman Owenby asked exactly what it would take to manufacture this type of septic tank. Mr. Burgin advised that the tanks would be poured, cured then sold. Once poured, tanks must be stored for 30 days to cure.

Councilman Owenby asked if anyone in McDowell County makes septic tanks.

Mr. Burgin advised that McDowell cement makes septic tanks. The City Manager advised that McDowell Cement was in an M-1 zone and predated the City's Zoning Ordinance.

Mr. Burgin stated that this type of business operates from 7AM until 5PM – Monday – Friday and that the only noise would be vibrating sound for approximately fifteen seconds at a time.

Mayor Clark asked if concrete would be mixed on site. Mr. Burgin advised that concrete would be trucked to the site.

Mr. Edwards asked where this location was. Mr. Burgin described the location of his property at Baldwin Avenue and Perry Street.

Mr. Cuthbertson asked if the nature of the business had been explained to the planning board.

Mr. Burgin advised that he had not fully explained the nature of the proposed business to the Planning Board.

Councilman Martin advised that he would like to see the amendment approved to allow Mr. Burgin to locate his business on Baldwin Avenue.

Mr. Burgin advised that approximately 6 to 8 person would be employed if this business goes well.

A discussion followed.

Mayor Clark closed the Public Hearing.

Mayor Clark advised that the screening of stored material would be essential and that prohibiting the mixing of concrete would drastically cut down on noise and dust. The City Manager explained that the B-2 district required screening of materials stored on site, which could likely be done through a solid fence.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members approve the following ordinance to allow the manufacture and sale of septic tanks as permitted use in the B-2 Neighborhood Business District, contingent upon no mixing of concrete being allowed on site:

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 807.2, B-1 Neighborhood Business District Permitted Uses, is amended by adding the following:

(21) Manufacture and sales of septic tanks, provided that no mixing of concrete shall be permitted.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 15th day of November, 2005.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City manager/Clerk

Ordinance Number: O-05-11-15-1

PUBLIC HEARING CLOSE-OUT OF COMMUNITY DEVELOPMENT BLOCK GRANK ECONOMIC RECOVERY GRANT: Mayor Clark open the Public Hearing.

Mr. Jim Edwards, Assistant Director of Isothermal Planning and Development Commission, was present for this meeting and gave an overview of the Comprehensive Economic Development Strategy (CEDS) funded by a Community Development Block Grant (CDBG) Economic Recovery Grant obtained by the City for Isothermal. Mr. Edwards stated that the project was complete and that the grant was now ready to be closed No one was present to speak concerning the grant close-out.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Cuthbertson those members of Council present voted to close out the CDBG Economic Recovery Grant.

PUBLIC APPERARANCE- CHUCK BROWN: Mr. Chuck Brown appeared before Council to discuss concerns with traffic on Morgan Street.

He advised that last week a young child was struck and injured by an automobile on Morgan Street.

Mr. Brown expressed concerns about the speed and volume of traffic on Morgan Street, recognizing that Morgan Street is used as a cut through between South Main Street/Rutherford Road and West Henderson Street.

Mr. Brown stated that he is interested in an effective way to slow this traffic down, through reducing the speed limit, such as eliminate trucks, placing speed humps, painting the speed limit on the street, etc.

Councilman Edwards asked if there a time of day that is worse than others.

Mr. Brown advised that weekends are worst, along with times when people are traveling to and from work.

Chief Elliott advised that he sees no parking problems on Morgan Street. The driver in the accident where a pedestrian was struck was not cited in the accident. The child ran from a car into the path of the driver.

Councilman Edwards advised that the same people are repeatedly using the Street as a throughway and that he would like to see this area enforced for a couple of weeks and citations written, to change the driving habits of such people.

The City Manager advised that on Thursday, Friday and Saturdays, the Police Department had begun a downtown traffic enforcement effort. He stated that staff would look at signage on Morgan Street to make sure all approved restrictions are properly posted on the street. The City Manager stated that the Traffic Schedule did list truck restrictions on Morgan Street and that he would make sure that the proper signs were posted.

Mayor Clark thanked Mr. Brown for coming.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

PARK AVENUE PARKING: The City Manager advised that this item is placed back on the agenda at Council's request.

Councilman Edwards advised that he agrees that something needs to be done to further restrict parking on Park Avenue in the area between Cardinal Lane and Turner Street.

Councilman Cuthbertson stated that he also agreed that something needs to be done.

A discussion followed. Council members agreed to direct the City Manager to put together an Ordinance prohibiting parking on the east side of Park Avenue between Cardinal Lane and Turner Street and to place the ordinance on the December 6 Consent Agenda for approval.

No action was taken.

AWARD MA FIRE DISTRICT TANKER/PUMPER TRUCK PURCHASE CONTRACT: Fire Chief Jim Neal was present for this meeting and gave overview of the bid process for the Marion Area Fire District tanker/pumper truck. Chief Neal stated that the City receive one bid from Slagle Fire Equipment, in the amount of $321,180.83. This amount is higher than the $290,000 that Chief Neal had estimated for the truck earlier this year. The City manager noted that the annual payments would be lower than what was estimated earlier in the year, since interest rates were much lower than had been projected. The City Manager advised that State law required no minimum number of bids for the purchase of vehicles or equipment; therefore, the contract for the fire truck could be awarded to the lone bidder.

Council asked where this truck was built. Chief Neal advised that it was built in Pennsylvania and could be delivered in six to eight moths after being ordered.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, those members of Council present voted to accept the bid from Salgle Fire Equipment for the purchase of a 2006 tanker/pumper fire truck For Marion Area fire District in the amount of $321,180.83.

REVIEW FINAL FORM OF STREET RIGHT OF WAY MOWING AND CEMETERY MOWING CONTRACTS: The City Manager presented the final form of Street Right of Way and Cemetery Mowing contracts, as reviewed by staff and the City Attorney, to allow three year mowing contracts with Landworx, subject to the conditions listed in the contracts. Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to approve the following:

RIGHT-OF-WAY MOWING
CONTRACT
City of MARION
Post Office Drawer 700
Marion, North Carolina 28752

This **Contract,** made and entered into this ____ day of _____, _____, between Brian Kelly and Judy Kelly D/B/A Landworx hereinafter known as the **Company,** and the City Of Marion, a municipality, hereinafter known as the **City,** shall be binding per the following:

City Right-of- Way mowing for the 2006, 2007, and 2008 seasons, approximate duration of 26 weeks per season, dependent on climate and growing conditions, to begin on or about April 1 each season with completion on or about September 30 each season. The **Company** agrees to perform the above-named service as specified in the bid instructions and work specifications, which are attached hereto as exhibit **A** and which terms are hereby incorporated by reference as if fully set forth herein, on which the **Company** has submitted the accepted bid of **$800.00** per week, for the 2006, 2007, and 2008 seasons with the City having the option to renew at the end of the 2008 season for another three years with a 2% increase to **$816.00** per week. The City agrees to pay the **Company,** upon inspection of said property and satisfactory performance by **Company,** when due and payable on the 10th, 20th and 30th of each month within the **Contract** period. The **Company** shall invoice the **City** accordingly.

The City, in its sole discretion, may request an extension for additional weeks, if needed beyond the usual season, at same rate as seasonal rate as described above. Any work that is in addition to or different than the work and bid specification as defined in exhibit A which is attached hereto must be performed with only the written approval of an authorized **City** representative or the responsibility of any charges shall be with the **Company.**

Either party, the **Company** or the **City,** may terminate this contract in writing at the end of any mowing season, which ending date must be a date the city acknowledges in writing is an ending date for purposes of this contract without notice and without penalty.

In addition to the foregoing, the **City** reserves the right to terminate this contract during the season if in the sole discretion of the city, the **Company** does not perform the work in accordance with the bid and work specification as attached hereto to the full satisfaction of the **City** or the company is otherwise in violation of this contract. In the event of such default, the **City** shall terminate the contract by sending written notification of termination to the company, and the city shall seek completion of the work by another contractor, In addition to any other damages allowable by law, the **Company** shall indemnify and pay to the city the increase in cost, if any, to the **City,** above the **Company's** agree-upon price when a replacement contractor is retained to complete the contract work for the time and the seasons of work remaining under the terms of this contract.

The **Company** agrees to comply with and perform all obligations imposed upon the **Company** by the terms and/or specifications of the attached work and did specifications. The **Company** has provided all required documentation for insurance coverage and business license, which the **Company** agrees to maintain throughout the duration of this **Contract.**

The **Company** agrees to exercise proper conduct and dress code, to the City's satisfaction, while performing work for the City.

It is the responsibility of the **Company** to supervise all work activities and the condition of the job site, and to report the **City** existence of any conditions which might constitute a hazard or "zone of danger" within the meaning of any applicable state, federal, or local regulations or statutes, including but not limited to those governing occupational safety and health. The **City** shall not have any responsibility to independently discover or inspect hazardous conditions on the job site. It shall be the sole responsibility of the **Company** to eliminate any such condition or take steps to minimize it.

The **Company** shall be responsible for and required to pay, any damages of any nature to persons or property arising during this contact period caused by the **Company** or their employees.

The **Company** aggress to indemnify the **City** and hold the **City** harmless against any and all liability and damages including costs and legal fees which may arise on account of the **Company's** actions in performing the duties of this contract, as well as the **Company's** failure to comply with the provisions of this Agreement or on account of the **Company's** failure to comply with any state, federal or local regulations, including but not limited to any provisions of the Occupational Health and Safety Act (OSHA).

_____
Printed Name and Title of Company Representative

_____
Signature of Company Representative

_____
Date

_____
City Representative

_____
Title

_____
Date

OAK GROVE CEMETERY MOWING CONTRACT
City of Marion
Post Office Drawer 700
Marion, North Carolina 28752

This **Contract**, made and entered into this ____ day of _____, _____, between Brian Kelly and Judy A Kelly D/B/A Landworx hereinafter known as the **Company**, and the City of Marion, a municipality, hereinafter known as the City, shall be binding per the following:

Oak Grove Cemetery mowing for the 2006, 2007, and 2008 seasons, approximate duration of 26 weeks per season, dependent on climate and growing conditions, to begin on or about April 1 each season with completion on or about September 30 each season.

The **Company** agrees to perform the above-named service as specified in the bid instructions and work specifications, which are attached hereto as exhibit **A** and which terms are hereby incorporated by reference as if fully set forth herein, on which the **Company** has submitted the accepted bid of **$800.00** per week, for the 2006, 2007, and 2008 seasons with the City having the option to renew at the end of the 2008 season for another three years with a 2% increase to **$816.00** per week. The City agrees to pay the **Company,** upon inspection of said property and satisfactory performance by **Company,** when due and payable on the 10th, 20th and 30th of each month within the **Contract** period. The **Company** shall invoice the **City** accordingly.

The City, in its sole discretion, may request an extension for additional weeks, if needed beyond the usual season, at same rate as seasonal rate as described above. Any work that is in addition to or different than the work and bid specification as defined in exhibit A which is attached hereto must be performed with only the written approval of an authorized **City** representative or the responsibility of any charges shall be with the **Company.**

Either party, the **Company** or the **City**, may terminate this contract in writing at the end of any mowing season, which ending date must be a date the city acknowledges in writing is an ending date for purposes of this contract without notice and without penalty.

In addition to the foregoing, the **City** reserves the right to terminate this contract during the season if in the sole discretion of the city, the **Company** does not perform the work in accordance with the bid and work specification as attached hereto to the full satisfaction of the **City** or the company is otherwise in violation of this contract. In the event of such default, the **City** shall terminate the contract by sending written notification of termination to the company, and the city shall seek completion of the work by another contractor, In addition to any other damages allowable by law, the **Company** shall indemnify and pay to the city the increase in cost, if any, to the **City**, above the

Company's agree-upon price when a replacement contractor is retained to complete the contract work for the time and the seasons of work remaining under the terms of this contract.

The **Company** agrees to comply with and perform all obligations imposed upon the **Company** by the terms and/or specifications of the attached work and did specifications. The **Company** has provided all required documentation for insurance coverage and business license, which the **Company** agrees to maintain throughout the duration of this **Contract.**

The **Company** agrees to exercise proper conduct and dress code, to the City's satisfaction, while performing work for the City.

It is the responsibility of the **Company** to supervise all work activities and the condition of the job site, and to report to the **City** existence of any conditions which might constitute a hazard or "zone of danger" within the meaning of any applicable state, federal, or local regulations or statutes, including but not limited to those governing occupational safety and health. The **City** shall not have any responsibility to independently discover or inspect hazardous conditions on the job site. It shall be the sole responsibility of the **Company** to eliminate any such condition or take steps to minimize it.

The **Company** shall be responsible for and required to pay, any damages of any nature to persons or property arising during this contact period caused by the **Company** or their employees.

The **Company** aggress to indemnify the **City** and hold the **City** harmless against any and all liability and damages including costs and legal fees which may arise on account of the **Company**'s actions in performing the duties of this contract, as well as the **Company's** failure to comply with the provisions of this Agreement or on account of the **Company's** failure to comply with any state, federal or local regulations, including but not limited to any provisions of the Occupational Health and Safety Act (OSHA).

_____
Printed Name and Title of Company Representative

_____
Signature of Company Representative

_____
Date

_____
City Representative

_____
Title

_____
Date

REVIEW EASTFIELD ANNEXATION RECOMMENDATIONS: The City Manager advised that staff had compiled revised revenue and expenditure projections for Eastfield Annexation Option 1, as revised by Council last month, and for a potential retail shopping center development at US 70 East and Stacy Hill Road. The revised Eastfield Option 1 area includes 98 houses on Perry, Leach, Bostic, Clark, Doyle and Florence Street and on Yancey Street from Clark to Perry Street. The City Manager stated that the revised boundary makes more sense on the ground and should be easier for the public and City staff to understand. With the addition of 36 houses on Clark and Yancey Streets and the US 70 East retail development, the City Manager noted that Police Chief Mika Elliott has asked for one additional police officer and for a code enforcement officer. The total expected gross revenues for the Eastfield Phase 1 Highway 70 East/Stacey Hill Road development annexations come to over $110,000, conservatively (not counting personal property taxes to be paid by Eastfield residents on their vehicles or by businesses in the new shopping center), allowing for an annual surplus of $24,715.85 if both annexations are pursued and the additional staff requested by the Police Chief are approved. The City Manager stated that with this additional staff, the Police Chief feels much more comfortable being able to serve the proposed Highway 70 East/Stacy Hill Road retail development.

The City Manager noted that the full-time Ordinance Enforcement Officer would focus on community appearance/clean-up issues. The existing Enforcement Officer could focus more time on addressing increasing complaints with animal control and parking enforcement.

The first year annexation costs, including the one-time purchase of vehicles, would result in a net loss of $26,843.51, but the annexations would nearly break even at he end of the second year, which is quite unusual for an annexation, some of which may take five to ten years or more to break even, especially if infrastructure extensions are involved.

The City Manager stated that the 70 East satellite annexation assumed septic tank maintenance by the City, pursuant to State law, and fire service contract with the Nebo Fire Department. The City Manager proposed annexation schedules, concluding and annexation effective dates of June 30, 2006.

It was the consensus of those members of Council present to proceed with both annexations under the service plans listed above with a target date of June 30, 2006 for both annexations.

ENDORSE MCDOWELL COUNTY REQUEST FOR FEDERAL FUNDING: The City manager advised that he had received information from the County regarding the County Federal funding request to the Western North Carolina Local Government Caucus for the Nebo Water System Improvement Project. The full $5.4 million project calls for a new water treatment plant, a water storage tank and water distribution lines throughout the Nebo area.

Councilman Martin noted that this request would benefit the City by allowing more water to be sold and should therefore be endorsed by Council.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to endorse the County's Federal Funding request to the Western North Carolina Local Government Caucus for the Nebo Water System.

DISCUSS/SELECT DATES FOR TOWN MEETING AND CITY COUNCL PLANNING SESSIONS: The Town meeting was scheduled for Thursday, January 19, at 7:00 p.m. at the Depot, with Thursday, January 26 scheduled as a back up date in case of inclement weather. The City Manager advised that he had researched several places where the Planning Session could be held at an out of town location, including the Highland Lake Inn in Flat Rock, the Lake Logan Episcopal Center near Canton, the Broyhill Center in Boone and the Blowing Rock Conference Center near Blowing Rock. The City Manager presented proposed costs for
The Planning Session of between $1,500 and $3,800.

Councilman Owenby advised that he is not if favor of going out of town for the Planning Session.

Councilman Edwards stated that he agreed with what Councilman Little had proposed about going out of town for the Planning Sessions to eliminate the possibility of interruptions; however, he stated that he is concerned with the perception of the public and the news media if Council goes out of town with the Planning Session, especially since the Chamber of Commerce is promoting a "Shop at Home" effort.

Mayor Clark advised that Council can go out of town or stay in town for Planning Session but, either way, time should be devoted to clear minds and concentrate.

Councilman Cuthbertson suggested alternate Planning Sessions locations.

A discussion followed.

It was the consensus of Council to hold the Planning Session in town on Friday, January 27 and Saturday, January 28, subject to the schedule of Mayor Pro Team Little. A schedule will be developed to allow for presentations by consultants and staff on the afternoon of Friday, January 27, beginning at 2:00 p.m., followed by an all-day Planning Session on Saturday, January 28, with Council going out to restaurants for all meals.

CITY MANAGER'S REORTS: The City manager gave a brief report on current projects.

The City Manager advised that McGill Associates has installed flow monitors in three wastewater collection sub-basins and that staff is now waiting for a heavy rainfall event so that sources of inflow and infiltration can be analyzed and needed repairs or line replacements can be targeted.

The City Manager stated that McGill Associates has completed the Special Order by consent (SOC) application for the Corpening Creek Wastewater Plant and sent the draft to the Asheville Regional Office of the N .C. Division of Water Quality for review. The City Manager distributed the SOC application to the Mayor and Council. The SOC contains many improvements needed in the collection system and at Corpening Creek. The City Manager stated that the City would have to use some Water and Sewer Fund Balance, Capital Reserve money and/or grant money to fund the improvements on the schedule listed in the SOC application.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to approve the SOC Application for the Corpening Creek Wastewater Plant.

CLOSING COMMENTS:

Councilman Martin asked about a potential guardrail on Sugar Hill Road between California Avenue and Wilhemenia Street. The City Manager advised that the request was submitted to DOT.

Councilman Edwards advised that there was some confusion regarding the City election as to where to vote and that the election was taking place at all. Councilman Edwards stated that he had shared these concerns with Board of Elections Chairman Roy Stepp.

Councilman Cuthbertson advised that he sees red lights being run in the downtown area and that he had noted a speeding problem on Miller Avenue.

Councilman Cuthbertson also advised that the West Henderson Street house of ill repute is still in operation. Police Chief Mika Elliott outlined efforts being made to address complaints and criminal activity at this house and to stress traffic enforcement, particularly in the downtown area. Chief Elliott noted that the problem with this house and others in the City is that we have no minimum housing code to use in solving these type of problems.

Councilman Martin suggested that the City should look at having a minimum housing ordinance given the number of substandard houses there are in the City and in potential annexations areas. Mayor Clark noted that the City would have to devote a full time person to properly enforce such a code. It was agreed that the concept of minimum housing ordinance could be discussed at the Planning Session in January.

Councilman Cuthbertson also noted that the sidewalk on Crawford Street looks dangerous and extremely unattractive. The City Manager reported that this sidewalk replacement would be an upcoming project and that he would make sure it was addressed very shortly.

Councilman Owenby advised that cars are being sold again in the Wal Mart parking lot. Police Chief Elliott advised that there are no ordinances on the books regarding these types of sales, but that he would see what could be done.

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, December 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, 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; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Nancy Clark, 330 Fleming Avenue; Marion, NC; Kaye Cuthbertson 201 Broad Street, Marion, NC; Charlie Mae Mace 2281 Burma RE, Nebo, NC; Bonnie Edwards Pulliam Street, Marion, NC; Terry Menard 85 Park Avenue, Marion, NC; J. Michelle Harrison 75 Turner Street, Marion, NC; Denise Sluder Stidham 51 Lamplighter Circle, Marion, NC; Harold & Hazel Sluder, 14 Cardinal Lane, Marion, NC; Charles Burgin, Mia Lorenz, Jennifer Jackson, Phillip Jackson, Sharon Parker and Aaron Walker, City Attorneys.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows, excluding item C:

A. Approval of Minutes - November 15, 2005 Regular Session

B. Approve Resolution to Honor Retirement of Bryan Zimmerman from the US Post Office:

Resolution Honoring Bryan Hastings Zimmerman
For Over Thirty Years of Service
With the Federal Government

WHEREAS, Bryan Hastings Zimmerman has been employed with the Federal Government since 1968, during which time he served as a mail carrier by plane for the U.S. Army in Vietnam and served as a mail carrier in Charlotte, Burke County and Marion; and

WHEREAS, Bryan has served as a mail carrier in McDowell County and in the City of Marion for over twenty years; and

WHEREAS, Bryan has carried mail for 50 percent of the City routes in Marion over the past 20 years, serving thousands of City residents; and

WHEREAS, Bryan has touched the lives of many persons in Marion as a mail carrier and often checked on the elderly as well as delivering their mail; and

WHEREAS, Bryan saved the life of an elderly Marion resident last year, who had fallen on her patio during freezing weather, by calling EMS and making sure she received needed medical care attention; and

WHEREAS, despite serious health problems the past few years, Bryan retired from the Post Office on November 8, 2005, completing over 30 years of service with the Federal Government.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES to recognize and honor Bryan Zimmerman for his years of service with the Federal Government and for his dedicated service to the many citizens of Marion.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette
City Manager

C. Approve Park Avenue Ordinance: This item pulled from consent Agenda.

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 ACROSS	EAST SIDE BEGINNING FROM THE NW CORNER OF PARK AVE. AND TURNER ST. CONTINUING 105 FT. SOUTHERLY	PROHIBITED IMMEDIATELY

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION	
PARK AVENUE	PARKING 30 FT. SOUTH OF A	EAST SIDE, BEGINNING POINT IMMEDIATELY ACROSS FROM THE SW CORNER OF PARK AVE. AND CARDINAL LANE CONTINUING NORTHERLY TO A POINT IMMEDIATELY ACROSS FROM THE NW CORNER OF PARK AVE. AND TURNER ST.	PROHIBITED

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of December, 2005.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-12-06-1

D. Approve Ordinance – Set Skate Park Rules and Regulations

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, Hazardous Recreational Activities, as follows:

Art. III. HAZARDOUS RECREATIONAL ACTIVITIES

Sec. 12-51. Purpose.

The purpose of this Article is to promote the health, safety and welfare of those persons desiring to engage in hazardous recreational activities within designated areas of the City of Marion. This Article is intended to comply with and supplement the Hazardous Recreation Parks Safety and Liability Act, Chapter 99E, Article 3 of the North Carolina General Statutes, and shall be interpreted in accordance therewith.

Sec. 12-52. Authority and enactment.

This Article is adopted under the authority and provision of the General Statutes of the State of North Carolina Article 6, Chapter 153A-121.

Section 12-53. Jurisdiction.

This Ordinance shall apply to the McDowell County Recreation Center located at 25 Academy Street in the corporate limits of the City of Marion and any other Designated Areas as defined by the City Council.

Section 12-54. Definition of terms.

(a) "Protective Equipment" shall mean helmets, elbow pads and kneepads.

(b) "Helmet" shall mean protective headgear that meets or exceeds standards established by the American National Safety Institute.

(c) "Hazardous Recreational Activities" shall mean skateboarding, inline skating or freestyle bicycling.

(d) "Designated Areas" shall mean those areas within the City of Marion specifically set aside for those engaging in Hazardous Recreational Activities. A list of Designated Areas shall be maintained by the City Clerk and each Designated Area shall include a sign clearly identifying such area Hazardous Recreational Activities use.

(e) "Participant" shall mean a person, regardless of age, who engages in a Hazardous Recreational Activity within any Designated Area.

Section 12-55. Rules and regulations.

The City Manager shall develop rules and regulations governing the use of all Designated Areas; however, the rules and regulations for the Skate Park located at the McDowell County Recreation Center at 25 Academy Street in the corporate limits of the City of Marion shall be developed by the McDowell County Director of Parks and Recreation, with input from the City. The rules and regulations shall be posted prominently near the entrances to all Designated Areas. Any person may request, at no charge, a written copy of the current rules and regulations.

Section 12-56. Duties of participants.

All persons shall wear Protective Equipment while engaging in any Hazardous Recreational Activity within a Designated Area. All Participants shall comply with all rules and regulations applicable to Designated Areas. Specifically, and without limitation, any person riding a skateboard or similar device within any Designated Area shall wear elbow pads, knee pads and a helmet that is properly fitted with chin strap fastened.

Section 12-57. Violations.

Any person violating this Article shall be subject to penalties established in Chapter 1 of the City Code.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of December, 2005.

A. Everette Clark , Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-05-12-06-2

SKATE PARK RULES

* Operating hours are sunrise to sunset. No persons are permitted within the Park between sunset and sunrise.
* No Profanity
* No vandalism, graffiti, tagging, or other means of defacing County and personal property is permitted.
* No Camping
* No Loitering
* Keep area clean and free of litter.
* Keep noise level to a minimum.
* No Food or Drinks are permitted inside the Skate Park.
* Use of alcohol, drugs, or weapons of any kind is strictly prohibited.
* Tobacco products and glass containers are prohibited.
* Unauthorized pieces of equipment or obstacles (ramps/jumps) are not allowed in the Skate Park.
* McDowell County and the City of Marion are not responsible for items left unattended.
* Skateboards and in-line skates ONLY. No bicycles, scooters, motorized vehicles of any kind or animals are permitted in the Skate Park
* Be considerate of fellow skaters especially those who are younger or less skilled. Serious injuries may result from being hit by a skateboard, falling, or colliding. Please skate safely and in control.
* WARNING! This facility is unsupervised. Users assume all risks inherent in the use of this facility. USE MAY RESULT IN SERIOUS INJURY.

* Patrons of the Skate Park must wear appropriate protective gear, including a helmet, elbow pads on each elbow, and knee pads on both knees.
* Amplified music is not permitted in the Skate Park.
* Patrons must sign registration form (one time only) and sign release and indemnity.
* During softball games, balls may come over fence from softball field – (PLEASE BE ALERT) Only in Spring and Summer months.
* Failure to adhere to the above guidelines on any direction given by the McDowell County Parks and Recreation staff may result in loss of privileges to use any McDowell County Recreation facilities.
* The McDowell County Parks and Recreation Department reserves the right to adjust operating hours based upon weather conditions and usage patterns.
* The Skate Park will be closed for rain and any inclement conditions.
* To keep the Park safe and open, please follow these guidelines and report any abuse to the McDowell County Parks and Recreation Department at 652-3001.

E. Approve Election Abstract

City Council		
Lloyd Cuthbertson	313	29 %
Mike Edwards	295	28 %
Steve Little	294	27%
Brent Rumfelt	166	15%
Write In	3	0%
Mayor		
Everette Clark	329	99%
Write In	4	1%

F. Approve Tax Refund
Connie Poteat – 2196 Rutherford Road – PIN Number 171118407419
67% of Property outside City Limits – Due Refund of $379.74

G. Endorsement of Grant Application – Pedestrian Bicycle/Recreation Planning - Council endorsed the submission of a Fit for Life Grant application to Blue Cross Blue Shield, in conjunction with the Rutherford – Polk – McDowell Health District and the McDowell Trails Association to allow for recreation, pedestrian and bicycle planning within the City.

APPROVE PARK AVENUE ORDINANCE: Councilman Owenby moved that this item tabled until the next meeting to have time to look at the proposed Parking Ordinance and to make sure he was comfortable with distances set out in the ordinance. This motion was seconded by Councilman Edwards.

Ms. Terry Menard asked if this item was open for discussion.

Mayor Clark advised no.

Ms. Menad stated that it is her opinion that Councilman Owenby has a conflict of interest with this item and should remove himself.

Councilman Owenby stated that if he had a conflict of interest with this item he would gladly remove himself; however, he does not.

Mayor Clark stated that this item would be placed on the next Council Agenda for further discussion.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

ADMINISTER OATH OF OFFICE – MAYOR/CITY COUNCIL: Mayor A. Everette Clark, Councilman Mike Edwards, Lloyd Cuthbertson and Steve Little received the Oath of Office for the positions of Mayor and City Council administered by Don Ramsey, Clerk of Superior Court of McDowell County.

SPECIAL PRESENTATION BY MAYOR CLARK: Mayor Clark Presented Mayor Pro Tem Steve Little with a service pin for twenty years of service as a Council Member for the City of Marion.

Mayor Clark presented Councilman Billy Martin and Cecil Owenby with service pins for ten years of service as a Council Member for the City of Marion.

ELECTION OF MAYOR PRO TEM: Mayor Clark opened the floor for nominations for Mayor Pro Tem.

Councilman Cuthbertson nominated Councilman Steve Little to be re-appointed as Mayor Pro Tem.

Councilman Edwards made a motion that the nomination period be closed. The motion was seconded by Councilman Cuthbertson.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to re-appoint Councilman Steve Little as Mayor Pro Tem.

APPOINTMENT/OATH OF OFFICE – CITY ATTORNEY: Mayor Clark advised that it is unusual to have the same firm serve as City Attorney for as long as Dameron, Burgin and Parker has done so. Mayor Clark noted that the firm has represented the City of Marion for nearly 60 years.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to re-appoint Dameron Burgin and Parker as City Attorney.

Attorneys Charles Burgin, Jennifer Jackson, Phillip Jackson, Mia Lorenz, Sharon Parker and Aaron Walker received the oath of Office as City Attorney administered by Don Ramsey, Clerk of Superior Court of McDowell County.

REAPPOINT CITY MANAGER TO ISOTHERMAL PLANNING AND DEVELOPMENT COMMISSION BOARD OF DIRECTORS: Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to reappoint City Manager Bob Boyette to the Isothermal Planning and Development Commission Board of Directors.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that the City, due to the hard work and persistence of Public Utilities/Project Director Glen Sherlin, had received an extended warranty with Heresy Meters on the radio units for the automated water meters installed on the water system two years ago. The City Manager stated that, according to review by City Attorney, the extended warranty is the best deal the City could possibly get.

Councilman Steve Little commended Public Utilities/Projects Director Glen Sherlin for working with Hersey Meters to get this warranty.

CLOSING COMMENTS: None

ADJOURNMENT – IN MEMORY OF MS VIRGINIA ZACHARY: Upon a motion by Councilman Edwards, seconded by Councilman Martin, Council voted unanimously to adjourn in memory of Ms. Virginia Zachary, the former elementary school teacher of Councilman Edwards. Ms. Zachary recently passed away.

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 3, 2006 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; Harriett Thomas, Finance Director; Brenda Williams, Purchasing Agent; Karen Thompson, Utility Clerk, Dawn Penland, Bookkeeper; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Colin & Tamara Wagner, 992 Fairview Road, Marion, NC; April Westmorland, Johnson Price & Sprinkle; Terry Menard, 85 Park Avenue, Marion, NC; J. Michelle & Jonathan Harrison, 75 Turner Street, Marion, NC; Denise Sluder Stidham, 51 Lamplighter Circle, Marion, NC; Harold & Hazel Sluder, 14 Cardinal Lane, Marion, NC; Keith Cook 34 Cardinal Lane, Marion, NC; John Walker (Troop 807) 1901 Nix Creek Road, Marion NC; Steve McKinney, Marion, NC; Patrick Jenkins 121 Lamplighter Lane, Marion, NC; Carma Todd 121 Lamplighter Lane, Marion, NC; Jonathan Poole 150 Baldwin Avenue, Marion, NC; Anthony Adkins 121 Lamplighter Lane, Marion, NC; Nathan Poole, 150 Baldwin Avenue, Marion, Robert Pool 46 Sunland Drive, Marion, NC; Tyler Smith 63 Ashebridge Road West, Marion, NC, 28752; Girl Scout Troop 359 from the Community Building, (8 Girls and 5 Adults).

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 - December 6, 2005 Regular Session

B. Adopt Resolution – Amend Water Policy

A Resolution Ending the Provision of Free Water and Sewer Service for City Employees, the Mayor, City Council Members, Volunteer Firefighters, Retirees and Spouses of Deceased Employees Not Currently Receiving Said Benefit

WHEREAS, the Free Water/Sewer Service Resolution adopted by the Marion City Council on January 18, 1994 provided free water and sewer service to persons meeting the qualifications listed in the resolution, including current City employees, the Mayor and City Council members, volunteer firefighters and retirees and spouses in certain cases; and

WHEREAS, research by the City Attorney indicates that this resolution and the provision of free water and sewer service is no longer consistent with North Carolina law which states that water and sewer rates may vary according to classes of services but that cities may not discriminate among customers of essentially the same character and services; and

WHEREAS, the City Council of the City of Marion determines that it is the best interest of the City to be compliant with State law while acknowledging that the City has promised this free water and sewer benefit to current recipients of said benefit.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MARION RESOLVES:

Section 1. The Marion City Council hereby rescinds the Free Water/Sewer Service Resolution adopted on January 18, 1994 except for persons qualifying for the free water and sewer benefit as of the date of adoption of this resolution, a record of which shall be kept in the Office of the City Clerk. Persons receiving the free water and sewer benefit as of the date of adoption of this resolution may continue to receive said benefit for such time as they qualify for the benefit according to the conditions established in the Free Water/Sewer Service Resolution adopted on January 18, 1994, but in no case shall any person not receiving the benefit as of the date of adoption of this resolution receive said benefit at any time in the future. If at any time a person qualifying for the benefit as of the date of adoption of this ordinances loses their eligibility to receive the free water/sewer benefit under the conditions established in the January 18, 1994 Resolution, such person shall not be eligible to receive the benefit at any time in the future.

Section 2. This resolution shall be effective upon its adoption.

Adopted this the 3rd day of January, 2006.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-06-01-03-01

C. Amend Pay and Classification Plan

CITY OF MARION
ALLOCATION OF POSITION CLASSES TO SALARY GRADES
Effective January 3, 2006

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 Receptionist
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 Administrative Secretary II Police Telecommunications Supervisor
9	$22,321	$34,837	Tax Collector Personnel Technician 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/Lab Supervisor 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	$46,681	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
22	$42,447	$66,219	
23	$44,601	$69,588	Public Works Director/Engineer
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 - January 3, 2006

D. Amend Fee Schedule/Approve Charges for Leaf and Recycling Bags:

City of Marion
Fee and Rate Schedule – January 2006

I. Water and Sewer rate Ordinance
II. Business Privilege License Ordinance
III. Planning and Inspection Fee Ordinance
IV. Copy Charge
V. Community Building Rental Rate Ordinance
VI. Oak grove Cemetery/Mausoleum/Columbarium Charges
VII. Spetic Hauler Charges
VIII. Leaf Bag Sales
IX. Depot Building Rental Rate Ordinance
X. Fire Department Water Sales
XI. Weed and Grass/Junked Vehicle/Solid Waste Ordinance Violations
XII. Parking/Ordinance Violations/Fingerprinting Charges
XIII. Solid Waste Collection Charges

Water & Sewer Rates

	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**	**$4.00 per 1,000 Gallons, plus**

	$7.20 Service Charge per month	$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	INSIDE CITY		OUTSIDE CITY	
SIZE	TAP FEE	CRC CHARGE	TAP FEE	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) 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 CUSTOMERS REQUEST TO CHECK WATER METER FOR ACCURACY	**$ 25.00**	**$ 25.00**
¾" AND 1" METERS	**$ 15.00**	**$ 15.00**
LARGER METERS	**AT COST**	**AT COST**
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	**AT COST**	**AT COST**

Privilege License Tax:

Building Inspection Fees:

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

Copies : $.02 per copy

Community Building and Community Building Basement Rentals:

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:

A. $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.

Oak Grove Cemetery:

Opening and Closing of Mausoleum -	$200.00
Opening and Closing of Columbarium-	$100.00
Sale of Old Mausoleum Vaults:	$1,000-$1,500
Sale of New Mausoleum Vaults:	$1,500-$2,000
Sale of Columbarium Niches:	**$750.00**
Plaques for Mausoleum Vaults and Columbarium Niches:	Actual Cost Plus 10%

Septic Haulers:

$15.00 per load and $.02 cents per gallon

Leaf and Trash Bag Sales:

Leaf and Trash Bag Sales $1.25 per roll of four bags

Depot Building Rentals:

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

Fire Department Water Sales:

For Railroad, DOT and Persons or Firms contracting for DOT:

$10.00 plus $.02 per gallon charge for all pickups at fire station
$20.00 plus $ .02 per gallon charge for all pickups from hydrants

For all other persons:

$10.00 plus $ .05 per gallon charge for pickups at fire station
$20.00 plus $ .05 pre gallon charge for pickups at hydrants

Weed and Grass/Junked Vehicle/Solid Waste Ordinance Violations:

Actual Cost per Violation

Marion Police Department – Tickets and Violations:

Parking Violations $10.00 with an additional $25.00 charge if not paid within seven days

Other Ordinance Violations $50.00 per occurrence

Fingerprinting Charge $5.00

Solid Waste Collections:

Special Collections:

Items Loaded without the use of a backhoe:

1-5 items	$15.00
6-10 items	$25.00
Over 10 items	To be determined by the Sanitation Supervisor

If backhoe is required:

1-5 items	$35.00
6-10 items	$45.00
Over 10 items	To be determined by the Sanitation Supervisor

Commercial Solid Waste Collection:

Plan "A" - Industrial/Commercial Dumpsters

Number of Pick-Ups Per Week	Monthly Charge
1	$ 101.00
2	$ 245.00
3	$ 390.00
4	$ 535.00
5	$ 679.00

Number of Pick-Ups Per Month	Monthly Charge

1	$	28.00
2	$	49.00
3	$	71.00

Plan "B" - Apartment Complexes

Number of Pick-Ups Per Week	Monthly Charge	
1 (minimum charge)	$	6.00 (minimum charge)
2	$	56.00
3	$	106.00
4	$	155.00
5	$	206.00

Plan "C" - Commercial Can Service

Number of Pick-Ups Per Week	Monthly Charge	
1 (minimum charge) (3 – 35 gallon cans)	$	13.00 (minimum charge)

Plan "D" – Commercial Recycling Service (see description in contract)

Monthly charge: $ 13.00

INTRODUCTION OF NEW EMPLOYEES; The City Manager advised that there had been several changes in different departments throughout the City this year due to resignations and retirements.

Finance Director Harriett Thomas introduced the following employees:

Brenda Williams – Transferred from the Water Department to Purchasing Agent

Karen Thompson – Took Ms. Williams' position as Collections Clerk in the Water Department

Dawn Penland – Took Ms. Ann Searcy's position as Accounting Assistant

Mayor Clark and Council Members thanked all three new employees for coming and wished them well in their new positions.

RECOGNITION – PATRICK JENKINS – COMPLETION OF POLICE DEPARTMENT PICNIC SHELTER AS AN EAGLE SCOUT PROJECT: Mayor Clark recognized Boy Scout Troop 807, and Girl Scout Troop 359 and thanked them for coming to this meeting.

Mr. Patrick Jenkins was present for this meeting and is a member of Troop 807. Patrick's mother, brother and sister were with him.

Mayor Clark advised that Patrick had done something really unusual that has earned him his Eagle Scout Award. Mayor Clark noted that to achieve the Eagle Scout award, a young man must complete a project that helps the community.

Police Chief Mika Elliott introduced Mr. Patrick Jenkins, who if fifteen year old. He advised that he too was an Eagle Scout and that he has a lot of respect for the Boy Scouts.

Chief Elliott stated that Patrick came to him asking if there was anything he could do that would help the police department and the City of Marion in an effort to earn his Eagle Scout Award. As a result, a nice picnic shelter has been built behind the Police Department.

Chief Elliott commended Patrick for the great job he and his fellow scouts had done on this project and encouraged everyone to take the opportunity to view the new picnic shelter.

Chief Elliott presented Patrick with a plaque thanking him for his efforts and for the completion of this project.

Council congratulated Mr. Jenkins for his many achievements at such a young age.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

CONSIDER ADOPTION OF PARK AVENUE PARKING ORDINANCE: The City Manager advised that the ordinance presented for Council, to prohibit parking on the east side of Park Avenue from a point 30 feet south of Cardinal Lane to turner street, was the same as presented last month.

Mayor Clark advised that this item was tabled by Council at the last meeting.

Councilman Owenby stated that it was he who requested that the item be tabled at the last meeting. He stated that he felt that more persons would be harmed by the adoption of this ordinance than would benefit by its passage and that eliminating parking on the street would open up the street for more speeding.

Councilman Little stated that there were competing interests with this issue on both sides. He noted that on-street parking is often done because of residents having no driveways or driveways that cannot accommodate several cars. If only one car can park in a driveway, this would create problems with guest being able to park while visiting.

Councilman Little suggested that an alternative to the proposed ordinance would be to adopt an ordinance to allow for two hour parking on Park Avenue between Cardinal Lane and Turner Street between 6:00 a.m. and 12:00 Midnight, as had been done some years ago on South Garden Street to accommodate visitors needing to park. Councilman Little moved that Council adopt an ordinance to allow for two hour parking on Park Avenue between Cardinal Lane and Turner Street between 6:00 a.m. and 12:00 Midnight.

Councilman Edwards stated that he appreciated Councilman Little's suggestion, however, school children are being placed in danger on this street during school hours due to the presence of parked cars and vehicular traffic.

Mayor Clark stated that he felt that Councilman Little's suggestion for two hour parking would help both sides & would be a good compromise. Mayor Clark advised that the City would be open to helping citizens on Park Avenue with making new approaches into their driveways.

Ms. Terry Menard of Park Avenue advised that this was the fifth time she and other residents of the Park Avenue area had been to Council, that notice of the discussion had been printed in the paper each time; however, persons opposing this ordinance have not been to a single meeting.

Councilman Edwards advised that two hour type of parking would create difficulty in enforcement for the Marion Police Department.

Mayor Clark stated that there was a motion on the floor and asked for a second. The Motion died from lack of a second.

Councilman Edwards made a motion to adopt the ordinance prohibiting parking on the east side of Park Avenue from a point 30 feet south of Cardinal Lane to Turner Street as recommended. The motion was seconded by Councilman Martin.

Councilman Cuthbertson stated that he had concerns with emergency vehicles and large City trucks not being able to maneuver Park Avenue safely with on street parking. He advised that he had to pull over for oncoming traffic several times that day while driving on Park Avenue.

Councilman Little called for question.

Motion to approve Ordinance as presented:

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 ACROSS	EAST SIDE BEGINNING FROM THE NW CORNER	PROHIBITED	IMMEDIATELY

OF PARK AVE. AND TURNER ST. CONTINUING 105 FT. SOUTHERLY

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION	
PARK AVENUE	PARKING 30 FT.	EAST SIDE, BEGINNING SOUTH OF A POINT IMMEDIATELY ACROSS FROM THE SW CORNER OF PARK AVE. AND CARDINAL LANE CONTINUING NORTHERLY TO A POINT IMMEDIATELY ACROSS FROM THE NW CORNER OF PARK AVE. AND TURNER ST.	PROHIBITED

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 3rd day of January, 2006.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-01-03-1

The Vote was as follows:

Edwards	Yes
Martin	Yes
Cuthbertson	Yes
Owenby	No
Little	No

Councilman Owenby asked if the first reading of an ordinance did not require a supermajority vote for passage under State law. The City Manager stated that State law did require a supermajority vote for passage of an ordinance on the first reading; however, the City of Marion Charter states that Council action shall in all instances be by majority vote. The City Manager noted that he had raised this issue in 2001 and that City Attorney Charles Burgin had provided his opinion that the Charter provisions prevailed.

CIVIL CITATION APPEAL: The City Manager advised that this citation was issued for property located on School Street that had trash all over the yard, a junked vehicle in the yard and had no house number posted. Mr. and Mrs. Colin Wagner had been notified by having the first notice posted on the property on October 24th. Mr. and Mrs. Wagner advised that they did not see the first notice, so a second one was issued on November 1st, making the total of citations $150.00.

The City Manager stated that the property was cleaned and all cited violations corrected by the Wagners per the direction of the Ordinance enforcement Officer by November 8; therefore he and Chief Elliott would not oppose the $150.00 in penalties being waived by Council.

Mr. and Mrs. Wagner were present for this meeting.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to waive the $150.00 penalties for the two civil citations issued to Mr. and Mrs. Colin Wagner as described above.

AUDIT PRESENTATION – JOHNSON PRICE & SPRINKLE:
Ms. April Westmoreland appeared before Council and presented a summary of the city of Marion 2004-2005 Audit.

Ms. Westmoreland stated that this is the first year the City of Marion has not received a Management letter from Johnson Price and Sprinkle, and commended Finance Director Harriett Thomas for the work she has done this past year to ensure such a smooth audit and to improve the city's operations.

The City Manager, Mayor Clark and Council Members all commended Ms. Thomas for her work with the City.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to accept the audit report as presented.

A copy of the audit report is available at City Hall.

REVIEW REVISED FEE SCHEDULE – DOWNTOWN STREETSCAPE/TRAFFIC FLOW PLAN: The City Manager advised that a few months ago Council reviewed the proposal of HSMM to complete the Downtown Streetscape/Traffic Flow Plan for $50,809.40. The City Manager noted that the Chamber of Commerce would fund $10,000 of the cost. Council decided at that point that the City could invest up to $30,000 in the study.

The City Manager stated that further negotiations with HSMM have reduced the fee down to $41,013. This quote includes a projected cost of $1,284 for an aerial flyover of downtown. McDowell County has recently done an aerial flyover and HSMM is looking to see if that aerial photography would meet the City's needs. If it does, the cost of the study would be reduced down to $39,729.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve the proposal from HSMM to complete the Downtown Streetscape/Traffic Flow Plan fro an amount not to exceed $41,013, including a $10,000 outside contribution, and to fund this study over a two year period if necessary.

DISCUSS DOWNTOWN ADVISORY COMMITTEE APPOINTMENTS: The City Manager advised that there are two vacancies on the DAC Board at this time and that Council may wish to consider appointments for these positions.

The Downtown Advisory Committee Members are as follows:

Regular Members:

Patti Hart
Has Moved
Term Expires June 30, 2008

Cliff McLarty
Resigned
Term Expires June 30, 2008

Gina DeGrechie
Term Expires June 30, 2008

Carol Price
Term Expires June 30, 2007

Mike Rabb
Term Expires June 30, 2007

Dean Kanipe
Term Expires June 30, 2007

Donna Stevens
Term Expires June 30, 2006

Gill Masters
Term Expires June 30, 2006

Bobbie Young
Term Expires June 30, 2006

Ex-officio Members:

Mayor Everette Clark
Bob Boyette (City Manager)
Freddie Killough (DBA Director)
Ashley Wooten (County Representative)
Chad Toney (Chamber Representative)

Staff:

Vacant (City Planner)

Councilman Little suggested that Kelly Lewis at Carolina Chocolatiers may be interested, or Claudia O'Buckley of Village Bakery. The City Manager suggested asking the Downtown Advisory Committee members for possible names. Council agreed by consensus to table these appointments until a future meeting.

REQUEST – MCDOWELL BOARD OF REALTORS: The City Manager presented Council with a letter from Mr. Mike Rabb, President of the McDowell Board of Realtors, requesting that Council consider charging the Board of Realtors the reduced fee of $25 per meeting charged to other non-profit and civic groups presently using the community Building on a regular schedule for their meetings.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve this request retroactive to January 1, 2006.

DISCUSS DRAINAGE REQUEST/STREET LIGHT REQUEST: The City Manager advised that several months ago the Street Committee examined a complaint by Mr. Frank Boldon about water standing at the base of his driveway as a result of the new sidewalk on Montevista and Fern Avenue.

Street Superintendent Roger Estes has spoke with Mr. Bolden regarding several ways to address this problem. Mr. Bolden has proposed that the city re-pour his driveway approach and come back about fifty (50) feet up his driveway to allow for the proper grade.

The City Manager also advised that he has received a request for a new street light at Sugar Hill Road and Stroud Street.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to refer these requests to the Street Committee for further review and a recommendation back to Council.

REVIEW NORFOLK SOUTHERN RAIL ABANDONMENT REQUEST: The City Manager reported that Norfolk Southern Railway had stated its intent to abandon the old Pea Vine Rail Line from State Street southward to a point near McDowell Tech south of I-40. This stretch of rail line totals about 3.5 miles. The City Manager stated that if the City wanted to keep the rail line right of way available for public or trail use, the following letter would need to be sent to the Federal Surface Transportation Board:

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20006

Re: Norfolk Southern Railway Company Abandonment in McDowell County, North Carolina, STB Docket No. AB-290 (Sub-No. 266X)

Dear Secretary Williams:

This request is filed on behalf of the City of Marion, North Carolina, which is a political subdivision of the State of North Carolina, hereinafter referred to as "Proponent."

Proponent encloses a $200.00 filing fee and requests issuance of a Public Use Condition as well as an Interim Trail Use Condition rather than an outright abandonment authorization between railroad milepost SB 205.0 and railroad milepost SB

208.5, a distance of 3.5 miles, located in the City of Marion, McDowell County, North Carolina. It is our understanding from staff at the STB's Office of Public Services that because the City of Marion is a public entity, a wavier of the filing fee may be requested. We respectfully request that wavier.

Request For Public Use Condition

Proponent asks the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the track, ties and signal equipment, except for public use on reasonable terms. Justification for this condition is that this corridor would connect public recreation areas, a public school and nearby neighborhoods to the downtown business district. The corridor would make an excellent recreation trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and open space and its preservation as a recreational trail is consistent with those purposes. The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time to begin negotiations with the carrier.
2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days form the effective date of abandonment authorization for the same reason as indicated above.

Request For Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Proponent also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 CFR §1152.29, Proponent is willing to assume full responsibility for management of, indemnify the railroad against any potential liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by and operated by Norfolk Southern Railway Company.

The property extends from railroad milepost SB 205.0 to railroad milepost SB 208.5, a distance of 3.5 miles, located in the City of Marion, McDowell County, North Carolina. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-290 (Sub-No. 266X).

A map depicting the right-of-way is attached.

Proponent acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon Norfolk Southern, James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510 by U.S. Mail, postage pre-paid, first class, this ___ day of January 2006.

Respectfully submitted,

Bob Boyette
Manager, City of Marion

A discussion followed. The City Manager noted that Council would need to decide at some point to what use they wished the trail to be put.

After discussion, Council settled on the idea of building a street along the section of the rail line between State and Spring Streets and to focus on a trail between Spring Street and Baldwin Avenue, with the remaining section
of the rail line reserved for future use. The City Manager suggested that Council review the street construction costs prior

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to authorize City Manager to file the above letter with the Federal Surface Transportation Board and to negotiate with Norfolk Southern the city's acquisition of the rail right of way, subject to Council review and approval.

The City Manager noted that Norfolk Southern would likely greatly reduce the amount charged for the right of way if the City would consent to closing the existing Clay Street railroad crossing. Council agreed to allow the City Manager to pursue this option, subject to Council review and approval.

REVIEW REQUEST FROM DOT – DISPOSAL OF PROPERTY – RAILROAD/BROAD STREETS: The City Manager presented a request from the North Carolina Department of Transportation for the City to consent to the disposal of residual property owned by DOT on Railroad and Broad Streets. The City Manager stated that Public Utility/Projects Director Glen Sherlin had looked at the property and that it appeared that no City utility lines are located on this property; however, it would be helpful if the City could obtain an extra ten (10) feet of right of way from DOT at this location.

The City Manager advised that the City would have to buy the right of way from DOT, at a projected cost of likely no more than a couple of hundred dollars. The remainder of the property would be sold by DOT, likely to the adjacent property owner.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve DOT's request to dispose of the residual property at Railroad and road Streets, on the condition that the City has the opportunity to acquire a ten foot strip of right of way adjacent to Railroad Street.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City retirement dinner honoring seven City employees who have retired over the past year is scheduled for Thursday, January 12, 2006 at 6:30 PM at the Marion Community Building.

The Marion Skate Park dedication is scheduled for Thursday, January 12, 2006 at 4:00 PM.

The City of Marion Town Meeting is scheduled for Thursday January 19, 2006 at the Depot.

CLOSING COMMENTS:

Councilman Little advised that the railroad crossing on Garden Street is the worst it has ever been since he has lived in Marion. The City Manager advised that multiple complaints had been made regarding that crossing and that numerous calls have been placed to Norfolk southern railway. Mayor Clark suggested that the City Manager seek assistance on this matter from the North Carolina Department of Transportation Rail Division.

Councilman Cuthbertson advised that he had been asked why we do not take down the wind screens on the tennis courts in winter to protect it. The City Manager stated that, to his knowledge, the windscreens were designed to be left up year round since people do occasionally play tennis during the winter.
Ms. Ashley Sluder, a Girl Scout, advised that she would like to see Camp Marion opened to the Girl Scouts again.

Mayor Clark advised that this area has been developed and is now a Firing range used by the Marion Fire Department and outside agencies such as McDowell Tech with permission. Mayor Clark thanked Ashley for her input and her interest.

CLOSED SESSION: Upon a motion by Councilman Martin, seconded by Councilman Little, 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 Cuthbertson, 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 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, January 17, 2006 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; Charles Oliver, Police Detective; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Kristy Carter and Karen Smith - NC Division of Community Assistance; Terry Menard, 85 Park Avenue, Marion, NC; Denise Sluder Stidham, 51 Lamplighter Circle, Marion, NC; Regina Beaver, Appalachian State University Social Work Student, Marion, NC; Sheremy Finley 206 Park Avenue, Marion, NC;. Ray Zemlis, Park Avenue, 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 - January 3, 2006 Regular Session

B. Approve Annual Certification of Firemen

CERTIFIED ROSTER
MARION FIRE DEPARTMENT
2004

Active	Retired
Christopher Burnette	John W Beck
James M Coward	Clyde W Bobo
Durwood Creson	Fred T Brown
Douglas A Crisp	Ralph M Dark, Jr.
Jacob F Crowder	Ralph M Dark, III
Adam Davis	Bruce Edwards
Terry L Depoyster	Marvin E Hall
Bradley W Depoyster	Tommy W Harris
John G Fox	James R Hollifield
Jay Goins	Millard Hollifield
Charles S King	John M Laughridge, Jr.
Roger W. McCarthy	
James Y Laughridge	
James D Parker	
John C Laughridge	
Billy R Poteat	
Dennis Laws	
Kenny W Poteat	
Raymond N McDaniels	
Jimmy Morris	Jerry W Poteat
John M Morrow, III	Dennis M Price
Fredrick Nanney	John Reese
Joseph L. Neal	
James E Neal, III	
	Jerry Stevens
Kevin W. Owenby	Charles G Suttles
James D Willis	
Amanda G. Peters	William J Young, Jr.
Kevin W Poteat	

Charles L Presnell, Jr.
Scotty W Radford William R Smith, III
Michael J Williams

C. Approve Application for N.C. Rural Center Small Towns Initiative
A Copy of the North Carolina Rural Center Small Cities Initiative Application can be found on file in the City Clerk's Office.

D. Approve Budget Amendments

CITY OF MARION, NORTH CAROLINA

2005-2006 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 2005-06 as adopted by the Marion City Council on the 2Vt day of June, 2005 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-319-1000, Prior Year Taxes is increased from $30,000 to $45,000.

b. General Fund Revenues, Account Number 10-334-1600, Federal Drug Asset Revenue is increased from $-0- to $15,200.

c. General Fund Revenues, Account Number 10-334-1700, State Controlled Substance Revenue is increased from $-0- to $5,850.

d. General Fund Revenues, Account Number 10-334-1800, County Reimbursement— Police is increased from $-0- to $1,580.

e. General Fund Revenues, Account Number 10-335-0300, Mountain Glory Revenue is increased from $16,000 to $19,500.

f. General Fund Revenues, Account Number 10-341-0500, Refunds / Reimbursements is increased from $-0- to $16,000.

g. General Fund Revenues, Account Number 10-361-0000, Interest Earned is increased from $36,000 to $60,000.

h. General Fund Revenues, Account Number 10-361-1000, Interest — Powell Bill is increased from $600 to $1,000.

i. General Fund Revenues, Account Number 10-365-0400, Police Generator Grant is increased from $110,530 to $112,423.

j. General Fund Revenues, Account Number 10-392-3000, PD Property / Insurance Reimbursement is increased from $7,055 to $13,080.

k. General Fund Revenues, Account Number 10-398-0400, Safe Neighborhood Grant is increased from $-0- to $1,000.

1. General Fund Revenues, Account Number 10-398-04 10, Street Sweeper Debt Proceeds is decreased from $140,000 to $137,000.

m. General Fund Revenues, Account Number 10-347-4100, Drink Commissions is increased from $500 to $1,000.

n. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is decreased from $459,981 to $372,033.

WATER AND SEWER

a. Water and Sewer Revenues, Account Number 30-335-2800, Fire Protection Taps, is increased from $2,500 to $10,000.

b. Water and Sewer Revenues, Account Number 30-373-0 100, Water Taps, is increased from $25,000 to $125,000.

c. Water and Sewer Revenues, Account Number 30-373-0200, Sewer Taps, is increased from $25,000 to $43,000.

d. Water and Sewer Revenues, Account Number 30-392-1100, Sale of Surplus Equipment is increased from $1,000 to $16,875.

e. Water and Sewer Revenues, Account Number 30-377-0400, Hwy 226 Bridge Grant is increased from $-0- to $25,000.

f. Water and Sewer Expenditures, Account Number 30-660-5400, Non — Departmental, Unemployment Insurance, is increased from $3,500 to $9,500.

g. Water and Sewer Expenditures, Account Number 30-810-2600, Utility Line Maintenance, Advertising, is increased from $2,000 to $6,500.

h. Water and Sewer Expenditures, Account Number 30-81-4500, Waste Treatment Plant Contracted Services, is increased from $110,000 to $166,000.

i. Water and Sewer Revenues, Account Number 30-299-0000, Fund Balance Appropriated, is decreased from $217,321 to $141,446.

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 finds.

Adopted this the 17th day of January, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: 0-06-01-17-01

E. Approve Water Extension: Brookfield Lane Subdivision off of Mackey Creek Road – City to pay for materials and engineering. The developer will install the water line under City supervision.

PUBLIC APPEARANCE: Ms. Sheremy Finley of Park Avenue appeared before Council requesting that Council designate an area in front of her residence as a handicapped parking space.

Ms. Finley advised that she is disabled and cannot access her driveway from her house since parking has been prohibited in front of her house on Park Avenue.

A discussion followed.

The City Manager advised that he had received another similar request from Mr. Harold Stewart of Orange City Florida, requesting that a designated handicap parking space be placed in front of his mother's house, Ms. Vernie Stewart at 184 Park Avenue as well.

Mayor Clark asked if driveway approaches could be built by the City to accommodate these two situations. The City Manager stated that this could be done, if Council would agree to approve any modifications and variances needed from the City's driveways standards.

Ms. Finley stated that this idea was an acceptable solution for her situation.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted unanimously to allow the City staff to pour driveway approaches for Ms. Sheremy Finley and Ms. Vernie Stewart on Park Avenue at no cost and to approve any modifications and variances needed from the City's driveway standards to allow one or more driveway approaches to be made at each residence to allow for access by each property owner.

It was also the consensus of Council that the Street Committee would look at these two requests the next day and make sure that the action taken above would accommodate these two property owners.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

PUBLIC HEARING – ZONING AMENDMENT: Mayor Clark opened the Public Hearing.

The City Manager advised that it is the recommendation of the Planning Board to amend Section 500 of the City of Marion Zoning Ordinance to add the B-1 District as a listed district. This proposed amendment would correct an inadvertent omission of the B-1 Neighborhood Business District as a listed district under Section 500 of the Zoning Ordinance.

A discussion followed.

There were no citizens present to discuss this issue.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance as recommended by the Planning Board:

ORDINANCE
AMENDING APPENDIZ 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 V, Section 500, Use district, is amended by adding the following:

(7) B-1 Neighborhood Business District

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of January, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-01-17-2

PUBLIC HEARING – AMENDMENTS TO ADULT BUSINESS, PLANNING, SUBDIVISION AND ZONING ORDINANCES TO COMPLY WITH STATE LAW CHANGES: Mayor Clark opened the Public Hearing.

The City Manager advised that he had worked with Ms. Karen Smith, of the North Carolina Division of Community Assistance Program on necessary amendments to several City ordinances to comply with recent State law changes and to correct ordinance inconsistencies. Ms. Smith gave a brief summary of the proposed amendments to the Adult Business, Planning, Subdivision and Zoning Ordinances needed for the City Code to be consistent with statutory changes made by the General Assembly during their 2005 session and to correct errors and inconsistencies.

Councilman Little marveled at what Ms. Smith has put together, stated that the amendments and summary had been done very well and commended her for the hard work.

Mayor Clark advised these amendments must be up to date in order for the City's planning program to function properly.

A discussion followed.

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 accept the amendments.

A copy of the amendments can be found on file in the City Clerk's office.

DISCUSS/APPROVE OAK GROVE CEMETERY IMPROVEMENTS AND REPAIRS: The City Manager presented Council with a memo from Roger Estes, Street Superintendent, advising that there is a growing problem with headstones and sunken graves in the cemetery.

Mr. Estes has suggested that the Street crews go into the cemetery for two weeks and fill in sunken graves and reset head stones. The City Manager stated that the Street crews would also fill in low places in the Cemetery roads and remove unsightly red poles marking the sunken areas in the road.

It was the consensus of Council to approve this project.

The City Manager advised that he would add this project to the Street and Sidewalk priority list, to be completed by Spring after current projects already underway are completed.

RECEIVE STREET COMMITTEE RECOMMENDATIONS - DRAINAGE/STREET LIGHT REQUESTS: The City Manager advised that the Street Committee met on January 6th and reviewed a request from Mr. Frank Boldon requesting that the City re-pour his driveway approach and re-grade the lower part of his driveway to correct a problem with standing water at the bottom of his driveway. The problem was caused by the new sidewalk that was installed by the City on Montevista/Fern Avenue.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the request for the City to participate in repairs to Mr. Boldon's driveway due to drainage problems created by the new sidewalk and curb on Montevista/Fern Avenue.

The Street Committee also recommended the approval of a street light at the intersection of Sugar Hill Road and Stroud Street as requested by a new occupant of the Buena Vista Townhouses on Stroud Street.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the request for a new street light at Sugar Hill Road and Stroud Street.

REQUEST TO LOCATE FED EX BOX AT FORT AND LOGAN STREETS: The City Manager advised that Fed Ex recently installed a drop box without permission on City right of way at the intersection of Fort and Logan Street.

After being contacted, Fed Ex has requested permission for the box to remain where it is. The City Manager stated that, in order for the drop box to remain, Council would have to approve the location and that a notarized, signed release form should be completed by Fed Ex.

Councilman Edwards asked why its location was changed in the first place and stated that the way it is now is very unsightly.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the placement of a Fed Ex drop box on City right of way at the intersection of Fort and Logan Street, on the condition that Fed Ex submits a signed, notarized release form holding the City harmless from any liability or problems created by the placement of the drop box at this location.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

CLOSING COMMENTS:

Councilman Owenby asked if there would be any problems with City supervision of the water line to be constructed by developers in the Brookfield Lane subdivision off of Mackey Creek Road. The City Manager stated that he had explained to the developers that City supervision of the water line installation would be required and that the developers had expressed no objection to this requirement.

Councilman Cuthbertson advised that the wind had blown the mirror at Willow and Railroad Street askew. The City Manager stated that he would have the mirror reset.

ORDINANCE AMENDMENT TO ADULT BUSINESS, PLANNING, SUBDIVISION AND ZONING ORDINANCES TO COMPLY WITH STATE LAW CHANGES 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 in its entirety as follows:

APPENDIX A ZONING*

***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. Overlay Districts, §§ 900, 901

Art. IX.5. 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:

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; Ord. No. O-03-10-07-01, § 1, 10-7-03)

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; Ord. No. O-03-10-07-01, § 1, 10-7-03)

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; Ord. No. O-03-10-07-01, § 1, 10-7-03)

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 words "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 words "map," " zoning map," "Official Zoning Map" or "Marion Zoning Map" shall mean 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.

2) 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.

3) 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.

4) Armory. A place where arms and federal and/or state military equipment may be stored and military personnel may be trained.

5) *Automobile.* For the purpose of this ordinance the term automobile shall include all motor vehicles.

6) *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)

7) *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.

8) *Automobile tire sales and service shop.* 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.

9) *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.

10) *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.

11) *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.

12) *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.

13) *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.

14) *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.

15) *Building height.* The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of the roof.

16) *Building, principal.* A building in which is conducted the principal use of the lot on which said building is located.

17) *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.

18) *Carport.* A structure consisting of a roof and two (2) or less exterior walls.

19) *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.

20) *Condominium Building.* A building containing two (2) or more condominium dwelling units.

21) *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.

22) *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.

23) *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.

24) *Dwelling unit.* A building, or portion thereof, providing complete and permanent living facilities for one family.

25) *Dwelling, single family.* A building arranged or designed to be occupied by one (1) family.

26) *Dwelling, multi-family.* A building arranged or designed to be occupied by two (2) or more families living independently of each other.

27) *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.

28) *Family care home.* A home with support 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.

29) *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.

30) *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.

31) *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.)

32) *"In view" or "visible"*. Means that it is capable of being seen without visual aid by a person of normal visual acuity.

33) *Inoperable Motor Vehicle.* See "Junked and/or Inoperable Motor Vehicle"

34) *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)

35) *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)

36) *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))

37) *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.

38) *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.

39) *Lot, depth of.* The average distance between front and rear lot lines as measured along the side lot lines.

40) *Lot, width of.* The distance between side lot lines measured at the building line.

41) *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.

42) *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.

43) *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.

44) *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.

45) *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.

46) *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.

47) *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.

48) *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.

49) *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.

50) 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:

A. A breeding ground or harbor for mosquitoes, or other insects, rats, or pests; or
B. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; or
C. A point of collection of pools or pounds of water; or
D. A point of concentration of quantities of gasoline oil or other flammable or explosive materials as evidenced by odor; or
E. One which has areas of confinement which cannot be operated from the inside, such as trunk, hoods, etc.; or
F. So situated or located that there is a danger of it falling or turning over; or

G. One which is a point of collection of garbage, food waste, animal waste or any rotten or putrescible matter of any kind; or
H. One which has sharp points thereon which are jagged or contain sharp edges of metal or glass; or
I. 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.
J. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

51) *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.

52) *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.

53) *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.

54) *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.

55) *Property line.* A line delineating the boundary of a lot or other piece of property.

56) *Senior Housing. A*n 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.

57) *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.

58) *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.

59) *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.

60) *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.

61) *Street.* A public thoroughfare which affords a principal means of access to abutting property.

62) *Structure.* Anything constructed or erected, or anything attached to something having a permanent location on the ground.

63) *Townhouse.* A single building unit constructed in a series or 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.

64) *Townhouse Building.* A building containing two (2) or more townhouse building units.

65) Townhouse development. A development consisting of two (2) or more townhouse buildings

66) *Travel trailer.* A vehicular or portable structure designed as a temporary dwelling for travel, recreation or vacation uses.

67) *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.

68) *Use, accessory.* A use located on the same lot with a principal use, and clearly incidental or subordinate to and customary in connection with the principal use.

69) *Use, principal.* The main use on a lot.

70) *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.

71) *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.

72) *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.

73) *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.

74) *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.

75) *Zoning Administrator.* The city planner or other individual(s) authorized by the city manager to administer this chapter.
(Ord. of 4-20-93; Ord. of 7-19-94; Ord. of 7-22-97, § 1; Ord. No. O-01-09-18-1, § 2, 9-18-01; Ord. No. O-02-06-18-08, § 2, 6-18-02; Ord. No. O-02-11-19-4, § 2, 11-19-02; Ord. No. O-03-03-18-03, § 2, 3-18-03; Ord. No. O-03-10-21-01, § 1, 10-21-03; Ord. No. O-03-11-18-01, § 2, 11-18-03; Ord. No. O-04-03-16-04, § 2, 3-16-04; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.

Nothing herein shall preclude the adoption of an amortization period in which certain non-conforming uses or conditions are to be phased out.

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.

(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, § 2, 10-21-03)

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 Zoning administrator 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.

(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.

(a) Location of Parking. All required off-street parking spaces shall be located on the same lot as the principal structure or use or on a contiguous lot which has the same zoning classification and is under the same ownership. The Zoning Administrator may authorize an alternative satellite parking location provided that the required parking spaces are located within 500 feet of the building entrance of the principal structure or use, are located in a zoning district that permits the principal use and provided that ownership arrangements are made so as to assure the permanent availability of such spaces to the satisfaction of the Zoning Administrator.

(b) Shared Parking. Required off-street parking spaces may be provided cooperatively for two or more uses, subject to arrangements that will assure the permanent availability of such spaces to the satisfaction of the Zoning Administrator. The number of such combined parking spaces shall equal the sum of the parking spaces required for the separate uses. However, the Zoning Administrator may reduce the total number of parking spaces required if it is determined that some or all of the spaces may serve two or more uses by reason of the daily hours of operation or seasonal activity of such uses.

REQUIRED PARKING SPACES FOR FOLLOWING USES

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.

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.

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.

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 bassinets) 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.

Senior Housing--One (1) spaces for each dwelling unit

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 Zoning administrator 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; Ord. No. O-03-08-19-03, § 2, 8-19-03; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, § 3, 10-21-03; Ord. No. O-04-03-16-04, § 3, 3-16-04; Ord No. O-05-10-18-01; § 2, 10-18-05)

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. No. O-03-08-19-03, § 3, 8-19-03; Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, § 4, 10-21-03; Ord. No. O-06-15-04-03, § 2, 6-15-04)

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) **Sign, building-attached.** 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.

(5) **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.

(6) **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.

(7) **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.

(8) **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.

(9) **Sign, On-premise.** A permanent sign which is located on the same lot as the business or establishment that it is advertising for.

(10) **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.

(11) **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.

(12) **Sign, projecting.** 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.

(13) **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.

(14) **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.

(15) **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."

(16) **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 Zoning administrator 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 Zoning administrator 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 Zoning administrator, 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 Zoning administrator. 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 Zoning administrator, 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 Zoning administrator 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 Zoning administrator 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 Zoning administrator.
(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 Zoning administrator 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 Zoning administrator 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 Zoning administrator shall refuse to issue a permit for that proposed sign structure.

When such noncompliance of this ordinance has been determined, the Zoning administrator 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 Zoning administrator, 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 Zoning administrator.

(2) As a courtesy to the sign owner, if the Zoning administrator discovers that a sign has been damaged or is in an unsafe condition, the Zoning administrator 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 Zoning administrator 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 Zoning administrator 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 Zoning administrator in conformance with the provisions of this Ordinance or remove such sign. If the notice is not complied with in ten (10) days, the zoning administrator shall remove such sign at the expense of the recipient of the notice.

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 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.

(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 within the city limits of Marion. Spectacular signs may be located only in the C-1 Central Business District, B-1 Neighborhood Business District and the C-2 General Business District after an application has been submitted to the Zoning Administrator and a permit issued therefore. No more than one spectacular sign shall be permitted per property. Spectacular signs 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 Zoning Administrator. 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.

(P) Vehicles shall not be used for the sole purpose of displaying signs.

(2) In the Residential Districts and the Neighborhood Business 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) 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.

(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.

(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.

(4) In the 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."

(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 specials or menus

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 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.

(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 Zoning Administrator.

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 4-20-93; Ord. of 6-22-93; Ord. of 9-21-93; Ord. of 7-22-97, § 1; Ord. of 4-2-02, § 2; Ord No. O-02-07-16-01, § 2, 7-16-02; Ord. No. O-02-09-03-1, § 2, 9-3-02; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-04-01-20-01, § 2, 1-20-04; Ord. No. O-04-03-16-05, § 2, 3-16-04; Ord. No. O-04-08-17-07, § 2, 8-17-04; Ord. No. O-04-09-07-02, § 2, 9-7-04; Ord. No. O-05-04-19-01, § 2, 4-19-05; Ord. No. O-05-05-17-02, §§ 2--4, 5-17-05; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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 the Zoning Administrator 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 the Zoning Administrator to determine whether or not such plan, when fully implemented, will comply with these landscaping requirements. The Zoning Administrator shall review the plan and assure compliance with these requirements, and approve or deny the 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 zoning administrator 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.

(Ord. No. O-02-08-06-01, § 2, 8-6-02; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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. 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.

(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.

(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 section 708 within six (6) months after the adoption of the ordinance adopting or amending section 708, shall be in violation.

(Ord. No. O-02-11-19-04, § 3, 11-19-02; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, § 5, 10-21-03; Ord. No. O-06-15-04-03, § 3, 6-15-04; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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.

(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.

(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, § 6, 10-21-03)

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.

(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.

(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 schools.

(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 buildings, 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 shall be allowed in the rear yard of the principal building but they shall not be allowed within one (1) foot of the side and rear property lines nor shall they be constructed so as to not drain onto adjoining property. (Refer to Article X, Exceptions and Modifications)

(10) Patio Home Developments: A development consisting of individual lots (having a minimum of sixty (60) feet in width and seven thousand (7,000) square feet in area) 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 approved and platted in accordance with Chapter 16 of the Marion City Code (Subdivision Regulations) and described by metes and bounds. The plats(s) for patio home developments must show the location of all proposed buildings and patio walls to be located on each lot. The plat(s) and metes and bounds description(s) must be recorded in the Office of the Register of Deeds for McDowell County, North Carolina, following final plat approval of said development by the Marion City Council. In addition to standards provided in the Subdivision Regulations, the following standards shall also apply to patio home developments,
- (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.

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; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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 permitted uses in the R-1 Single Family Residential District.

(2) Multi-family dwellings of eight (8) units or less.

(3) Rooming and boarding houses.

(4) Cemeteries.

(5) Day nurseries and kindergartens.

(6) One (1) mobile home per residential lot, provided 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 developments, in accordance with the requirements in Section 1003.

(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) freestanding 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

(9) Accounting and Attorney offices

(10) Real-estate offices

(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.

(12) Senior Housing

(Ord. of 11-97; Ord of 2-20-90; Ord. of 4-21-92; Ord. of 4-20-93; Ord. No. O-02-06-18-08, § 3, 6-18-02; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-04-03-16-04, § 4, 3-16-04; Ord. No. O-06-01-17-01, § 1, 01-17-06)

Section 803. C-1 Central business district.

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 schools.

(9) Bus stations.

(10) Churches.

(11) Civic and fraternal organizations.

(12) Commercial parking lots.

(13) Construction office, temporary. (See Section 400(14))

(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 offices.

(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 (see also Section 803.3).

(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.

(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 within a reasonable walking distance of such unit.

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.

(1) Construction of new multi-family buildings. Parking will be as set forth in section 702.

(2) Planned unit developments, in accordance with the requirements in Section 1003.

(3) Light industry.

(4) Uses listed in section 4.5-36 of the Marion City Code as being permitted as a special exception in the C-1 and C-2 zoning districts, subject to the requirements of Section 4.5-36 and any other applicable requirements of Chapter 4.5 of the Marion City Code.

(Ord. of 4-20-93; Ord. of 8-19-97, § 1; Ord. of 1-8-02; Ord. No. O-03-04-01-1, § 2, 4-1-03; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-05-03-22-1, §§ 2, 3, 3-22-05; Ord. No. O-06-01-17-01, § 1, 01-17-06)

Section 804. C-2 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 concentrations of general commercial activities.

804.2 Permitted uses. The following uses are permitted within the C-2 General Business District:

(1) All permitted uses in a C-1 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 shops, automobile sales, tire sales/ services, or towing and wrecking service businesses as defined herein. These businesses shall comply with section 708.

(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, sanitariums, nursing homes and medical and dental clinics.

(20) Ice pick-up stations.

(21) Industrial or vocational trade schools.

(22) Laundries and dry cleaning establishments - including self service.

(23) Mobile home sales.

(24) Monument sales.

(25) Motels, 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.

(33) Satellite parking lots

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 developments, in accordance with the requirements in Section 1003.

(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.

(4) Non-motorized bike tracks

(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."

(6) Uses listed in section 4.5-36 of the Marion City Code as being permitted as a special exception in the C-1 and C-2 zoning districts, subject to the requirements of Section 4.5-36 and any other applicable requirements of Chapter 4.5 of the Marion City Code.

(Ord. of 4-20-93; Ord. No. O-02-04-16-2, § 2, 4-16-02; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, § 8, 10-21-03; Ord. No. O-05-03-22-1, § 4, 3-22-05; Ord No. O-05-10-18-01; § 3, 10-18-05; Ord. No. O-06-01-17-01, §1, 01-17-06)

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 section 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.

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.

(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.

(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 graveyards, Automobile wrecking, junkyards 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 (L) of Section 805.3(1) of this Ordinance are 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 (L).

(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 developments, in accordance with the requirements in Section 1003.

(4) Trade lots and/ or Flea Markets located totally within an existing structure.

(Ord. of 4-20-93; Ord. No. O-03-03-04-01, § 2, 3-4-03; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, § 7, 10-21-03; Ord. No. O-06-15-04-03, § 4, 6-15-04; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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, but 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 section 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.

(15) Churches or similar places of worship, including single-family parish houses or parsonages.

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 developments, in accordance with the requirements in Section 1003.

(3) Law enforcement facilities.

(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.

(Ord. of 4-20-93; Ord. of 7-19-94; Ord. No. O-03-03-04-01, § 3, 3-4-03; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-11-18-01, §§ 3, 4, 11-18-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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

(7) Book store.
(8) Boutiques.

(9) Computer sales and services

(10) Churches

(11) Craft shops.

(12) Day Care

(13) Delicatessens.

(14) Drug stores.

(15) Flower shops.

(16) Gift shops.

(17) Convenience grocery stores.

(18) Hardware stores.

(19) Jewelry stores.

(20) Photographer's studios.

(21) Radio, appliance and television sales and repair

(22) Restaurant or Café

(23) Single-family dwellings (excluding mobile homes)

(24) Multi-family dwelling of eight of less units.

(25) Manufacture and sales of septic tanks, provided that no mixing of concrete shall be permitted.

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:

(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.

(Ord. of 4-20-93; Ord. of 7-19-94; Ord. No. O-03-03-04-01, § 2, 3-4-03; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. of 7-20-04, § 2; Ord. No. O-04-09-07-03, § 2, 9-7-04; O-05-11-15-01, § 2, 11-15-01)

ARTICLE IX. OVERLAY DISTRICTS

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.
(Ord. No. O-03-03-18-04, § 2, 3-18-03; Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.

(3) Windows. Boarding or bricking of windows is prohibited.

(Ord. No. O-03-03-18-04, § 3, 3-18-03; Ord. No. O-03-06-17-02, § 2, 6-17-03; Ord. No. O-03-10-07-01, § 1, 10-7-03)

ARTICLE IX.5 DIMENSIONAL REQUIREMENTS

R-1 Single family residential

(1)

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.

(2)

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.

(3)

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

(1)

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.

(2)

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.

(3)

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-I 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.

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.

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.

(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. of 7-20-04, § 3; Ord. No. O-04-09-07-03, § 2, 9-7-04)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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 of the setbacks of the aforementioned existing buildings.
(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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. No. O-03-03-18-03, § 3, 3-18-03; Ord. No. O-03-10-07-01, § 1, 10-7-03)

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 Zoning administrator where same are so placed as not to obstruct the light and ventilation.

(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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 efficient 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. See section 400(40)

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 special exceptions, 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 acceptable to the Board.

(Ord. of 4-20-93; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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 areas listed in (A), below, or located in the districts listed in (B) through (D), below, 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 (1) and (2) of this section when located in a side yard or if 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) O-I Office and Institutional District

(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.

(Am. of 2-2-99; Ord. No. O-02-03-19-02, § 2, 3-19-02; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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 Zoning administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning administrator and that from the decision of the Board of Adjustment, 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, unless otherwise specified, the duties of the City Council in connection with this Ordinance shall be holding a public hearing and voting upon any proposed amendment or repeal of this Ordinance as provided by law, approving or rescinding approval of vested rights as provided in Section 1104 of this Ordinance, enacting moratoria on development approvals as provided in Section 1105 of this Ordinance and establishing fees related to this Ordinance.

(Ord. No. O-3-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

Section 1101. Zoning Administrator.

The Marion City Manager shall appoint a Zoning Administrator whose duty it shall be to enforce and administer the provisions of this Ordinance.

(Ord. of 4-20-93; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

Section 1102. Zoning permit required.

No building or other structure shall be erected, moved, added to, or structurally altered nor shall the use of any building or land be changed (except as allowed by G.S. 160A-392) until the Zoning administrator 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 of Adjustment. 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 zoning or 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 shall include the following information:

(1) The location and dimensions of proposed and existing structures

(2) The location of existing and proposed driveway, sidewalks, streets and right-of-ways.

(B) Site Plan Required. No other zoning or 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:

(1) 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.

(2) 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.

(3) Location of internal and external streets, right-of-ways, sidewalks, entrances and exits.

(4) Parking lots indicating individual spaces, loading zones, and handicap parking. Adequate information to determine parking requirements.

(5) Landscape Plan as required by Section 707.

(6) Location of dumpsters and other refuse areas including screening/ buffering plan.

(7) Location and picture of proposed and existing signage as well as sign permits

(8) Pervious to non-pervious calculations.

(9) 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.)

(3) Procedures. The Zoning Administrator 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 zoning administrator 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 Zoning Administrator, 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.
(Ord. No. O-03-03-04-02, §§ 2--4, 3-4-03; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

Section 1103. Certificate of occupancy required.

A Certificate of Occupancy issued by the Zoning administrator 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 Zoning administrator 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 Zoning administrator 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 Zoning administrator, 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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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 by the City Council, following notice and a public hearing, 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 and any applicable fee as established by the City Council. 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, except that the approval authority for vested rights applications filed under this section shall be the city Council. The City Council, in considering vested rights applications (and their termination, as provided below), shall act in a quasi-judicial capacity. The City Council may approve a site specific development plan under such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure of the landowner to comply with the approved terms and conditions will result in forfeiture of vested rights approval.

(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, 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, 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;
4. 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;
5. Upon findings by the City Council, by Ordinance and after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval of the site specific development plan;

6. 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 notice and a public hearing, that the change in State or federal law has a fundamental effect on the approved site specific development plan.

(4) The Marion City Council 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; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

Section 1105. Adoption of moratoria on development approvals.
Per G.S. 160A-381, the City Council may adopt temporary moratoria on any City of Marion development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the City Council shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a special exception application has been accepted under this chapter, to development set forth in a site-specific development plan approved pursuant to G.S. 160A-385.1 and this chapter, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the City of Marion prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the City prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the City and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the City during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the City shall have taken all reasonable and feasible steps proposed to be taken by the City in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the City shall have the burden of showing compliance with the procedural requirements of this subsection.
(Ord. No. O-06-01-17-01, § 1, 01-17-06)

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. Said Board performs the duties of a Planning Board as allowed by the North Carolina General Statutes and the Marion Zoning Ordinance. Under the provisions of G.S. 160A-388 the Board also performs the duties of a Board of Adjustment 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 or rules of procedure of said Board. Depending on the particular duties it must perform, the Board may be referred to in this Ordinance as the "Planning Board" or the "Board of Adjustment".
(Ord. of 4-20-93; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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 Zoning administrator.
Appeals to the Board may be taken by any person aggrieved or by any officer, department, or board of the City of Marion affected by any decision of the Zoning administrator or other City official based on this Ordinance. Such appeal shall be filed in accordance with the adopted by-laws or rules of procedure of the Board. The Zoning administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning administrator 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 Zoning administrator and on due cause shown.

(Ord. of 4-20-93; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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 Zoning administrator 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 it makes the following written 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) That the proposed special exception complies 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.
- (I) Relation of the special exception to applicable elements if the City's planning program (see (3) below).
- (J) Appearance of the special exception relative to location, structures, and design (See (3), below).

(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 City's planning program.
- (B) Appearance of the special exception relative to location, structures, 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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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, or 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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

Section 1206. Fees for variances, appeals, and special exceptions.
The Marion City Council shall establish a fee schedule for each application for a variance, special exception or appeal, to cover the necessary administrative costs and advertising.
(Ord. of 4-20-93; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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 from its first consideration (at a meeting) of a proposed amendment 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. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any adopted land use or comprehensive plan and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the land use or comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council. The City Council is not bound by the recommendations, if any of the Planning Board.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for small-scale rezonings.

A Planning Board member shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

1300.1 Public Hearing. A public hearing shall be held by the City Council before adoption of any proposed amendment to this Ordinance. Notice of such public hearing shall be provided as required by G.S. 160A-364 and G.S. 160A-384, as outlined below:

(1) Newspaper Notice. 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.

(2) Mailed Notice. When an amendment to the Official Zoning Map (zoning map amendment) is proposed, the owner of that parcel of land, as shown on the county tax listing, that is the subject of a proposed zoning amendment, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. Such notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(3) Alternative to Mailed Notice. The first class mail notice required in subsection (2), above, shall not be required if the zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the City elects to use the expanded published notice provided for in this subsection (3). In this instance, the City may elect to either make the mailed notice provided for in subsection (2), above, or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364 (and enumerated in subsection (1), above), but provided that each advertisement shall not be less than one-half of a newspaper page in size. The

advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (2), above.

(4) Posted Notice. When a zoning map amendment is proposed, the City shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons

1300.2 Action on Zoning Amendments. Prior to adopting or rejecting any zoning amendment, the City Council shall adopt a statement describing whether its action is consistent with an adopted land use or comprehensive plan and explaining why the City Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

A City Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

1300.3 Protests. In the case of a qualified protest against an amendment to the Official Zoning Map, such amendment shall not become effective except by favorable vote of three-fourths of all members of the City Council. For the purposes of this section, vacant positions on the City Council and members who are excused from voting shall not be considered "members of the City Council" for calculation of the requisite supermajority. To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the City may rely on the county tax listing to determine the "owners" of potentially qualifying areas. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise.

No protest against any amendment to this Ordinance, including the Official Zoning Map, shall be valid or effective for the purposes of this section and G.S. 160A-385 unless it shall be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed amendment, and unless it shall have been received by the City Clerk in sufficient time to allow the City at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The City Council may, by ordinance, require that all protest petitions be on a form prescribed and furnished by the City, and such form may prescribe any reasonable information deemed necessary to permit the City to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in this section and G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.
(Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-06-01-17-01, § 1, 01-17-06)

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; Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

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.
(Ord. No. O-03-10-07-01, § 1, 10-7-03)

ARTICLE XV. PENALTY AND EFFECTIVE DATE

Section 1500. Penalties and Enforcement.

(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 by the Zoning Administrator.

(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 filed, 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 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 [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 within 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 filed. If an 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 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.

(Ord. No. O-02-11-19-1, § 2, 11-19-02; Ord. No. O-03-10-07-01, § 1, 10-7-03; Ord. No. O-03-10-21-01, §§ 9--11, 10-21-03)

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.

(Ord. No. O-03-10-07-01, § 1, 10-7-03)

Section 2. That Chapter 4.5, Businesses, of the Code of Ordinances, Article II, Sexually Oriented Businesses, Section 4-5-36 is amended as follows:

Sec. 4.5-36. Locational restrictions.

Sexually oriented businesses may be permitted as a special exception 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 one thousand five hundred (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 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 a sexually oriented business is conducted, to the nearest property line of the premises of any use listed in (a) above.

(Ord. of 7-18-00, § 11; Ord. O-06-01-17-1, § 2, 01-17-06)

Section 3. That Chapter 13, Planning, of the Code of Ordinances, Article II, Planning and Zoning Board, Section 13-28 is amended as follows:

Sec. 13-28. Rules; record, meetings; quorum.

The board 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, findings and recommendations, which record shall be a public record. The board shall hold at least one (1) meeting monthly, and all of its meetings shall be open to the public. There shall be a quorum of three (3) board members for the purpose of taking any official action required by this article. However, the board shall not perform the duties of a board of adjustment as authorized by general statutes section 160A-388, and section 13-30 of this article without the presence of four (4) board members.

(Ord. of 2-18-86, § 3; Ord. O-06-01-17-1, § 3, 01-17-06)

Section 4. That Chapter 16, Subdivisions, of the Code of Ordinances, City of Marion, North Carolina is amended in its entirety as follows:

Chapter 16 SUBDIVISIONS*

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*Cross reference(s)--Buildings and building regulations, Ch. 4; fire prevention and protection, Ch. 7; flood hazard management, Ch. 8; standards for subdivision proposals, § 8-54; planning, Ch. 13; streets, sidewalks and public places, Ch. 15; acceptance of streets, § 15-26 et seq.; water and sewerage, Ch. 20; zoning, App. A.

State law reference(s)--Authority to regulate subdivisions, G.S. § 160A-371.

Art. I. In General, §§ 16-1--16-29

Art. II. Procedures for Securing Approval of Subdivisions, §§ 16-31--16-50

Art. III. Design Standards, §§ 16-51--16-80

Art. IV. Hillside Subdivisions, §§ 16-81--16-100

Art. V. Exceptions and Variances, §§ 16-101--16-120

Art. VI. Penalties, §§ 16-121--16-135

Art. VII. Amendments, § 16-136

ARTICLE I. IN GENERAL

Sec. 16-1. Authority to regulate subdivisions.

This chapter is adopted under the authority granted by general statutes section 160A-371.
(Code 1982, § 9-3001)

Sec. 16-2. Title.

This chapter shall be known or cited as the Subdivision Regulations of the City of Marion, North Carolina, and is referred to throughout this chapter as subdivision regulations.
(Code 1982, § 9-3002)

Sec. 16-3. Jurisdiction.

These subdivision regulations shall govern all subdivision of land lying within the corporate limits of the city as now or hereafter established.
(Code 1982, § 9-3003)

Sec. 16-4. Purpose.

The purpose of these subdivision regulations is to:

(1) Establish procedures and standards for the development and subdivision of real estate within the corporate limits of the city in an effort to ensure proper legal description, identification, monumentation and recordation of real estate boundaries;

(2) Promote the orderly layout and appropriate use of land;

(3) Provide safe, convenient and economic circulation of vehicular traffic;

(4) Provide adequate building sites which are readily accessible to emergency vehicles;

(5) Ensure the proper installation of streets and utilities;

(6) Promote the eventual elimination of unsafe or unsanitary conditions because of undue concentrations of population; and

(7) Help conserve and protect the physical and economic resources of the city.
(Code 1982, § 9-3004)

Sec. 16-5. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alley means a strip or parcel of land that is publicly or privately owned, is at least twenty (20) feet in width between property lines and is set aside for public vehicular right-of-way to adjoining properties.

Building includes the word structure.

Building setback line means a line delineating the minimum distance between the property line and a building or a lot within which no building or other structure shall be placed.

Dedication means a gift by the owner of a right to the use of land for a specified purpose. Because a transfer of property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

Easement means a grant or privilege extended by the property owner for the use of a strip of land without loss of ownership for specified purposes to the public, a corporation or a person.

Lot means a parcel of land having frontage on a public street or other officially approved means of access, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, yard parking area, and other open space provisions of this chapter and of the city zoning ordinance.

Lot, corner means a lot abutting upon two (2) or more streets at their intersection. The shortest side fronting upon a street shall be considered the front of the lot and the longest side fronting upon a street shall be considered the side of the lot.

Lot, double frontage means a continuous through lot which is accessible from both streets upon which it fronts.

Lot, record of means a lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds of the county prior to the adoption of the ordinance from which this section derives, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of the ordinance from which this section derives.

Lot, through or *double frontage lot* means a lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots.

Minor subdivision means 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 subdivisions shall be considered major except for those defined as minor subdivisions.

Monument means a column or shaft of stone, concrete, or concrete and metal, employed to designate a fixed point, buried vertically in the earth, designed for maximum permanency, exployed by a surveyor to mark corners, and of a design and composition approved by the state board of registration for engineers and land surveyors.

Official maps or plans means any maps or plans officially adopted by the city council as a guide to the development of the city.

Open space means an area, land and water, generally lacking in manmade structures and reserved for enjoyment in its unaltered state.

Plan means any documented and approved program of recommended action, policy, intention, etc., which sets forth goals and objectives along with criteria, standards and implementing procedures necessary for effectively guiding and controlling decisions relative to facilitating development and growth management.

Plat means a map or plan of a parcel of land which is to be or has been subdivided.

Street means a dedicated and accepted public right-of-way for vehicular traffic.

Street, collector means a street designed to carry medium volumes of vehicular traffic, provide access to the major street system and collect the vehicular traffic from the intersecting minor streets.

Street, cul-de-sac means a street designed to have one (1) end permanently closed, the closed end terminated by a vehicular turnaround.

Street, marginal access means a minor service street which parallels and is immediately adjacent to a major street or highway, and which provides access to abutting property.

Street, major means a street designed primarily to carry heavy volumes of local vehicular traffic.

Street, minor means a street, the principal purpose of which is to provide vehicular access to the property abutting it.

Subdivider means any person, partnership, association, estate, trust, or any other group or combination acting as a unit, dividing or proposing to divide land so as to constitute a subdivision as defined in this section, including any authorized agent of the subdivider.

Subdivision shall include all divisions of a tract or parcel of land into two (2) or more lots, building sites or other divisions when any one or more of those divisions is created, for the purpose whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to these subdivision regulations.

(1) The combination or recombination of portions of previously recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the city as required by this chapter;

(2) The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors; and

(4) The division of a tract of land in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceeds the city's requirements, as standards by this chapter.

Subdivision Administrator means the City Planner or other individual(s) authorized by the City Manager to administer this chapter.

(Code 1982, § 9-3011; Ord. O-04-02-17-03, § 2, 2-17-04; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Cross reference(s)--Definitions and rules of construction generally, § 1-3.

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.
(Code 1982, § 9-3021; Ord. O-04-02-17-03) (§ 3, 2-17-04)

Sec. 16-7. Preliminary plat or minor subdivision approval required.

No subdivider shall grade, scrape, or otherwise open or extend a street in a proposed subdivision, or stake out, or lay out lots in such subdivision, or in any other manner cause construction to begin, before obtaining approval of the preliminary plat from the city council or, for minor subdivisions, final plat approval from the subdivision administrator.
(Code 1982, § 9-3022; Ord. No. O-06-01-17-01, § 4, 01-17-06)

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. See also Section 16-121.
(Code 1982, § 9-3023; Ord. O-04-02-17-03, § 4, 2-17-04; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-9. Approval of plat to precede recording.

The Review Officer, pursuant to G.S. 47-30.2, shall not certify, nor shall the clerk of superior court of the county order the register of deeds to record a plat of a subdivision until approval has been given of the final plat in accordance with the procedures set forth in these subdivision regulations, where required, and such approval has been duly evidenced in writing on the original of the final plat.
(Code 1982, § 9-3024; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-10. Approval of plat to precede acceptance of streets.

No street within a subdivision shall be accepted or maintained by the city until the final plat of the subdivision has been approved and duly recorded by the register of deeds for the county.

(Code 1982, § 9-3025)

Sec. 16-11. Conformity with regulations required for connection with public services. 66VV

The city will not accept water and sewer mains or permit any utility connections or provide any public service to any subdivision unless it conforms to the provisions of these subdivision regulations.
(Code 1982, § 9-3026)

Secs. 16-12--16-29. Reserved.

ARTICLE II. PROCEDURES FOR SECURING APPROVAL OF SUBDIVISIONS

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 subdivision administrator a simple sketch plan of the proposed subdivision, together with a sketch vicinity map 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 Subdivisions shall be approved according to Section 16-31 all other subdivisions shall be approved according to Section 16-32 through 16-34.

(Code 1982, § 9-3027; Ord. O-04-02-17-03, § 5, 2-17-04; Ord. No. O-06-01-17-01, § 4, 01-17-06)

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 subdivision meets definition for minor subdivision 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, indicating 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 this chapter and the Zoning 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:_____
(Ord. O-04-02-17-03, § 6, 2-17-04; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-32. Submission of preliminary plat.

(a) After recommendations of the sketch plan have been complied with, the subdivider shall submit to the subdivision administrator 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.

(b) Before acting on the preliminary plat, the city council may request a report from any person or agency directly concerned with the proposed development. Such report shall certify compliance with or note deviations from the requirements of this chapter and any other applicable plans, policies, ordinances or standards and include comments on other factors which bear upon the public interest.

(c) The city council shall approve or disapprove the preliminary plat within a period of forty-five (45) days of the date of submission. If conditional approval or if disapproval is given, the reasons for such action shall be stated in writing and reference shall be made to the specific section of this chapter with which the preliminary plat does not comply.

(d) Approval of the preliminary plat shall be effective for a period not to exceed one (1) year.

(Code 1982, § 9-3028; Ord. O-04-02-17-03, § 7, 2-17-04; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-33. Submission of a final plat.

(a) Whenever the provisions of these regulations have been complied with and before the expiration date of the approval of the preliminary plat, the subdivider shall submit to the subdivision administrator for review by the city council a minimum of three (3) black or bluelined prints of the final plat. The final plat shall conform substantially to the preliminary plat as

approved. The final plat shall constitute only that portion of the approved preliminary plat which the subdivider proposes to develop and record at the time; provided, however, that such portion conforms to all requirements of this chapter.

(b) The city council shall approve or disapprove the final plat within forty-five (45) days from the time of its receipt by the city manager.

(c) Action of the city council shall be noted in writing.

(d) The approval of the final plat by the city council shall not be deemed to constitute or effect the acceptance by the city of the dedication of any street or other ground, public utility line, or other public facility shown upon the plat.

(e) Within thirty (30) days after the final plat has been approved by the city council, the subdivider shall cause the plat to be recorded with the register of deeds for the county.

(Code 1982, § 9-3029; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-34. Forms for final certification.

The following certificates shall be lettered or rubber stamped on the final plat in such a manner to insure that such certificates will be legible on any prints made there from:

(1) *Certificate of Ownership and Dedication:*

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish minimum building lines, and dedicate all streets, alleys, walks, parks, and other sites to public or private use as noted. Further, I (we) certify the land as shown hereon is within the platting jurisdiction of the City of Marion, North Carolina.

	____
	Owner
____	____
Date	Owner

(2) *Certificate of Survey and Accuracy* (prepared in accordance with G.S. 47-30, as amended-example shown below).

I, _____, certify that this plat was drawn from (an actual survey made by me) (deed description recorded in book _____, page _____, book _____, page _____) (other;) that the error of closure as calculated by latitudes and departures is 1:_____; that the boundaries not surveyed are shown as broken lines from information found in book _____ page _____; that this plat was prepared in accordance with the provisions with G.S. 47-30 as amended.) Witness my hand and seal this the _____ day of _____, A.D., 20 _____.

(Seal or Stamp)

	____
	Registered N.C. Surveyor
	____
	Registration No.

(3) *Certificate of Approval of the Design and Installation of Streets, Utilities and Other Required Improvements.*

I hereby certify (1) that streets, utilities, and other required improvements have been installed in an acceptable manner and according to the City of Marion's specifications and standards in the subdivision entitled _____, or, (2) that a guarantee of the installation of the required improvements in an amount satisfactory to the City of Marion has been received.

	———
	Public Works Director
———	———
Date	City Manager

(4) *Certificate of Approval for Recording Plat.*

I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Regulations for Marion, North Carolina, and that this plat has been approved by the Marion City Council for recording in the office of the Register of Deeds for McDowell County.

———	———
Date	City Clerk

(Seal)

(Code 1982, § 9-3030; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-35. Adoption of moratoria on development approvals.

Per G.S. 160A-381, the City Council may adopt temporary moratoria on any City of Marion development approval required by law. See applicable provisions of the Zoning Ordinance of the City of Marion and G.S. 160A-381.
(Ord. No. O-06-01-17-01, § 4, 01-17-06)

Secs. 16-36--16-50. Reserved.

ARTICLE III. DESIGN STANDARDS

Sec. 16-51. Compliance.

All subdivisions established after the adoption of the ordinance from which this section derives, with the exception of those subdivisions meeting the requirements of a hillside subdivision as defined in this chapter, shall be developed in accordance with the minimum design standards set forth in this article, the Zoning Ordinance of the City of Marion and any other applicable plans, policies, ordinances or standards.
(Code 1982, § 9-3036; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-52. Streets.

(a) *Conformity to existing maps or plans.* The location and width of all streets shall be in conformity with official plans and maps of the city and with existing plans of the city council, including the major thoroughfare plan.

(b) *Continuation of adjoining street system.* The street layout shall be coordinated with the street system of the surrounding area.

(c) *Access to adjacent properties.* Where, in the judgment of the city council, it is desirable to provide for street access to adjoining property, streets shall be extended by dedication to the boundary of such property and a temporary turnaround shall be provided.

(d) *Private streets.* There shall be no private streets or reserve strips platted in any subdivision.

(e) *Street names.* The names of new streets shall not duplicate or be phonetically similar to existing street names. New streets which are in alignment with existing and named streets shall bear the assigned name of the street.

(f) *Street right-of-way widths.* Minimum street right-of-way widths shall be in accordance with the following:

(1) Highways . . . . 80--100 feet

(2) Major streets . . . . 80 feet

(3) Collector streets . . . . 50 feet

(4) Minor streets . . . . 50 feet

(5) Marginal access streets . . . . 50 feet

(6) Cul-de-sacs . . . . 100 feet

(g) *Street pavement widths.* Pavement width back to back of curb shall not be less than the following:

(1) Major streets . . . . 55 feet

(2) Collector streets . . . . 28 feet

(3) Minor streets . . . . 28 feet

(4) Marginal access streets . . . . 28 feet

(5) Cul-de-sacs . . . . 80 feet

(h) *Street grades.* Street grades shall be as follows:

(1) Street grades shall not be more than fifteen (15) percent nor less than one-half of one (1) percent.

(2) Grades approaching intersections shall not exceed five (5) percent for a distance of not less than one hundred (100) feet from the centerline of such intersection.

(i) *Intersections.* Street intersections shall be laid out as follows:

(1) Streets shall intersect as nearly as possible at right angles and no street shall intersect at less than sixty (60) degrees.

(2) Property lines at street intersections shall be rounded with a minimum radius of twenty (20) feet. At an angle of intersection of less than seventy-five (75) degrees a greater radius may be required. Where a street intersects a highway, the design standards of the state highway commission shall apply.

(Code 1982, § 9-3037)

Cross reference(s)--Requirements for acceptance of new streets, § 15-27.

Sec. 16-53. Street improvements.

The following requirements shall apply to all streets within the corporate limits of the city.

(1) *Grading.* All streets shall be graded to their full width. Finished grade, cross section and profile shall be approved by the city council.

(2) *Paving.* Road base and paving shall be installed in accordance with the provisions of this chapter and city specifications and standards.

(3) *Curb and gutter.* Combination curb and gutter shall be installed in accordance with city specifications and standards.

(4) *Cul-de-sac.* A cul-de-sac shall not exceed eight hundred (800) feet in length and shall be provided with a turnaround having a roadway diameter of at least eighty (80) feet and a right-of-way diameter of at least one hundred (100) feet. Temporary turnarounds shall be paved in accordance with the city's specifications and standards. All streets must be through streets unless approved otherwise by the city council.

(Code 1982, § 9-3038)

Sec. 16-54. Alleys.

Alleys shall be provided to the rear of all lots used for other than residential purposes. Alleys are prohibited in residential blocks unless such are approved by the city council. All dead-end alleys shall be provided with a turnaround. All alleys shall be constructed in accordance with city specifications and standards and shall have a right-of-way width of twenty (20) feet.
(Code 1982, § 9-3039)

Sec. 16-55. Lots.

All lots shall front upon a public street. Double frontage shall be avoided. Lots shall comply with the following requirements:

(1) *Area.* All lots shall have a minimum area as required by the Zoning Ordinance of the City of Marion.

(2) *Orientation of lot lines.* Side lot lines shall be substantially at right angles or radial to street lines.

(3) *Width and depth.* All lots shall have a minimum width at the building line as required by the Zoning Ordinance of the City of Marion and a minimum width at the street line of thirty-five (35) feet. Corner lots shall have an extra width of fifteen (15) feet to permit adequate setback from side streets.

(Code 1982, § 9-3040; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-56. Blocks.

The maximum and minimum lengths and widths of blocks shall be as follows:

(1) *Length.* Block lengths shall not exceed one thousand five hundred (1,500) feet nor be less than four hundred (400) feet. If deemed necessary by the city council a pedestrian crosswalk of at least ten (10) feet in width may be required.

(2) *Width.* Blocks shall have sufficient width to allow two (2) tiers of lots of minimum depth. Blocks may be one (1) lot in depth where single-tier lots are required to separate residential development from through vehicular traffic or nonresidential uses.

(Code 1982, § 9-3041)

Sec. 16-57. Sidewalks.

Sidewalks shall be constructed on such streets the city council considers sidewalks to be necessary. Sidewalks, if constructed, shall be within the street right-of-way and installed in accordance with city specifications and standards.
(Code 1982, § 9-3042)

Sec. 16-58. Subdivision corner ties and monuments.

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with the following requirements:

(1) *Subdivision corner tie.* At least one (1) corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker. If a corner is within two thousand (2,000) feet of a U.S. Coast and Geodetic Station or state grid system coordinated monument or city limit marker, then this corner shall be marked with a monument so designed by computed X and Y coordinates which shall appear on the map with a statement identifying this station or monument. When such a monument or station is not available, the tie shall be made to some pertinent and readily recognizable landmark or identifiable point, physical object or structure.

(2) *Monument.* Within each block of a subdivision at least two (2) monuments designed and designated as control corners shall be installed. The surveyor shall employ additional monuments if and when required. All monuments shall be constructed of concrete and be at least four (4) inches in diameter or square and not less than three (3) feet in length. Each monument shall have imbedded in the top and attached by a suitable means a metal plate of noncorrosive materials and marked plainly with the point, the surveyor's registration number, the month and year it was installed, and the word monument or control corner. A monument shall be set at least thirty (30) inches in the ground with at least six (6) inches exposed above the ground unless this requirement is impractical.

(Code 1982, § 9-3043)

Sec. 16-59. Property markers.

A steel or wrought iron pipe or the equivalent not less than three-fourths inches in diameter and at least thirty (30) inches in length shall be set at all corners, expoint curve, point of intersection, property corner, point of tangency and reference point unless a monument has already been placed at such points. Additional markers shall be placed at other points as required.
(Code 1982, § 9-3044)

Sec. 16-60. Utilities.

Storm sewers, waterlines and sanitary sewers shall be designed by a registered engineer and shall be approved by the city manager and public works director. Sanitary sewers and water mains shall be installed in accordance with city specifications and standards. No private water and sewerage systems will be accepted by the city unless they are installed according to city specifications and standards.
(Code 1982, § 9-3045)

Sec. 16-61. Guarantee of improvements.

Where the required streets, utilities or other improvements have not been completed prior to the submission of the final plat for approval, the subdivider may guarantee the installation of the improvements in one (1) of the following methods:

(1) Filing a performance or surety bond in an amount equal to one hundred and twenty five percent (125%) of the cost to complete the remaining required improvements as determined by cost estimates; or

(2) Depositing or placing in escrow a certified check or cash in an amount equal to one hundred and twenty five percent (125%) to complete the remaining required improvements as determined by cost estimates.

Portions of the improvement guarantee may be released by the city as work progresses.
(Code 1982, § 9-3046; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-62. Building setback lines.

The minimum setback from property lines shall be as provided in the Zoning Ordinance of the City of Marion:
(Code 1982, § 9-3047; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Sec. 16-63. Easements.

Utility and other easements shall be provided as follows:

(1) *Utility easements.* Utility easements centered on rear or side lot lines shall be provided where deemed necessary by the city council and shall be at least fifteen (15) feet in width.

(2) *Crosswalk easements.* A crosswalk easement of at least eight (8) feet in width shall be provided if required by the city council.

(3) *Watercourse and drainage easement.* Where a subdivision is traversed by a watercourse, drainage way, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width or construction, or both, as will be adequate for the purpose.
(Code 1982, § 9-3048)

Secs. 16-64--16-80. Reserved.

ARTICLE IV. HILLSIDE SUBDIVISIONS

Sec. 16-81. Definition.

For the purpose of this article, the term hillside subdivision means land proposed to be subdivided which has a fifteen (15) percent slope, an average difference in elevation of more than fifteen (15) feet in a horizontal distance of one hundred (100) feet, or more. Any block frontage shall be considered a hillside subdivision if the slope of thirty (30) percent or more of its length equals or exceeds fifteen (15) percent. All provisions of this article as set forth herein shall apply to hillside subdivisions.
(Code 1982, § 9-3056)

Cross reference(s)--Definitions and rules of construction generally, § 1-3.

Sec. 16-82. Street design.

(a) *Widths.* Within the corporate limits of the city, minor streets shall have a right-of-way of at least fifty (50) feet except that a right-of-way of forty (40) feet will be permitted if:

(1) The average cross slope of the hillside is forty (40) percent or more; or

(2) The street is permanently dead-ended; or

(3) Lots front on only one (1) side of the street and the cross slope is twenty-six (26) percent or more.

(b) *Cul-de-sacs.* The required turnaround on a dead-end street in a hillside subdivision shall have a roadway diameter of not less than sixty (60) feet. If the street length does not exceed three hundred (300) feet and if construction difficulties will not permit a turnaround, the use of a Y or hammerhead turning space may be acceptable if approved by the city council.
(Code 1982, § 9-3057)

Sec. 16-83. Pavement widths.

Where the average cross slope is twenty-six (26) percent or greater, pavement widths may be reduced by the city council as follows:

(1) Where the average cross slope is between twenty-six (26) percent and forty (40) percent the minimum pavement width may be reduced to twenty (20) feet.

(Code 1982, § 9-3058)

Sec. 16-84. Lots.

(a) Where the average cross slope is between fifteen (15) percent and twenty-five (25) percent, design requirements for lots are as follows:

(1) The average minimum lot area for the entire subdivided area will be twelve thousand (12,000) square feet. Not less than eighty (80) percent of the lots shall have an area of twelve thousand seven hundred (12,700) feet and no lot shall have an area of less than nine thousand (9,000) square feet.

(2) Minimum lot frontage will be seventy (70) feet except a minimum frontage of forty-five (45) feet may be permitted at the end of a cul-de-sac.

(3) Minimum average lot width will be seventy (70) feet.

(b) When the average cross slope is between twenty-six (26) percent and forty (40) percent, design requirements for lots are as follows:

(1) The average minimum lot area for the entire subdivided area will be twenty-five thousand (25,000) square feet. Not less than eighty (80) percent of the lots shall have a minimum area of twenty-eight thousand (28,000) square feet and no lot shall have an area of less than fourteen thousand (14,000) square feet.

(2) Minimum lot frontage will be one hundred (100) feet except a minimum frontage of fifty-five (55) feet may be permitted at the end of a cul-de-sac. The city council may approve panhandle lots in exceptional cases where it is impractical to serve an isolated lot by a public street. The frontage of a panhandle lot shall have a minimum width of twenty-five (25) feet providing an access strip between two (2) regular lots to the isolated building site. The area of such strip shall be excluded in computing the lot area and width, and the length of such strip shall not exceed three hundred (300) feet.

(3) Minimum average lot width will be one hundred (100) feet.

(c) When the average cross slope is greater than forty (40) percent, design requirements for lots are as follows:

(1) The average minimum lot area for the entire subdivided area will be one (1) acre. Not less than eighty (80) percent of the lots shall have a minimum area of forty-eight thousand (48,000) square feet and no lot shall have an area less than twenty-five thousand (25,000) square feet.

(2) Minimum lot frontage will be one hundred forty (140) feet except a minimum frontage of seventy (70) feet may be permitted at the end of a cul-de-sac. In exceptional cases, panhandle lots may be permitted as provided for in section 16-55.

(3) Minimum average lot width will be one hundred thirty (130) feet.

(Code 1982, § 9-3059)

Sec. 16-85. Front setback.

Within the city limits, setback requirements for hillside subdivisions shall conform to the requirements of section 16-62.

(Code 1982, § 9-3060; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Secs. 16-86--16-100. Reserved.

ARTICLE V. EXCEPTIONS AND VARIANCES

Sec. 16-101. Modification of standards and requirements.

The standards and requirements of this chapter may be modified by the city council in the case of a plan or program for a complete group development which in the judgment of the city council provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and which also provides such covenants or other legal provisions that will assure conformity to and achievement of the plan.

(Code 1982, § 9-3066)

Sec. 16-102. Variances.

Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of the regulations of this chapter would cause an unnecessary hardship, the city council may authorize a variance, following notice and a quasi-judicial hearing,

if such variance can be made without destroying the intent of the subdivision regulations. Any variance thus authorized is required to be entered in writing in the minutes of the city council and the reasoning on which the departure was justified set forth.
(Code 1982, § 9-3067; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Secs. 16-103--16-120. Reserved.

ARTICLE VI. PENALTIES

Sec. 16-121. Penalties.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the city, thereafter subdivides such land in violation of the subdivision regulations or transfers or sells such land by reference to, exhibition of, or any other use of a plat showing a subdivision of such land before such plat has been approved in accordance with the subdivision regulations recorded in the office of the register of deeds, shall be guilty of a misdemeanor, and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring such land shall not exempt the transaction from such penalties. The city, through its city attorney or other official designated by the city council, may enjoin such transfer or sale by action for injunction. Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, the city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct or abate the violation, or to prevent any illegal act or conduct. See also Chapter 1 of the Marion City Code.

The provision of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision regulations or recorded with the register of deeds, provided such is done in compliance with G.S. 160A-375, as amended.
(Code 1982, § 9-3071; Ord. No. O-06-01-17-01, § 4, 01-17-06)

Secs. 16-122--16-135. Reserved.

ARTICLE VII. AMENDMENTS

Sec. 16-136. Amendments.

This chapter may be amended from time to time by the city council as specified in this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the city council for review. The city council shall have thirty (30) days within which to reach a decision. If the city council fails to reach a decision within the specified time, it shall be deemed to have approved the amendment.
(Code 1982, § 9-3073)

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of January 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

ORDINANCE NUMBER: O-06-01-17-1

[redacted]

Councilman Little advised that he had discussed the Skate Park hours of operation with the County at the Joint Utility Committee meeting that morning, asking that the operating hours and days of the park be increased. Councilman Little stated that the County responded positively to this suggestion. Mayor Clark stated that the park should not be padlocked and should be open most of the time.

Councilman Edwards advised that people are driving aggressively while pedestrians are crossing downtown streets and that this type of driving needs to stop.

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 its Annual Town Meeting on Thursday January 19, 2006 at 7:00 P.M. at the Marion Depot located at 58 Depot Street.

BOARD MEMBERS PRESENT: Mayor A. 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; Jay Suttles, Building Inspector; Harriett Thomas, Finance Director; Steve Miller, Water Plant Superintendent; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Roger Estes, Street Superintendent; Steve Basney, Utility Maintenance Superintendent; Dean Ollis, Sanitation Supervisor; Larry Carver, Wastewater Treatment Superintendent, Mike Conley, News Reporter, The McDowell News; Van McKinney, News Reporter, WBRM Radio.

GUESTS PRESENT: Wayne Ollis, 176 Sunny Street, Marion, NC 28752; Terry Menard, Park Avenue, Marion, NC. 28752; Ray Zemlis Park Avenue, Marion, NC 28752 and Denise Stidham, Lamplighter Circle Marion, NC; 28752

UTILITY REPRESENTATIVES:

PUBLIC SERVICE COMPANY OF NORTH CAROLINA:
Don Hallingse

UNITED STATES POSTAL SERVICE:
Jim Halterman and Helen Dennis

CHARTER CABLE COMPANY:
No representative

EMERGENCY MANAGEMENT – 911 ADDRESSING SYSTEM:
Carroll Hemphill

DUKE ENERGY COMPANY:
Don Hollifield
Sandy Tallant

VERIZON PHONE COMPANY:
No Representative

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION:
Mark Teague
Doug McNeal
Marshall Williams

TOWN MEETING: Mayor Clark opened the meeting and thanked everyone present for attending. City Council members also stated their appreciation to the invited guests and the public for their presence.

The City Manager introduced City staff and invited guests and gave a presentation on City accomplishments for 2005. Each invited guest also gave information on current projects for their organization or company.

No citizen comments were made during this Town Meeting.

The Mayor and Council members discussed current activities with and asked questions of the Post Office and the North Carolina Department of Transportation.

ADJOURNMENT: The Town Meeting was adjourned at 8:40 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 for a Special Called Meeting (Planning Session) on Friday, January 27 from 2:00 p.m. to 9:15 p.m. at the City Hall Conference Room located at 194 North Main Street and continued on Saturday, January 28 starting at 7:00 a.m. at Countryside Barbeque on Rutherford Road and continuing from 7:45 a.m. until 5:30 p.m. 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; Harriett Thomas, Finance Director; Pat Thomas and Susan Ennis, the MAPS Group, Cary NC; Dennie Martin, Danny Bridges, Steven Miller, Randy Hintz, Mike Waresak and Forrest Westall, McGill Associates, P.A., Asheville NC.

The following Topics were discussed during the Planning Session:

I. **MAPS Group/City Staff – Presentation of Proposed Pay and Classification Plan/Personnel Policy**

II. **Water/Sewer Issues – McGill Presentation of Water/Sewer Asset Management Plan/Capital Improvements Plan and Current Projects**

III. **Water and Sewer Capital Asset Management Plan/Capital Improvements Plan/Recommendations – continued discussion**

IV. **Recommended City Council Goals for 2006-07**

V. **Wastewater Operations**

VI. **Water Operations**

VII. **Public Works Administration**

VIII. **Streets and Sidewalks**

IX. **Fleet Maintenance**

X. **Cemetery**

XI. Parks and Recreation/Public Buildings and Grounds

XII. Sanitation

XIII. Planning and Development

XIV. Police

XV. Fire

XVI. Finance/Budget

XVII. General Administration/Ordinances/Policies

XVIII. Long Range Planning/Brainstorming for 2006-07

The Mayor and City Council gave general guidance on the preparation of the 2006-07 budget and on priorities for City projects and services.

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 7, 2006 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 out of town.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Police Sergeant Gaye Noblitt; Retired Police Major Johnny Patton; Crystal Dunn, Water Plant Operator; Heather Cotton, City Planner; Joan Boger, Receptionist; Freddie Killough, Executive Director, Marion Downtown Business Association; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Riannon & Pam Anthony 784 Hensley Road, Marion, NC; Mr. & Mrs. Eston Ross Marion, NC; Mr. & Mrs. Bill Ross 74 Rainbow Trout Drive, Marion, NC; Garner & Mary Hallman, Marion, NC; Angus Stronach, Marion, NC; Don & Evelyn Jones Marion, NC; Frank Dean 375 South Garden Street, Marion, NC; Mary Smith 408 Spaulding Road, Marion, NC; Anita Hayden 241 Rockhouse Road, Marion, NC; Warren Huskins 242 B North Main Street, Marion, NC; Bill Hendley 1476 Roby Conley Road, Marion, NC; Carol Price 89 Westwood Chateau, Marion, NC; Cliff McLarty, North Madison Street, Marion, NC; Albert Davis, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Cecil Owenby selected the Citizen of the Month for February 2006:

ESTON ROSS

Councilman Owenby advised that Mr. Eston Ross was born and raised in McDowell County and raised his family here. He has been married to Mrs. Margaret Adkins Ross for over 58 years.

Mr. Ross loves his church and family. He has two children and four grandchildren.

Mr. Ross served in the Navy, worked at Duke Power and was employed by Old Fort Finishing Plant for 38 years until it ceased operation. Mr. Ross started with Old Fort Finishing as Receiving Clerk and worked his way up to Vice President and General Manager.

Mr. Ross has served as Board Member of his Church, was a Lay Speaker, Sunday School Superintendent, Delegate to the Annual Conference, Counselor to the Youth, served on the Staff Parish Committee and in many other positions inside the Church.

Mr. Ross has also served as Board Member of the McDowell Hospital, President of Western Carolina Industries, a member and Secretary of the Francis Marion Club, a member of the Marion Lake Club where he served as Vice President. Mr. Ross served as a Board Member of the Old Fort Golf Course, the Northwestern Bank in Old Fort, has been a member of the Chamber of Commerce and served as a Commissioner of the Isothermal Planning and Development Commission in Rutherfordton.

Mr. Ross has been active with the Lake James Environmental Association where he served as President, Vice President, Treasurer and Board Member. One of the greatest achievements while serving on this Board was the State Park on Lake James.

He has slowed down due to heart problems and enjoys spending time with his grandchildren.

Mayor Clark, Council Members, Family and Friends all had kind words to share about Mr. Ross.

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 17, 2006 Regular Session
January 19, 2006 Town Meeting Minutes
January 27th & 28th 2006
Planning Session Minutes

B Adopt Reimbursement Resolution – WWTP Improvements:

RESOLUTION
DECLARING THE INTENT TO REIMBURSE EXPENDITURES

WHEREAS, the City Manager has described to the City Council the desirability of adopting a resolution, as provided under federal tax law, to facilitate the City's using financing proceeds to restore the City's funds when the City makes capital expenditures prior to closing on a bond issue or other financing.

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

1. The project is for City of Marion Wastewater Treatment and Collection System Improvements.

2. The project is to be financed. The currently expected type of financing is an installment financing contract as allowed for under N.C.G.S 160A-20. The currently expected maximum amount of bonds or other obligations to be issued or contracted for the project is $6,000,000.

3. Funds that have been advanced, or may be advanced from the General Fund, the Water and Sewer Fund, the General Capital Reserve Fund or the Water and Sewer Capital Reserve Fund for project costs are intended to be reimbursed from the financing proceeds.

Adopted this 7th day of February, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

C. Approve Ordinances – Start Condemnation Proceedings – Morehead Road and California Avenue:

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: 203 Morehead Road, Marion, McDowell County, North Carolina, Tax I.D. 1711.09-05-4803.

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 7th day of February, 2006.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:

_____
J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-02-07-1

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: California Avenue, Marion, McDowell County, North Carolina, Tax I.D. 1701.18-31-7940, 1701.18-31-7980 and 1701.18-31-8839.

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 7th day of February, 2006.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:

_____
J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-02-07-2

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: 129 California Avenue, Marion, McDowell County, North Carolina, Tax I.D. 1701.18-41-3816.

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 7th day of February, 2006.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:

_____
J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-02-07-3

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:

4. 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: 201 Morehead Road, Marion, McDowell County, North Carolina, Tax I.D. 1711.09-05-3759.

5. 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

6. 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 7th day of February, 2006.

CITY OF MARION

BY: _____
A. Everette Clark, Mayor

ATTESTED BY:

_____
J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-02-07-4

D. Approve Resolution of Intent to Annex – Eastfield Area Phase One

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 at the intersection of the current Marion Corporate Limits and the northwestern corner of Lot 5828 in Block 18 on McDowell County Tax Map 1711.05, thence following the northern boundary of Lots 5828, 5971, 6944, 7904, 7985, 8975, and 9947 all in Block 18 on McDowell County Tax Map 1711.05 and Lot 0915 in Block 28 on McDowell County Tax Map 1711.05 approximately 578.5 feet in a easterly direction to a point, said point being at the intersection of the northeast corner of said Lot 0915 and the western boundary of Lot 1000 in Block 29 on McDowell County Tax Map 1711.05 , thence following the western and then northern boundary of said Lot 1000, first approximately 8 feet in a northerly direct, then approximately 125 feet in a easterly direction to a point at the northeast corner of said Lot 1000, said point also being at the western margin of the right-of-way of Florence Avenue, thence crossing Florence Avenue in a straight line approximately 25 feet in a easterly direction to a point at the northwest corner of Lot 2965 in Block 28 on McDowell County Tax Map 1711.05, thence following the northern boundary of said Lot 2965 approximately 125 feet to a point at the northeastern corner of said Lot 2965, thence following the eastern boundary of said Lot 2965 approximately 12 feet in a southerly direction to a point at the northwestern corner of Lot 3945 in Block 28 on McDowell County Tax Map 1711.05, thence following the northern boundary of said Lot 3945 and Lots 3995, 4946, and 4984 approximately 200 feet in a easterly direction to a point, said point being at the northeastern corner of said Lot 4984, said point also being the northwest corner of Lot 6161 in Block 29 on McDowell County Tax Map 1711.06, thence following the western boundary of said Lot 6161 in a southerly direction approximately 104.5 feet to a point, said point being at the northwestern corner of Lot 6910 in Block 28 on McDowell County Tax Map 1711.06, thence following the northern boundary of said Lot 6910 in a easterly direction approximately 197 feet to a point, said point being at the intersection of the northeast corner of said Lot 6910 and the western boundary of East Yancey Street (SR 1720), thence crossing SR 1720 in a straight line approximately 30 feet in a easterly direction to a point at the southwest corner of Lot 7090 in Block 29 on McDowell County Tax Map 1711.06, said point also being on the eastern boundary of East Yancey Street (SR 1720), thence following first the western boundary of said Lot 7090 then the northern boundary of said Lot 7090 then the eastern boundary of said Lot 7090 first approximately 94 feet in a northerly direction, then approximately 76 feet in a easterly direction then approximately 94 feet in a southerly direction to a point at the south east corner of said Lot 7090, said point also being on the northern boundary of Lot 8837 in Block 28 on McDowell County Tax Map 1711.06, thence following the northern boundary of said Lot 8837 approximately 107 feet in an easterly direction to a point at the northeast corner of said Lot 8837, thence following the eastern boundary of said Lot 8837 and the eastern boundary of Lots 8715 and 8635 in Block 28 on McDowell County Tax Map 1711.06 approximately 343.9 feet in a southerly direction to a point at the intersection of the southeast corner of said Lot 8635 and the northern boundary of Eastfield School Road (SR 1827), thence crossing SR 1827 in a straight line in a southerly direction approximately 70 feet to a point, said point being at the intersection of the southern boundary of SR 1827 and the northeast corner of Lot 7864 in Block 28 on McDowell County Tax 1711.06, thence following the eastern boundary of said Lot 7564 and eastern boundary of Lots 7466, 6491 and 6395 in Block 28 on McDowell County Tax Map 1711.06 approximately 214.5 feet in a southerly direction to a point at the southeast corner of said Lot 6395, thence following the southern boundary of said Lot 6395 approximately 239 feet in a westerly direction then the eastern boundary of said Lot 6395 approximately 21 feet in a southerly direction to a point at the northeastern corner of Lot 5264 in Block 28 on McDowell County Tax Map 1711.06, thence following the eastern boundary of said Lot 5264 and the eastern boundary of Lot 5255 in Block 28 on McDowell County Tax Map 1711.06 approximately 187.5 feet to a point at the northeastern corner of said Lot 5155, said point also being on the northern boundary of Leach street, thence crossing Leach Street in a southerly direction in a straight line approximately 40 feet to a point, said point being at the intersection of the southern boundary of Leach Street and the northeastern corner of Lot 5043 in block 28 on McDowell County Tax Map 1711.06, then following the eastern boundary of said Lot 5043 and the eastern boundary of Lot 5940 in Block 27 on McDowell County Tax Map 1711.06 approximately 250 feet in a southerly direction to a point at the intersection at the southeast corner of said Lot 5940 and the northern boundary of SR 1718, thence crossing SR 1718 in a southerly direction in a straight line approximately 40 feet to a point at the intersection of the southern boundary of SR 1718 and the northeast corner of Lot 5732 in Block 27 on McDowell County Tax Map 1711.06, thence following the eastern boundary of said Lot 5732 approximately 164 feet in a southerly direction to a point at the southeast corner of said Lot 5732, said point also being at the northeast corner of Lot 3516 in Block 27 on McDowell County Tax Map 1711.05, thence following the

eastern boundary of said Lot 3516 and the southern boundary of said Lot 3516 first approximately 181.6 feet in a southerly direction, then

approximately 305.7 feet in a westerly direction to a point at the southwestern corner of said Lot 3516, said point also being on the current Marion Corporate Limits, thence following the current Marion Corporate Limits in a generally westerly direction approximately 1,706.00 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 March 28, 2006, 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 2, 2006, 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 7TH day of February 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

Resolution Number: R-06-02-07-1

E. Receive Unpaid 2005 Real Property Taxes/Approve 2005 Advertisement of Unpaid Real Property Taxes:

As of January 26, 2006, unpaid 2005 real property taxes are $132,301.39.
Approval was given to advertise unpaid 2005 real property taxes in the McDowell News on Wednesday, May 3, 2006.

RECOGNITION OF RETIREES: The City Manager advised that the City's first annual retirement dinner was held on January 12 and was very successful as we had a number of people retiring this past year. Honored at the dinner were Robert Parker, Glen Sherlin, Lovina Smith, James Robbins, Ann Searcy and Bob Watkins.

A memorial Resolution was presented to family members of the late Ms. Linda Suttles at the dinner.

Mr. Johnny Patton, Mr. Truett Randolph and Mr. Buck Byrd could not be present for this dinner.

Mr. Buck Byrd has since passed away.

Retired Police Major Johnny Patton was present for tonight's City Council meeting and the City Manager

presented him with a Resolution from North Carolina League of Municipalities honoring Major Patton's retirement.

INTRODUCTION OF NEW EMPLOYEES: The City Manager introduced several new employees. Ms. Crystal Dunn has been employed at the Water Plant as a Water Plant Operator since November.

The City Manager introduced Ms. Heather Cotton as the new City Planner. Ms. Cotton started work on February 6. Ms. Cotton is a native of Franklin, North Carolina and has been residing in the Florida Keys.

Ms. Harriett Thomas, Finance Director, introduced Ms. Joan Boger. Ms. Boger started February 6 as the Receptionist at City Hall.

PUBLIC APPEARANCE – MR. ALBERT DAVIS – REQUEST APPROVAL FOR CAR CRUISE – INS: Mr. Albert Davis appeared before Council requesting permission to hold a series of Cruise-Ins each Saturday evening at 5:00 PM in the West Henderson Street Parking Lot.

The City Manager advised that there will be no need for traffic control and that there is no down side to this request as it will bring more people downtown and not interfere with parking used for other purposes, since the West Henderson Street Parking Lot is typically empty on Saturday evenings.

Ms. Freddie Killough advised that the cruise-ins sound like a great way to bring more traffic into the downtown area.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the request by Mr. Albert Davis to allow a series of Cruise-Ins each Saturday evening at 5:00 PM in the West Henderson Street Parking Lot.

PUBLIC APPEARANCE – MCDOWELL TRAILS ASSOCIATION:
Ms. Mary Smith and Mr. Frank Dean appeared before Council and gave a presentation on behalf of the McDowell Trails Association.

Mr. Frank Dean advised that the McDowell Trails Association is a non profit group formed by many members of the former McDowell County Natural Resources Committee. The Natural Resources Committee worked for several years to undertake a rails to trails project on the old Peavine railroad tracks but the effort was stopped when the railroad decided not to release the property for trail development.

The Association has five objectives:

* Organize grassroots support for trails
* Serve as a resource on trail development by conducting assessments and public forums to assist with trail planning
* Raise funds to support the non-profit, its mission and the implementation and maintenance of trails
* Assist in the construction of trails
* Cooperate with city and county government agencies to create public trails in McDowell County

Ms. Mary Smith gave a power point presentation.

Ms. Smith advised that two trail development grants have been submitted one for county, which was not funded, and one for the City of Marion, which is under consideration.

Ms. Smith advised that what causes most deaths, disabilities and health care costs in McDowell County is hearth disease, strokes, diabetes and obesity.

76 billion dollars is spent annually on medical costs associated with physical inactivity and its consequences.

The City Manager advised that the grant jointly submitted by the Health Department, City and the Trails Association may allow for the completion of a City wide Recreation and Trails Plan, improving the City's chances to receive future funding for recreation, sidewalk and trail development.

The Mayor and Council members offered the City's support for the endeavors of the Trails Association.

PUBLIC APPEARANCE – CLIFF MCLARTY – DISCUSS NORTH MAIN STREET PARKING: Mr. Cliff McLarty appeared before council regarding a parking issue on North Main Street.

Mr. McLarty advised that he had purchased, renovated and sold two businesses on North Main Street in the former Caraway Paint building and that both businesses are doing well.

He advised that the city had recently posted two hour parking across the street from these businesses and that he would request that they go back to all day parking.

The City Manager advised that this area had been listed on the books for years as two hour parking; however, the area was not properly posted.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted to refer this parking issue to the Street Committee for a recommendation.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

DOWNTOWN ADVISORY COMMITTEE APPOINTMENTS: The City Manager advised that Council had suggested two names to fill vacancies on the Downtown Advisory Committee in January.

Mr. Kelly Lewis is unable to serve. Ms. Claudia O'Buckley cannot serve at the present time.

The City Manager advised that Downtown Advisory Committee members had proposed additional names. Mr. Chad Toney is willing to serve. Frank Boldon has also been suggested, but is out of town until March.

Council members suggested that the City Manager contact Frank and Debra Boldon to see if either or both are willing to serve.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to appoint Mr. Chad Toney to serve on the Downtown Advisory Committee, to fill the unexpired term of Patti Hart, said term to expire June 30, 2008.

CIVIL CITATION APPEALS: The City Manager advised that Police Chief Mika Elliott could not be present for this meeting. He is attending a Region C Banquet in Rutherfordton where two of his officers are receiving awards.

The City Manager presented Council with a memo from Chief Elliott advising that on January 9, 2006, School Resource Officer Braswell was notified by Ordinance officer Dawn Norman that there was a problem with vehicles parked on the sidewalk at East McDowell Junior High School during a basketball game at the school. Officer Braswell mistakenly wrote City parking pickets to three vehicles parked on school property and a parking ticket for prohibited parking on State Street that Officer Norman had just written.

The citations issued are as follows:

P002259 NSK-1282

P002260 CVH-6241
P002258 MURPHY3
P002261 MXZ-8481

The City Manager stated that he and Chief Elliott would request that the penalties for these four parking tickets be waived.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson those members of Council present voted to waive penalties as stated above.

Councilman Edwards suggested that the City Manager could be given authority to deal with clear cut types of dismissals of civil citations. After discussion, it was the consensus of Council present that straightforward, non-controversial civil citations be placed on the Consent Agenda.

REQEUST FOR REIMBURSEMENT OF DAMAGES: The City Manager presented Council with a request from Mr. Richard Byrd of 5th Street in Clinchfield. Mr. Byrd advised that his vehicle was damaged by a City vehicle and requested that the city pay $125.00 to repair the door glass in the vehicle. A police report was made, in which a neighbor told Mr. Byrd that he had seen a City truck spreading sand in the area in the general time period in which the damage occurred. The City Manager stated that there no evidence to prove or disprove that a City vehicle caused the damaged, but that the police report indicated that there was no sand or items inside the vehicle to indicate damage caused by an object thrown from a truck.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, those members of Council present voted respectfully to deny the request or Mr. Richard Byrd for reimbursement of $125.00 for damage to his vehicle.

REQUEST FROM DOT – ADDITIONAL RIGHT OF WAY FROM CORPENING CREEK PROPERTY FOR NC 226 SOUTH WIDENING: The City Manager advised that several months ago, Council granted right of way and easements from the City's Corpening Creek Wastewater Plant property to DOT for the Highway 226 South widening project. At that time, the Department of Transportation agreed to handle storm water issues that the City requested and to install a guardrail in front of the Wastewater Plant property. The City Manager stated that, due to a need to relocate the City's water line further off of the pavement, which is in the City's best interest, DOT now needs additional right of way on the unused portion of our property south of the Corpening Creek entrance. The additional right of way will also cause some tree cover to be removed in this area. The City Manager advised that these trees and surrounding brush have caused sight visibility problems for vehicles pulling out of the Corpening Creek property.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to approve the donation of right of way City's Corpening Creek Wastewater Plant property to the North Carolina Department of Transportation for the Highway 226 South widening project.

EASTFIELD WATER INTERLOCAL AGREEMENT WITH COUNTY: The City Manager presented Council with a recommended amendment to the Eastfield Sewer Project Interlocal Agreement with McDowell County, to allow the City to obtain an additional $33,000 in State funds to cover 24 needed water connections in the project area.

Mayor Clark advised that the City needs something in writing from the County stating that water and sewer connections needed as a result of commitments made in exchange for easements and for homes and properties currently unserved are not the obligation of the City, since there are residents in the Eastfield area that are still expecting service from the City at no cost.

Mayor Clark stated that he feels sure that it is the intent of the County to handle this issue; however, he believes something needs to be put in writing, stating that the County is liable for these connections, and not the City of Marion.

Gaye Noblitt, who lives in the Eastfield area, was present for this meeting and advised that State and County officials are telling persons in the Eastfiled area that extensions of water lines are the responsibility of the City.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to approve the recommended amendment to the Eastfield Sewer Project Interlocal Agreement with McDowell County, to allow the City to obtain an additional $33,000 in State funds to cover 24 needed water connections in the project area, as follows:

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. This amendment supersedes any prior agreement regarding cost recovery charges.

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 $912.44 per unit for all of the 357 units connected to the sewer system for this project only. The total compensation for the City will not exceed $325,741.08.

IN WITNESS THEREOF, the parties hereto have caused the execution of this Amendment to the originally approved agreement.

ENTERED into this day, the 13th of February, 2006.

A. Everette Clark, Mayor
City of Marion

ATTEST:

J. Robert Boyette, City Manager/Clerk
City of Marion

Andrew K. Webb, Chairman
McDowell County

ATTEST:

Carrie Padgett, Clerk to the Board
McDowell County

Mayor Clark noted that there is talk in the General Assembly about another clean water bond.

DISCUSSION - DOWNTOWN TRAFFIC DISCUSSION: The City Manager advised that the Police Department started a program of aggressive downtown traffic enforcement that day. The program will involve as constant a presence of police officers from morning until night Monday through Saturday as possible. All State and local violations will be targeted, particularly speeding, red light violations and failure to yield to pedestrians.

Councilman Edwards advised that he has almost been hit by vehicles many times while crossing Main Street.

The City Manager noted that the Police Chief also was studying regulatory ideas to help with pedestrian safety downtown, such as prohibiting right turns on red. Council asked that the Street Committee study this idea and bring back a recommendation.

The City Manager stated that the upcoming Downtown Streetscape/Traffic Flow Study could also yield some suggestions for physical design changes to Main Street that could enhance safety of motorists and pedestrians.

Mayor Clark suggested that it may be time for the City to consider installing red light cameras at certain intersections in the City, to improve compliance. The City Manager was directed to obtain information on red light cameras.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager noted that we have not heard from Fed Ex officials to date about the placement of their box on City right of way on Fort Street.
The City Manager stated that the property owner who had originally requested this drop box no longer wanted the box on Fort Street; therefore, he was working with Fed Ex to find an alternate location for the drop box.

The City Manager advised that the Community Building Basement renovations are in progress and that the drop ceiling installation, heating and air installation and bathroom renovations are finished.

Councilman Little stated that the outside steps leading from the upper parking lot to the back of the Community Building needs to be replaced with a safer surface and a handrail. Council agreed that the City Manager should seek to work this project into the 2006-07 budget.

The City Manager stated that the Park Avenue approach at the residence of Ms. Sheremy Finley has been finished. The City Manager presented Council with a letter from Mr. Harold Stewart, requesting again that Council consider a handicapped parking space at his mother's house at 184 Park Avenue. Council declined to change their previous decision not to approve any handicapped parking spaces in areas prohibited for parking on Park Avenue.

CLOSING COMMENTS:

COUNCILMAN LITTLE asked if the Sugar Hill Road widening project was completed and if a guardrail was scheduled to be installed above the YMCA soccer fields. The City Manager advised that the project appears to be completed and that the City had not requested a guardrail in front of the YMCA property. The City Manager stated that he would check with DOT and McDowell County about this request.

COUNCILMAN CUTHBERTSON commented on the unsightly poles marking fiber optic cable on the new section of Sugar Hill Road.

COUNCILMAN OWENBY advised that he had been asked if the City could install a buffer in front of the Corpening Creek Wastewater Treatment Plant property on Highway 226 South. The City Manager stated that landscaping could be looked at after the 226 widening project is completed.

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

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 21, 2006 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; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Charles Oliver, Marion Police Detective, 136 Montevista Avenue, Marion, NC; Andy Brown, 37 Haywood Street, Asheville, NC; Cliff & Sharon McLarty 190 North Madison Street, Marion, NC; Nancy Guthrie 99 Oakwood Drive, Marion, NC; Danny & Patsy Braswell 379 Barney McKinney Road, Spruce Pine, NC; Angie Fineberg, 215 Honeycutt Lane, Nebo, NC.

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 Minutes - February 7, 2006 Regular Session

B. Approve Use of Community Building Basement

Downtown Business Association Easter Bonnet Parade/Egg Hunt – April 8, 2006 - Rental Fees to be charged to the Downtown Advisory Committee

C. Approve Revised Personnel Policy

CITY OF MARION
PERSONNEL POLICY OF THE CITY OF MARION

WHEREAS, the Mayor and City Council of the City of Marion recognizes the importance of its municipal employees in meeting the service needs of City residents; and

WHEREAS, it is the desire of the Mayor and City Council to maintain a municipal work force composed of qualified, competent, dedicated employees; and

WHEREAS, the Mayor and City Council recognize the necessity of equitable rates of pay and reasonable conditions of employment in the maintenance of such a work force; and

WHEREAS, it is the desire of the Mayor and City Council to establish a system of personnel administration that will assure equity of compensation and fair and reasonable employee treatment consistent with the needs of the City and the circumstances of the situation which may be faced from time to time;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MARION that the following rules and regulations shall govern the appointment, classification, salary, promotion, demotion, and employment conditions of the employees of the City of Marion, North Carolina, replacing, where appropriate, the existing articles and sections on personnel, pay plans, class specifications, and benefits.

ADOPTED this 21st day of February, 2006.

Article I.
Policy

Section 1.

The employment relationship between the City and the employee is terminable at the will of either at any time, with or without cause and with or without notice. No employee, officer, agent or representative of the City has any authority to enter into any agreement or representation, verbally or in writing, which alters, amends, or contradicts this provision or other provisions in these policies. Any exception to this policy of "at will" employment must be expressly authorized in writing, approved by the City Council, and executed by the officers designated by the City Council.

Section 2.

None of the benefits or policies set forth herein is intended because of their publication to confer any rights or privileges upon employees or to entitle them to be or remain employed by the City. The contents of this document and procedure herein are presented as a matter of information.

Section 3.

These personnel policies are not a binding contract, but merely a set of guidelines for the implementation of personnel policies. The City explicitly reserves the right to modify any of the provisions of these policies at any time and without any notice to employees. Notwithstanding any of the provisions within these policies, employment may be terminated at any time, either by the employee or by the City, with or without cause and with or without advance notice.

Section 4.

Since each department of the City has particular personnel and operational requirements, each is authorized to establish supplemental written rules and regulations applicable only to the personnel of that department. All such rules and regulations shall be subject to the final approval of the City Manager and shall not in any way conflict with the provisions of this policy but shall be considered as a supplement to this policy.

Article II.
General Provisions

Section 1. Purpose

The purpose of these policies is to establish a personnel system that will recruit, select, develop and maintain an effective and responsible work force. These policies are established under the authority of the General Statutes of North Carolina.

The City Personnel Policy has been designed to provide the employees of the City with a copy of the general policies as adopted by the Marion City Council. A brief summary of employee rights and responsibilities are included.

This policy is not an exclusive statement of all the terms of employment. It is also not a guarantee to any employee of the matters covered in any particular topic.

The topics covered herein are subject to change without advance notice, and the individual employer reserves the right to make final decisions as to interpretation of each policy and practice covered herein.

No policy, benefit, or procedure contained herein creates an employment contract for any period of time. All employees will be considered as employees-at-will. Employees may be terminated for failure to satisfactorily perform their duties or simply at the will of the employer, but they shall not be terminated for a discriminatory or illegal purpose.

Section 2. Coverage

This policy shall cover all regular and probationary employees except as specifically exempted. The City Manager, City Attorney, members of the City Council, members of advisory boards and Councils, and part-time employees will be exempted except in sections where specifically included.

Section 3.Definitions

(a) Probationary Employee. A person appointed to a budgeted position that has not yet completed the probationary period.

(b) Part-time Employee. An employee, either permanent regular or temporary, who is regularly scheduled less than, or not to exceed 1040 hours. Permanent part-time employees are defined as those in a regular position who work between 1000 but less than 2040 hours a year. Permanent part-time employees shall be entitled to all City benefits.

(c) Regular/Full-time Employee. An employee who has successfully completed the prescribed probationary periods shall be considered regular. However, all City positions are subject to budget review and approval each year by the City Council, and all employees' work and conduct must meet standards of performance and behavior. Therefore, reference to "regular" employees or permanent positions should not be construed as a contract or right to perpetual funding or employment. Regular employees are entitled to all City benefits.

(d) Seasonal/Temporary Employee. Qualified employees appointed to serve in a position for a defined time period, usually less than six months. Such employees are not entitled to City benefits.

(e) Grievance. A claim or complaint based upon an event or condition which affects the circumstance under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.

(f) Adverse Action. A demotion, dismissal, reduction in pay, layoff, suspension, or undesirable transfer.

Section 4. Merit Principle

The purpose of this policy and the rules and regulations set forth is to establish a fair and uniform system of modern personnel administration for all employees of the City.

The City shall embrace the following merit system principles in administering its personnel program:

(a) Applicants and employees shall be assured of fair treatment in all aspects of personnel administration without regard for political affiliation, religious creed, sex, national origin, color, race, or disability. Individuals shall likewise be treated with proper regard for their privacy and constitutional rights as citizens.

(b) Employees shall be recruited, selected, trained, and advanced on the basis of their ability, knowledge, skill, and performance.

(c) Employees shall be retained on the basis of the adequacy of their performance. They shall be guided in ways to correct inadequate performance and separated when inadequate performance cannot be corrected.

(d) Employees shall be protected against coercion for partisan political purposes.

(e) Employees shall receive equitable pay and benefits and eligible employees may receive merit pay increases based upon their performance subject to the availability of funds.

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 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, and vision coverage, etc.

Section 6. Responsibility of the City Manager

The City Manager shall administer the affairs of the City within the authority granted by the adoption of the Council-Manager form of government. The City Manager shall be responsible for assisting in the preparation and maintenance of the position classification plan and the pay plan, and shall perform such other duties in connection with a modern personnel program as are required. The City Manager will prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the City. All matters dealing with personnel shall be routed to the City Manager. The manager will see that a complete system of personnel files and records are maintained. The City Manager may perform any or all of these duties and responsibilities or assign them to staff employees.

Section 7. Responsibility of Department Heads

The head of each City department, with the approval of the City Manager, shall manage operations and supervise employees assigned to the department under such rules, regulations and procedures as may be required by the City Manager's standard operational procedures manuals or guidelines as appropriate.

Article III.
Recruitment and Employment

Section 1. Statement of Equal Employment Opportunity Policy

It is the policy of the City of Marion to foster, maintain, and promote equal employment opportunity. The City shall select employees on the basis of the applicants' qualification and without regard to age, sex, race, color, creed, religion or national origin. Applicants with disabilities shall be given equal consideration with other applicants for positions if such applicants can, with or without reasonable accommodation, perform the essential requirements of the position.

Section 2. Implementation of EEO Policy

All personnel responsible for recruitment and employment shall continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable performance-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, creed, religion, national origin, or disability. Notices with regard to equal employment matters shall be posted in conspicuous places on City government premises in places where notices are customarily posted. In addition, the City will comply with the provisions contained within the American's With Disabilities Act (ADA) as amended. It is the City Manager's responsibility to insure compliance and make recommendations for actions to bring the organization into compliance.

Section 3. Recruitment

All opportunities for employment shall be publicized, including applicable salary ranges and employment qualifications. Some jobs will only be advertised within the City workforce. Information on job openings and hiring practices may be provided to recruitment sources including organizations and various media serving the appropriate labor market. In addition, notice of vacancies shall be posted at designated conspicuous sites within City buildings. Individuals shall be recruited from a geographic area as wide as is necessary to insure that well qualified applicants are obtained for City service.

Section 4. Job Announcements

Employment announcements shall contain assurances of equal employment opportunity and shall comply with federal and state statutes prohibiting discrimination in employment matters.

Section 5. Applications for Employment

All persons expressing interest in employment with the City shall be given the opportunity to file an application for employment when a position is vacant or when the City is advertising to fill such positions. Applications will remain active only for that vacant position available.

Section 6. Application Reserve File

Upon inquiring, each potential applicant shall be informed of the current job openings. After the active period of six months, applications for candidates not selected shall be kept in a file for two (2) years, in accordance with Equal Employment Opportunity and City Council guidelines and the Records Retention Schedule issued by the NC Division of Archives and History.

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 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 those who have a conditional offer of employment 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 name 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 full-time permanent or part time status, will be required to undergo a thorough medical screening to be administered by a doctor or 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/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/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 results from workplace accidents, injuries and events are required as a condition of returning to employment and 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 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 will result in the conditional offer of employment being withdrawn.

(5) Drug and Alcohol Testing. Applicants for full time, part time and temporary positions who have been extended a conditional offer of employment by the City will be required to undergo alcohol and drug tests. Applicants for employment with the City will be advised that a clean result on a drug and alcohol test is a condition of employment. See "Substance Abuse Policy" for more information.

(6) Criminal/Background Investigations. An applicant who has been extended a conditional offer of employment will be subjected to a background investigation in order to determine suitability for employment. A thorough investigation of personal records and background may be obtained to secure the public's interest regarding an applicant's personal and employment history.

(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 8. Selection

Department heads shall make such investigations and conduct such examinations as deemed appropriate to assess fairly the aptitude, education and experience, knowledge and skills, character, physical fitness, and other qualifications required for positions in the service of the City. All selection devices administered by the City or by persons or agencies for the City shall be valid measurers of job requirements.

Section 9. Appointments

It is the City's policy to create career opportunities for its employees when possible. Therefore, when a current employee applying for a vacant position possesses the best qualifications of all applicants, that applicant shall be appointed to that position. However, if other applicants possess comparable qualifications and if the City would continue any historical discriminatory employment practices by automatically promoting or transferring the current employee without considering other applicants, then the City must carefully consider the qualifications of other applicants in filling this position.

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 (sworn) 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 the City probationary period at the end of six months of service and to use leave and receive other benefits which are provided at the end of probation. 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 use 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 probation 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 11. Performance Evaluation

A supervisor shall evaluate performance beginning with the employee's first day on the job. Through open communications with his/her supervisor, the employee should obtain a clear understanding of what is expected related to job performance and a periodic assessment of his/her job strengths and weaknesses. A formal evaluation shall be completed for an employee prior to the completion of his/her probationary period and at least once each year thereafter. The City's performance evaluation program provides a system for appraising the employee's work.

Section 12. Notification of Action and Pre-disciplinary Action

Before suspensions of three (3) days or more, demotion, or dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the Department Head will conduct a pre-disciplinary conference. At this conference, the employee may present a response to the proposed disciplinary action. The Department Head will consider the employee's response, if any, to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, notify the employee in writing of the final decision to take disciplinary action. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal rights.

Section 13. Promotion

Department Heads shall endeavor to anticipate retirements and turnover and to have employees trained to assume positions of greater responsibility. In filling vacancies an effort shall be made to promote qualified employees from within the City work force before seeking an outside replacement.

When a vacancy occurs, the supervisor and department head in whose department the vacancy occurs shall review all applications received, including those from current City employees wishing to be promoted into the position. If a current City employee is chosen for promotion, the department head shall forward the employee's name to the City Manager and/or the Personnel Department with written recommendations for classification, salary and reasons for selecting the employee over other applicants.

Candidates for promotion shall be chosen on the basis of existing or anticipated job openings, on their qualifications, and on their work records.
Employees being promoted must meet the qualification standards to include education, training, and experience for the classification to which the promotion is being made.

Section 14. Demotion

Any employee who fails to maintain high standards of personal conduct or whose work in his/her present position is unsatisfactory may be demoted, provided the employee shows promise of becoming a satisfactory employee in another position. Such a demotion shall be preceded by the warning procedures outlined for cases involving inability to perform duties or failure in performance of duties. An employee who wishes to accept a position with less complex duties and responsibility may be demoted for reasons other than unsatisfactory performance of duties or failures in personal conduct.

In all cases involving demotion, following the pre-disciplinary conference, the employee shall be provided with written notice citing the recommended effective date, reasons for demotion, and appeal rights available, if any.

Section 15. Violation of Good Employment Practices Leading to Suspension, Demotion, or Dismissal

(a) Each employee will be expected to keep his/her personal affairs arranged in such a way that the City of Marion will not be embarrassed.

(b) While on duty, the use of alcohol or illegal substances is strictly prohibited and may be cause for immediate dismissal.

Should an employee require the use of a medicine (prescription or over–the-counter) that has side effects (dizziness, drowsiness, etc.), that employee should report the medicine to the immediate supervisor to prevent improper accusations on the part of the supervisor. A decision shall be made as to the employee's ability to stay on his/her regular job, carry out lighter duties or be sent home. The decision will be rendered from the aspect as to the safety of the employee, other personnel and the citizens of the City. The Department Head shall determine if the employee should work or be sent home.

If there is reasonable suspicion by someone in a supervisory capacity or regular employee as to the use of an intoxicant (alcohol, drugs, etc.) by another employee arriving to the job or while on the job with the City of Marion, then the following action may be taken:

1. The employee or employees involved shall be asked to remain at the location of the incident.

2. A City Police Officer shall be called to the location of the incident. Upon arriving, the officer shall determine if a law has been possibly violated and take appropriate action. An employee not arrested or charged with a crime, may still be disciplined under City policies.

3. The employee or employees may be asked to take a drug test or breathalyzer test subject to the requirements of the Substance Abuse Policy. The test shall be at the City's expense.

Refusing to remain at the location of the incident, refusing to comply with the Police Officer's request; or refusing to take either of the tests shall be grounds for a three (3) day suspension subject to dismissal. During the three (3) days, a determination will be made as to the use of an intoxicant on the employee's part. If it is determined that a reasonable suspicion does exist or actual proof is obtained, then the employee or employees will be dismissed.

Section 16. Transfer

An employee who has successfully completed a probationary period may be transferred to the same or similar class in a different department. As vacancies occur in other departments to which an employee would be eligible for transfer, the employee shall notify his/her supervisor of interest in the transfer and submit notice of a desire for transfer to the various department head(s) for consideration. If a department head wishes to hire that employee, the transfer is subject to the approval of the City Manager.

Section 17. Reduction in Force

In the event that a reduction in force becomes necessary, the quality of each employee's past performance and the needs of the City as well as seniority shall be considered in determining those employees to be retained. Regular employees who are to be terminated due to reduction in force shall normally be given at least ten (10) working days' notice of the anticipated layoff.

Article IV.
Classification Plan

Section 1. Adoption

The position classification plan, as amended from time to time, is hereby adopted as the position classification plan for the City.

Section 2. Allocation of Positions

The City Manager shall allocate each position covered by the classification plan to its appropriate class in the plan.

Section 3. Administration of the Position Classification Plan

The City Manager shall be responsible for the administration and maintenance of the position classification plan so that it will accurately reflect the duties performed by the employees in the classes to which their positions are allocated. Department heads shall be responsible for bringing to the attention of the City Manager (1) the need for new positions, and (2) material changes in the nature of duties, responsibilities, working conditions or other factors that may affect the classification of any existing position.

When the City Manager finds that a substantial change has occurred in the nature or level of duties and responsibilities of an existing position, the existing class specification shall be revised or reallocated to the appropriate class within the existing classification plan, or the position classification plan shall be amended establishing a new class to which the position may be allocated.

Section 4. Amendment of Position Classification Plan

Classes of positions shall be added and deleted from the position classification plan by the City Council upon recommendation of the City Manager.

Article V.
The Pay Plan

Section 1. Adoption

The schedule of salary ranges and class titles assigned to salary ranges, as amended from time to time, is hereby adopted as the pay plan for the City.

Section 2. Maintenance of the Pay Plan

The City Manager shall be responsible for the administration and maintenance of the pay plan. The pay plan is intended to provide equitable compensation for all positions, reflecting differences in duties and responsibilities, the rates of pay for comparable positions in private and public employment in the area, changes in the cost of living, the financial conditions of the City, and other factors. To this end, the City Manager shall from time to time make comparative studies of all factors affecting the levels of salary ranges and shall recommend to the City Council such changes in salary ranges as appear to be warranted.

Section 3. Use of Salary Ranges

Salary ranges are intended to furnish administrative flexibility in recognizing individual performance among employees holding positions in the same class by rewarding employees for meritorious service. The following general provisions will govern the granting of increases within the pay range:

(a) The minimum rate established for the class is the normal hiring rate, except in those cases where unusual circumstances appear to warrant appointment at a higher rate. Appointment above the minimum step may be made with the approval of the City Manager when deemed necessary and in the best interest of the City. Above–the-minimum appointments will be based on such factors as the qualifications of the applicant being higher than the desirable education and experience for the class, a shortage of qualified applicants available at the minimum step, the refusal of qualified applicants to accept employment at the minimum step, or other similar factors.

(b) All steps above the second are reserved to reward employees for meritorious service. Each year, the City Manager may require department heads to consider the eligibility of employees to receive salary increases and to recommend such advancement or retention at the same rate. Department heads shall consider all factors affecting employee performance and shall submit their recommendations in writing, giving the reasons to advance or retain the employee at the same rate. All such advancements and retention in the salary range must be approved by the City Manager.

Section 4. Payment at a Listed Rate

All employees covered by the salary plan shall be paid at a listed rate within the salary range established for their respective job classes except for employees in a "trainee status", or employees whose present salaries are above the established maximum rate following transition to a new pay plan.

Section 5. Salary of Trainee

An applicant hired or an employee promoted to a position in a higher class, who does not meet all the established requirements of the position, may be appointed at a rate in the pay plan below the minimum established for the position. In such cases, a plan for training, including a time schedule will be prepared.

Trainee salaries may be no more than two steps below the minimum Salary established for the position for which the person is being trained. An employee will remain on the trainee step until the department head determines that the trainee is qualified to assume the full responsibilities of the position. The department head shall review the progress of each employee in a trainee status monthly, or more frequently as necessary, to determine when the trainee is qualified to assume the full responsibilities of the position. Provided, however, that a trainee shall not be in such status for longer than one (1) year.

Section 6. Pay Rates in Promotion, Demotion, Transfer, Reclassification, and Completion of Probationary Period

When an employee is promoted, demoted, transferred, or reclassified, the rate of pay for the new position will be established in accordance with the following rules:

(a) Promotion: An employee who is promoted shall receive a full one step award in base salary or an increase to the minimum step of the new pay range, whichever is higher.

(b) Demotion: The salary of an employee who is demoted may be adjusted to meet the appropriate salary range of the new position, at the recommendation of the Department Head and approval of the City Manager. If the salary of the demoted employee falls above the maximum of the new salary range, the salary shall be frozen until such time as the salary range increases sufficient to include the demoted employee's salary.

(c) Transfer: An employee transferring from a position in one class to a position in another class assigned the same pay range shall continue to receive the same salary.

(d) Reclassification: An employee whose position is reclassified to a class having a higher salary range may be eligible for an appropriate increase, with the recommendation of the City Manager. If the position is reclassified to a lower pay range and the employee is receiving a salary above the maximum step established for the new class, the salary of the employee may be adjusted to meet the appropriate salary range of the new position at the recommendation of the Department Head and approval of the City Manager.

(e) Probationary Period: An employee who successfully completes the probationary period may receive a five percent pay increase.

Section 7. Pay Rates in Salary Range Revisions

When the City Council approves a change in salary ranges or the City Manager changes the range for a class of positions, the salaries of employees whose positions are allocated to that class shall be affected as follows:

(a) When a class of positions is assigned to a higher pay range, employees in that class shall receive a 5% pay increase or an increase to the minimum step of the new pay range, whichever is higher.

(b) When a class of positions is assigned to a lower pay range, the salaries of employees in that class will remain unchanged. If this assignment to a lower pay range results in an employee being paid at a rate above the maximum step established for the new class, the salary of the employee shall be maintained at that level until such time as the employee's pay range is increased above the employee's current salary.

(c) When an adjustment is made to a pay range to reflect market changes, or as a result of a complete revision to the classification and pay plan by the City or consultant resulting in reclassification employees in classes within that pay range may or may not receive adjustments, depending on the City's financial condition or recommendations from the revision study.

Section 8. Pay for Part-Time Work

The provisions of this section of the policy apply only to full-time positions. Employees appointed to temporary and part-time positions will be paid at an hourly rate within the appropriate salary range for regular positions, or as determined by the department head.

Section 9. Overtime

To the extent that local government jurisdictions are so required the City will comply with the Fair Labor Standards Act (FLSA).

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 compensated 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 compensated at one and one half times their regular rate of pay for all hours 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 compensated at 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 these threshold hours for overtime eligibility.

Whenever practicable, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of paying overtime. When time off within the work period cannot be granted, overtime worked will be paid at a time-and-one-half rate or taken as compensatory time at a time-and-one-half rate, in accordance with FLSA regulations. Compensatory time may be accumulated up to 80 hours with any hours in excess of this limit to be paid to the employee. Accumulated compensatory time shall be used before accumulated vacation leave. Overtime work must be of an unusual, unscheduled, or emergency nature and be directed or authorized by the department head or authorized representative of the department head. If an employee is called out for emergencies, then the employee will receive overtime pay unless constraints are placed on the budget.

Exempt Employees. Employees in positions determined to be "exempt" from the FLSA (as Executive, Administrative, or Professional staff) will not receive pay for hours worked in excess of their normal work periods. These employees may be granted occasional compensatory leave by their department heads or the City Manager where the convenience of the department allows. In rare cases, such as under conditions designated by the City Council as "Declared Emergency", exempt employees may be eligible for additional pay or time off for extra hours worked, as approved by the City Manager.

The City intends to make deductions form the pay of exempt employees for authorized reasons and prohibits improper pay deductions. Exempt employees who wish to question deductions they believe to be improper may use the City's Grievance procedure, as explained in this policy. If the deduction is found to be improper the City will reimburse the employee for lost pay.

Starting and ending times may vary depending on departmental needs and for operations on a twenty-four hour schedule.

Section 10. Merit System

When the quality of an employee's performance is worthy of special recognition, the employee's salary may be advanced within the same assigned salary grade. Such merit award shall be done only after recommendation of the department head and based on the quality of the individual's work performance. Any such increases in wages and salaries require City Council funding.

Following successful completion of an employee's probationary period, the quality of his/her performance shall continue to be reviewed and appropriate instruction and counsel shall be provided in methods for improving job performance.

Merit awards shall not be granted automatically. A merit award within the applicable salary grade may be granted with the approval of the City Manager to deserving full-time employees in accordance with the following provisions:

(a) When a new employee has completed the initial probationary period, and annually thereafter following a year of continuous service.

(b) A promoted employee shall be eligible for a merit award after a year of continuous service from the date or promotion.

(c) Such an award shall not exceed the maximum salary rate for the class of his/her position.

(d) When the work of the employee is determined to be within the requirements contained in the City of Marion's Performance Evaluation guidelines, as documented on the employee's performance evaluation. All employee awards are dependent upon City Council funding.

(e) When an employee has completed courses, certifications or the recipient of degrees beneficial to the City, the employee may be approved by the City Manager or pursuant an adopted educational incentive schedule, to receive a merit increase.

When an employee's productivity, behavior, attendance or work quality need to be improved, the department head shall not grant a merit award with the approval of the City Manager, and the employee shall be told where improvement needs to be made.

Section 11. Merit Bonus Plan

The purpose of the merit bonus is to reward employees who have reached the top step in their salary range with a merit bonus when their work performance is determined to be meritorious and with City Council Funding.

All regular full-time employees of the City are eligible for a maximum of five merit awards after reaching the top step of the employee's salary range. The merit bonus payment (if any) shall be awarded based on the performance of the employee as reflected on the annual performance evaluation. Merit bonuses may be awarded every other year after the employee reaches the top step of the salary range for the position classification. Eligible merit bonus payments shall be made in a lump sum and will be payable at the discretion of the employer.

If an employee fails to achieve a merit bonus payment on his/her eligible year, the employee shall become eligible again the following year, provided, however, that the employee shall not earn more than one (1) merit bonus payment in a two (2) year period or a total of five (5) merit bonus payments.

Section 12. Payroll Deductions

Federal Law - Federal Income Tax Social Security
State Law - State Income Tax Retirement
Employees – Dependant Coverage (Health, Life, Dental)
Credit Union
Volunteer Contributions to 401K or Loans
Child Support
Bankruptcy
Garnishment
Contributions (United Way)
Other – Coverage elected by employee

Section 13. Longevity Pay

Longevity pay is to recognize long-term service of regular, non-elective, full-time employees who have served at least one (1) year with the City of Marion. An employee who is out of work in a leave status will not earn longevity credit.

Time and Method of Payment

(a) Longevity pay is automatic - payment shall be made when all eligibility requirements are met.

(b) Longevity payments shall be made in a lump sum.

(c) The hiring cut-off date will be November 1st, with payment being made during the month of November.

Pay Amounts

Annual longevity pay amounts are based on the length of consecutive years of service with the City of Marion. Amounts shall be computed in the following manner:

More than 1, but less than 2 years service	1 days pay
More than 2, but less than 3 years service	2 days pay
More than 3, but less than 4 years service	3 days pay
More than 4, but less than 5 years service	4 days pay
More than 5, but less than 6 years service	5 days pay

Individuals with six (6) or more years of service will receive five (5) days plus an established fixed amount, times the number of months of service above five (5) years. This fixed amount will be the same for all regular full-time employees approved by the City Council.

Eligibility Requirements

(a) To qualify for longevity pay an employee must be in a current pay status. Employees who have resigned, retired, or otherwise left employment with the City prior to this time shall not qualify for payment. In addition, employees on unpaid leave for 6 months during the previous year shall not qualify for payment.

(b) An employee shall have at least one (1) year of regular, non-elective, full-time service before being eligible for any longevity payments.

(c) The employee must have a regular appointment.

(d) Credit for the service requirement shall not be given for temporary regular or temporary part-time employment and periods of leave.

Records Responsibility

Accurate records on an employee's length of service and the amount of longevity pay shall be kept in the City's personnel department.

Effect of Longevity Pay

Longevity pay is not to be considered a part of annual base pay for classification and pay purposes, nor is it to be recorded in personnel records as a part of annual base salary.

Payroll Deductions

The following payroll deductions are to be made from each longevity payment:
Social Security Tax (FICA)
Employee's Retirement

No other deductions are to be made. (Such as: savings bonds, credit union savings or payments, or insurance premiums.)

Continuance of Longevity

The continuance of longevity pay as an employee benefit is subject, on a year to year basis, to the availability of funds.

Article VI.
Work Conditions and Expectations

Section 1. Work Period

The work period is defined as seven consecutive days. Full-time, non-exempt, employees (other than public safety shift employees) normally work 40 hours per work period and are subject to the overtime provisions set forth within these policies. Police officer's and firefighter's work schedule(s) will be established and maintained in accordance with FLSA and work periods will be set as 28 consecutive days. Non-exempt police officers, regardless of rank, are subject to overtime after 171 hours of work over 28 consecutive days. Non-exempt fire-fighters, regardless of rank, are subject to overtime after 212 hours of work over 28 consecutive days. Exempt employees in administrative, professional or managerial positions shall work the number of hours necessary to assure the satisfactory performance of their duties.

When the activities of a particular department require some other schedule to meet work needs, the City Manager may authorize department heads to create deviations from the normal schedule.

Due to the variation in work schedules and needs among departments, the City makes no attempt to define a uniform policy for rest periods or breaks. Department heads may establish appropriate rest period practices which best serve the City's interest within the work units under their supervision. Such practices shall be subject to review of the City Manager, and shall be limited to one rest period or break in the morning and in the afternoon no longer than 15 minutes each.

All employees are normally allowed thirty (30) minutes or one hour for one (1) meal break during any normal working day. Breaks of at least 30 minutes taken for mealtime will not be counted as part of any employee's normal work hours

Section 2. Designated On-Call Time

Weekend call duty will start at 5:00 PM on Friday and continue through
to 7:00 AM Monday morning.

Responsibilities Of The Marion Police Department

The dispatcher will screen all calls to determine:

1. If a police officer can handle the situation or
2. If the on-call person should be contacted.

Setting up cones to designate hazardous situations, checking of small leaks, etc. should be carried out by the police department. If a dead animal on a street is reported during the week-end, a police officer will remove the animal out of the travel lane to the edge of the street. The on-call person will be contacted at 8:00 AM on Saturday and Sunday to remove any animals reported during the night and at 4:00 PM for any animals reported during the day.

If the call is outside the City Limits, the on-call person will be contacted.

When the dispatcher receives any calls concerning any alarms due to pump stations or either of the treatment plants, they will call the treatment plant to reach the plant operator and if no one is reached, they will page and call the designated on call personnel.

Restrictions

The individual that participates in the weekend program is prohibited from using alcohol or taking medications that cause drowsiness in order that they are fit for duty if called to return.

This individual will have a phone and carry a two-way radio with them at all times for communication with the Marion Police Department. All complaints are to come through the Marion Police Department. The on-call personnel at the waste treatment plant will be provided a pager for the weekend call duty.

A response time not exceeding thirty (30) minutes will be required. Upon receiving a call, the Public Works on-call person is to respond to the Marion Police Department dispatcher. The on-call person for the Waste Treatment plant is to respond to the Marion Wastewater Treatment facility operator, if the operator cannot be reached then the on call person should contact the Police Department dispatcher.

This individual will have access to a City vehicle which will remain parked at the Public Works facility, or Wastewater Treatment Facility. Keys to the Public Works facility, if needed, can be checked out through the Marion Police Department.

This vehicle is not to be used for any personal business. No one is to be allowed in the vehicle except for City employees and the vehicle is to be used only as transportation to and from the job site. The consumption of alcohol or the use of medication that causes drowsiness is prohibited when driving a City vehicle. (see above)

The Public Works on-call individual is to come to the Police Department to punch in on their time card. Once the work has been completed, the on-call person will return to the Police Department and punch out. The Wastewater Treatment on-call individual will punch in and out at the facility.

If it is determined that a problem is too serious for one individual to deal with, the on-call person will have the police dispatcher contact the superintendent of the affected area. (Water Distribution Superintendent or Street Superintendent).

If the superintendents are unavailable, the Public Works Director is to be contacted. If none of these individuals are available, the firefighters on duty at the Marion Fire Department will have the authority to authorize additional personnel.

When it is a major problem (broken water mains, water plant failure, street cave-ins, etc.), the Public Works Director along with the superintendent of the affected area is to be contacted immediately by the Police Department.

For Wastewater Treatment personnel - if it is determined that the problem is too serious for one individual to deal with or if the problem concerns an environmental impact, then the Operator in Responsible Charge should be called. In the event that a more serious problem or the Operator in Responsible Charge cannot be contacted, then the Plant Superintendent should be called.

When the Marion Police Department receives a complaint on week days (Monday through Friday), it is to be passed on to the superintendent of the affected area.

When the Public Works Director, the Water Distribution Superintendent or the Street Superintendent leave town, they are to report to the Marion Police Department as to the time of departure and as to the expected time of arrival back in town.

Payment for Call Duty

The on-call person will receive an established payment amount of $65.00 (necessary tax deductions etc. will apply) as compensation for taking weekend call duty. If the individual is called out, they will receive their regular rate of pay for all hours worked up to forty and time and half for all hours over forty.

If the weekend call person cannot be contacted within 30 minutes of the first attempt by the Marion Police Department or Plant Operator, the entire weekend call duty pay will be forfeited, and the employee may be subject to disciplinary action.

The on-call person taking duty during established holidays by the City of Marion will receive four (4) hours off with pay for each day of duty. The schedule for time taken off will be arranged through the employee's supervisor. This time off, if possible, shall be taken within one (1) work week.

Section 3. Volunteer Service

The City encourages and shall permit employees to participate as members of a volunteer emergency service to the extent that such volunteer activities do not interfere with the employee's responsibilities in the City service. However, no employee will be required or will be allowed to volunteer his/her time to the City to perform the same or similar work performed as a regular employee.

Section 4. Safety, Accidents And Driver's License

It is the intent of the City to provide for an ongoing program that assures a safe, healthy work environment for all employees and complies with all safety laws and regulations. To that end, each supervisor shall be responsible for:

(a) Providing safe work procedures and environments;
(b) Implementing safety policies and programs;
(c) Informing and training employees in safe work habits;
(d) Detecting and correcting unsafe practices and conditions;
(e) Investigating accidents and preparing accident reports;
(f) Encouraging employees to report unsafe conditions and to submit practical safety suggestions.

Likewise, each City employee shall be responsible for:

(a) Developing and maintaining safe work habits;
(b) Promptly reporting all accidents and injuries;
(c) Pointing out what are believed to be dangerous practices and working conditions;
(d) Assisting with investigations of accidents;
(e) Taking proper care of safety equipment;
(f) Wearing proper clothing and avoiding loose sleeves, cuffs, rings, bracelets and long hair around moving machinery; and
(g) Knowing the location and use of fire extinguishers, the location of fire exits and the best method for reporting a fire.
(h) Abiding by all safety laws and regulations.

Reporting Vehicle Accidents

If a City vehicle or equipment is involved in an accident, either on a public street or private property, it is not to be moved. The Police Department and the immediate supervisor or department head must be notified immediately. Failure to do so may be grounds for dismissal or other disciplinary action.

An investigation is to be carried out by the immediate supervisor, department head, and the personnel department.

If an employee is involved in an accident that involves a fatality, or any accident in which the driver is issued a citation under state or local laws, for a moving traffic violation, arising from the accident, that employee will be required to submit to an Alcohol and Controlled Substance Test. Testing will be administered immediately following the accident or as soon as medically and legally possible.

Driver's License

Many jobs with the City of Marion require a valid North Carolina driver's license. The following is the policy of the City of Marion regarding suspended and/or revoked driver's license after employment. This policy may not apply to the Police or Fire Departments.

I. Requirement for Driver's License – All employees in the following departments are required to have a valid North Carolina driver's license.
   (a) Sanitation
   (b) Street
   (c) Water
   (d) Water Treatment
   (e) Waste Water Treatment
   (f) Public Works Administration
   (g) Purchasing
   (h) Personnel
   (i) Planning and Zoning
   (j) Inspections
   (k) Fleet Maintenance

II. Suspension and/or Revocation of Driver's License – The following procedure shall be followed regarding suspension and/or revocation of driver's license.

   (a) An employee is required to report the loss of his/her driver's license to his/her immediate supervisor the following scheduled workday. Failure to comply will lead to suspension or dismissal.

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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.

Off the job injuries: An employee who sustains an injury or illness in connection with outside employment and is receiving Workers' Compensations benefits from that employer shall not be entitled to receive City Workers Compensation benefits or use accrued City sick leave.

Section 8. Limitation of Employment of Relatives

(a) Members of an immediate family shall not be employed in the same department or same building at the same time. Neither shall two (2) members of an immediate family be employed at the same time if such employment would result in an employee directly or indirectly supervising a member of the immediate family.

(b) This policy shall not be retroactive, and no action will be taken concerning those members of the same family employed in conflict with (a) above prior to the adoption of this policy.

(c) Immediate family is defined for the purpose of this section as spouse, mother, father, guardian, children, sister, brother, grandparents, grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those names, or anyone living as a part of the same household.

(d) No member of any employee's immediate family shall be hired without prior approval of the City Manager.

(e) Immediate family members of the Mayor, City Council and City Manager shall not be employed in any capacity, either full-time, part-time, temporary or as a contract employee.

Section 9. Conformance to Immigration Law Requirements

All employees are required to furnish proof of citizenship or other required documents indicating a legal right to work in the United States. Copies of the completed form I-9 shall be a permanent part of their personnel file.

Section 10. Confidential Information

No appointed official or employee shall, without the approval of his/her department head, disclose confidential information concerning the property, government, or affairs of the City. Nor shall they, under any circumstance, use such information to advance the financial or other private interest of themselves or others.

Section 11. Controlled Substances

No employee shall use intoxicating beverages or non-prescribed controlled drugs of any kind while on duty. Nor shall an employee report for duty while under the influence of an intoxicant or non-prescribed controlled drug. Any employee using medication or a controlled drug by prescription that
may affect job performance or safety shall notify their supervisor. The City's substance abuse, testing, referral and rehabilitation administrative policy contained in the City's drug testing policy will apply in most circumstances. The City Manager will be responsible for administration of this program.

Substance Abuse Policy

Policy Statement:

The use, possession, purchase, sale or manufacture of alcohol, illegal drugs or non – prescribed drugs or being under the influence of alcohol, illegal drugs, or non – prescribed drugs while on City property, while operating City vehicles, or while engaging in City business is strictly **prohibited.**

Scope:

Employees Subject to Testing – All applicants for full or part time positions at the City and all full time and part-time employees.

Alcohol – Means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

No employee shall report for work or remain at work while having an alcohol concentration of 0.02 or greater.

No employee shall report for work within eight (8) hours after using alcohol.

No employee required to take a post accident test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

Controlled Substance – The U.S. Department of Transportation (DOT) Requires testing for amphetamines, cannabinoids, cocaine, opiates, phencyclidine, and illegal substances or non – prescribed drugs.

No employee shall report for work or remain when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a motor vehicle.

No employee shall report for work or remain on duty, if the employee tests positive for controlled substances.

Prescribed Medications - All employees taking prescribed medications that could impair their ability to safely operate a motor vehicle or related activities associated with loading, unloading, inspection and maintenance or other activity that is classified as "on duty time" 49 CFR 395.2 must report this to their immediate supervisor as directed by this policy.

Qualifications for Employment and Prohibited Conduct

Prohibited Conduct – The City prohibits any alcohol misuse and/or drug use that could affect employee performance, including:

Alcohol

1. Use while at work.
2. Use during eight (8) hours before reporting for work.
3. Reporting for work or remaining at work with an alcohol concentration of 0.02 or greater.
4. Possession of alcohol, including the possessions of medicines containing alcohol (prescription or over the counter), unless the packaging seal is unbroken.
5. Use during the eight (8) hours following an accident or until he/she undergoes a post accident test.
6. Refusal to take a required test.

Note: An employee found to have an alcohol concentration of 0.02 or greater shall not be permitted to remain at work and may be subject to disciplinary action.

Controlled Substance

1. Use of any drug, except by doctor's prescription, and then only if the doctor has advised that the drug will not adversely affect the employee's ability to safely operate equipment.
2. Testing positive for illegal drugs; and
3. Refusing to take a required test.

Consequences and Disqualifications

1. The employee shall not work or be permitted to work if any of the above listed prohibitions are violated.
2. Any employee violating these prohibitions will be discharged from employment.

Testing Circumstances

Pre–employment Testing

All applicants for part-time or full-time positions who have been extended a conditional offer of employment or persons transferring to positions requiring commercial driver's license, will be directed to submit to an Alcohol and Controlled Substance Test.

An alcohol test result must indicate an alcohol concentration of less than 0.02 in order for the employee to be considered for employment.

A drug test will be conducted during the pre-employment process and a negative drug test result must be received before a final offer of employment is made.

Post–Accident–Testing

If an employee is involved in an accident/incident or is injured in an accident/incident arising out of and in the course of employment, that employee will be required to submit to an Alcohol and Controlled Substance Test. Testing will be administered immediately following the accident/incident or as soon as medically and legally possible.

The alcohol test must be administered within (2) hours following the accident and in no case shall more than (8) hours elapse before the test is administered. It is the employee's responsibility to notify the City immediately to insure actions are taken to meet the testing requirements.

The driver must refrain from using alcohol for (8) hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

The drug test must be administered within 32 hours following the accident. The driver must remain available for testing, or the City will consider the driver to have refused to submit to the testing.

Note:
Nothing in this requirement should be construed as to require the delay of necessary medical attention for injured people following an accident.

Random Testing:

Random testing will be done on percentage basis in a fair and equal manner for employees with DOT-required CDL positions.

For alcohol or drug testing an employee may be tested at any time that the employee is at work for the City.

Selection of employees for random testing will be made by a scientifically valid method, such as a random number table or a computer– based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

Each time a random selection is made, every employee will have an equal chance of being selected. Random tests will be unannounced and spread reasonably throughout the year. Employees when notified that they have been selected for random testing will proceed immediately to the collection site.

Reasonable Suspicion Testing

Any employee, while on City property, while operating a City Vehicle, or while engaging in City business, acts in a manner sufficient to cause reasonable suspicion that he/she is under the influence of alcohol or drugs will, be required to submit to an Intoxilyzer test and/or a controlled substance test upon the approval and directions of a Marion Police Officer.

Alcohol testing under this section will only be performed by a Marion Police Officer holding a permit issued by the North Carolina Department of Health and Human Services to perform chemical analysis of breath.

Alcohol testing will only be preformed using an Intoxilyzer, Model 5000 in accordance with current regulations of the North Carolina Commission of Human Services.

Return to Work Testing

Any employee that, based on the City approval, is allowed to return to work following referral, evaluation, and treatment as a result of a positive alcohol or drug test will be required to submit to a return-to-work alcohol and/or controlled substance test. An alcohol concentration of less than 0.02 and a negative drug test will be required before a return-to-work decision is made.

Follow-up Testing

In the event an employee is allowed to return to work following referral, evaluation, and treatment, a minimum of six (6) unannounced alcohol and/or drug tests will be required during the next twelve (12) months of employment. Follow up testing may continue for up to 60 months following returning to work at the City's discretion, based on recommendations from the Substance Abuse Professional.

Alcohol testing and Controlled substance testing may be performed at any time the employee is at work for the City.

Discipline And Consequences

Pre–employment/Pre–duty

An applicant for part time, full time or transfer with a verified positive controlled substance test result and/or a verified positive controlled substance test result and/or a confirmed breath test result of 0.02 or greater will be denied employment.

Reasonable Cause

Any employee of the City subject to the terms of this policy, as a result of reasonable cause testing, with a verified positive controlled substance test result and/or an alcohol breath test with a confirmed test result of 0.02 or greater will be terminated from employment.

Post-accident

Any employee of the City subject to the terms of this policy as a result of a post-accident test, with a verified positive controlled substance test result and/or a confirmed alcohol breath test with a confirmed test result of 0.02 or greater will be terminated from employment.

Random

Any employee of the City subject to the terms of this policy, as a result of a random test, with a verified positive controlled substance test and/or a confirmed alcohol test result of 0.02 or greater will be terminated from employment.

Supervisory Training as required by DOT will be provided to all Supervisors.

Educational material as required by DOT will be provided to all employees in safety – sensitive positions.

If an Employee should approach the City for assistance through rehabilitation for drug abuse or alcohol abuse prior to a testing request by the City, the City will consider a medical leave of absence for treatment.

Under no circumstances will the City pay for any counseling or rehabilitation for drug or alcohol abuse except as indirectly paid by the employee's City paid medical insurance policy.

Any questions regarding this policy should be directed to the City of Marion.

Section 12. Use of City Owned Equipment

The personal use of any City owned equipment or supplies by any employee elected or appointed official or individual is prohibited unless authorized by the City Manager. Should authorization be granted, use will be limited to the use specified in the authorization.

Use of City owned vehicles is governed by the following:

(a) Vehicles owned by the City may be provided to one or more employees in connection with City business and shall be used only on City business. When the vehicle is not used in the City's business, it is kept on the City's business premises. Pursuant to Federal and State law, neither the employee, nor any person, whose use would be taxable to the employee, may use the City vehicle for personal use.

(b) For bona fide non-compensatory business reasons, the City may require certain employees to commute to and from work in City vehicles that are not exempted by IRS regulations. In accord with federal and state law, an employee may not use the City owned
vehicle for personal uses other than commuting. Under these conditions, the City will account for commuting use as specified and required in IRS regulations.

Section 13. Travel and Expense Reimbursement

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 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.

Advances of travel and expenses may be authorized in unusual cases. The City Manager will approve all requests for travel advances. Such requests shall be made at least ten (10) work days in advance of the actual expenses.

Employees attending meetings, conferences, etc., where lodging is offered and available at the institution, shall be required to use such accommodations.

Reimbursement for meal expenses shall be guided 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.

The City Manager, upon the recommendation by the Finance Director, may deny reimbursement of any questionable, unsupported, or excessive expense claims submitted by employees.

Any violation of the provisions in this section shall be deemed improper conduct and may subject the employee to discharge or other disciplinary action.

Section 14. Discrimination/Sexual Harassment

The City is committed to maintaining a work environment that is free of discrimination. In keeping with this commitment, no discrimination shall be exercised, threatened, or promised against or in favor of any applicant or employee because of his/her race, religion, color, creed, national origin, age, political beliefs, sex or disability.

Harassment consists of unwelcome conduct, whether verbal, physical, of or visual, that is based upon a person's protected status. The City will not tolerate harassing conduct that affects tangible job benefits, that interferes with an individual's work performance, or that creates an intimidating, hostile, or offensive working environment.

An employee who feels they have been harassed are highly encouraged to bring it to the attention of either the

Department Head or the City Manager who shall conduct a thorough investigation and develop a course of appropriate action. The complaint should be submitted in writing. If the employee works directly for the City Manager, the complaint may be filed with the Mayor.

The City forbids retaliation against anyone who has reported harassment. If allegations warrant, the City will investigate to the fullest extent practicable, and will try to keep complaints and the policy of the complaint confidential.

Sexual harassment:: The City expressly prohibits any form of sexual harassment and seeks to guarantee all employees the right to work in an environment free from such harassment.

A particular form of harassment, sexual harassment is defined as Unwelcome sexual advances, request for sexual favors, and other physical, verbal, or visual conduct based on sex, constitutes sexual harassment. Sexual harassment happens when submission to the conduct is an explicit or implicit term of condition of employment; submission to or rejection of the conduct is used as the basis for an employment decision; the conduct has the purpose or effect of reasonably interfering with an individual's work performance. Sexual harassment may include explicit sexual propositions, sexual innuendo's, suggestive comments, sexual oriented "kidding" or "teasing", "practical jokes", jokes about gender specific traits, foul or obscene language or gestures, displays of foul or printed or visual material, and physical contact, such as patting, pinching, or brushing against another's body.

The City recognizes that false accusations of sexual harassment can have a serious effect on innocent men and women. Individuals falsely accusing another of sexual harassment will be disciplined in accordance with the nature and extent of his/her false accusation.

Section 15. Personal Appearance and Property

Employees will be expected to wear clothing appropriate to the department and environmental working conditions. Clothing such as shorts and tank tops should not be worn while at work.

Facial jewelry will not be allowed (example: nose, lip, eyebrow, cheek, and tongue). Earrings should be conservative in nature and not pose a safety risk to the employee. Clothing must cover tattoos that are considered offensive in nature.

It shall be the policy of the City of Marion not to replace personal items of City employees lost, damaged, or stolen.

The City will replace, under existing policies, safety gear furnished by the City.

Section 16. Surrender of Property

An employee who is suspended or discharged shall be required to return all items of equipment and supplies, including uniforms issued, rented, or owned by the City. Return of such equipment must precede the issuance of such an employee's final pay check.

Section 17. Loaning of Equipment

The City of Marion will not loan out any equipment, chairs, tables, or other types of materials and/or supplies.

This policy does not apply to Federal, State, or local governments, including the Recreation Department, Senior Center, Health Department, School System, McDowell Technical Community College, Keep McDowell County Beautiful, the Marion Downtown Business Association, contractors working for the City of Marion, or any other organization with whom the City has a funding relationship.

Section 18. Residency

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.

Section 19. Telephones, e-mail and Internet

Usage of City telephones and computers for personal communications and Internet connections or e-mail for personal reasons should be brief. Likewise, employee use of personal cell phones and text messaging devices on the job should be brief, and abuse may subject the employee to disciplinary action.

Employees shall not access pornographic sites through City equipment or use City telephones for personal long-distance calls.

Under North Carolina law, e-mail sent or received by the City is considered a public record and is subject to inspection upon request.

Section 20. Inclement Weather

The Department Head may be called to determine if the offices will be open or closed. An employee unable to work due to inclement weather may use vacation or compensatory time. In emergency situations, designated supervisors or employees may be required to report to work.

Article VII.
Leaves of Absence

Section 1. Holidays

The following days, and other days as the City Council may designate, are holidays with pay for employees and appointed officers of the City working the basic workweek.

New Year's Day
Martin Luther King Day
Good Friday
Memorial Day
July 4th
Labor Day
Veterans Day
Thanksgiving-Two Days-Thursday and Friday
Christmas - Two to Three Days

Christmas -The City will try to observe the same holidays or schedule as McDowell County not exceeding the established holidays as set forth in this policy.

New Year's Day, July 4th and Veterans Day are floating holidays. The day observed is the day of the week on which the holiday actually falls. If the Holiday should fall on a Saturday, Friday is observed, if the holiday falls on Sunday, Monday is observed.

Martin Luther King Day, Memorial Day and Labor Day are taken on the Monday that these holidays are observed according to the calendar.

Christmas is usually taken the workday before, Christmas Day, and the workday after.

All employees involved in a twenty-four (24) hour, seven (7) day a week operation will be granted eleven (11) or twelve (12) days off, depending on the number of holidays granted other employees, in lieu of fixed holidays. These days can be taken at a time that is agreeable with the department head and the operational schedule of the department.

The granted time off will equal the regular scheduled shift hours that one would normally work. If one is scheduled to work eight (8) hours, then eight (8) hours will be granted off for the holiday. These days may not be taken prior to the passing of the holiday.

When a holiday, other than Christmas Day, falls on Saturday the prior Friday shall be observed as the holiday. When the holiday, other than Christmas, falls on a Sunday the following Monday shall be observed as the holiday.

For employees having a workweek with greater hours than the basic workweek, holiday leave shall be granted in the same proportion as their workweek is to a forty (40) hour workweek.

Employees still on probation will be given time off, without pay, for holidays.

Section 2. Effect of Holidays on Other Types of Leave

Regular holidays which occur during a vacation, sick or other leave period of any appointed officer or employee of the City shall not be considered as vacation, sick or other leave.

Section 3. Holiday-When Work Is Required

Employees required to perform work on regularly scheduled holidays may be granted "holiday compensatory time off" or paid at their hourly rate for the hours actually worked in addition to any holiday pay to which they may be entitled.

"Holiday compensatory time" shall be granted whenever feasible and shall be taken within three (3) months from the time it is earned. "Holiday compensatory time", not taken within three (3) months will be paid out to the employee. Accumulated "holiday compensatory time" shall be used before accumulated vacation leave. Should an employee leave prior to being able to use the holiday, the employee will be paid for the holiday time not taken.

Section 4. Vacation Leave

Vacation leave shall be used for rest and relaxation and in emergencies when sick leave has been exhausted.

(a) Initial Appointment
Probationary Employees serving a probationary period following initial appointment may accumulate vacation leave but shall not be permitted to take vacation leave during the probationary period.

(b) Vacation Leave-Manner of Accumulation
Each full-time regular and probationary employee shall eam vacation leave annually, provided the employee is active and eligible to contribute to the Local Govemment Retirement System, as follows:

Years of Service	Amount of leave earned
0 - 10 years	10 days (80 hours)*
10 and thereafter	15 days (120 hours) *

(* hours of vacation earned annually based on an 8 hour work day)

Employees who are out of work in a leave status shall not be eligible for accumulation of vacation leave. 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 active employee each pay period.

(c) Vacation Leave-Maximum Accumulation
Annual leave may be accumulated up to 200 hours maximum for 40 hour employees, up to 210 hours maximum for 42 hour employees and up to 280 hours maximum for 56 hour employees.
Vacation accumulated beyond this amount will automatically be transferred to sick leave on an hour for hour basis. However, if the employee separates from service, payment for accumulated annual leave 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.

(d) Vacation Leave-Manner of Taking Leave
Vacation leave may be taken as accumulated by regular employees subject to policy and approval by the department head. General guidelines are fourteen (14) day notice for a five
(5) day or longer vacation request; five (5) day notice for three (3) to four (4) day vacation request; and two (2) day notice for a one (1) to two (2) day vacation request.

(e) Vacation Leave-Previous Leave Credit
Vacation leave credit accumulated by each employee as of the
adoption of these personnel administration policies shall be retained as of the effective date of these policies.

(f) Vacation Leave-Terminal Pay of Vacation Leave
An employee resigning from municipal employment shall be paid for vacation leave accumulated to the date of separation not to exceed a maximum of 200 hours for 40 hour employees, up to 210 hours maximum for 42 hour employees and up to 280 hours maximum for 56 hour employees.

(g) Vacation Leave-Payment for Accumulated Vacation upon Death
The designated beneficiary of an employee who dies while employed by the City shall be entitled to payment for all of the accumulated vacation leave credited to the employee's account, not to exceed a maximum of 200 hours for 40 hour employees, up to 210 hours maximum for 42 hour employees and up to 280 hours maximum for 56 hour employees, at the time of death.

Section 5. Sick Leave

(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), provided the employee is active and eligible to contribute to the Local Government Retirement System. Employees who are out of work on a leave status shall not be eligible for accumulation of sick leave. 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 active employee each pay period.

(b) Sick Leave-Maximum Accrual
Sick leave shall accumulate with no maximum accumulation, and may be used as credit for service under the NC Local Governmental Employee's Retirement System.

(c) Sick Leave-Physician's Certificate

The employee's supervisor or department head may require a physician's certificate concerning the nature of the illness and the employee's physical capacity to resume duties for each occasion on which an employee uses sick leave.

Sick leave with pay is not a right that an employee may demand but a privilege granted by the City Council for the benefit of an employee when sick. Sick leave shall be granted to an employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease. Sick leave may also be used for illness in the employee's family that requires the care of the employee.

Good attendance is extremely important as it allows each City department to carry out the services and projects assigned to it and expected of it. When employees are absent, projects are delayed, service delivery suffers, and other employees must work harder to complete the same amount of work. Therefore, it is in the interest of employees, supervisors, and the City as a whole to promote good attendance.

Abuse of sick time shall not be tolerated and shall subject the employee to disciplinary action. Examples of abuse of sick time shall include, but not be limited to: taking unapproved leave, failure to notify a supervisor in advance of the need to take a personal day, use of all sick time accrued, or lying about the need for or use of sick time. Supervisors may require the presentation of a physician's note for an employee using sick time to go to a medical or dental appointment for themselves or a family member.

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 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.

Incentives

Along with disciplining employees for abuse of sick time, it is the policy of the City of Marion to reward employees for excellent attendance. Therefore, the following incentives shall apply for various levels of attendance:

An employee who does not use any sick leave in a three (3) month period, or quarterly, shall receive four (4) hours of personal leave. Such awards shall be made on January 1, April 1, July 1 and October 1 of every year. In order to be eligible for this award, the employee must have been employed with the City of Marion as of the first day of that three (3) month period (October 1 for a January 1 award, January 1 for an April 1 award, April 1 for a July 1 award and July 1 for an October 1 award).

An employee who completes one (1) calendar year of perfect attendance without using any sick leave shall therefore receive sixteen (16) hours of personal leave. Personal leave awarded in accordance with this section will be treated as vacation time, its use approved in advance by the supervisor, with the requirements for notice as are in place for use of vacation time.

Shared Sick Leave

It shall be the policy of the City of Marion to allow a city employee to donate up to fifty percent (50%) of all accumulated sick leave time, in excess of forty (40) hours, to any other city employee having exhausted all of his/her sick leave and vacation leave due to the employee's major illness and/or major surgery.

Sick leave time contributed will remain with the employee given the time and no portion of the time contributed will be returned to the employee contributing the time. Time contributed will be on an hour for hour basis without regard to the hourly rate paid each employee.

Requests for shared sick leave time shall be submitted to the employee's department head. The department head will review the request to insure compliance with the policy and notify the City Manager. If approved by the department head and City Manager, proper notification will be given to all city employees of the request. The notice shall state only the employee's name, department, and need of donated sick leave time.
Any employee interested in donating sick leave time will complete the necessary forms provided by the city.

The employee contributing the sick time will be required to sign a notarized statement including, at least, the following information:

(a) The date the contribution is made.
(b) The name and department of the employee to receive the time.
(c) The name and department of the employee donating the time.
(d) The number of hours contributed.
(e) The balance of accumulated sick leave time left after the time contributed is deducted.

Employees Leaving

If an employee is leaving and has already turned in their resignation with department heads well aware of their separation date, the employee will not be allowed to contribute any sick time to another employee who has exhausted their time. If the sick time is not used due to sickness on the employee's part or not applied to retirement, then it will be lost.

If an employee has decided to leave and has not turned in a resignation and the department heads are not aware of the employee quitting, the employee can complete all shared sick leave forms and contribute time to another employee who has met all the criteria to receive shared sick leave time. The forms must be fully processed with all appropriate signatures to be valid.

Section 6. Family Medical Leave

The City will comply with the provisions of the Family Medical Leave Act (FMLA). Employees are entitled to take leave without pay for up to 12 weeks for reasons contained within the Act. If an employee elects to use paid leave for the leave authorized within the Family Medical Leave Act such paid leave will automatically count toward this 12 week entitlement.

The Family Medical Leave Act requires a balance in the workplace concerning time spent with the family and time spent with the employer. To that end the City, will comply with this provision as follows:

(a) Eligible Employee

An employee who has been employed with the City for at least one (1) year and who has worked at least 1,250 hours during the past 12 months is entitled to a total of twelve (12) workweeks of family and medical leave either paid through the election of accrual leave or unpaid leave during a (12) month period for one or more of the following reasons:

1. For the employee to care for the employee's child, spouse, or parent where that child, spouse, or parent has a serious health condition; or
2. Placement of a child with the employee for adoption or foster care.
3. Because the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position; or
4. For parental leave as provided and explained in the following section.

(b) Definitions Applicable

Parent: Biological or adoptive person or one who stood in loco parentis to an employee when the employee was a child.

Child: Son, daughter under 18 years of age or 18 or greater who is incapable of self-care because of mental or physical disability who is either; biological, adopted, foster, step, legal ward or child of employee who is standing in loco parentis.

Spouse: Husband or wife recognized by State law.

Serious health condition: illness, injury, impairment, physical or mental condition that involves either in-patient care in medical facility or continuing care by a health care provider.

(c) Parental Leave: Parental leave is an eligible event under the Family and Medical Leave Act for the employee to request leave. The amount of this leave that can be taken is the same as other events under this requirement. The qualifying event is the birth and care of a child or the adoption, or foster care of a child following placement.

(d) Employee Responsibility: It is the employee's responsibility to notify the City when they are unable to report to work because of a family medical leave reason. Generally if an employee has to take leave for a family and medical leave act reason that leaves shall automatically be a Family and Medical Leave within the meaning of this section. The employee can elect to use any accrued paid leave they have earned. If any type of paid leave is elected it will run concurrently with the family medical leave. If accrued leave is not elected then the leave is an unpaid family and medical leave.

(e) The City Manager shall provide for procedures and process for employees and departments to use in administering this section and shall follow the minimum standards for administration required by the Act.

Section 7. Maternity Leave

An employee desiring to take a leave of absence from work for reasons caused by or contributed to by pregnancy, miscarriage, childbirth, or recovery from should apply in writing to her supervisor stating the nature of her condition and the anticipated dates and duration of the requested leave. The supervisor shall forward the request to the City Manager for approval.

Failure to report at the expiration of the leave of absence unless an extension has been requested and approved shall be considered a resignation.

An employee may elect to use accumulated vacation leave and/or to use sick leave for the period of actual disability. If an employee wishes to retain all accumulated sick leave and vacation leave, leave without pay may be taken for the entire period.

Leave without pay is available as required by circumstances, agreed on by the department head and the City Manager, and/or medically determined.

Employers are prohibited from terminating, refusing to hire or failing to promote a woman solely because she is pregnant.

Employers must treat pregnancy and childbirth the same as other disabilities under their employee fringe benefit plans.

Mandatory leaves for pregnant employees based on arbitrary time periods in their pregnancy, which are not based on the individual's ability to work are prohibited.

Reinstatement rights of women on leave for pregnancy-related reasons, including credit for previous service, accrued retirement benefits, and accumulated seniority must be observed.

Section 8. Leave Without Pay

A regular employee with at least two (2) years of service may be granted a leave of absence without pay for up to one (1) year by the City Manager. The employee shall apply in writing to the City Manager for leave, stating the reason and the length of time for the leave of absence request.

The employee is obligated to return to duty within, or at the end of the time determined appropriate by the City Manager. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification, seniority and pay. If the employee decides not to return to work, the supervisor should be notified immediately. Failure to report at the expiration of a leave of absence, unless an extension has been requested and approved, shall be considered a resignation.

(a) Leave Without Pay-Effect on Benefits

An employee shall retain all unused vacation and sick leave while on leave without pay. An employee ceases to earn or accrue leave credits on the date leave without pay begins. The employee may continue to be eligible for benefits under the City's group insurance plans. If the leave without pay including worker's compensation leave as described below, will continue beyond 30 consecutive days employees may continue in the various insurance plans as allowed by the rules and regulations of the insurance carriers by paying for both employee and dependent premium payments for the duration of such leave without pay. These arrangements require prior acknowledgment and agreement by both City and employee affected. Any other benefits continuation issues should also be resolved prior to the commencement of the unpaid leave.

Section 9. Worker's Compensation Leave

An employee injured in an accident arising out of and in the course of employment may elect to use sick leave and/or vacation leave in order to receive the difference between the Worker's Compensation payment and his/her regular salary while he/she is disabled.

This will also apply to an employee injured on the job who is out of work for less than the seven day waiting period required by Worker's Compensation. Once sick/vacation leave is exhausted, the employee will only be entitled to the Worker's Compensation payment. Donated sick leave is not permitted in a Worker's Compensation situation.

Temporary and/or probationary employees will be placed in a leave without pay status and will receive all benefits for which they may be adjudged eligible under the Workers' Compensation Act.

Section 10. Funeral Leave

An employee, after completing the probationary period, may have up to three (3) days leave at full pay without charge to annual leave or sick leave when attending the funeral of an immediate family member. An immediate family member is defined as a spouse, parent, grandparent, child (or stepchild), grandchild, sibling, stepbrother, stepsister, stepparent or spouse's parents. Additional time to settle affairs of the family may be taken with the approval of the department head and should be charged to vacation leave. Leave to attend funerals of other than the immediate family may be granted by the department head and charged to sick leave.

Section 11. Temporary Disability Leave

Accumulated sick leave is available to employees for the period of temporary disability in the same manner as for any other illness.

Leave without pay may be used by the employee during or after the disability ends as long as a doctor's certification continues to support the disability. The employee may elect to use accumulated vacation leave (1) before going on sick leave, (2) after accumulated sick leave has been exhausted, and/or (3) after the temporary disability has ended. If an employee is temporarily disabled and has exhausted all accumulated sick leave, that employee may be eligible to receive leave without pay for personal disability under the provisions of Section 8 of this article. If an employee wishes to retain all accumulated sick leave and vacation leave, leave without pay may be taken for the entire period.

before this supplement is calculated and paid. The employee may elect to use annual leave to cover part or all of the military leave.

If such military duty is required beyond this two (2) calendar week period, the employee shall be eligible to take accumulated vacation leave or be placed in a leave without pay status. Regular employees who are members of the National Guard or Armed Forces Reserves, have all job rights specified in the Veterans Readjustment Assistance Act.

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/her accrued leave.

(b) If any employee is subpoenaed to testify in a court case, not related to City employment, the employee must notify his/her supervisor or department head. Charge will be made against the employee's accrued leave, if notice of the leave is provided in advance. Time spent in court by law enforcement officers and others called to testify in cases related to their City employment will be considered work time.

Section 14. Educational Leave with Pay

A leave of absence with pay during regular working hours will be granted to an employee to take courses required by the City as a condition of employment. The City shall reimburse the employee for tuition, fees, and books for the courses, provided the employee submits a receipt for such expenses.

An employee on educational leave with full pay shall continue to earn leave credits and any other benefits to which City employees are entitled.

Section 15. Light Duty

In the event of an injury, either on duty or off duty related, an employee is expected to return to duty when authorized by competent medical authority. Some light duty may be authorized but only with work within the department assigned and only within work limits described by the medical authority. The City will not be obligated to create light duty to maintain an employee on the clock. The Department Head is responsible for supervision and assignment of light duty within these guides. Once released by the medical authority the employee is expected to return to perform the full range of regular work within the position description of the position assigned.

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 small pox 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.

Section 17. School Involvement Leave

In keeping with the provisions of N.C. G. S. 95-28, full-time regular employees who are parents, guardians, or persons "standing in loco parentis" of a school-aged child shall be granted four hours per year of unpaid leave to attend or otherwise be involved at their child's school. However, the leave is subject to the following conditions:

(a) The leave shall be at a mutually agreed upon time between the supervisor and the employee;

(b) A written request must be submitted to the supervisor for the leave at least 48 hours before the time desired for the leave;

For the purposes of this section, "school" means any public school, private church school, church of religious charter, non-public school, preschool and child daycare facilities.

Employees may be allowed to use accumulated vacation or compensatory time with approval of the supervisor

Section 18. Excessive Absenteeism

(a) **Absence:** Two (2) days of unexcused absences in a four (4) week period is reason for dismissal. Unexcused absences involve taking unapproved leave, or using sick time for an unapproved reason as defined above. Excused absences, when possible, should be authorized in advance by the immediate supervisor. Three (3) days without reporting to work or contacting the appropriate official shall be considered a voluntary resignation.

(b) **Tardiness**: Twice (2) in a one- (1) week period or three (3) times in a four- (4) week period is reason for dismissal.

Tardiness will be considered unexcused except in emergency situations approved by the immediate supervisor. Tardiness,will be defined as follows: Reporting to work eight (8) minutes or more after the regular start work time of each employee as with the respective departments.

(c) **Leaving Early**: Except in emergency situations, employees will be limited to leave work early two (2) times in a four-week period. Employees are encouraged to take care of personal business on their own time.

Article VIII.
Separation, Disciplinary Actions and Reinstatement

Section 1. Types of Separation

All separations of employees from positions in the service of the City shall be designated as one of the following types and shall be accomplished in the manner indicated:

(a) Resignation: A minimum of two (2) weeks notice is expected of all resigning personnel. Such notice should be given to the department head (or in the case of department heads, to the City Manager). Employees who do not give proper notice will not be paid for their accumulated vacation leave balance upon termination. Three (3) days without reporting to work or contacting the appropriate official shall be considered a voluntary resignation.

(b) Reduction in Force: In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's past performance, organizational needs, and seniority, in that order, in determining those employees to be retained. Employees who are laid off because of reduction in force shall be given at least one (1) pay period notice of anticipated layoff. No regular employee shall be separated while there are temporary employees serving in the same class in the department, unless the regular employee is not willing to transfer to the position held by the temporary employee.

(c) Disability: An employee may be separated for disability when the employee cannot perform the required duties because of a physical or mental impairment and reasonable accommodations, as required by the American with Disabilities Act (ADA), cannot be made. The employee or the City may initiate action, but in all cases it shall be supported by medical evidence as certified by a competent physician. The City may require an examination at its expense and performed by a physician of its choice. Before an employee is separated for disability, a reasonable effort shall be made to locate alternative positions within the City's service for which the employee may be suited.

(d) Death: All compensation due in accordance with Article VII, Section 4 of these policies will be paid to the designated beneficiary of a deceased employee. The date of death shall be recorded as the separation date for computing compensation due.

(e) Dismissal: If the appointing authority determines that a dismissal action is appropriate, before dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the Department Head will conduct a pre-disciplinary conference. At this conference, the employee may present any response to the proposed disciplinary action. The Department Head will consider the employee's response, if any, to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, notify the employee in writing of the final decision to take disciplinary action. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal rights.

Section 2. Disciplinary Action

An employee may be suspended, demoted, or dismissed by the department head because of failure in performance of duties or failure in personal conduct. The department head shall provide the employee with a written notice including the effective date, reasons for the action, and appeal rights available to the employee.

(a) Failure in Performance of Duties

Failure in the performance of duties includes any aspects of the employee's job, which are not performed as required to meet the standards set by the City Manager.

The following causes relating to failure in the performance of duties are representative, but not all inclusive, of those considered to be adequate grounds for suspension, demotion or dismissal:

(1) Inefficiency, negligence or incompetence in the performance of duties;
(2) Careless, negligent or improper use of City property or equipment;
(3) Physical or mental incapacity to perform duties;
(4) Discourteous treatment of the public or other employees;
(5) Absence without approved leave;

(6) Habitual improper use of leave privileges;
(7) Habitual pattern of failure to report for duty at the assigned time and place.
(8) Willful insubordination.

Prior to making a decision to terminate employment, the Department Head or City Manager will conduct a pre-disciplinary conference.

(b) Failure in Personal Conduct

An employee may be suspended, demoted or dismissed for causes relating to personal conduct detrimental to City service without warning in order to avoid undue disruption of work to protect the safety of persons or property. Before a final decision is made the Department Head or City Manager will conduct a pre-disciplinary conference.

The following causes relating to failure in personal conduct are representative, but not all inclusive, of those considered to be adequate grounds for suspension, demotion, or dismissal:

(1) Fraud in securing appointment;
(2) Conduct unbecoming a public officer or employee;
(3) Conviction of a felony or of a misdemeanor which would adversely affect performance of duties, or the entry of a plea of "no contest" to either;
(4) Misappropriation of City funds or property;
(5) Falsification of City records for personal profit or to grant special privileges;
(6) Reporting to work under the influence of alcohol or narcotic drugs or partaking of such things while on duty or while on public property, except prescribed medication may be taken within the limits set by a physician so long as medically necessary;
(7) Willful damage or destruction of property;
(8) Willful acts that would endanger the lives and property of others;
(9) Acceptance of gifts in exchange for "favors" or "influence";
(10) Incompatible outside employment or conflict of interest;
(11) Violation of political activity restrictions.

(c) Disciplinary Suspension

An employee who is suspended for disciplinary reasons shall be relieved temporarily of all duties and responsibilities and shall receive no compensation for the period of suspension. The Department Head or City Manager will conduct a pre-disciplinary conference.

(d) Immediate Disciplinary Suspension

An employee may be suspended without notice by the department head for causes related to personal conduct in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. Before a final decision is made the Department Head or City Manager will conduct a pre-disciplinary conference. When a department head suspends an employee the employee needs to leave City property at once and remain away until further notice.

(e) Non-Disciplinary Suspension .

During the investigation, hearing or trial of an employee on any criminal charge or during the course of any civil action involving an employee, the department head may suspend the employee without pay for the duration of the proceedings as a non-disciplinary action. However, the investigation, hearing, trial, or civil action must involve matters that may form the basis for disciplinary suspension, demotion or dismissal in order for the non-disciplinary suspension to be allowed.

Full recovery of pay and benefits for the period of non-disciplinary suspension may be authorized by the City Manager, if the suspension is terminated with full reinstatement of employee.

Exempt employees: . In accordance with FLSA requirements to maintain exempt status, suspensions for exempt employees shall normally be for one full work week, especially if the suspension is for failure in performance of duties issues. Under FLSA suspensions of less than a week are authorized for major safety violations or infractions of workplace conduct rules (detrimental personal conduct).

Section 3. Employee Appeal

A regular employee wishing to appeal a demotion, suspension or dismissal may present the matter in accordance with the provisions of the grievance procedure prescribed in these policies.

Section 4. Reinstatement

An employee who resigns while in good standing or who is dismissed because of reduction in force may be reinstated within one (1) year of the date of separation, with the approval of the City Manager. An employee who enters extended active duty with the Armed Forces of the United States, the Public Health Service or with a Reserve Component of the Armed Forces will be granted reinstatement rights as allowed by the Veterans Readjustment Assistance Act.

An employee who is reinstated shall be credited with previous service and previously accrued sick leave and will receive all benefits provided in accordance with this policy and state law. The salary paid a reinstated employee shall be as close as reasonably possible, given the circumstance of each employee's case, to the salary step previously attained by the employee in the salary range for the previous class of work, plus any across-the-board pay increases.

Article IX
Grievance Procedure and Adverse Action Appeal

Section 1. Policy

It is the policy of the City to provide a just procedure for the presentation, consideration, and disposition of employee grievances. The purpose of this Article is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

Employees utilizing the grievance procedures shall not be subjected to retaliation or any form of harassment from supervisors or employees for exercising their rights under this policy. Supervisors or other employees who violate this policy shall be subject to disciplinary action up to and including dismissal from City service.

Section 2. Grievance Defined

A grievance is a claim or complaint by an employee based upon an event or condition which affects the circumstances under which an employee works and is allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.

Section 3. Purposes of the Grievance Procedure

The purposes of the grievance procedure include, but are not limited to:

a) providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;

b) encouraging employees to express themselves about the conditions of work which affect them as employees;

c) promoting better understanding of policies, practices, and procedures which affect employees;

d) increasing employees' confidence that personnel actions taken are in accordance with established, fair, and uniform policies and procedures;

e) increasing the sense of responsibility exercised by supervisors in dealing with their employees.

f) encouraging conflicts to be resolved between employees and supervisors who must maintain an effective future working relationship, and therefore, encouraging conflicts to be resolved at the lowest level possible of the chain of command through collaboration and/or mediation; and

g) creating a work environment free of continuing conflicts, disagreements, and negative feelings about the City or its leaders, thus freeing up employee motivation, productivity, and creativity.

Section 4. Procedure

When an employee has a grievance, the following successive steps are to be taken. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved by the City Manager before the decision becomes effective.

Informal Resolution. Prior to the submission of a formal grievance, the employee and supervisor should meet to discuss the problem and seek to resolve it informally. Either the employee or the supervisor may involve the Finance Director as a resource to help resolve the grievance. Mediation may be used at any step in the process and is encouraged. Mediation is the neutral facilitation of the conflict between or among parties where the facilitator help the parties find a mutually agreeable outcome.

Step 1. If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor (the person who took the action which created the grievance issue, could be immediate supervisor, Division Head, Department Head, etc.) in writing. The grievance must be presented within seven calendar days of the event or within seven calendar days of learning of the event or condition. The written grievance should identify the action that is deemed unfair and the reason the grieving employee believes it to be unfair. The supervisor shall respond to the grievance within seven calendar days after receipt of the grievance. The supervisor should, and is encouraged to, consult
with any employee of the City in order to reach a correct, impartial, fair and equitable determination or decision concerning the grievance. Any employee consulted by the supervisor is required to cooperate to the fullest extent possible.

The response from the supervisor for each step in the formal grievance process shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The responder at each step shall send copies of the grievance and response to the Finance Director.

Step 2. If the grievance is not resolved by the first level supervisor to the satisfaction of the employee by the supervisor, the employee may appeal in writing to the next level supervisor (Division Head, Department Head, City Manager, etc.) within seven calendar days after receipt of the response from Step 1. The next level supervisor shall respond to the appeal, stating the determination of decision within seven calendar days after receipt of the appeal.

Step 3. If the grievance is not resolved to the satisfaction of the employee at the end of Step 2, the employee may appeal, in writing, to the City Manager within seven calendar days after receipt of the response from Step 2. The City Manager shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal. The City Manager's decision shall be the final decision. The City Manager would notify the City Council of any impending legal action or any grievance that has not been resolved to the satisfaction of the City Manager and employee(s).

Department Heads. In the case of Department Heads or other employees where the City Manager has been significantly involved in determining disciplinary action, including dismissal, the City may wish to obtain a neutral outside party to either:

1) provide mediation between the grieving Department Head and the City Manager (see definition of mediation in informal resolution above); or

2) consider the appeal and make recommendations back to the City Manager concerning the appeal. Such parties might consist of human resource professionals, attorneys, mediators, or other parties appropriate to the situation.

The City Manager's decision shall be the final decision. The City Manager would notify the City Council of any impending legal action.

Section 5. Role of the Finance Director

Throughout the grievance procedure, the Finance Director shall:

a) advise parties (including employee, supervisors, and City Manager) of their rights and responsibilities under this policy, including interpreting the grievance and other policies for consistency of application;

b) be a clearinghouse for information and decisions in the matter including maintaining files of all grievance documents.

c) give notices to parties concerning timetables of the process, etc.;

d) assist employees and supervisors in drafting statements;

e) facilitate the resolution of conflicts in the procedures or of the grievance at any step in the process; and

f) help locate mediation or other resources as needed.

The Finance Director shall also determine whether or not additional time shall be allowed to either side in unusual circumstances if the parties cannot agree upon extensions when needed or indicated.

Section 6. Grievance and Adverse Action Appeal Procedure for Discrimination

When an employee, former employee, or applicant, believes that any employment action discriminates illegally (i.e. is based on age, sex, race, color, national origin, religion, creed, political affiliation, or non-job related handicap), he or she has the right to appeal such action using the grievance procedure outlined in this Article (Section 4 above). While such persons are encouraged to use the grievance procedure, they shall also have the right to appeal directly to the Finance Director or City Manager. Employment actions subject to appeal because of discrimination include promotion, training, classification, pay, disciplinary action, transfer, layoff, failure to hire, or termination of employment. An employee or applicant should appeal an alleged act of discrimination within thirty calendar days of the alleged discriminatory action, but may appeal for up to six months following the action.

Article X.
Insurance/Retirement Benefits

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 fifteen (15) years of service; or retiring with thirty (30) years of service at any age are eligible 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 Medical 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 age fifty-five (55) years of age; or age fifty (50) retiring under disability with fifteen (15) years of service; or retiring with thirty (30) years of service at any age.

That said retired employee will be required to pay in advance, the difference between the actual cost of medical

(i) A record shall be made of each disclosure and placed in the employee's file (except of disclosures to the employee and the supervisor).

Section 5. Records of Former Employees

The provisions for access to records apply to former employees as they apply to present employees.

Section 6. Records of Applicants

Applicants and other information gathered with respect to an applicant will be kept confidential. The City will not release this information without written permission from the applicant.

Section 7. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place in the file a statement relating to the material considered to be inaccurate or misleading. The employee may seek the removal of such material in accordance with established grievance procedures.

Section 8. Penalty for Permitting Access to Confidential File by Unauthorized Person

The NC General Statutes provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee's personnel file, except as permitted by the statute, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars ($500.00).

Section 9. Penalty for Examining and/or Copying Confidential Material without Authorization

NC General Statutes provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars ($500.00).

Section 10. Destruction of Records Regulated

No person may destroy, sell, loan, or otherwise dispose of any public record except as allowed by NC General Statute. Whoever unlawfully removes a public record from the offices where it is usually kept, or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined no less than ten dollars ($10.00) and not more than five hundred dollars ($500.00).

Article XII.
Implementation of Policy

Section 1. Conflicting Policies Repealed

All policies, ordinances or resolutions that conflict with the provisions of these policies are hereby repealed.

Section 2. Separability

If any provision of these policies or any rule, regulation or order thereunder or the application of such provision to any person or circumstances is held invalid, the remainder of these policies and the application of such remaining provisions of these policies or such rules, regulations or orders to persons or circumstances other than those held invalid will not be affected thereby.

Section 3. Violations of Policy Provisions

An employee violating any of the provisions of these policies shall be subject to suspension and/or dismissal, in addition to any civil or criminal penalty that may be imposed for the violation of the same.

Section 4. Effective Date

ADOPTED by the City Council of the City of Marion this the 21st day of February, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

D. Approve Annexation Report – Eastfield Phase One Area

After examination and discussion of the report of plans for extending service to the area to be considered for annexation, the annexation report and plan of services for the Eastfield Phase 1 Annexation Area was adopted this the 21st day of February, 2006. The report is available in the office of the City Clerk.

RECOGNITION – AWARDS RECEIVED BY CITY EMPLOYEES:

Police Chief Mika Elliott recognized Officers Angie Fineburg and Danny Braswell for receiving Region C Traffic Officer of the Year and D.A.R.E. Officer of the Year awards, respectively. Officer Braswell performed a demonstration before Council on how easy it is to carry concealed items into a school or meeting by having numerous guns, knives and weapons hidden on his person.

Chief Elliott stated that the City is blessed with good police officers and that Officers Fineburg and Braswell are two of the best.

Ms. Nancy Guthrie, Principal of East McDowell Junior High School was present for this meeting and stated that Officer Braswell has done a great job as School Resource Officer at East and is pro active in working with students and keeping the school safe. Ms. Guthrie stated that the SrO program is a win-win situation for the School and the City.

Mayor Clark and Council members congratulated both officers for receiving these awards and for their work.

PUBLIC APPEARANCE – MS. TERRY GOODWIN: Ms. Goodwin withdrew her request to appear before Council.

PUBLIC APPEARANCE – MR. ANDY BROWN: Mr. Andy Grant appeared before Council and advised that the Muddy Creek Restoration Partners (Partners) were approached by the NC Division of Water Quality (NCDWQ) in the summer of 2005 about the potential for collaborating with McDowell County and the City of Marion to plan and implement improvement projects that would restore stream health and water quality in Jacktown and Corpening Creeks. Mr. Brown stated that NCDWQ has significant interest in concentrating resources here because of (a) documented problems in those streams that has resulted in their designation as "impaired", and (b) the opportunity to capitalize on an existing partnership that has demonstrated its staying power and ability to get things done on the ground.

Five million dollars has been generated thus far to spend on stream restoration. Mr. Brown stated that McDowell County has been an active Partner in the past, and the Partners would be very pleased to re-energize this relationship and also work more inclusively with the City of Marion. The Partners believe that a collaborative effort seeking a 319 grant from NCDWQ would benefit our local governments in a variety of ways, some of which are as follows:

- improve stream health and water quality in these legally impaired waterways
- position the local governments for later grants that may help accomplish other local objectives that are mutually compatible with stream health and water quality improvements. Potential examples include sewage line expansion, greenway/trail designs, stormwater controls, best management practices. etc.
- purchase GIS equipment and, by default of working with the Partnership, associated training on the applications of GIS in data management and map production
- funding to pay for administration of the grant

Mr. Brown stated that this project would only cost the city – staff time. They would suggest that City Manager Bob Boyette assist them. The group is seeking a planning grant in the range of $40,000-$60,000. Those involved, including the City, would determine the scope of the grant application.

Mayor Clark stated that he did not feel that this study would not benefit the City of Marion, since the targeted creeks, Corpening Creek ands Jacktown Creek, were mainly outside the City. Mayor Clark asked for more details about possible benefits. Mr. Brown stated that the group could apply for follow up grants in the areas of trail/greenway planning and design, stormwater controls and sewer line extensions, after the initial grant was approved.

Councilman Martin asked what the down side of this would be for the City.

Mr. Brown advised that there was no down side for the City, other than devoting a small amount of staff time.

Councilman Cuthbertson advised that the City's Corpening Creek Plant is in the City and is located along Corpening Creek, portions of which are also in the City. Councilman Cuthbertson advised of problems experienced along Corpening Creek in the past that have been improved over the years.

Mayor Clark advised that this project would take City employee time and that if a second grant does come about the City would be asked to match it at that point. Mr. Brown stated that the North Carolina Cooperative Extension Service would cover the local match for the first grant application and that the City's participation in subsequent grants would be voluntary.

Councilman Martin suggested that City staff could work with the group on the grant application and then determine if the program would be beneficial.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to authorize the City to participate in this grant project, subject to no local match being paid by the City for this grant application.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

UPDATE ON DOWNTOWN TRAFFIC ENFORCEMENT: Police Chief Mika Elliott reported that, as requested by the City Council, the Police Department had begun an emphasis on downtown traffic enforcement in October 2005.

The project had involved having officers work three days per week on Main Street on Thursday, Friday and Saturday from 3:00 PM until 7:00 PM. Chief Elliott stated that patrol was expanded to Garden and Morgan Streets due to complaints from those areas. From October 2005 until early February 2006, the Police Department issued 70 citations during the first phase of the project.

Chief Elliott advised that ten motor vehicle accidents occurred on Main Street in the downtown area (State to New Street) from February 8, 2005 to February 8, 2006. During the same time, two pedestrian related accidents occurred in the same area. Both of these pedestrian accidents were fortunately minor, with one being caused by the pedestrian.

Chief Elliott stated that the focus of the downtown traffic enforcement effort changed drastically on February 7, 2006, with the Police Department saturating the downtown area even more days of the week and for longer hours and concentrating on the intersection of Court and Main Street. From February 6, 2006 until February 20, 2006, the Police Department wrote 42 citations for various offenses in the downtown area. Two motor vehicle accidents occurred downtown during this two week time period.

Chief Elliott also noted that the department is currently three officers short, two due to resignations and one due to an injury. Calls for service have increased by 4,110 from 2004 to 2005.

Chief Elliott stated that officers have also observed pedestrians making unsafe movements, such as jaywalking or crossing against red lights. Councilman Edwards stated that his interpretation of the City Code is that jaywalking is legal in Marion, and that pedestrians must simply yield to motor vehicles when not crossing the street in designated crosswalks. Councilman Edwards stated that aggressive drivers, not pedestrians, are the problem and that these drivers should be the focus of the enforcement effort.

Mayor Clark stated that there is a need for a vehicle like a motorcycle that can maneuver easily in the downtown area so that officers can better undertake traffic enforcement in the downtown area and make downtown more safe and user friendly for pedestrians. Mayor Clark stated that the additional police presence in the downtown area is definitely helping.

Chief Elliott added that part-time Community Relations Officer Johnny Patton was making business visits two days per week in the downtown area, to provide a public relations effort and to create even more of a police presence.

Chief Elliott noted that he was not a not traffic engineer, but that we need to do some things regulation wise to assist in traffic calming.

The City Manager stated tat regulatory changes could help with this effort as well. The City Manager stated that the Street Committee had recommended that Council make a request to the North Carolina Department of Transportation to prohibit right turns on red in all directions at the intersection of Henderson Street and Main Street and at Court Street and Main Street, since both intersection had limited visibility and since right turn on red movements could be hazardous to pedestrians.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted for the City to make a request to the North Carolina Department of Transportation to prohibit right turns on red in all directions at the intersection of Henderson Street and Main Street and at Court Street and Main Street.

Councilman Edwards suggested that a sign be posted at the exit from the Courthouse Property onto Main Street advising motorists to yield to pedestrians. The City Manager stated that a sign similar to the one in place at the Brown Drive/Main Street intersection could be installed.

The City Manager noted that the upcoming Downtown Streetscape/Traffic Flow Plan could yield additional recommended physical design changes, that could calm traffic and lower speeds downtown.

The City Manager advised that the current downtown traffic enforcement effort could not be maintained long-term, due to the staffing level of the Police Department, a growing City, rising call volume and the difficulty in getting officers to consistently cover the project through overtime work. The City Manager reported that Council had authorized $20,000 to be put toward overtime projects, mainly to include downtown, in the 2005-06 Police Department budget. The City Manager cited examples of Downtown Patrol Officers in other cities and suggested that such a position would not cost considerably more than the overtime effort and could better serve Council goals. The City Manager stated that such a position would need to work Monday-Friday, during normal business hours, to be effective.

Councilman Edwards stated that a hybrid position that could patrol downtown on heavy Court days, which are now Monday, Wednesday and Friday, and which could make business visits on lighter traffic days such as Tuesday and Thursday, would be a good idea.

Mayor Clark stated that he also agreed that the City should hire someone to work Monday through Friday patrolling the downtown area and might want to consider purchase of a motorcycle for the position.

A discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted to authorize a Downtown Patrol Officer position for the Police Department, to cover downtown traffic enforcement and to make downtown business visits. Council agreed to receive a report on the effort after six months to determine if a motorcycle would be helpful to the program.

CONSIDER ADOPTION OF ORDINANCES – NORTH MAIN STREET AND VIEWPOINT DRIVE: The City Manager advised that the Street Committee reviewed the parking on North Main Street in front of the Community Building and recommended keeping some of the two hour parking area directly in front of the Community Building, but opening up approximately the last 100 feet, or five parking spaces, for all day parking.

Upon a motion by Councilman Martin, 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 deleting the following:

STREET NAME	REGULATION	REG. APPLICATION

MAIN STREET (NORTH)	PARKING CORNER	WEST SIDE, BEGIN OF NEW AND MAIN CONTINUING 367 FT. NORTHERLY	2 HR. LIMIT	AT THE NW

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	**REGULATION**	**REG. APPLICATION**		
MAIN STREET (NORTH)	PARKING CORNER	WEST SIDE, BEGIN OF NEW AND MAIN CONTINUING 254 FT. NORTHERLY	2 HR. LIMIT	AT THE NW

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of February, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-02-21-2

The Street Committee felt that parking should be prohibited on both sides of Viewpoint Drive between North Main Street and James Drive, since this block could be a logical location for overflow parking from Mr. McLarty's building. The Street Committee felt that this block should be kept free of vehicular traffic.

A discussion followed.

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

ORDINANCE
AMENDING CHAPTER 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**	
HILLSIDE DRIVE	PARKING	NE SIDE, BETWEEN JAMES DR. AND CRESCENT DR.	PROHIBITED

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	**REGULATION**	**REG. APPLICATION**	
VIEWPOINT DRIVE	PARKING	NE SIDE, BETWEEN JAMES DR. AND CRESCENT DR.	PROHIBITED
	PARKING PROHIBITED	BOTH SIDES OF STREET, BETWEEN NORTH MAIN ST. AND JAMES DRIVE	

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of February, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-02-21-1

APPROVE SOUTH GARDEN STREET PARKING LOT DESIGN:
The City Manager presented the proposed parking lot design for the new South Garden Street Parking Lot and advised that County Commissioners have approved the design. The City Manager stated that the County does not want a cut through from this parking lot to the EMS property. There will be a total of sixty two (62) parking spaces in this parking lot. The City Manager stated that final construction of the parking lot could begin in the Spring.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the parking lot design as presented.

APPROVE 2006 STREET RESURFACING SCHEDULE: The City Manager presented the recommended Spring 2006 Resurfacing Schedule as follows:

Recommended for Spring 2006 Paving

1. Lail Street – Held from last year's approved paving list, due to needed water line work, which has been completed
2. Clay Street – From East Court Street to Oak Street - Held from last year's approved paving list, due to needed water line work, which will be completed in time for Spring paving
3. School Street – Entire length of street
4. Lamar Street – Entire length of street
5. East Oak Street – From North McDowell Street to Martin Street
6. Azalea Street – From North McDowell Street to Park Avenue
7. Fort Street – From Main Street to Logan Street
8. Burgin Street – Entire length of street
9. Murray Street – Entire length of street
10. Oak Avenue – From Ridley Street to High Street
11. Crawford Street – Entire length of street – Curb/sidewalk work on Crawford Street should be completed in time for Spring paving
12. Ann Hawkins Street – From Police Department property to Crawford Street where needed for new curb project

Upon a motion by Councilman Martin seconded by Councilman Owenby, those members of Council present voted to approve the 2006 Street Resurfacing Schedule as listed above. Bids will be sought for the street resurfacing and brought back to Council for approval.

CABLE FRANCHISE: The City Manager advised that last year the City obtained a proposal from Mr. Dave Harris to complete the City's cable franchise renewal with Charter Communications for $7,000. The City Manager stated that he had obtained names of other consultants and that Mr. John Howell of Telecommunications Consulting Associates of Waynesville has presented a proposal to complete the City's cable franchise renewal and an audit of Charter's performance and franchise fees for the lump sum of $3,000, which is significantly less than the City paid in 1996 for the cable franchise renewal.

The City Manager noted that Mr. Howell comes highly recommended from McDowell County and from other cities in Western North Carolina.

Councilman Owenby inquired about the provision in the contract calling for Mr. Howell to receive 10 percent of all funds paid to the City as a result of the audit. The City Manager stated that Mr. Howell would only be paid this commission if he found franchise fees owed to the City by Charter.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, those members of Council

present voted to approve the contract with Mr. John Howell of Telecommunications Consulting Associates of Waynesville to complete the City's cable franchise renewal and an audit of Charter's performance and franchise fees for the lump sum of $3,000 with Mr. Howell receiving ten (10) percent of all funds paid to the City as a result of any franchise fees found to be owed to the City as a result of the audit.

CEMETERY – DISCUSSION: Councilman Owenby stated that Council has discussed several years ago the idea of trash cans for the disposal of flowers and other debris at the Oak Grove Cemetery, but that this idea had not been pursued after the passing of Mr. Warren Hobbs.

A discussion followed.

It was the consensus of those members of Council present for the City Manager to get some information and prices on trash cans and bring the information back to the next City Council Meeting.

DISCUSSION – HANKINS FIRE DEPARTMENT - FIRE PUMPER TANKER TRUCK: The City Manager advised that Chief Barry Stepp of the Hankins Fire Department has contacted him regarding the Fire pumper/tanker Truck that the City of Marion gave the Hankins Department last year.

The City Manager stated that Chief Stepp indicated that it will take a substantial amount of money to repair the truck and that the Hankins Fire Department has requested permission to sell the truck. The City Manager stated that he understood that the donation of the truck carried no restrictions, but that he wanted to run this request by Council.

It was the consensus of Council that the truck donated to the Hankins Fire Department can be used in any way the department sees fit, including selling the truck.

BID – FIRE TRUCK: The City Manager advised that bids had been solicited from banks for financing of the 2006 KME Fire pumper/tanker truck in the amount of $321,180.83.

The following responses were received:

Wachovia Bank	4.5100%
Asheville Savings Bank	5.5000%
Carolina First Bank	4.5740%
BB & T	3.8700%
Bank of America	3.9998%

All bids were for eight year terms. The City Manager stated that the low bid from BB&T carried no prepayment penalty if the total loan amount was paid in full; therefore, the City could not prepay a year's payment out of the 2005-06 Marion Area Fire District revenues. Council members stated that they saw no problem with the City not making a full year's truck payment out of the 2005-06 budget. The City Manager presented a resolution approving the financing terms with BB&T and recommended its approval.

A discussion followed.

Resolution Approving Financing Terms

WHEREAS: The City of Marion ("City") has previously determined to undertake a project for a 2006 KME Fire Truck, 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 February 16, 2006. The amount financed shall not exceed $321,180.83, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.87%, and the financing term shall not exceed eight (8) years from closing.

2. All financing contracts 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 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 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 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.

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 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).

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 thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 21st day of February, 2006

(Clerk) (Mayor)

SEAL

Upon a motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to approve the following resolution, accepting the proposal of BB&T to finance the 2006 KME Fire pumper/tanker truck at an interest rate of 3.8700% for eight years with quarterly payments of $11,718.75:

DISCUSSION - NUISANCE ORDINANCE DRAFT: The City Manager presented Council with a draft copy of the a revised Nuisance Ordinance. The City Manager stated that this draft ordinance had been prepared due to the City's current Weeds and Refuse Ordinance having vague language about situations involving trash and junk on private property and that adoption of the ordinance could help the City address such situations more effectively.

Mayor Clark suggested that consideration of the draft ordinance be tabled until the next Council meeting so that the ordinance could be more thoroughly reviewed. It was the consensus of Council to hold this item until the next Council meeting.

REQEUST FOR CERTIFICATE OF TAXI OF PUBLIC NECESSITY: The City Manager advised that he had received an application from Mr. Ronnie Patel wishing to apply for a certificate of public convenience and necessity for his proposed new taxicab service, Diamond Taxicab.

The City Manager advised that Council would need to schedule a Public Hearing on the application.

The City Manager stated that Mr. Patel is also requesting permission to adjust the maximum rates for this service, since the taxicab rates had not been adjusted since 1988. The City Manager presented proposed rates as suggested by Mr. Patel based on the rates in Asheville. Councilman Cuthbertson noted that the proposed rates were not that much different from current rates, given the 18 year period since rates were last adjusted.

A brief discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to schedule a Public Hearing on the application of Mr. Ronnie Patel for a certificate of public convenience and necessity for his proposed new taxicab service, Diamond Taxicab for the March 7, 2006 City Council Meeting.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager noted that Finance Director Harriett Thomas has requested a property/liability insurance quote from the North Carolina League of Municipalities, as authorized by Council at the Planning Session. The City Manager stated that Marsh Dark of McDowell Insurance, which carries the City's current property/liability insurance policy, has asked if he can also obtain quotes for a renewal. The Mayor and City Council stated no objections to Mr. Dark obtaining property/liability insurance quotes to compare with the quote from the North Carolina League of Municipalities.

The City Manager stated that a larger sink had been install by City Staff in the kitchen of the Depot, without any major cabinet work being needed.

The City Manager stated that a letter of resignation was received from Mr. Gil Masters, stating his resignation from the Downtown Advisory Committee. The City Manager stated that he would ask Frank andDebra Boldon if one or both wished to serve on the DAC.

The City Manager stated that Cliff McLarty had learned that Fed Ex planned to remove the unwanted drop box at the intersection of Fort and Logan Street and move the drop box to replace an old box at the Courthouse.

CLOSING COMMENTS:

Councilman Martin asked about the shredder truck recently used by the City to clean out the Community Building. The City Manager noted that cleaning out over 30 years of files from the Community Building had cost about $2,000. Councilman Martin suggested that the City might consider making this truck available to the public periodically at a central location as a public service. Chief Elliott stated that he had a proposal from this company to pick up three boxes of files for $55.00 per visit.

Councilman Edwards, noted that the builder that had constructed the dream home in Lake Lure for a television network has recently bought a large amount of acreage on Mud Cut Road, with fantastic views facing Lake Lure.

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)(6) to discuss a personnel matter.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, 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 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, March 7, 2006 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 Billy Martin, Lloyd Cuthbertson, and Cecil Owenby.

Councilman Mike Edwards was not present for this meeting due to a work conflict.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Jim Neal, Fire Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Mr. & Mrs. Ronnie Patel, 1814 North Main Street; Marion, NC; Jimmy Dobson, 255 Randolph Road, Marion, NC; Sylvia Davis, 342 Forest Heights Drive, Marion, NC; Robert Davis Jr., 342 Forest Heights Drive, Marion, NC; Nancy Clark, 330 Fleming Avenue, Marion, NC; Brenda Hartis, 112 East Glenview Street Marion NC; Jan Ramsey, 188 Hillcrest Drive, Marion NC; Elizabeth Seaver 209 Ashworth Circle, Marion NC; Jaime Rankin 258 Broad Street, Marion, NC; Nancy Talbert 101 Smokerise Drive, Marion, NC; Ansel and Emily Clark, 78 Richard Drive, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Lloyd Cuthbertson selected the Citizen of the Month for March 2006:

SYLVIA B. DAVIS

Councilman Cuthbertson advised that Ms. Sylvia Davis is the daughter of the late John Ballard and Gladys Ballard Scott of Bennettsville, South Carolina. Ms. Davis has one sister, Nancy Clark, wife of Mayor Everette Clark.

Ms. Davis graduated from Bennettsville High School where she played basketball. Ms. Davis received a BA degree from Winthrop University in Rock Hill, South Carolina. She later received a Masters Degree in Education from the University of Montevallo in Montevallo, Alabama.

Ms. Davis married the late Robert Davis in 1969, who was the pastor of the First Baptist Church in Marion until his death. Dr. and Mrs. Davis had two children, John and Robert.

Ms. Davis began her professional career with Vocational Rehabilitation in South Carolina. She later moved to Florida and continued her career in education as a classroom teacher. She taught in Florida, Georgia and Alabama prior to moving to North Carolina where she served as a guidance counselor at Marion Elementary School.

Ms. Davis is a member of the First Baptist Church of Marion and serves on the Scholarship Committee. Ms. Davis serves on the Permanency Planning Team for the McDowell County Department of Social Services, volunteers with the Heart Association and is involved in numerous other activities.

Mayor Clark, Council members, family and friends all had kind words to share about Ms. Davis.

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 17~~ Feb. 21, DWS, 2006 Regular & Closed Sessions

B Approve Resolution – Declare Certain City Property 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 twenty-seven Mossberg, Remington and Winchester shotguns that are no longer needed by the City Police Department; and

WHEREAS, the estimated value of the shotguns and practical considerations regarding the sale of weapons 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:

Brand	Caliber	Quantity
Mossberg 500	12 ga	12
Mossberg 500A	12 ga	1
Mossberg 590	12 ga	1
Remington 870	12 ga	8
Winchester	12 ga	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 3. This resolution shall be effective upon its adoption.

Adopted this the 7th day of March, 2006.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-06-03-07-1

C. Approve Resolution – Request DOT to Assume Maintenance of Grace Corpening Drive

NORTH CAROLINA STATE
DEPARTMENT OF TRANSPORTATION AND HIGHWAY SAFETY
REQUEST FOR ADDITION TO
STATE MAINTAINED SECONDARY ROAD SYSTEM
North Carolina
County of McDowell

Road Description: Grace Corpening Drive off of SR 1001. Division file No. 59.0364. Addition to state System at a total cost of $0. Road is 0.14 miles in length.

WHEREAS, the attached request has been filed with the City Council of the City of Marion requesting that the above described road, the location of which has been indicated in red on the attached map, be added to the Secondary Road System; and

WHEREAS, the City Council is of the opinion that the above described road should be added to the Secondary Road System, if the road meets minimum standards and criteria established by the Division of Highways of the Department of Transportation and Highway Safety for the addition of roads to the System.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion that the Division of Highways is hereby requested to make the above changes to reflect actual lengths of the above road(s).

CERTIFICATE

The forgoing resolution was duly adopted by the City Council of the City of Marion at a meeting on the 7th day of March, 2006, and appears on the minutes of said City Council.

WITNESS my hand and official seal this the 8th day of March, 2006.

J. Robert Boyette, City Manager/Clerk
City of Marion

PUBLIC APPEARANCE – MR. DAVID DITT – DISCUSS VIEWPOINT DRIVE PARKING: Mr. David Ditt appeared before Council and requested that the parking restrictions adopted by Council at the February 21 meeting, prohibiting parking on both sides of Viewpoint Drive between Main Street and James Drive, be amended to allow parking on the northeast side of the street. Mr. Ditt stated that he occasionally had visitors to his house and needed the ability to have parking on one side of this block.

A discussion followed.

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

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
VIEWPOINT DRIVE	PARKING PROHIBITED	BOTH SIDES OF STREET, BETWEEN NORTH MAIN ST. AND JAMES DRIVE

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
VIEWPOINT DRIVE	PARKING PROHIBITED	NW SIDE OF STREET, BETWEEN NORTH MAIN ST. AND JAMES DRIVE

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of March, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-03-07-1

PUBLIC HEARING – REQUEST FOR TAXICAB CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY – DIAMOND TAXICAB SERVICE: Mayor Clark opened the Public Hearing.

The City Manager advised that it had been many years since a new Taxi service has proposed to come into the City. Mr. Ronnie Patel has filed an application for a Certificate of Public Convenience and Necessity to operate Diamond Taxicab Service out of his business location on North Main Street. The City Manager

stated that Mr. Patel has met all requirements of the City's Taxicab Ordinance, except for completing the required criminal background check. Police Chief Mika Elliott described problems being experienced with obtaining permission from the State Bureau of Investigation to complete the necessary background check.

Mayor Clark advised that years ago Marion had five or six cab companies, however, presently there is none.

There were no citizens present to discuss this matter.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Martin, seconded by Councilman Little, those members of Council present voted to approve the request by Mr. Ronnie Patel for a Certificate of Public Convenience and Necessity to operate Diamond Taxicab Service out of his business location on North Main Street, subject to Mr. Patel meeting all conditions listed in the City's Taxicab Ordinance.

CONSIDER APPROVAL OF ORDINANCE – AMEND MAXIMUM TAXICAB RATES: The City Manager advised that proposed taxicab rates were submitted at the last meeting for Council's review. Mr. Ronnie Patel has proposed to increase the rates being charged for taxi service, using rates charged in Asheville as a guide. The City Manager stated that taxicab rates had not been adjusted in Marion since 1988.

Councilman Owenby suggested to Mr. Patel that his customers might prefer not having to pay a series of small charges for items such as handling luggage and groceries.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to adopt the following Ordinance amending the City's maximum allowed taxicab rates:

ORDINANCE
AMENDING CHAPTER 17
TAXICABS
MARION CITY CODE

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 17-6 (a) in its entirety and replacing it with the following:

(a) Rates for the use of taxicabs within the city limits of the City of Marion shall be based upon mileage. Customers using taxicabs shall pay not more than:

(1) Two dollars and fifty cents ($2.50) for the first mile of travel and twenty-five cents ($0.25) for each one-tenth of a mile of travel thereafter.

(2) There shall be an additional charge of two dollars ($2.00) for each ten (10) minutes of waiting time or major fraction thereof, when the customer is out of the taxicab or when waiting is at the request of the customer.

(3) There shall be a charge of fifty cents ($0.50) for each trunk or piece of heavy baggage handled by the taxicab driver.

(4) There shall be an additional charge of seventy-five cents ($0.75) for handling groceries or laundry if the driver is required to leave the vehicle.

(5) Flat rates for additional requested services not listed above are permitted, as long as such charges are posted inside the taxicab or are normal and customary fees.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of March, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-04-03-07-2

PUBLIC COMMENT PERIOD: There was one citizen present to discuss an unscheduled item during this meeting.

Mr. Gene Padgett appeared before Council requesting that something be done about parking on North Garden Street near the apartment units he owns. Mr. Padgett advised that this problem has been on a list of ongoing projects for many years and keeps being skipped and set aside and requested that this project be completed as soon as possible.

The City Manager stated that the project Mr. Padgett mentioned was part of a larger prioritized Street and Sidewalk Priority Project to replace curb and gutter on North Garden Street and James Drive, to mill down part of North Garden Street to allow for resurfacing and to complete drainage improvements at New and North Garden Streets. The City Manager confirmed that the project had been delayed for many years.

Councilman Little suggested that the Street Committee look at this request. The City Manager noted that a new Public Works Director would be coming to work for the City on March 20. The City Manager proposed that he and the Public Works Director could develop recommendations for a reprioritized Street and Sidewalk Priority List, including opportunities for contracting certain projects and for street crews to complete other projects. After the reprioritized list is prepared, it could be reviewed by the Street Committee prior to review by City Council.

The Mayor and City Council agreed with the suggestion of the City Manager to have staff develop recommendations for a reprioritized list, then to have the list reviewed by the Street Committee prior to review by City Council.

PRESENTATION OF PROPOSED SIX MILE MA FIRE DISTRICT AND REVISED MUTUAL AID CONTRACT/UPDATE ON HANKINS-NORTH FORK FIRE DEPARTMENT FORMATION:
Fire Chief Jim Neal presented a map showing the proposed expansion of the Marion Area Fire District to a six mile Fire District. Chief Neal reported that many departments in the County were proposing such six mile districts. The six mile districts are scheduled for approval by the County Commissioners in the next two months and then will be inspected by the North Carolina Department of Insurance. Chief Neal also presented a proposed updated Mutual Aid Agreement between all Fire Departments in the County. Chief Neal stated that he and the City Manager had compared this agreement line by line with the previous agreement, which was signed in 1981. The new agreement reflects the formation of the new Hankins-North Fork Fire Department and puts into writing a practice in the County calling for all fire departments, when responding by mutual aid, to provide apparatus with a minimum capacity of 1,000 gallons of water.

The City Manager stated that the new six mile fire district, along with the formation of the Hankins-North North Fork Fire Department, virtually eliminates areas that our fire Department will served that are not included in the tax district, except for a few remaining properties in the Nix Creek Road Area.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to recommend to the McDowell County Board of Commissioners the approval of the proposed six mile Marion Area Fire District and to approve the following revised Mutual Aid Agreement:

MUTUAL AID AND CONTRACT AGREEMENT BETWEEN THE FIRE DEPARTMENTS OF MCDOWELL COUNTY, NORTH CAROLINA

McDowell County

North Carolina

THIS MUTUAL AID AND CONTRACT AGREEMENT made and entered into this 7th day of March, 2006, among the fire departments of McDowell County.

WITNESSETH

That whereas, the General Assembly of North Carolina did enact into law, the act codified as Chapter 69, Section 40, of the General Statutes of North Carolina stating, "A county, municipal corporation, fire protection district, sanitary district or incorporated fire department shall have full authority to send, or to decline to send, firemen and apparatus beyond the territorial limits which it normally serves.

When responding to a call and while working at a fire or other emergency outside the territorial limits which it normally serves, members and employees of county, municipal corporation, fire protection district, sanitary district and incorporated fire departments shall have all authority, rights and privileges and immunities including coverage under workmen's compensation laws, as they have when responding to a call and while working at a fire or other emergency inside the territorial limits normally served.

A county, municipal corporation, fire protection district, sanitary district, or incorporated fire department, in attending an emergency or answering a call outside the limits of the county, municipal corporation, fire protection district, sanitary district, or other area normally served, shall have all authority, rights, privileges and immunities that it would have in attending an emergency or answering a call inside the territorial limits normally served."

WHEREAS, the purpose of this agreement is to provide each of the parties hereto, through their mutual cooperation, a predetermined plan by which each of them might render aid to the other in case of conflagration, holocaust, civil disorder or natural disaster, any of which demand fire services to a degree beyond the existing capabilities of either party;

WHEREAS, it is deemed to be in the public interest for the parties hereto to enter into an agreement for mutual assistance in fire protection and in order to increase fire defenses and to assure the community of adequate protection;

NOW THEREFORE in consideration of the mutual covenants contained herein, by and among the parties hereto, it is hereby agreed as follows:

1. It shall be the responsibility of the chief of the fire department of the responding party that all personnel responding to the request for assistance are responsible persons and that the conduct and actions of said personnel shall be the responsibility of the party sending assistance.

2. Each party to this agreement shall assume all liability and responsibility for the death of or injury to all personnel of their own command responding to the request for mutual aid.

3. The party responding under the terms of this agreement shall assume no responsibility or liability for property damaged or destroyed at the actual scene of any civil disorder, holocaust, conflagration or natural disaster due to firefighting and rescue operations, fire control tactics and strategy or other operations as may be required or ordered. Said liability and responsibility shall rest solely with the party requesting such aid and within whose boundaries the property shall exist, or the incident occurs.

4. The party responding to the request for mutual aid under the terms of this agreement shall assume all liability and responsibility for damage to its own apparatus and/or equipment. The party responding shall also assume all liability and responsibility for any damage caused by its own apparatus while in route to or returning from a specific location.

5. The party who requests mutual aid shall in no way be deemed liable or responsible for the personal property of the members of the fire department of the responding which may be lost, stolen or damaged while performing their duties under the response terms herein.

6. Each party to this agreement shall assume all costs of salaries, wages, bonuses or other compensation for its own personnel that responds for duty under the terms of this agreement and shall also assume all costs involving the use of apparatus, equipment and tools used specifically in response to the request for aid and shall make no charge for such use to the party requesting assistance; however, any special chemicals used by the responding party from its own supply shall be paid for by the party requesting the aid upon receipt of an itemized statement of costs for such chemicals.

7. Upon receipt of a request for assistance by the chief or officer receiving the request of the fire department of the responding party, and upon a determination by the chief, or officer in charge, of the responding party that the request may be honored without impairing the capacity to provide for fire protection within its own jurisdiction, the chief or officer in charge of the fire department may take steps as necessary to furnish apparatus, manpower and assistance to the requesting party as he deems appropriate. Such response shall remain the decision of the chief or officer in charge of the fire department of the responding party.

8. The fire department in whose community the emergency exists and who places the request for assistance shall in all instances be in command of the emergency as to the aspects of strategy, fire control tactics and overall direction of the operations. All orders or directions regarding the operations of the responding party shall be relayed to the chief fire officer in command of the responding party.

9. The parties of this agreement/contract agree to be automatically and simultaneously dispatched to adjoining fire districts and will dispatch a piece of fire apparatus capable of carrying a minimum of 1000 gallons of water when such dispatch would not impose upon each respective community a serious impairment to the fire defenses and fire protection.

10. Either party may at any time terminate this agreement through the respective fire commission upon serving of a thirty day written notice to the fire commission of McDowell County.

11. When fire department personnel are sent to another community pursuant to this agreement, the jurisdiction, authority, rights, privileges, and immunities including coverage under worker's compensation laws, which they have in the sending fire department shall extend to and include the area in which like benefits and authorities are or could be afforded to the area located between their respective communities when said personnel are acting within the scope of the authority conferred by this agreement.

12. If a fire department does not attempt to send mutual aid, it should not request or expect to receive mutual aid.

WHEREFORE, fire departments of McDowell County have caused this instrument to be signed by their duly authorized officers the day and year first above written in multiple originals, with each fire department to retain a signed copy of the original for its records.

ATTEST:

Marion Fire Department

By: _____ Date: 3/8/06

City Manager

By: _____ Date: _____

Fire Chief

REQUEST FOR WAIVER OF LATE PARKING FEE: The City Manager presented Council with a request from Mr. Mary Jane Boyd requesting that the $25.00 additional penalty for a $10.00 parking ticket she received on February 10 be waived. Ms. Boyd stated that she assumed she had thirty days to pay the $10 fee, based on her experiences in Boone.

A discussion followed. Councilman Little stated that it is clearly written on the parking ticket that tickets must be paid within seven days or else a $25.00 late fee is charged. Councilman Owenby also stated that he felt that there was no justification to waive the penalty.

Councilman Martin made a motion to waive the $25.00 late fee. The motion was seconded by Councilman Cuthbertson.

The vote was as follows:

Councilman Martin	Yes
Councilman Cuthbertson	Yes
Councilman Owenby	No
Councilman Little	No

Mayor Clark broke the tie by voting yes for the motion. The motion carried three to two.

CONSIDER ADOPTION OF ORDINANCE – DESIGNATE SOUTH GARDEN STREET PARKING LOT ALL DAY PARKING LOT:
The City Manager presented Council with a proposed ordinance for consideration establishing the new South Garden Street Parking Lot as an all-day parking lot, with no parking allowed between 1:00 a.m. and 7:30 a.m., just like other City parking lots. The City Manager noted that this parking lot would be unique in having some posted restrictions on use, as the parking lot would be used for jury parking when Court is in session.

A discussion followed. Councilman Little stated that he would proposed that Council revisit this ordinance if necessary in the future if County EMS employees need to use the parking lot for overnight parking of their personal vehicles.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted 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 adding Section 18-256 (7) as follows:

(7) *Lot #7, South Garden Street*--Beginning at a point on the east side of South Garden Street, said point located 264 feet south of the southeast corner of East Court and South Garden Streets; thence east 165 feet; thence south 80 feet; thence west 173 feet; thence north running parallel with South Garden Street 130 feet to the point of beginning.

Section 3. Chapter 18 is amended by deleting Sec. 18-258, All day parking lots, in its entirety and replacing it with the following:

Sec. 18-258. All day parking lots.

The parking lots described in subsections (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. The parking lot described in subsection (7) of Section 18-256 is hereby designated as an all-day parking lot with restrictions of use at certain times in accordance with posted signs. No person shall park any motor vehicle and leave such vehicle parked in the above described all-day parking lot between the hours of 1:00 a.m. and 7:30 a.m. local time.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of March, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-03-07-3

CONSIDER ADOPTION OF ORDINANCE – ESTABLISH NO PARKING AREA DIRECTLY IN FRONT OF NEW SOUTH GARDEN STREET PARKING LOT: The City Manager advised that on street parking will not be possible on South Garden Street in front of the new South Garden Street parking lot. The City Manager presented a proposed ordinance to prohibit parking in front of the new parking lot, to include yellow curbed areas in front of the County EMS property.

A discussion followed.

Upon a motion by Councilman Little, 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
GARDEN STREET (SOUTH)	PARKING PROHIBITED	EAST SIDE, BEGIN 190 FT. SOUTH OF THE SE CORNER OF EAST COURT AND GARDEN AND CONTINUING 250 FT. SOUTHERLY

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of March, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-03-07-4

CONSIDER ADOPTION OF REVISED NUISANCE ORDINANCE: The City Manager presented Council with a copy of a revised Nuisance Ordinance that would prohibit the accumulation of trash and junk on properties in the City in a much more specific manner than the current ordinance.

A discussion followed.

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

ORDINANCE
AMENDING CHAPTER 9
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 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 deleting Article V, Weeds and Refuse, in its entirety and replacing it with the following:

ARTICLE V.
NUISANCES

Sec. 9-121. General provisions; definition.

(a) For purposes of this Article, the term "nuisance" means any condition or use of property, or any act or omission affecting the condition or use of property which directly threatens the safety of citizens or adversely affects the general health, happiness, security and welfare of others, or is detrimental to the rights of others to the full use of their own property and their own comfort, happiness and emotional stability because of decreased property values and the unattractiveness and livability of neighborhoods. Further, the City Council finds and declares that the following specific conditions are prejudicial to the general health, safety and welfare of the City and its citizens, lessen the attractiveness and livability of the City and when located on any lot or parcel of land within the City limits of the City are a nuisance and therefore unlawful:

(1) Overgrowth or heavy growth of weeds, bushes, poison oak, poison ivy or other noxious vegetation or overgrowth of grass and weeds over six (6) inches in height;
(2) Conditions which have become or will become, if not corrected, a breeding ground or harbor for mosquitoes, snakes, rats or other pests;
(3) A collection place for lumber, brick, blocks, nails, building Materials and building rubbish unless such conditions are temporary in nature for a period not to exceed 30 days and caused by current construction in progress pursuant to a lawfully issued building permit;
(4) Any accumulation of garbage, food waste, litter, animal waste, trash and refuse or any other rotten or putrescible matter of any kind which is the result of the absence of or the result of overflowing or improperly closed trash or garbage containers;
(5) Rotten, damaged or dilapidated sheds, outbuildings, <u>portable canopies</u>, garages or other uninhabited structures which have collapsed or partially collapsed or pose a danger of fire or pose a risk to neighborhood children or to adjacent property and property owners;
(6) An open or unsecured storage or collection place for chemicals, oils, gasoline, flammable liquids or other similar harmful or dangerous substances, gases or vapors;
(7) Any accumulation of garbage, rubbish, trash or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes, mosquitoes or vermin prejudicial to the public health;
(8) A collection or storage place for old, worn-out, broken or discarded machinery, car parts, glass, junk, furniture, stoves, refrigerators and appliances, cans or containers, household goods or plumbing and electrical fixtures or other similar materials;
(9) An open place of concentration of combustible items such as mattresses, wood, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials or objects of a like nature;
(10) A collection place or pool or pond of stagnant or foul water caused by any manmade berm, dam, ditch or impoundment;
(11) A storage place or place of collection for broken bottles, glass, tin, aluminum and other sharp, pointed, jagged or rusted metal;
(12) Barns, animal pens and enclosures, dog lots and runs or other similar places that house animals and which are not kept in a sanitary condition, attract flies and other pests or emit foul odors;
(13) A collection place for sewage and sewage drainage or the seepage from septic tanks;
(14) A collection place for tree limbs, dried brush, dead vegetation or other rubbish;
(15) Any discharge into or polluting of any stream, creek, river or other body of water of any dangerous substance or any other material likely to harm the water or any vegetation, fish or wildlife in or along the water or the storage of such harmful materials and substances in a manner so that it is likely that such streams, creeks, rivers or other bodies of water will be polluted;
(16) Any conditions or use of property which results in the emission of pollutants and particles into the atmosphere or causes noxious odors and stenches to be emitted into the air;
(17) The use of portable screening devices such as a tarp, fabric, canvas, nylon, vinyl, plastic or other non-rigid material to cover or hide the above referenced collection, accumulation or storage of any and all conditions referenced in this section.
(18) Any other act or condition declared to be a nuisance in the manner provided in this Article by the City Council.

Sec. 9-122. Findings; policy.

(a) The City Council finds as a fact that there are many parcels of land and vacant lots throughout the City which are overgrown with weeds and other noxious growth, have become a collection place for trash, garbage, debris, junk or other undesirable material or have specific unattractive conditions located thereon. The City Council further finds as a fact that such conditions adversely affect one or more of the following:

(1) The safety of the citizens of the City;
(2) The general health and welfare of the citizens of the City;

(3) The health and safety of children who are attracted to such conditions;
(4) The quality of urban attractiveness and aesthetic appearance of the City;
(5) The protection of property values throughout the City;
(6) The preservation of the livability and attractiveness of neighborhoods;
(7) The opportunities for full economic development of the City;
(8) The comfort, happiness and emotional stability of occupants of property in the vicinity of unattractive conditions and nuisances;
(9) The full use, ownership and enjoyment of property in the vicinity of such conditions.

(b) It is the policy of the City that each person is entitled to live in a community which is generally safe and free of conditions which adversely affect the general health and welfare of the community. Citizens also ought to have the right to live in an attractive community free of litter, garbage and unsightly junk especially when such conditions do not further individual rights or ownership of property. To protect against such conditions, the City intends to define, prohibit and restrain nuisances or to cause such nuisances to be removed from the City. The City Manager or his or her designee shall be responsible for the administration and enforcement of this Article.

Sec. 9-123. Nuisances prohibited.

It shall be unlawful for any person to create a nuisance or cause a nuisance to be created or for the owner, lessee, occupant, caretaker or person in possession of any lot, parcel or tract of land in the City to create a nuisance or otherwise permit, allow or suffer a nuisance to be created or to allow a nuisance to remain on such property after it has been declared a nuisance.

Sec. 9-124. Exceptions.

Notwithstanding the provisions of Sec. 9-123, the use of property for a lawful business or commercial purpose pursuant to all required licenses and permits and in full compliance with the zoning rules and regulations in effect in the City shall not be considered as a nuisance so long as the use of the property and the conditions created thereon further such lawful business use or commercial use.

Sec. 9-124.1. Notice; abatement.

(a) When any condition in violation of this Article is found to exist, the City Manager shall give notice of the owner of the premises to abate or remove such conditions within ten (10) days. Such notice shall be in writing, shall include a description of the premises sufficient for identification and shall set forth the violation and state that, if the violation is not corrected within ten (10) days, the City may proceed to correct the same as authorized by this Article. Service of such notice shall be any one of the following methods:

(1) By delivery to any owner personally or by leaving the notice at the usual place of abode of the owner with a person who is over the age of sixteen (16) years old and a member of the family of the owner.
(2) By mailing a copy of the notice by registered or certified mail, return receipt requested, addressed to the person to be served and delivered to the addressee;
(3) By delivering a copy of the notice to any officer, employee or agent of a corporation, partnership or business; or
(2) By posting, for ten (10) days, a copy of the notice in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be served by (1), (2) or (3) above.

(b) When the owner of any property fails to comply with a notice given pursuant to this Article, within ten (10) days after the service of such notice, he or she shall be subject to any criminal or civil penalties authorized by Chapter 1 of the City Code in accordance with law and each day that such failure continues shall be a separate offense. In addition, the City Manager may have the condition described in the notice abated, removed or otherwise corrected and all expenses incurred thereby shall be chargeable to and paid by the owner of the property and shall be collected as taxes and levies are collected. All such expenses shall constitute a lien against the property on which the work was done.

(c) The procedure set forth in this article shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances, and this chapter shall not prevent the City from proceeding in a criminal action against any person, firm or corporation violating the provisions of the Article as provided in G.S. 14-4.

Sec. 9-124.2. Emergency action.

Notwithstanding the notice provisions set out in Sec. 9-124.1, the City Manager shall have authority to summarily remove, abate or remedy any condition that is dangerous or prejudicial to the public health or public safety.

Sec. 9-124.3. Other nuisances not enumerated.

(a) In addition to the conditions declared to be a nuisance enumerated above, the City Council may, by ordinance, define, prohibit, regulate or abate other acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the City.

(b) Prior to adopting such ordinance, the City Council shall conduct a hearing at any regularly scheduled or

specially convened meeting of the City Council after giving written notice to the owner, occupant or person in possession of the premises on which the conditions alleged to be a nuisance are located. The notice shall describe the conditions believed to be a nuisance and shall set forth the date, place and time of the public hearing. The notice shall be served in the same manner other notices are served in this Article; except, that if the notice is served by posting on the property, then such notice shall also be advertised once in a newspaper having local circulation at least ten (10) days prior to the hearing.

(c) At the hearing, the City Council may receive and consider evidence in the form of testimony, affidavits, statements, documents or other written proof and the property owner, occupant or person in possession of the premises shall have a right to appear and show cause why the conditions are not a nuisance or ought not to be abated.

(d) If the conditions are thereafter determined by the City Council to be a nuisance, the City Council may order the removal or abatement of the nuisance or take such other remedial action as may be appropriate except that the City Council may not declare unattractive conditions a nuisance and order the abatement thereof without finding in writing that the aesthetic benefits of removing or abating the conditions outweigh the burdens imposed upon the private property owner. Such special findings shall be based upon 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, including protection of property values, promotion of economic and community development opportunities, indirect protection of the public health and safety, preservation of the character and integrity of the community and the promotion of the comfort, happiness and emotional stability of area residents.

Sec. 9-125. Policy to promote safety.

It shall be the policy and intent of the city council of the city to promote and provide for the safety of pedestrians and operators and passengers of motor vehicles using public streets, roads, ways and sidewalks within the city. It is fundamentally important that all such pedestrians and operators of motor vehicles be able to have access to and use all public streets, roads, ways and sidewalks without visual interference, obstruction or impairment.
(Ord. of 2-2-88)

Sec. 9-126. Unlawful to obstruct vision along streets.

(a) It shall be unlawful for any owner or occupant of any premises within the city to plant, install, build, maintain, cultivate or allow to exist any bush, shrub, hedge, tree, living plant, fence, wall or other item which obstructs vision if such item:

(1) Is located within five (5) feet of the outer edge of the curb (or other edge of the pavement if there is no curb) of a public street;

(2) Has a height greater than two and one-half (2 1/2) feet; or

(3) Is located in any other place of any height if such item interferes with, obstructs or impairs the vision of any pedestrian or operator of a motor vehicle in gaining access to or using any public street, road, way or sidewalk.

(b) Buildings in existence as of February 2, 1988, shall be exempt from this article.
(Ord. of 2-2-88)

Sec. 9-127. Notice to remove visual obstruction; remedy for noncompliance.

If any person violates the provisions of this article, it shall be the duty of the building inspector or his or her designee to give notice to the owner, or to any person in possession and occupying said premises, directing that within ten (10) days or sooner from the time of such notice, all plant growth or fence or other visual obstruction shall be pruned, trimmed, shortened or removed from the designated area. If such owner or occupant fails or refuses to take such corrective action so as to come into compliance with this article, the building inspector shall promptly take such corrective action as is necessary to remove the visual obstruction, and all costs and charges shall be charged against the premises. If such costs and charges are not paid within thirty (30) days, they shall become a lien against said property and shall be collected in the manner provided for the collection of delinquent taxes.

(Ord. of 2-2-88)

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 city without first applying for and receiving a permit issued by the public works director or his designee. The public works director or his or her 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.
(Ord. of 6-6-00, § 1)

Secs. 9-129--9-149. Reserved.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of March, 2006.

A. Everette Clark

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-03-07-5

REQEUST FOR EASEMENT – CITY PROEPRTY OFF OF MACKEY CREEK ROAD: The City Manager advised that the City had been approached by Ronald Sneed, an attorney in Black Mountain, on behalf of the Tom Burnette family requesting that Council grant an easement across City Property off of Mackey Creek Road to property owned by the Burnette family. The City granted a similar easement to a Rita Burnette in 1987.

The City Manager noted that the City Attorney looked at the request and suggests the possible need for a road maintenance agreement, limiting the width of the easement to the existing roadway, including a reversion clause whereby the easement would revert to the City if the roadway changes and and/or ceases to cross City property, most importantly suggesting that these persons would pick up legal fees.

Councilman Little stated that he agreed with the suggestions of the City Attorney suggests and would propose that the City Manager convey these conditions to Mr. Sneed. Mayor Clark stated that the Burnette family should also give the City an easement across their property.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted for the City Manager to contact the Burnette's attorney, Mr. Ronald Sneed, and convey that the City would approve the easement for the Burnette family subject to a road maintenance agreement being provided, language being added limiting the width of the easement to the existing roadway, the easement including a reversion clause whereby the easement would revert to the City if the roadway changes and and/or ceases to cross City property, the Burnette family picking up the City's legal fees and the Burnette family granting the City an easement across their property.

UPDATE ON PEAVINE RAIL LINE ABANDONMENT/REQEUST BY NORFOLK SOUTHERN TO CONDISER CLAY STREET RAILROAD CROSSING CLOSING: The City Manager advised that Norfolk Southern had not yet filed the abandonment of the Peavine Rail Line with the Federal Surface Transportation Board, but had filed a second environmental report on the impact of the rail abandonment. The City Manager stated that the City is in the same position as in months past regarding this matter, as the City is waiting for the filing of the rail line abandonment.

Mayor Clark stated that he had been approached at a recent meeting by Mr. Robert Pressley, the engineer that previously requested on behalf of Norfolk Southern and the DOT Rail Division for the City to allow the closing of the Clay Street Crossing. Mr. Pressley noted that this approval could contain whatever conditions Council wished.

A discussion followed.

The City Manager advised that Council has previously stated that they would consider closing the Clay Street Crossing in exchange for Norfolk Southern giving the City or significantly discounting the Peavine Rail Line property. Other ideas suggested included:

- Norfolk Southern making immediate repairs to the Garden Street Railroad Crossing to make this crossing safe and passable for vehicular traffic. The City of Marion has asked for several years for repairs to this crossing, without success.
- Norfolk Southern correcting drainage problems along the railroad banks behind properties on East Court Street. The City of Marion has asked for two years for these drainage problems to be addressed, without success.
- Norfolk Southern undertaking improvements to the unsightly railroad banks on either side of Main Street in downtown, in a manner that fits with the City's vision for downtown beautification and revitalization, including a possible retaining wall and landscaping.
- Norfolk Southern assisting the City of Marion with acquiring real property that will allow for a one block road extension of McDowell Avenue, to provide an alternate route for motorists currently using the Clay Street Crossing.
- Norfolk Southern constructing cul-de-sacs on either side of the closed Clay Street Crossing, along with proper barricades and signage, per City standards and expectations.

Mayor Clark asked if Council would be open to these suggestions in order to consider the closing of the Clay Street crossing.

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 Mr. Robert Pressley stating City Council's willingness to consider the closing of the Clay Street railroad crossing with the six conditions stated above.

CONSIDER AWARD OF CONTRACTS FOR VEHICLE PURCHASE: The City Manager advised that bids had been taken for several new City vehicles.

Upon a Motion by Councilman Little, seconded by Councilman Martin, those members of Council present voted to approve contracts with the low bidders for each of the following vehicles:

City Manager's Car

Low Bid: Sheehey Ford	Ford Crown Victoria	$20,988.60
Other Bids:		
Stamey Chrysler	Dodge Charger	$24,662.00
Bobby Jones Ford	Ford Crown Victoria	$21,301.00
Vic Bailey Ford	Ford Crown Victoria	$21,721.00

The total amount budgeted for this vehicle was $23,000.00.

Fully Equipped Marked Police Car

Low Bid: Sheehey Ford	Ford Crown Victoria	$31,735.45
Other Bids:		
Bobby Jones Ford	Ford Crown Victoria	$31,909.00
Vic Bailey Ford	Ford Crown Victoria	$32,019.00

This vehicle is to replace the Patrol Car that had been totaled. $32,000 was budgeted for the purchase of a fully equipped patrol car in the 2004-05 budget.

Unmarked Police Car

Low Bid: Sheehey Ford	Ford Crown Victoria	$23,938.30
Other Bids:		
Bobby Jones Ford	Ford Crown Victoria	$25,135.00
Vic Bailey Ford	Ford Crown Victoria	$24,727.00

The total amount budgeted for this vehicle was $27,000.00

Fire Department Crew Cab Truck

Low Bid: Dale Jarrett Ford	2006 Ford F-150	$25,059.60
Other Bids:		
Legendary Ford	2006 Ford F-150	$27,820.55
Stamey Chrysler	2006 Dodge Ram	$25,804.00
Vic Bailey Ford	2006 Ford F-150	$25,495.00

The total amount budgeted for the truck was $22,000.00. However, the City Manager and Fire Chief advised that a four wheel drive vehicle with a crew cab would be useful in helping the Fire Department move personnel during inclement weather and to go to out of town meetings.

Sanitation Department Pickup Truck

Low Bid: Vic Bailey Ford	2006 Ford F-150	$15,230.00

Other Bids:		
Legendary Ford	2006 Ford F-150 4x2	$18,144.55
Stamey Chrysler	2006 Dodge Ram 4x2	$18,672.00
Dale Jarrett Ford	2006 Ford F-150 4x2	$15,869.60

Quotes on 4X4 trucks are as follows:

Low Bid: Vic Bailey Ford	2006 Ford F-150	$17,231.00

Other Bids:		
Legendary Ford	2006 Ford F-150 4x4	$21,143.55
Stamey Chrysler	2006 Dodge Ram 4x4	$21,501.00
Dale Jarrett Ford	2006 Ford F-150 4x4	$17,370.00

The total amount budgeted for the truck, which is a 4WD, is $21,000.00. Council agreed to purchase the low bid 4x4 truck for Sanitation.

DISCUSS DEPOT RENTAL: The City Manager advised that Finance Director Harriett Thomas is in the process of drafting an updated copy of the Depot rules.

The City Manager stated that one issue that needed clarification is whether persons could rent or use the outside courtyard area of the Depot, if not using the inside as well, or whether the courtyard was included with the rental of the building. The City Manager stated that the Community Building has always been treated as two separate uses, with the outside being open to the public at no charge with a first come first serve basis.

It was the consensus of Council that the Depot is different from the Community Building that use of the courtyard is included with the rental of the Depot Building and that the courtyard cannot be reserved or rented without renting the Depot Building itself. Furthermore, persons renting the Depot will have the authority to have persons gathered in the courtyard removed, if in conflict with the activities of the renter. This direction will be included in the proposed Depot rules.

DISCUSS TRASH CANS FOR CEMETERY: The City Manager stated that Councilman Owenby had suggested at the February 21 City Council meeting the possible need for trash cans in Oak Grove Cemetery.

The City Manager presented photos and prices of various options of trash cans, ranging from around $200 apiece to more than $900 each. The City Manager stated that he and former Public Works Director Glen Sherlin had worked with Warren Hobbs on ideas for trash cans in Oak Grove, but had been unable to agree on a style and location. The City Manager stated that he and Street Superintendent Roger Estes had looked at possible locations for trash cans in the Cemetery and had determined that the close proximity of grave sites to exterior walls and public areas would make it difficult to place trash cans, without being too close to graves.

Councilman Little stated that he did not really see a need for trash cans in the Cemetery. Mayor Clark note that the trash cans would have to emptied fairly often, creating a maintenance burden.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to table discussion of trash cans in Oak Grove Cemetery indefinitely.

DISCUSS RESIDENTIAL SUBDIVISION INCENTIVE POLICY:
The City Manager presented Council with a residential subdivision incentive policy from the Town of Farmville to review as was discussed at the Planning Session. The policy provides for City participation in infrastructure development for subdivisions located in the City or which will be annexed immediately, with City payments coinciding with occupancy of houses and tax base and population being created. The policy has successfully been used in Farmville to encourage many new subdivisions in the City, enhancing tax base, population and creating new housing stock.

The City Manager noted that Farmville paid for the incentive out of their Water and Sewer and Electric Funds, but stated that a conversation with David Lawrence of the School of Government had indicated that the City could justify the part of the incentive related to streets, curb and gutter and drainage being charged to the General Fund. The City Manager stated that Mr. Lawrence saw no problem with such an incentive. A discussion followed. Council stated that they liked the Farmville policy and that the City should adopt a similar policy.

Upon a motion by Councilman Little, Seconded by Councilman Martin, those members of council present voted for the City Manager to put together a customized version of this policy and bring it back to Council for approval.

REVIEW WATER EXTENSION POLICY: The City Manager advised that the current City water extension policy calls for the City to provide 100 feet of six inch water line per connection that is purchased. The policy also calls for the City to pay engineering costs for extensions on DOT roads. Over the past few years, City Council has approved arrangements whereby the City would pay for materials and the developer pays for installation of water lines. The costs of materials and engineering and permitting costs have become substantial, even with short extensions, and the connection fees barely cover the costs and certainly do not seem to allow for savings, as was intended years ago with the Cost Recovery Charges.

The City Manager stated that review of the policy may be in order, to determine if the policy was too generous to developers, particularly in areas that could not be annexed.

Mayor Clark suggested that this item be referred to the Utility Committee.

A discussion followed.

It was the consensus of Council present to refer this item to the Utility Committee as suggested by Mayor Clark. The City Manager stated that the new Public Works Director could review the policy with him after he starts work on March 20 and that review of the policy with the Utility Committee could be scheduled a few weeks after that time.

DISCUSS MARCH MEETING SCHEDULE: The City Manager noted that Mayor Clark, Mayor Pro Tem Steve Little and himself would be out of town from March 11-15 to attend the National League of Cities Congressional Cities Conference in Washington D.C. Due to the tight time schedule to prepare the agenda for the March 21 Council meeting after March 15, the City Manager proposed that the March 21, 2006 City Council Meeting be canceled.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Little, those members of Council present voted to cancel the March 21 City Council meeting.

POLICE MATTER – INVOLUNTARY COMMITMENTS: The City Manager and Police Chief Mika Elliott advised Council or recurring issues with police officers spending considerable amounts of time handling involuntary commitments at The McDowell Hospital.

Chief Elliott advised that when someone is committed, the individual has to be taken into custody, transported to The McDowell Hospital and an officer has to sit with the person for up to twelve to fourteen hours or more, while awaiting medical evaluation and transport.

The City Manager proposed that the City request the North Carolina League of Municipalities to make this matter a policy initiative and to seek legislative action and/or a solution to this problem, shared by all cities with hospitals.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to request the North Carolina League of Municipalities to make the matter of involuntary commitments a policy initiative and to seek legislative action and/or a solution to this problem.

DISCUSSION – COUNTY SEWER SYSTEM PROJECTS:

The City Manager advised the County had sent a letter requesting that the City take over the US 221 North, Easfield and PG sewer systems. The 221 North and Eastfield sewer systems are ready to take over, however the City Manager recommended that the City wait to take over the PG sewer system until the sewer repairs being done by the County's contractor are completed.

A discussion followed. Mayor Clark asked if the easements for the Eastfield project had been put in the City's name. The City Manager stated that the easements were still in the County's name. Mayor Clark suggested that acceptance of the Eastfield sewer system be contingent on the City having the 180+ easements put in the City's name.

Upon a motion by Councilman Little, seconded by Councilman Martin, those council members present voted to take over the 221 North and Easfield Sewer Systems contingent upon Eastfield project easements being signed over to the City of Marion. This motion excludes acceptance of the PG sewer project subject to inspection of the on-going sewer repairs.

CITY MANAGER'S REPORT:

The City Manager commended DBA Director Freddie Killough on the grant application she recently completed for the Rural Center Small Cities Initiative/NC STEP Program, which resulted in the City being selected for this demonstration program and the resulting $220,000 in grant funding.

The City Manager noted that former Council Member Angus Stronach has requested that several low places on New, Garden and Logan Streets be looked at and that he would like to see the City complete a Report to the People, as had been done years ago.

The City Manager reminded Council that Arbor Day would be held on Thursday, March 16, 2006 at 9:00 a.m. at Marion Elementary School, with a tree planting to take place at the new South Garden Street Parking Lot.

The City Manager stated that Danny Bridges, P.E., of McGill Associates has advised that the proposed project to fill a ditch in the Oak Grove Cemetery may inquire major permitting. The City Manager stated that he would ask the new Public Works Director to study options for this ditch.

CLOSING COMMENTS:

Councilman Little mentioned the information in the February 21 City Manager's Report from the City Attorney regarding the Berryhill legal case and noted that the lawsuit's time schedule and costs seemed excessive, causing the case to be drug out. Mayor Clark suggested that Councilman Little, the City Manager and himself sit down with the City Attorneys to express concerns about the costs and scheduling of this case. Council agreed with the suggestion of Mayor Clark.

Councilman Cuthbertson advised that there is a problem with roots in the roadway on Forest Heights Drive and noted that the roots would need to be addressed during the planned curb replacement project on this street.

Councilman Cuthbertson noted that the Berryhill property on North Main Street is getting a new roof.

Councilman Cuthbertson also noted that the school nurse at East McDowell Junior High School asked the Red Cross to use their infant mannequin to hold a CPR class for students and found that there was a cost of $280 to use the mannequin. This $280 cost was half the price normally charged by Red Cross. Councilman Cuthbertson stated that Council may wish to reconsider allowing the Red Cross free use of the Community Building if this amount is charged to the school nurses.

Councilman Owenby asked would the persons replacing the roof on the Berryhill property have to get a permit. The City Manager stated that he would check with the Building Inspector regarding whether the roofing work required and had obtained a permit.

Councilman Owenby advised that contractors had been parked on the sidewalk and curb at Robert Street and Fleming Avenue, in violation of City ordinances. Police Chief Elliott stated that he would check on the location.

Mayor Clark discussed an idea about acquisition of property to improve traffic flow in the McDowell Avenue area.

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 4, 2006 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 Billy Martin, Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Richard McMillan, Public Works Director/Engineer; Heather Cotton, City Planner/Zoning Administrator; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: David Cable and Bruce Messing, McDowell County Rescue Squad, Marion, NC; Juanita Doggett, 192 North Garden Street, Marion, NC; Margaret Stevens, 1100 Old Fort Sugar Hill Road, Old Fort, NC; Ellen Brown, 108 Carriage Station, Marion, NC; Janice Pierce, 115 Mackey Farm Drive, Old Fort, NC; Kathy Flowers 215-2, North Garden Street, Marion, NC; Alice Little, 370 South Garden Street, Marion, NC; Bobbie & Jim Young, 218 Forest Heights Drive, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM STEVE LITTLE: Mayor Pro Tem Steve Little selected the Citizen of the Month for April 2006:

JUANITA DOGGETT

Mayor Pro Tem Steve Little announced that he was pleased to recognize Ms. Juanita Doggett as his Citizen of the Month. She has been an active part of the community for the past ten years.

Ms. Doggett is employed with McDowell Tech as Director of Industry Training and works with various industries creating courses for the public to train them for new jobs.

Ms. Doggett is responsible for making employment available to hundreds of people in our community.

She is an active part of the First Baptist Church as an outreach leader, serves as Deacon and has been involved with many of their youth activities.

Ms. Doggett, through her work with McDowell Tech, works closely with McDowell Economic Development Association and is a behind the scenes part of the recruitment of industry to Marion and McDowell County.

Mayor Clark, Council Members, family members and many friends were present and all had kind words to share about Ms. Doggett.

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 - March 7, 2007

B. Approve Budget Amendments:

CITY OF MARION, NORTH CAROLINA
2005-2006 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 2005-06 as adopted by the Marion City Council on the 21st day of June, 2005 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-313-1000, Hold Harmless Fund is increased from $7,550 to $8,121.

b. General Fund Revenues, Account Number 10-319-1000, Prior Year Taxes is increased from $45,000 to $78,000.

c. General Fund Revenues, Account Number 10-321-0000, Privilege Licenses is increased from $18,500 to $21,200.

d. General Fund Revenues, Account Number 10-330-0000, Planning & Zoning Fees is increased from $1,000 to $1,800.

e. General Fund Revenues, Account Number 10-335-0100, MIT – Wellness Grant is increased from $-0- to $2,820.

f. General Fund Revenues, Account Number 10-341-0500, Refunds / Reimbursements is increased from $16,000 to $17,000.

g. General Fund Revenues, Account Number 10-341-1000, Court Costs, Fees & Charges is increased from $5,000 to $6,000.

h. General Fund Revenues, Account Number 10-341-1100, Parking Tickets / Civil Citations is increased from $4,000 to $6,000.

i. General Fund Revenues, Account Number 10-342-1000, PD Copies & Fingerprints is increased from $100 to $500.

j. General Fund Revenues, Account Number 10-342-2100, County Fire Protection is increased from $130,000 to $180,000.

k. General Fund Revenues, Account Number 10-342-2200, State Fire Protection is increased from $750 to $1,859.

l. General Fund Revenues, Account Number 10-344-4000, County Contribution - Recycling is increased from $7,500 to $9,000.

m. General Fund Revenues, Account Number 10-361-0000, Interest Earned is increased from $60,000 to $80,000.

n. General Fund Revenues, Account Number 10-361-0000, Powell Bill Interest Earned is increased from $1,000 to $1,500.

o. General Fund Revenues, Account Number 10-390-0000, Cemetery Revenues is increased from $3,000 to $6,525.

p. General Fund Revenues, Account Number 10-392-1100, Sale of Surplus Equipment is decreased from $6,000 to $2,028.

q. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is decreased from $372,033 to $340,839.

r. General Fund Expenditures, Account Number 10-420-0400, Professional Services is increased from $35,000 to $50,000.

s. General Fund Expenditures, Account Number 10-420-1700, M&R Vehicles is increased from $800 to $1,500.

t. General Fund Expenditures, Account Number 10-420-5300, Dues & Subscriptions is increased from $9,500 to $10,500.

u. General Fund Expenditures, Account Number 10-420-5700, Miscellaneous Expense is increased from $500 to $1,000.

v. General Fund Expenditures, Account Number 10-500-5000, Code Enforcement is increased from $20,000 to $40,000.

w. General Fund Expenditures, Account Number 10-530-5400, Insurance is increased from $-0- to $13,559.

x. General Fund Expenditures, Account Number 10-660-9000, Transfer to General Fund Capital Projects is increased from $-0- to $35,000.

WATER AND SEWER

a. Water and Sewer Revenues, Account Number 30-335-0100, Insurance Reimbursement, is increased from $100 to $2,702.

b. Water and Sewer Revenues, Account Number 30-335-2800, Fire Protection Taps, is increased from $10,000 to $18,000.

c. Water and Sewer Revenues, Account Number 30-337-0000, Reimbursement Septic, is increased from $8,000 to $10,000.

d. Water and Sewer Revenues, Account Number 30-373-0100, Water Taps, is increased from $125,000 to $175,000.

e. Water and Sewer Revenues, Account Number 30-373-0200, Sewer Taps, is increased from $43,000 to $52,000.

f. Water and Sewer Revenues, Account Number 30-392-1100, Sale of Surplus Equipment, is increased from $16,875 to $17,875.

g. Water and Sewer Revenues, Account Number 30-299-0000, Fund Balance Appropriated, is decreased from $141,446 to $68,844.

INTERNAL SERVICE FUND

a. Internal Service Fund Revenues, Account Number 35-391-0000, Purchase Other Fund Revenues, is increased from $125,000 to $140,000.

b. Internal Service Fund Expenditures, Account Number 35-660-3300, Inventory is increased from $125,000 to $140,000.

WATER AND SEWER CAPITAL PROJECTS FUND

a. Water and Sewer Capital Projects Fund Revenues, US 221 N Water and Sewer Improvements, Account Number 31-380-1000, 221 N – EPA Grant, is increased from $-0- to $380,000.

b. Water and Sewer Capital Projects Fund Expenditures, US 221 N Water and Sewer Improvements, Account Number 31-178-1000, 221 N Extension / Hankins Road, is increased from $-0- to $380,000.

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 4th day of April 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O–06–04–04–2

C. Approve City Septic Tank Maintenance Policy

CITY OF MARION
POLICY REGARDING MAINTENANCE OF SEPTIC TANKS IN AREAS WHERE SEWER SERVICE IS NOT FEASIBLE WITHIN THE MARION CITY LIMITS

In areas where the installation of sanitary sewer lines is not economically feasible due to the unique topography of the area, the City may provide septic tank maintenance and repair service to properties within the City Limits until such time as sanitary sewer service is provided to the area. For purposes of this policy, septic tank maintenance and repair shall consist of pumping out a septic tank at City expense no more than one (1) time per calendar year and repairs deemed minor (i.e. replacement of manhole lids and repair of broken pipes) by the City, but shall not involve replacement of septic tanks, drain fields or repairs deemed major by the City. The City shall in no way be liable for any violations issued by the local Health Department or any State or Federal agency regarding any septic tank maintained or repaired under this policy.

In exchange for the provision of septic tank maintenance and repair service by the City, the property owner or resident shall pay a monthly charge for City sewer service consistent with other City sewer customers and shall be treated as a City sewer customer. All policies relating to deposits, payments and service disconnection that apply to City sewer customers shall also apply to property owners or residents receiving septic tank maintenance and repair service.

All requests for septic tank maintenance and repair service under this policy must be reviewed by the City Council on a case by case basis and approved prior to the service being provided. In reviewing such requests, the City Council shall determine whether sanitary sewer service is available or can feasibly be extended to the property. If the City Council determines that the installation of sanitary sewer lines is not economically feasible due to the unique topography of the area, the City Council may approve septic tank maintenance and repair service to the property until such time as City sanitary sewer service is provided to the area. Once City sanitary sewer service becomes available to a property receiving septic tank maintenance and repair service, City septic tank maintenance and repair service to the property shall be immediately discontinued. The property owner or resident approved for septic tank maintenance and repair under this policy shall be responsible for the full cost of connecting their sewer system to the City sanitary sewer system. Once the property is connected to the City sanitary sewer system, the City's maintenance responsibility shall end at the street right-of-way at the clean-out.

The property owner or resident approved for septic tank maintenance and repair under this policy shall install the appropriate fats/oil/grease separator or trap required by local, State or Federal requirements. The property owner or resident approved for septic tank maintenance and repair under this policy shall abide by local, State and Federal requirements concerning the operation of the septic system by a certified sub-surface operator.

No property outside the City Limits is eligible to receive septic tank maintenance and repair service, unless a petition for voluntary annexation of the property for which the septic tank maintenance and repair service is requested has been received.

Once a property is approved for septic tank maintenance and repair, the City shall only pump or repair the septic tank upon request from the property owner or a resident paying the sewer bill and after determination from the City Manager or his designee that such pumping or maintenance by the City is necessary and is consistent with this policy.

Adopted this the 4th day of April, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

D. Endorse Governor's Proclamation of Spring 2006 "Litter Sweep" Roadside Cleanup – April 17-30, 2006

E. Approve Annual Downtown Business Association Sidewalk Sale – To be held on downtown sidewalks on Saturday, May 6, 2006

F. Approve Waiver of Charges for Collection of Bulky Items – April 24 – April 28, as part of Spring 2006 Litter Sweep.

G. Adopt Ordinance – Change Designation of Public Officer to Enforce City Building Regulations Ordinance

ORDINANCE
AMENDING CHAPTER 4
BUILDINGS AND BUILDING REGULATIONS
MARION CITY CODE

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 deleting Section 4-125 in its entirety and replacing it with the following:

Sec. 4-125. Designation of public officer.

The Building Inspector of the City of Marion or other person appointed by the City Manager is hereby designated as the public officer that is to exercise the powers granted in this Article.

Section 3. This ordinance shall become effective on July 1, 2006.

Adopted this the 4th day of April, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-04-04-1

H. Approve Summer Use of Community Building Basement by McDowell County SOS Program – Monday, June 12, 2006 – Thursday, August 17, 2006 (Excluding the week of July 4th), at no charge.

I. Approve Purchase of Vehicle for Police Department - 1997 4x4 Chevrolet Suburban – From DOT - $3,800. – Using drug seizure funds

J. Amend Taxicab Ordinance

ORDINANCE
AMENDING CHAPTER 17
TAXICABS
MARION CITY CODE

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 17-63.5 in its entirety and replacing it with the following:

Sec. 17-63.5. Review of application.

(a) Under the authority of N.C.G.S. 160A-304, a criminal records background check is required for all applicants for a permit to operate or drive a taxicab under this article, in order to protect the public health, safety and welfare. Such criminal records background check shall include fingerprinting of the applicant and state and national checks to 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.

(c) 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 to be unfit to conduct a business for which the license is applied.

(d) Prior to denial or termination of a permit under this article based upon criminal history records information received from the Police Department, the City of Marion shall verify the existence of a record by either obtaining a certified public record or by submitting a fingerprint card of the individual to the criminal Information and Identification Section of the North Carolina State Bureau of Investigation for verification that the criminal history records information belongs to the individual.

(Ord. No. O-03-02-18-4, § 2, 2-18-03)

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 4th day of April, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-04-04-3

K. Approve Resolution – Endorse Wastewater Improvements Plan and Funding

Resolution Endorsing Planned City of Marion Wastewater Improvements and Associated Funding Strategy

WHEREAS, the City of Marion has operated a wastewater system since the early 1900's; and

WHEREAS, the City of Marion operates two wastewater plants, 18 wastewater pump stations and numerous miles of wastewater collection lines, providing sanitary sewer service to the City of Marion and surrounding areas, allowing for residential, commercial and industrial development in the Marion/McDowell County area; and

WHEREAS, the City of Marion's two Wastewater Treatment Plants have experienced problems leading to violations of State and Federal regulations and fines by the North Carolina Department of Environment and Natural Resources (NCDENR); and

WHEREAS, the City's wastewater violations have mainly been caused by aging wastewater plants and inflow and infiltration into aging wastewater collection lines during periods of heavy rainfall; and

WHEREAS, the City of Marion was forced to participate in the U.S. Environmental Protection Agency (EPA) Management, Operations and Maintenance (MOM) Program in 2000, resulting in high costs and close monitoring of the City's wastewater operations by NCDENR and EPA; and

WHEREAS, as part of a strong desire by the City of Marion to put the City back into full compliance, the City has contracted with a consulting engineer to identify needed wastewater plant improvements, resulting in $5.6 million in identified needs, including elimination of the Catawba River Wastewater Plant, transfer of the Catawba River Wastewater Plant flow to the Corpening Creek Wastewater Plant, improvements and repairs to wastewater collection lines to reduce inflow and infiltration during heavy rainfall events and upgrades to the Corpening Creek Wastewater Plant to make this facility a modern wastewater treatment plant capable of meeting all State and Federal regulations; and

WHEREAS, the City of Marion has entered into a Special Order by Consent agreement with NCDENR to allow the City time to complete the necessary wastewater improvements as outlined above without the threat of further fines; and

WHEREAS, the City of Marion has lost 2,400 manufacturing jobs and hundreds of thousands of dollars in annual utility revenues since the early 1990's as a result of textile and furniture plant closings, causing the City to have to increase water and sewer rates four times since 1998 by as much as 88 percent to some customers, creating a financial burden on the few remaining industries in the City, on small businesses and on individuals that are often without employment, making it impossible for the City to fund the entire cost of the needed wastewater improvements without additional crippling water and sewer rate increases which could create severe financial hardships on elderly and unemployed individuals, small businesses and on industry; and

WHEREAS, the City of Marion is still paying hundreds of thousands of dollars in annual debt service on water and sewer improvements completed in the 1990's to expand the City's water and sewer capacity to serve industries that have since closed and which are no longer providing the utility and tax revenues needed to pay said debt service and needed wastewater system upgrades; and

WHEREAS, despite all obstacles and setbacks, the City of Marion City Council is still committed to making necessary wastewater improvements to place the City's wastewater system back into compliance and in a position to handle future economic growth so greatly needed in the Marion/McDowell County area, and is therefore seeking State and Federal grants and committing to incurring additional local debt to fill any funding gaps.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION THAT:

Section 1. The City of Marion City Council does hereby formally adopt and endorse the $5.6 million improvements and funding strategy to the City's wastewater treatment plants and wastewater collection system, as outlined in the attached "Special Appropriations Work Plan" document.

Section 2. The City of Marion City Council commits to providing the necessary funding, through State grants and/or loans or local debt issuance, to supplement Federal funds received for the $5.6 million in improvements listed in the attached Special Appropriations Work Plan" document.

Section 3. The City of Marion City Council respectfully requests the Federal government to provide any funding assistance possible to assist the City of Marion in making the wastewater improvements needed to comply with State and Federal requirements.

Section 4. This resolution shall become effective upon its adoption.

Adopted this the 4th day of April, 2006.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-06-04-04-1

L. Tax Refund - Paul Ledford – Property on Matilda Avenue - PIN # 1712.18-20-8064 – 2004 Tax - $48.09 (Located Outside City Limits)

M. Fee Schedule Amendments – Fingerprinting/Background Check Charges – Increased to the following charges:

Fingerprinting Charge	$10.00
Background Checks:	
Taxicab Operators/Drivers	$25.00
Pool Rooms/Game Rooms	$25.00
Tattoo Parlors	$25.00

N. Approve Right of Way Agreement with DOT – Grace Corpening

Drive – Council approved donation of right of way to the North Carolina Department of Transportation along Grace Corpening Drive leading into the YMCA off of SR 1001, Sugar Hill Road, for a distance of 784 Feet

O. Approve Capital Projects Fund Ordinance

CITY OF MARION, NORTH CAROLINA
WATER & SEWER CAPITAL PROJECTS FUND ORDINANCE –
WWTP 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 2005-06 as adopted by the Marion City Council on the 21st day of June 2005 is hereby amended as follows to include the expenditures associated with Water & Sewer Capital Projects by adopting the following Water & Sewer Capital Projects Fund Ordinance:

WATER & SEWER CAPITAL PROJECTS FUND

a. Water & Sewer Capital Projects Fund Expenditures, WWTP Improvements Project, Corpening Creek WWTP – SOC Action Items, Account Number 31-172-0100, is increased from $-0- to $600,000.

b. Water & Sewer Capital Projects Fund Expenditures, WWTP Improvements Project, Corpening Creek WWTP – Capital Improvements Allowances, Account Number 31-172-0200, is increased from $-0- to $2,350,000.

c. Water & Sewer Capital Projects Fund Expenditures, WWTP Improvements Project, Catawba River Basin Sewer System Improvements , Account Number 31-172-0300, is increased from $-0- to $2,350,000.

d. Water & Sewer Capital Projects Fund Expenditures, WWTP Improvements Project, Miscellaneous, Account Number 31-172-0400, is increased from $-0- to $200,000.

e. Water & Sewer Capital Projects Fund Expenditures, WWTP Improvements Project, Preliminary Engineering and Grant Assistance, Account Number 31-172-0500, is increased from $-0- to $100,000.

f. Water & Sewer Capital Projects Fund Revenues, WWTP Improvements Project, Clean Water Management Trust Fund, Account Number 31-370-0000, is increased from $-0- to $2,000,000.

g. Water & Sewer Capital Projects Fund Revenues, WWTP Improvements Project, STAGG Grant, Account Number 31-370-0100, is increased from $-0- to $1,000,000.

h. Water & Sewer Capital Projects Fund Revenues, WWTP Improvements Project, Long Term Debt Proceeds, Account Number 31-370-0200, is increased from $-0- to $2,600,000.

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 4th day of April 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-04-04-4

INTRODUCTION OF NEW EMPLOYEE: The City Manager introduced Mr. Richard McMillian as the City's new Public Works Director/Engineer. The City Manager advised that he had taken several months to find a Public Works Director to replace the retired Glen Sherlin. The City Manager stated that Mr. McMillan comes to Marion with a professional engineer's certification and 18 years of experience in larger cities such as Winston-Salem, Charlotte and Mooresville.

PUBLIC APPEARANCE – MCDOWELL COUNTY RESCUE SQUAD REQUEST: Mr. David Cable and Mr. Bruce Messing appeared before Council advising that a new Rescue Squad is in the process of being built on State Street. Mr. Cable and Mr. Messing requested assistance with funding from City Council for a water and sewer connection and assistance with their dumpster service for the new facility.

Mr. Cable advised that the Rescue Squad's tax base generates approximately $118,000 a year and that the Squad recently had to replace a crash truck out of this money as the insurance did not cover the full cost.

Mayor Clark asked if the current building would still be used. Mr. Cable stated that the present building would be used for storage and training purposes.

A discussion was held regarding whether the new building's utilities could be connected to the present building so that the same water and sewer connections could be used. Mr. Cable advised that the current building has old lines that would not be suitable for interconnection with the new building. The City Manager stated that such interconnection would not be allowed as a master meter service under current City policy, since the parcels on which the two buildings would be located are not under single ownership, with the City owning the property on which the current Rescue Squad building is located and with the Rescue Squad owning the property on which the new building will be built.

A lengthy discussion followed.

The City Manager advised that a one inch water and sewer connection, the expected size of the Rescue Squad service, inside the City will cost $7,610 (including tap fee and Cost Recovery Charge). The City Manager noted that Council did not typically waive connection fees and had never provided commercial garbage service free of charge, but that Council had on rare occasions made a donation to groups eligible for City funding.

Councilman Little stated that the City often wanted to help organizations needing assistance and certainly valued the service provided by the Rescue Squad, but was not always able to help each organization requesting financial assistance.

Mayor Clark proposed that the City and County fund this connection on a per capita formula of approximately 17.5 cents per person, resulting in a City donation of just over $1,100.

Councilman Owenby suggested that, in light of the Rescue Squad's service to the community, Council increase the donation to $2,500. The City Manager suggested that any donation be paid out of current year funds.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously for the City to donate $2,500 to the McDowell County Rescue Squad, using current year funds.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

CITATION APPEAL The City Manager advised that Ms. Sharon Long of 201 Blue Ridge Street submitted an appeal of a civil citation issued on February 13 for an untagged vehicle at the property she rents at the intersection of Pulliam and Blue Ridge Streets.

Ms. Long was present for this meeting and contends that the vehicle has a tag; however, she had removed it while trying to sale it and would request that Council waive this $50.00 citation.

Councilman Edwards advised that the untagged vehicle was a violation of City ordinance and that Ms. Long has a larger problem involving the accumulation of large amounts of materials in her yard. Councilman Edwards stated that neighbors in the area are extremely upset about the condition of the property and want the property to be cleaned. He suggested that Ms. Long seek to be a good neighbor and keep her property in a condition consistent with the rest of the neighborhood and in compliance with City ordinances, since this type of activity affects the whole community.

The City Manager stated that the City's Ordinance Enforcement Officer had warned Ms. Long repeatedly about materials stacked in her yard and the untagged vehicle. The City Manager stated that City ordinances clearly prohibit untagged vehicles.

Ms. Long advised that no one had complained to her and advised that there is no longer any car parked in her yard. After questioning, Ms. Long clarified this statement and said that the cars were only parked in the driveway.

A discussion followed.

Councilman Little stated that City ordinances were quite clear in prohibiting untagged vehicles and that there was no justification to waive the civil citation penalty.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to deny the request of Ms. Sharon Long to waive the penalty for the $50.00 civil citation issued to her for an untagged vehicle at Pulliam and Blue Ridge Streets and to direct that the penalty be paid immediately.

PRESENTATION – CITY PLANNER HEATHER COTTON – LAND USE AND DEVELOPMENT PLANT PROPOSED SCHEDULE: Ms. Heather Cotton, City Planner presented the latest proposed "Welcome to Marion" gateway sign design, as prepared by Custom Shirts & Embroidery. Ms. Cotton also presented the initial design of Custom Shirts. Ms. Cotton and the City Manager noted how each sign was not consistent with City expectations, but how modifications could be made.

The City Manager stated that he had just learned that day that the City had already paid Custom Shirts for the five signs, something he said he was not pleased to learn and which should not have occurred.

A discussion was held regarding the two signs with direction for choosing the finished sign. After discussion, Council agreed to select the sign color on the first sign and to eliminate the rock design at the bottom of the sign. Ms. Cotton will communicate this desired design to the owner of Custom Shirts and direct that another sign sample be made for final review.

Ms. Cotton also presented Council with a proposed schedule and outline for the completion of a new Land Use and Comprehensive Plan for the City of Marion in the next few months. Ms. Cotton related how she planned to seek public participation and work with City staff and the Planning Board on a draft plan, which would be presented to the Planning Board and City Council for review and approval at a later date. The City Manager advised that he had instructed Ms. Cotton to make this Land Use and Comprehensive Plan a top priority and that she had exceeded his expectation with the outline and proposed components of the plan. The Mayor and Council members expressed their approval of the plan outline and schedule and that they were pleased to see this plan being made a priority.

DISCUSS IDEA OF CITY YOUTH COUNCIL: The City Manager advised that he and Mayor Clark had met with Ms. Mandy Pitts, who staffs the City of Hickory's Youth Council and with an ad hoc committee of citizens and school personnel to discuss the possibility of a Youth Council in Marion.

The City Manager presented Council with information supplied by the City of Hickory, including tips for starting a Youth Council, application forms, committee bylaws and a work plan. The consensus of the committee that met with Ms. Pitts was that the Youth Council was an excellent idea, but would involve commitment on the part of the City and volunteers.

A discussion followed.

Mayor Clark stated that this is something that would benefit the youth of the City and could be discussed in more detail later during a planning session.

Councilman Little stated that he had been involved in a youth council in his hometown in Smithfield that met one time with nothing being accomplished. He stated that he did not want a similar situation to occur in Marion.

Councilman Martin stated that this sounds like a good idea that needs further discussion.

It was the consensus of Council to hold this item and discuss further at a later date, most likely at a future planning session.

DOWNTOWN ADVISORY COMMITTEE APPOINTMENTS: The City Manger advised that Mr. Frank Boldon cannot accept an appointment for the DAC for the next few months to a year, due to commitments involved with a business he is starting. However, he is very interested and may be able to participate in selected events.

The City Manager stated that there are therefore two positions still vacant on the Downtown Advisory Committee and two positions needing reappointments. With Donna Stevens' recent retirement, the DAC recommended that Council appoint Denis Buck, the new Director of Keep McDowell County Beautiful to fill Donna's term. This said term would end June 30, 2009.

Bobbie Young, the newly elected DAC Chair, also needs to be reappointed for a new three year term, to

expire June 30, 2009.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to reappoint Ms. Bobbie Young to a three year term on the Downtown Advisory Committee, said term to end June 30, 2009, and to appoint Ms. Denise Buck to a three year term on the Downtown Advisory Committee, said term to end on June 30, 2009.

The current DAC Board is as follows:

Regular Members: (Nine Positions)

Carol Price	Term expires June 30, 2007
Mike Rabb	Term expires June 30, 2007
Dean Kanipe	Term expires June 30, 2007
Gina DeGrechie	Term expires June 30, 2008
Denise Buck	Term expires June 30, 2009
Chad Toney	Term expires June 30, 2009
Bobbie Young	Term expires June 30, 2009
Vacant Position	
Vacant Position	

Ex-Officio Members:

Mayor Everette Clark
Bob Boyette, City Manager
Freddie Killough, Executive Director, Marion Downtown Business Association
Ashley Wooten, McDowell County Representative
Rod Birdsong, Executive Director, McDowell Chamber of Commerce

Staff:

Heather Cotton, City Planner

TREE BOARD APPOINTMENTS: The City Manager presented Council with the resignation of Ms. Loretta Smith from the Tree Board on June 2007. Ms. Smith's term expires on June 30, 2007, but the City Manager suggested that a new appointment could be given a three term to expire June 30, 2009, to make the Tree Board terms more staggered.

The Tree Board Members are as follows:

Voting Members

Joan Hensley
Term Expires June 30, 2008

Walton Clapp
Term Expires June 30, 2008

Pat Brown
Term Expires June 30, 2007

Phil Tate
Term Expires June 30, 2007

Vacant Position
Term Expires June 30, 2007

Ex Officio Members
Councilman Lloyd Cuthbertson
John Reese
Phil Ray

Staff
Debi Sherlin

It was the consensus of Council to refer this item to the Tree Board to make suggestions and recommendations regarding filling this vacant position.

ABC APPOINTMENT: The City Manager advised that the term of Mr., Jim Issacs on the ABC Board expires on April 18, 2006. The City Manager presented a letter from ABC Board Chairman Robert Teeter, requesting that Mr. Isaacs be reappointed to a new three year term.

The City Manager noted that Mr. Isaacs is willing to serve another term if reappointed.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson,
Council voted unanimously to reappoint Mr. Jim Isaacs to a three year term, to expire June 30, 2009.

The ABC Board is as follows:

Robert Teeter
Term Expires June 30, 2008

Robert Ayers
Term Expires April 30, 2007

Jim Isaacs
Term Expires April 18, 2009

UPDATE ON EASTFIELD/PG SEWER SYSTEMS: The City Manager advised that Council took action at the March 7, 2006 meeting to accept the US 221 North Water and Sewer systems. The City Manager stated that Wastewater Treatment Superintendent Larry Carver informed the State of this acceptance so that the permit can be transferred to the City's name. The City Manager stated that the permits were already in the City's name, since the City coordinated this project; therefore, no permit changes are needed.

The City Manager informed Mr. Ashley Wooten with the County that the City would accept the Eastfield sewer system once project easements were put in the City's name. The City Manager stated that Mr. Wooten had indicated that the County Attorney is exploring how to get the easements in the City's name. The Department of Transportation subsequently informed Larry Carver that there are road repairs in the Eastfield area that still must be made, involving manholes being too high above the pavement and that DOT would hold the permit holder responsible. The City Manager stated that this information has been passed on to the County to correct.

The City Manager stated that the PG sewer system inspection was in March and that the inspection revealed some repair items that remain to be completed by the County involving bolting down some manholes and putting some vent pipes in working condition. In addition, the access road to the 70 West pump station needs to be reestablished since it was damaged by Hurricane Frances in 2004. The City Manager stated that some progress was being made and County officials are aware that these issues must be settled before the City can take over the PG sewer system.

UPDATE ON RECYCLING PROGRAM: The City Manager advised that Sanitation Supervisor Dean Ollis met with County Public Works Director Mike Gladden in February to discuss what it would take for the City to market their own recyclables, as had been suggested at the City Council Planning Session in January.

Mr. Ollis estimates the costs for the City to start marketing its own recyclables as follows:

Baler	$50,000
Front End Loader	$50,000
Building for Storage	$100,000

The City Manager stated that these costs appeared to be too high to justify at this time, especially given the volatility of the recycling market. Council members agreed that the costs were too high to pursue. No action was taken.

APPROVE RESIDENTIAL INCENTIVE POLICY: The City Manager presented the following residential incentive policy, as was discussed last month by Council:

Residential Development Participation Policy
City of Marion

Objective of the Policy

The City Council wishes to encourage housing development with a goal of at least one percent growth per year the housing stock within the City limits. This goal extends into the foreseeable future.

This policy is designed to encourage residential land developers to build both single family housing and multi-unit condominium or townhouse developments and require construction of some of the housing units as a condition for reimbursement of the City's share of the infrastructure development costs.

The City is willing to make a reasonable investment in developing proper and sustained growth. The City Council recognizes that there are many advantages to residential development in addition to the financial benefits. Due to these immeasurable benefits of development and growth, the City Council is willing to participate in new residential development costs utilizing available revenues so that the entire community will benefit in the future.

Policy Conditions

The City of Marion will participate in 40 percent of the actual cost of eligible development infrastructure items, described below, not to exceed 40 percent of the total of $250 per running foot of street. Participation will be approved under the following stipulations:

- The developer will pay all required development costs (including water, sewer, street, curb & gutter, storm drainage, and associated engineering costs) at the outset of the development process;

- The eligible development infrastructure shall be designed and constructed in accordance to the City's specifications and the bid process conducted in accordance to City's standards;

- The property involved with the proposed development or the particular phase of the development shall be located within the City limits or receive approval of petition to annex said property; and, the City Council reserves the right to exclude this policy for satellite annexation;

- The City will pay equal payments for each house or cluster of housing units under the same roof structure (multi-unit condominium or townhouse development) upon completion and receipt of certificate of occupancy, certification and full acceptance of the utility system(s) and certification and full or deferred acceptance of the roadway. The payments per housing unit will be an amount equal to 40 percent of the actual cost of required infrastructure development divided by the number of housing units in the phase approved for City participation;

- The reimbursement payments for each approved participation will be limited to a period of 10 years from the date of approval; and,

- The developer understands that the City funding for the above-mentioned payments is not guaranteed until formal approval is granted by the City and all conditions of this policy are met. In considering approval of applications under this policy, the City Council will consider the amount which is available in the annual budget at any time during each fiscal year.

Eligible Development Infrastructure Items

The City of Marion will participate by reimbursing a developer 40 percent of the sum of actual eligible construction, engineering and other related costs, as outlined below:

Water – water lines within the development street right-of-way and/or public water main easements;

Sewer – sewer mains and lines within the development street right-of-way and/or public sanitary sewer easements;

Street Construction – any street construction within the development in accordance with City's Subdivision Ordinance standards;

Grading, Soil Testing, Curb & Gutter, and Storm Drainage – within the development street right-of-way and/or public drainage easements as required by the City's Subdivision Ordinance standards;

Engineering and Other Fees – including the costs associated with the development of topographic maps; preliminary plans; local, State and Federal permits for water, sewer, roadway, grading, drainage, wetlands, etc.; sedimentation and erosion control installation and maintenance; engineering; construction plans; design and as built (field measured) plans; lot layout/design, stake out, and final plat;

Inspection - The City will provide inspection with the cost of inspection shared by the City and the developer at the same participation rate. The City will determine said cost and inform the developer at the time of City approval of plans, specifications, and contracts.

Non-eligible costs – includes but not limited to the following: property surveys; additional cost of non-standard streetlights; fees; fines; and corrective actions to correct design or construction errors; or other costs the City deems not eligible.

Note: If the development is a phased process, the City will only approve participation for that phase being considered for construction at that time.

Procedures

A developer may apply for City participation in accordance with the following procedures:

1) The application for City participation in residential development costs shall include a sketch residential

2) development plan and a professional engineer's estimate of costs related to site work/grading, street improvements, water, sewer, soil testing, erosion control, grading, curb and gutter and drainage in accordance with the City's regulations and specifications and shall include an estimate of associated engineering fees. The City will not fund any development located within the 100 year flood plain, without specific approval from the City Council and full compliance with all City Flood Ordinance regulations.

3) Once the sketch plan has been reviewed and approved by the City of Marion Planning Board, the application for participation in the development cost will then be forwarded to the City Council for consideration.

   The City Council will consider the application and may request the City Public Works Director/Engineer to verify the estimates prior to their consideration. The Public Works Director/Engineer will report to the City Council if the developer's estimate is reasonable in his professional opinion and the City Council will adopt a resolution stating the lineal feet of street limit and percentage of participation, if funds allocated for residential development participation are available. (Refer to paragraph following regarding funding.)

4) The City Council in adopting a resolution to participate in no way circumvents or overrides any Planning Board deliberations and decisions in the process of approving preliminary plats for residential development. The City Council recognizes that a developer may wish to secure a commitment from the participation prior to the preliminary plats of residential development being completed.

4) Upon completion of the construction of the proposed development, the City shall be provided a final construction cost and engineering fees certified by the engineer of record as actual expenses. A final cost shall be presented to the Public Works Director for review. Upon recommendation by the Public Works Director, the City Manager shall be authorized to approve the City's 40 percent participation payment, provided that final construction costs and engineering fees do not exceed the initial estimates approved by Council by more than five (5) percent. The City shall base its reimbursements on these final certified figures.

Funding

In preparation for each fiscal year, the City Council may review and evaluate its current objectives with regards to residential development growth objectives and its investment for this purpose. The Council may choose to allocate General Fund and/or Water and Sewer Fund revenues to fund this line item in the City's budget.

Prospective residential developers, who are applicants for participation, will be informed that the funding of the reimbursement payments will be on a first-come-first-served case by case basis until Council's desired amount of funding for that fiscal year is depleted. This approach allows more than one residential developer to participate and allows for varying pace of construction of housing units.

The City Council recognizes that the objective of this policy may not be met by the specifics included in the policy at the time of its initial adoption; therefore, the Council reserves the right and encourages future Councils to amend this policy as it deems necessary in order to encourage residential growth for the betterment of the City of Marion. Thus, the Council recommends that each Council review the amount of funding and the procedure details for this policy each year during its budget preparation and approval process.

Adopted this the 4th day of April, 2006 by the City Council of the City of Marion.

A. Everette Clark, Mayor

Attest:

L. Robert Boyette, City Manager/Clerk

A discussion followed.

The Mayor and Council members stated that this was an innovative policy that could hopefully attract some single family residential development in the City.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the Residential Participation Incentive Policy as sated above.

REVIEW ORDINANCE – SOUTH GARDEN STREET PARKING LOT: The City Manager presented Council with an ordinance regarding the South Garden Street parking lot. The City Manager stated that this ordinance met the interest of the County in allowing for EMS employees to park overnight in the parking lot, but that he was waiting for County comment on the ordinance; therefore, he suggested that this ordinance be held until the next meeting.

Councilman Owenby stated that he would like to see the City trade the County the new South Garden Street

parking lot for the current jury parking lot at East Court and North Garden Streets. Councilman Owenby advised that the County is asking for the lot to be used by employees, which was not the idea of this new parking lot.

By consensus, Council agreed to table this ordinance until County comments are received.

REVIEW/APPROVE STREET RESURFACING CONTRACT – SPRING 2006 PAVING: The City Manager stated that the City received the following qualified bids for the street resurfacing project for I-2 asphalt as specified. The approximate total street project is 18,559 square yards.

Burke Grading & Paving, Inc.		
1 ¼" Resurface Per Square Yard	$4.90	$ 90,939.10
1 ½" Resurface Per Square Yard	$5.23	$ 97,063.57
APAC		
1 ¼" Resurface Per Square Yard	$5.25	$ 97,434.75
1 ½" Resurface Per Square Yard	$6.00	$111,354.00
Boggs Paving, Inc.		
1 ¼" Resurface Per Square Yard	$5.00	$ 92,795.00
1 ½" Resurface Per Square Yard	$5.80	$107,642.20

The City Manager stated that, after review Public Works Director/Engineer Richard McMillan and Purchasing Agent Brenda Williams recommended the award of the paving contract to Burke Grading & Paving, Inc. for the standard 1 ¼" resurfacing.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to award the contract for the Spring 2006 Resurfacing Project to Burke Grading & Paving for 1 ¼" resurfacing in the amount of $90,939,10, or $4.90 per square yard.

DISCUSS POSSIBLE PLANNING SESSION: The City Manager advised that Mayor Clark and Mayor Pro Tem Steve Little discussed at the National League of Cities Conference the idea of holding another Planning Session at City Hall in the near future to conduct some long range planning and visioning for the City that they felt may not have been fully completed during Council's January Planning Session. There is a need to plan/vision in the areas of economic development, our new N.C. STEP Demonstration Program, the up coming Downtown Streetscape/Traffic Flow Plan, our Land Use and Development Plan and in growth issues.

It may be possible to bring in consultants, such as HSMM Project Manager Mr. Greg Lambert, to meet with Council during a planning session.

Councilman Edwards advised that he would suggest that Council re-look at how the planning sessions are held. He stated that there are a lot of items discussed that he feels should simply be handled by the City Manager. Councilman Edwards also stated that he would not promote bringing in outside consultants to these planning sessions and that the planning sessions should instead involve general policy and goal setting and visioning by Council. He feels that Council is sort of micro managing by going through the budget as they have in the past and that he personally has not benefited from how it has been done.

Mayor Clark agrees that a more limited Planning Session is possible, since the City has a Manager that Council can trust.

Councilman Little stated that he agreed that Council needs to discuss and talk about long range planning issues and that the Planning Session should not be focused just on the upcoming budget.

Councilman Cuthbertson stated that there are no new persons on Council and that he too would like to see more time being spent on planning and visioning instead of the upcoming budget.

The City Manager stated that Council typically holds a brief budget workshop in early June, with a duration of about one hour or less, and that a planning and visioning session could be held in conjunction with this meeting to discuss long range planning issues previously mentioned, plus the Youth Council idea.

It was the consensus of Council to hold this item for further discussion and to set a date that all five members could attend at an upcoming meeting.

CITY MANAGER'S REPORT:

The City Manager reported a State Legislative Hearing on expanding passenger and freight rail service would be held in Asheville on Friday, April 7 at 10:00 a.m. at the Crowne Plaza Resort

The City Manager stated that cable consultant John Howell is working on the Charter Audit and has suggested waiting to meet with Council to brainstorm desired outcomes with the franchise renewal until after April, when State and Federal legislation regarding local cable franchising is to be introduced.

The City Manager stated that DOT had approved an encroachment agreement on Sugar Hill Road to allow Duke Power to install needed street lights between the YMCA entrance and McDowell Family Medicine. The City Manager also reported that DOT Division Traffic Engineer Mark Teague had given approval for the right turn on red prohibitions at Court and Main and Henderson and Main, as previously requested by Council.

The City Manager stated that City Planner Heather Cotton was working with Lamar Outdoor Advertising regarding the downed billboard on West Henderson Street.

The City Manager stated that all Civic Clubs are updating their signs located at various locations around the City.

The City Manager stated that revised plans for Sugar Hill Road landscaping project have been received and would be reviewed by City staff and the Tree Board.

The City Manager stated that the City continues to receive requests for sewer only services. After a brief discussion, Council stated that they would not look favorably upon further requests, unless sewer service was promised as part of an easement.

CLOSING COMMENTS:

Councilman Martin had an issue he will discuss with the Street Committee. A meeting will be scheduled shortly.

Councilman Edwards advised that window panes on the north side of the community building look bad and need to be painted.

Councilman Little and Mayor Clark gave a report on their recent trip to the National League of Cities Conference in Washington, DC. Councilman Little stated that the conference is a great learning experience and encouraged each Council Member to attend future conferences.

Mayor Clark outlined the meeting he and the City Manager had with Congressman Taylor's Chief of Staff Sean Dalton requesting funding for City Wastewater Treatment Plant improvements. Mayor Clark stated that the meeting was very positive.

Mayor stated that he was concerned about the City being left out of the loop with the McDowell County Scattered Site CDBG Grant and the resulting selection of houses to be cleared and renovated.

Councilman Little advised that the street light in front of his office at 20 North Main Street is not working properly.

Councilman Cuthbertson advised that the flag in front of City Hall needs to be cleaned or replaced.

Councilman Owenby stated that the Crape Myrtles on Main Street seem to have been trimmed at an odd time of year and noted that the rocks around them are not very attractive. Councilman Little stated that early Spring is a good time to trim these trees.

Councilman Owenby also advised that the trees on Garden Street are in the power lines. Contractors for Duke Power are in the process of trimming trees in the Marion area.

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, April 18, 2006 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, Mike Edwards, and Cecil Owenby.

Councilman Lloyd Cuthbertson was not present for this meeting due to being out of town.

Councilman Billy Martin was not present for this meeting due to recent surgery.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Heather Cotton, City Planner; Richard McMillian, Public Works Director; Mika Elliott, Police Chief.

There were no persons present from the news media.

GUESTS PRESENT: Mr. Arnold Cardell 165 Mill Road, Marion, 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 Minutes - April 4, 2006 Regular Session

B. Adopt Ordinance – South Garden Street Parking Lot– Councilman Owenby requested that this item be pulled off the consent agenda for further discussion.

ADOPT ORDINANCE – SOUTH GARDEN STREET PARKING: The City Manager presented Council with a draft ordinance to amend the South Garden Street Parking Lot ordinance to allow for overnight parking by County EMS employees, as had been requested by the County. Councilman Owenby stated that he was not opposed to providing parking for EMS employees in the new lot, but felt that this allowance would open the door for the County to seek to park other vehicles in the lot. Councilman Owenby noted that the parking lot was intended for juror parking, or for public parking, when Court was not in session. He also reiterated his previous suggestion that the City give this lot to the County in exchange for the current jury parking lot at East Court and North Garden Streets. Councilman Owenby suggested that Council table this item until all Council Members can be present.

Councilman Little advised that County officials had made a request that morning at the Joint Utility Committee meeting to allow some County vehicles to park in the new South Garden Street parking lot. Councilman Little stated that he and Councilman Cuthbertson did not feel this request was appropriate, given the previously agreed upon use of the lot. However, Councilman Little stated that he did not believe that five or six parking spaces used by EMS personnel would make a difference.

Councilman Edwards stated that if too many County vehicles are parked in the new lot, it may appear to the public that the lot is for private parking instead of public parking.

The City Manager advised that the County had so far made three requests, one to allow EMS personnel to park in the lot, to allow County vehicles displaced from the County parking deck in the lot and to use additional space in the parking lot for EMS trailers. The City Manager noted that the proposed ordinance addressed the first request, that Councilmen Little and Cuthbertson had recommended against the second request in the Joint Utility Committee meeting that morning and that every usable square inch of the parking lot is being utilized for parking, making the third request impossible.

The City Manager suggested that the draft ordinance be modified to state that County EMS personnel could parking in the new parking lot only while on duty. Council agreed in concept to this modification.

By consensus, Council agreed to have this item placed on the next regular scheduled City Council Meeting agenda on May 2 for further discussion.

PUBLIC HEARING – REZONING – SOUTH GARDEN STREET: Mayor Clark opened the Public Hearing.

The City Manager reported that this request involves the rezoning of the new South Garden Street Parking lot (two parcels) and the County EMS property on South Garden Street from C-2 General Business to C-1 Central Business District. The request will enable these parcels to be zoned consistently with other surrounding properties on the west side of South Garden Street and to the north (MEDA and the Old House Theater), and also for the new parking lot to be constructed according to the approved site plan, without all the landscaping area required in the C-2 district.

The City Manager stated that C-1 zoning will allow governmental uses and actually provide the City and County more flexibility in the event redevelopment of these properties are ever considered in the future.

The Planning Board met and unanimously recommends the approval of this request and the County has expressed no opposition to this request.

There were no persons present to discuss this issue.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to adopt the following ordinance approving the rezoning of the new South Garden Street Parking lot (two parcels) and the County EMS property on South Garden Street from C-2 General Business to C-1 Central Business District:

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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map from C-2 General Business to C-1 Central Business for properties with the Parcel Identification Numbers 1701.11-77-1306, 1701.11-77-1237 and 1701-11-77-1261.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on April 6, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of April, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-04-18-1

REQUEST – HANDICAPPED PARKING SPACE – WEST COURT STREET: Mr. Arnold Cardell appeared before Council requesting a handicapped parking space on West Court Street in front of his apartment building located at 197 West Court Street.

Mr. Cardell stated that he had a handicapped tenant who had lived in his apartment for seven years, and had never had trouble getting a parking space near his apartment until the skate park starting generating traffic.

The City Manager advised that he had been in contact with the County Recreation Director Stan Braswell concerning activities and noise at the Skate Park.

Councilman Little advised that the City does not typically designate private parking spaces for handicapped persons through out the City. Councilman Little stated that if Mr. Cardell's tenant did not have a valid handicapped placard, then he would not be permitted to park in a handicapped parking space. Councilman Little suggested that the request could be referred to the Street Committee for review.

Councilman Owenby stated that the City has to be fair in this type of decision.

Mayor Clark asked how many parking spaces Mr. Cardell had for his apartments. Mr. Cardell stated that he had two designated handicapped off-street parking spaces for his 11 apartments, and that he had no space on which to place additional parking spaces.

Councilman Edwards advised that he looks at the request differently; and that he feels that Council should look at granting this request, based on the information provided by Mr. Cardell that his tenant needs parking and since Mr. Cardell does not physically have space to accommodate additional off-street parking. Councilman Edwards stated that this request should be approved immediately, to avoid hardship on Mr. Cardell's tenant.

Councilman Little made a motion that the Street Committee look further into this request and the motion was seconded by Councilman Owenby.

The vote was as follows:

Owenby Yes
Little Yes

Edwards No

Mayor Clark stated that the matter would be placed back on the May 2 City Council agenda, after review by the Street Committee.

PUBLIC COMMENT PERIOD – HOUSE BILL 635: There were no unscheduled guests at this meeting.

REQUEST – EASTFIELD SEWER ISSUE: The City Manager presented a letter from Mr. Ashley Wooten with McDowell County requesting that the City credit Mr. Joseph Williams of Clark Street for about 27 months of sewer bills, in the amount of $653.69, which he paid during a time when his residence was not actually connected to sewer, due to the contractor's omission.

The City Manager stated that there have been other accounts found in the same area that was not connected to sewer, with at least one other similar instance still outstanding and the suspicion of more situations, based on current trends.

Public Works Director Richard McMillan stated that smoke testing would show which properties are not properly connected to sewer.

It was the consensus of Council that the smoke testing should be scheduled as soon as possible.

Mayor Clark advised that he personally had a problem with charging someone for services they had not received.

The City Manager noted that the City could reimburse or credit Mr. Williams and then work with the County to get the money back from the contractor, who had failed to properly connect Mr. Williams and others. The City Manager asked for permission to refund or credit additional customers found to be in similar situations, if Council approved a refund or credit for Mr. Williams.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to authorize the City Manager to issue a refund or credit to Mr. Joseph Williams, in the amount of $653.69, for sewer service not received due to contractor error, and to authorize the City Manager to issue

refunds or credits to other customers in Eastfield also found not to be connected to sewer due to contractor error. The City Manager stated that City staff would work on smoke testing as soon as possible and talk with Mr. Ashley Wooten with McDowell County regarding the contractor being responsible for reimbursing the City for these revenue losses.

REQUEST – MARION KIWANIS CLUB: The City Manager presented Council with a request from Mr. Sonny Reeves, President of the Marion Kiwanis Club, asking permission to hang a photo of Kiwanis Club Members from the 1950's and a plaque listing past presidents and Rotarians of the year permanently in the Marion Community Building. The City Manager stated that the Marion Rotary Club had recently been delinquent in taking down all its plaques after club meetings, leading to the request by the Kiwanis Club.

Mayor Clark asked if the City did not have a policy prohibiting such permanent displays by renters of the Community Building. The City Manager stated that Community Building policy clearly prohibited permanent displays by renters of the Community Building, but that clubs had typically been allowed to put out displays during their meetings, as long as these displays were taken down at the end of the meeting.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to deny the request by the Marion Kiwanis Club to place permanent displays in the Community Building.

AWARD CONTRACT – PURCHASE OF STREET DEPARTMENT DUMP TRUCK: The City Manager advised that the following bids had been received for a new dump truck to be used in the Street Department.

Dale Jarrett Ford	2006 F36 141"WB Chassis	$24,136.60
Legendary Ford	2006 F-350 Dump Truck	$34,187.66

Legendary Ford met the proposed specifications. Dale Jarrett's bid was for the Chassis only; they could not find a body to bid, so they did not meet the specifications.

The total amount budgeted for the truck is $34,000. So the bid is over by $187.66.

City Staff recommends purchasing the Dump Truck from Legendary Ford.

The City Manager asked that the contract award be approved on the condition that Public Works Director Richard McMillan determines that the truck fully meets City specifications.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to award the contract for the purchase of the Street Department dump truck to Legendary Ford in the amount of $34,187.66, on the condition that City staff determines that the truck fully meets City specifications.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that the City cannot yet accept the Eastfield and PG sewer systems, due to the North Carolina Department of Transportation demanding road repairs in the Eastfield Area, the need for Eastfield easements to be put in the City's name and the need for the City to have legal, permanent access provided to the PG pump station on US 70 West.

The City Manager congratulated the Hankins-North Fork Fire Department on being certified by the State and for answering their first fire calls.

Public Works Director Richard McMillan gave a brief update on the renovations to the basement of the Community Building.

The City Manager noted that the City of Marion Annual Open House is set for May 5, 2006 and thanked Debi Sherlin for her hard work in setting up this event.

The City Manager reported that the County's aerial photography will not be received until late June, which will further delay work on the Downtown Plan. Mayor Clark asked if this delay would have an impact on the consultant's contract. The City Manager stated that he will speak with Mr. Greg Lambert with HSMM and determine if the delay would create additional costs for the City.

The City Manager stated that the County had been complimentary of the City's efforts to patrol the Skate Park and that Public Works Director Richard McMillan is working with County to get the cameras placed at the park.

CLOSING COMMENTS:

Councilman Edwards noted that political signs are being placed on City Properties and listed three problem locations. The City Manager stated that staff would contact the candidates to have these signs removed.

Councilman Little stated that he had received requests to relocate the City Seal be relocated from its present position to another location due to decorating needs of renters. Mayor Clark stressed that the City needs to have a seal in the building in a prominent location. The City Manager stated that City staff would evaluate whether the seal could be moved.

Councilman Owenby inquired about the previously reported alleged illegal paint shop on Broad Street. City Planner Heather Cotton advised that she had spoken with the property owner and that he had agreed to clean up the property, something that had not yet been done. Further enforcement action will be evaluated.

Councilman Owenby also noted that the trees are still growing into the power lines on Garden Street and are in need of pruning. Duke Power will be contacted about this location and the need for tree trimming.

Mayor Clark requested an update on the City gateway signs. City Planner Heather Cotton reported that the City is awaiting another final design proposal. Mayor Clark stressed the need for this project to completed as soon as possible, given the long delay since the contract was awarded for this project.

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

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 2, 2006 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 Billy Martin, Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Richard McMillan, Public Works Director/Engineer; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Charles R. Evans, 585 East Yancey Street, Marion, NC; George Walden III, Perry Street, Marion, NC; Ann Walden, Perry Street, Marion, NC; James McKinney, 26 Palmer Drive, Marion, NC; Brian McKinney, 30 Palmer Drive, Marion, NC; Wayne Sprouse, 100 3rd Street, Marion, NC; Jenny Rumfelt, 1160 Mudcut Loop, Marion, NC; Jim Elmore, 1324 Mud Cut Road, Nebo, NC; Kevin Tucker, 125 Chapel Hill Church Loop, Marion, NC; Al Reel 1200 Rutherford Road, Marion, NC; Diane Curd, 89 Perry Street, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM STEVE LITTLE: Mayor A. Everette Clark selected the Citizen of the Month for May 2006:

WAYNE K. SPROUSE

Born to John Henry & Lela Lawing Sprouse, Wayne Sprouse was raised in the Brackett Town Community and has since lived in the East Marion Community for over 45 years. He went to School at Glenwood & Dysartsville and worked on the family farm with his six siblings.

After School he was drafted into the Army and served in Korea for two years. Upon discharge he began working in textiles at Marion Fabrics which is where he met his wife Retha Helms. They married and lived on 3rd Street in East Marion and raised three children, Kellan, Karen and Allison, who all work in various medical fields and are very productive citizens in each of their communities. Mrs. Sprouse passed away in 2002, after 45 years of marriage.

Mr. Sprouse worked for Marion Fabrics for 33 years until he retired from a disability, the disability coming from a fall while helping a neighbor cut down a tree. He came close to death after this fall; however, this has never stopped him from helping other neighbors and families members when there was a need.

Mr. Sprouse is very active in his church, Chapel Hill Baptist. He goes out visiting to various shut ins in the community every Tuesday morning. Mr. Sprouse is probably most known for his activity in his community. He stays busy working in his yard, raising a garden, and woodworking. He not only maintains his own yard, but has worked, mowed and done many odd jobs through the years, for neighbors and friends on 3rd Street, which in essence, has helped to maintain the whole street. Mr. Sporuse takes much pride in his family, his home, the street he lives on and his community.

Mr. Sprouse is active in McDowell Relay for Life, assists with the Cancer Survivor Committee in McDowell County, runs errands for the sick and shut-ins, shovels snow for various shut-ins, paints, remodels and does much to help others.

Mr. Sprouse and his wife also helped look after and raise several nieces and nephews and he was like a Dad to several children in the neighborhood.

One statement that has always been true of Wayne Sprouse is that he has always put others before himself.

Mayor Clark, Council Members and family members all had kind words to share about Mr. Sprouse.

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 18, 2006 Regular Session Minutes

B. Adopt Budget Ordinance Amendments:

CITY OF MARION, NORTH CAROLINA
2005-2006 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 2005-06 as adopted by the Marion City Council on the 21st day of June, 2005 is hereby amended as follows:

GENERAL FUND

a. General Fund Revenues, Account Number 10-398-0450, Fire Truck Proceeds is increased from $-0- to $321,181.

b. General Fund Expenditures, Account Number 10-510-1700, M & R Vehicles is increased from $45,000 to $48,500.

c. General Fund Expenditures, Account Number 10-510-7400, Capital Outlay is increased from $179,060 to $182,860.

d. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is decreased from $340,839 to $26,958.

WATER AND SEWER

a. Water and Sewer Revenues, Account Number 30-377-0400, Hwy 226 Bridge Grant, is increased from $25,000 to $33,000.

b. Water and Sewer Expenses, Account Number 30-660-8000, Transfer to Capital Projects, is increased from $-0- to $27,500.

c. Water and Sewer Revenues, Account Number 30-299-0000, Fund Balance Appropriated, is increased from $68,844 to $88,344.

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 May 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-05-02-1

C. Adopt Resolution – Authorize Clean Water Management Trust Fund Application:

CITY OF MARION
NORTH CAROLINA
RESOLUTION APPROVING GRANT APPLICATION

WHEREAS, the North Carolina Clean Water Management Trust Fund has authorized the making of grants to aid eligible units of government or non-profit organizations in financing the cost of improvements and/or studies that will impact the quality of affected waterways; and

WHEREAS, the City of Marion has need for and intends to significantly improve its wastewater system by implementing the corrective actions specified in the Special Order of Consent for the Corpening Creek basin collection and treatment system. The project will also include the making needed repairs to the Corpening Creek WWTP so that flow can be accepted from a decommissioned Catawba River WWTP: and

WHEREAS, the City of Marion intends to request grant assistance from the State of North Carolina.

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 State grant.

That the City of Marion will perform the functions and obligations of the grant recipient as set out in a grant agreement should this project be chosen for funding.

That Bob Boyette, City Manager and successors so titled, is hereby authorized to execute and file an application on behalf of the City of Marion with the North Carolina Clean Water Management Trust Fund for a grant to aid in the construction of the project described above.

That Bob Boyette, City Manager and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency 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.

Adopted this the 2nd day of May, 2006 by the City Council of the City of Marion at Marion, North Carolina.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-06-05-02-1

PUBLIC HEARING – EASTFIELD PHASE ONE ANNEXATION AREA: Mayor Clark opened the public Hearing.

The City Manager presented a summary of the Eastfield Phase One annexation area Annexation Report and Plan of Services. The City Manager advised that the adoption of the annexation ordinance is scheduled for May 16th with the annexation taking effect on June 30. 98 houses are included in the annexation area which has a compact boundary readily identifiable on the ground.

Mayor Clark asked if Council had any comments.

Councilman Owenby stated that persons need to realize that there will not be sidewalks planned anytime soon for this area, but that other services will be provided.

Mr. Jim Elmore was present for this meeting and advised that he owns several lots in the proposed area and that he would like for one of the properties to be excluded from this annexation. He stated that this is a wooded lot and feels that water and sewer would not benefit this property.

Mayor Clark and Councilman Little both advised that being in the City and having water and sewer availability would benefit the property if he were to sell the property. Councilman Martin asked if changing the boundaries of the area would pose problems for the entire annexation. The City Manager stated that the annexation schedule was, by law, very tight, resulting in the annexation ordinance having to be adopted at the May 16 City Council meeting in order for the annexation to take effect on June 30. The City Manager added that the annexation report and legal description of the area would also need to be changed, making it practically very difficult to change the annexation boundaries at this point.

It was the consensus of Council not to change the boundaries of this annexation at this stage of the process.

Mr. Chares Evans was present for this meeting and advised that the road he lives on is gravel. Mr. Evans said that the road name needs to be changed and that the road needs to be paved.

Mayor Clark advised that DOT maintains the roads in that area, but that the City generally asked DOT to improve roads in annexation areas so that the City could take over the roads after annexation. Mayor Clark stated that the City would be happy to consider changes in road names.

Mr. & Mrs. George Walden advised that they have properties that are not hooked up to sewer and asked when they could get connected.

The City Manager stated that this was a County project, but that the Waldens could contact him for information about the connections.

Mayor Clark closed the Public Hearing

No action was taken.

REQUEST – MR. AL REEL – SEWER SERVICE: The City Manager presented Council with a request to allow a minimum sewer billing for the Garden Center on Rutherford Road from Mr. Al Reel.

Mr. Reel was present for this meeting and stated that when he first developed the garden center on Rutherford Road, there were no restrooms on site. However, a building was later placed on site that has a restroom. Mr. Reel stated that he would request consideration for minimum for billing instead of water usage due to an estimated 95 percent of this water usage going on the ground and not in the City Sewer System.

The City Manager suggested that some set formula could be worked out to approximate the correct sewer billing.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin Council voted unanimously to grant the request with details to be worked out with the City Manager and the Public Works Director/Engineer.

REQUEST – MR. BRIAN MCKINNEY – SEWER SERVICE: The City Manager presented Council with a letter of request from Mr. Brian McKinney requesting a waiver of the City's prohibition aginst sewer only customers to allow him to receive sewer service at the the old Homes America lot on Highway 70 West in PG, next to the Devon Boyd property (Mad Mama's).

The City Manager advised that water service is not available in this section of US 70 West. The sewer line to serve this property runs along the river, several hundred feet from the highway frontage and City staff are checking into whether sewer service is possible to this property.

Mr. McKinney was present for this meeting and advised that he would like to have nine rental properties.

Mayor Clark asked if water was available, would he hook up to water? Mr. McKinney advised that he would connect to water if it was available.

Councilman Little related the City's history of sincere persons wanting sewer only service with promises of taking water service later. In many cases, these persons would not connect when the service was available and then ended up not wanting to pay their sewer bill. Councilman Little summarized the City's problems with disconnection of sewer only customers, particularly next to a body of water as is the case with Mr. McKinney's property. Councilman Little noted that he is elected to serve the City, not the County, and that this type of request would not benefit the City as sewer only service is a losing proposition. He stated that the City is obligated to provide sewer service in the City, but not outside the City.

Mayor Clark suggested that the City could double sewer rates in such situations, so that it would be in the best interest of the customer to connect to water when it was available, since there would be no additional cost.

Mayor Clark asked Mr. McKinney what the time frame was on developing this property. Mr. McKinney stated that he would like to start the development in the next two to three months.

Councilman Edwards advised that he would like to see the City find a way to accommodate this request.

Councilman Little stated that he would be concerned about whether any agreements with Mr. McKinney would be enforceable to future owners of the property.

A discussion followed.

Mayor Clark suggested that the Utility Committee look further into this request and report back at a future Council Meeting. By consensus, Council referred the request to the Utility Committee for review and a recommendation.

REQUEST FOR HANDICAPPED PARKING SPACE – WEST COURT STREET: The City Manager advised that the Street Committee met on April 28, 2006 to review the request of Mr. Arnold Cardell, owner of the apartment building on West Court and Burgin Street, for a handicapped parking space in West Court Street.

After review, the Street Committee would recommend that no handicapped parking space be approved at this location, due to concerns about prior City precedent and the request benefiting an individual only.

Councilman Edwards stated that he had expected the Street Committee to talk to the handicapped man who

Councilman Little stated that he talked to Mr. Cardell who made the request and does not believe that the skate park is the problem. Councilman Little stated that he has not observed a parking problem at the location.

Councilman Owenby stated that he felt that this would be a private parking space and that he also had not seen an actual parking problem at the location.

Councilman Edwards stated that more information should be obtained from the man needing the handicapped parking space.

Mayor Clark stated that, since there is not a handicapped parking space in this area, one could possibly be justified.

A discussion followed.

After discussion, it was the consensus of Council for the Street Committee to further investigate this request.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

CONSIDER APPROVAL OF ORDINANCE – SOUTH GARDEN STREET PARKING LOT: The City Manager presented an ordinance to provide allowances for overnight parking at the South Garden Street Parking Lot for EMS personnel while on duty; as had been requested by McDowell County.

A motion was made by Councilman Martin, and seconded by Councilman Little to approve the Ordinance.

Councilman Cuthbertson stated that he does not want the lot to be taken over by EMS workers.

Councilman Owenby advised that the lot was designed for juror parking and public parking and that approval of this request would lead to further requests for parking from the County.

A discussion followed.

Councilman Little advised that if the parking turns into a problem then Council could deal with it at that time.

Councilman Little called for the question.

The vote for the following Ordinance was as follows:

No	Cuthbertson
No	Owenby
Yes	Edwards
Yes	Little
Yes	Martin

The ordinance passed by a 3-2 vote.

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 adding Section 18-256 (7) as follows:

(7) *Lot #7, South Garden Street*--Beginning at a point on the east side of South Garden Street, said point located 264 feet south of the southeast corner of East Court and South Garden Streets; thence east 165 feet; thence south 80 feet; thence west 173 feet; thence north running parallel with South Garden Street 130 feet to the point of beginning.

Section 3. Chapter 18 is amended by deleting Sec. 18-258, All day parking lots, in its entirety and replacing it with the following:

Sec. 18-258. All day parking lots.

(a) The parking lots described in subsections (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.

(b) The parking lot described in subsection (7) of Section 18-256 is hereby designated as an all-day parking lot with restrictions of use at certain times in accordance with posted signs. No person shall park any motor vehicle and leave such vehicle parked in the above described all-day parking lot between the hours of 1:00 a.m. and 7:30 a.m. local time, except for employees of the McDowell County Emergency Medical Services, who may park their personal vehicles in this parking lot while on duty at any time the lot does not carry restrictions of use in accordance with posted signs.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-05-02-2

REVIEW/APPROVE REVISED COMMUNITY BUILDING AND DEPOT RULES/FEES SCHEDULE: The City Manager presented Council with revised Community Building and Depot Rules and Fee Schedule Ordinances based on observed problems and direction by Council at the Planning Session. The City Manager stated that the combined rules document addressed eviction and/or revocation of deposits for alcohol usage and having the Police called out due to disturbances, stating that the Courtyard is included with the Depot rental, stating that the flag cannot be removed from either building, banning grills or cooking devices from the Depot Courtyard and anywhere except for parking lots and also banning motor vehicles from the Depot Courtyard.

The City Manager advised that Community Building rates are proposed for adjustment to increase the basement rental charge including kitchen from $25 to $100, the same as the upper floor of the Community Building without he kitchen, and to increase the Depot renal charge from $100 to $150. Deposits for both buildings are proposed to be $200, regardless of whether either building has been rented before by the prospective renter.

A discussion followed.

It was the consensus of Council to have three separate rules documents for the Depot, the Community Building Main Floor and the Community Building Basement. The City Manager stated that he would break the rules and regulations into three documents and bring them back to Council for adoption at a future meeting.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to adopt the following Ordinances setting rates and fees for the Community Building and Depot:

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 May 2, 2006.

PER DAY, PER EVENT CHARGE:
MAIN OR STREET LEVEL:
ASSEMBLY ROOM USE ONLY $100.00 KITCHEN AND ASSEMBLY ROOM $150.00
BASEMENT WITH KITCHEN $100.00

DEPOSIT FOR EACH USE: $200.00
(DEPOSITS WILL BE IN CASH UNLESS MADE
MORE THAN 5 DAYS IN ADVANCE OF EVENT)

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATIONS AUTHORIZED BY THE CITY COUNCIL TO USE THE BUILDING ON A REGULAR SCHEDULE AND AT SPECIAL RATE:
PER DAY, PER EVENT CHARGE $ 25.00
NO DEPOSIT IS REQUIRED.

ADOPTED this the 2nd day of May 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-05-02-3

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 May 2, 2006.

PER DAY, PER EVENT CHARGE:
ASSEMBLY ROOM, KITCHEN AND
COURTYARD $150.00

DEPOSIT FOR EACH USE: $200.00
(DEPOSITS WILL BE IN CASH UNLESS MADE
MORE THAN 5 DAYS IN ADVANCE OF EVENT)

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATIONS AUTHORIZED BY THE CITY COUNCIL TO USE THE BUILDING ON A REGULAR SCHEDULE AND AT SPECIAL RATE:
PER DAY, PER EVENT CHARGE $ 25.00
NO DEPOSIT IS REQUIRED.

ADOPTED this the 2nd day of May 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-05-02-4

SET DATES FOR BUDGET WORKSHOP/PLANNING SESSION:

The City Manager advised that a date needs to be selected for the annual Budget Workshop and that a planning session could be possibly held in conjunction with the Budget Workshop. The City Manager stated that he would distribute the recommended 2006-07 City Budget at the May 16 City Council Meeting.

Councilman Little stated that having such a workshop/planning session would be helpful, but that he would like to see every one in attendance.

Mayor Clark suggested that we get the budget workshop completed first and then schedule a planning

session for late summer/early fall.

Council decided by consensus to hold the Budget Workshop on Tuesday May 30, 2006 at 6:00 P.M. at City Hall.

DISCUSS MACKEY CREEK EASEMENT: The City Manager presented Council with information from Attorney Ronald Sneed requesting an easement across City property on Mackey Creek Road. The revised easement included many of the items previously discussed by Council and recommended by the City Attorney.

The City Manager also noted that the North Carolina General Statutes state that cities can grant easements across City property by action of Council at a regular meeting, with no published notice required.

Mayor Clark stated that the request for a 30 foot easement is excessive and that a 15 foot easement is reasonable. Mayor Clark also suggested that the City be the last to sign the easement and require that the Burnette family requesting the easement pay the City any compensation provide to any other property owners for the easement.

Councilman Little stated that he felt that such conditions were a good idea, and suggested some alternate language for the easement document.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to direct the City Manager to send a letter to Mr. Ronald Sneed stating the City's intent to approve an easement for the Burnette family across City property off of Mackey Creek Road, on the following conditions:

1. The width of the easement should be reduced from 30 feet to 15 feet, to more accurately reflect existing roadway conditions.

2. The easements should contain the following language:

   " The easement described herein is for the purpose of providing access through egress, ingress and regress, for all other purposes necessary for the full enjoyment of the subject properties. The road way within the easement shall remain open and unobstructed at all times."

3. The City will be the last property owner to sign the easement and directed that the highest amount of compensation provided to any other property owner for the easement, either as paid voluntarily by the clients or as directed by a Court of Law. If the clients make no payment to other property owners for the easement, the City will expect no payment; however, if any payments are made to other property owners for the easement, the City would expect the highest amount paid to any other property owner.

TREE BOARD NOMINATION: The City Manager presented Council with a recommendation from Tree Board Chairperson Joan Hensely recommending Ms. Annie Lee Epley to fill the unexpired term of Ms. Loretta Smith on the Tree Board, said term to expire June 30, 2009.

A discussion followed. It was noted that Ms. Epley may no longer reside in the City. The City Manager stated that he would ask Ms. Epley for her residency status at the Tree Board meeting tomorrow and advise Council accordingly.

Upon a Motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to appoint Ms. Annie Lee Epley to the Tree Board, contingent on Ms. Epley being a City resident, said term to expire June 30, 2009.

CITY MANAGER'S REPORT:

The City Manager reminded Council of the Annual City Open House scheduled for Friday, May 5, 2006 and the North Carolina League of Municipalities Town Hall Day on June 7, 2006.

The City Manager stated that the Downtown Advisory Committee (DAC) met with Art Jackson with the N.C. Rural Center on April 20, 2006 to discuss the NC STEP Program. Plans are being made to hold a kickoff celebration with what is likely to be the most well attended First Friday Concert (Coming Up Brass on August 4) and to broaden our leadership team, which the DAC brainstormed at their last meeting.

The City Manager reported that the Cemetery Improvements Project is complete and that the Community Building windows are scheduled to be painted, as suggested by Councilman Edwards.

Police Chief Mika Elliott reported that he met with the Hospital CEO and others from the County, DSS, Clerk of Court's office, Foothills Mental Health, the Sheriff's Department and Mission Hospital on April 24th to discuss involuntary commitment/mental health issues. Chief Elliott advised that progress is being made on this issue, due to the cooperation of the Hospital and Sheriff's Department.

Mayor Clark advised that large cities are trying to improve the Court system and are working with Supreme Court Chief Justice Sarah Parker to request increased funding from the General Assembly to address the problem of a backlog of court cases.

The City Manager stated that Mr. John Howell is working on the City's Cable Franchise Fee audit and has a dispute with Charter over how far back the audit can go – three years or six. The City Manager suggested that it may not be worth the City Attorney's time to research this issue. Councilman Little advised that no money needs to be spent on this issue as the statute of limitations in North Carolina for such matters is three years. Council agreed by consensus to only go back three years with the audit.

CLOSING COMMENTS:

Councilman Little advised that a resident on Hillcrest Drive has several dogs barking on a constant basis. The City Manager stated that one of the dogs had recently been picked up by the City's Ordinance Enforcement Officer for running loose, but that the owner had reclaimed the dog. The City Manager stated that staff would contact the owner about the barking dog.

Councilman Cuthbertson advised that he had heard complaints about the Police Department receiving a larger across the board raise as part of the Pay and Classification Study. The City Manager stated that the Pay and Classification options had been reviewed by Council at the Planning Session in January and did not, to his knowledge, involve the Police Department receiving significantly higher average pay increases that other departments. The City Manager stated that he would supply Council with information about this matter.

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 16, 2006 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 a family commitment.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Heather Cotton, City Planner; Richard McMillan, Public Works Director/Engineer; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Ms. Nancy Guthrie 88 Oakwood Drive, Marion, 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 Minutes - May 2, 2006 Regular Session

B. Adopt Resolution Directing Clerk to Investigate the Sufficiency of a Petition for Voluntary Contiguous Annexation and a Resolution Fixing the Date of Public Hearing on Said Annexation – School Street Property:

PETITION REQUESTING ANNEXATION

Date: _____

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:

BEING A 0.80 ACRE PORTION of tract recorded in Deed Book 396, at Page 303 of the McDowell County Deed Registry and being more fully described by metes and bounds as follows:
BEGINNING on an existing iron pipe, said existing iron pipe being located, North 64 degrees 09 minutes 13 seconds East 974.83 feet from an existing concrete monument and also being the Larry Stevens Northwest corner as described in Deed recorded in Deed Book 212, at Page 339, and runs thence, a new line, North 09 degrees 41 minutes 35 seconds West 124.79 feet to an iron pin set; thence, a new line and with the North bank of a ditch, the following seven courses and distances:

North 67 degrees 18 minutes 04 seconds East 37.13 feet;
North 71 degrees 46 minutes 46 seconds East 27.17 feet;
North 76 degrees 56 minutes 50 seconds East 41.92 feet;
North 78 degrees 39 minutes 16 seconds East 24.00 feet;
North 70 degrees 01 minutes 42 seconds East 22.39 feet;
North 62 degrees 54 minutes 05 seconds East 36.73 feet;
North 67 degrees 57 minutes 17 seconds East 57.49 feet to an iron pin set; thence, a new line, South 09 degrees 04 minutes 30 seconds East 169.17 feet to a 32-inch maple tree corner; thence, with the Stevens line (Book 166, at Page 422), South 80 degrees 40 minutes 51 seconds West 79.25 feet to an iron pin set; thence, with the line of Leah Fox (Book 244, at Page 26), South 80 degrees 40 minutes 51 seconds West 80.59 feet to an iron pin set; thence South 80 degrees 40 minutes 51 seconds West 80.48 feet unto the point of the BEGINNING, containing 0.80 acres, more or less. All calls taken from an unrecorded plat of survey entitled: "Larry Stevens" by Suttles Surveying, PA, dated May 8, 1989, Map No. 10683 F.BK 8907, hereby incorporated by reference as if fully set out.

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

1. _____ _____ _____

_____

2. _____ _____ _____

_____

3. _____ _____ _____

_____

4. _____ _____ _____

_____

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 10, 2006 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 16th day of May, 2006.

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 16th day of May, 2006.

(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, June 20, 2006.

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

BEING A 0.80 ACRE PORTION of tract recorded in Deed Book 396, at Page 303 of the McDowell County Deed Registry and being more fully described by metes and bounds as follows:
BEGINNING on an existing iron pipe, said existing iron pipe being located, North 64 degrees 09 minutes 13 seconds East 974.83 feet from an existing concrete monument and also being the Larry Stevens Northwest corner as described in Deed recorded in Deed Book 212, at Page 339, and runs thence, a new line, North 09 degrees 41 minutes 35 seconds West 124.79 feet to an iron pin set; thence, a new line and with the North bank of a ditch, the following seven courses and distances:

North 67 degrees 18 minutes 04 seconds East 37.13 feet;
North 71 degrees 46 minutes 46 seconds East 27.17 feet;
North 76 degrees 56 minutes 50 seconds East 41.92 feet;
North 78 degrees 39 minutes 16 seconds East 24.00 feet;
North 70 degrees 01 minutes 42 seconds East 22.39 feet;
North 62 degrees 54 minutes 05 seconds East 36.73 feet;
North 67 degrees 57 minutes 17 seconds East 57.49 feet to an iron pin set; thence, a new line, South 09 degrees 04 minutes 30 seconds East 169.17 feet to a 32-inch maple tree corner; thence, with the Stevens line (Book 166, at Page 422), South 80 degrees 40 minutes 51 seconds West 79.25 feet to an iron pin set; thence, with the line of Leah Fox (Book 244, at Page 26), South 80 degrees 40 minutes 51 seconds West 80.59 feet to an iron pin set; thence South 80 degrees 40 minutes 51 seconds West 80.48 feet unto the point of the BEGINNING, containing 0.80 acres, more or less. All calls taken from an unrecorded plat of survey entitled: "Larry Stevens" by Suttles Surveying, PA, dated May 8, 1989, Map No. 10683 F.BK 8907, hereby incorporated by reference as if fully set out.

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 16th day of May, 2006.

Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

C. Adopt Resolution Directing the Clerk to Investigate the Sufficiency of a Petition for Voluntary Non-Contiguous Annexation and a Resolution Fixing the Date of Public Hearing on Said Annexation – Scotty's Mobile Village-Hankins Road:

PETITION REQUESTING A NON-CONTIGUOUS ANNEXATION

Date: _____

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.

3. The area to be annexed is non-contiguous to the City Marion and the boundaries of such territory are as follows:

BEGINNING at the pavement and at a stake at the western margin of Marion-Hankins public paved road, and runs thence North 5 deg. 45 feet East 161 feet to a stake; thence North 71 deg. 30 feet West 241.5 feet to a stake; thence South 6 deg. East 420 feet to a stake; thence North 62 deg. East 263 feet to a stake in old J.L. Morgan line; thence North about 80 deg. East 500 feet, more or less, to a point in the center of Big Branch; thence in a Southeasterly direction down said Big Branch 800 feet, more or less, to the west end of a bridge over Big Branch and Marion-Hankins public paved road; thence in a Southeasterly direction with the NE and NW pavement of Marion-Hankins public paved road 1,000 feet, more or less to the beginning.

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. _____	_____	_____
_____		
2. _____	_____	_____
_____		
3. _____	_____	_____
_____		

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 10, 2006 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 16th day of May, 2006.

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-58.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 16th day of May, 2006.

(Seal)

J. 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 , June 20, 2006.

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

BEGINNING at the pavement and at a stake at the western margin of Marion-Hankins public paved road, and runs thence North 5 deg. 45 feet East 161 feet to a stake; thence North 71 deg. 30 feet West 241.5 feet to a stake; thence South 6 deg. East 420 feet to a stake; thence North 62 deg. East 263 feet to a stake in old J.L. Morgan line; thence North about 80 deg. East 500 feet, more or less, to a point in the center of Big Branch; thence in a Southeasterly direction down said Big Branch 800 feet, more or less, to the west end of a bridge over Big Branch and Marion-Hankins public paved road; thence in a Southeasterly direction with the NE and NW pavement of Marion-Hankins public paved road 1,000 feet, more or less to the 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 16th day of May, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

D. Adopt Resolution Directing the Clerk to Investigate the Sufficiency orf a Petition for voluntary Non-Contiguous Annexation and a Resolution Fixing the Date of Public Hearing on Said Annexation – Property – US 70 East/Stacy Hill Road:

PETITION REQUESTING A NON-CONTIGUOUS ANNEXATION

Date: _____

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.

4. The area to be annexed is non-contiguous to the City Marion and the boundaries of such territory are as follows:

TRACT ONE (1):

BEGINNING on a magnetic nail set in the centerline of intersection of NC Highway 70 and State Road No. 1747, Stacy Hill Road, said point of beginning being the 30th corner of Tract One (1) of the Roger Andrews lands as recorded in Deed Book 435 on Page 311 of the McDowell Deed Registry and running thence with the centerline of NC Highway 70 the following four courses and distances:

South 65 degrees 11 minutes 34 seconds East 536.88 feet to a point;
South 65 Degrees 48 minutes 25 seconds East 63.42 feet to a point;
South 68 degrees 27 minutes 29 seconds East 53.19 feet to a point;
South 73 degrees 39 minutes 25 seconds East 34.29 feet to a point, said point located North 89 degrees 42 minutes 29 seconds West 210.28 feet from an existing magnetic nail in the intersection of NC Highway 70 and Stacy Farm Street;

thence leaving said centerline of NC Highway 70 and with the western line of the Stacy Farms Subdivision as recorded in Plat Book 4 on page 425 of the McDowell Deed Registry the following courses and distances:

South 16 degrees 45 minutes 36 seconds West 26.07 feet to an existing iron pin located just north of concrete headwall;
South 16 degrees 45 minutes 36 seconds West 122.16 feet to an iron pin set;
South 39 degrees 58 minutes 10 seconds East 47.99 feet to an existing iron pin;
South 40 degrees 18 minutes 29 seconds West 36.14 feet to an existing iron pin;
South 05 degrees 38 minutes 44 seconds West 64.16 feet to an existing iron pin in branch;
South 05 degrees 38 minutes 44 seconds West 68.23 feet to a point in branch;
South 04 degrees 22 minutes 02 seconds West 80.70 feet to a point in branch;
South 04 degrees 45 minutes 12 seconds West 58.70 feet to a point in branch;
South 02 degrees 08 minutes 36 seconds East 88.81 feet to an iron pin set;
South 02 degrees 19 minutes 27 seconds East 64.67 feet to an existing iron pin;
South 02 degrees 19 minutes 27 seconds East 15.16 feet to a point in the centerline of the creek;

thence with the centerline of said creek the following thirteen courses and distances:

North 65 degrees 53 minutes 50 seconds West 94.57 feet to a point;
South 60 degrees 22 minutes 46 seconds West 46.36 feet to a point;
North 35 degrees 00 minutes 30 seconds West 29.33 feet to a point
North 75 degrees 09 minutes 46 seconds West 50.33 feet to a point;
North 21 degrees 13 minutes 14 seconds West 38.58 feet to a point;
North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West 68.22 feet to a point located in the line of David Holland (Book 504 On Page 205);
North 80 degrees 32 minutes 50 seconds West 28.69 feet along the line of David Holland (Book 504 on Page 205) to a point;
North 11 degrees 10 minutes 46 seconds West 74.84 feet along the line of David Holland (Book 504 on Page 205) to a point, said point located in the line of David Holland (Book 470 on Page 450) and also being the Northern most corner of David Holland lands recorded in Deed Book 504 on Page 205 of said registry;

thence continuing with said creek centerline and the line of David Holland (Book 470 on Page 450) the following six courses and distances:

North 40 degrees 10 minutes 46 seconds East 67.00 feet to a point;
North 14 degrees 13 minutes 28 seconds East 115.07 feet to a point;
North 34 degrees 30 minutes 20 seconds West 111.99 feet to a point;
North 16 degrees 14 minutes 54 seconds West 67.20 feet to a point;
North 08 degrees 01 minutes 32 seconds West 130.28 feet to a point;
North 33 degrees 17 minutes 33 seconds West 63.11 feet to a magnetic nail set in a bridge over center of creek, said bridge being a part of State Road No. 1747, Stacy Hill Road;

thence with the centerline of State Road No. 1747, Stacy Hill Road, North 29 degrees 43 minutes 21 seconds East 103.17 feet to the BEGINNING.

TRACT TWO (2):

BEGINNING on an iron pin set, said iron pin set being located in the line of the Roger Andrews lands as recorded in Deed Book 435 on Page 311, Tract One (1) of the McDowell Public Registry and being located North 51 degrees 24 minutes 39 seconds East 33.34 feet from an existing iron pin found at a Poplar Tree witness, the same being the Southern most corner of the Kathleen D. Taylor lands recorded in Deed Book 555 on Page 368 of said registry and running thence south 58 degrees 51 minutes 51 seconds East 421.02 feet to an iron pin set; thence, North 46 degrees 37 minutes 22 seconds East 60.34 feet to an iron pin set, thence North 29 degrees 49 minutes 02 seconds West 115.51 feet to an iron pin set; thence North 34 degrees 48 minutes 23 seconds West 133.75 feet to an iron pin set; thence North 38 degrees 38 minutes 45 seconds West 110.30 feet to an iron pin set; thence North 44 degrees 26 minutes 32 seconds East 59.85 feet to an iron pin set at a power pole; thence North 27 degrees 55 minutes 58 seconds East 65.11 feet to a iron pin set; thence North 66 degrees 07 minutes 11 seconds East 134.25 feet to an iron pin set; thence South 54 degrees 50 minutes 55 seconds East 16.22 feet to a point in the center of a creek; thence continuing with said creek centerline the following six courses and distance:

North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West5 68.22 feet to a point located in the line of David Holland (Book 504 on Page 205);

thence continuing with the line of David Holland (Book 504 on Page 205) South 26 degrees 01 minutes 55 seconds East 84.52 feet to an existing iron pipe; thence South 26 degrees 01 minutes 55 seconds East 189.34 feet to an existing iron pipe in the northeastern margin of Andrews Road, a private soil roadway right of way; thence running along the eastern margin of Andrews Road South 36 degrees 55 minutes 54 seconds West 45.37 feet to an existing iron pin in the southeastern margin of Andrews Road, being the second (2nd) corner of Kathleen D. Taylor lands recorded in Book 555 on Page 368 of said registry; thence leaving said southeastern margin of Andrews Road and with the marked line of Kathleen D. Taylor (Book 555 on Page 368) South 51 degrees 24 minutes 39 seconds West 242.33 feet to the BEGINNING.

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. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

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 10, 2006 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 16th day of May, 2006.

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-58.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Marion this the 16th day of May, 2006.

(Seal)

J. 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 , June 20, 2006.

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

TRACT ONE (1):

BEGINNING on a magnetic nail set in the centerline of intersection of NC Highway 70 and State Road No. 1747, Stacy Hill Road, said point of beginning being the 30th corner of Tract One (1) of the Roger Andrews lands as recorded in Deed Book 435 on Page 311 of the McDowell Deed Registry and running thence with the centerline of NC Highway 70 the following four courses and distances:

South 65 degrees 11 minutes 34 seconds East 536.88 feet to a point;
South 65 Degrees 48 minutes 25 seconds East 63.42 feet to a point;
South 68 degrees 27 minutes 29 seconds East 53.19 feet to a point;
South 73 degrees 39 minutes 25 seconds East 34.29 feet to a point, said point located North 89 degrees 42 minutes 29 seconds West 210.28 feet from an existing magnetic nail in the intersection of NC Highway 70 and Stacy Farm Street;

thence leaving said centerline of NC Highway 70 and with the western line of the Stacy Farms Subdivision as recorded in Plat Book 4 on page 425 of the McDowell Deed Registry the following courses and distances:

South 16 degrees 45 minutes 36 seconds West 26.07 feet to an existing iron pin located just north of concrete headwall;
South 16 degrees 45 minutes 36 seconds West 122.16 feet to an iron pin set;
South 39 degrees 58 minutes 10 seconds East 47.99 feet to an existing iron pin;
South 40 degrees 18 minutes 29 seconds West 36.14 feet to an existing iron pin;
South 05 degrees 38 minutes 44 seconds West 64.16 feet to an existing iron pin in branch;
South 05 degrees 38 minutes 44 seconds West 68.23 feet to a point in branch;
South 04 degrees 22 minutes 02 seconds West 80.70 feet to a point in branch;
South 04 degrees 45 minutes 12 seconds West 58.70 feet to a point in branch;
South 02 degrees 08 minutes 36 seconds East 88.81 feet to an iron pin set;
South 02 degrees 19 minutes 27 seconds East 64.67 feet to an existing iron pin;
South 02 degrees 19 minutes 27 seconds East 15.16 feet to a point in the centerline of the creek;

thence with the centerline of said creek the following thirteen courses and distances:

North 65 degrees 53 minutes 50 seconds West 94.57 feet to a point;
South 60 degrees 22 minutes 46 seconds West 46.36 feet to a point;
North 35 degrees 00 minutes 30 seconds West 29.33 feet to a point
North 75 degrees 09 minutes 46 seconds West 50.33 feet to a point;
North 21 degrees 13 minutes 14 seconds West 38.58 feet to a point;
North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West 68.22 feet to a point located in the line of David Holland (Book 504 On Page 205);
North 80 degrees 32 minutes 50 seconds West 28.69 feet along the line of David Holland (Book 504 on Page 205) to a point;
North 11 degrees 10 minutes 46 seconds West 74.84 feet along the line of David Holland (Book 504 on Page 205) to a point, said point located in the line of David Holland (Book 470 on Page 450) and also being the Northern most corner of David Holland lands recorded in Deed Book 504 on Page 205 of said registry;

thence continuing with said creek centerline and the line of David Holland (Book 470 on Page 450) the following six courses and distances:

North 40 degrees 10 minutes 46 seconds East 67.00 feet to a point;
North 14 degrees 13 minutes 28 seconds East 115.07 feet to a point;
North 34 degrees 30 minutes 20 seconds West 111.99 feet to a point;
North 16 degrees 14 minutes 54 seconds West 67.20 feet to a point;
North 08 degrees 01 minutes 32 seconds West 130.28 feet to a point;
North 33 degrees 17 minutes 33 seconds West 63.11 feet to a magnetic nail set in a bridge over

center of creek, said bridge being a part of State Road No. 1747, Stacy Hill Road; thence with the centerline of State Road No. 1747, Stacy Hill Road, North 29 degrees 43 minutes 21 seconds East 103.17 feet to the BEGINNING.

TRACT TWO (2):

BEGINNING on an iron pin set, said iron pin set being located in the line of the Roger Andrews lands as recorded in Deed Book 435 on Page 311, Tract One (1) of the McDowell Public Registry and being located North 51 degrees 24 minutes 39 seconds East 33.34 feet from an existing iron pin found at a Poplar Tree witness, the same being the Southern most corner of the Kathleen D. Taylor lands recorded in Deed Book 555 on Page 368 of said registry and running thence south 58 degrees 51 minutes 51 seconds East 421.02 feet to an iron pin set; thence, North 46 degrees 37 minutes 22 seconds East 60.34 feet to an iron pin set, thence North 29 degrees 49 minutes 02 seconds West 115.51 feet to an iron pin set; thence North 34 degrees 48 minutes 23 seconds West 133.75 feet to an iron pin set; thence North 38 degrees 38 minutes 45 seconds West 110.30 feet to an iron pin set; thence North 44 degrees 26 minutes 32 seconds East 59.85 feet to an iron pin set at a power pole; thence North 27 degrees 55 minutes 58 seconds East 65.11 feet to a iron pin set; thence North 66 degrees 07 minutes 11 seconds East 134.25 feet to an iron pin set; thence South 54 degrees 50 minutes 55 seconds East 16.22 feet to a point in the center of a creek; thence continuing with said creek centerline the following six courses and distance:

North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West5 68.22 feet to a point located in the line of David Holland (Book 504 on Page 205);

thence continuing with the line of David Holland (Book 504 on Page 205) South 26 degrees 01 minutes 55 seconds East 84.52 feet to an existing iron pipe; thence South 26 degrees 01 minutes 55 seconds East 189.34 feet to an existing iron pipe in the northeastern margin of Andrews Road, a private soil roadway right of way; thence running along the eastern margin of Andrews Road South 36 degrees 55 minutes 54 seconds West 45.37 feet to an existing iron pin in the southeastern margin of Andrews Road, being the second (2nd) corner of Kathleen D. Taylor lands recorded in Book 555 on Page 368 of said registry; thence leaving said southeastern margin of Andrews Road and with the marked line of Kathleen D. Taylor (Book 555 on Page 368) South 51 degrees 24 minutes 39 seconds West 242.33 feet to the 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 16th day of May, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

E. Adopt Ordinance – Community Building Rates:

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 May 16, 2006.

PER DAY, PER EVENT CHARGE:
MAIN OR STREET LEVEL:
ASSEMBLY ROOM USE ONLY $100.00 KITCHEN AND ASSEMBLY ROOM $150.00
BASEMENT WITH KITCHEN $100.00

DEPOSIT FOR EACH USE: $200.00
(DEPOSITS WILL BE IN CASH UNLESS MADE MORE THAN 5 DAYS IN ADVANCE OF EVENT)

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATIONS AUTHORIZED BY THE CITY COUNCIL TO USE THE BUILDING ON A REGULAR SCHEDULE AND AT SPECIAL RATE:
PER DAY, PER EVENT CHARGE $ 25.00
NO DEPOSIT IS REQUIRED.

GIRL SCOUT ROOM:
PER DAY, PER EVENT CHARGE $ 25.00
A CASH DEPOSIT OF $25.00 IS REQUIRED
FOR EACH USE.

ADOPTED this the 16th day of May 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-05-16-2

ADOPT ORDINANCE – EASTFIELD PHASE ONE ANNEXATION:
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, 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 of statements presented at the public hearing held on May 2, 2006, 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 at the intersection of the current Marion Corporate Limits and the northwestern corner of Lot 5828 in Block 18 on McDowell County Tax Map 1711.05, thence following the northern boundary of Lots 5828, 5971, 6944, 7904, 7985, 8975, and 9947 all in Block 18 on McDowell County Tax Map 1711.05 and Lot 0915 in Block 28 on McDowell County Tax Map 1711.05 approximately 578.5 feet in a easterly direction to a point, said point being at the intersection of the northeast corner of said Lot 0915 and the western boundary of Lot 1000 in Block 29 on McDowell County Tax Map 1711.05 , thence following the western and then northern boundary of said Lot 1000, first approximately 8 feet in a northerly direct, then approximately 125 feet in a easterly direction to a point at the northeast corner of said Lot 1000, said point also being at the western margin of the right-of-way of Florence Avenue, thence crossing Florence Avenue in a straight line approximately 25 feet in a easterly direction to a point at the northwest corner of Lot 2965 in Block 28 on McDdowell County Tax Map 1711.05, thence following the northern boundary of said Lot 2965 approximately 125 feet to a point at the northeastern corner of said Lot 2965, thence following the eastern boundary of said Lot 2965 approximately 12 feet in a southerly direction to a point at the northwestern corner of Lot 3945 in Block 28 on McDowell County Tax Map 1711.05, thence following the northern boundary of said Lot 3945 and Lots 3995, 4946, and 4984 approximately 200 feet in a easterly direction to a point, said point being at the northeastern corner of said Lot 4984, said point also being the northwest corner of Lot 6161 in Block 29 on McDowell County Tax Map 1711.06, thence following the western boundary of said Lot 6161 in a southerly direction approximately 104.5 feet to a point, said point being at the northwestern corner of Lot 6910 in Block 28 on McDowell County Tax Map 1711.06, thence following the northern boundary of said Lot 6910 in a easterly direction approximately 197 feet to a point, said point being at the intersection of the northeast corner of said Lot 6910 and the western boundary of East Yancey Street (SR 1720), thence crossing SR 1720 in a straight line approximately 30 feet in a easterly direction to a point at the southwest corner of Lot 7090 in Block 29 on McDowell County Tax Map 1711.06, said point also being on the eastern boundary of East Yancey Street (SR 1720), thence following first the western boundary of said Lot 7090 then the northern boundary of said Lot 7090 then the eastern boundary of said Lot 7090 first approximately 94 feet in a northerly direction, then approximately 76 feet in a easterly direction then approximately 94 feet in a southerly direction to a point at the south east corner of said Lot 7090, said point also being on the northern boundary of Lot 8837 in Block 28 on McDowell County Tax Map 1711.06, thence following the northern boundary of said Lot 8837 approximately 107 feet in an easterly direction to a point at the northeast corner of said Lot 8837, thence following the eastern boundary of said

Lot 8837 and the eastern boundary of Lots 8715 and 8635 in Block 28 on McDowell County Tax Map 1711.06 approximately 343.9 feet in a southerly direction to a point at the intersection of the southeast corner of said Lot 8635 and the northern boundary of Eastfield School Road (SR 1827), thence crossing SR

1827 in a straight line in a southerly direction approximately 70 feet to a point, said point being at the intersection of the southern boundary of SR 1827 and the northeast corner of Lot 7864 in Block 28 on McDowell County Tax 1711.06, thence following the eastern boundary of said Lot 7564 and eastern boundary of Lots 7466, 6491 and 6395 in Block 28 on McDowell County Tax Map 1711.06 approximately 214.5 feet in a southerly direction to a point at the southeast corner of said Lot 6395, thence following the southern boundary of said Lot 6395 approximately 239 feet in a westerly direction then the eastern boundary of said Lot 6395 approximately 21 feet in a southerly direction to a point at the northeastern corner of Lot 5264 in Block 28 on McDowell County Tax Map 1711.06, thence following the eastern boundary of said Lot 5264 and the eastern boundary of Lot 5255 in Block 28 on McDowell County Tax Map 1711.06 approximately 187.5 feet to a point at the northeastern corner of said Lot 5155, said point also being on the northern boundary of Leach street, thence crossing Leach Street in a southerly direction in a straight line approximately 40 feet to a point, said point being at the intersection of the southern boundary of Leach Street and the northeastern corner of Lot 5043 in block 28 on McDowell County Tax Map 1711.06, then following the eastern boundary of said Lot 5043 and the eastern boundary of Lot 5940 in Block 27 on McDowell County Tax Map 1711.06 approximately 250 feet in a southerly direction to a point at the intersection at the southeast corner of said Lot 5940 and the northern boundary of SR 1718, thence crossing SR 1718 in a southerly direction in a straight line approximately 40 feet to a point at the intersection of the southern boundary of SR 1718 and the northeast corner of Lot 5732 in Block 27 on McDowell County Tax Map 1711.06, thence following the eastern boundary of said Lot 5732 approximately 164 feet in a southerly direction to a point at the southeast corner of said Lot 5732, said point also being at the northeast corner of Lot 3516 in Block 27 on McDowell County Tax Map 1711.05, thence following the eastern boundary of said Lot 3516 and the southern boundary of said Lot 3516 first approximately 181.6 feet in a southerly direction, then approximately 305.7 feet in a westerly direction to a point at the southwestern corner of said Lot 3516, said point also being on the current Marion Corporate Limits, thence following the current Marion Corporate Limits in a generally westerly direction approximately 1,706.00 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 7th day of February, 2006, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 5,539.20 feet, of which 1,706.00 feet (or 30.8%) coincides with the City boundary. Therefore, at least one eighth (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 87.5% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 100.0% 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 February 21, 2006 and filed in the office of the Clerk for public inspection on February 22, 2006.

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, 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. (No water and sewer extensions are necessary in the area to be annexed).

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 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 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, 2006.

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 16th day of May 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

APPROVED AS TO FORM:

City Attorney

Ordinance Number: O-06-05-16-1

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

I, _____, Notary Public of McDowell County, North Carolina, do hereby certify that before me this day personally appeared J. Robert Boyette, who, after first being duly sworn, deposes and says that he is acquainted with A. Everette Clark, who is Mayor of the City of Marion, North Carolina, the corporation executing the foregoing Ordinance to Extend the Corporate Limits of the City of Marion, North Carolina, that he knows the common seal of the City of Marion and that he, the said J. Robert Bnoyette,, Clerk of the City Council of the said City, that he saw the foregoing instrument signed in the name of said corporation by A. Everette Clark, Mayor, as aforesaid, that he saw the Mayor affix the common seal of the said corporation thereto, and that he, the said J. Robert Boyette, Clerk as aforesaid signed his name in attest action of execution thereof, all ordered by the City Council of the City of Marion, North Carolina, for purposes therein set forth,

WITNESS my hand this the _____ day of _____ 2006

(Seal)

_____
Notary Public

My Commission Expires: _____

WORD OF APPRECIATION – MS. NANCY GUTHRIE – EAST MCDOWELL JUNIOR HIGH SCHOOL: -Ms. Nancy Guthrie, Principal of East McDowell Junior School appeared before Council to thank Police Chief Mika Elliott and the Marion Police Department for working with the School regarding threats of potential violence inside the school that prompted the school to have a lockdown the previous week.

Ms. Guthrie expressed words of high praise and compliments of Chief Elliott and his officers, stating that the day could not have gone any better.

Mayor Clark and Council Members thanked Ms. Guthrie for her co-operation with the City as well.

Mayor Clark stated that he is very proud of the Police Department, especially Chief Elliott.

Chief Elliott stated that the success stemmed from total cooperation from the School System and other law enforcement agencies, including the Sheriff's Department, SBI and the Highway Patrol.

PUBLIC HEARING – ZONING ORDINANCE AMENDMENT: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that when the B-1 Neighborhood Business District was adopted in 2004, regulations governing development standards for landscaping and buffering in the B-1 District were not included. This proposed amendment would provide a mechanism for which to regulate landscaping and

buffering development standards in the B-1 Neighborhood Business District.

There were no citizens present to discuss this issue.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, 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. *Zoning*, Article VII. *General Provisions*, Section 707.1(3) General Provisions of Landscaping and Buffering is amended by adding the following:

Section 707. Landscaping and buffering

707.1 General Provisions

(3) Landscape Plan Required - A landscape plan is required for:
- (A) Any new development in the B-1, 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 B-1, 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 B-1, 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.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 16th day of May 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance number: O-06-05-16-03

DISCUSSION – NEW CITY SIGN: City Planner Heather Cotton presented Council with the final design of the new proposed City gateway sign, to be placed at five major entrances to the City. Councilman Little stated that he liked the changes except for adding the color blue to the bottom of the sign.

All Council members present agreed by consensus with the final sign design contingent upon adding blue to the bottom of the sign.

City staff will work with Custom Shirts & Design to have the final signs made and installed.

REQUEST – FINANCING OF WATER/SEWER CONNECTION: The City Manager advised that Mr. Ae Ja Kim, owner of Ponderosa Park Mobile Home Park on US 221 North Business immediately north of the Catawba River, has requested that he be allowed to finance his water and sewer connections for the mobile home park for a period of 24 months and therefore be treated as a residential customer. The City Manager stated that he had initially thought that Mr. Kim should be treated as a business customer and be allowed to finance his water and sewer connections for a maximum period of 12 months. Mr. Kim has stated that he needs the full 24 month period to pay for the connections. The City Manager advised that, in exchange for an easement going for hundreds of feet across his property, Mr. Kim was given 10 free water and sewer connections. Mr. Kim has refused to consider a master meter for this 18 unit mobile home park and will therefore need to purchase eight connections, at a cost of over $32,000.

The City Manager suggested that the City require Mr. Kim to put the eight financed connections in his name and understand that the water service would be cut off to the eight units if monthly payments are not made.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted unanimously to approve the request of Mr. Ae Ja Kim to finance his water and sewer connections for Ponderosa Park Mobile Home Park on US 221 North Business for a period of 24 months and therefore be treated as a residential customer.

PUBLIC COMMENT PERIOD: There were no unscheduled guests wishing to speak at this meeting.

PRESENTATION – FIRE CHIEF JIM NEAL – FIRST RESPONDER PROGRTAM/VOLUNTEER FIREFIGHTER ISSUES: The City Manager presented Council with information from Fire Chief Neal on a proposed First Responder Program and regarding volunteer firefighter compensation. Chief Neal was also present for this meeting and advised that several volunteer firefighters had requested that they be allowed to be first responders as part of the Marion Fire Department. Chief Neal stated that he had also been approached by EMS personnel expressing the desire for the Marion Fire Department to be in the First Responder program as well. Chief Neal stated that he could incorporate the First Responder program into the Fire Department with minimal impact on the day to day operation of the department, since the program would mainly involve response by volunteers in their own private vehicles. The Fire Department is already responding to serious auto accidents and have assisted the EMS in the past by providing help with loading patients and driving ambulances when both paramedics are required to be in the rear of the unit with patients. At least seven of the volunteer firemen are already first responder qualified. Volunteers would require 60 hours of training. Chief Neal presented the County's Guidelines for First Responders and suggested its adoption.

Mayor Clark asked if there would be a liability issue for the City.

Chief Neal advised that he had contacted McDowell Insurance and the City is already covered for this type of activity.

Councilman Little suggested that the County's First Responder Guidelines be modified somewhat for City use to further explain technical terms and to spell out acronyms.

A discussion followed.

It was the consensus of Council to tentatively approve this request, contingent on final review of the First Responder Guidelines. The City Manager stated that Chief Neal could revise the guidelines and that this matter could be placed on a June Council meeting agenda for further discussion and possible approval.

Chief Neal also reported to Council that the call volume for the Fire Department has gone from 228 calls in 1994 to 384 calls in 2003, 526 calls in 2004 and 552 calls in 2005. The Fire Department has responded to 193 calls from January through April 2006, which will likely lead to another record year of calls. Chief Neal stated that these figures indicate that the City is asking for much more time and response from the volunteers. Chief Neal advised that he feels it is time to consider some sort of incentive plan to reimburse the volunteers for their fuel expense.

Chief Neal suggests that, based upon a Statewide survey he conducted, Council adopt an incentive pay for volunteers and recommends the following plan:

$3.00 for all non-structure and mutual aid calls excluding first responder calls

$5.00 for all structure calls

Chief Neal reported that some departments cap the amount they will pay at less than $600.00 to avoid having to issue 1099's. With no cap, based on last year's call volume, the proposed pay plan would cost $18,000 per year.

Councilman Cuthbertson suggested that inside the City Limits, volunteers be reimbursed $3.00 per call and that they be paid $5.00 per call in the Marion Area Fire District, and that amounts be paid quarterly.

Councilman Little proposed that the payments be called fuel reimbursement.

Councilman Little stated that there needs to be a cap per person and feels that $600.00 is reasonable.

Councilman Owenby asked how the Fire Department would keep up with who responds to each call. Chief Neal advised that the Fire Department already takes roll at each call.

A discussion followed.

It was the consensus of Council that Chief Neal would put together figures for Councilman Cuthbertson's alternate method of payment and that the idea would be further discussed at the budget workshop scheduled for May 30, 2006 or at a Regular Council Meeting.

REQUEST – HANDICAPPED PARKING SPACE – WEST COURT STREET: The City Manager advised that the Street Committee met on May 5th, to further review the request of Mr. Arnold Cardell, owner of the apartment building at West Court and Burgin Streets, requesting a handicapped parking space on West Court Street for one of his tenants. It has been determined that the tenant in question at Apartment 1, Mr. Cox, drives a white Oldsmobile and possesses a valid handicapped placard. The City Manager stated that the Street Committee met with Mr. Cox on May 5 and learned that he has one leg and a heart condition that prevents him from walking more than about 50 feet at a time.

The City Manager stated that the Street Committee had wanted a ruling from DOT regarding whether State approval was needed for a handicapped parking designation on a State maintained road such as West Court Street and also a legal opinion from the City Attorney on whether City Council could approval a parking space for an individual. The City Manager stated that he had spoken to DOT Division Traffic Engineer Mark Teague and that Mr. Teague had indicated that DOT did not get involved in handicapped parking designations on State maintained roads. Mr. Teague stated that DOT simply made decisions on whether parking was permissible in a certain location and that municipalities could freely decide how to regulate the parking further.

The City Manager noted that the City Attorney has advised that a space approved solely for the benefit of an individual was not advisable, but that if City Council could justify the handicapped parking space as serving the street or surrounding area, it would be legally defensible.

A discussion was held regarding the safety of placing a handicapped parking space on a street that would require a person to open a car door into traffic.

The Street Committee members gave their opinions on the request. Councilman Martin stated that he had compassion for the man, but would not want to encourage someone to use a handicapped space if it could be dangerous. Councilman Martin stated that he would be comfortable going with the majority opinion of Council on this matter. Councilman Owenby stated that he still viewed this request as primarily benefitting an individual, something Council had sought to avoid in the past. Councilman Owenby stated that he would therefore have to opposed the request.

Councilman Little also stated that he could not support the request.

A discussion followed.

Mayor Clark asked for a motion on the matter. No motions were made.

It was the consensus of those members of Council present to take no action on this request.

APPOINTMENT – TREE BOARD: The City Manager advised that the City Council, upon recommendation from the Tree Board, had tentatively appointed Ms. Annie Lee Epley to the Tree Board contingent upon a determination regarding whether Ms. Epley still resided inside the City.

The City Manager noted that he had checked with Ms. Epley and that she had indeed moved outside the City Limits. The City Manager stated that the City Code required Tree Board voting members to reside inside the City and that Ms. Epley asked City Council not to change the residency requirement on her account.

It was stated that Ms. Nancy Clark was willing to serve on the Tree Board.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to appoint Ms. Nancy Clark to a three year term on the Tree Board, said term to end June 30, 2009.

WWTP – BID PROPOSALS - UTILITY VEHICLE: The City Manager presented Council with a memo from Ms. Brenda Williams with the following proposals for a utility vehicle for the Wastewater Treatment Plant.

Stamey Chrysler Jeep Dodge	2006 Jeep Liberty Sport	$21,236.10
Legendary Ford	2006 Ford Explorer 4x4	$23,918.60
Jim Cook Chevrolet	2006 Chevrolet Trail Blazer	$23,314.00

The City Manager noted that Larry Carver has stated that he had looked at the Jeep Liberty Sport and feels that it is to small for the Wastewater Treatment Plant's needs, and would recommend that Council approve the purchase of the Chevrolet Trail Blazer in the amount of $23,314.00, which is below the $24,000 amount budgeted for this truck.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to award the contract for the purchase of a sport utility vehicle for the Wastewater Treatment Plant to Jim Cook Chevrolet in the amount of $23,314.00 for a 2006 Chevrolet Trail Blazer.

JOHNSON PRICE AND SPRINKLE – 2005-06 AUDIT CONTRACT: The City Manager presented Council with a proposed contract for the 2005-06 City audit from Johnson, Price & Sprinkle in the amount of $17,075, which is up slightly from the 2004-05 audit cost of $16,500. The City Manager noted that the increased audit cost is still down substantially from the amount of $25,300 that the City paid for the audit prior to the arrival of Finance Director Harriett Thomas.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to approve the contract from Johnson, Price & Sprinkle for the 2005-06 City audit in the amount of $17,075.00.

DISCUSSION – MAUSOLEUM PLAQUES: Mayor Clark advised that he had been approached by persons wishing to place military plaques on the City's mausoleum. Mayor Clark stated that he realized that City policy states that the City will order each plaque and place them on the mausoleum and that each plaque will be in uniform size and wording, but that the City should allow exceptions for these military plaques.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, those members of Council present voted to allow military plaques to be placed on the mausoleums, subject to City staff verifying that the plaques will fit on the mausoleum. This will be the only exception to current policy.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

A test speed hump has been set up on the Public Works Facility Property. The City Manager encouraged Council Members go by and see if this is indeed what they have in mind to try and slow traffic down on some of our through streets. The City Manager stated that he would seek approval of the speed hump design and a policy to guide placement of speed humps at a June Council meeting.

Mayor Clark stated that he had received a complaint from the property owner at the intersection of East Court and Garden Streets regarding traffic cutting through their parking lot and/or speeding to avoid the traffic signal.

Chief Elliott advised that he is not aware of a law against cutting through parking lots. Council members suggested that the property owner place speed humps on the property.

The City Manager advised that the County has prepared a 115 page Hazard Mitigation Plan for Council's review. Mayor Clark expressed concern about some of the wording in the document. The City Manager will look through the plan and report back to Council.

The City Manager advised that a letter has been received from Mr. Robert Pressley, a Norfolk Southern consultant, concerning the City's six conditions on the proposed closing of the Clay Street Railroad Crossing, proposing a meeting among City representatives, Norfolk Southern and the DOT Rail Division.

Council agreed to have the Mayor, Street Committee and City Manager represent the City at this meeting and begin negotiations.

The City Manager noted that a property/liability insurance quote has been received from the North Carolina League of Municipalities, in the amount of $87,079, which is $16,075, or 22.6% higher, than what the City is paying Millenium/Argonaut Insurance (through McDowell Insurance) this year. The City Manager stated that he is waiting to hear from Marsh Dark, the City's agent with McDowell Insurance, who is seeking a renewal quote from Millenium/Argonaut.

The City Manager stated that the City has sent in a claim for six years of back Charter cable franchise fees in the amount of $38,942. Of this amount, $26,021 is attributable to the past three years (2003-2005) and $12,921 to the 2000-2002 time period. At the last Council meeting, Council agreed not to seek anything beyond three years prior. Charter reviewed the City's request and sent a letter offering to immediately pay within 30 days the sum of $22,601, which is essentially the $26,021 for 2003-2005 less the interest for this time period ($3,184) that Charter is declining to pay. The City Manager stated that he would work with the City's consultant to pursue this interest payment and present the final recommended settlement to Council in June.

The City Manager reported that the City's recent Employee Health Fair was a great success, with over 75 percent participation.

The City Manager also advised that the City's recent Annual Open House was a huge success and that he would seek to invite Baxter Healthcare representatives to a Council Meeting, to publicly thank them for all they have done to assist with our open house each year.

The City Manager presented Council with the 2006-07 proposed City budget which he said was not complete until the City's final medical insurance rates are set by the North Carolina League of Municipalities later in the week.

CLOSING COMMENTS: Councilman Cuthbertson inquired about the status of the request by Mr. and Mrs. George Walden for water and sewer service to their property on Perry Street. The City Manager advised that the property in the Eastfield area that the Waldens had questioned is already on City water and sewer, according to City utility billing records, and that he had left the Waldens a message advising them that if they had further questions to give him a call.

CLOSED SESSION – UNDER N.C.G.S 143-318.11(A)(5) TO DISCUSS A MATTER INVOLVING THE ACQUISITION OF REAL ESTATE AND UNDER N.C.G.S. 143-318.11(A)(6) TO DISCUSS A PERSONNEL MATTER: 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)(5) to discuss a matter involving the acquisition of real estate and in accordance with N.C.G.S. 143-318.11(a)(6) to discuss a personnel 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 during the Closed Session.

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
COUNTY OF McDOWELL
CITY OF MARION

The City Council for the City of Marion held a Special Meeting on Tuesday evening, May 30, 2006 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 the meeting at 6:45 P.M. due to a work conflict.

OTHERS PRESENT: Bob Boyette, City Manager

BUDGET WORKSHOP: Mayor Clark stated that the purpose of this meeting was to review the proposed 2006-07 City budget. The City Manager provided an overview of his proposed 2006-07 City budget. The budget was reviewed in detail by the Mayor and City Council and the City Manager 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 close to self supporting.

The public hearing on the budget and consideration of adoption of the 2006-07 City budget will be held on Tuesday, June 20, 2006 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
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 6, 2006 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 Billy Martin, Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

Mayor Clark arrived for this meeting at 8:15 due to attending a Graduation exercise with his granddaughter.

Mayor Pro Tem Steve Little presided over this meeting until Mayor Clark arrived at 8:15 PM.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Richard McMillan, Public Works Director/Engineer; Jim Neal, Fire Chief; Kellie Duncan, Police Corporal; Freddie Killough, Executive Director, Marion Downtown Business Association; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Clara Andrews 60 Doyle Street, Marion, NC; Chris Goudreau 320 South Garden Street, Marion, NC; Brian McKinney 30 Palmer Drive, Marion; Maria D. Astello, Marion, NC 28752.

CONSENT AGENDA: Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - May 16, 2006 Regular and Closed Session and
May 30, 2006 Special Called Meeting Minutes

B. Approve Pay Grades

GRADE	CLASSIFICATION	HIRING RATE	MAXIMUM
7	Equipment Operator I Maintenance Worker Receptionist	20,697	31,045
8	Animal Control and Parking Officer Billing and Collections Clerk Collection/Distribution Technician Equipment Operator II Inventory Specialist Meter Reader Telecommunicator Treatment Plant Operator Trainee Zoning & Codes Enforcement Officer	21,732	32,598
9	Administrative Support Specialist Treatment Plant Operator	22,819	34,228
10	Maintenance Technician/Plant Operator	23,959	35,940
11	Crew Leader/Equipment Operator Fire Inspector Fleet Mechanic Laboratory Technician Lead Telecommunicator Senior Treatment Plant Operator Tax Collector	25,158	37,736
12	Accounting Technician Administrative Assistant Fire Equipment Officer / Field Supervisor Police Officer Purchasing Agent	26,415	39,623
13	Fleet Maintenance Supervisor/Mechanic Payroll and Personnel Technician Streets Crew Leader I /Maintenance Technician	27,737	41,605

14	Crew Leader/ Equipment Operator II Laboratory Supervisor Police Assistant Shift Supervisor Police Officer - Special Assignment Streets Crew Leader II /Maintenance Technician	29,123	43,686
15	Administrative Officer Assistant Water Utility Maintenance Superintendent Police Investigator Police Shift Supervisor Sanitation Superintendent	30,580	45,870
16	Assistant Fire Chief	32,109	48,164
17	Investigations Supervisor Public Works Superintendent Water Utility Maintenance Superintendent	33,714	50,571
18	Building Codes Inspector City Planner Water Treatment Plant Superintendent	35,400	53,101
19	Patrol Commander Wastewater Collection/Treatment Superintendent	37,171	55,756
20	Public Utilities/Projects Director	39,029	58,544
22	Finance Director Fire Chief	43,030	64,544
24	Police Chief Public Works Director	47,440	71,161

C. Approve Resolution Adopting the Water and Sewer Asset Management Plan

Resolution to Accept the Water and Sewer Asset Management Plan

WHEREAS, the City of Marion recognizes the need for a Water and Sewer Asset Management Plan to ensure that assets are operated and maintained in a sustainable and cost effective manner so that they continue to provide the required level of service for current and future users, and

WHEREAS, the City of Marion recognizes this Water and Sewer Asset Management Plan provides a detailed description of all components of the water and sewer systems; provides a valuation of the water and sewer system as well as its individual components; provides financial forecasts of expenditures based on the estimated age and future life of components; and creates a timeline for improvements that will ensure financial resources are used wisely, and

WHEREAS, the City of Marion's staff worked in conjunction with Martin-McGill, Inc. to compile the Water and Sewer Asset Management Plan using audited financial statements, historic records, and personal knowledge.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION THAT:

Section 1. The City of Marion City Council does hereby formally adopt and endorse the Water and Sewer Asset Management Plan recognizing that it puts in place a system that will improve documentation, maintain an asset inventory, asset valuation assessment, and cost monitoring and control.

Section 2. This resolution shall become effective upon its adoption.

Adopted this the 6th day of June, 2006.

A. Everette Clark, Mayor

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-06-06-06-1

D. Amended Firing Range 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, or 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 hall any person under 18 years of age be allowed on the firing range. Person 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 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 o 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 approvided 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.
12. **All persons engaged in firing weapons or persons in the area of the range while weapons are being fired must wear hearing and eye protection. The hearing and eye protection will be supplied by the person(s) or group(s) that requested the use of the firing range.**

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, 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, expenses, 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, proceeding, demands, assessments, judgments, costs, and expenses, and which liabilities or claims against the Cit 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

_____

Print Name

City Department/Group/Agency Name

E. Approve Settlement with Charter Communications

A settlement in the amount of $22,601 with Charter Communications for payment of back franchise fees was approved by Council.

F. Approve Agreement with McDowell Tech – Use of City Firing Range

The use of the City's Firing Range by McDowell Technical Community College for training classes was approved, for the time period of June 1, 2006 through May 31, 2007. A copy of the agreement is on file at City Hall.

RECOGNITION – POLICE OFFICER CERTIFICATION: Police Chief Mika Elliott presented Police Corporal Kellie Duncan with her Intermediate Law Enforcement Certificate from the State of North Carolina. Chief Elliott stated that Cpl. Duncan was a valued member of the Police Department and had worked hard to complete her education and to earn this certification.

Mayor Pro Tem Little and Council members commended Cpl. Duncan for her hard work and the service she has given the City.

PUBLIC HEARING – ASSIGN ZONING TO EASTFIELD PHASE ONE ANNEXATION AREA: Mayor Pro Tem Steve Little opened the Public Hearing.

City Planner Heather Cotton advised that the area to be zoned includes all properties within the Eastfield Phase I Annexation. (See attached legal description Appendix A.) Ms. Cotton stated that the Planning Board unanimously voted at their June 1 meeting to recommend R-2 General Residential zoning for this area, to be consistent with zoning in the East Marion and Clinchfield neighborhoods adjacent to Eastfield. Ms. Cotton outlined some of the permitted uses in the R-2 District.

A citizen from the Eastfield Community appeared to inquire about the public hearing. Ms. Cotton explained the purpose of the public hearing and that zoning must be assigned to an area annexed into the City. There were no other citizens present to discuss this issue.

Mayor Pro Tem closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, 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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map to include Eastfield Phase I Annexation Territory in the R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on June 1, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective July 1, 2006.

Adopted this the 6th day of June 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: 06-06-06-01

PUBLIC HEARING – ZONING AMENDMENT – C-1 CENTRAL BUSINESS DISTRICT: Mayor Pro Tem Steve Little opened the Public Hearing.

City Planner Heather Cotton advised that on April 6, 2006, a request by the City of Marion to amend to the Official Zoning Map was heard by the Planning Board to rezone properties from the C-2 General Zoning District to the C-1 Central Business District. One of the subject properties included was the site of the existing County EMS facility. Although fire and police stations and public buildings are a permitted use within the C-1 Zoning District, EMS facilities were not an explicit use. Ms. Cotton stated that the Planning Board requested that Staff revise Section 803.2(15) of the Zoning Ordinance to clarify that such emergency related facilities are permitted within the C-1 Zoning District. Ms. Cotton stated that she had proposed the same language for the OI and R-2 districts as well, to be consistent.

Ms. Cotton stated that she subsequently reviewed the North American Industry Classification System (NAICS) and the National Land Based Classification System (LBCS) to formulate language modeled after national classification standards for such uses.

A copy of the Ordinance to amend Section 803.2(15) was presented to Council for review.

Ms. Cotton stated that the Planning Board unanimously recommended approval of this ordinance at their meeting on June 1.

There were no citizens present to discuss this issue.

Mayor Pro Tem Little Closed the Public Hearing

Upon a motion by Councilman Owenby, 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. *Zoning*, Article VIII. *Use Requirements By District*, Section 802.3 *Special Exceptions* of R-2 General Residential District is amended by the following:

802.3 Special Exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance.

(5) Public Safety/Emergency Related Facilities provided that a 20-foot vegetative buffer is approved by the Board of Adjustment after receiving tree-planting recommendations from the City of Marion Tree Board.

Section 3 Appendix A. *Zoning*, Article VIII. *Use Requirements By District*, Section 803.2 *Permitted Uses* of C-1 Central Business District is amended by the following:

803.2 Permitted uses. Within the C-1 Central Business District the following uses shall be permitted:

(15) Public Safety/Emergency Related Facilities

Section 4. Appendix A. *Zoning*, Article VIII. *Use Requirements By District*, Section 806.3 *Special Exceptions* of O-I Office and Institutional District is amended by the following:

806.3 Special Exceptions. The following uses are permitted as special exceptions as provided for in Article XII, Section 1204.2 of this Ordinance.

(3) Public Safety/Emergency Related Facilities

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of June 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-06-06-06-02

PUBLIC HEARING – ZONING AMENDMENT – ROOF TOP SIGNAGE REVISIONS: Mayor Pro Tem Steve Little opened the Public Hearing.

City Planner Heather Cotton advised that on May 4, 2006, an appeal to the Board of Adjustment was made in relation to roof-top signage. The Planning Board approved the appeal and requested staff to amend the Zoning Ordinance to allow for certain types of roof-top signage.

Ms. Cotton stated that she reviewed regulations in other municipalities with regards to roof top signage as well as model guidelines published by the American Planning Association. Based on the analysis, she recommended a revision to Section 706 *Signs* regulating on-premises roof signs specifically within the C-2 General Commercial Zoning District.

In addition, Ms. Cotton reported that a second amendment is being proposed to modify regulations for off-premises advertising signs to prohibit a new trend commonly referred to as "electronic message boards" which are replacing many older signs. Many municipalities across the state have been questioning the most appropriate means for controlling this type of signage for public safety reasons as well as from complaints regarding nuisance and aesthetics related to light pollution. As a result of this trend and the limited control municipalities have in relation to existing off-premises advertising, Ms. Cotton stated that she had recommended that the City take a proactive and direct approach in regulating "electronic message boards", which are becoming more sophisticated than flashing lights or moving parts. Staff has included language in the proposed ordinance that would effectively prohibit manually activated and computer activated off-premises advertising signs as well as specific definitions regarding these types of signs.

Ms. Cotton stated that the final amendment is for the inclusion of specific definitions which are commonly referenced with Section 706 and help to clarify specific regulations.

A copy of the Ordinance amendments was presented to Council for review.

Ms. Cotton advised that the Planning Board unanimously recommended approval of these amendments at their meeting on June 1.

There were no Citizens present for this meeting.

Mayor Pro Tem Little Closed the Public Hearing

Upon a Motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to approve this request 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. *Zoning*, Article VII. *General Provisions*, Section 706 *Signs* is amended as follows:

706. Signs, billboards and other advertising structures.

706.1 Definitions. The following words or terms have the meaning as herein defined:

(1) **Awning Sign.** A sign attached to, affixed to, or painted on an awning.

(2) **Computer-controlled variable message electronic sign.** Signs where informational content can be changed or altered by means of computer-driven electronic impulses.

(3) **Electronically activated sign.** Sign where alphabetic, pictographic, or symbolic informational content can be changed or altered on a fixed display surface composed of electronically illuminated or mechanically driven changeable segments including fixed-message electronic signs and computer-controlled variable message electronic signs.

(4) **Fixed-message electronic sign.** Sings where basic informational content has been preprogrammed to include only certain types of information projections, such as time, temperature, predictable traffic conditions, or other content subject to prior programming.

(5) **Freestanding sign.** A sign on a frame, pole or other support structure not attached to any building.

(6) **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.

(7) **Manually activated sign.** Signs whose alphabetic, pictographic, or symbolic informational content can be changed or altered by manual means.

(8) **Monument sign.** A freestanding sign supported primarily by an internal structural framework or integrated into landscaping or other solid structural features other than support poles.

(9) **Roof sign.** A sign erected or attached to a roof, in addition to signs that project beyond the lowest point of the roofline, parapet, or fascia of the building.

(10) **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.

(11) **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.

(12) **Sign, building-attached.** 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.

(13) **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.

(14) **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.

(15) **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.

(16) **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.

(17) **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.

(18) **Sign, On-premise.** A permanent sign which is located on the same lot as the business or establishment that it is advertising for.

(19) **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.

(20) **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. (Amended 9-7-04.)

(21) **Sign, projecting.** 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.

(22) **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.

(23) **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."

(24) **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.

(25) **Window Sign.** A Sign posted, painted, placed, or affixed to the interior or exterior of a window.

(26) **Wall Sign.** A sign mounted flat against or painted on the wall of a building or structure with the exposed face of the sign in a plane parallel to the face of the wall.

***

706.11 The regulations for On-premises signs and other advertising structures are enumerated below:

(M) Roof signs shall be permitted within the C-2 General Business District provided that the following conditions are met:

1. The sign does not exceed four (4) feet in height from the attached point of the roof.
2. The sign is centered proportionately and does not exceed fifty percent of the total linear feet of the building in size.
3. The sign does not extend beyond the highest point of the roof.
4. No more than one (1) roof sign shall be permitted per building or structure.
5. No sign shall be permitted that can be manually activated or electronically activated.

***

Section 706.12 The regulations for Off-premises signs, billboards and other advertising structures are enumerated below:

(2) Signs prohibited. The following off-premises signs are prohibited within the jurisdiction of this Ordinance:

(K) Signs that are manually activated or electronically activated.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of June 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-06-06-06-03

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

REQUEST – SEWER SERVICE – RECOMMENDATION FROM UTILITY COMMITTEE: The City Manager advised that at the last Council meeting Mr. Brian Kinney had presented a request to approve requesting sewer only service to his property on Highway 70 West. Council directed this request to be reviewed by the City Utility Committee.

The City Manager advised that the Utility Committee met on May 23 and discussed several options for sewer only customers such as Mr. McKinney.

The City Manager advised that it is the recommendation of the Utility Committee to approve Mr. McKinney's request with the following conditions:

- Mr. McKinney, as property owner, must put all bills in his name and be treated as a master meter customer.
- Mr. McKinney must provide a deposit equal to six months worth of projected monthly sewer bills.
- Double sewer rates will be charged (above the existing higher outside fee).
- Mr. McKinney must agree to construct and dedicate to the City, along with a 20 foot permanent easement, a public sewer line of sufficient size (likely 8") extending from the existing public sewer line near the river to Highway 70. Mr. McKinney cold chose which side of his property on which to place this sewer line. The sewer line will provide the city with a way to serve properties along Highway 70 between the buck Creek and Catawba River Overflow bridges.

The Utility Committee did state that some negotiation could be considered on the final item, if necessary, to allow the City to pick up the difference in material costs between the 6" sewer line Mr. McKinney would need to serve his property and the 8" required size of a public sewer line.

The City Manager stated that Public Works Director had gone over these proposed conditions with Mr. McKinney. Mayor Pro Tem Little asked Mr. McKinney if he agreed with these conditions on the sewer connection. Mr. McKinney stated that he had no objection to the listed conditions. Mr. McKinney asked what kind of easement would be involved. The City Manager stated that the City generally asked for 20 foot permanent easement.

Mayor Pro Tem Little stated that when the Utility Committee met to review this request, it was with the intention to make this request work.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of Utility Committee to approve sewer only service to the property of Mr. Brian McKinney at 1423 US Highway 70 West, contingent upon the following conditions:

- Mr. McKinney, as property owner, must put all bills in his name and be treated as a master meter customer.
- Mr. McKinney must provide a deposit equal to six months worth of projected monthly sewer bills.
- Double sewer rates will be charged (above the existing higher outside fee).
- Mr. McKinney must agree to construct and dedicate to the City, along with a 20 foot permanent easement, a public seer line of sufficient size (likely 8") extending from the existing public sewer line near the river to Highway 70. Mr. McKinney cold chose which side of his property on which to place this sewer line. The sewer line will provide the city with a way to serve properties along Highway 70 between the buck Creek and Catawba River Overflow bridges.

REQUEST – MUSIC PERFORMANCES – DEPOT: The City Manager commended Marion Downtown Business Association Executive Director Freddie Killough for her efforts to secure $220,000 in grant funding and participation in the N.C. STEP Program with the N.C. Rural Economic development Center. The City Manager also commended Ms. Killough for the recent Memorial Day bluegrass concert she had arranged and advised that the event was so successful that additional events were now being requested.

Ms. Killough was present for this meeting and advised that this year on Memorial Day there were over 150 persons present at the bluegrass concert at the Depot. Ms. Killough stated that Mr. Gene Padgett was a part of this event and had requested permission to build on the bluegrass concert held with an additional performances on Monday evenings. These events would be held outside weather permitting and would involve one City employee running the sound system for about four hours of overtime. The first event would be proposed for Monday, June 26, with additional events possible.

The City Manager recommended approving one event on June 26 to see how the public responds on a non-holiday date.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, Council voted unanimously to approve the request by Mr. Gene Padgett to hold a bluegrass concert at the Depot on Monday, June 26, with the Depot rental paid by the City and City staff support for the event.

PRESENTATION – FIRE CHIEF JIM NEAL – FIRST RESPONDER PROGRAM: The City

Manager reported that he and Fire Chief Jim Neal had revised the First Responder Guidelines, as directed by Council, to remove language not needed by the City and to spell out acronyms. The City Manager proposed a July 1 starting date for the First Responder Program.

Councilman Edwards stated that he thought the First Responder Program was a great idea and noted that he wished this service had been available when Dr. Jim Wheeler passed away a few years ago after suffering a heart attack at home.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to approve the First Responder Standard Operations Guidelines, to take effect on July 1, 2006, as follows:

CITY OF MARION
FIRST RESPONDER STANDARD
OPERATIONS GUIDELINES

FIRST RESPONDER DEFINITIONS PAGE

"CPR" – cardio pulmonary resuscitation

"AED" - automated external defibrillator

"O2 therapy" – to administer oxygen

"LZ Operations" – establishing and maintaining a landing zone for helicopter operations

Call Priority – First responder calls initiated by the emergency operations center as either C, D or E allow the first responder to use a flashing red light in his/her vehicle. The higher the priority code, the greater the life hazard.

E.O.C. – Emergency Operation Center

E.M.S. – Emergency Management Service

E.V.O.C. – Emergency Vehicle Operator Course

PURPOSE

Basics

The purpose of the City of Marion First Responder program is to assist the McDowell County Emergency Medical Service (EMS) in medical intervention. The City's First Responder Program predetermines actions to be taken by trained personnel to enhance patient care in the field.

Concept of Operation

1. The 9-1-1 Emergency Medical Dispatch System is the first intervention in a medical emergency.

2. The First Responder may or may not be the first arriving responder.

3. The First Responder is to function within the local incident command system.

4. The First Responder interventions could include but are not limited to:

   - Patient Assessment
   - Blood Pressure Checks
   - Respiration Checks
   - First Aid Procedures
   - Cardiopulmonary Resuscitation (CPR)
   - Automated External Defibrillation (AED)
   - Oxygen Therapy (O2 Therapy)
   - Vehicle Extrication
   - General Assistance

- Serving as Safety Officer
- Fire Extinguisher Operation
- Operation of Emergency Vehicles
- Landing Zone (LZ) Operations
- Assisting in Locating Incidents
- Assisting with traffic control at motor vehicle accidents
- Other

Guidelines

1. A City of Marion First Responder must belong to the Marion Fire Department.

2. A First Responder must have successfully completed the 60 hour First Responder course.

3. First Responders shall be dispatched according to the Emergency Medical Dispatch Priority System. First Responder may use red lights on personal vehicles when responding to a call that has been dispatched as priority C, D or E.

4. First Responders should display some type of identification on their person identifying them as a First Responder.

5. First Responders should give special attention and care in an approach to a residence, especially at night, and should carry and use a flashlight.

6. Identification numbers used by First Responders will be those assigned by the Marion Fire Department.

7. First Responders may communicate to the responding EMS crew patient information such as vital signs, type of injuries, etc., as well as directions that will assist the ambulance crew to find the location of the incident.

8. First Responders may suggest/recommend to responding EMS crews the need for emergency air transport. The First Responder should give the responding EMS crew accurate medical information. Air transports should not be recommended by any person not on the scene.

9. A response log will be kept at the Marion Fire Department.

10. Responses that require the use of an Automated External Defibrillator (AED) are to be documented on the standard AED form provided by the EMS. A copy is to be provided to EMS within twenty-four (24) hours of the incident.

11. It is recommended that only two first responders be with the patient at one time unless absolutely necessary, including in the residence and ambulance, unless requested by the EMS crew. One person should act as a "Safety Officer" remaining at the building doorway and/or scene. This person can act as not only a safety officer but can relay messages to people on the scene.

12. First Responders are not to chase ambulances to the scene or hospital.

13. First Responders driving or riding an ambulance to the hospital should remain with the ambulance or in the Emergency Room waiting room. At no time should the First Responder wander around the hospital.

14. First Responders are to leave room for other emergency vehicles at the scene of the emergency. This includes leaving enough room on the roadway for an ambulance to depart the scene readily.

15. The response area for a First Responder from the Marion Fire Department is the City Limits of Marion and the Marion Area Fire District. When a first responder is outside the designated response area, he/she may respond to an emergency if the responder is in the immediate area of the emergency.

16. First Responders should not respond long distances when there are responders in the immediate area of the emergency.

17. First Responders are to abide all North Carolina Traffic laws and respond to all incidents in a safe manner.

18. Individual problems that may arise from time to time will be discussed with the Coordinator of Educational Program/Quality Improvement, the EMS director and/or the Chief of the Marion Fire Department.

19. First Responders are expected to maintain the following training at least two hours per month:

    A. Cardio Pulmonary Resuscitation (CPR)- Recertification.
    B. Oxygen therapy (O2 therapy)

C. Use of EMS equipment and location of said equipment on ambulances
D. Emergency Vehicle Driving
E. Other training as needed or required

20. All persons qualified as a First Responder must posses a valid North Carolina Driver's License.

DRIVING AMBULANCES

From time to time, First Responders will be asked to drive the ambulance to the hospital. Driving ambulances is much different the driving regular vehicles such as automobiles or pickup trucks. Ambulances are longer, wider and will not make sharp turns. Ambulances will not go under low hanging objects such as limbs, awnings, signs, etc. Curbs are not to be struck with ambulance wheels.

Ambulances are not to be backed unless absolutely necessary. Instead, drivers should seek a good place to turn the ambulance around. If backing an ambulance is necessary, the driver should have a responsible spotter.

In order to comply with EMS requirements, persons driving ambulances must have completed the Emergency Vehicle Operator Course (EVOC) or its equivalent. Persons driving emergency vehicles should be recertified every three years.

Approved by the City Council of the City of Marion this the 6th day of June, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

DISCUSSION OF VOLUNTEER FIREFIGHTER ISSUES: Fire Chief Jim Neal reported that he had recalculated the proposed payments to volunteer firefighters to offset fuel related costs, based on Councilman Cuthbertson's proposed formula to pay $3 per call in the City Limits and $5 per call in the Marion Area Fire District, with exclusions for first responder calls and a cap of $599 on annual payments to an individual firefighter. Chief Neal estimated the cost of this program to be $11,930 for 2006-07 based on the prior 12 months of calls; however, he would propose to budget $16,800 to be conservative.

The City Manager reported that Finance Director Harriett Thomas had stated that this could not be considered a fuel reimbursement for tax purposes, without keeping detailed mileage records.

A discussion followed.

Councilman Little stated that there could be problems with calling this program a fuel reimbursement.

Councilman Cuthbertson suggested that the payments be called a fuel allowance.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the request to pay City of Marion volunteer firefighters a fuel allowance, effective July 1, 2006 based on payments of $3 per call in the City Limits, $5 per call in the Marion Area Fire District, no payments for First Responder calls and a cap of $50 per month and $599 per year on payments.

CONSIDER APPROVAL OF REVISED WATER EXTENSION POLICY OUTSIDE THE CITY: The City Manager advised that he and Public Works Director/Engineer Richard McMillian have revised the Water Extension Policy for outside the City. This policy has been reviewed by and is recommended by the Utility Committee for approval. The City Manager stated that the revised policy placed much more burden on developers to pay for costs of water extensions outside the City.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted unanimously to approve the following policy:

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. AND ALONG ROADS NOT PUBLICLY MAINTAINED BUT FOR WHICH RIGHT OF WAY HAS BEEN DEDICATED TO THE PUBLIC:

The City of Marion may extend and pay for up to a six inch (6") diameter water line, along any public road maintained by the North Carolina Department of Transportation or along any road not publicly maintained but for which right of way has been dedicated to the public for a distance up to one hundred feet (100') per lot fronting on the road and requesting water service, 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 a larger diameter line is requested, or if the extension crosses a river, railroad tracks, interstate or major highway, or if rock removal is required, 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).

The applicant(s) shall be responsible for paying all applicable connection fees in advance of any construction.

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.

Unless approved by the City Council, the City shall not reimburse any applicant(s) for any funds contributed for any water line extensions.

C. 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 developer's 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. Connection fees will be charged by the City and City forces will install meters. With the approval of City Council, the City may reduce or eliminate the tap fee for a developer or applicant that installs individual taps after constructing a public water line, thereby alleviating the need for City forces to install said taps. In no case shall the Cost Recovery Charges be waived.

Unless approved by the City Council, the City shall not reimburse any applicant(s) for any funds contributed for any water line extensions.

In order for the City to maintain water lines and install individual water meters on private property or along a private road, the following requirements must be met:

The owner(s) and/or developer(s) must:

1. Provide a shoulder and or physical space in which City forces can work and effectively maintain water lines and appurtenances.
2. Prohibit private wells, except for yard or garden sprinkling systems.
3. Provide the City with a public utility access easement ensuring the City an easement of at least twenty (20') feet in width, ten feet (10') on each side of the main water line, for City maintenance of the water line, access to all water meters and use of any roads or property needed for maintenance of water lines and appurtenances.
4. Pay the City for the materials and labor to connect to the main water line, if the City agrees to perform said work.

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 or adjacent the street right of way or private road to the City of Marion.
8. Sign a hold harmless agreement relieving the City of Marion from responsibility for damages not directly caused by maintenance of the water system.

D. ENGINEERING SERVICES: Unless approved by the City Council, the City will not pay for engineering services. Engineering services shall be the responsibility of the developer or applicant(s).

E. 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. City approval of engineer's plans and design is required prior to submission to the State of North Carolina for a permit or construction. No meters shall be installed until copies of the engineer's certification of the water line and/or system is provided to the City.

F. APPROVAL: All extensions under this policy require approval of City Council, except for any extension not involving City funding and extensions of less than 1,000 feet, which may be approved by the City Manager, upon recommendation by the Public Works Director.

This policy replaces the "Water Line Extension Policy Outside the City Limits" adopted by the City Council on March 22, 2005.

ADOPTED this the 6th day of June, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

P-06-06-06-01

REVIEW/APPROVE SPEED HUMP PLACEMENT POLICY AND SPEED HUMP DESIGN: The City Manager stated that at the last meeting he had reported that City staff had constructed a speed hump at the Public Works facility. The City Manager stated that he hoped that Council members had the opportunity to try out the test speed hump. The City Manager advised that he and Public Works Director Richard McMillan had prepared and reviewed a draft Traffic Calming Policy to guide placement of traffic control devices such as speed humps and speed cushions. Mr. McMillan gave a summary of the proposed policy.

Mayor Clark arrived for this meeting during this discussion at 8:15 PM.

Councilman Owenby asked if the State supports this type of speed hump placement. Mr. McMillan stated that the N.C. Department of Transportation would not permit speed humps to be placed on state maintained roads.

Mayor Pro Tem Steve Little asked Mr. Chris Goudreau, who was present for the meeting, if he had any comments regarding this proposed policy. Mr. Goudreau stated that he agreed that there was a problem with speeding on various streets in the City, especially South Garden, where he resides, and would welcome a speed hum on South Garden Street.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following Policy:

City of Marion
Traffic Calming Policy
Speed Hump / Speed Cushion
June 2006

PURPOSE:
The purpose of this Traffic Calming Policy is to provide guidance to the request, evaluation, approval, and application/installation of traffic calming measures such as speed humps, speed cushions and other approved devices.

DEFINITIONS:

- Average Daily Traffic (ADT): The actual traffic volume passing a point in both directions on an average day (24-hours).
- City Maintained Street: A street that is currently on the City's list of streets which it maintains.
- NCDOT Maintained Street: A street that is maintained by the North Carolina Department of Transportation. The City cannot approve any Traffic Calming Devices on these streets.
- Posted Speed Limit: Speed limit posted on a street based on design criteria such as vertical and horizontal sight distances.
- Speed Bump: An abrupt bump in a travel way (usually in parking lots), 3-4 inches high and 1-3 feet in length. These devices are not allowed on City Maintained Streets and not addressed in this Policy.
- Speed Cushion: A series of smaller humps (2 or 3, depending on street width) across a street design to slow normal vehicular traffic, but with breaks in the pattern as to allow for the passage of emergency vehicles with a wider wheelbase without hitting a hump.
- Speed Hump: A traffic calming device consisting of a raised hump in the roadway, generally 3 inches high and 12 feet long, stretching across the entire roadway.
- Traffic Calming Measure: Measures, such as speed humps, cushions, traffic islands/medians, and etc., intended to reduce the speed of the motorist and/or prevent or decrease neighborhood cut-through traffic.

REQUESTS:
The City Council and/or City Manager may direct staff to look at a street for traffic calming measures to facilitate reducing vehicular speed and/or non-residential cut-through traffic.

A citizen, property owner or business within the corporate limits of Marion may formally request a traffic calming measure on their street. The request must be done in writing and must include all contact information such as name, address, phone number, and requested street. This request must be sent to the City Manager and/or the Public Works Director.

With each request, and upon approval for consideration by the City Council, the Public Works Director (PWD) shall evaluate the request for traffic calming measure(s) on a particular street and the ability to comply with the required standards.

After the PWD completes the evaluation, the recommendation for a traffic calming measure must be accompany with approvals from the PWD, Fire Chief, and Police Chief. This recommendation shall be forwarded to the City Manager for presentation to City Council. The City Council shall approve, approve with conditions, or disapprove the request.

Once a request has been denied by the City Council, the specific section of street may not be evaluated again for one year (12 months).

APPLICATION OF MEASURES:
The following are evaluation characteristics that must be met in order for a traffic calming measure to be considered:

Roadway Characteristics:
- The Street must be a public street, maintained by the City of Marion.
- The Street shall be classified as a local residential street. Collectors, thoroughfares, NCDOT maintained, or private roads will not be considered for traffic calming measures by the City of Marion.
- Posted speed limit shall be 25 mph or less.
- The Street must not exceed 36 feet wide from curb to curb.
- The Street must not be more than two travel lanes wide (two lanes with common left turn would ***not*** qualify).

Roadway Volumes, Design, and Measure Placement:
- The Average Daily Traffic (ADT) for the street being considered should not be less than 400 vehicles per day (VPD) and not greater than 3,000 vpd. Actual traffic counts may be taken or evaluated by City Staff at various times of the day.
- The Street must be at least one thousand (1,000) feet in length.
- The Street shall not have a grade greater than 8% within 250 feet of the traffic calming measure.
- Traffic calming measures shall be a minimum of 250 feet from an intersection.
- The Street shall have adequate horizontal and vertical sight distances as determined by the Public Works Director, as to not present a safety issue.

Upon review and approval of the Public Work Director, Police Chief and Fire Chief, as well as approval of the City Manager and City Council, minor variations in the criteria list above may be considered depending on site specific conditions.

Speed Hump:
The installation of a speed hump shall consist of one raised hump across the width of the entire roadway. The speed hump shall be approximately 12 feet in length and 3 inches high, with a parabolic curved surface. The entry and exit points of the hump shall be milled one inch into existing surface of the roadway as to allow for a smooth transition from the existing roadway, proper bonding of the asphalt, and to prevent the asphalt from raveling.

A Speed Hump detail is provided below.

Speed Cushion:
In cases where the roadway in question is considered a primary emergency response route by Fire, Police, and/or EMS, speed cushions may be installed as an option to speed humps.

The installation of speed cushions shall consist of two or three rounded humps across a roadway with gaps between the

rounded humps to allow for wide emergency vehicles to "straddle" the humps as not to delay response time or possibly damage the frame of the emergency vehicle. Standard width emergency vehicles may not be able to straddle the humps.

A Speed Cushion detail is provided below.

INSTALLATION OF TRAFFIC CALMING DEVICES:
Upon approval of City Council, the Public Works Department will schedule the installation of the approved traffic calming measure. The Public Works Department shall determine the proper location for the installation of the traffic calming measures. Speed Humps or Speed Cushions shall be placed as follows:

- Speed Hump/Cushions shall not be installed at driveways, but should be placed on property lines and other locations to avoid impeding ingress and egress.
- On open-street sections, consideration should be made to install speed humps/cushions in areas where "drive-around" is not possible.
- Drainage should not be compromised with the installation of the traffic calming measure. Humps and cushions should be tapered on the edge down to the edge of pavement at the gutter line.
- Advance Warning: The City shall install one yellow diamond-shaped warning sign (36"x36") at least 200 feet in advance of the measure in each direction. The warning sign should state "SPEED HUMP".
- The advanced warning signs and raised pavement markings should be installed immediately upon the installation of the speed hump/cushion.

COST FOR TRAFFIC CALMING DEVICES:
The cost for the installation, maintenance, and removal of any traffic calming measure on existing City maintained street, unless otherwise approved by City Council, shall be the responsibility of the City of Marion. Funds for the construction of the traffic calming measures will be funded from the Streets Department budget.

In the case of a neighborhood, business, or other entity requesting a device and the Roadway Volumes, Design, and Measure Placement do not justify installation, the City Council may approve the installation of a traffic calming measure and pay for all, a portion or none of the costs. The requesting party would be required to pay all approved costs in advance before the City would install the device. The City Council may also deny the request in its entirety.

In the event that a developer desires to install traffic calming measures in a new development, with streets to be maintained by the City, such installation may be considered as part of the street improvement costs under the City's Residential Development Incentive Policy. Otherwise, the costs of any and all measures shall be the sole responsibility of the developer.

Where practical, an effort should be made to install other traffic calming measures prior to installing speed humps/cushions, such as traffic round-abouts, traffic islands/medians, and other approved methods. Speed humps and cushions should only be considered on existing residential streets.

Upon the City accepting the streets for maintenance, the maintenance and/or removal of these measures shall be the responsibility of the City.

Adopted by the City Council of the City of Marion this the 6th day of June, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

P-06-06-06-3

Mr. McMillan stated that he had been directed by the City Manager to evaluate possible placement of speed humps on four streets identified by Council at the Planning Session, Fern Avenue, South Garden Street, Morgan Street and North Madison Street. Mr. McMillan reported that he had evaluated each street and would recommend two speed humps on Fern Avenue and Morgan Street, one speed hump on South Garden Street and no speed hump placement on North Madison Street due to the presence of two three or four way stop intersections.

Councilman Cuthbertson asked if Powell Bill money could be used for this project. The City Manager advised that Powell Bill Money should be able to be used for speed humps on City streets.

The City Manager recommended approval of the recommendation, subject to final consultation with County and City emergency services representatives.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the placement of speed humps on Morgan Street, South Garden Street and Fern Avenue, subject to final staff evaluation and consultation with County and City emergency service agencies.

REPORT – PLACEMENT OF PLAQUES – DOVE OF PEACE MAUSOLEUMS: The City Manager advised that at the May 16th Meeting Council endorsed the concept of allowing military plaques to be placed at the Mausoleums.

The City Manager presented Council with photos prepared by Public Works Director Richard McMillan showing how the plaques would look.

A discussion followed. The Mayor and Council members stated that the military plaques looked on the mausoleum.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the placement of the military plaques upon request.

CITY MANAGER'S REPORT:

The City Manager provided a report of current projects and activities.

CLOSING COMMENTS:

Councilman Edwards advised that Mr. Dennis Cox would be coming to June 20th City Council meeting regarding the handicapped parking situation on West Court Street.

Mayor Clark advised that he and City Manager Bob Boyette will be going to the N.C. League of Municipalities Town Hall Day the next day.

CLOSED SESSION – UNDER N.C.G.S 143-318.11(A)(5) TO DISCUSS MATTERS INVOLVING THE ACQUISITION OF REAL ESTATE: 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)(5) to discuss matters involving the acquisition of real estate.

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 during 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

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, 2006 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 Billy Martin, Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Richard McMillan, Public Works Director/Engineer; Heather Cotton, City Planner/Zoning Administrator; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Dennis Cox 195 West Court Street, Marion, NC; Michael Cox 1267 Jacktown Road, Marion, NC; Margaret Watkins 1293 Cannon Road, Marion, NC; Thomas Jenkins 167 Oak Crest Drive, Marion, NC; Stewart Neiman 4oo Foxtail Heights, Marion, NC; Gene Marlowe 7681 Sugar Hill Road, Marion NC; Charles & Donna Ledford 750 Vernon Bradley Road, Old Fort, NC; Carey Woody 90 Circle Drive, Marion, NC; Max Woody, Marion, NC; Rick & Melinda Gutierrez; Fran Jenkins, Marion, NC; Ruth Jenkins, Nadia and Olivia Avery 167 Oak Crest Drive, Marion, NC; Thomasina Jenkins Tate 36 Blanton Street, Asheville, NC; Anissa Hamrick 425 Jackson Road, Marion, NC; Larcella Rutherford 650 Arrowhead Trail, Marion, NC; Donnick & Elizabeth Siler 103 Panther Drive, Marion, NC; Ronnie & Shelia McPeters 20 Broad Street, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN MIKE EDWARDS: Councilman Mike Edwards selected the Citizen of the Month for June 2006:

Richard Thomas Jenkins

Councilman Edwards announced that he was pleased to recognize Mr. Richard Thomas Jenkins as his Citizen of the Month.

Mr. Richard "Tom" Jenkins retired from Norfolk Southern Railway. He is an active member of the Greenlee Baptist Church where he serves as a Deacon.

Councilman Edwards stressed that Mr. Jenkins is a good neighbor to everyone.

Mr. Jenkins has been married to Ruth for 52 years. They have five children and eight grandchildren.

In Mr. Jenkins' own words, "HE LOVES THREE THINGS": His wife, people and Jesus.

He initiated the McDowell Transportation Ministry over thirteen years ago. From July 2005 to April 2006, this ministry has taken 3,879 persons for medical care.

Mr. Jenkins works at the McDowell Mission, with the Prison Ministry, the local Shelter, the Friendship Home, the Men's Shelter, the Benevolence Ministry and much more. He cuts wood for the needy and volunteers with the School System.

Mr. Jenkins is known by a nickname, "Rat" – His sister said when he was born, he was so small that family members said he looked like a rat, and the nickname stuck with him through the years.

Mayor Clark, Council Members, many friends and family members all shared kind words about Mr. Jenkins.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the Consent Agenda, excluding items D, E and F as follows:

A. Approval of Minutes - June 6, 2006 Regular & Closed Session

B. Approve Budget Amendments:

CITY OF MARION, NORTH CAROLINA
2005-2006 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 2005-06 as adopted by the Marion City Council on the 21st day of June, 2005 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Account Number 10-420-0400, Professional Services is increased from $50,000 to $55,000.

b. General Fund Expenditures, Account Number 10-420-0600, Insurance is increased from $29,053 to $37,500.

c. General Fund Expenditures, Account Number 10-420-2600, Advertising increased from $1,000 to $1,500.

d. General Fund Expenditures, Account Number 10-580-1700, M&R Vehicles is increased from $23,000 to $37,500.

e. General Fund Expenditures, Account Number 10-620-6000, Mountain Glory Expenses increased from $15,000 to $18,500.

f. General Fund Expenditures, Account Number 10-620-7400, Capital Outlay is increased from $101,255 to $110,000.

g. General Fund Expenditures, Account Number 10-660-5500, Wellness Programs increased from $1,500 to $4,300.

h. General Fund Expenditures, Account Number 10-660-9000, Transfer to GF Capital Projects increased from $35,000 to $55,000.

i. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is increased from $26,958 to $90,450.

WATER AND SEWER

a. Water and Sewer Revenues, Account Number 30-335-0100, Property Insurance Reimbursement, is increased from $2,702 to $9,422.

b. Water and Sewer Expenses, Account Number 30-660-8000, Transfer to Capital Projects, is increased from $27,500 to $93,000.

c. Water and Sewer Expenses, Account Number 30-816-1600, M&R Equipment, is increased from $60,000 to $67,000.

d. Water and Sewer Expenses, Account Number 30-816-1700, M&R Vehicles, is increased from $6,000 to $12,000.

e. Water and Sewer Expenses, Account Number 30-816-3300, Materials & Supplies, is increased from $48,000 to $60,000.

f. Water and Sewer Expenses, Account Number 30-816-4500, Contracted Services, is increased from $110,000 to $120,000.

g. Water and Sewer Expenses, Account Number 30-816-5300, Dues & Subscriptions, is increased from $11,000 to $17,000.

h. Water and Sewer Expenses, Account Number 30-816-7400, Capital Outlay, is increased from $75,000 to $85,000.

i. Water and Sewer Revenues, Account Number 30-299-0000, Fund Balance Appropriated, is increased from $64,344 to $175,124.

INTERNAL SERVICE FUND

a. Internal Service Fund Expenses, Account Number 35-660-3300, Inventory, is increased from $140,000 to $150,000.

b. Internal Service Fund Revenues, Account Number 35-391-0000, Purchases Other Fund Revenues, is increased from $140,000 to $150,000.

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 20th day of June 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O–06–06–20–8

C. Approve Revised Mausoleum Deed

NORTH CAROLINA
McDOWELL COUNTY

AGREEMENT

THIS CONVEYANCE AND AGREEMENT, Made this 2nd day of March, 2006 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 $1,750.00, 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. 3 East in the DOVE OF PEACE MAUSOLEUM II **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 second part will purchase 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, with the exception of a plaque provided by the United States Government honoring military service, which may be provided to the City of Marion for placement on the above described 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

G. Approve Revised Document Copying Fee: From $.02 to $.05 per page

DISCUSSION - CONSENT AGENDA ITEMS D, E, & F: Councilman Lloyd Cuthbertson requested that these items be removed from the consent agenda for discussion.

Councilman Cuthbertson suggested some slight changes to the rules documents. These changes were endorsed by Council.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously to approve the following rules and regulations for the Community Building Main Level, Community Building Basement and the Depot as follows:

CITY OF MARION, NORTH CAROLINA

RULES AND REGULATIONS
FOR THE
MARION COMMUNITY BUILDING MAIN LEVEL

REVISED JUNE 20, 2006

The Marion Community Building is owned and operated by the City of Marion. This building is available to civic groups, organizations, and individuals needing a place to meet.

DAYS OF OPERATION

The Community Building is available to be scheduled for use seven (7) days a week, on a year round basis, excluding days used by local Civic Clubs and Not - For - Profit Organizations.

CIVIC CLUBS AND NOT-FOR-PROFIT ORGANIZATION USING THE COMMUNITY BUILDING ON A REGULAR SCHEDULE

Marion Rotary Club	Every Thursday 7:00am to 2:00pm
Lions Club	1st and 3rd Thursday 2:00pm to 9:00pm
Kiwanis Club	Every Tuesday 1:00pm to 8:30pm
Christian Women's Club	3rd Monday 7:00am to 3:00pm
McDowell Ballroom Dancers	Last Saturday each month 1:00pm to 11:00pm
McDowell Board of Realtors	1st Tuesday 8:00am to 1:00pm

HOURS OF OPERATION

The Community 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 Midnight.

RULES AND REGULATIONS

Violations of any of these rules and regulations or any damages to the Facility may result in forfeiture of all or part of the security deposit held by the City.

1. No one shall be permitted to use the building without first having made proper reservations and 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) workdays 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 and regulations or any damages to the Facility. 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 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 sixty (60) days in advance of the scheduled event, in which case a refund will be made, except for an administrative service charge of $25.00. In lieu of |receiving a refund, a person or group canceling an event more than sixty (60) days

in advance of the scheduled event may reschedule the building without additional cost at some other open date within the next twelve (12) months. A person or group canceling an event less than sixty (60) days in advance of the scheduled event may reschedule the building without additional cost at some other open date within the next twelve (12) months, but will not be eligible to receive a refund. Should the person or group fail to reschedule within the designated twelve (12) month period, the entire rental fee will be forfeited. Reservations must be made in person (no reservations by telephone, fax, e-mail or any other electronic means), 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 2006, the earliest you can schedule the building is September 1, 2005). 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 the 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. If the deposit is to be refunded, it will be issued by the City within ten (10) work days following the use of the building.

4. The person or group renting the Community Building may not sublet 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. Any fixtures, furniture, displays 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 for the next group. Failure to remove items shall be cause for revocation of part or all of the rental deposit.

6. The piano in the Community Building shall NOT be moved by anyone other than authorized City employees. If you need the piano moved, please ask that the City have the piano moved for you.

7. No one shall be permitted to use the Community Building kitchen for any purpose unless necessary arrangements have been made and the additional fee paid to the City.

8. Persons or groups renting the Community Building kitchen facility may use the existing pots, pans, cutlery, dishes, glasses, and utensils. These items may NOT be removed under any circumstances. The City will not replace or purchase any additional kitchenware. If additional dishes or utensils are needed, those using the facility shall be required to furnish their own.

9. Each person or group of persons using the kitchen shall thoroughly clean the kitchen and all fixtures, including dishes, utensils, etc. before leaving the building and shall clean and remove all food from the refrigerator. In addition, the stove must be cleaned and the floor mopped before leaving the building. At no time shall any of the kitchen appliances be unplugged or moved from their original location. All garbage and refuse shall be removed from the building and placed in the containers located outside the kitchen door.

10. No equipment of any kind, including chairs, tables, flags, cooking utensils, dishes, silverware, etc. shall, under any circumstances be removed from the building without the specific permission of the City Council.

11. 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 652-3231.

12. Barbeque grills or any outside cooking device shall only be used on the paved area of the Community Building. Any grease or cooking residue shall be cleaned from the area immediately following use.

13. 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 personal 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.

14. No person(s), organization, etc. may use the Community Building for religious services.

15. No persons, firm or organization will be allowed to use the building for the purpose of offering bingo games to the general public.

16. Each person 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 China, glassware, cooking utensils, etc. Cost for damages will be deducted from the security deposit and in the event the costs exceed the security deposit, the person responsible for renting the facility shall be held responsible for the additional costs. If prompt payment is not made, the City will pursue legal action to collect such claims.

17. Tables and chairs may be rearranged by persons using the building, but must be returned to their original positions after each use. The podium and the head tables at the Community Building are permanently installed. No attempt should be made to move them.

18. 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. Reports prepared by the Marion Police Department and reports from the cleaning agency will be used to determine if the security deposits shall be refunded.

19. The volume for the speaker system is preset. A switch located on the backside of the podium will turn on the equipment. No other equipment, other than the microphone may be hooked to the sound system at any time.

20. 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.

21. The officers of the Marion Police Department have authority to enter the building at any time for the purpose on insuring compliance with all rules and regulations.

22. Officers of the Marion Police Department shall have authority to open or look in any ice chests and/or coolers on the premises, to monitor possible alcohol use or other improper activity.

23. It is unlawful for any person to consume any alcoholic beverage on any property owned or controlled by the City of Marion. Possession of alcohol or evidence of consumption of alcohol at the Community Building will result in immediate eviction from the premises, forfeiture of security deposit and may result in criminal charges, fines and penalties.

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 at 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 any part of 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.

25. Animals are not permitted inside any part of the Community Building, with the exception of Seeing Eye dogs for legally blind individuals.

26. If the Marion Police Department is called to the Community Building in reference to a disturbance or due to any violations of Federal, State or Local law, the event may be immediately suspended, all persons evicted from the building after applicable clean-up and the deposit revoked for the event.

27. No skateboards, in-line skates, roller skates or bicycles are allowed inside the Community Building or on the Community Building property.

These new regulations shall be effective upon adoption.

Adopted this the 20th day of June 2006.

A. Everette Clark, Mayor

ATTEST:

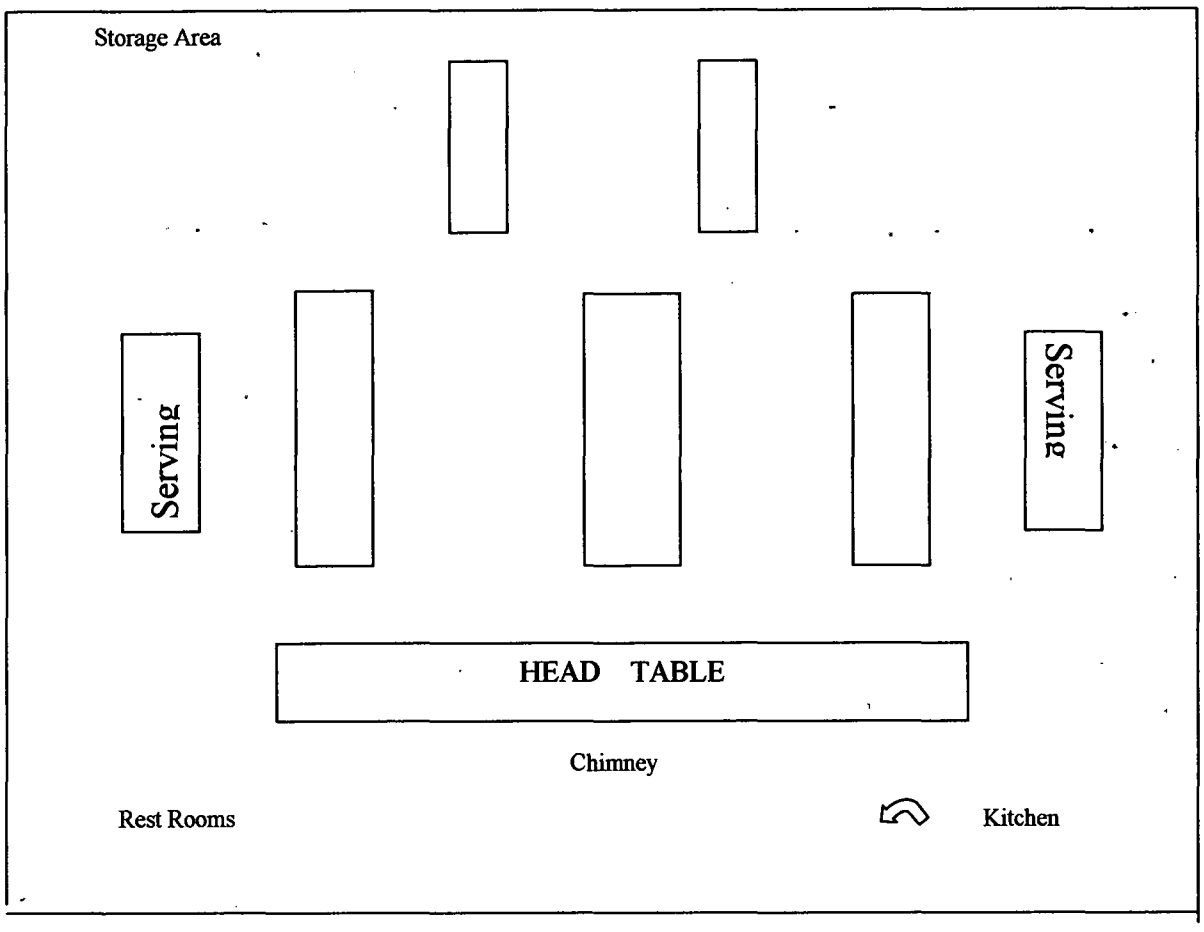
J. Robert Boyette, City Manager/Clerk

MARION COMMUNITY BUILDING
TABLE ARRANGEMENT

Tables and chairs may be moved by person(s) using the building but must be left in the arrangement shown below. Head tables and podium may not be moved.

Additional tables and chairs are available in the storage area. If these are used, they must be returned to the storage area. Fire regulations prohibit no more than 210 people on the first floor of the Community Building.

Table Size 2 ½ X 8 or 30 ½ Wide by 96 ½ Long



CITY OF MARION, NORTH CAROLINA
RULES AND REGULATIONS FOR THE
MARION COMMUNITY BUILDING BASEMENT

REVISED JUNE 20, 2006

The Marion Community Building Basement is owned and operated by the City of Marion. This building is available to groups, organizations, and individuals needing a place to meet.

DAYS OF OPERATION

The Community Building Basement is available to be scheduled for use seven (7) days a week, on a year round basis.

HOURS OF OPERATION

The Community Building Basement 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 Midnight.

RULES AND REGULATIONS

Violations of any of these rules and regulations or any damages to the Facility may result in forfeiture of all or part of the security deposit held by the City.

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) workdays 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 and regulations or any damages to the Facility. 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 Community Building Basement 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 sixty (60) days in

advance of the scheduled event, in which case a refund will be made, except for an administrative service charge of $25.00. In lieu of receiving a refund, a person or group canceling an event more than sixty (60) days in advance of the scheduled event may reschedule the building without additional cost at some other open date within the next twelve (12) months. A person or group canceling an event less than sixty (60) days in advance of the scheduled event may reschedule the building without additional cost at some other open date within the next twelve (12) months, but will not be eligible to receive a refund. Should the person or group fail to reschedule within the designated twelve (12) month period, the entire rental fee will be forfeited. Reservations must be made in person (no reservations by telephone, fax, e-mail or any other electronic means), 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 2006, the earliest you can schedule the building is September 1, 2005). 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 the 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. If the deposit is to be refunded, it will be issued by the City within ten (10) work days following the use of the building.

4. The person or group renting the Community Building Basement may not sublet 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. Fixtures, furniture, displays 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 for the next group. Failure to remove items shall be cause for revocation of part or all of the rental deposit.

6. Each person or group of persons using the kitchen shall thoroughly clean the kitchen and all fixtures before leaving the building and shall clean and remove all food from the refrigerator. In addition, the stove must be cleaned and the floor mopped before leaving the building. At no time shall any of the kitchen appliances be unplugged or moved from their original location. All garbage and refuse shall be removed from the building and placed in the containers located outside.

7. No equipment of any kind, including chairs and tables, shall, under any circumstances be removed from the building without the specific permission of the City Council.

8. Barbeque grills or any outside cooking device shall only be used on the paved area of the Community Building Basement. Any grease or cooking residue shall be cleaned from the area immediately following use.

9. No person, organization, etc. may use the Community Building Basement for commercial purposes. (It is the intent of this regulation to prohibit any person from using the building for personal 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 Basement 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.

10. No person(s), organization, etc. may use the Community Building Basement for religious services.

11. No persons, firm or organization will be allowed to use the building for the purpose of offering bingo games to the general public.

12. Each person using the building will be held responsible for any damages to the walls, floors, windows,

etc. Cost for damages will be deducted from the security deposit and in the event the costs exceed the security deposit, the person responsible for renting the facility shall be held responsible for the additional costs. If prompt payment is not made, the City will pursue legal action to collect such claims.

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. Reports prepared by the Marion Police Department and reports from the cleaning agency will be used to determine if the security deposits shall be refunded.

15. The officers of the Marion Police Department have authority to enter the building at any time for the purpose on insuring compliance with all rules and regulations.

16. Officers of the Marion Police Department shall have authority to open or look in any ice chests and/or coolers on the premises, to monitor possible alcohol use or other improper activity.

17. It is unlawful for any person to consume any alcoholic beverage on any property owned or controlled by the City of Marion. Possession of alcohol or evidence of consumption of alcohol at the Community Building Basement will result in immediate eviction from the premises, forfeiture of security deposit and may result in criminal charges, fines and penalties.

18. Persons or groups renting the Marion Community Building Basement 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 at 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 Basement 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 Basement 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 Basement (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 Basement 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 any part of 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 Basement are not to be given out to persons or groups renting the Community Building Basement, 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.

19. Animals are not permitted inside any part of the Community Building Basement, with the exception of Seeing Eye dogs for legally blind individuals.

20. If the Marion Police Department is called to the Community Building Basement in reference to a disturbance or due to any violations of Federal, State or Local law, the event may be immediately suspended, all persons evicted from the building after applicable clean-up and the deposit revoked for the event.

21. No skateboards, in-line skates, roller skates or bicycles are allowed inside the Community Building Basement or on the Community Building property.

These new regulations shall be effective upon adoption.

Adopted this the 20th day of June 2006.

A. Everette Clark, Mayor

ATTEST:

L Robert Boyette, City Manager/Clerk

CITY OF MARION, NORTH CAROLINA
RULES AND REGULATIONS
FOR THE
MARION DEPOT

REVISED JUNE 20, 2006

The Marion Depot is owned and operated by the City of Marion. This building is available to civic groups, organizations, and individuals needing a place to meet.

DAYS OF OPERATION

The Depot is available to be scheduled for use seven (7) days a week, on a year round basis.

HOURS OF OPERATION

The Depot 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 Midnight.

RULES AND REGULATIONS

Violations of any of these rules and regulations or any damages to the Facilities may result in forfeiture of all or part of the security deposit held by the City.

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) workdays 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 and 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 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 sixty (60) days in advance of the scheduled event, in which case a refund will be made, except for an administrative service charge of $25.00. In lieu of receiving a refund, a person or group canceling an event more than sixty (60) days in advance of the scheduled event may reschedule the building without additional cost at some other open date within the next twelve (12) months. A person or group canceling an event less than sixty (60) days in advance of the scheduled event may reschedule the building without additional cost at some other open date within the next twelve (12) months, but will not be eligible to receive a refund. Reservations must be made in person (no reservations by telephone, fax, e-mail or any other electronic means), 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 2006, the earliest you can schedule the building is September 1, 2005). 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 the 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. If the deposit is to be refunded, it will be issued by the City within ten (10) work days following the use of the building.

4. The Courtyard area of the Depot shall only be rented in conjunction with rental of the Depot. Persons renting the Depot have the authority to ask unauthorized Courtyard users to leave. Any damages to the Courtyard or surrounding landscaped areas will be the responsibility of the person renting the facility.

5. The person or group renting the Depot may not sublet the building or Courtyard to another person or group.

6. 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. Fixtures, furniture, displays 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 for the next group. Failure to remove items shall be cause for revocation of part or all of the rental deposit.

7. Each person or group of persons using the kitchen in the facility shall thoroughly clean the kitchen and all fixtures before leaving the building and shall clean and remove all food from the refrigerator. In addition, the stove must be cleaned and the floor mopped before leaving the building. At no time shall any of the kitchen appliances be unplugged or moved from their original location. All garbage and refuse shall be removed from the building and placed in the containers located outside.

8. No equipment of any kind, including chairs and tables, shall, under any circumstances be removed from either building without the specific permission of the City Council.

9. Barbeque grills or any outside cooking device shall only be used on the paved area of the Depot. Any grease or cooking residue shall be cleaned from the area immediately following use. At no time shall any barbeque grill or outside cooking device be placed on the Courtyard area of the Depot.

10. No motor vehicle of any kind shall be allowed on the Courtyard of the Depot at anytime. All unloading or loading shall be done at curbside.

11. No person, organization, etc. may use the Depot for commercial purposes. (It is the intent of this regulation to prohibit any person from using the building for personal 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 Depot 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.

12. No person(s), organization, etc. may use the Depot for religious services.

13. No persons, firm or organization will be allowed to use the building for the purpose of offering bingo games to the general public.

14. Each person using the building will be held responsible for any damages to the walls, floors, windows, etc. Cost for damages will be deducted from the security deposit and in the event the costs exceed the security deposit, the person responsible for renting the facility shall be held responsible for the additional costs. If prompt payment is not made, the City will pursue legal action to collect such claims.

15. Tables and chairs may be rearranged by persons using the building, but must be returned to their original positions after each use.

16. 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. Reports prepared by the Marion Police Department and the cleaning agency will be used to determine if the security deposits shall be refunded.

17. 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.

18. The officers of the Marion Police Department have authority to enter the building at any time for the purpose on insuring compliance with all rules and regulations.

19. Officers of the Marion Police Department shall have authority to open or look in any ice chests and/or coolers on the premises, to monitor possible alcohol use or other improper activity.

20. It is unlawful for any person to consume any alcoholic beverage on any property owned or controlled by the City of Marion. Possession of alcohol or evidence of consumption of alcohol at the Depot will result in immediate eviction from the premises, forfeiture of security deposit and may result in criminal charges, fines and penalties.

21. No signs are permitted to be posted in front of or on the Depot property.

22. Animals are not permitted inside any part of the Depot, with the exception of Seeing Eye dogs for legally blind individuals.

23. If the Marion Police Department is called to the Depot in reference to a disturbance or due to any violations of Federal, State or Local law, the event may be immediately suspended, all persons evicted from the building after applicable clean-up and the deposit revoked for the event.

24. No skateboards, in-line skates, roller skates or bicycles are allowed inside the Depot, in the Courtyard area on anywhere on the Depot property.

These new regulations shall be effective upon adoption.

Adopted this the 20th day of June 2006.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

PUBLIC HEARING – ADOPTION OF 2006-07 CITY BUDGET ORDINANCE: Mayor Clark opened the Public Hearing.

The City Manager gave a brief overview of the proposed 2006-07 City budget.

There were no citizens present to discuss this proposed budget.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously 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 its activities for the fiscal year beginning July 1, 2006 and ending June 30, 2007 in accordance with the chart of accounts heretofore established by the City:

Administration	$ 468,919
Purchasing and Warehousing	53,670
Inspection	190,180
Police	1,561,799
Fire	689,622
Public Works Administration	110,360
Fleet Maintenance	57,552
Street	755,548
Powell Bill	222,500
Sanitation	514,679
Recreation	169,700
Cemetery	37,000
Non-Departmental	633,739
Total	**$ 5,465,268**

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2006 and ending June 30, 2007:

Prior Year's Taxes	$ 45,000
Vehicle Tax-Collected by County	140,000
Current Taxes	1,588,000
Tax Penalties & Interest	16,000
Privilege License Sales	20,010
Peddler's Permit	200
Interest Earned	86,000
Powell Bill Interest Earned	1,100
Rents and Concessions	30,000
Misc. Revenues	100
Drink Commissions	1,000
Mowing Reimbursement	500
Bad Check Fees	150
P/D Ser Copies Fingerprints	100
Refunds/ Reimbursements	17,000
Miscellaneous Parts & Labor	1,000
Utilities Franchise Tax	480,000
Beer/Wine Revenue	28,500
Powell Bill Allocation	204,000
Sales Tax Distribution	1,410,000
ABC Revenues	150,000
ABC Officer Revenues	6,000
Court Costs, Fees & Charges	6,000
Parking Violations	6,000
County Fire Protection	210,000
State Fire Protection Reimbursement	2,400
County Contribution – Recycling	7,500
Recycling Bin Deposit	100
Cemetery	4,000
DOT Reimbursement Grass Mowing	1,850
Garbage Fees	153,000
Zoning Income - Inspection Fees	21,500
Sale of Garbage/Leaf/Recycling Bags	800
Cable TV Revenues	45,000
Sales of Surplus Equipment	5,000
McDowell County Schools	18,500
Wellness Grant	2,820
Mountain Glory Revenues	18,000
Fund Balance	396,957
Fund Balance reserved for Fire Truck	321,181
Powell Bill Fund Balance	20,000
Total	**$ 5,465,268**

Section 3. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2006 and ending June 30, 2007:

Reserve for Future Appropriations	$ 335,250
Total	**$ 335,250**

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, 2006 and ending June 30, 2007:

Fund Balance Appropriated	$ 325,750
Interest on Investments	9,500
Total	**$ 335,250**

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, 2006 and ending on June 30, 2007 in accordance with the accounts heretofore approved for the City:

Utility Line Operation	$ 1,162,741
Water Filter Plant	446,849
Waste Treatment Plant	958,366
Non-Departmental	567,645
TOTAL	**$3,135,601**

Section 6. It is estimated that the following revenues will be available in the Water / Sewer Fund for the fiscal year beginning July 1, 2006 and ending June 30, 2007:

Fund Balance		$ 232,199	
Interest Earned		10,000	
Miscellaneous Income		5,000	
Property & Insurance Reimbursement		100	
Bad Check Fees		1,500	
Time Payment Interest		2,000	
Fire Protection		10,000	
Transfer Fee		1,000	
Reimbursement – Septic	9,000		Reimbursement - Pump Stations
	1,500		
Reimbursement – Pretreatment		4,000	
Owner Temporary Sales		1,050	
Water Sales		912,000	
Cut on Fees/Late Penalties		60,000	
Sewer Service		560,000	
Water Taps		100,000	
Sewer Taps		50,000	
Delinquent Accounts Collected		1,000	
Tank Truck Charges		4,000	
Cost Recovery – Water		25,000	
Cost Recovery – Sewer		25,000	
Water Service Charge		632,000	
Sewer Service Charge		365,000	
			County Reimbursement – 221N
	14,252		
Free Water Reimbursement - Annex Subsidy		100,000	
Gain on Sale of Assets		10,000	
TOTAL		**$ 3,135,601**	

Section 7. The following amounts are hereby appropriated in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2006 and ending June 30, 2007:

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, 2006 and ending June 30, 2007:

Fund Balance Appropriated	$ 207,500
Interest on Investments	7,500
TOTAL	**$ 215,000**

Section 9. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2006 and ending June 30, 2007:

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, 2006 and ending June 30, 2007:

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, 2006 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 $ 325,600,000 and estimated rate of collection of 96%.

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 20th day of June, 2006

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

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

Councilman Owenby commended the City Manager for keeping City Council informed.

The City Manager commended Ms. Harriett Thomas for her hard work and for doing the bulk of the work in putting together the budget document. The City Manager also commended City department heads for their stewardship of City funds.

INTRODUCTION OF NEW EMPLOYEE: The City Manager noted that on rare occasions, good employees are able to return back to the City after leaving employment.

Sergeant Gaye Noblitt of the Marion Police Department introduced Officer Rick Gutierrez and his wife Melinda. Officer Gutierrez has been employed in Forest City for the past eight years and has recently returned to work with the City.

Mayor Clark stated that it was great to have Mr. Gutierrez back, and noted that he is bilingual along with being a great officer.

PUBLIC APPEARANCE – MR. DENNIS COX – DISCUSS WEST COURT PARKING ISSUES:
Councilman Edwards stated that he was absent from the June 6 Council meeting and missed the discussion about the requested handicapped parking space at West Court and Burgin Streets in front of the Burgin Street apartments. Councilman Edwards stated that he would like Council to approve the parking space to meet the request of Mr. Dennis Cox and since the City did not have any handicapped parking spaces on or around West Court Street. Councilman Edwards noted that the City had very few on-street handicapped parking spaces and suggested that the space on West Court Street should be approved like one beside First Baptist Church on Fort Street had been a few years ago.

Councilman Edwards introduced Mr. Cox, who has requested the handicapped parking space in front of his apartment at West Court and Burgin Streets. Councilman Edwards stated that Mr. Cox has heart problems and one leg and advised that Mr. Cox holds a valid handicapped placard. Councilman Edwards and Mr. Cox outlined how special events at the Recreation Center and downtown periodically prevent Mr. Cox from parking in the space directly in front of his apartment.

A discussion followed.

Councilman Edwards made a motion for Council to approve placement of one handicapped parking space on West Court Street immediately east of Burgin Street. The motion was seconded by Councilman Martin.

Councilman Martin stated that he had decided that no harm would come with the handicapped parking space being approved and that he would support approval of the space.

Councilman Cuthbertson advised that this section of street would not meet the ADA guidelines for width of

a handicap parking space and that persons would be required to get out of a vehicle into the street, creating potential liability for the City. Councilman Cuthbertson distributed ADA standards he had located online.

Councilman Martin noted that the proposed space is no more dangerous than the one on Main Street next to First Baptist Church.

Councilman Owenby noted that two requests for handicap parking spaces were recently turned down from persons on Park Avenue with handicaps, and that the City had instead provided help with off-street parking.

Councilman Little advised that the handicap parking space on Fort Street next to First Baptist Church may need to be re-visited. He noted that a significant amount of time has gone into looking at this situation at multiple Council meetings.

Councilman Edwards asked Mr. Cox how many times in a given week does he not have a parking space in front of his apartment. Mr. Cox stated that last year during summer months he had problems with parking when special events were held downtown and at the Recreation Center.

Councilman Owenby stated that he had been by Mr. Cox's several times in n the past few weeks and rarely observed anyone but Mr. Cox parked in front of the apartments. Councilman Owenby stated that he feels that the owner of the apartments may need to so something to assist the various parking issues faced by persons renting the apartments. He noted that he could not in good conscience vote for this request.

Councilman Edwards asked how many on-street handicap spaces we presently have in the City.

The City Manager advised that he could think of two approved in the past five years – one next to St. John's Episcopal Church on Spring Street and one next to First Baptist Church on Fort Street.

Councilman Edwards advised that he would be very disappointed if Council did not approve this request. If this request is turned down, he stated that Council should come up with a rule that would apply across the board, by removing other on-street handicapped parking spaces.

Councilman Little called for the question.

The vote was as follows:

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

The motion failed three to two.

Councilman Edwards made a motion for the Street Committee to be directed to study the removal of the two handicap parking spaces next to St. John's Episcopal Church on Spring Street and one next to First Baptist Church on Fort Street with the respective churches and to bring a recommendation back to Council.

The Motion died from lack of a second.

Councilman Edwards asked if Council found it acceptable to deny one handicapped parking request, while leaving two others that do not meet the ADA standards.

Councilman Cuthbertson agreed with Councilman Edwards that consistency is needed.

Mayor Clark suggested that the Street Committee could look at the continued need for other on-street handicapped parking spaces, such as the ones on Spring Street and Fort Street. Council agreed by consensus for the Street Committee to study these parking spaces and to bring a recommendation back to Council.

The City Manager advised that the City and County Officials are scheduled to study parking issues near the Recreation Department and that he could ask the County to encourage persons using the Recreation Center not to park on West Court Street, if possible.

Mayor Clark stated that a walkway is needed between the City and County parking lots for citizens utilizing the Recreation Department property.

PUBLIC APPEARANCE – MR. RONNIE MCPETERS – DISUCSS BROAD STREET LAND USE: Mr. Ronnie McPeters appeared before Council regarding letters he had received from anonymous persons insulting the appearance of his property on Broad Street and accusing him of running an auto painting business. He advised that he and his wife moved to Broad Street from Dysartsville because of family issues and feel that these letters and complaints being made to the City are from family members.

The City Manager stated that the City has rules to protect residents, regarding untagged vehicles, business type activities in residential areas that state you can not operate an auto repair shop from your home in a residential area. This had been the type of complaints coming to the City Planner and the Code Enforcement Officer.

City Planner Heather Cotton stated that back in March she assisted Code Enforcement Officer Dawn Norman with complaints regarding the number of untagged cars on the property and had received more calls since then. She advised that Mr. McPeters' property now appeared to be in compliance.

Mayor Clark stated that we can not control complaints from the neighbors/citizens. However, as long as Mr. McPeters is not doing anything wrong, the City has no problems.

Councilman Martin advised that the only thing he had ever heard was that Mr. McPeters was running a business when he first moved over there because of the large number of cars there. These cars have since been moved.

Mr. McPeters stated that he understood that he could not operate a business on Broad Street and that he was not painting cars as a business. He said that it was his desire to comply with City ordinances.

The City Manager stated that City staff had done everything possible to investigate complaints concerning this property and now felt that compliance was achieved. He stated that City staff would focus on other enforcement issues, unless otherwise desired by Council or unless firm evidence to the contrary came forward.

The Mayor and Council members agreed with the suggested approach of the City Manager. No action was taken by Council.

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – SCHOOL STREET/STEVENS PROEPRTY: Mayor Cark opened the Public Hearing.

The City Manager advised that this is the final step in the voluntary annexation of 0.80 acres of property at 75 School Street.

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 adopt the following Ordinance:

**AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA –
SCHOOL STREET/STEVENS**

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 20, 2006, after due notice by publication on Friday, June 2, 2006; 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, 2006:

BEING A 0.80 ACRE PORTION of tract recorded in Deed Book 396, at Page 303 of the McDowell County Deed Registry and being more fully described by metes and bounds as follows:
BEGINNING on an existing iron pipe, said existing iron pipe being located, North 64 degrees 09 minutes 13 seconds East 974.83 feet from an existing concrete monument and also being the Larry Stevens Northwest corner as described in Deed recorded in Deed Book 212, at Page 339, and runs thence, a new line, North 09 degrees 41 minutes 35 seconds West 124.79 feet to an iron pin set; thence, a new line and with the North bank of a ditch, the following seven courses and distances:

North 67 degrees 18 minutes 04 seconds East 37.13 feet;
North 71 degrees 46 minutes 46 seconds East 27.17 feet;
North 76 degrees 56 minutes 50 seconds East 41.92 feet;
North 78 degrees 39 minutes 16 seconds East 24.00 feet;
North 70 degrees 01 minutes 42 seconds East 22.39 feet;
North 62 degrees 54 minutes 05 seconds East 36.73 feet;

North 67 degrees 57 minutes 17 seconds East 57.49 feet to an iron pin set; thence, a new line, South 09 degrees 04 minutes 30 seconds East 169.17 feet to a 32-inch maple tree corner; thence, with the Stevens line (Book 166, at Page 422), South 80 degrees 40 minutes 51 seconds West 79.25 feet to an iron pin set; thence, with the line of Leah Fox (Book 244, at Page 26), South 80 degrees 40 minutes 51 seconds West 80.59 feet to an iron pin set; thence South 80 degrees 40 minutes 51 seconds West 80.48 feet unto the point of the BEGINNING, containing 0.80 acres, more or less. All calls taken from an unrecorded plat of survey entitled: "Larry Stevens" by Suttles Surveying, PA, dated May 8, 1989, Map No. 10683 F.BK 8907, hereby incorporated by reference as if fully set out.

Section 2. Upon and after June 30, 2006, 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 20th day of June, 2006.

A. Everette Clark, Mayor

ATTEST: **Approved As To Form:**

J. Robert Boyette, City Clerk **City Attorney**

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

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – SCOTTY'S MOBILE VILLAGE – HANKINS ROAD: Mayor Clark opened the Public Hearing.

The City Manager advised that this is the final step in the voluntary annexation of Scotty's Mobile Village property on Hankins Road which would become effective June 30, 2006.

There were no citizens present for this Public Hearing.

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

220

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 20, 2006, after due notice by publication on June 2, 2006; 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 June 30, 2006:

BEGINNING at the pavement and at a stake at the western margin of Marion-Hankins public paved road, and runs thence North 5 deg. 45 feet East 161 feet to a stake; thence North 71 deg. 30 feet West 241.5 feet to a stake; thence South 6 deg. East 420 feet to a stake; thence North 62 deg. East 263 feet to a stake in old J.L. Morgan line; thence North about 80 deg. East 500 feet, more or less, to a point in the center of Big Branch; thence in a Southeasterly direction down said Big Branch 800 feet, more or less, to the west end of a bridge over Big Branch and Marion-Hankins public paved road; thence in a Southeasterly direction with the NE and NW pavement of Marion-Hankins public paved road 1,000 feet, more or less to the beginning.

Section 2. Upon and after June 30, 2006, 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 20th day of June, 2006.

A. Everette Clark

A. Everette Clark, Mayor

ATTEST: **Approved As To Form:**

J. Robert Boyette, City Clerk **City Attorney**

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

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – PROPERTY AT U.S. 70 EAST AND STACY HILL ROAD: Mayor Clark opened the Public Hearing.

The City Manager advised that this is the final step in the voluntary annexation of the shopping center site at US 70 East and Stacy Hill Road which would become effective June 30, 2006.

There were no citizens present for this Public Hearing.

Mayor Clark Closed 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

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 20, 2006, after due notice by publication on June 2, 2006; 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 (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 June 30, 2006:

TRACT ONE (1):

BEGINNING on a magnetic nail set in the centerline of intersection of NC Highway 70 and State Road No. 1747, Stacy Hill Road, said point of beginning being the 30th corner of Tract One (1) of the Roger Andrews lands as recorded in Deed Book 435 on Page 311 of the McDowell Deed Registry and running thence with the centerline of NC Highway 70 the following four courses and distances:

South 65 degrees 11 minutes 34 seconds East 536.88 feet to a point;
South 65 Degrees 48 minutes 25 seconds East 63.42 feet to a point;
South 68 degrees 27 minutes 29 seconds East 53.19 feet to a point;
South 73 degrees 39 minutes 25 seconds East 34.29 feet to a point, said point located North 89 degrees 42 minutes 29 seconds West 210.28 feet from an existing magnetic nail in the intersection of NC Highway 70 and Stacy Farm Street;
thence leaving said centerline of NC Highway 70 and with the western line of the Stacy Farms Subdivision as recorded in Plat Book 4 on page 425 of the McDowell Deed Registry the following courses and distances:
South 16 degrees 45 minutes 36 seconds West 26.07 feet to an existing iron pin located just north of concrete headwall;
South 16 degrees 45 minutes 36 seconds West 122.16 feet to an iron pin set;
South 39 degrees 58 minutes 10 seconds East 47.99 feet to an existing iron pin;
South 40 degrees 18 minutes 29 seconds West 36.14 feet to an existing iron pin;
South 05 degrees 38 minutes 44 seconds West 64.16 feet to an existing iron pin in branch;
South 05 degrees 38 minutes 44 seconds West 68.23 feet to a point in branch;
South 04 degrees 22 minutes 02 seconds West 80.70 feet to a point in branch;
South 04 degrees 45 minutes 12 seconds West 58.70 feet to a point in branch;
South 02 degrees 08 minutes 36 seconds East 88.81 feet to an iron pin set;
South 02 degrees 19 minutes 27 seconds East 64.67 feet to an existing iron pin;
South 02 degrees 19 minutes 27 seconds East 15.16 feet to a point in the centerline of the creek;
thence with the centerline of said creek the following thirteen courses and distances:
North 65 degrees 53 minutes 50 seconds West 94.57 feet to a point;
South 60 degrees 22 minutes 46 seconds West 46.36 feet to a point;
North 35 degrees 00 minutes 30 seconds West 29.33 feet to a point
North 75 degrees 09 minutes 46 seconds West 50.33 feet to a point;
North 21 degrees 13 minutes 14 seconds West 38.58 feet to a point;
North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West 68.22 feet to a point located in the line of David Holland (Book 504 On Page 205);
North 80 degrees 32 minutes 50 seconds West 28.69 feet along the line of David Holland (Book 504 on Page 205) to a point;
North 11 degrees 10 minutes 46 seconds West 74.84 feet along the line of David Holland (Book 504 on Page 205) to a point, said point located in the line of David Holland (Book 470 on Page 450) and also being the Northern most corner of David Holland lands recorded in Deed Book 504 on Page 205 of said registry;
thence continuing with said creek centerline and the line of David Holland (Book 470 on Page 450) the following six courses and distances:
North 40 degrees 10 minutes 46 seconds East 67.00 feet to a point;
North 14 degrees 13 minutes 28 seconds East 115.07 feet to a point;
North 34 degrees 30 minutes 20 seconds West 111.99 feet to a point;
North 16 degrees 14 minutes 54 seconds West 67.20 feet to a point;
North 08 degrees 01 minutes 32 seconds West 130.28 feet to a point;
North 33 degrees 17 minutes 33 seconds West 63.11 feet to a magnetic nail set in a bridge over center of creek, said bridge being a part of State Road No. 1747, Stacy Hill Road;
thence with the centerline of State Road No. 1747, Stacy Hill Road, North 29 degrees 43 minutes 21 seconds East 103.17 feet to the BEGINNING.

TRACT TWO (2):

BEGINNING on an iron pin set, said iron pin set being located in the line of the Roger Andrews lands as recorded in Deed Book 435 on Page 311, Tract One (1) of the McDowell Public Registry and being located North 51 degrees 24 minutes 39 seconds East 33.34 feet from an existing iron pin found at a Poplar Tree witness, the same being the Southern most corner of the Kathleen D. Taylor lands recorded in Deed Book 555 on Page 368 of said registry and running thence south 58 degrees 51 minutes 51 seconds East 421.02 feet to an iron pin set; thence, North 46 degrees 37 minutes 22 seconds East 60.34 feet to an iron pin set, thence North 29 degrees 49 minutes 02 seconds West 115.51 feet to an iron pin set; thence North 34 degrees 48 minutes 23 seconds West 133.75 feet to an iron pin set; thence North 38 degrees 38 minutes 45 seconds West 110.30 feet to an iron pin set; thence North 44 degrees 26 minutes 32 seconds East 59.85 feet to an iron pin set at a power pole; thence North 27 degrees 55 minutes 58 seconds East 65.11 feet to a

iron pin set; thence North 66 degrees 07 minutes 11 seconds East 134.25 feet to an iron pin set; thence South 54 degrees 50 minutes 55 seconds East 16.22 feet to a point in the center of a creek; thence continuing with said creek centerline the following six courses and distance:

North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West5 68.22 feet to a point located in the line of David Holland (Book 504 on Page 205);

thence continuing with the line of David Holland (Book 504 on Page 205) South 26 degrees 01 minutes 55 seconds East 84.52 feet to an existing iron pipe; thence South 26 degrees 01 minutes 55 seconds East 189.34 feet to an existing iron pipe in the northeastern margin of Andrews Road, a private soil roadway right of way; thence running along the eastern margin of Andrews Road South 36 degrees 55 minutes 54 seconds West 45.37 feet to an existing iron pin in the southeastern margin of Andrews Road, being the second (2nd) corner of Kathleen D. Taylor lands recorded in Book 555 on Page 368 of said registry; thence leaving said southeastern margin of Andrews Road and with the marked line of Kathleen D. Taylor (Book 555 on Page 368) South 51 degrees 24 minutes 39 seconds West 242.33 feet to the BEGINNING.

Section 2. Upon and after June 30, 2006, 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 20th day of June, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

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

NATIONAL NIGHT OUT – Sergeant Gaye Noblitt advised that this year's National Night Out is scheduled for August 1, 2006, to be held in the downtown area. Sgt. Noblitt reported that a variety of activities are planned and that Main Street will be closed for the event, which will take place from 5:00 p.m. to 10:00 p.m.

The City Manager noted that this would be the same night as a City Council Meeting and asked Council if this conflict posed a problem. The Mayor and Council members agreed that the conflict would not be a problem and that the event could proceed on the scheduled date.

Councilman Cuthbertson suggested making sure that downtown businesses find the closing of Main Street around 5:00 p.m. acceptable. The City Manager stated that he would work with Freddie Killough to make sure that downtown businesses were not impacted by the street closing.

ADOPT WATER/SEWER RATE AND CONNECTION FEE ORDINANCE: The City Manager presented Council with a proposed Water and Sewer Rate and Connection Fee Ordinance, that increased water and sewer rates by six percent and increases and institutes some minor water and sewer related fees. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following 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:	**$1.70 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $23.85 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.60**	**$26.50**
Master Meter Rate	**$1.70 per 1,000 Gallons, plus $7.63 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $19.08 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.90**	**$22.25**

	INSIDE CITY	**OUTSIDE CITY**
Sewer Rates:	**$1.70 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $23.85 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.60**	**$26.50**
Master Meter Rate	**$1.70 per 1,000 Gallons, plus $7.63 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $19.08 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.90**	**$22.25**

	INSIDE CITY	**OUTSIDE CITY**
Sewer Rates for Private Wells	**$2.44 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$6.10 per 1,000 Gallons, plus $23.85 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 $7.63 for water and $7.63 for sewer in the City, and $19.08 for water and $19.08 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 $26.50 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 $10.60 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**	**$ 60.00**

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 average 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
CUT – OFF FEES:		
1 - 3 OCCURANCES	$ 15.00	$ 15.00
4 - 10 OCCURANCES	$ 25.00	$ 25.00
OVER 10 OCCURANCES	$ 50.00	$ 50.00
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 37.50
TEMPORARY SERVICE (SEVEN OR LESS DAYS)	$ 15.00 PLUS ACTUAL WATER USAGE	$ 37.50 PLUS ACTUAL WATER USAGE
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
METER TAMPERING:		
1ST OFFENSE	$ 100.00	$ 100.00
2ND OFFENSE	$ 200.00	$ 200.00
3RD AND SBSEQUENT OFFENSES	$ 500.00	$ 500.00
RETURNED 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	$ 25.00	$ 25.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on June 21st , 2005 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 20th day of June, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

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

ADOPT COMMERCIAL GARBAGE FEE ORDINANCE: The City Manager presented Council with a proposed Commercial Garbage/Recycling Fee Ordinance which includes a proposed ten percent rate increase to make the commercial garbage program essentially self supporting.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the following 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	$ 111
2	269
3	429
4	588
5	747

Pickups per Month	Monthly Charge
1	$ 31
2	54
3	78

Plan "B"
Apartment Complexes

Pickups per Week	Monthly Charge
1	$ 7 (minimum charge)
2	62
3	117
4	170
5	227

Plan "C"
Commercial Can Services (3 – 35 gallon cans)

Pickups per Week	Monthly Charge
1	$ 14 (minimum charge)

Plan "D"
Commercial Recycling Services (see description in contract)

Flat Monthly Charge $ 14

Section 2. The Ordinance adopted on June 21st, 2005 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, 2006.

Adopted this the 20th day of June 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O–06–06–20–6

ADOPT PLANNING/INSPECTION FEE ORDINANCE: The City Manager presented Council with an Ordinance proposing to increase permit fees to remain consistent with the County and municipalities in the region. The Ordinance included an extra surcharge on larger commercial buildings, as was discussed at the Budget Workshop. The City Manager noted that the Ordinance proposal includes new fees for Fire Inspections, which could be removed from the Ordinance and discussed separately at a later date.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to adopt the Planning/Inspections Fee Ordinance, with the exception of Section 17, Fire Inspection Fees, as follows:

AN ORDINANCE ESTABLISHING FEES FOR THE PLANNING AND INSPECTIONS DEPARTMENT AND FIRE INSPECTIONS

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 $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 all signs regulated pursuant of Section 706 *Signs, billboards and other advertising structures* of Appendix A *Zoning* of the Code of the City of Marion.

On Premise Signs. 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 an electrical inspection shall be $25.00 plus $1.00 for each additional square foot over 24 square feet. An on-premise sign that is twenty-four (24) square feet or less that does require a footing and/or an electrical inspection shall be $50.00 plus $1.00 for each additional square foot over 24 square feet. The fee for a temporary two (2) week spectacular sign or directional sign permit and all other thirty (30) day temporary sign permits shall be $20.00. No fee shall be charged for a temporary 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 $200.00 plus $1.00 for each additional square foot over one hundred square feet. The fee shall include footing and/or an electrical inspection. An annual renewal fee shall be charged for all off-premise advertising signs. Failure to renew an off-premise sign shall result in a revocation of permit. The annual off-premise sign fee will be as follows:

OFF-PREMISE SIGN FEE SCHEDULE	
Sign Face	**Annual Renewal Fee**
0-100 square feet	$100.00
101-200 square feet	$100.00 + $0.25 per square foot
201-300 square feet	$100.00 + $0.50 per square foot

SECTION 3. FEES FOR APPLICATION TO THE BOARD OF ADJUSTMENT, PLANNING COMMISSION AND CITY COUNCIL. A fee of $125.00 will be charged for each application processed through the Planning and Inspections Department that requires action by the Board of Adjustment, Planning Board and/or City Council excluding cell tower applications and subdivision review applications. This fee includes administrative processing, staff analysis, advertising, and public notice.

SECTION 4. CELL TOWERS. A Cell tower permit application fee shall be $2,500.

SECTION 5. SUBDIVISION REVIEW. The following fees shall apply to subdivision review applications.

SUBDIVISION REVIEW FEE SCHEDULE	
Review Process	**Application Fee**
Sketch Plan/Preliminary Plat	$100.00
Final Minor Subdivision Plat	$50.00
Final Major Subdivision Plat	$100.00 + $2.00 per lot

SECTION 6. GIS MAPS. The following fees shall apply for the production of a city map.

GIS MAP PRODUCTION FEES			
Size	**Black and White**	**Color**	**Aerial**
8.5" x 11"	$1.00	$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 CITY CODE AND ORDINANCES. The following fees shall apply for requested copies of the Zoning Regulations, Subdivision Regulations, and all other sections of the Code and Ordinances:

DOCUMENT REPRODUCTION FEES	
Document	**Fee**
City Code Appendix A Zoning	$15.00
City Code Chapter 16 Subdivision	$10.00
Sections of Code & Ordinances	$0.05 per page
City Code on CD	$5.00

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, addition or structure 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 fees includes plan review for zoning compliance.
SECTION 9. 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 10. 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 estimated costs. The minimum permit fee will be $50.00. Electrical, plumbing and mechanical will be based on the Permit Chart with a minimum fee per trade of $50.00.

SECTION 11. ELECTRICAL INSPECTIONS. Fees for electrical inspections shall be determined by the Permit Chart.

SECTION 12. PLUMBING INSPECTIONS. Fees for plumbing inspections shall be determined by the Permit Chart.

SECTION 13. MECHANICAL INSPECTIONS. Fees for mechanical inspections shall be determined by the Permit Chart.

PERMIT CHART:

BUILDING PERMIT FEE SCHEDULE							
Size	**Building**	**Electrical**	**Plumbing**	**Heating**	**A/C**	**Insulation**	**Total**
Assembly							
0-10,000 sq ft	0.0785	0.0425	0.0360	0.0065	0.0065	0.0120	0.1820
10,000-50,000 sq ft	0.0788	0.0347	0.0027	0.0053	0.0053	0.0095	0.1361
50,000+ sq ft	0.0683	0.0273	0.0210	0.0042	0.0042	0.0014	0.1263
Business							
0-10,000 sq ft	0.0693	0.0425	0.0305	0.0240	0.0240	0.0120	0.2024
10,000-50,000 sq ft	0.0714	0.0420	0.0305	0.0231	0.0231	0.0074	0.1974
50,000+ sq ft	0.0641	0.0315	0.0231	0.0074	0.0074	0.0042	0.1376
Educational							
0-10,000 sq ft	0.0785	0.0360	0.0360	0.0065	0.0065	0.0120	0.1756
10,000-50,000 sq ft	0.0683	0.0273	0.0273	0.0047	0.0047	0.0095	0.1418
50,000+ sq ft	0.0620	0.0242	0.0242	0.0042	0.0042	0.0074	0.1260
Factory/Industrial							
0-10,000 sq ft	0.0360	0.0185	0.0120	0.0065	0.0065	0.0065	0.0859
10,000-50,000 sq ft	0.0273	0.0137	0.0074	0.0042	0.0042	0.0042	0.0609
50,000+ sq ft	0.0263	0.0105	0.0042	0.0032	0.0032	0.0014	0.0486
Hazardous							
0-5,000 sq ft	0.0410	0.0105	0.0105	0.0105	0.0105	0.0137	0.0966
5,001+ sq ft	0.0310	0.0084	0.0084	0.0084	0.0084	0.0105	0.0751
Institution							
0-10,000 sq ft	0.1201	0.0665	0.0665	0.0360	0.0360	0.0120	0.3373
10,000-50,000 sq ft	0.0956	0.0410	0.0452	0.0273	0.0273	0.0053	0.2415
50,000+ sq ft	0.0683	0.0273	0.0273	0.0210	0.0210	0.0042	0.1691
Mercantile							
0-10,000 sq ft	0.0517	0.0240	0.0240	0.0185	0.0185	0.0120	0.1488
10,000-50,000 sq ft	0.0546	0.0242	0.0179	0.0137	0.0137	0.0095	0.1334
50,000+ sq ft	0.0410	0.0168	0.0074	0.0095	0.0095	0.0042	0.0882
Storage							
0-10,000 sq ft	0.0360	0.0083	0.0083	0.0083	0.0083	0.0046	0.0739
10,000-50,000 sq ft	0.0355	0.0074	0.0074	0.0021	0.0053	0.0053	0.0628
50,000+ sq ft	0.0273	0.0053	0.0053	0.0042	0.0014	0.0021	0.0455
Residential							
	0.0721	0.0360	0.0360	0.0231	0.0231	0.0092	0.1996

SECTION 14. MANUFACTURED HOMES. The permit fee for a manufactured home shall be $75.00. The mobile home permit will include all trade. Modular home fees shall not be considered a manufactured home.

SECTION 15. MISCELLANEOUS INSPECTIONS. Fees for miscellaneous inspections will be as follows:

MISCELLANEOUS INSPECTION PERMITS	
Inspection Type	**Fee**
Fuel Storage Tank	$50.00
Swimming Pools	$50.00
Insulation	$50.00
Demolition	$50.00
Other Required Inspection	$50.00
Return Inspection	$50.00

Section 16. WORK WITHOUT PERMIT. The City of Marion shall charge a penalty double the standard permit fee for all activities requiring a zoning or building permit and/or inspection.

Section 17. This ordinance shall become effective July 1, 2006.

Adopted this 20th day of June 2006.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette
City Manager/ Clerk

Ordinance Number: O-06-05-16-07

DOWNTOWN ADVISORY COMMITTEE APPOINTMENTS: The City Manager advised that there were two vacancies to be filled on the Downtown Advisory Committee (DAC). He stated that the DAC had unanimously recommended Mr. Harold Walker of First Citizen's Bank and Ms. Cindy Ruel, owner of Wine Ruels, to fill unexpired terms on the DAC.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to appoint Ms. Cindy Ruel and Mr. Harold Walker to fill unexpired terms on the DAC, said terms to expire June 30, 2008.

CONSIDER ADOPTION OF RESOLUTION TO ACCEPT GOVERNOR'S HIGHWAY SAFETY PROGRAM: The City Manager presented Council with a Resolution proposing to accept a Governor's Highway Safety Program Grant. The grant will allow the City to purchase a $28,000+ motorcycle to assist with traffic enforcement, with only a 25 percent local match of just over $7,000.

Mayor Clark stated that he would like to see the City pursue this grant. He stated that the motorcycle would be a great value, at just over $7,000, even if it is not used that much.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, Council voted unanimously to approve the following Resolution:

NORTH CAROLINA GOVERNOR'S HIGHWAY SAFETY PROGRAM
LOCAL GOVERNMENTAL RESOLUTION
Form GHSP-02-A

WHEREAS, the Marion Police Department, herein called the "Agency" has completed an application contract for traffic safety funding; and that the Marion city Council, 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 20th DAY OF JUNE, 2006 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, an application contract in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of $23,137.00 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 $44,991.00 as required by the project contract; and
4. That the Project Director designed 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 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 BY:

J. Robert Boyette, City Manager/Clerk

DATE: June 20, 2006

CITY MANAGER'S REPORT:

The City Manager presented Council with information from the Rural Center on the N.C. STEP Program. August 4th is the kick-off celebration in conjunction with the First Friday concert (Coming Up Brass). Mayor Clark stated that he hopes that the City can have a large crowd for this kick off. Mayor Clark and Council members suggested that hot dogs and ice cream be served to attract a larger crowd.

The City Manager stated that he had been advised of the need for Dog Waste Receptacles in the Downtown area. Council was presented information on different types of receptacles. It was the consensus of Council to have this matter reviewed during the upcoming Downtown Streetscape/Traffic Flow Plan, to determine if receptacles can be pursued that will blend in with the City's downtown streetscape.

The City Manager advised that DOT District Engineer Doug McNeal has asked for a letter from the City, stating that the City does not wish to contact business owners at the southern end of Rutherford Road to try and acquire the needed right of way for the proposed Rutherford Road widening project. Council agreed by consensus that the City would not pursue acquisition of this right of way and for the City Manager to send the requested letter on the City's behalf.

The City Manager reported that the promised traffic signal at West Henderson and Wilhemenia Streets had been denied by DOT. Mayor Clark stated that DOT Board member Alan Thornburg had promised that the City would receive this traffic signal. After brief discussion, it was agreed that the Mayor would send a letter to Mr. Thornburg, protesting the denial of the traffic signal.

Public Works Director/Engineer Richard McMillian gave an update on the renovations of the Community Building Basement and on the proposed painting of the outside of the Community Building.

The City Manager stated that City Staff is working to extend final services to June 30 annexation areas.

CLOSING COMMENTS:

Councilman Edwards reported that the landscaping around the Welcome to Marion sign on Sugar Hill Road is in poor condition and needs to be cut back. The City Manager stated that the City's landscaping contractor would be contacted about the condition of this landscaping and that the landscaping around all City gateway signs would be trimmed when new signs were put in place before the N.C. STEP Program kick-off event on August 4.

Councilman Cuthbertson advised that there is a dead tree on West Henderson Street, just south of the railroad underpass and that the trees in the South Garden Street Parking Lot appear to be dying. Public Works Director Richard McMillan stated that City staff is trying to water the trees in the South Garden Street Parking Lot in order to save them. The City Manager stated that staff would work to remove and replace the dead tree on West Henderson Street as soon as it is practical.

Councilman Owenby advised that he would like to see the City make sure that grease traps are consistently put in place on all food service establishments throughout the City and on the City's utility system.

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, July 18, 2006 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; Jim Neal, Fire Chief; Richard McMillian, Public Works Director/Engineer; Heather Cotton, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Mary Smith 408 Spaulding Road, Marion, NC; James Wilson 372 Rabbit Ridge, Rutherfordton, NC; Jeannie Hensley 247-B South Garden Street Marion, NC; Bill Hendley 1476 Roby Conley Road, Marion, NC; Bill & Anita Moore 90 West Yancey Street Marion, NC; Frank Dean 375 South Garden Street, Marion, NC; Sandra Holland 51 Stacey Hill Road, Marion, 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 Minutes - June 20, 2006 Regular Session

B. Adopt Resolution – Authorizing Disposal of Surplus Personal Property:

RESOLUTION AUTHORIZING DETERMINATION AND DISPOSAL OF SURPLUS PERSONAL PROPERTY

WHEREAS, The City of Marion desires to dispose of property determined to be surplus;

WHEREAS, G.S. 160A-266c allows a city council to adopt regulations prescribing procedures for disposing of personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items;
WHEREAS, regulations shall be designed to secure for the City fair market value for all property disposed of and to accomplish the disposal efficiently and economically;

WHEREAS, a council may authorize one or more city officials to declare surplus any personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the City in accord with the regulations;

WHEREAS, records of disposed property should be maintained by the City.

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

The City of Marion ("City") desires to dispose of surplus personal property valued at less than thirty thousand dollars ($30,000) by appointing the City Manager, upon conference with or recommendation from the applicable department head, the designated official responsible for declaring any personal property valued at less than thirty thousand dollars ($30,000) as surplus, set its fair market value, and to convey title to the property for the City.

BE IT FURTHER RESOLVED, that the City Manager shall keep a record of all property sold and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

This resolution shall become effective upon its adoption.

ADOPTED this the 18th day of July, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-06-07-18-1

C. Approve 2005-06 Tax Adjustments:

July 1, 2005 through June 30, 2006 – Total Adjustments $ 18,502.48

PUBLIC HEARING – RUTHERFORD ROAD REZONING: Mayor Clark Opened the Public Hearing.

City Planner Heather Cotton advised that the applicant is requesting an amendment to the Official Zoning Map in order to redevelop a vacant residential property into a commercial office for North State Gas. An existing duplex is located on the subject property and the Applicant has indicated the property has been vacant for over year. The property is located on Rutherford Road within close proximity to major transportation routes and adjacent to existing C-2 zoning.

Ms Cotton advised that the Planning Board had recommended approval with a 4-0 vote at a duly noticed public hearing held July 13, 2006 to Rezone Property on Rutherford Road with the PIN No. 1711.04-50-0593 from R-2 General Residential to the C-2 General Commercial Zoning District.

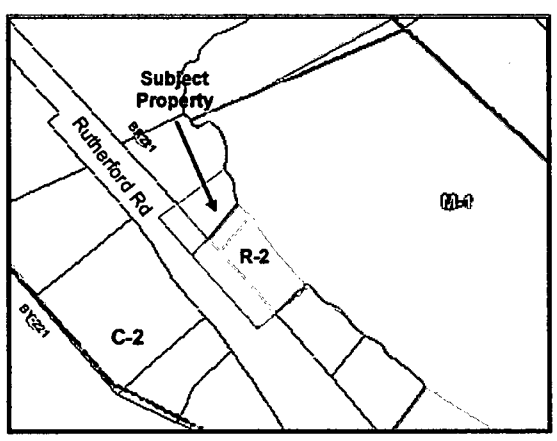


Figure One: Current Zoning District

Ms. Cotton stated that the proposed use as an office for North State Gas is consistent with the intent of the C-2 General Commercial Zoning District. Historically, the surrounding area has been developed for commercial uses and those properties that were once residential have since converted uses. Two (2) residential properties remain in proximity to the subject property. The residential property contiguous to the subject property, which is presently under the same ownership is for currently for sale. The other existing residential use is located within the C-2 General Commercial Zoning District.

There were no citizens present to discuss this request.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the request to rezone the subject property on Rutherford Road from R-2 General Residential to C-2 General Commercial and to adopt the following Ordinance accordingly:

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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of Louise Byers Revocable Management Trust for property with the Parcel Identification Number 1711.04-50-0593 from R-2 General Residential to the C-2 General Commercial Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on July 13, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 18th day of July 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: 06-07-18-01

PUBLIC HEARING – ASSIGN ZONING TO SCOTTY'S MOBILE VILLAGE ANNEXATION AREA – HANKINS ROAD: Mayor Clark opened the Public Hearing:

City Planner Heather Cotton advised that this request for zoning was initiated by the City of Marion for territory within the Scotty's Mobile Home Village Annexation area. The purpose of the request is to zone the property within the annexation to make it compatible with like uses within the City of Marion and to provide a mechanism to regulate the mobile home park.
Ms. Cotton stated that pursuant to Section 802, *R-2 General Residential Zoning District* of the Marion Zoning Ordinance, the area is compatible with like uses permitted within the R-2 Zoning District.

Ms. Cotton advised that the area to be zoned was recently annexed by the City of Marion City Council during a duly noticed public hearing on June 20, 2006. The annexation of the property took effect on June 30, 2006. Currently, the area does not have a zoning designation for which to effectively review proposed development applications and regulate existing uses. The proposed annexation would create a mechanism for the City of Marion to regulate and enforce the City Code.

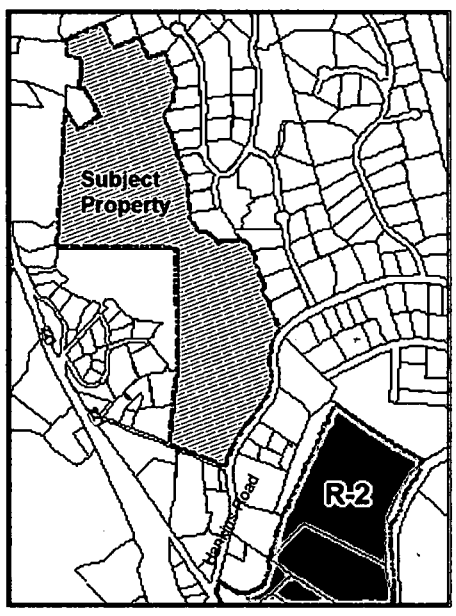
Ms. Cotton reported that at a duly noticed public hearing held on July 13, 2006, the City of Marion Planning Board voted 4-0 to APPROVE the proposed zoning map amendment.

A brief discussion followed.

There were no citizens present to discuss this request.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the zoning of the Scotty's Mobile Village annexation area on Hankins Road as R-2 General Residential and to adopt the following Ordinance accordingly:



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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map to include Scotty's Mobile Village Annexation Territory in the R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on July 13, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 18th day of July 2006.

A. Everette Clark, Mayor

ATTEST:

I. Robert Boyette, City Manager/Clerk

Ordinance Number: 06-07-18-02

PUBLIC HEARING – ASSIGN ZONING TO SCHOOL STREET/STEVENS PROPERTY: Mayor Clark opened the Public Hearing.

City Planer Heather Cotton advised that an Ordinance to amend the *Official Zoning Map* to include property

annexed by the City of Marion located on School Street with the PIN No. 1712.13-12-1747 in the R-2 General Residential Zoning District was initiated by the City of Marion for property located on School Street that was annexed by the City on June 30, 2006. The purpose of the request is to zone the property within the annexation to make it compatible with like uses within the City of Marion and to provide a mechanism to regulate such uses. Pursuant to Section 802, *R-2 General Residential Zoning District* of the Marion Zoning Ordinance, the area is compatible with like uses permitted within the R-2 Zoning District.

Ms. Cotton reported that the area to be zoned would include one (1) parcel of land contiguous to property located on School Street. The parcel to be zoned is owned by the same property owner as the properties that fronts on School Street.

The existing use of the property is residential and is surrounded by other single family residential located within and outside the City's jurisdictional limits. No new development is being proposed as part of the proposed zoning map amendment. The proposed Zoning District Map is shown below in Figure One.

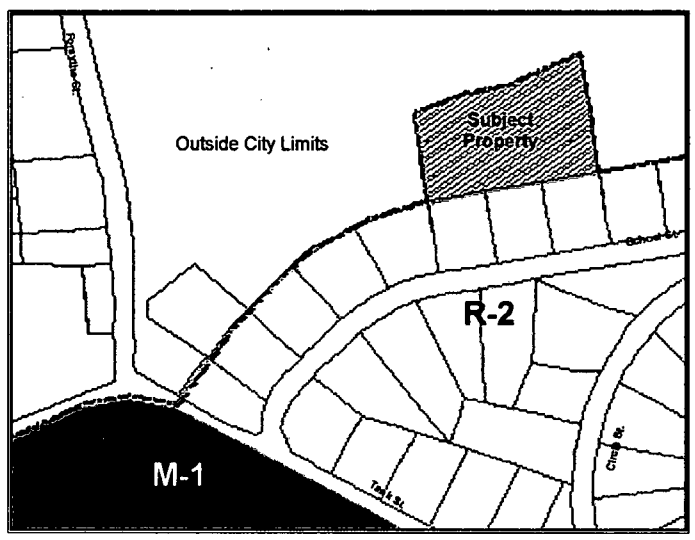


Figure One: Proposed Zoning District

Ms. Cotton advised that in a duly noticed public hearing held on July 13, 2006, the City of Marion Planning Board voted 4-0 to APPROVE the proposed zoning map amendment.

A brief discussion followed.

Mayor Clark closed the Public Hearing.

There were no citizens present to discuss this request.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to zone the School Street/Stevens Annexation Area as R-2 General Residential and to adopt the following Ordinance accordingly:

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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map to include property annexed by the City on June 30, 2006 located on School Street with the PIN No. 1712.13-12-1747 in the R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on July 13, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 18th day of July 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: 06-07-18-03

PUBLIC HEARING - ASSIGN ZONING TO HIGHWAY 70 EAST/STACY HILL ROAD PROPERTY ANNEXATION AREA:

Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that an Ordinance to amend the *Official Zoning Map* to include the Food Lion Annexation Area in the C-2 General Commercial Zoning District was presented to Council.

The purpose of the request is to zone the property within the annexation to make it compatible with like uses within the City of Marion and to provide a mechanism to regulate future commercial development. Pursuant to Section 804, *C-2 General Commercial Zoning District* of the Marion Zoning Ordinance, the area is compatible with like uses permitted within the C-2 Zoning District.

Ms. Cotton stated that the Planning Board recommended Approval with a 4-0 vote at a duly noticed public hearing held July 13, 2006.

Ms. Cotton reported that the area to be zoned would include a parcel of land located on State Highway 70 East with the PIN No. 1711.09-07-5215. The parcel is owned by Food Lion LLC and is currently vacant. The future use of the property is proposed to include a Food Lion shopping center. The property owner has not submitted or received approval from the City of Marion for development.

It is surrounded by residential properties in addition to vacant/agricultural land located outside the City's jurisdictional limits. The proposed Zoning District Map is shown below in Figure One:

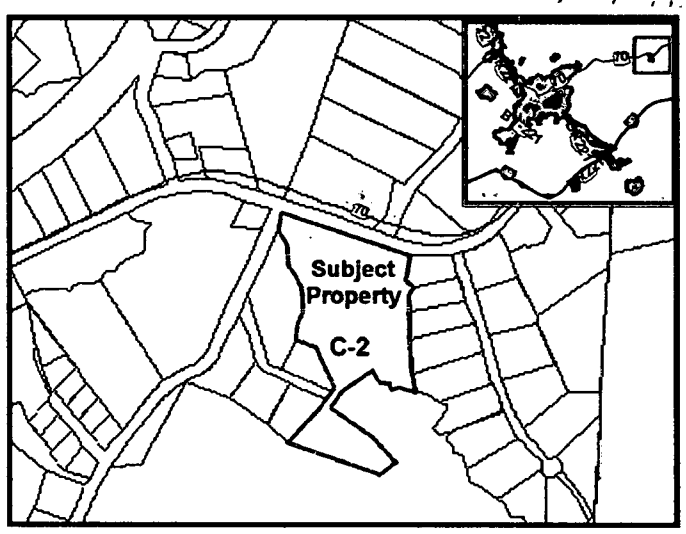


Figure One: Proposed Zoning District

A brief discussion followed.

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 approve the zoning of the Food Lion Annexation Area at US 70 East and Stacy Hill Road as C-2 General Commercial and to adopt the following Ordinance accordingly:

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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map to include property owned by Food Lion LLC annexed by the City on June 30, 2006 located on Highway 70 East to the C-2 General Commercial Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on July 13, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 18th day of July 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: 06-07-18-04

REQUEST – PARKING RESTRICTIONS – YANCY STREET IN WEST MARION: The City Manager presented Council with a written request from Mr. & Mrs. Bill Moore regarding a problem with on-street parking on Yancy Street in West Marion.

Mr. and Mrs. Moore were present for this meeting and advised that cars are parking on both sides of the street on Yancy and West Hudgins Streets, creating a difficult and dangerous situation for motorists trying to travel the street. Mr. and Mrs. Moore stated that emergency vehicles could not get through this street in the event of an emergency. Mr. and Mrs. Moore requested that no parking on one side of both Yancy and West Hudgins Streets be approved by Council.

The City Manager noted that the Street Committee had looked at this parking situation and feels that no parking restrictions on one side of Yancy Street is indeed warranted.

Police Chief Mika Elliott also noted the extent of this congested area.

A discussion followed.

It was the consensus of Council to refer to request to the Street Committee so that West Hudgins Street could be looked at, along with Yancy Street.

APPROVE 2005 TAX SETTLEMENT: The City Manager presented Council with the 2005 Tax Settlement, prepared by Tax Collector Claudia Hill as follows:

2005 TAX SETTLEMENT

July 1, 2005 - June 30, 2006

CHARGES		CREDITS	
Real Property	$ 1,315,881.33	Tax Revenue	$ 1,572,162.01
Less Exemption	(29,557.88)	Less 1% Discount	(6,542.70)
Personal Prop.	267,818.67	Less Refunds - Principal	(379.74)
Utilities	73,524.94	Late Listing	1,006.18
Discoveries	4,766.28	Interest & Penalties	4,458.26
Total Tax	**$1,632,433.34**	**Total Revenue**	**$ 1,570,704.01**
Late Listing	1,647.51		
Interest & Penalties	4,542.88	**ADJUSTMENTS**	
		1% Discount	6,542.70
TOTAL	**$ 1,638,623.73**	Tax Releases - Principal	5,581.26
		Tax Releases - Late List	13.37
		Tax Releases - Interest	84.62
		Tax Refunds - Principal	379.74
		Uncollected Late List	627.96
		Uncollected - Real	48,877.95
		Uncollected - Personal	5,812.12
		TOTAL	**$1,638,623.73**

The City Manager advised that tax collection for 2005-06 was well above 96 percent, much improved over 2004-05, when the City's largest taxpayer was in bankruptcy. The City Manager stated that approval of the prior year tax settlement is required under State law before the next year's tax bills can be mailed.

A brief discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbettson, Council voted unanimously to approve the 2005-06 tax settlement as prepared and presented above.

APPROVE ORDER OF COLLECTION FOR PROPERTY TAXES FOR 2006: The City Manager presented Council with the Order of Collection for City property taxes for 2006 and advised that, under State law, the Order of Collection must be approved in order for 2006-07 City property tax bills to be mailed. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted to approve the Order of Collections for 2006 City property 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 2006 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 seal, this 18th day of July, 2006.

_____(Seal)
A. Everette Clark, Mayor

ATTEST:

_____
J. Robert Boyette, City Manager/Clerk

REQUEST BY McDOWELL TRAILS ASSOCIATION: Mr. Bill Hendley, President of the McDowell Trails Association, appeared before Council, along with Frank Dean and Mary Smith, requesting that the City fund one-half, or $3,495.00, of the cost of a preliminary greenway study, to be completed by McGill Associates, for a possible 1.4 mile greenway along the Catawba River on property owned by Great Meadows and other property owners from US 70 West to the US 221 Bypass.

The greenway design would outline the progression of events that should occur, in order to establish the greenway in the following six steps:

1. Have a feasibility/concept map made of the route including a construction cost estimate.
2. Obtain right-of-way agreements from property owners.
3. Have detailed drawings made of every aspect of the route.
4. Obtain funding and permits
5. Contract construction.
6. Supervise construction according to drawing specifications.

Mayor Clark commended the McDowell Trails Association for their efforts on the greenway thus far.

Councilman Owenby asked if the property owners along the proposed greenway route supported the concept of a greenway. Frank Dean stated that he had obtained written permission from three property owners, giving permission for the Trails Association to begin the greenway planning process.

Councilman Martin asked how long it would take for the greenway to become a reality. Mary Smith estimated that the greenway could be constructed in two to three years.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve funding for the Catawba River Greenway study in the amount of $3,495.00.

Councilman Little stated that he would like to see a good quality, attractive classy product showing the plan for the future greenway.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

DISCUSS FIRE DEPARTMENT FUNDRAISING : The City Manager advised that Councilman Edwards had requested that the issue of the telephone solicitations being made on behalf of the Marion Fire Department be placed on this agenda.

Due to numerous complaints about solicitation calls on behalf of the Marion Firefighter's Association (using the name of the Marion Fire Department), the City Manager advised that he had informed Department Heads that the City of Marion will not participate in fundraisers that involve telephone solicitations in the future and that all fundraising activities need to be routed through him for review.

Councilman Edwards advised that he had received several complaints about the sales pitch being used by the firm conducting the fundraising for the Fire Department. He stated that the fundraising effort gave the appearance of the Fire Department begging for funding. Councilman Edwards stated that the City should adequately fund the Fire Department's needs, including the annual Christmas banquet and other items, and suggested that these needs be communicated during the budget process.

Mayor Pro Tem Steve Little stated that he had reviewed the contract recently signed by the Marion Firefighter's Association and noted that the City would have to show documentation of violations of the terms of the agreement in order to get out of this contract, meaning that it would be best for the City to finish out this contract.

Mayor Clark stated that he had received a sales call that was misleading, indicating that the fundraising was being done to purchase equipment and supplies for the Fire Department, which was not the case. Chief Neal stated that he had subsequently instructed the firm making the telephone calls to change their message. Chief Neal was present for this meeting and added that, on a positive note, the North Carolina Department of Insurance had conducted an inspection of the Marion Area Fire District new six mile district and had certified the six mile area as a Class 9E area. Chief Neal stated that he should soon receive written confirmation on the official rating, putting the new six mile district in effect. The City Manager added that the six mile district effectively eliminates almost all areas served by the Marion Fire Department, but outside of a taxable district.

APPROVE SUGAR HILL ROAD LANDSCAPING PLANS: The City Manager advised that Council had previously received a copy of the proposed DOT landscaping plans for the Sugar Hill Road corridor. These plans have been endorsed by the Tree Board.

The City's Landscaping Contractor Lawrence Moore, has provided an estimate of $5,250 per year to maintain this landscaping, compared to $10,000 per year for the initial DOT landscaping design for Sugar Hill Road. Under the agreement with DOT, the State will install the landscaping, likely this fall, and maintain the plantings for one year. The City would be responsible for maintaining the plantings after the first year. Maintenance costs would appear would first appear in the 2007-08 Fiscal Year for the new landscaping.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the DOT landscaping plans for Sugar Hill Road.

STREET COMMITTEE RECOMMENDATIONS – HANDICAPPED PARKING SPACES – FORT AND SPRING STREETS: The City Manager advised that the Street Committee met and examined on-street handicapped parking spaces on Spring Street and Fort Street, adjacent to St. John's Episcopal Church and First Baptist Church, respectively.

The City Manager stated that it is the recommendation of the Street Committee to remove both handicapped parking spaces, for consistency with past Council actions and due to the locations not meeting ADA standards for width for on-street handicapped parking spaces.

A discussion followed. Councilman Edwards stated that he would have to vote against the recommendation of the Street Committee because he continued to believe that the City did not provide enough on-street handicapped parking spaces.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, Council voted to adopt the following Ordinances:

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		
FORT 60 FEET WEST OF	HANDICAP ONLY FORT AND N. MAIN	NORTH SIDE, BEGIN THE NW CORNER OF AND CONTINUING 23 FEET WEST	STREET	PARKING

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of July, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-07-18-5

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 35 FEET EAST OF	HANDICAP ONLY SPRING AND S. MAIN	NORTH SIDE, BEGIN THE NE CORNER OF AND CONTINUING 22 FEET EAST	STREET	PARKING

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of July, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-07-18-6

The vote was as follows:

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

PARKING – TIME RESTRICTED SPACES TO ACCOMMODATE TAG OFFICE: The City Manager

advised that the handicapped parking space on South Garden Street had been determined not to be a legal space, since it is not on the City Traffic Schedule.

Council agreed that this handicap space is needed and should be added to the Traffic Schedule.

The City Manager further noted that the tag office, operated by the County, is scheduled to open August 1, 2006 in the County Administration Building.

County Officials are requesting that additional parking spaces around the County Administration Building be designated as thirty (30) minute parking to provide needed parking for the tag office.

The City Manager presented a map showing that one handicapped and three two hour parking spaces were currently in place behind the County Administration Building on South Garden Street, while one handicapped, two 15 minute and 13 two hour parking space were in place next to the County Administration Building on East Court Street (Courthouse Hill).

A discussion followed.

Mayor Clark suggested that all non-handicapped parking spaces on South Garden Street and East Court Street adjacent to the County Administration building be designated as 30 minute parking.

Mayor Pro Tem Little proposed that the three two hour spaces on South Garden Street behind the County Administration Building and seven current 15 minute and two hour parking spaces on East Court Street next to the County Administration building be designated as 30 minute parking.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the following ordinance to designate the three two hour spaces on South Garden Street behind the County Administration Building and seven current 15 minute and two hour parking spaces on East Court Street next to the County Administration building as 30 minute parking, effective immediately as soon as signs are posted:

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
GARDEN STREET(SOUTH)	2 HR. PARKING	WEST SIDE,BEGIN 83 FT. SOUTH OF THE SW CORNER OF S. GARDEN ST. AND E. COURT ST. CONTINUING 97 FT. SOUTHERLY
COURT STREET (EAST)	HANDICAP PARKING	SOUTH SIDE, BEGIN 74 FT. WEST OF THE SW CORNER OF E. COURT ST. AND GARDEN ST., CONTINUING 16 FT. WESTERLY
COURT STREET (EAST)	PARKING 15 MINUTE	SOUTH SIDE, BEGIN 90 FT. WEST OF THE SW CORNER OF E. COURT ST. AND GARDEN ST., CONTINUING 27 FT. WESTERLY
COURT STREET (EAST)	PARKING 2 HOUR LIMIT 45 DEGREES	SOUTH SIDE, BEGIN 125 FT. WEST OF THE SW CORNER OF E. COURT ST. AND GARDEN ST., CONTINUING 81 FT. WESTERLY

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
GARDEN STREET(SOUTH)	HANDICAP PARKING	WEST SIDE, BEGIN 63 FT. SOUTH OF THE SW CORNER OF S. GARDEN ST. AND E. COURT ST. CONTINUING 21 FT. SOUTHERLY
	PARKING 30 MINUTE LIMIT	WEST SIDE,BEGIN 84 FT. SOUTH OF THE SW CORNER OF S. GARDEN ST. AND E. COURT ST. CONTINUING 79 FT. SOUTHERLY
COURT STREET (EAST)	HANDICAP PARKING 45 DEGREES	SOUTH SIDE, BEGIN 75 FT. WEST OF THE SW CORNER OF E. COURT ST. AND GARDEN ST., CONTINUING 15 FT. WESTERLY
COURT STREET (EAST)	PARKING 30 MINUTE LIMIT 45 DEGREES	SOUTH SIDE, BEGIN 97 FT. WEST OF THE SW CORNER OF E. COURT ST. AND GARDEN ST., CONTINUING 96 FT. WESTERLY
COURT STREET (EAST)	PARKING 2 HOUR LIMIT 45 DEGREES	SOUTH SIDE, BEGIN 193 FT. WEST OF THE SW CORNER OF E. COURT ST. AND GARDEN ST., CONTINUING 110 FT. WESTERLY

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of July, 2006.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-07-18-7

ADOPT RESOLUTION APPROVING HAZARD MITIGATION PLAN: The City Manager reported that the draft Hazard Mitigation Plan, encompassing McDowell County, the City of Marion and the Town of Old Fort had been presented to Council in May. After the initial presentation, the City Manager stated that he had sent the County several changes to be made to the document, mainly involving references to the City. The City Manager stated that A Resolution now needed to be adopted by Council approving the Plan so that it could be submitted to the State. The City Manager stated that he knew of at least one additional correction and would recommend approval of the Plan, subject to final review by staff. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following Resolution approving the Hazard Mitigation Plan, subject to final technical corrections to be submitted by the City Manager to McDowell County:

McDowell County Multi Jurisdictional
Hazard Mitigation Plan

WHEREAS, the citizens and property within the City of Marion are subject to the effects of natural hazards and man-made hazard events that pose threats to lives and cause damages to property, and with the knowledge and experience that certain areas, i.e., flood hazard areas, are particularly susceptible to flood hazard events; and

WHEREAS, the City desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has in Section 1 Part 166A of the North Carolina General Statutes (adopted in Session Law 2001-214—Senate Bill 300 effective July 1, 2001), states in Item (a) (2) "For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after November 1, 2004, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act"; and

WEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local government must develop an All-Hazards Mitigation Plan in order to receive future Hazard Mitigation Grant Program Funds, and

WHEREAS, it is the intent of the City Council of Marion to fulfill this obligation in order that the City will be eligible for state assistance in the event that a state of disaster is declared for a hazard event affecting the County;

NOW, therefore, be it resolved that the City Council of Marion hereby:

1. Adopts the McDowell County Multi Jurisdictional Hazard Mitigation Plan; and

2. Vests the City Manager with the responsibility, authority, and the means to:

   (a) Inform all concerned parties of this action.

   (b) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards.

   (c) Adjust the boundaries of County and municipal planning jurisdictions whenever a municipal annexation or extraterritorial jurisdiction revision results in a change whereby a municipality assumes or relinquishes the authority to adopt and enforce floodplain management regulations for a particular area in order that all Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) accurately represent the planning jurisdiction boundaries. Provide notification of boundary revisions along with a map suitable for reproduction, clearly delineating municipal corporate limits and extraterritorial jurisdiction boundaries to all concerned parties.

3. Appoints the City Manager to assure that the Hazard Mitigation Plan is reviewed annually and in greater detail at least once every five years to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the Marion City Council for consideration.

4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

ADOPTED by the City Council of the City of Marion this the 18th day of July, 2006.

A. Everette Clark, Mayor
City of Marion

ATTEST:

J. Robert Boyette, City Manager/Clerk

SEAL

Resolution Number: R-06-07-18-1

McDowell County Multi-Jurisdiction Hazard Mitigation Plan

Including the City of Marion and Town of Old Fort

June 2006

McDOWELL COUNTY 1842 NORTH CAROLINA

Introduction/Planning Process

A. Statement of the Problem

Natural hazards are a part of the world in which we live. Floods, hurricanes, tornadoes, winter storms, wildfires, and other hazardous events are natural phenomena. Natural hazards are inevitable and there is little humans can do to control force and intensity. However, how the natural and the built environments interact with hazards is quite different.

The natural environment is amazingly recuperative from the forces of wind, rain, fire and earth and can regenerate with resiliency, restoring habitat and ecosystems in time for the next generation of plant and animal life to begin anew. The built environment, however, is not as resilient. Natural disasters occur when human activity in the form of buildings, infrastructure, agriculture and other land uses are located in the path of the destructive forces of nature.[I-1] Since the built environment is more susceptible to natural hazards and cannot recuperate like the natural environment, communities impacted by a natural hazard often recover only over a long period of time and at great social and economic cost.

In recent years, the frequency and impact of natural disasters has increased not because natural hazards occur more frequently but because more people are choosing to live and work in locations that put them and their property at risk. "By the year 2010 the number of people residing in the most hurricane-prone counties throughout the nation will have doubled. Likewise, while floods have caused a greater loss of life and property and have disrupted more families and communities than all other natural hazards combined, the rate of development in flood-prone areas continues to escalate, putting more people and property in danger." [I-2]

While natural hazards cannot be prevented, local communities can use various means to reduce the vulnerability of people and property to damage. Communities can reduce exposure to future natural hazards by managing the location and characteristics of both the existing and future built environment. By utilizing location and construction techniques, a community can mitigate negative impacts and reduce future damage to both human lives and property.

Preparing for natural hazards involves establishing a comprehensive emergency management system consisting of the following four component activities:

1. Preparedness activities undertaken to improve a community's ability to respond immediately after a disaster. Preparedness activities include the development of response procedures, design and installation of warning systems, exercises to test emergency operational procedures, and training of emergency personnel.
2. Response activities designed to meet the urgent needs of disaster victims. Response activities occur during the disaster and include rescue operations, evacuation, emergency medical care, and shelter programs.
3. Recovery activities designed to rebuild after a disaster. These activities include repairs to damaged public facilities such as roads and bridges, restoration of public services such as power and water, and other activities that help restore normal services to a community.
4. Hazard mitigation activities designed to reduce or eliminate damages from future hazardous events. These activities can occur before, during, and after a disaster and overlap all phases of emergency management.

Hazard mitigation is defined as "any action taken to eliminate or reduce the long-term risk to human life and property from natural and technological hazards.[I-3] Mitigation activities are ongoing and overlap all phases of emergency management.

Hazard mitigation includes three types of activities:

1. Structural mitigation – constructing dam and levee projects to protect against flooding, constructing disaster-resistant structures, and retrofitting existing structures to withstand future hazardous events;
2. Non-structural mitigation - development of land use plans, zoning ordinances, subdivision regulations, and tax incentives and disincentives to discourage development in high-hazard risk areas; and
3. Educational programs – educating the public about potential natural hazards, the importance of mitigation, and how to prepare to withstand a disaster.

"A fundamental premise of mitigation strategy is that current dollars invested in mitigation activities will significantly reduce the demand for future dollars by reducing the amount needed for emergency recovery, repair, and reconstruction following a disaster. Mitigation also calls for conservation of natural and ecologically sensitive areas (such as wetlands, floodplains, and dunes) which enables the environment to absorb some of the impact of hazard events. In this manner, mitigation programs help communities attain a level of *sustainability*, ensuring long-term economic vitality and environmental health for the community as a whole." [I-4]

The concept of sustainable development has emerged in recent years as a means to emphasize the need to regain a balance between the built and natural environment. Sustainable development is defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[I-5] Sustainable development centers on the type of development rather than quantity and is not intended to be a no-growth or slow-growth initiative.

"Sustainable development through mitigation is not an impediment to growth. By building a community that is resilient to natural hazards, citizens strengthen the local economy. A locality that reduces its vulnerability will experience less restoration time, shortened business downtime, and less social disruption following a disaster, freeing resources that would otherwise be devoted to response and recovery; and more quickly improving citizens' lives." [I-6]

B. Purpose of the Plan

The purpose of the Plan is:

1. To demonstrate local commitment to hazard mitigation planning principles;
2. To reduce natural hazard vulnerability by reducing the potential for future damages and economic losses;
3. To speed recovery and redevelopment following future natural hazard events;
4. To comply with both State and Federal legislative requirements for local hazard mitigation planning; and
5. To qualify for additional grant funding, in both pre-disaster and post-disaster situations.

C. Authority

Once the draft plan is approved by NC Emergency Management, the McDowell County Multi Jurisdictional Hazard Mitigation

Plan will be adopted by the McDowell County Board of Commissioners, under the authority and police powers granted to counties of the State of North Carolina by North Carolina General Statutes (N.C.G.S., Chapter 153A). The McDowell County Multi Jurisdictional Hazard Mitigation Plan will also be adopted by the City of Marion City Council and Town of Old Fort Board of Alderman.

The Plan has been developed in accordance with current criteria governing the development of local hazard mitigation plans including 1) Chapter 166A: North Carolina Emergency Management Act as amended by Senate Bill 300: An Act to Amend the Laws Regarding Emergency Management as Recommended by the Legislative Disaster Response and Recovery Commission (2001) and 2) the Disaster Mitigation Act of 2000 (Public Law 106-390, October 30, 2000) that amended the Robert T. Stafford Relief and Emergency Assistance Act.

D. Participants in the Planning Process

The planning process was overseen by the McDowell County Hazard Mitigation Advisory Committee (Table I-1) which met regularly during the planning process. The Team also identified other interested parties who were invited to participate in planning meetings and who were also sent copies of draft documents for review and comment.

Table I-1: HMP Advisory Committee / Interested Parties

Local Government/Agency	Position
McDowell County Planning	Director
McDowell County Inspections	Director
McDowell County Administration	County Manager
McDowell County Info. Tech.	Director
McDowell County Health Dept.	Director
McDowell County Emergency Medical Services	Operations Director
McDowell County Emergency Management	Director
City of Marion	City Manager
Town of Old Fort	Mayor

E. Description of the Planning Process

In the summer of 2003 McDowell County realized that a countywide comprehensive planning process that involved all of the smaller municipalities within the County would be the key to making mitigation a countywide effort. Using a comprehensive planning forum would make it possible for the County to assist the towns with creating a proactive rather than reactive approach to hazard mitigation and to ensuring that all lands subject to hazards were identified and managed appropriately to reduce future exposure.

In May 2003, McDowell County staff worked as a team to create the draft plan. The comprehensive planning process was organized to ensure that individual mitigation projects and initiatives undertaken by the County are carried out in a cooperative manner such that all local initiatives work together and no single action or project detracts from the overall goal of creating a safer environment for all citizens of McDowell County. The planning process also played an important part in generating community understanding of and support for hazard mitigation by creating a forum for discussion and publicizing the need for hazard mitigation planning.

Public Input

1st Public Meeting

On July 17, 2004, McDowell County gave public notice of the start of the hazard mitigation planning process at the McDowell County Board of Commissioners public meeting. The meeting was advertised in the local newspaper, The McDowell News.

Neighboring communities, State and Federal Agencies, businesses, academia, nonprofits, and other interested parties were invited to participate in the planning process. These individuals were invited by advertising a public announcement in The McDowell News as well as through email and on the County website.

At the meeting, a presentation was made describing the purpose of the hazard mitigation planning process and the schedule for plan development. The section of the Plan on hazard identification and analysis was also presented. No public comments were received.

In addition to the meeting, public announcement of the meeting provided an address and phone number for persons who were unable to attend the meeting but who wanted to receive more information about the planning process. During the planning process, drafts of the plan were also available for public review at the McDowell County Emergency Services Department.

2nd Public Meeting

A second public meeting/public hearing will be held once the Plan has been approved by NC Emergency Management and is ready for adoption by the McDowell County Board of Commissioners and the City of Marion and Town Old Fort.

HMP Team Meetings

The Hazard Mitigation Planning (HMP) Team, consisting of representatives from interested County departments, met three times between May and November 2004 (Table I-2).

Table I-2: Plan Meeting Schedule

Meeting Date	Topic
August 2003	Project Initiation
July 17, 2004	1st Public Meeting
August 23, 2004	HMP Team Meeting
September 15, 2004	HMP Team Meeting
October 14, 2004	HMP Team Meeting
November 16,2004	HMP Team Meeting
December 14, 2004	HMP Team Meeting
To Be Announced	Public Hearing
To Be Announced	Public Meeting/Plan Adoption

The Team generally followed the planning steps as outlined in "Keeping Natural Hazards from Becoming Disasters – A Mitigation Planning Guidebook for Local Governments", NC Division of Emergency Management.

Step 1. Hazard Identification and Analysis
This step involved describing and analyzing the twelve natural hazards to which McDowell County could be susceptible. Appendix A, which represents the results of this planning step, includes historical data on past hazard events and establishes an individual hazard profile and risk index for each hazard based upon frequency, magnitude and impact. The summary risk assessment at the end of Appendix A serves as the foundation for concentrating and prioritizing local mitigation efforts. Technical data sources consulted include state and local hazard histories, NFIP repetitive loss properties lists, and available GIS information.

Step 2. Community Vulnerability Assessment
This step involved research and mapping, using best available data, to determine and assess current conditions. Appendix B, which contains the results of this planning step, includes a description of community characteristics, an assessment of current conditions, a list of critical facilities, projections for future growth and summary conclusions including an assessment of both current (2000) and projected (2020) future conditions. Appendix B also contains two summary maps that depict 1) multi-hazards (floodplains and past hazard events that lend themselves to mapping, e.g., tornado touchdowns); and 2) critical facilities (those facilities without which each community could not continue to function for long).

Step 3. Community Capabilities Assessment
The step included a comprehensive examination and evaluation of capacity to implement mitigation strategies, a review of local government authority for hazard mitigation planning, a description of local government organization and staff, a review of technical and fiscal capabilities, and a summary statement of local commitment to hazard mitigation planning. The purpose of this step, represented in Appendix C, was to identify any gaps or weaknesses in local programs or regulations, to determine if any existing programs/regulations had the effect of hindering hazard mitigation, and to identify programs/regulations that could be revised or amended to strengthen local hazard mitigation efforts.

Step 4. Form Interim Conclusions
At the conclusion of Steps 1 – 3, the HMP Team developed summary conclusions regarding individual vulnerability to natural hazards and individual capabilities for dealing with hazards.

Step 5. Community Goals and Objectives
Steps 1 through 3 also established the foundation for moving forward with developing an action program for the community to undertake. The HMP Team worked to formulate and agree upon general goals and objectives for hazard mitigation before moving forward with developing specific mitigation strategies.

Step 6. Mitigation Strategies
Next the Team cooperated in formulating mitigation strategies/actions. This step also included assigning responsibility for implementation of each action.

Step 7. Procedures for Monitoring, Evaluating and Reporting Progress
The HMP Team developed a procedure for an annual review and progress report on the plan. The review process provides for the HMP Team and the general public to have input on plan review.

Step 8. Procedures for Revisions and Updates
The HMP Team developed a procedure for a comprehensive review and update of the Plan on a 5-year schedule. The procedure provides for the inclusion of the public.

Step 9. Adoption.
McDowell County will hold a public hearing on the Plan (when approved by NCEM) and then adopt a resolution.

F. Resolution of Adoption
A draft resolution of adoption for McDowell County, the City of Marion and Town of Old Fort is included on the following pages. The final approved resolution will be inserted when the Plan is adopted (*after NCEM approval).*

RESOLUTION OF ADOPTION

McDowell County
Hazard Mitigation Plan

WHEREAS, the citizens and property within McDowell County are subject to the effects of natural hazards and man-made hazard events that pose threats to lives and cause damages to property, and with the knowledge and experience that certain areas, i.e., flood hazard areas, are particularly susceptible to flood hazard events; and

WHEREAS, the County desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has in Section 1 Part 166A of the North Carolina General Statutes (adopted in Session Law 2001-214—Senate Bill 300 effective July 1, 2001), states in Item (a) (2) "For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after November 1, 2004, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act"; and

WEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local government must develop an All-Hazards Mitigation Plan in order to receive future Hazard Mitigation Grant Program Funds, and

WHEREAS, it is the intent of the Board of Commissioners of McDowell County to fulfill this obligation in order that the County will be eligible for state assistance in the event that a state of disaster is declared for a hazard event affecting the County;

NOW, therefore, be it resolved that the Board of Commissioners of McDowell County hereby:

1. Adopts the McDowell County Hazard Mitigation Plan; and

2. Vests the County Manager with the responsibility, authority, and the means to:

   (a) Inform all concerned parties of this action.

   (b) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards.

   (c) Adjust the boundaries of County and municipal planning jurisdictions whenever a municipal annexation or extraterritorial jurisdiction revision results in a change whereby a municipality assumes or relinquishes the authority to adopt and enforce floodplain management regulations for a particular area in order that all Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) accurately represent the planning jurisdiction boundaries. Provide notification of boundary revisions along with a map suitable for reproduction, clearly delineating municipal corporate limits and extraterritorial jurisdiction boundaries to all concerned parties.

3. Appoints the County Manager to assure that the Hazard Mitigation Plan is reviewed annually and in greater detail at least once every five years to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the McDowell County Board of Commissioners for consideration.

4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

Adopted on _____

RESOLUTION OF ADOPTION

McDowell County Multi Jurisdictional Hazard Mitigation Plan

WHEREAS, the citizens and property within the City of Marion are subject to the effects of natural hazards and man-made hazard events that pose threats to lives and cause damages to property, and with the knowledge and experience that certain areas, i.e., flood hazard areas, are particularly susceptible to flood hazard events; and

WHEREAS, the City desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has in Section 1 Part 166A of the North Carolina General Statutes (adopted in Session Law 2001-214—Senate Bill 300 effective July 1, 2001), states in Item (a) (2) "For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after November 1, 2004, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act"; and

WEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local government must develop an All-Hazards Mitigation Plan in order to receive future Hazard Mitigation Grant Program Funds, and

WHEREAS, it is the intent of the City Council of Marion to fulfill this obligation in order that the City will be eligible for state assistance in the event that a state of disaster is declared for a hazard event affecting the County;

NOW, therefore, be it resolved that the City Council of Marion hereby:

1. Adopts the McDowell County Multi Jurisdictional Hazard Mitigation Plan; and

2. Vests the City Manager with the responsibility, authority, and the means to:

   (a) Inform all concerned parties of this action.

   (b) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards.

   (c) Adjust the boundaries of County and municipal planning jurisdictions whenever a municipal annexation or extraterritorial jurisdiction revision results in a change whereby a municipality assumes or relinquishes the authority to adopt and enforce floodplain management regulations for a particular area in order that all Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) accurately represent the planning jurisdiction boundaries. Provide notification of boundary revisions along with a map suitable for reproduction, clearly delineating municipal corporate limits and extraterritorial jurisdiction boundaries to all concerned parties.

3. Appoints the City Manager to assure that the Hazard Mitigation Plan is reviewed annually and in greater detail at least once every five years to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the Marion City Council for consideration.

4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

ADOPTED by the City Council of the City of Marion this the 18th day of July, 2006.

RESOLUTION OF ADOPTION

McDowell County Multi Jurisdictional Hazard Mitigation Plan

WHEREAS, the citizens and property within the Town of Old Fort are subject to the effects of natural hazards and man-made hazard events that pose threats to lives and cause damages to property, and with the knowledge and experience that certain areas, i.e., flood hazard areas, are particularly susceptible to flood hazard events; and

WHEREAS, the Town desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has in Section 1 Part 166A of the North Carolina General Statutes (adopted in Session Law 2001-214—Senate Bill 300 effective July 1, 2001), states in Item (a) (2) "For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after November 1, 2004, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act"; and

WEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local government must develop an All-Hazards Mitigation Plan in order to receive future Hazard Mitigation Grant Program Funds, and

WHEREAS, it is the intent of the Board of Alderman of Old Fort to fulfill this obligation in order that the Town will be eligible for state assistance in the event that a state of disaster is declared for a hazard event affecting the Town;

NOW, therefore, be it resolved, that the Board of Alderman of Old Fort hereby:

5. Adopts the McDowell County Multi Jurisdictional Hazard Mitigation Plan; and

6. Vests the Mayor with the responsibility, authority, and the means to:

   (d) Inform all concerned parties of this action.

   (e) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards.

   (f) Adjust the boundaries of County and municipal planning jurisdictions whenever a municipal annexation or

extraterritorial jurisdiction revision results in a change whereby a municipality assumes or relinquishes the authority to adopt and enforce floodplain management regulations for a particular area in order that all Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) accurately represent the planning jurisdiction boundaries. Provide notification of boundary revisions along with a map suitable for reproduction, clearly delineating municipal corporate limits and extraterritorial jurisdiction boundaries to all concerned parties.

7. Appoints the Mayor to assure that the Hazard Mitigation Plan is reviewed annually and in greater detail at least once every five years to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the Old Fort Board of Alderman for consideration.

8. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

Adopted on _____

Footnotes

[I-1] Keeping Natural Hazards from Becoming Disasters - A Mitigation Planning guidebook for Local Governments, North Carolina Division of Emergency Management, May 2003, p. 1.

[I-2] Local Hazard Mitigation Planning Manual, North Carolina Division of Emergency Management, November 1998, p.1.

[I-3] Post-Disaster Hazard Mitigation Planning Guidance for State and Local Governments, Federal Emergency Management Agency, 1990, p. 4.

[I-4] Local Hazard Mitigation Planning Manual, p. 4.

[I-5] Our Common Future, United Nation's World Commission on Environment and Development, 1987, as quoted in Local Hazard Mitigation Planning Manual, p. 4.

[I-6] Preventing Disasters through Hazard Mitigation, Ana K. Schwab, Popular Government, Spring 2000, p. 12.

II. Mitigation Action Plan

This section of the Plan summarizes study conclusions, outlines community goals and objectives, and describes the action plan to reduce community vulnerability to the effects of natural hazards in McDowell County. Mitigation objectives are designed to support community goals while further defining the parameters for development of mitigation actions. Mitigation actions describe specific steps that are to be undertaken to achieve the stated objectives and are intended to serve as benchmarks for evaluating progress on plan implementation.

The McDowell County Mitigation Advisory Committee agreed upon mitigation goals, mitigation objectives and mitigation actions in this section. The Mitigation Advisory Committee received input from individuals from McDowell County, the City of Marion, and the Town of Old Fort. In the context of this section McDowell County will also refer to the City of Marion and Town of Old Fort. *Due to limited capabilities of the Town of Old Fort, the County administers most of the ordinances, plans, and regulations, etc. for the Town. The City of Marion administers its own ordinances, plans, regulations, etc.*

A. Study Conclusions

With limited financial and staff resources to dedicate to hazard mitigation, it is essential that those hazards with the highest likelihood of occurrence and the greatest potential impact receive the highest investment of County resources. Through hazard identification and analysis and vulnerability assessment, it has been determined that McDowell County is susceptible to the impact of certain natural hazards as summarized at the conclusion of Appendix A Hazard Identification and Analysis.

Through the hazard mitigation planning process, the County determined that the community is not at risk for coastal erosion, tsunamis or volcanoes and that there is "low" risk of riverine erosion, dam failures, earthquakes, and landslides. Five hazards were rated "moderate" risk – droughts and heat waves, floods, hurricanes and coastal storms, severe storms and tornadoes, and wildfires. One hazard – winter storms and freezes – was rated "high" risk.

Moderate and High Hazard Threats

Floods (including Hurricanes/Coastal Storms)
Flooding is often associated with hurricanes and coastal storms (most often general flooding) as well as with severe summer storms (typically flash flooding). Floods are the easiest hazard to quantify and isolate as flooding occurs only in known locations. The severity of a flood is generally dependent upon the amount of rainfall and prior soil conditions (including ground cover). Flood hazard vulnerability can be decreased through adoption and enforcement of local land use regulations and through cooperative, regional efforts to ensure that upstream jurisdictions are not contributing to downstream flooding problems.

High Winds (including Severe Storms/Tornadoes and Hurricanes/Coastal Storms)
Severe storms and tornadoes as well as hurricanes and coastal storms present high wind hazards. This hazard is mainly combated through building codes and construction. Enforcement of the current State building code and enhancement of the code in regards to wind resistance will prove the most beneficial in addressing high winds.

Wildfires
Fortunately, wildfires in North Carolina, although frequent, are not normally a serious threat to large areas as is the case in western states where dry weather conditions and large expanses of timber increase the likelihood and extent of the impact of a

wildfire. The North Carolina Division of Forest Resources has the responsibility for protecting state and privately owned forest land from wildfires. The program is managed on a cooperative basis with all one hundred counties in the State. The State fire program emphasizes fire prevention efforts; pre-suppression activities (including extensive training of Personnel); aggressive suppression efforts on all wildfires; and law enforcement follow-up.

Droughts and Heat Waves

In general, communities can have little influence or impact on mitigating the impact of droughts/heat waves on the local government level except through ensuring adequate water supplies for normal circumstances and through implementation of water conservation measures when drought conditions are imminent. Similarly, heat waves have wide ranging effects that are almost impossible to combat on a level government level. Communities, therefore, depend upon State and Federal agencies for assistance.

Winter Storms and Freezes

Local governments also look to the State and to private utility companies for leadership in dealing with winter storms/freezes. The typical effects of snow and ice accumulation - loss of electrical power, phone, and cable service and treacherous road conditions - can be only minimally addressed at the local level. (The exceptions would be larger cities which have more snow/ice removal equipment and manpower and governments that own the local electrical distribution system.)

Draft Statement of Commitment to Mitigating Impacts of Natural Hazards

Through the act of developing and adopting a Hazard Mitigation Plan, McDowell County is committing to develop and engage in programs, activities and practices that can be implemented at the local government level to help to mitigate the impacts of future natural hazards. The County will place primary emphasis on and dedicate resources, as available, to mitigating the effects of flooding. Secondary emphasis will be placed, as practicable at the local level, on mitigating the effects of high winds.

B. Community Goals

The primary goal of all local governments is to promote the public health, safety, and welfare of the citizens of the community. In keeping with this standard, McDowell County has developed four goal statements for local hazard mitigation planning. Each goal, purposefully broad in nature, serves to establish parameters that were used in developing more specific objectives and mitigation actions. Consistent implementation of objectives and actions will over time ensure that community goals are achieved.

Goal #1 Protect the public health, safety and welfare by increasing public awareness of hazards and by encouraging collective and individual responsibility for mitigating hazard risks.

Goal #2 Improve technical capability to respond to hazards and to improve the effectiveness of hazard mitigation actions.

Goal #3 Enhance existing or create new policies and ordinances that will help reduce the damaging effects of natural hazards.

Goal #4 Protect the most vulnerable populations, buildings, and critical facilities through the implementation of cost-effective and technically feasible mitigation actions.

C. Mitigation Objectives

Mitigation objectives are designed to support community goals while further defining parameters for development of mitigation actions. Objectives are numbered to correspond with the goal that each supports.

Objective 1.1 The County will engage in activities and practices that will help mitigate the impacts of natural hazards.

Objective 1.2 The County will implement a public awareness campaign to educate citizens of the possible hazards associated with severe weather events.

Objective 1.3 The County will strive to ensure that emergency services are adequate to protect public health and safety.

Objective 2.1 The County will strive to keep infrastructure extensions out of hazardous areas in order not to actively encourage development to occur in known hazardous areas.

Objective 2.2 The County will seek to maintain up-to-date geographic information systems hardware and software to support and enhance the effectiveness of mitigation programs.

Objective 3.1 The County will strive to ensure that future development occurs in such a way as to protect wetlands, floodplains, and other natural features that serve to reduce flood hazard susceptibility and thus to reduce impact of development in McDowell County on downstream communities.

Objective 3.2 The County will increase control over development in the floodplain to prevent increases in flood velocities and levels that endanger both people and property within the County and in downstream communities.

Objective 4.1 The County will plan to develop in such a way that the built environment does not occur in any known or predictable pathways of a natural hazard. If this is unavoidable, as in the case of hurricane force winds, the County will ensure that new structures are as resilient as possible to the impacts of a natural hazard.

Objective 4.2 The County will strive to limit development in areas that may cause emergency workers to put lives at risk to rescue someone from a structure knowingly built in a hazardous area.

D. Mitigation Actions

McDowell County has worked to develop the mitigation actions shown in Table II-1 McDowell County

Mitigation Action Plan. Mitigation actions were developed with an eye toward reducing vulnerability to all natural hazards that can be addressed in a practicable way at the local level. The listed actions do, however, primarily focus on ways McDowell County can act to lessen and, ideally, eventually eliminate repetitive flood losses and prevent future flood losses from inappropriate new development.

All the mitigation actions were prioritized according to:

1. Cost effective, i.e. (returns or savings produced by implementation of the action outweigh the cost of implementation);
2. Environmentally sound, i.e. (actions were designed to protect environmentally fragile areas as natural stormwater storage areas); and
3. Technically feasible, i.e. (actions are to be undertaken by the County using current staff and resources except where grant funds are available.)

Cost-benefit review was given special emphasis, in light of its possible use in environmental reviews for HMGP, FMA and other federal hazard mitigation projects.

In developing actions, the County relied on the following six mitigation policy categories provided by FEMA:

1. Prevention (P) Measures
   Preventive measures are intended to keep hazard problems from getting worse. They are particularly effective in reducing a community's future vulnerability, especially in areas where development has not occurred or where capital improvements have not been substantial. Examples of prevention measures include:
   (a) Comprehensive land use planning
   (b) Zoning regulations
   (c) Subdivision regulations
   (d) Open space preservation
   (e) Building code
   (f) Floodplain development regulations
   (g) Stormwater management

2. Property Protection (PP) Measures
   Property protection measures protect existing structures by modifying the building to withstand hazardous events, or removing structures from hazardous locations. Examples of property protection measures include:
   (a) Building relocation
   (b) Acquisition and clearance
   (c) Building elevation
   (d) Barrier installation
   (e) Building retrofit

3. Natural Resource (NR) Protection
   Natural resource protection activities reduce the impact of natural hazards by preserving or restoring natural areas and their mitigative functions. Such areas include floodplains, wetlands, and dunes. Parks, recreation or conservation agencies and organizations often implement these measures. Examples include:
   (a) Wetland protection
   (b) Habitat protection
   (c) Erosion and sedimentation control
   (d) Best management practices (BMPs)
   (e) Stream dumping
   (f) Forestry practices

4. Emergency Services (ES) Measures
   Although not typically considered a mitigation technique, emergency service measures do minimize the impact of a hazard event on people and property. These commonly are actions taken immediately prior to, during, or in response to a hazard event. Examples include:
   (a) Hazard warning system
   (b) Emergency response plan
   (c) Critical facilities protection
   (d) Health and safety maintenance
   (e) Post-disaster mitigation

5. Structural Projects (S)
   Structural mitigation projects are intended to lessen the impact of a hazard by modifying the environmental natural progression of the hazard event. The projects are usually designed by engineers and managed or maintained by public works staff. Examples include:
   (a) Reservoirs, retention and detention basins
   (b) Levees and floodwalls
   (c) Channel modifications
   (d) Channel maintenance

6. Public Information (PI) Activities
   Public information and awareness activities are used to advise residents, business owners, potential property buyers, and visitors about hazards, hazardous areas, and mitigation techniques that the public can use to protect themselves and their property. Examples of measures to education and inform the public include:
   (a) Map information
   (b) Outreach projects
   (c) Library

(d) Technical Assistance
(e) Real estate disclosure
(f) Environmental education

Table II-1 - Explanation of Columns and Acronyms

Columns

Action #
Action # corresponds to FEMA mitigation policy categories listed above.

Action
Description of action to be undertaken.

Hazard
Hazard which the action addresses.

Objective(s) Addressed
Reference to the numbered objective which the action supports.

Relative Priority
Low, moderate or high priority for funding and implementation.

Funding Sources
State and Federal sources of funds are noted, where applicable.

Responsible Party
Staff department responsible for undertaking the action. Note: *The McDowell County Board of Commissioners has ultimate authority to approve any policy, program or regulation revisions pertaining to the unincorporated areas of the county, while the Marion City Council and the Old Fort Board of Alderman have ultimate authority to approve any policy, program or regulation revisions inside their respective incorporated areas.*

Target Completion Date
Date by which the action should be completed.

Abbreviations used in Table II-

ES	McDowell County Emergency Services
INSP	McDowell County Building Inspections
PZ	McDowell County Planning and Zoning

Table II-1: McDowell County Mitigation Action Plan

Action #	McDowell County Actions	Hazard	Objective(s) Addressed	Relative Priority	Funding Sources	Responsible Party	Target Completion Date
Preventive Actions							
P-1	At next Land Use Plan Update, review and include hazard mitigation objectives.	All	1.1 2.1 3.1	Moderate	Local	McDowell County PZ (Marion, Old Fort)	
P-2	Develop a policy to minimize public services to proposed new structures that will be located in 100-year floodplain areas.	Flood	2.1 4.2	Moderate	Local	McDowell County PZ (Marion, Old Fort)	
P-3	Update the Floodplain Ordinance to raise the minimum flood protection level.	Flood	3.2 4.2	Moderate	Local	McDowell County PZ (Marion, Old Fort)	
P-4	Update the Subdivision Ordinance by reviewing and incorporating hazard mitigation objectives.	All	1.1 2.1 3.2	Moderate	Local	McDowell County PZ (Marion, Old Fort)	
P-5	Review and revise the Planning Ordinance to allow for clustering of residential lots.	Flood	2.1 3.1	Moderate	Local	McDowell County PZ (Marion, Old Fort)	
PI-6	Revise and update the regulatory floodplain maps.	Flood	3.1 3.2	High	Federal State	McDowell County PZ (Marion, Old Fort)	

Action #	McDowell County Actions	Hazard	Objective(s) Addressed	Relative Priority	Funding Sources	Responsible Party	Target Completion Date
PI-7	Building Inspections – Flood Damaged Structures. Any and all portions of buildings that have been submerged for any length of time will be inspected for flood related damage as well as other conditions that may be dangerous to life, health or other property. Plan for Damaged Structures: 1. Overall damage assessment/data collection (visual inspection from roadways). 2. Data compiled and geographical areas assigned to teams. 3. Second detailed assessment by area teams. 4. Portions of walls, floors, ceilings, etc. that have been exposed to water will be opened for evaluation. 5. All construction that is repaired, replaced, dried or sealed will be inspected before covered. 6. Structure inspected for certificate of compliance.	Flood	1.1	High	Local	McDowell County INSP (Marion, Old Fort)	
PI-8	Policy and procedures related to storm damage and disconnected utility services: 1) inform public via television, radio and newspaper of the necessary steps to have utilities restored; 2) restrict travel as necessary while collecting damage assessment data; conduct inspections on first come, first serve basis; 4) work overtime to expedite utility reconnections.	All	1.1	High	Local	McDowell County INSP (Marion, Old Fort)	
PI-9	Create a zoning map (digital) that can be easily reproduced/updated for staff and public use.	All	1.1	High	Local	McDowell County PZ (Marion, Old Fort)	
Property Protection Actions							
PP-1	Create and maintain a list of repetitive flood loss properties.	Flood	2.2 3.1	Moderate	Local	McDowell County PZ (Marion, Old Fort)	
Emergency Services							
ES-1	Ensure adequate evacuation warning in case of major hazard event.	All	1.3	High	Local	McDowell County ES (Marion, Old Fort)	
ES-2	Improve shelter capacities with alternate power/heat sources.	Winter Storm	1.3	High	Local	McDowell County ES (Marion, Old Fort)	
ES-3	Establish program to maintain continuity of government operations.	All	1.3	High	Local	McDowell County ES (Marion, Old Fort)	
ES-4	Identify alternate Emergency Operations Center locations.	All	1.3	High	Local	McDowell County ES (Marion, Old Fort)	
ES-5	Identify alternate detour routes from major arteries in the county.	All	1.3	High	Local	McDowell County ES (Marion, Old Fort)	
Public Information Activities							
PI-1	Place flood protection and other hazard education materials in all branches of the McDowell County public library system.	All	1.2	High	Local	McDowell County PZ (Marion, Old Fort)	
PI-2	The McDowell Planning and Zoning Director has received training on erosion and sedimentation control methods and on floodplain surveying certification. On an annual basis, this official or his designee makes numerous site visits to assist property owners and developers with problems and potential problems associated with drainage, erosion, and flooding. Site visits are made at the request of the property owner or developer and are usually handled through the Planning and Zoning Department.	Floods	1.1 3.1 4.1	High	Local	McDowell County ,PZ (Marion, Old Fort)	

III. Plan Implementation

A. Process

The McDowell County Multi Jurisdictional Hazard Mitigation Plan will be implemented through the delegation of assignments as specified in this section. Each McDowell County implementation action includes the assignment of responsibility to specific County departments along with the establishment of a target date for completion for each activity.

It will be the responsibility of the County Manager, the City Manager in the case of the City of Marion and the Mayor in the case of the Town of Old Fort, or their respective designees to ensure that applicable actions are completed by the target completion date unless reasonable circumstances, e.g., lack of funding, prevent timely implementation. In the case where a target date is not met, the reason for such failure to complete the activity in a timely manner will be noted in the annual progress report.

B. Funding Sources

Although in the long term hazard mitigation actions will save money by avoiding the loss of lives or property damages, in the short term each action will have an associated cost. McDowell County will rely heavily on local funding sources to fulfill most of the Plan obligations; however, the County will also seek funds from interested State and Federal agencies for both pre- and post-disaster activities. A short description of major disaster assistance programs is included here. More detail on organizations and programs that could provide sources for potential funding for local mitigation actions is included in Appendix D Federal and State Resources.

Federal Programs

Pre-Disaster Mitigation Program – Federal Emergency Management Agency
The Disaster Mitigation Act of 2000 created a national program to provide a funding mechanism that is not dependent on a Presidential disaster declaration. The Pre-Disaster Mitigation (PDM) Program provides funding to states and communities for cost-effective hazard mitigation activities that complement a comprehensive mitigation program and reduce injuries, loss of life, and damage of property.

The funding is based on a 75% Federal share plus a 25% non-Federal share of costs. The non-Federal match can be fully in-kind or cash or a combination of the two. Special accommodations are made for small and impoverished communities who are eligible for 90% Federal share plus 10% non-Federal.

Flood Mitigation Assistance Program – Federal Emergency Management Agency
The Flood Mitigation Assistance Program (FMAP) was established by the National Flood Insurance Reform Act of 1994. This program provides grants for cost effective measures to reduce or eliminate the long-term risk of flood damage to existing structures, with an emphasis on sites that historically have been subject to repetitive losses under the National Flood Insurance Program (NFIP). These grants are also available for planning assistance to identify flood risks and actions to reduce that risk, to provide a process for approving flood mitigation plans, and to provide grants to implement measures to decrease flood loses.

Examples of projects that are eligible for grants under this program include elevating or flood proofing pre-FIRM structures, i.e., structures that were brought into the regulatory floodplain by a revision of the Flood Insurance Rate Maps, to acquire land or structures in flood hazard areas, to relocate or demolish existing structures, to construct detention or retention ponds to aid in the control of flood waters, to flood proof sewer systems, to modify drainage culverts and to obtain technical assistance, such as hiring a professional consultant.

Hazard Mitigation Grant Program (HMGP) - Federal Emergency Management Agency
The Hazard Mitigation Grant Program (HMGP) provides funding for mitigation measures following a Presidential disaster declaration. The HMGP is funded in most part by the Federal government and administered by state governments. FEMA can fund up to 75% of project costs and the State or local share can be cash or in-kind services.

HMGP funds can be used for projects such as acquisition or relocation of structures from hazard prone areas, retrofitting of existing structures to protect them from future damages, and development of state or local mitigation standards designed to protect buildings from future damages, comprehensive state and local mitigation plans, structural hazard control, and the purchase of equipment to improve preparedness and response.

Public Assistance (Infrastructure) Program – Federal Emergency Management Agency (Section 406)
The Public Assistance (PA) Program provides funding to local governments following a Presidential disaster declaration. Funds may be used for mitigation activities in conjunction with the repair of damaged public facilities and infrastructure. Mitigation activities must be related to eligible disaster-related damages and must directly reduce the potential of future disaster damages.

Projects are evaluated for cost effectiveness, technical feasibility, and compliance with statutory, regulatory and executive order requirements. The evaluation must ensure that the mitigation measures do not negatively impact facility operation or risk from another hazard.

Small Business Administration Disaster Assistance Program - U.S. Small Business Administration
The Small Business Administration (SBA) Disaster Assistance Program provides low-interest loans to businesses following a Presidential disaster declaration. The loans target businesses with repair and replacement of uninsured property damages including real estate, machinery and equipment, inventory, and supplies. Businesses and non-profit organizations are eligible.

Community Development Block Grants - U.S. Department of Housing and Urban Development
The Community Development Block Grant (CDBG) program assists communities in rehabilitating substandard dwelling structures

and in expanding economic opportunities, primarily for low-to-moderate-income families. However, as a result of a Presidential disaster declaration, CDBG funds may be used for long-term needs such as acquisition, reconstruction, and redevelopment of disaster-affected areas.

State Programs

Statewide Floodplain Mapping Initiative
The State of North Carolina, through the Federal Emergency Management Agency's Cooperating Technical Community partnership initiative, has been designated as a Cooperating Technical State (CTS). As a CTS, the State will assume primary ownership and responsibility for Flood Insurance Rate Maps (FIRMs) for all North Carolina communities. The Statewide Floodplain Mapping Initiative project will include conducting flood hazard analysis and producing updated, digital FIRMs (DFIRMs).

The State began acquiring raw elevation data for the Cape Fear, Lumber, Neuse, Pasquotank, Tar-Pamlico, and White Oak river basins in December 2000. This first phase of mapping will address these six river basins, which were the basins most impacted by Hurricane Floyd. These six river basins account for approximately one-half of the area of the State, impact 48 counties and 334 incorporated municipalities, and encompass over 21,000 miles of streams and rivers.

The data being collected will be used to develop Digital Elevation Models (DEMs) and updated flood hazard data and to produce draft DFIRMs for the affected counties and communities. Draft DFIRMS for the Neuse and Tar-Pamlico River basins were provided in March 2003, and are scheduled for adoption in September 2003.

This updated flood hazard data will provide current, accurate information for communities and property owners to make sound locating and design decisions when building new structures and infrastructure and when retrofitting existing structures. If consistently used by communities for floodplain management, this information should help to dramatically reduce future flood losses in North Carolina.

Water and Sewer Grant Programs - NC Rural Economic Development Center, Inc.
The Rural Center administers three programs that assist rural communities with development of public water and sewer systems needed to support local economic growth and to ensure a reliable supply of clean water. The programs are funded by appropriations from the NC General Assembly and through proceeds from Clean Water Bonds approved by voters in November 1998.

1. The Supplemental Grants Program enables local governments and qualified non-profit organizations to improve local public water and sewer systems. Projects may address public health, environmental and/or economic development critical needs. Rural Center funds must be used to match other project funds from local or other sources. The maximum grant amount is $400,000.

2. The Capacity Building Grants Program provides funding for local governments to undertake planning efforts that support strategic investments in public water and sewer facilities. Funds typically are used to prepare preliminary engineering reports, master water and sewer plans, capital improvement plans, water and sewer feasibility studies, rate studies and grant applications. The maximum grant amount is $40,000.

3. The Unsewered Communities Grants Program provides funding for the planning and construction of new publicly owned sewer systems. Qualified communities must be unserved by wastewater collection or treatment systems. Unsewered communities grants are designed to cover 90% of the total project costs, but grants can not exceed $3 million.

Clean Water Management Trust Fund - CWMTF Board of Trustees
The Clean Water Management Trust Fund was created in 1996 for the purpose of making grants to local governments, state agencies, and conservation non-profit organizations to help finance projects that address water pollution. CWMTF will fund projects that 1) enhance or restore degraded waters; 2) protect unpolluted waters; and/or 3) contribute toward a network of riparian buffers and greenways for environmental, educational, and recreational benefits.

The program is funded annually through a portion of unreserved credit balance in the NC General Fund for a minimum of $30 million per year. The CWMTF Board of Trustees, an independent body of 18 members, has responsibility for allocation of fund revenues.

CAMA Local Planning and Management Grants Program - NC Department of Environment and Natural Resources, Division of Coastal Management
The NC Division of Coastal Management assists local governments within the designated 20 coastal counties with local land use planning and management projects through the CAMA Local Planning and Management Grants Program. Eligible projects include new or updated CAMA land use plans, implementation projects, land use ordinances, beach or waterfront access plans, stormwater management plans, hazard mitigation plans, and capital facilities plans.

Water Resources Development Grant Program - NC Department of Environment and Natural Resources, Division of Water Resources
The Water Resources Development Grant Program funds can be used as the non-Federal share of water resources development projects. Eligible projects include 1) general navigation projects; 2) recreational navigation projects: 3) flood control and water drainage projects; 4) stream restoration; 5) protection of privately owned beaches with public access; 6) land acquisition and facility development for water-based recreation; and 7) aquatic weed control projects.

Natural Heritage Trust Fund
The Natural Heritage Trust Fund was established in 1987 and is funded by 25% of the annual state deed excise stamp tax revenues and a portion of license plate sales. The fund is managed by the Board of Trustees and the Natural Heritage

Program in the Division of Parks & Recreation (DPR) in the Department of Environment & Natural Resources (DENR). Since 1987, 332 applications have requested $176 million. $80.6 million has been awarded for 1 project to help protect 145,000 acres of land. (http://ils.unc.edu/parkproject/heritage/nhtf.html).

NC Parks and Recreation Trust Fund (NCPARTF)
The NC Parks and Recreation Trust Fund was established in 1993 and is funded by 75% of the annual state deed excise stamp tax revenues. State parks receive 65%; local parks, 30%; beaches & waterfronts, 5%; and administration, 3%. Approximately $22 million is available each year. The program is managed by the Board of the Parks & Recreation Authority and the Division of Parks & Recreation (DPR) in DENR.

Since 1995, local governments have submitted 549 applications requesting over $76 million for capital improvements and land acquisition. The Parks & Recreation Authority has approved 226 projects for a total of $33.7 million. Over 1400 acres have been added to local parks. The Authority has approved 140 state park land acquisition and facility projects for a total of $71.7 million. PARTF has funded the addition of 8,466 acres to the State Park System. (http://ils.unc.edu/parkproject/partfund).

Land and Water Conservation Fund (LWCF)
The Land and Water Conservation Fund was established in 1964 to provide for funding for federal land acquisition and to provide matching grants for state and local governments to acquire parkland. The federal government allocated $2.9 million to North Carolina for this program in fiscal year 2002-03 with 60% being reserved for local governments and the remaining 40% for State government.

National Recreation Trails Program
The National Recreation Trails Program provides funds to federal, state and local governments and for non-profit organizations for the acquisition of land for trails, and for the development and maintenance of a trail system. The State of North Carolina was allocated $1.1 million in fiscal year 2002-03 from this program which is managed by the US Department of Transportation.

Million Acres Initiative
When the Million Acre Initiative began in January 1999, approximately 2.8 million acres — 9% of the state — were permanently protected in North Carolina. At least 112,000 additional acres were permanently protected during the initiative's first two years. Upon reaching the million acre goal in 2009, North Carolina will contain at least 3.8 million acres of land are permanently protected through the federal, state and local governments, and private, nonprofit groups. One of the stated objectives of protecting open space is to "reduce the risk to people and (property) from flooding".

Conservation Income Tax Credit
Established in 1983, the Conservation Income Tax Credit provides a 25% income tax credit for donations of land or easements for conservation purposes. The donor's tax filing must be accompanied by a Certificate of Conservation Benefit from the Department of Environment & Natural Resources (DENR). As of August 2001, approximately 400 individual and corporate property owners had donated 82,000 acres of land or conservation easements worth an estimated $165 million at a cost to the State of $26 million (http://ncctc.enr.state.nc.us/).

North Carolina Farmland Preservation Program
The NC Farmland Preservation Program was established in 1986 and is funded by appropriates from the NC General Assembly. The program is managed by the NC Department of Agriculture and Consumer Services and contracted to the Conservation Trust for N.C (CTNC). The General Assembly has appropriated $2.45 million to the program since 1998. The 2001 appropriation of $200,000 was expended on nine grants awarded to help local land trusts and counties with farmland protection programs work with farm families to arrange permanent conservation easements on over 4,270 acres and large parts of 30 farms. These grants have leveraged over $20 million from other private and public funding sources and donations of development rights from farm owners. (www.info@ctnc.org or www.ctnc.org).

Conservation Grants Fund
The Conservation Grants Fund program was created in 1997 for the purpose of providing subsidies to non-profit land trusts to aid in transaction costs related to the donation of land, and to provide for staff and volunteer training. This program has never been funded.

Local Sources
Local governments (counties and municipalities) depend upon local property taxes as their primary source of revenue. Property taxes are typically used to finance services that must be available and delivered on a routine basis to the general public, e.g., counties – social services, schools, etc.; municipalities – water, sewer, solid waste management. If local budgets allow, these funds can also be used for other purposes in the general public interest which would include programs to further hazard mitigation planning. Local funds are most effective when used as local match for Federal and State grant programs.

Non-Governmental Sources
Another potential but typically less available source of funds for implementing local hazard mitigation projects are monetary contributions from non-governmental organizations such as private sector companies, churches, charities, community relief funds, the Red Cross, hospitals, land trusts and other non-profit organizations interested in the environment or the plight of citizens affected by disasters.

IV. Plan Review and Update

Periodic monitoring and reporting of progress is required to ensure that Plan goals and objectives are kept current and that local mitigation efforts are being accomplished. The McDowell County Multi Jurisdictional Hazard Mitigation Plan shall be reviewed annually, or more often as the local situation may require following a disaster declaration, to ensure that progress is being made on achieving stated goals and objectives. The Plan will also undergo periodic evaluation and update as required by FEMA and the State.

A. Annual Review/Progress Report

The County Manager shall direct the County Planner to take responsibility for monitoring the plan and conducting the annual review. The annual review shall include the re-initiation of the hazard mitigation team planning process utilized during development of the Plan. The team will include representatives of all affected County departments and the participating jurisdictions of Marion and Old Fort.

Other interested parties, non-incorporated municipalities within the County, the North Carolina Division of Emergency Management will be notified of the review process. The general public will be notified through a variety of media, including but not limited to, the local newspaper, the McDowell County website, and mailed or emailed notices, of the review process and the opportunity to comment on the Plan review.

The annual review shall ensure:

1. That the Planning Board receives an annual report and/or presentation on the progress of Plan implementation. The report will include a status report on the implementation of mitigation actions.
2. That the County Board of Commissioners receives an annual report and/or presentation on the progress of Plan implementation along with a recommendation from the Planning Board regarding on-going implementation of the Plan.
3. The annual report will include an evaluation of the effectiveness and appropriateness of the mitigation actions included in the Plan.
4. The annual report will recommend, as appropriate, any necessary revisions or amendments to the Plan.

If the County Board of Commissioners determines that the recommendations warrant amendment of the Plan, *the Board may initiate an amendment through the process described below, with the approval of the Marion City Council, and the Old Fort Board of Alderman required before the amendments take effect in the incorporated municipalities.*

B. Periodic Plan Update

Periodic updates and revision of the Plan will help ensure that local mitigation efforts include the latest and most effective mitigation techniques. These periodic updates and revisions may also be necessary to keep the Plan in compliance with Federal and State statutes and regulations. The Plan will need to be updated to reflect changes, such as new development in the area, implementation of mitigation efforts, revisions of the mitigation processes, and changes in Federal and State statutes and regulations.

In the context of a Federal disaster declaration, State and local governments are allowed to update or expand an existing plan to reflect circumstances arising out of the disaster. An updated plan in this circumstance might include a re-evaluation of the hazards and the jurisdiction's exposure to them, a re-assessment of existing mitigation capabilities, and new or additional mitigation recommendations.

The Plan shall be revised and updated at minimum within five (5) years of the most recent FEMA approval date. One year prior to the 5-year expiration of the FEMA approval, the hazard mitigation team will begin the review and revision process to determine if there have been any significant changes that would affect the Plan update. Increased development, increased exposure to certain hazards, the development of new mitigation capabilities or techniques, and changes to Federal or State legislation may affect the appropriateness of the Plan.

Review of the Plan

The procedure for reviewing, revising, and updating the Plan shall begin with a report prepared by the County Planner and submitted to the Planning Board for consideration and recommendation to the Board of Commissioners. The report shall include a summary of progress on implementation of hazard mitigation strategies and a recommendation, as appropriate, for any changes or amendments to the Plan.

The review shall include an evaluation of the effectiveness and appropriateness of the Plan. Specifically, the evaluation shall involve a review of the consistency of day-to-day land use

decisions to determine if the hazard mitigation policies are being implemented. The review shall recommend if plan amendments are warranted and if any revisions to regulatory tools (zoning, subdivision regulation, etc.) are necessary to assist in implementing the policies of the Plan.

If the Board of Commissioners determines that such report raises issues that warrant modification of the Plan, or if the Planning Board recommends that issues have been raised which warrant modification of the Plan, the Board may initiate an amendment as delineated below, or may direct the County Manager to undertake a complete update of the Plan.

Procedure for Amending the Plan

An amendment to the Plan shall be initiated by the Board of Commissioners either at its own initiative or upon the recommendation of the Planning Board, the County Planner, or any other McDowell person or agency who demonstrates that an amendment should be considered.

Upon initiation of a text or map amendment, the County Planner shall re-convene the hazard mitigation planning team and notify other interested parties as described in the Annual Review/Progress Report subsection above. The team will consider any proposed amendment(s) which shall then be forwarded to affected parties, including, but not limited to, County departments, municipalities within the County, and other interested agencies such as the North Carolina Division of Emergency Management, the United States Army Corps of Engineers, and the Federal Emergency Management Agency for a ninety (90) day review and comment period.

At the end of the comment period, the proposed amendment(s) shall be forwarded along with all review comments to the Planning Board for consideration. If no comments are received from the reviewing department or agency within the specified review period, such shall be noted in the report to the Planning Board.

Planning Board Review and Recommendation

The Planning Board shall review the proposed amendment(s), the report and recommendation of the County Planner, and any comments received from other local governments and State and Federal agencies. The Planning Board shall submit a recommendation on the proposed amendment to the Board of Commissioners within sixty (60) days. Failure of the Planning Board to submit a recommendation within this time period shall constitute a favorable recommendation.

In deciding whether to recommend approval or denial of an amendment request, the Planning Board shall consider whether or not the proposed amendment is necessary based upon one or more of the following factors:

a) There are errors or omissions made in the identification of issues or needs during the preparation of the original Plan;
b) New issues or needs have been identified which were not adequately addressed in the original Plan;
c) There has been a change in projections or assumptions from those on which the original Plan was based.

Board of Commissioners Review and Approval

Upon receiving the recommendation of the Planning Board, the Board of Commissioners shall hold a public hearing. The Board shall review the Planning Board recommendation (including the factors delineated above), the report and recommendation from the County Planner, and any oral or written comments received at the public hearing. Following that review, the Board shall take one of the following actions:

a) Adopt the proposed amendment as presented or with modifications.
b) Deny the proposed amendment.
c) Refer the amendment request back to the Planning Board for further consideration.
d) Defer the amendment request for further consideration and/or hearing.

Coordinatation with Municiplaites

Approval of the Marion City Council and the Old Fort Board of Alderman is required prior to any amendment taking effect inside their respective municipal corporate limits.

Incorporation into Existing Planning Mechanisms

The local government has created a process by which the requirements of this hazard mitigation plan will be incorporated into other local plans. During the planning process for new and updated local planning documents, such as a comprehensive plan, land-use plan, capital improvements plan, or emergency management plan, to name a few examples, the local planner will provide a copy of the hazard mitigation plan to each respective advisory committee member. The local planner will recommend the advisory committee members to ensure that all goals and strategies of new and updated local planning documents are consistent with the hazard mitigation plan and will not contribute to increased hazards in the jurisdiction.

Appendix A: Hazard Identification and Analysis

Introduction

The development of a hazard mitigation plan consists of five steps – identification and analysis of natural hazards that could impact the community, assessment of the community's vulnerability to natural hazards, assessment of the community's capability to respond to a natural disaster, assessment of the community's current policies and ordinances that affect hazard mitigation, and development of hazard mitigation strategies that can be implemented to reduce future vulnerability.

This section includes a description and history of each type of natural hazard event in McDowell County using the best available data. Members of the McDowell County Mitigation Advisory Committee agreed that all natural hazards that would affect McDowell County would also affect the City of Marion and Town Old Fort. The only natural hazard that would affect each municipality different would be flooding and River Erosion. Event histories are based on a search of two national databases - the National Climatic Data Center (NCDC - http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms. Other data from the County is included as available.

1. **Dam and Levee Failures**
2. **Droughts and Heat Waves**
3. **Earthquakes**
4. **Floods**
5. **Hurricanes and Coastal Storms**
6. **Landslides and Sink Holes**
7. **Severe Storms and Tornadoes**
8. **Wildfires**
9. **Winter Storms and Freezes**

Hazard Analysis - Evaluation Method

Each natural hazard is evaluated for three characteristics:

1. Likelihood of Occurrence, i.e., expected frequency;
2. Likely Range of Impact, i.e., predictable size and location of impact; and
3. Probable Level of Impact, i.e., estimated strength and damage potential.

Likelihood of Occurrence

The likelihood, or frequency, of occurrence of a particular hazard within a specific jurisdiction will be classified in one of four categories. These four categories are explained in Table A - 1.

Table A-1: Explanation of Hazard Likelihood of Occurrence

Likelihood	Frequency of Occurrence
Highly Likely	Near 100% probability in the next year.
Likely	Between 10% and 100% probability in the next year or at least one chance within the next ten years.
Possible	Between 1% and 10% probability in the next year, or at least one chance in the next 100 years.
Unlikely	Less than 1% probability in the next year, or less than one chance in the next 100 years.

Source: "Keeping Natural Hazards from Becoming Disasters", NC Division of Emergency Management, November 2001, p. 11.

Likely Range of Impact

The likely range of impact, or predictable size and location, of a particular hazard within a specific jurisdiction will be classified in one of three categories. These three categories are described in Table A-2.

Table A-2: Description of Likely Range of Impact

Size of Area	Description
Small	10 % or less of the total jurisdictional area
Medium	10 % to 40 % of the total jurisdictional area
Large	40 % to 100 % of the total jurisdictional area

Source: "Keeping Natural Hazards from Becoming Disasters", NC Division of Emergency Management, November 2001, p. 11.

Probable Level of Impact

The probable level of impact, or estimated strength and damage potential, of a particular hazard within a specific jurisdiction is classified in one of four categories as described in Table A-3.

Table A-3: Description of Hazard Probable Level of Impact

Level	Area Affected	Impact[1]
Catastrophic	More than 50%	• Multiple deaths. • Complete shutdown of facilities for 30 days or more. • More than 50% of property is severely damaged.
Critical	25 to 50%	• Multiple severe injuries. • Complete shutdown of critical facilities for at least 2 weeks. • More than 25% of property is severely damaged.
Limited	10 to 25%	• Some injuries. • Complete shutdown of critical facilities for more than 1 week. • More than 10% of property is severely damaged.
Negligible	Less than 10%	• Minor injuries. • Minimal quality of life impact. • Shutdown of critical facilities and services for 24 hours or less. • Less than 10% of property is severely damaged.

Source: "Keeping Natural Hazards from Becoming Disasters", NC Division of Emergency Management, November 2001, p. 12.

[1] The impact of a natural hazard is a combination of the severity of the occurrence, the magnitude of the event, and the density of human activity in the affected area.

Composite Hazard Index

These three sets of classification categories - likelihood of occurrence, likely range of impact, and probable level of impact – have been combined to create a composite hazard index for each natural hazard. The combined hazard index describes vulnerability in general terms of "low", "moderate" or "high" hazard susceptibility. An individual hazard index is developed at the end of each of the twelve hazard sections. Table A-33 at the end of Appendix A is a composite of the twelve hazard index scores.

Table A-4: Composite Hazard Index Rating

[1] Each variable was assigned a number from 1 (lowest) to 3 or 4 (highest) rating. A score from 9 to 11 is a "high hazard risk"; from 6 to 8 "moderate hazard risk"; and from 3 to 5 "low hazard risk".

Natural Hazards Identification and Analysis

Riverine Erosion Hazard *(Information source: Farm*A*System North Carolina/Photo: FEMA)*

North Carolina's 37,000 miles of streams and rivers and the floodplains and upland areas adjacent to these waters possess great economic, social, cultural, and environmental value. These corridors contain complex ecosystems that encompass the land, plants, animals, and stream networks.

Size of area	Small (1)	Mediu m (2)	Large (3)	Small (1)	Mediu m (2)	Large (3)	Small (1)	Mediu m (2)	Large (3)	Small (1)
Likelihood of Occurrence / Impact	Catastrophic (4)			Critical (3)			Limited (2)			Negligib (1)
Highly Likely (4)	9	10	11	8	9	10	7	8	9	6
Likely (3)	8	9	10	7	8	9	6	7	8	5
Possible (2)	7	8	9	6	7	8	5	6	7	4
Unlikely (1)	6	7	8	5	6	7	4	5	6	3

Rivers and streams perform a number of important functions, including carrying water and sediment, storing water in wetlands and floodplains, and providing habitat for aquatic and terrestrial plants and animals. For these other reasons, protecting streams is important.

Stable stream channels maintain their shape by slowly eroding the outside of a meander bend while depositing sediment on the inside bend. Unaltered streams located in large, flat floodplains have more meanders than steep streams without floodplains. Whatever the channel form, most unaltered streams have alternating, regularly spaced, deep and shallow areas called pools and riffles.

Naturally stable floodplain stream channels are typically sinuous with varying channel depths and stream banks low enough to allow large storm flows to overflow onto the floodplain every one to two years. The natural meandering and varying channel depths dissipate the energy of the water and reduce stream bank erosion. Floodplains also dissipate water energy during high flows, spreading shallow water over a wide area.

Bank height and steepness are the most important indicators of stream bank stability. When stream banks are too high and steep, soil erodes from the bank. Bank height is related to factors such as bank slope, soil types, vegetation cover, and location along the reach. However, once a critical bank height is reached, erosion likely will occur regardless of the other factors.

Management practices that reduce stream bank erosion and sedimentation and protect riparian (on the bank of a river, stream, or other body of water) vegetation can help maintain critical stream channel features. Vegetation slows the flow of water and reduces erosion of the banks. Overall, streams with a mature, diverse riparian buffer are the most stable over time.

Many streams in North Carolina have been straightened and dredged for agriculture, development, and flood control. Straight streams have a steeper gradient than meandering streams which often results in channel incision. Incision is an erosion process that lowers the streambed elevation until it reaches bedrock or other resistant materials. Incision increases stream bank heights and disconnects the stream from the original floodplain. With more water in the channel with steeper slopes and higher banks, the stream has more power to erode the stream banks.

Riverine Erosion Hazard Analysis

Likelihood of Occurrence of Riverine Erosion

There has been erosion along the Catawba River, notably in the Catawba River Park, a county-owned park. Thus likelihood of occurrence is rated as "likely." This indicates that there is between 10% and 100% probability in the next 10 years that riverine erosion will occur.

Likely Range of Impact for Riverine Erosion
The potential for riverine erosion is confined to limited areas of the County, thus the range of impact can be classified as "small", meaning 10% or less of the entire land within the jurisdiction will be impacted.

Probable Level of Impact for Riverine Erosion
With limited occurrence and small exposure, the probable level of impact of riverine erosion in McDowell County can be categorized as "negligible", indicating that, if impacted by riverine erosion, there would be a minimal impact upon the quality of life, only minor injuries would be sustained, critical facilities would only be shut down for 24 hours, and less than 10% of total property would be damaged.

McDowell County Hazard Index for Riverine Erosion (see table A-33)
The hazard index for riverine erosion in McDowell County is categorized as "low" based on a "likely" occurrence, "small" range of impact, and "negligible" level of impact. This hazard index of "low" indicates that riverine erosion poses a relatively low threat and that local hazard mitigation efforts may be more wisely directed to other hazards to which the County and its municipalities are more vulnerable. However, as erosion at the Catawba River Park does affect a public asset, it should be noted that steps have taken to protect both the river and the park through a soil conservation grant (For more information, see: http://www.wnca.org/chapter/mcdowell.shtml).

Dam and Levee Failures
Dam and levee failures can be a serious consequence of natural hazards. Dams are structures or appurtenances built to impound or divert water flow in streams or rivers. Levees are embankments built along rivers to contain flood waters.

Dams
There are approximately 80,000 dams listed in the National Inventory of Dams. This number includes impoundment structures greater than or equal to 25' in height or impounding 50 acre-feet (an acre-foot equal's water 1 foot deep across one acre of land) or more of water, or structures above 6 ft in height whose failure would potentially cause damage downstream. Nine thousand dams nationwide have been designated as high hazard dams.

The high hazard designation does not indicate the inherent stability or instability of a dam but instead measures the potential threat posed to downstream populations in the event of a dam failure.
Background Information on Dams *(Source: Association of State Dam Safety Officials)*
Dams provide a life-sustaining resource to people in all regions of the United States. Unlike most infrastructures, dam owners are solely responsible for the safety and the liability of the dam and for financing upkeep, upgrade and repair. While most infrastructure facilities (roads, bridges, sewer systems, etc.) are owned by public entities, the majority of dams in the United States are privately owned. Across the nation, about 58% of dams are privately owned, 16% are owned by local governments, 4% by states, and the rest by the federal government and public utilities.

Manmade dams are classified according to the type of construction material used, the methods used in construction, the slope or cross-section of the dam, the way the dam resists the forces of water pressure, the means used for controlling seepage and, occasionally, according to the purpose of the dam.

The materials used for construction of dams include earth, rock, tailings from mining or milling, concrete, masonry, steel, timber, miscellaneous materials (such as plastic or rubber) and any combination of these materials. Embankment dams, the most common type of dam, are usually constructed of natural soil or rock or waste materials obtained from mining or milling operations. An embankment dam is termed an "earth-fill" or "rock-fill" dam depending on whether it is comprised of compacted earth or mostly compacted rock. The ability of an embankment dam to resist water pressure is primarily a result of the mass, weight, type and strength of the materials from which the dam is made.

Overtopping of an embankment dam is very undesirable since embankment materials may be eroded away. Water normally passes through the main spillway or outlet works; it should pass over an auxiliary spillway only during periods of high reservoir levels and high water inflow. All embankment and most concrete dams have some seepage; however, it is important to control the seepage to prevent internal erosion and instability. Proper dam construction, maintenance, and monitoring of seepage provide this control.

Intentional release of water is confined to water releases through outlet works and spillways. A dam typically has a principal or mechanical spillway and a draw down facility. Additionally, some dams are equipped with auxiliary spillways to manage extreme floods. Spillways ensure that the reservoir does not overtop the dam. Outlet works may be provided so that water can be drawn continuously, or as needed, from the reservoir. Outlets also provide a way to draw down the reservoir for repair or safety concerns. Water withdrawn may be discharged into the river below the dam, run through generators to provide hydroelectric power, or used for irrigation. Dam outlets usually

consist of pipes, box culverts or tunnels with intake inverts near minimum reservoir level. Such outlets are provided with gates or valves to regulate the flow rate.

Dam Classifications

Dams are classified in one of three categories:

Table A-5: Dam Hazard Classification

Hazard Classification	Description of Potential Damage	Quantitative Guidelines
Low	Interruption of road service, low volume roads	Less than 25 vehicles/day
	Economic damage	**< $30,000**
Intermediate or Significant	Damage to highways, interruption of service	25 to less than 250 vehicles/day
	Economic damage	**$30,000 < $200,000**
High	Loss of human life*	Probable loss of 1 or more human lives
	Economic damage	**>$200,000**
	*Probable loss of human life due to breached roadway or bridge on or below the dam.	250 vehicles/day at 1000 feet visibility 100 vehicles/day at 500 feet visibility 25 vehicles/day at 200 feet visibility

Source: Dam Safety Program, NC Division of Land Resources.

Note: Cost of dam repair and loss of services should be included in economic loss estimate if the dam is a publicly owned utility, such as a municipal water supply dam.

National Dam Safety Program

The National Dam Safety Program Act, enacted in 1996, was established to improve dam safety by:

1. providing assistance grants to state dam safety agencies to improve regulatory programs;
2. funding research to enhance technical expertise as dams are built and rehabilitated;
3. establishing training programs for dam safety inspectors; and
4. creating a National Inventory of Dams.

The Act also requires FEMA to provide education to the public, to dam owners and to others about the need for strong dam safety programs, nationally and locally, and to coordinate partnerships among all players within the dam safety community to enhance dam safety.

Potential of Dam Failure

Early in the 20th century, it was recognized that some form of regulation was needed after a number of dams failed due to lack of proper engineering and maintenance. Federal agencies, such as the Corps of Engineers and the Department of Interior, Bureau of Reclamation built many dams during the early part of the twentieth century and established safety standards during this time. It was not until a string of significant dam failures in the 1970s that awareness was raised to a new level among the states and the federal government.

Driving every other issue and all activities within the dam safety community is the risk of dam failure. Although the majority of dams in the U.S. have responsible owners and are properly maintained, still many dams fail every year. In the past several years, there have been hundreds of documented failures across the nation (this includes 250 after the Georgia Flood of 1994). Dam and downstream repair costs resulting from failures in 23 states reporting in one recent year totaled $54.3 million.

Dam failures are most likely to happen for one of the following reasons:

- Structural failure of materials used in dam construction
- Cracking caused by movements like the natural settling of a dam
- Piping—when seepage through a dam is not properly filtered and soil particles continue to progress and form sink holes in the dam.

Property owners downstream often know nothing about the potential that an upstream dam has to cause devastation should it fail. Even if citizens understand and are aware of dams, they still can be overly confident in the infallibility of these manmade structures. Living in dam-break flood-prone areas is a risk. Many dam owners do not realize their responsibility and liability toward the downstream public and

environment. Adequate understanding of proper dam maintenance and upgrade techniques is a typical problem among many owners across the United States.

History of Dam and Levee Failures in North Carolina

The North Carolina Dam Safety Program has made use of National Dam Safety Program funds to create and implement the North Carolina Emergency Action Plan. The Plan was activated in 1999 during and after Hurricane Floyd and was instrumental in reducing response time in closing roads and evacuating persons from high-risk areas. Following Hurricane Floyd, no injuries were reported despite the failure of 36 dams (14 high hazard, 5 intermediate, and 12 low or unclassified dams). In the days and months following Hurricane Floyd, North Carolina dam safety personnel worked to ensure the safety of over fifty dams damaged by the hurricane. Dam owners, safety inspectors and local emergency management personnel monitored these dams asking owners to lower water levels and/or complete emergency repairs. No dam failures were reported in McDowell County.

Dams in McDowell County

There are 34 dams located in McDowell County, 10 of those dams are rated "high hazard" meaning that if a failure were to occur there is a probable loss of one or more human lives and property damage would probably exceed $200,000 (see Table A-5). Also 14 dams located in McDowell County are classified as having a intermediate rating, meaning those dams where failure or misoperation results in no probable loss of human life, but can cause economic loss, environment damage, disruption of lifeline facilities, or impact other concerns. Significant hazard potential classification dams are located in predominantly rural areas. The remaining 10 dams are classified as having a "low" hazard rating, meaning that no human or property loss would be affected. Losses are principally limited to the owner's property.

Table A-6: High Hazard Dams

ID	Dam Name	Basin	DDY	DDX	Dam Status	Drainage Area
2705	2nd Broad River W.S. #11-16	Broad	35.561	-81.980	Impounding	195.0000
2706	2nd Broad River W.S. #11-17	Broad	35.559	-81.981	Impounding	238.0000
2676	Muddy Creek #8	Catawba	35.696	-81.917	Impounding	0.0000
2680	Muddy Creek - B. S. A.	Catawba	35.596	-81.868	Impounding	0.0000
2682	Camp Grier Dam	Catawba	35.640	-82.195	Impounding	0.0000
2683	Lady Marion Dam	Catawba	35.694	-82.026	Impounding	0.0000
2684	Phillips Lake	Catawba	35.725	-82.053	Impounding	0.0000
2685	Lake Tahoma (Ferc)	Catawba	35.723	-82.080	Exempt	14720.0000
2687	Catawba Dam (Duke Ferc)	Catawba	35.734	-81.889	Exempt	0.0000
2693	Muddy Creek #3	Catawba	35.632	-81.992	Impounding	0.0000

Source: National Inventory of Dams

Hazard Analysis – Dam Failure

Likelihood of Occurrence of Dam Failure

There is no recorded history of significant dam failure occurring in McDowell County; however, failure of one or more of the high hazard dams in the county due to high rain precipitation or other events could result in significant damage to downstream properties and the possible loss of human life. The likelihood of a significant high hazard dam failure can be classified as "possible".

Likely Range of Impact for Dam Failure

The potential for dam failure is confined to limited areas of the County, thus the range of impact can be classified as "small".

Probable Level of Impact for Dam Failure

With limited possibility of occurrence and small exposure, the probable level of impact of dam failure in McDowell County can be categorized as "negligible".

McDowell County Hazard Index for Dam Failure (see table A-33)

The hazard index for dam failure in McDowell County is categorized as "low" based on a rating of "possible" occurrence, "small" range of impact, and "negligible" level of impact. This hazard index of "low" indicates that dam failure, especially given the regulation and inspection programs of the NC Dam Safety Program, poses a relatively low threat. Hazard mitigation efforts should continue to rely primarily on the State Dam Safety Program to discover and correct any potential failure problems.

Levees

Many communities around the globe are nestled in the lush green valleys and fertile floodplains that surround the rushing waters of streams and rivers. These water systems are vital in moving rainwater from land to sea and also serve to transport and deposit sediments. It is estimated that streams and rivers move about 1.5 billion tons of sediment from land to oceans each year. By shifting such great masses of earth, streams become sculptors of the land.

Farming communities often settle along rivers on floodplains because the land is flat, the soil is deep and fertile, and there is abundant rainfall. People have long known the risk of settling in these areas but to them, the economic benefits of agricultural production there usually outweigh the flood risk.

People living in valleys or on flood plains next to earthen dams or levees are susceptible to sudden flooding. Dams and levees can both fail in the event of an earthquake, internal erosion, poor engineering and construction or avalanches. The most common cause of failure, however, is too much rainfall.

When a region experiences heavy rainfall, the water inside a levee builds up and flows over the top. Water flow washes away the upper portion of the barrier and carves out deep grooves. The levee will eventually weaken as the water destroys the structure, resulting in sudden release of tons of water.

Levees are broadly classified as either urban or agricultural. Urban levees provide protection from flooding in communities where industrial, commercial, and residential properties are at risk of flood damage. Agricultural levees protect agricultural lands. There are five main types of levees:

1. Main/Tributary Levees - parallel the main channel and/or its tributaries.
2. Ring Levees - encircle or "ring" an area from all directions.
3. Setback Levees - generally built as a backup to an existing levee that has become endangered due to such actions as river migration.
4. Sub-Levees - constructed for the purpose of under seepage control. Sub-levees encircle areas landward of the main levee, and capture seepage water during high-water stages.
5. Spur Levees - project from the main levee and provide protection to the main levee by directing erosive river currents riverward.

Constructed levees cause water levels to rise upriver by forcing flood waters to pass through a narrow funnel-like opening between the levees. Waters impounded downstream by levees cause rapidly rising, higher than normal flood elevations such that properties upstream that have never been flooded are affected. The result is a chain reaction where people upstream build levees to protect their property – usually with taxpayer assistance. Overtime, the majority of the river will become contained within levees that isolate virtually the entire floodplain from the river.

Levee Failures

When high levees break, a tremendous amount of energy is released as a "dam break flood wave" which creates huge scour holes adjacent to the channel. Sands from these holes are then scattered across the floodplain at varying depths creating natural levees and floodplains. During a flood, as sediment-laden water flows out of the completely submerged channel, the depth, velocity and turbulence of the water decrease abruptly at the channel margins, where the coarsest part of the suspended load is deposited to form a natural levee. Farther away, finer silt and clay settle out across the stream's floodplain, a relatively flat region of valley floor that is periodically inundated by floodwater.

The Midwest floods of 1993 caused $14 - $16 billion in property damages and recovery costs. Since 1993, USGS scientists have decided that the best way to provide for flood control is to enclose the river's entire meander belt within a system of setback levees. The meander belt is the area most susceptible to flooding, the area where old active river channels occur, and where most of the major levee breaks occurred during the 1993 flood. The meander belt is thus that portion of the floodplain least desirable for farming or other developmental uses.

Hazard Analysis - Hazard Index for Levee Failures

There are no known levees in McDowell County, thus levee failure is not included in the natural hazard index analysis.

Droughts and Heat Waves

Droughts

Droughts are not rare or random events but normal, recurrent features of climate. Droughts occur in virtually all climatic zones, but drought characteristics vary significantly from one region to another.

Drought is a temporary aberration and differs from aridity which is restricted to low rainfall regions and is a permanent feature of climate. Drought originates from a deficiency of precipitation over an extended period of time, usually a season or more. This deficiency results in a water shortage for some activity, group, or environmental sector. *(Photo: NOAA)*

Drought should be considered relative to some long-term average condition of balance between precipitation and evapotranspiration (i.e., evaporation + transpiration) in a particular area, a condition often perceived as "normal". It is also related to the timing (i.e., principal season of occurrence, delays in the start of the rainy season, occurrence of rains in relation to principal crop growth stages) and the effectiveness (i.e., rainfall intensity, number of rainfall events) of rain events. Other climatic factors such as high temperature, high wind, and low relative humidity are often associated with drought and can significantly aggravate drought severity.

The more recent understanding that a deficit of precipitation has different impacts on groundwater, reservoir storage, soil moisture, snow-pack, and stream-flow led to the development of the Standardized Precipitation Index (SPI) in 1993. The SPI was designed to quantify the precipitation deficit for multiple time scales. These time scales reflect the impact of drought on the availability of the different water resources. Soil moisture conditions respond to precipitation irregularities on a relatively short scale. Groundwater, stream-flow, and reservoir storage reflect longer-term precipitation anomalies.

Sequence of Drought Impacts

When drought begins, the agricultural sector is usually the first to be affected because of heavy dependence on stored soil water. Soil water can be rapidly depleted during extended dry periods. If precipitation deficiencies continue, then people dependent on other sources of water will begin to feel the effects of the shortage. Those who rely on surface water (reservoirs and lakes) and subsurface water (ground water), for example, are usually the last to be affected. A short-term drought that persists for 3 to 6 months may have little impact on these sectors, depending on the characteristics of the hydrologic system and water use requirements.

When precipitation returns to normal and meteorological drought conditions have abated, the sequence is repeated for the recovery of surface and subsurface water supplies. Soil water reserves are replenished first, followed by stream-flow, reservoirs and lakes, and ground water. Drought impacts may diminish rapidly in the agricultural sector because of its reliance on soil water, but linger for months or even years in other sectors dependent on stored surface or subsurface supplies. Ground water users, often the last to be affected by drought during its onset, may be the last to experience a return to normal water levels. The length of the recovery period is a function of the intensity of the drought, its duration, and the quantity of precipitation received as the episode terminates.

Severe Droughts in the United States

The period of drought that has been the most well documented in both text and photographs occurred in the 1930s when drought covered virtually the entire Plains area of the U.S. for almost a decade. The direct effect

of the drought is most often remembered as agricultural. Crops were damaged by deficient rainfall, high temperatures, and high winds, as well as insect infestations and dust storms that accompanied these conditions. The resulting agricultural depression contributed to the Great Depression with bank closures, business losses, increased unemployment, and other physical and emotional hardships. Although records focus on other problems, the lack of precipitation would also have affected wildlife and plant life, and would have created water shortages for domestic needs.
Effects of the Plains drought sent economic and social ripples throughout the country. Millions of people migrated from the drought areas, often heading west, in search of work. These newcomers were often in direct competition for jobs with longer-established residents, which created conflict between the groups. In addition, because of poverty and high unemployment, migrants added to local relief efforts, sometimes overburdening relief and health agencies.

To reduce the impact of future droughts, proactive measures were developed and implemented including an increase in conservation practices and irrigation, average farm size, and crop diversity. Federal crop insurance was established and the regional economy was diversified. Many other proactive measures taken after the 1930's drought also reduced rural and urban vulnerability to drought, including new or enlarged reservoirs, improved domestic water systems, changes in farm policies, new insurance and aid programs, and removal of some of the most sensitive agricultural lands from production.

Table A- 7: History of Drought in North Carolina and the U.S.

Year	Description
1980	The drought/heat wave summer of 1980 caused over $20 billion in damages to agriculture and related industries and an estimated 10,000 heat stress-related deaths in the United States.
1986	$1 - $1.5 billion in damages and an estimated 100 deaths.
1988	Over $40 billion in damages and 5,000 to 10,000 deaths across central and eastern United States.
1993	During June-July 1993 most of the Southeast received less than 50% of normal rainfall along with temperatures 3 – 6 degrees above normal. Eighty-nine of the one hundred counties in NC were declared disaster areas. Crop losses for NC were estimated at $165 million. During this period, North Carolina also recorded the second driest summer (June-August) on record (since 1895) with a statewide average precipitation of only 9.43 inches. The Raleigh-Durham area recorded the driest June on record with 0.33 inches of rain. Estimated damages for the United States exceeded $1 billion in damages to agriculture and at least 16 deaths.
1998	Severe drought/heat wave from Texas/Oklahoma eastward to the Carolinas resulted in $6 - $9 billion in damages to agriculture and at least 200 deaths.
1999	Summer drought/heat wave of 1999 resulted in extensive agricultural losses estimated at over $1.0 billion in damages and an estimated 502 deaths in the United States. The east coast was hardest hit by the drought, with record and near-record short-term precipitation deficits occurring on a local and regional scale resulting in agricultural losses and drought emergencies being declared in several states. Drought was especially severe in the mid-Atlantic states, where local water restrictions were in effect and drought emergencies were declared by several governors. February-August 1999 ranked as the fifth driest such period in the 105-year record.
2000	Severe drought and persistent heat over south-central and southeastern states caused significant losses to agriculture and related industries estimated at over $4.0 billion in damages and 140 deaths.
2002	According to the National Climatic Data Center, moderate to extreme drought affected more than 45% of the United States June through August of 2002. Nationwide, the summer of 2002 was the third hottest on record after the summers of 1934 and 1936. The 12 months that ended with August 2002 were the driest on record for North Carolina. Local water restrictions were in effect throughout central and western North Carolina.

Source: National Climatic Data Center.

Heat Waves

Heat kills by taxing the human body beyond its abilities. In a normal year, about 175 Americans succumb to the demands of summer heat. Among large natural hazards, only the cold of winter -- not lightning, hurricanes, tornadoes, floods, or earthquakes – takes a greater toll. In the 40-year from 1936 through 1975, nearly 20,000 people in the United States were killed by the effects of heat and solar radiation. In the disastrous heat wave of 1980, more than 1,250 people died as a direct result of the heat wave. People at higher risk, e.g., with aging or diseased hearts, are especially susceptible to excessive heat. In recent years, the National Weather Service (NWS) has stepped up efforts to more effectively alert the general public and appropriate authorities to the hazards of heat waves and prolonged excessive heat/humidity episodes. *(Source: NOAA)*

How Heat Affects the Body

Human bodies dissipate heat by varying the rate and depth of blood circulation, by losing water through the skin and sweat glands, and -- as the last extremity is reached -- by panting, when blood is heated above 98.6 degrees. As heat rises, the heart begins to pump more blood, blood vessels dilate to accommodate the increased flow, and the bundles of tiny capillaries threading through the upper layers of skin are put into operation. Blood is circulated closer to the skin's surface, and excess heat drains off into the cooler atmosphere. At the same time, water diffuses through the skin as perspiration. The skin handles about 90 percent of the body's heat dissipating function. Sweating, by itself, does nothing to cool the body, unless the water is removed by evaporation -- and high relative humidity retards evaporation.
Heat disorders generally have to do with a reduction or collapse of the ability of the body to shed heat by circulatory changes and sweating, or a chemical (salt) imbalance caused by too much sweating. When heat gain exceeds the level the body can remove, or when the body cannot compensate for fluids and salt lost through perspiration, the temperature of the body's inner core begins to rise and heat-related illness may develop.

Ranging in severity, heat disorders share one common feature: the individual has overexposed or over exercised for his/her age and physical condition in the existing thermal environment. Sunburn, with its ultraviolet radiation burns, can significantly retard the skin's ability to shed excess heat. Studies indicate that, other things being equal, the severity of heat disorders tend to increase with age -- heat cramps in a 17-year-old may be heat exhaustion in someone 40 and heat stroke in a person over 60.

Heat Index
The heat index, given in degrees Fahrenheit, is an accurate measure of how hot it really feels when the relative humidity is added to the actual air temperature (see Table A-8 Heat Index Chart). If the air temperature is 95°F (found on the left side of Table A-8), and the relative humidity is 50% (found at the top of Table A-8), the heat index - or how hot it really feels - is 106.7°F. This is at the intersection of the 95° row and the 50% column. Since heat index values were devised for shady, light wind conditions, exposure to full sunshine can increase HI values by up to 15°F. Also, strong winds, particularly with very hot, dry air, can be extremely hazardous. In Table A-9, the shaded zone above 105°F corresponds to a heat index level that may cause increasingly severe heat disorders with continued exposure and/or physical activity.

Table A-8: Heat Index Chart

Temperature (F) versus Relative Humidity (%)									
°F	90%	80%	70%	60%	50%	40%	30%	20%	10%
65	65.6	64.7	63.8	62.8	61.9	60.9	60.	59.1	58.1
70	71.6	70.7	69.8	68.8	67.9	66.9	66.	65.1	64.1
75	79.7	76.7	75.8	74.8	73.9	72.9	72.	71.1	70.1
80	88.2	85.9	84.2	82.8	81.6	80.4	79.	77.4	76.1
85	101.4	97.	93.3	90.3	87.7	85.5	83.5	81.6	79.6
90	119.3	112	105.8	100.5	96.1	92.3	89.2	86.5	84.2
95	**141.8**	131.1	121.7	113.6	106.7	100.9	96.1	92.2	89.2
100	**168.7**	**154.**	**140.9**	129.5	119.6	111.2	104.2	98.7	94.4
105	**200**	**180.7**	**163.4**	**148.1**	**134.7**	123.2	113.6	105.8	100.
110	**235.**	**211.2**	**189.1**	**169.4**	**151.9**	**136.8**	124.1	113.7	105.8
115	**275.3**	**245.4**	**218**	**193.3**	**171.3**	**152.1**	**135.8**	122.3	111.9
120	**319.1**	**283.1**	**250.**	**219.9**	**192.9**	**169.1**	**148.7**	**131.6**	**118.2**

Source: National Weather Service Heat Index Program, NOAA.

Heat Index/Heat Disorders
The Heat Index/Heat Disorders (Table A-9) relates ranges of heat index with specific disorders, particularly for people in higher risk groups. Heat disorder symptoms are described in Table A-9.

Table A-9: Heat Index/Heat Disorders

Prolonged Exposure or Physical Activity	HI	Possible Heat Disorder
Caution	80°F - 90°F	Fatigue possible with prolonged exposure and physical activity.
Extreme Caution	90°F - 105°F	Sunstroke, heat cramps and heat exhaustion possible.
Danger	105°F – 130°F	Sunstroke, heat cramps, and heat exhaustion likely, and heat stroke possible.
Extreme Danger	**130°F or greater**	**Heat stroke highly likely with continued exposure.**

Source: National Weather Service Heat Index Program, NOAA.

Table A-10: Heat Disorder Symptoms

Heat Disorder	Symptoms	First Aid
Sunburn	Redness and pain. In severe cases, swelling of skin, blisters, fever, headaches.	Ointment for mild cases if blisters appear. If breaking occurs, apply dry sterile dressing. Serious cases should be seen by a physician.
Heat Cramps	Painful spasms usually in muscles of legs and abdomen possible. Heavy sweating.	Firm pressure on cramping muscles, or gentle massage to relieve spasm. Give sips of water. If nausea occurs, discontinue use.
Heat Exhaustion	Heavy sweating, weakness, skin cold, pale and clammy. Pulse thready. Normal temperature possible. Fainting and vomiting.	Get victim out of sun. Lie down and loosen clothing. Apply cool wet cloths. Fan or move victim to air conditioned room. Sips of water. If nausea occurs, discontinue use. If vomiting continues, seek immediate medical attention.
Heat Stroke/ Sunstroke	High body temperature (106°F, or higher). Hot dry skin. Rapid and strong pulse. Possible unconsciousness.	Heat stroke is a severe medical emergency. Summon medical assistance or get the victim to a hospital immediately. Delay can be fatal. Move the victim to a cooler environment. Reduce body temperature with cold bath or sponging. Use extreme caution. Remove clothing, use fans and air conditioners. If temperature rises again, repeat process. Do not give fluids.

Source: National Weather Service Heat Index Program, NOAA.

Air Quality Index

Ozone, a highly reactive form of oxygen, can be good and bad. High in the atmosphere, it protects the Earth from harmful solar radiation. Near the ground, ozone is unhealthy to breathe and can damage trees and crops. In North Carolina, ozone is the most widespread air quality problem and the main component in urban smog. Smog also contains dust, soot and other pollutants that can cause a dirty brown haze. But ozone, which is a colorless and odorless gas, can reach high levels even on sunny, clear days with little haze.

Ozone Formation

Cars, trucks, power plants, factories and other sources emit air pollutants that form ozone as a secondary pollutant. Ground-level ozone forms when nitrogen oxides (NOx) react with volatile organic compounds (VOCs) in the presence of heat and sunlight.

Ozone Forecasts

The N.C. Division of Air Quality (DAQ) issues daily ozone forecasts from May through September, when ozone levels generally are higher. These forecasts enable citizens to limit their exposure on high-ozone days and take actions that help reduce ozone-forming pollution. Forecasters use a color-coded system (See Table A-10) to advise the public about ozone exposure.

Table A-11: Air Quality Index Color Code Guide

Air Quality[1]	Weather Conditions	Recommended Actions	Health Effects
Good AQI: 0-50 *(Green)*	• Cool summer temperatures • Windy conditions • Significant cloud cover • Heavy or steady precipitation	• Keep cars and boats tuned up • Use environmentally safe paints and cleaning products • Conserve electricity-set A/C	No health effects are expected.

Moderate AQI: 51-100 *(Yellow)*	• Temperatures in the upper 70's to lower 80's • Light to moderate winds • Partly cloudy or mostly sunny skies • Chance of rain or afternoon thunderstorms	to highest comfortable level	Unusually sensitive people should consider limiting prolonged outdoor exertion.
Unhealthy for Sensitive Groups AQI: 101-150 *(Orange)*	• Temperatures in the 80's and 90's • Light winds • Mostly sunny skies • Slight chance of afternoon thunderstorms	• Limit daytime driving • Limit vehicle idling • Refuel vehicles after dusk • Don't "top off" your gas tank • Avoid congested periods • Use water-based paints • Use transit or car pool • Bike or walk for short trips • Use newest/best maintained car • Combine trips and share rides • Postpone using gasoline mowers • Barbecue without starter fluid	Active children and adults, and people with respiratory disease, such as asthma, should limit prolonged outdoor exertion.
Unhealthy AQI: 151-200 *(Red)*	• Hot, hazy, and humid • Stagnant air • Sunny skies • Little chance of precipitation		Active children and adults, and people with respiratory disease such as asthma, should avoid prolonged outdoor exertion; everyone else, especially children, should limit prolonged outdoor exertion.
Very Unhealthy AQI: 201-300 *(Purple)*	• Hot and very hazy • Extremely stagnant air • Sunny skies • No precipitation		Active children and adults, and people with respiratory disease such as asthma, should avoid all outdoor exertion; everyone else, especially children, should avoid prolonged outdoor exertion.

Source: NCDENR

[1] AQI refers to the Air Quality Index. An AQI of 100 is equivalent to the National Ambient Air Quality Standard (NAAQS). An AQI greater than 100 is considered to be above the national standard or NAAQS.

Cities Pose Special Hazards

The stagnant atmospheric conditions a heat wave trap pollutants in urban areas and add the stresses of severe pollution to the already dangerous stresses of hot weather, creating a health problem of greater dimensions. A map of heat-related deaths in St. Louis during 1966, for example, showed a heavier concentration in the crowded alleys and towers of the inner city, where air quality would also be poor during a heat wave.

The high inner-city death rates also can be read as poor access to air-conditioned rooms. While air-conditioning may be a luxury in normal times, it can be a lifesaver during heat wave conditions. The cost of cool air moves steadily higher, adding what appears to be a cruel economic side to heat wave fatalities. Indications from the 1978 Texas heat wave suggest that some elderly people on fixed incomes, many of them in buildings that could not be ventilated without air conditioning, found the cost too high, turned off their units, and ultimately succumbed to the stresses of heat. While temperatures often reach sub-freezing and code orange and/or code red levels (See Table A-11), only three instances of extreme temperatures have been officially recorded (See Table A-12).

Table A-12: Temperature Extremes for McDowell County 1993-2003

Location or County	Date	Type	Deaths	Injuries
McDowell County	09/01/99	Drought	0	0
McDowell County	10/10/98	Drought	0	0
McDowell County	11/01/98	Drought	0	0
McDowell County	06/01/99	Drought	0	0
McDowell County	08/01/99	Drought	0	0
McDowell County	07/01/99	Drought	0	0
Totals			0	0

Source: NOAA

Hazard Analysis – Droughts and Heat Waves

Likelihood of Occurrence of Droughts and Heat Waves

Since 1980, there have been several periods of significant drought affecting the southeastern portion of the United States. Although there are six years where recorded instances of drought occurred in McDowell County, these hazardous events can be considered "likely" in McDowell County. This rating indicates that there is between a 10% and 100% probability in the next year or at least one chance within the next ten years that a drought or heat wave will occur in this locality.

Likely Range of Impact for Droughts and Heat Waves

When droughts and heat waves do occur, they impact several states or an entire region of the United States, therefore, the range of impact can be classified as "large". This specifies an estimated impacted region consisting of between 40 % to 100 % of the total jurisdictional area.

Probable Level of Impact for Droughts and Heat Waves

Extended droughts can have a significant impact on local resources and local economies as evidenced by data on drought impacts since 1980. Heat waves have a much more limited impact, but considered together these two related natural hazards can have a huge impact on a community; therefore, the probable level of impact can be classified as "limited".

McDowell County Hazard Index for Droughts and Heat Waves (see table A-33)

The hazard index for droughts and heat waves in McDowell County is categorized as "moderate" based on a "likely" occurrence, "large" range of impact, and "limited" level of impact. This hazard index of "moderate" indicates that droughts and heat waves pose a relatively large threat in McDowell County and that major hazard mitigation efforts are advised. However, mitigating the impact of a drought or heat wave is generally considered a State or regional issue and planned for at those levels. Local initiatives could include public education and limits on water usage.

Earthquakes

The Federal Emergency Management Agency (FEMA) defines an earthquake as "a sudden, rapid shaking of the earth caused by the breaking and shifting of rock beneath the earth's surface". Earthquakes result when stress forces build up along fractures or fault lines in the earth's crust over extended periods of time. At the point where these stresses exceed the strength of the rocks on either side of the fault there is a sudden rupture or snapping that releases energy in the form of seismic waves. *(Source: National Science Foundation)*

The 1931 Modified Mercalli Scale (Table A-13) is used in the United States to measure the intensity of an earthquake. The scale assigns a Roman numeral from Category I to Category XII to describe the qualitative effects of an earthquake. The methodology used involves:

1. Assigning an intensity numeral at each location to describe the earthquake effect.
2. Creating a contour map of the zones of similar effect.
3. The earthquake assumed to occur near the region of maximum intensity.
4. The earthquake is characterized by the largest Roman numeral assigned.

The scale is a qualitative assessment that measures different phenomena. The lower intensity values measure human response to ground motions, the intermediate values characterize the response of simple structures, and the upper values describe ground failure processes. A problem with the scale is that incomplete spatial coverage may lead to missing the location of the earthquake or an underassessment of its size. This can be a problem when measuring offshore earthquakes or where sparsely populated, less developed areas result in inadequate measurements.

Table A-13: Modified Mercalli Scale of Earthquake Intensity

Scale	Intensity	Description of Effects	Maximum Acceleration (mm/sec)	Richter Scale
I	Instrumental	Detected only on seismographs.	<10	>3.2
II	Feeble	Some people feel it.	<25	<4.2
III	Slight	Felt by people resting.	<50	<4.3
IV	Moderate	Felt by people walking.	<100	>4.3, <4.8
V	Slightly Strong	Sleepers awake; church bells ring.	<250	<4.8
VI	Strong	Trees sway; suspended objects swing, objects fall off shelves.	<500	<5.4
VII	Very Strong	Mild alarm; walls crack; plaster falls.	<1000	<6.1
VIII	Destructive	Moving cars uncontrollable; masonry fractures, poorly constructed buildings damaged.	<2500	>6.2
IX	Ruinous	Some houses collapse; ground cracks; pipes break open.	<5000	<6.9
X	Disastrous	Ground cracks profusely; many buildings destroyed; liquefaction and landslides widespread.	<7500	<7.3
XI	Very Disastrous	Most buildings/bridges collapse; roads/railways/pipes/cables destroyed; other hazards triggered.	<9800	<8.1
XII	Catastrophic	Total destruction; trees fall; ground rises and falls in waves.	>9800	>8.1

Source: Local Hazard Mitigation Planning Manual, NC Division of Emergency Management, 1998.

History of Earthquakes Impacting North Carolina

North Carolina's vulnerability to earthquakes decreases from west to east. Epicenters that affect North Carolina are generally concentrated in the Eastern Tennessee Seismic Zone (ETSZ), which is second in activity in the eastern United States only to the New York Madrid Fault. The eastern portion of the State faces minimal effects from seismic activity.[1-3]

The ETSZ is part of a crescent of moderate seismic activity risk extending from Charleston, South Carolina northwestward into eastern Tennessee and then curving northeastward into central Virginia. There have not been any earthquakes in the ETSZ with MMI intensity greater than IV since 1928, but the potential to produce an earthquake of significant intensity still exists.

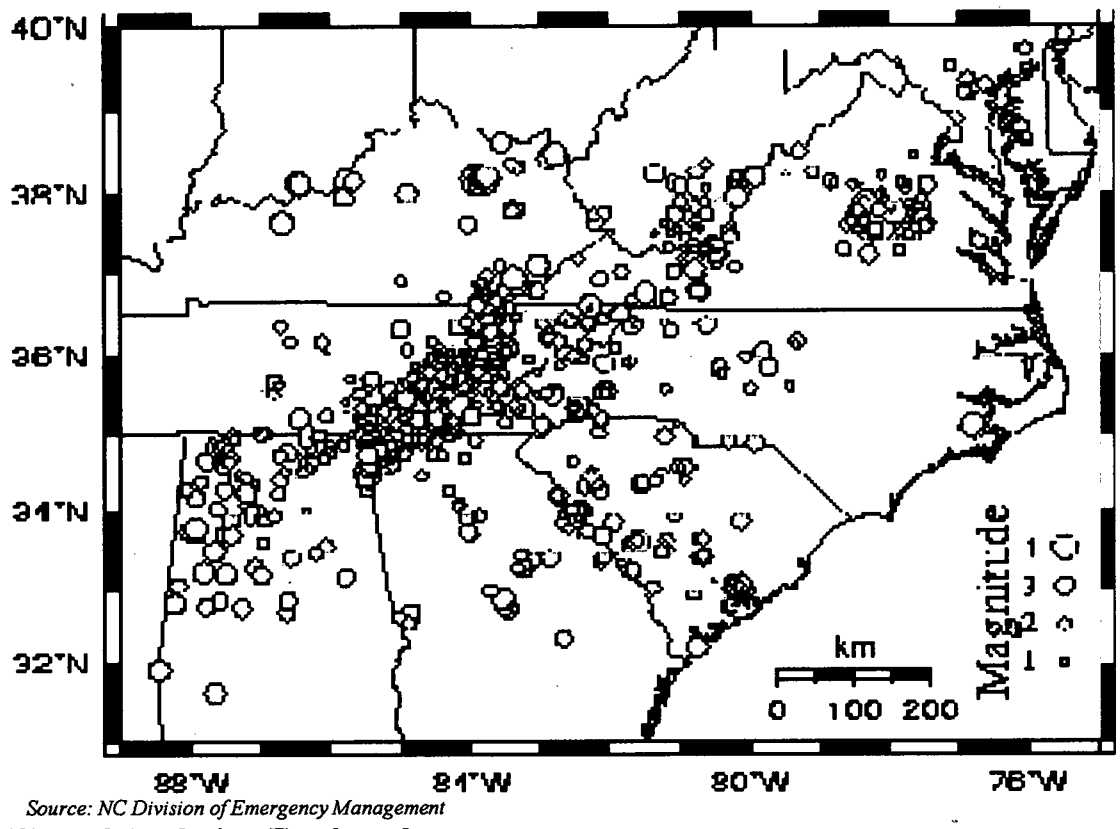
Earthquakes are relatively infrequent but not uncommon in North Carolina. From 1568 to 1992, 157 earthquakes occurred in North Carolina.[1-4] The strongest earthquake on record in the State occurred March 8, 1735 near Bath. During the great earthquake of 1811 (MMI VI), centered in the Mississippi Valley, tremors were felt throughout North Carolina.

The most earthquake property damages recorded in North Carolina are attributed to an earthquake that occurred August 31, 1886 in Charleston, SC. This quake left 65 people dead in Charleston and caused chimney collapses, fallen plaster and cracked walls as far away as Charlotte, Elizabethtown, Henderson, Hillsborough, Raleigh, Waynesville, and Whiteville, North Carolina. On February 21, 1916, the Asheville area was the center for a large MMI VI earthquake that was felt in several states. Subsequent minor earthquakes have caused damages in North Carolina in 1926, 1928, 1957, 1959, 1971, 1973, and 1976.

Fault Lines

Faults identified to date in North Carolina are ancient and inactive. The lack of correspondence between the locations of earthquake epicenters and these faults indicates they are not responsible for earthquakes in North Carolina within historical times. The faults beneath the surface that generate earthquakes have yet to be positively identified.

Epicenters of Earthquakes in Southeastern United States (1977-1996)



Source: NC Division of Emergency Management

Hazard Analysis – Earthquakes

Likelihood of Occurrence of an Earthquake

Since there have been numerous recorded minor tremors over the last century around or near McDowell County, the probability of a notable earthquake occurring in McDowell County can be classified as "possible".

Likely Range of Impact of an Earthquake

Earthquakes are not localized events within a small land area and therefore are not easily mapped. Any diminishment of the destructive force of an earthquake from one side of McDowell County to the other would probably be negligible. However, the impact of an earthquake within the area would be fairly uniform among structures which were built using comparable construction methods and materials. If an earthquake were to occur, the range of impact would be classified as "large".

Probable Level of Impact of an Earthquake

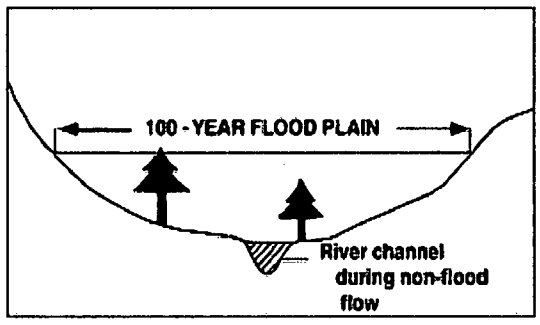
Earthquakes can cause buildings and bridges to collapse, damage utility service lines, trigger landslides and avalanches, and cause flash floods and fires. Regarding earthquakes, FEMA reports that "buildings with foundations resting on unconsolidated landfill, old waterways, or other unstable soil are most at risk. Buildings or trailers and manufactured homes not tied to a reinforced foundation anchored to the ground are also at risk since they can be shaken off their mountings during an earthquake". The probable level of impact of an earthquake in the greater McDowell County area can be classified as "negligible".

Hazard Index for Earthquakes (see table A-33)

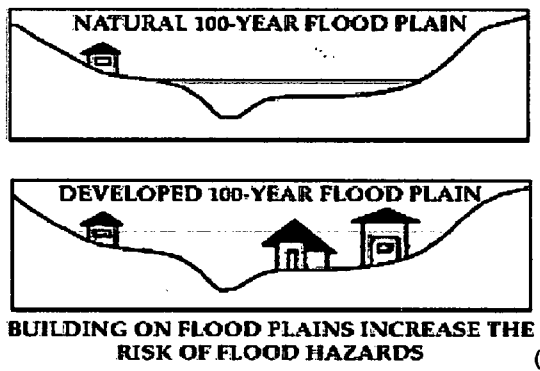
Earthquakes have been assigned a hazard index of "moderate" for the McDowell County area based on the likelihood of occurrence "possible", a "large" likely range of impact, and a "negligible" probability of damage. The combined hazard index of "moderate" for earthquakes indicates that this particular hazard poses a moderate threat and should be a minor focus of local hazard mitigation efforts.

Floods (Map A-1 Multi-Hazards)

Areas susceptible to flood damage caused by heavy rainfall have been determined through the Federal Emergency Management Agency (FEMA) floodplain mapping program. The economic and human impact a hurricane or other heavy rainfall event has on a community depends greatly on how development has occurred within that community. Development in areas of high risk or vulnerability greatly increases the potential for property damage and loss of life.



FLOOD PLAINS NORMALLY ARE DRY



BUILDING ON FLOOD PLAINS INCREASE THE RISK OF FLOOD HAZARDS (Source: USGS)

Flooding is normally the result of a larger event such as a hurricane, nor'easter or thunderstorm, but flooding can be as frequent as the occurrence of a spring rain or a summer thunderstorm. Flooding is caused by excessive precipitation and can be generally considered in two categories: flash floods and general floods.

Flash floods are the product of localized, high-intensity precipitation over a small drainage basin in a short time period. Flash floods, which typically occur more frequently than general floods, occur along small streams and creeks. The undermining or washing out of roads is typically associated with flash floods. General floods are caused by precipitation over a longer time period and over a given river basin. These larger storm events occur along the East Coast of the United States most often in the late summer and fall. *(Source: USGS.)*

A combination of river basin physiography, local thunderstorm movements, past soil moisture conditions, the degree of vegetative clearing and the amount of impervious surface coverage (buildings, pavement, etc) determine the severity of a flooding event. Flooding is typically most severe in areas of the floodplain immediately adjacent to major streams and rivers. The pictures above show satellite images of floodplains that have been flooded.

Historic Impact of Floods in McDowell County

Since 1995, five flood events have been reported in McDowell County (Table A-14). North Carolina Division of Emergency Management has rated McDowell County as a "moderate" risk for floods (Local Hazard Mitigation Planning Manual, p.86).

Table A-14: Flood Event Data for McDowell County – 1966 - 2003

Location	Date	Time	Type	Property Damages	Crop Damages
15 Central [1]	5/4/1993	2:00 PM	Flash Flood	0	0
19 MCDOWELL [2]	3/8/1995	9:30 AM	Flash Flood	0	0
39 Woodlawn	8/12/1996	10:00 AM	Flash Flood	0	0
190 Nebo [3]	6/15/2003	10:30 PM	Flash Flood	0	0
195 Marion [4]	7/12/2003	8:30 PM	Flash Flood	0	0
199 Sugar Hill	7/30/2003	9:00 PM	Flash Flood	0	0
Multi-County	1/26/1996	8:55 PM	Flood	30,000	0
Multi-County [5]	1/7/1998	11:00 PM	Flood	25,000	0
McDowell County [6]	4/10/2003	1:00 PM	Flood	100,000	0
McDowell County [7]	4/18/2003	4:30 AM	Flood	200,000	0
Multi-County	7/12/2003	10:00 PM	Flood	0	0
Multi-County	11/19/2003	7:30 AM	Flood	5,000	0
Multi-County	9/7/2004	5:30 PM	Flood	25,000,000	5,500,000
Multi-County	9/17/2004	1:00 AM	Flood	8,200,000	4,000,000

[1] Over three inches of rain from thunderstorms caused many creeks to overflow their banks and closed United States Route 221 four miles north of Marion for a period of time.

[2] Over three inches of rain fell in a four-hour period causing a strip of U.S. 221 North at Tom's Creek Road to be closed due to flooding. Numerous accidents were reported when drivers attempted to cross the rising waters.

[3] Three to five feet of water covered some roads in the area. A portion of highway 70 and several bridges were covered with water.

[4] Slow-moving thunderstorms with very heavy rainfall caused several creeks to overflow their banks and flood adjacent roadways. Most of the flooding was concentrated in the Montford Cove area, where flood waters rose above car doors.

[5] Excessive rainfall caused rockslides and flooding along Interstate 40, U.S. Highway 221 and NC Highway 80. A wall of water washed away part of a flea market and caused 12 thousand dollars of damage.

[6] An extended period of moderate to heavy rainfall resulted in gradual development of flooding in low lying areas. Some businesses and vehicles were flooded.

[7] Most of the flooding occurred in northern portions of the county. Several homes were flooded. Vehicles and campers were trapped by high water. Some mudslides also developed in mountainous areas.

Hazard Analysis – Floods

Likelihood of Occurrence of Floods
Localized flooding can occur several times a year in McDowell County. In recent years there have also been a number of more widespread flooding events caused by hurricanes and tropical storms. The likelihood of localized flooding as well as area wide flooding can be categorized as "likely".

Likely Range of Impact for Floods
Flooding is normally confined to specific, known flood hazard areas where development can be controlled or limited. The likely range of flood impact can be classified as "small".

Probable Level of Impact for Floods
As damages have been incurred due to floods within McDowell County, localized flooding typically has a "limited" level of impact, whereas area wide flooding, due to instances of damage sustained during flooding in the past, can also have a "limited" level of impact in McDowell County.

McDowell County Hazard Index for Floods (see table A-33)
The hazard index for floods in McDowell County is categorized as "moderate" based on a "likely" level of occurrence, "small" range of impact, and "limited" level of impact. This hazard index indicates that floods should be part of the focus of local hazard mitigation efforts.

The City of Marion
The City of Marion participates in the National Flood Insurance Program. Flooding occurs within the city limits of Marion, especially at the river bridges and low areas along Highway 221 within and just outside the City's limits. The City is looking forward to using new flood maps currently under development by the North Carolina Floodplain Mapping Program to enhance the City's ability to identify flood prone areas and regulate development in the floodplain. The best currently available digital data is based on flood prone soils. *These maps indicate that some of the areas of the City are likely to be subject to flooding during excessive events.*

The Town of Old Fort
The Town of Old Fort participates in the National Flood Insurance Program. Flooding occurs within the town limits of Old Fort, especially at the river bridges and low areas within and just outside the Town's limits. The Town is looking forward to using new flood maps currently under development by the North Carolina Floodplain Mapping Program to enhance the Town's ability to identify flood prone areas and regulate development in the floodplain. The best currently available digital data is based on flood prone soils. These maps indicate that significant areas of the town are likely to be subject to flooding during excessive rainfall events.

Hurricanes and Coastal Storms
Hurricanes are cyclonic low-pressure system storms originating in tropical ocean waters and fueled by latent heat from the condensation of warm water. Hurricanes and tropical storms that affect North Carolina normally form in the Atlantic Ocean off the coast of western Africa between the months of June and November with the peak season occurring in early September.

Hurricanes are born over tropical oceans when the water is warmer than about 80 degrees. These storms start as areas of disturbed weather where a combination of clouds and falling pressure combined with the rotation of the earth result in increasing winds. Once these winds mature into hurricanes, they can remain constant for days or they may peak and quickly die. Hurricanes lose power when taken away from a warm water source - which is what happens when a storm moves over land.

Hurricanes and other cyclones that form in the tropics during summer months are different from the extratropical storms (nor'easters) that form during winter months. Both types of storms produce strong winds and may cause flooding. The main differences between hurricanes and nor'easters are:

- Hurricanes and tropical systems have no fronts.
- Hurricane winds weaken with height.
- The centers of hurricanes are warmer than the surroundings.
- Hurricanes and tropical systems form under weak high-altitude winds.
- Air sinks at the center of a hurricane.
- Latent heat of condensation is the major energy source for hurricanes.
- Hurricanes weaken rapidly when over land.

Tropical Storm Categories

Tropical systems/hurricanes are classified into four categories according to degree of organization and maximum sustained wind speed:

1. Tropical Disturbance/Tropical Wave - unorganized mass of thunderstorms, very little, if any, organized wind circulation.
2. Tropical Depression - evidence of closed wind circulation around a center with sustained winds from 20-34 knots (23-39 mph).
3. Tropical Storm - maximum sustained winds are from 35-64 knots (40-74 mph). A storm is named once it reaches tropical storm strength.
4. Hurricane - maximum sustained winds exceed 64 knots (74 mph).

With favorable atmospheric and oceanic conditions, a storm will intensify from a tropical depression to a tropical storm and then to a hurricane. Heavy precipitation, high winds and tornadoes are all typically associated with hurricanes. Hurricanes have long threatened the North Carolina coast and, as evidenced in recent years, can strongly affect inland areas as well.

The Saffir-Simpson Scale measures hurricane intensity ranging from one (minimal) to five (catastrophic). The scale ratings are based on wind speeds, surface pressure and height of storm surge (Table A-15). To improve storm-rating accuracy, scientists are currently considering revising the Saffir-Simpson Scale to include rainfall potential as a fourth rating variable.

Hurricane Categories

Major hurricanes are categorized as 3, 4 or 5 on the Saffir-Simpson Scale. While hurricanes within this range comprise only 20% of total tropical cyclone landfalls, they account for over 70% of the damage in the United States. Maximum sustained winds of category 3, 4 and 5 hurricanes range from 112 mph to over 156 mph. The higher wind intensities topple trees and cause severe damage to structures.

Table A-15: Saffir-Simpson Hurricane Scale

Category	Barometric Pressure (mb)	Wind Speed (mph)	Height of Storm Surge (ft)	Damage Potential
1 Weak	>980.2	75 – 95	4 – 5	Minimal damage to vegetation
2 Moderate	979.68 – 965.12	96 – 110	6 – 8	Moderate damage to houses
3 Strong	945.14 – 964.78	111 – 130	8 – 12	Extensive damage to small buildings
4 Very Strong	920.08 – 944.80	131 – 155	13 – 18	Extreme structural damage
5 Devastating	<920.08	> 155	> 18	Catastrophic building failures possible

Source: State Climate Office of North Carolina, NC State University.

The National Hurricane Center, describes damages associated with hurricanes categories as:

Category 1
Damage primarily to unanchored mobile homes, shrubbery and trees. Some damage to poorly constructed signs. Also, some coastal road flooding and minor pier damage.

Category 2
Some building roofing material, door and window damage. Considerable damage to shrubbery and trees with some trees blown down. Considerable damage to mobile homes, poorly constructed signs and piers. Coastal and low-lying escape routes flood 2-4 hours before arrival of the hurricane center. Small craft in unprotected anchorages break moorings.

Category 3
Some structural damage to small residences and utility buildings with a minor amount of curtain wall failures. (Curtain walls are typically associated with non-residential buildings where non-structural window and/or wall panels are attached to the structural framework to form the exterior skin of the building.) Damage to shrubbery and trees with foliage blown off trees and large trees blown down. Mobile homes and poorly constructed signs are destroyed. Low-lying escape routes are cut by rising water 3-5 hours before arrival of the hurricane center. Flooding near the coast destroys smaller structures with larger structures damaged by battering of floating debris. Terrain continuously lower than 5 feet above mean

sea level may be flooded inland 8 miles or more. Evacuation of low-lying residences within several blocks of the shoreline may be required.

Category 4

More extensive curtain wall failures with some complete roof structure failures on small residences. Shrubs, trees, and all signs are blown down. Complete destruction of mobile homes. Extensive damage to doors and windows. Low-lying escape routes may be cut by rising water 3-5 hours before arrival of the hurricane center. Major damage to lower floors of structures near the shore. Terrain lower than 10 feet above sea level may be flooded requiring massive evacuation of residential areas as far inland as 6 miles.

Category 5

Complete roof failure on many residences and industrial buildings. Some complete building failures with small utility buildings blown over or away. All shrubs, trees, and signs blown down. Complete destruction of mobile homes. Severe and extensive window and door damage. Low-lying escape routes are cut by rising water 3-5 hours before arrival of the hurricane center. Major damage to lower floors of all structures located less than 15 feet above sea level and within 500 yards of the shoreline. Massive evacuation of residential areas on low ground within 5-10 miles of the shoreline may be required.

History of Hurricanes in North Carolina

"North Carolina has a long and notorious history of destruction by hurricanes. Ever since the first expeditions to Roanoke Island in 1586, hurricanes are recorded to have caused tremendous damage to the state. Reliable classification of the intensity of tropical cyclones began in 1886. Since that time, there have been 951 tropical cyclones recorded in the Atlantic Ocean and the Gulf of Mexico. Approximately 166 or 17.5% of those tropical cyclones passed within 300 miles of North Carolina. The coast of North Carolina can expect to receive a tropical storm or a hurricane once every four years, while a tropical cyclone affects the state every 1.3 years."[1-1] Since 1886, eighty-two hurricanes have passed through North Carolina.

North Carolina ranks third, after Florida and Texas in the number of hurricane strikes since 1899 (Louisiana is tied with North Carolina). The most active hurricane period in the state's history was from 1953 to 1956. Over that three-year period, six hurricanes made direct landfall in North Carolina. The most powerful hurricane ever to hit the State, Hurricane Hazel, a Category 4 hurricane, made landfall in Brunswick County in October 1954. Hurricane Hazel, traveling a path through North Carolina similar to that of Hurricane Fran in 1996, also caused considerable property damage in McDowell County.

The 1995-1999 hurricane seasons are recorded as the most active five years of hurricane damage in North Carolina since reliable records began in 1886. From 1995-1999, forty-one hurricanes of which twenty were classified as major (winds exceeding 110 mph) occurred. During this five-year period, there was an average of 13 named storms per year with 8 hurricanes occurring in the Atlantic basin, which includes the Atlantic Ocean, Caribbean Sea and Gulf of Mexico. All five major hurricanes in 1999 reached Category 4 status - the most in a single season since records began in 1886.

One of the most unusual years in North Carolina hurricane history was 1996. Tropical Storm Arthur and Hurricanes Bertha and Fran all made direct landfall on the North Carolina coastline that year. Hurricane Fran, the most costly hurricane to hit North Carolina to that date, occurred in the fall of 1996. The landfall of Fran near the City of Wilmington and its progression northwest into the Raleigh-Durham area caused an estimated $1.275 billion in damages across North Carolina alone. (State Climate Office of North Carolina)

The total financial impact of Hurricane Floyd, which made landfall on Topsail Island in Pender and Onslow Counties in September 1999, is estimated at $4.6 billion. Even more telling is that the human impact of Hurricane Floyd far exceeded that of Hurricane Fran. Where Hurricane Fran had a greater impact on public infrastructure (roads, water and sewer services), Hurricane Floyd, with more extensive flooding, had a greater impact on residential homes. Hurricane Floyd caused the total loss of an estimated 4,000 residential homes compared to an estimated 2,400 residential homes destroyed by Hurricane Fran. (NC Division of Emergency Management)

Since 1800 a number of storms have either made direct landfall in North Carolina or affected the State after coming ashore in another state. Tables A-18 and A-19 chronicle the history of these storms. (Note: For more detail on hurricane damages, also see section on Floods.)

Table A-18: Hurricanes and Tropical Storms Making Direct Landfall in North Carolina Since 1800

Approximate Date of Landfall	**Storm Name**	**Saffir-Simpson Intensity at Landfall**	**Approximate Location of Landfall**	**Speed (kt)**	**Surge (ft)**
9/28/1806	N/A	N/A	Ocracoke Inlet	N/A	N/A
9/3/1815	N/A	N/A	Wilmington/New Bern	N/A	10

Approximate Date of Landfall	Storm Name	Saffir-Simpson Intensity at Landfall	Approximate Location of Landfall	Speed (kt)	Surge (ft)
9/2/1821	N/A	N/A	Cape Lookout	N/A	N/A
6/3/1825	N/A	N/A	Morehead/New Bern	N/A	6-8
8/24/1827	N/A	N/A	Hatteras	N/A	N/A
9/4/1834	N/A	N/A	NC/SC Border	N/A	N/A
8/18/1837	N/A	N/A	Cape Fear	N/A	N/A
7/12/1842	N/A	N/A	Portsmouth	N/A	N/A
8/24/1842	N/A	N/A	Ocracoke	N/A	N/A
9/7/1846	N/A	N/A	Hatteras	N/A	N/A
9/4/1856	N/A	N/A	Wrightsville Beach	N/A	N/A
9/9/1857	N/A	N/A	Hatteras	N/A	N/A
8/19/1871	N/A	N/A	Southport	N/A	N/A
9/28/1874	N/A	N/A	Southport	60	N/A
11/10/1875	N/A	N/A	Long Beach	N/A	N/A
9/17/1876	N/A	Tropical Storm	NC/SC Border	60	N/A
10/23/1878	N/A	2	Morehead	90	N/A
8/18/1879	N/A	4	Wilmington/Cape Lookout	120	N/A
9/9/1881	N/A	N/A	Wilmington/Wrightsville	N/A	N/A
9/21/1882	N/A	Tropical Storm	Cape Lookout	50	N/A
9/11/1883	N/A	1	Southport	85	N/A
10/22/1893	N/A	Tropical Storm	West of Hatteras	50	N/A
10/26/1897	N/A	Tropical Storm	North of Hatteras	55	N/A
8/16/1899	N/A	4	Hatteras	115	4-10
10/31/1899	N/A	1	Wrightsville Beach	80	8
10/13/1900	N/A	Tropical Storm	Hatteras	N/A	N/A
7/11/1901	N/A	1	Hatteras	65	N/A
11/13/1904	N/A	3	Hatteras	100	N/A
7/31/1908	N/A	2	Morehead	85	N/A
9/3/1913	N/A	1	Hatteras	70	10
9/6/1916	N/A	Tropical Storm	Southport	35	N/A
8/25/1918	N/A	Tropical Storm	Morehead	50	N/A
9/22/1920	N/A	1	Topsail Beach	65	N/A
12/2/1925	N/A	1	Wilmington/Hatteras	65	N/A
8/23/1933	N/A	2	Hatteras	85	N/A
9/16/1933	N/A	3	Ocracoke	100	N/A
9/18/1936	N/A	2	Hatteras	85	N/A
8/1/1944	N/A	1	Southport	80	N/A
6/25/1945	N/A	Tropical Storm	Hatteras	55	N/A
7/6/1946	N/A	Tropical Storm	Wilmington	60	N/A
8/13/1953	Barbara	2	Cape Lookout	90	N/A
8/30/1954	Carol	2	Hatteras	85	N/A
10/15/1954	Hazel	4	NC/SC Border	125	10-20
8/12/1955	Connie	1	Cape Lookout	70	7
8/17/1955	Diane	1	Carolina Beach	75	5-9
9/19/1955	Ione	2	Salter Path	90	3-10
9/11/1960	Donna	2	Wilmington	95	6-8
10/16/1964	Isabell	1	Morehead	65	N/A
8/27/1971	Doria	Tropical Storm	Atlantic Beach	55	N/A
9/30/1971	Ginger	1	Atlantic Beach	65	4
9/9/1984	Diana	1	Long Beach	80	5-6
8/26/1985	Gloria	2	Hatteras	90	6-8
8/18/1986	Charley	1	Morehead	70	N/A
6/20/1996	Arthur	Tropical Storm	Morehead	35	N/A
7/13/1996	Bertha	2	Topsail Beach	90	5

Approximate Date of Landfall	Storm Name	Saffir-Simpson Intensity at Landfall	Approximate Location of Landfall	Speed (kt)	Surge (ft)
9/6/1996	Fran	3	Cape Fear	100	8-12
8/26/1998	Bonnie	3	Cape Fear	100	6-8
9/4/1999	Dennis	Tropical Storm	Core Banks	60	N/A
9/16/1999	Floyd	2	Topsail Island	95	N/A

Source: State Climate Office of North Carolina

Table A-19: Hurricanes and Tropical Storms Affecting North Carolina Since 1877

Date Storm Affected NC	Storm Name	Saffir-Simpson Maximum Intensity in North Carolina	Estimated Wind Speed (kt)
9/29/1877	N/A	Tropical Storm	40
10/3/1877	N/A	Tropical Storm	40
9/12/1878	N/A	1	70
8/27/1881	N/A	Tropical Storm	50
9/10/1882	N/A	Tropical Storm	N/A
10/11/1882	N/A	Tropical Storm	35
8/25/1885	N/A	3	105
10/12/1885	N/A	Tropical Storm	50
6/20/1886	N/A	Tropical Storm	30
6/30/1886	N/A	Tropical Storm	40
8/20/1887	N/A	1	85
10/20/1887	N/A	Extratropical	30
10/31/1887	N/A	Tropical Storm	60
10/11/1888	N/A	Tropical Storm	55
11/25/1888	N/A	Tropical Storm	60
9/11/1889	N/A	Tropical Storm	60
9/24/1889	N/A	Tropical Storm	60
6/16/1893	N/A	Tropical Storm	50
8/23/1893	N/A	Tropical Storm	60
8/28/1893	N/A	1	70
9/28/1894	N/A	Tropical Storm	55
10/10/1894	N/A	Tropical Storm	50
9/29/1896	N/A	Tropical Depression	30
9/22/1897	N/A	Tropical Storm	45
10/20/1897	N/A	Tropical Storm	40
10/2/1898	N/A	Tropical Storm	40
9/15/1903	N/A	1	65
9/14/1904	N/A	Tropical Storm	60
9/17/1906	N/A	3	100
7/30/1908	N/A	Tropical Storm	55
8/31/1908	N/A	Tropical Storm	45
10/19/1910	N/A	Tropical Storm	35
7/14/1916	N/A	Tropical Storm	55
7/19/1916	N/A	Tropical Storm	45
8/25/1924	N/A	1	65
9/18/1928	N/A	Tropical Storm	40
10/1/1929	N/A	Tropical Storm	40
9/12/1930	N/A	1	65
9/8/1934	N/A	Tropical Storm	60
9/5/1935	N/A	Tropical Storm	40
9/21/1938	N/A	Tropical Storm	60
8/11/1940	N/A	Tropical Storm	40
9/14/1944	N/A	3	110
10/20/1944	N/A	Tropical Storm	40
9/17/1945	N/A	Tropical Storm	40

Date Storm Affected NC	Storm Name	Saffir-Simpson Maximum Intensity in North Carolina	Estimated Wind Speed (kt)
10/9/1946	N/A	Extratropical	25
10/12/1947	N/A	Tropical Storm	40
8/24/1949	N/A	1	65
8/28/1949	N/A	Tropical Storm	40
8/20/1950	Able	4	115
8/31/1952	Able	Tropical Storm	45
9/11/1954	Edna	Tropical Storm	60
9/27/1958	Helene	3	110
8/29/1962	Alma	1	65
9/16/1967	Doria	Tropical Storm	45
10/20/1968	Gladys	1	70
9/10/1969	Gerda	Tropical Storm	35
6/21/1972	Agnes	Tropical Storm	40
8/9/1976	Belle	Tropical Storm	50
9/5/1979	David	Tropical Storm	40
8/20/1981	Dennis	Tropical Storm	55
7/25/1985	Bob	Tropical Storm	45
11/22/1985	Kate	Tropical Storm	45
8/29/1988	Chris	Tropical Depression	20
9/22/1989	Hugo	3	100
8/19/1991	Bob	3	100
9/25/1992	Danielle	Tropical Storm	45
8/31/1993	Emily	3	100
6/6/1995	Allison	Extratropical	40
6/20/1996	Arthur	Tropical Storm	35
7/13/1996	Bertha	2	100
9/6/1996	Fran	3	100
10/8/1996	Josephine	Extratropical	45
8/26/1998	Bonnie	3	100
9/4/1999	Dennis	Tropical Storm	60
9/16/1999	Floyd	2	95

Source: State Climate Office of North Carolina.

Implications of Hurricanes and Tropical Storms

While many communities are designed and developed to withstand severe weather, often times a large weather system will ravage both the built and natural landscape. Buildings, trees, and other plant life often take the bulk of the damage that is incurred from hurricanes and tropical storms in coastal areas. However, excessive rainfall has proven to be the greatest threat of hurricanes and their remnants to McDowell County. The mountainous topography combined with intense rainfall leads to flash flooding in streambeds and slope failure in steep sloped areas and around normally shallow creeks.

Impact of Hurricanes in McDowell County

No hurricane has managed to sustain itself as far inland as McDowell County. All hurricanes have been downgraded to tropical depressions or less once they moved as far west as the mountains of North Carolina. However, a rare event took place in 2004: Two named storms passed near McDowell County and drenched the mountain area with more rain than has been seen in over 30 years. The remnants of Hurricanes Ivan and Frances caused landslides, flooding, and washouts of roads and bridges, especially in the northern part of the county.

Table A-20: Named Storms Affecting McDowell County 1980-2004

Location	Hurricane	Date	Time	Property Damages	Crop Damages
Multi-County	**Frances**	9/7/2004	5:30 PM	25.0M	5.5M
Multi-County	**Ivan**	9/17/2004	1:00 AM	8.2M	4.0M

Source: National Climatic Data Center, http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms

Hazard Analysis – Hurricanes and Coastal Storms

Likelihood of Occurrence of Hurricanes

According to the Local Hazard Mitigation Planning Manual, "(by virtue of its position along the Atlantic Ocean adjacent to and protruding to the edge of the Gulf Stream, North Carolina is frequently impacted by hurricanes (and tropical storms). In fact, North Carolina has experienced the fourth greatest number of hurricane landfalls of any state in the twentieth century (after Florida, Texas and Louisiana)." Some of these storms track inland and pass over McDowell County, although they almost always have weakened below hurricane force by the time they reach the area.

Hurricanes that have struck North Carolina in the last 50 years include Hazel in 1954, Connie, Diane and Ione all in 1955, Donna in 1960, Hugo in 1989, Emily in 1993, Opal in 1995, Bertha and Fran in 1996, Bonnie in 1998, Dennis and Floyd in 1999, and Frances and Ivan in 2004. Due to the size of these storms (up to 400 miles wide), the McDowell County area felt some impact from several of these storms, although all of them were downgraded to less than hurricane status once they came this far inland. Therefore, the probability of the McDowell County area experiencing the impact of a tropical storm can be classified as "likely".

Likely Range of Impact of Hurricanes

Hurricanes and tropical storms are not localized events. The diminishment of the force of a hurricane or tropical storm from one side of McDowell County to the other would probably be negligible. The impact of the wind element of a hurricane or a tropical storm within the County would be fairly uniform among structures which were built using comparable construction methods and materials. The impact of the associated rainfall from a hurricane or tropical storm would primarily affect structures and infrastructure in proximity to regulatory floodplains and secondary tributaries and creeks. The accumulation of wind blown debris in public or private storm drainage inlets and drainage swales has the potential to cause minor flooding problems throughout the area. If a hurricane or tropical storm were to occur, the entire McDowell County area would be subject to the effects of the storm, therefore the range of impact can be classified as "large".

Probable Level of Impact of Hurricanes and Coastal Storms

Property damage can result when the high winds of a hurricane or a tropical storm combine with saturated soils from extended heavy rains which may cause trees to be uprooted and fall onto nearby structures, or when wind blown debris damages structures. Additionally, hurricanes and tropical storms generally include bands of severe thunderstorms, which may produce hail and spawn tornadoes. The probable level of impact of a hurricane or tropical storm in McDowell County can be classified as "limited". Although most hurricanes cause only limited damage within the area, Hurricanes Frances and Ivan caused critical damages throughout the County and region.

McDowell County Hazard Index for Hurricanes

The hazard index for hurricane impacts in McDowell County is "moderate" based on the probability of occurrence being "likely", the "large" area that would be impacted, and the probable "limited" damage impact. This hazard index of "moderate" for hurricanes indicates that this particular hazard poses a relatively large, but infrequent threat. Since hurricanes and coastal storms are also significant contributors to flooding, there are opportunities for local hazard mitigation efforts to have a significant impact on exposure to future events.

Landslides and Sinkholes

Landslides

According to the United States Geological Survey (USGS), landslides are a major geologic hazard that occur in all 50 states and cause on average $1-2 billion in damages and more than 25 fatalities each year. (USGS, 1997) Landslides often occur in conjunction with other natural hazards such as earthquakes and floods.[1-6]
Clay-rich soil landslides are common throughout the mountainous Appalachian region of the United States. The USGS classifies landslide incidence/susceptibility for the eastern United States as low, medium, or high based on geographic features and geologic formations.

USGS further defines susceptibility to landslides as the probable degree of response of geologic formations to natural or artificial cutting, loading of slopes, or unusually high precipitation. Generally, unusually high precipitation or changes in existing conditions can initiate landslide movement in areas where rocks and soils have experienced landslides in the past.

Table A-21: USGS Landslide Susceptibility/Incidence

Category	Incidence	Susceptibility
1	Low	Low
2	Low	Moderate
3	Low	High
4	Moderate	Moderate
5	Moderate	High
6	High	High

Source: Local Hazard Mitigation Planning Manual, North Carolina Division of Emergency Management, 1998.

An area with a "low" incidence ranking means that less than 1.5% of the area has experienced a landslide in the past. An area with a "medium" incidence ranking means that between 1.5% and 15% of the area has experienced a landslide in the past. An area with a "high" incidence ranking means that greater than 15% of the area has experienced a landslide in the past. The susceptibility rankings of "low", "medium" and "high" follow the same percentage classifications for landslide susceptibility for a specific area. McDowell County is considered to be a category 5.

Landslide History

Historic records suggest that destructive landslides and debris flows in the Appalachian Mountains occur when unusually heavy rain from hurricanes and intense rain storms soaks the ground, reducing the ability of steep slopes to resist the downward pull of gravity. Scientists have documented fifty-one debris-flow events in North Carolina between 1844 and 1985. All of these occurred in the Appalachian Mountains and most were in the Blue Ridge area. (Gori and Burton, 1996)

Location	Date	Time	Type	Description
41 Marion	9/28/96	3:00 PM	Mudslides	A prolonged period of heavy rain caused gradual rises on small streams in part of the mountains resulting in flooding. In McDowell county, no flooding was reported but mudslides and heavy rain downed numerous trees onto roadways.
66 Old Ft	2/16/98	10:15 AM	Rock Slide	A sudden rock slide induced by heavy rain closed 2 lanes of Interstate 40 for some time.

Source: National Climatic Data Center, http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms

County	Date landslide reported	Location information
McDowell	July 8, 2005	NC DOT reported that a small 8-foot high cut slope failed and partially blocked NC 226 about 3/4 mile north of the intersection with Pinnacle Church Road.

Source: NCDENR

Sinkholes

Sinkholes are basin-like, funnel-shaped, or vertical sided depressions in the land surface. In general, sinkholes form by the subsidence of unconsolidated materials or soils into voids created by the dissolution of the underlying soluble bedrock.

There are three general types of sinkholes – collapse, subsidence, and solution. These different types of sinkholes generally correspond to the thickness of the sediments overlying limestone. The sediments and water contained in the unsaturated zone, surficial aquifer system, and the confining layer are collectively referred to as overburden. Collapse sinkholes are most common in areas where the overburden is thick, but the confining layer is breached or absent. Subsidence sinkholes form where the overburden is thin and only a

veneer of sediments is present overlying the limestone. Solution sinkholes form where the overburden is absent and the limestone is exposed at land surface.

The rock exposed in a collapsed sinkhole is usually weathered and rounded, but some sinkholes contain freshly broken rock along steep sides of the hole. Freshly broken rock may indicate that the sinkhole has formed by the collapse of a cave (naturally occurring) or a mine (manmade). Where sinkholes and caves have formed by the dissolution of soluble rock, such as limestone, dolomite, and gypsum, surface water is uncommon and streams may sink into the ground. This type of topography formed by dissolution is referred to as karst terrain. In karst terrain, sinkholes are input points where surface water enters the groundwater system. The most important current and ongoing environmental issue with respect to karst is the sensitivity of these aquifers to groundwater contamination.

Karstic groundwater problems are accelerated with the advent of (1) expanding urbanization, (2) misuse and improper disposal of environmentally hazardous chemicals, (3) shortage of suitable repositories for toxic waste (both household and industrial), and (4) ineffective public education on waste disposal and the sensitivity of the karstic groundwater system.

Because sinkholes are natural holes in the ground surface, they have been inviting sites for dumping of trash. The number of active and inactive sinkhole dumps in karst regions is staggering. It is conceivable that each county with karst has hundreds of sinkhole dumps. The profusion of these dumps is the result of (1) the absence of a refuse-removal service in rural areas and the expense and inconvenience of trash haulage, (2) the convenient proximity of sinkholes, and (3) a lack of appreciation of the role of sinkholes in the karstic groundwater system.

Sinkholes are natural funnels that conveyed toxic substances directly into the karstic plumbing system. In many cases, chemicals may be transmitted directly to domestic wells in a matter of the few hours. Thoughtless disposal of game or farm animal carcasses into sinkholes (a common practice) can contaminate the well water of the landowner and even his neighbors.

Sinkhole dumping is only one way of contaminating a karstic groundwater supply. Fertilizers, herbicides, and pesticides applied to fields overlying carbonate rock can enter the aquifer through diffuse infiltration and contaminate springs and wells. Improper siding of municipal landfills on or near karst allows leakage or runoff from these landfills to easily contaminate karst waters. Chemicals introduced in this fashion may include many of the most hazardous, including hydrocarbons, heavy metals, PCBs, and others. Additionally, leaky septic systems or sewage lines and effluent from feed lots or faulty sewage treatment facilities introduced coliform bacteria and other disease causing organisms into the karst system.

A good conservation practice would be to establish natural buffer zones around sinkholes in order to maintain the quantity and quality of recharge entering the aquifer. Conditions, such as fractures in the bedrock, size of drainage area, and proximity to sources of contamination, should be considered when establishing the level protection that is needed.

Hazard Analysis – Landslides and Sinkholes

Likelihood of Occurrence of Landslides and Sinkholes

The Local Hazard Mitigation Planning Manual indicates that landslides are common throughout the mountainous Appalachian region of the eastern United States and New England and that these events primarily involve the sliding of clay-rich soils. This source also states that "the USGS identifies landslide incidence/susceptibility for the eastern United States by (1) classifying geographic areas by high, medium, or low landslide incidence and (2) evaluating geologic formations in these areas by high, medium, or low susceptibility to sliding. Susceptibility to landslides is defined by the USGS as the probable degree of response of geologic formations to natural or artificial cutting, loading of slopes, or to unusually high precipitation."

McDowell County is categorized as having a landslide vulnerability of "5" on a scale of "1" to "6" where "1" is the lowest level of risk. This categorization generally corresponds to the likelihood of earthquake activity and is based upon a combination of landslide susceptibility and incidence. This information is derived from the USGS National Landslide Overview Map. The potential of sinkholes in McDowell County has not been analyzed by the State. The likelihood of occurrence for landslides can be categorized as "highly likely". Sinkholes are "unlikely" in McDowell County.

Likely Range of Impact of Landslides and Sinkholes

Any landslide or sinkhole events that may occur within McDowell County will probably be in the form of very isolated and small-scale slumps of steep slope areas that are heavily saturated and/or under a load condition

from a nearby structure such as a house or road. The range of impact from landslide and sinkhole events in McDowell County can be classified as "small".

Probable Level of Impact of Landslides and Sinkholes

Landslides in other portions of the country, even in other portions of North Carolina (i.e.—the Blue Ridge Mountains) have the potential of being large-scale, fast moving events that may pose a serious risk to life and property that may be in their path. However, the mostly gently sloping terrain in McDowell County can be coupled with no record of notable landslide events and a low risk of earthquake activity to yield an impact classification of "negligible" for a landslide event. Likewise, the sinkholes, if they were to occur, could be expected to have only "negligible" impact in McDowell County.

McDowell County Hazard Index for Landslides and Sinkholes (see table A-33)

The Hazard Index for landslides and sinkholes in McDowell County can be categorized as "low" based on the "unlikely" probability of occurrence, the "small" area that would be impacted by a landslide event, and the probable "negligible" damages that could be expected from such events. The hazard index of "low" for landslides and sinkholes in McDowell County indicates that these natural hazards pose a very low threat, and that hazard mitigation efforts would be more wisely directed to other hazards to which McDowell County is vulnerable.

Severe Storms and Tornadoes

Thunderstorms (Hail and Lightning)

Severe thunderstorms can occur alone or in clusters, but affect relatively small areas compared to those affected by hurricanes or nor'easters. In eastern North Carolina, thunderstorms most frequently occur in the late afternoon or during the evening or night hours during the summer months. Summer thunderstorms involve lightning, strong winds, heavy rains and hail that can result in wildfires, localized wind damage and flash flooding. *(Source: NCDOT)*

According to the North Carolina State Climate Office, thunderstorms typically are 15 miles or less in diameter and last an average of 20 to 30 minutes. Downbursts and straight-line winds associated with thunderstorms can produce winds of 100-150 miles per hour - enough to flip large trucks and endanger airplane landings and takeoffs. The potential impact of thunderstorms, however, can be rated low due to the localized nature of the storms.

The National Weather Service considers a thunderstorm severe if it produces hail at least three-quarters of an inch in diameter, has winds of 58 miles per hour or greater or produces a tornado. Of the estimated 100,000 thunderstorms in the United States each year, only about 10% are classified as severe.

Lightning, a major threat during a thunderstorm, is responsible for more deaths each year in the United States than are tornadoes. Since lightning strikes are very unpredictable, the risk to individuals and property can be significant.

Historic Impact of Thunderstorms in McDowell County

A number of thunderstorm/high wind storm events and thunderstorm related events (hail and lightning) have been reported in McDowell County (Tables A-22 – A-27).

Table A-22: Thunderstorm/High Wind Data for McDowell County 1970 – 2004

Location	Date	Time	Magnitude	Property Damages	Crop Damages
2 MCDOWELL	6/6/77	1445	0 kts.	0	0
3 MCDOWELL	2/1/79	900	0 kts.	0	0
6 MCDOWELL	6/7/85	1325	87 kts.	0	0
9 MCDOWELL	6/12/89	1520	0 kts.	0	0
11 MCDOWELL	4/9/91	1600	0 kts.	0	0
12 MCDOWELL	4/9/91	1710	0 kts.	0	0
13 MCDOWELL	6/4/92	1500	0 kts.	0	0
14 MCDOWELL	7/5/92	2030	0 kts.	0	0
21 Pleasant Garden	7/25/95	2030	N/A	0	0
22 Marion	8/11/95	1525	N/A	5K	0
38 Marion	7/14/96	1:40 PM	50 kts.	0	0
40 Marion	8/16/96	3:00 PM	50 kts.	0	0

53 Old Ft	7/4/97	6:52 PM	50 kts.	0	0
55 Marion	7/4/97	7:15 PM	50 kts.	0	0
56 Sugar Hill	7/28/97	1:30 PM	50 kts.	0	0
57 Marion	8/4/97	5:00 PM	50 kts.	10K	0
70 Marion	5/26/98	4:43 PM	50 kts.	20K	0
72 Marion	6/16/98	1:15 PM	50 kts.	0	0
73 Marion	6/16/98	12:50 PM	50 kts.	0	0
74 Pleasant Gardens	6/22/98	9:05 PM	50 kts.	0	0
75 East Marion	6/22/98	9:20 PM	50 kts.	0	0
77 Old Ft	7/19/98	6:10 PM	52 kts.	0	0
78 Ashford	7/21/98	3:35 PM	50 kts.	0	0
79 Sugar Hill	7/22/98	4:20 PM	50 kts.	0	0
81 Old Ft	9/28/98	2:15 PM	50 kts.	0	0
120 Glenwood	5/20/00	3:45 PM	52 kts.	0	0
126 Pleasant Gardens	6/25/00	1:30 PM	50 kts.	0	0
128 Old Ft	8/10/00	1:19 AM	50 kts.	0	0
134 Glenwood	11/9/00	8:10 PM	50 kts.	0	0
152 Marion	7/8/01	5:05 PM	55 kts.	0	0
153 Old Ft	7/8/01	5:14 PM	50 kts.	0	0
154 Nebo	7/8/01	5:18 PM	50 kts.	0	0
155 Marion	7/8/01	5:20 PM	55 kts.	0	0
162 Marion	5/2/02	8:21 PM	55 kts.	5K	0
163 Pleasant Gardens	5/2/02	8:21 PM	55 kts.	0	0
164 Dysartsville	5/2/02	8:40 PM	55 kts.	0	0
Location	**Date**	**Time**	**Magnitude**	**Property Damages**	**Crop Damages**
167 Old Ft	6/4/02	4:26 PM	50 kts.	3K	0
168 Pleasant Gardens	6/4/02	6:00 PM	50 kts.	1K	0
169 Marion	6/6/02	1:30 PM	50 kts.	0	0
170 Old Ft	6/13/02	6:15 PM	50 kts.	1K	0
185 Old Ft	5/2/03	3:19 PM	50 kts.	0	0
186 Glenwood	5/2/03	3:30 PM	70 kts.	250K	0
189 Old Ft	6/8/03	5:34 PM	50 kts.	0	0
191 Marion	7/5/03	1:30 PM	50 kts.	0	0
192 Marion	7/9/03	4:40 PM	50 kts.	1K	0
193 Marion	7/9/03	5:00 PM	50 kts.	2K	0
194 Marion	7/9/03	5:15 PM	50 kts.	1K	0
204 Marion	11/19/03	6:30 AM	50 kts.	0	0
225 Marion	5/19/04	3:48 PM	50 kts.	0	0
229 Marion	5/23/04	1:35 PM	55 kts.	1K	0
242 Dysartsville	6/29/05	5:30 PM	50 kts.	0	0

Source: National Climatic Data Center, *http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms*

Table A-23: Hail Storm Data for McDowell County 1960 – 2004

Location	Date	Time	Magnitude	Property Damages	Crop Damages
1 MCDOWELL	6/20/74	1300	0.75 in.	0	0
4 MCDOWELL	6/16/80	1500	1.75 in.	0	0
5 MCDOWELL	6/7/85	1325	1.75 in.	0	0
7 MCDOWELL	7/10/85	1715	0.75 in.	0	0
8 MCDOWELL	6/5/89	1200	1.75 in.	0	0
10 MCDOWELL	8/21/90	1300	0.75 in.	0	0
37 Marion	5/25/96	3:44 PM	1.00 in.	0	0
51 Marion	6/2/97	5:02 AM	1.00 in.	0	0
52 Marion	6/2/97	5:23 AM	2.00 in.	2.0M	0
54 Marion	7/4/97	7:15 PM	0.88 in.	0	0

69 Marion	5/26/98	4:43 PM	0.75 in.	0	0
71 Marion	5/27/98	1:52 PM	0.75 in.	0	0
80 Old Ft	9/28/98	2:15 PM	0.75 in.	0	0
97 Pleasant Gardens	4/27/99	3:48 PM	0.75 in.	0	0
98 Marion	4/27/99	4:37 PM	0.75 in.	0	0
102 Ashford	8/20/99	1:50 AM	1.00 in.	0	0
116 Nebo	4/17/00	2:23 PM	0.75 in.	0	0
117 Marion	4/17/00	2:36 PM	0.75 in.	0	0
118 Old Ft	5/13/00	2:52 PM	0.88 in.	0	0
119 Sugar Hill	5/20/00	3:25 PM	0.75 in.	0	0
121 Marion	5/24/00	4:41 PM	1.75 in.	0	0
122 Marion	5/24/00	4:50 PM	1.75 in.	0	0
124 Marion	6/3/00	3:25 PM	0.75 in.	0	0
125 Marion	6/14/00	11:47 AM	0.75 in.	0	0
151 Old Ft	6/4/01	6:30 PM	1.00 in.	0	0
165 Old Ft	6/4/02	3:20 PM	0.88 in.	0	0
166 Old Ft	6/4/02	4:26 PM	0.75 in.	0	0
172 Pleasant Gardens	8/2/02	3:05 PM	0.75 in.	0	0
187 Old Ft	5/15/03	3:25 PM	1.00 in.	0	0
188 Old Ft	6/8/03	5:34 PM	1.00 in.	0	0
196 Sugar Hill	7/12/03	9:05 PM	0.75 in.	0	0
198 Marion	7/18/03	3:10 PM	0.88 in.	0	0
201 Sugar Hill	8/9/03	7:10 PM	0.75 in.	0	0
222 Little Switzerland	5/8/04	11:00 PM	1.75 in.	0	0
223 Marion	5/8/04	11:15 PM	1.75 in.	0	0
224 Marion	5/19/04	3:48 PM	0.75 in.	0	0
226 Ashford	5/19/04	4:55 PM	0.88 in.	0	75K
228 Marion	5/23/04	1:35 PM	0.75 in.	0	0
241 Marion	5/14/05	3:50 PM	0.88 in.	0	0

Source: National Climatic Data Center, http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms.

Table A-24: Lightning Data for McDowell County 1990 - 2004

Location	Date	Time	Injuries	Property Damages
16 Marion	8/3/93	1500	0	50K
20 Marion	7/10/95	1930	0	10K
23 Forest City	9/1/95	1500	0	75K
103 Countywide	8/20/99	2:00 AM	0	0
200 Marion	8/4/03	4:30 PM	2	0

Source: National Climatic Data Center, http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms

Since 1996, McDowell County has had 51 thunderstorms large enough to be reported. Therefore, the likelihood of occurrence has been given a rating of "likely". The damage was apparent, yet marginal; hence the range of impact was apparent, yet mediocre. However, the frequency of impact was extremely low, as only two storms have resulted in costly damage, giving the probability a negligible rating. Hail storms occurred with similar frequency and were given the same rating, but no damage has ever been recorded, resulting in a low impact range and negligible probability. Being highly unlikely, significant lightning has only happened once since 1900. However, significant damage was caused, giving it a medium range. But, due to the low frequency, lightning within McDowell County received a negligible rating of probability.

Hazard Analysis – Thunderstorms

Likelihood of Occurrence of Thunderstorms

Thunderstorms, including both lightning and hail storms, have occurred quite frequently throughout history in and around McDowell County. Therefore, the likelihood of occurrence has been given a rating of "highly likely".

Likely Range of Impact of Thunderstorms

While thunderstorms have occurred quite frequently in the past, the damages have not been widespread, and therefore have resulted in a rating of "small" for the range of impact.

Probable Level of Impact of Thunderstorms
While thunderstorms, lightning, and hail storms have occurred frequently and have caused instances of damage, the frequency of damage was low enough to give its probability the rating "limited".

McDowell County Hazard Index for Thunderstorms (see table A-33)
The Hazard Index for thunderstorms, lightning, and hail storms in McDowell County can be categorized as "moderate-low" based on the "highly likely" probability of occurrence, the "small" area that would be impacted by a thunderstorm, lightning, or hail event, and the probable "limited" damages that could be expected from such events. The hazard index of "moderate-low" for thunderstorms, lightning, and hail storms in McDowell County indicates that these natural hazards pose a threat, but a low threat, and that hazard mitigation efforts would be more wisely directed if addressed in conjunction with flood mitigation, to which McDowell County is more vulnerable.

Tornadoes **(Map A-1 Multi-Hazards)**
Many times severe storms, such as thunderstorms and hurricanes, can produce concentrated windstorms called tornadoes. Tornadoes are violently rotating columns of air created where warm, moist air intersects with cold, dry air. Tornadoes have a much more localized impact than a hurricane or nor'easter and have been known to destroy one building while leaving a nearby building virtually unharmed.

Tornadoes can produce a path of destruction from 0.01 mile wide to greater than 1 mile wide but generally tornadoes are less than 0.6 mile in width. In terms of length, paths of destruction vary from a few hundred feet to several miles in length. The duration of a tornado is typically less than 30 minutes.

The destruction caused by tornadoes may range from light to severe depending on the intensity of the storm and the travel path. Typically, tornadoes cause the greatest damages to structures of light construction, such as residential homes. The Fujita-Pearson Scale for tornado strength is shown in Table A-25.

Table A-25: Fujita-Pearson Tornado Scale

F-Scale	Damage	Winds (mph)	Path Length (miles)	Mean Width (miles)
F0	Light	40-72	<1.0	<0.01
F1	Moderate	73-112	1.0-3.1	0.01-0.03
F2	Considerable	113-157	3.2-9.9	0.04-0.09
F3	Severe	158-206	10-31	0.1-0.3
F4	Devastating	207-260	32-99	0.32-0.99
F5	Incredible	261-318	100+	1.0+

Source: Local Hazard Mitigation Planning Manual, North Carolina Division of Emergency Management, 1998.

Tornadoes are most likely to occur during the spring and early summer months of March through June. Tornadoes during these months tend to be the strongest, resulting in the greatest amount of physical harm and property damage. Tornadoes can occur at any time of day but are mostly likely to form between the hours of 3 p.m. and 9 p.m.

Historic Impact of Tornadoes in McDowell County
North Carolina ranks 22nd out of the 50 states for frequency of tornadoes, 18th for number of tornado related deaths, 17th for injuries and 21st for cost of damages. Although tornadoes in North Carolina are typically less severe than in other parts of the country, the North Carolina Division of Emergency Management has rated McDowell County as a "high" risk for tornadoes (Local Hazard Mitigation Planning Manual, p. 86). Five tornadoes hit McDowell County between 1900 and 2003. (Table A-26)

Table A-26: Tornado Data for McDowell County – 1900 - 2004

Location	Date	Time	Magnitude	Property Damages
36 Marion	4/20/96	12:50 PM	F0	20K
68 Glenwood	5/7/98	4:55 PM	F2	482K
123 Marion	5/24/00	4:50 PM	F0	0

Source: National Climatic Data Center.

Hazard Analysis – Tornadoes

Likelihood of Occurrence of Tornadoes
Tornadoes have occurred occasionally in McDowell County, based on Table A-26. The likelihood of a tornado occurring in McDowell County is therefore "possible".

Likely Range of Impact of Tornadoes
The range of impact for tornadoes is "small", as most tornadoes in this area do not exceed the F2 rating.

Probably Level of Impact of Tornadoes
The probability of impact, due to the number of tornadoes (6) that have hit McDowell County, is "limited".

McDowell County Hazard Index for Tornadoes (see table A-33)
Based on "possible" occurrence, "small" range of impact, and "limited" level of impact, the composite hazard rating for tornados for McDowell County is "low".

Note: The combined hazard index for severe storms and tornadoes is "moderate".

Wildfires

Wildfires occur in North Carolina during the dry spring and summer months. The potential for wildfires depends upon recent climate conditions, surface fuel characteristics, and fire behavior. Wildfires can destroy precious natural resources and forestry essential to the survival of wildlife and their complex ecosystems. While wildfire is a natural phenomenon, increased human activity has increased their occurrence. There are four types of wildfires as described in Table A-27.

Types of Wildfires

Table A-27: Types of Wildfires

Type	Description	Control
Ground	Burns in natural litter, duff (decayed organic matter), roots, or high organic soils.	Once started, difficult to control. Fire may rekindle.
Surface	Burns in grasses, low shrubs, and lower branches of trees.	May move rapidly. Ease of control depends upon fuel involved.
Crown	Burns in tops of trees.	Difficult to control; wind plays important role.
Spotting	Produced by crown fires; wind/topography conditions. Large burning embers thrown ahead of main fire.	Makes fire very difficult to control.

Source: National Weather Service, www.seawfo.noaa.gov/fire/olm/firetype.htm

In recent years, increased residential development has been occurring along the urban/rural interface where homes built in or near forests become susceptible to wildfire damage. These buildings are at great risk since wildfires often begin unnoticed and spread rapidly igniting brush, trees and buildings.

State forestry personnel have estimated that Hurricanes Fran and Floyd together multiplied the amount of forest fire fuel (pine needles, cones, twigs and damaged trees on the ground) by more than three times – increasing potential wildfire fuel from five tons to sixteen tons per acre in central and eastern North Carolina. In areas where damaged trees were not removed, excess wildfire fuel has greatly increased the likelihood of uncontrollable wildfires due to increased fire intensity and blocked fire roads.

Historic Impact of Wildfires in McDowell County
Of the total 279,930 acres in McDowell County, 239,261 acres (85%) were in forest in 1990 (NC Forest Statistics). Of these, 150,707 acres (63%) were in private ownership; 67,611 acres (28%) were owned by the federal government; 430 acres (< 1%) were in state ownership; 390 acres (< 1%) were in county/municipal ownership; and 20,123 acres (8%) were owned by forest industries.

Area of Timberland by Ownership Class * (Acres)					
All Ownership	**Federal Gov.**	**State Gov.**	**County & Municipal**	**Forest Industry**	**Private Ownership**
239,261	67,611	430	390	20,123	150,707
239,261	28%	< 1%	< 1%	8%	63%

* *Forest Statistics for North Carolina, 1990*

In the year 2000, two significant wildfire or forest fire events took place in McDowell County in the Linville Gorge area. More recently McDowell County has been going through an unusually moist period that has kept the number wildfires/forest fires and acres burned fairly low. The number of fires and acres burned per year tend to vary widely. However, the potential for significant property damage is greatest for those structures in close proximity to woodlands as wind direction and velocity changes can quickly imperil properties close to wildfire fuels.

	Lightning	Campfire	Smoking	Debris	Incendiary	Machine Use	Railroad	Children	Misc.	Total # Fires
2000	0	0	0	19	6	0	7	1	3	36
Avg # / 5 Yrs.	1	0.6	1.2	23.6	7.4	1.2	5.4	2	8.6	51

Table A-28: Recent Significant Wildfire Events

Location	Date	Time	Description
131 Ashford	10/28/00	6:00 AM	A wildfire was started in the Linville Gorge area and eventually burned hundreds of acres. Extremely dry conditions had persisted across the area since rain had not been measured for 50 days.
133 Ashford	11/1/00	12:00 AM	Wild fires which started in late October continued to burn out of control into early November. Several thousand acres were burned with the largest burn area in the Linville Gorge

Source: National Climatic Data Center.

Hazard Analysis – Wildfires

Likelihood of Occurrence of Wildfires in McDowell County

Between 2000 and 2004, there was an average of 51 wildfires per year. The likelihood of occurrence of a wildfire can be classified as "likely". (Note: The NC Division of Forest Resources did not provide locational information for past wildfire events thus no locations are shown. Potential wildfire locations could not be mapped because forest cover information was not available.)

Likely Range of Impact for Wildfires in McDowell County

When wildfires do occur they typically impact a relatively small area of land. Since 2000, wildfires have burned on average 200 acres per year. The range of impact can be classified as "small".

Probable Level of Impact for Wildfires in McDowell County

Wildfires have a very limited impact on the community so the level of impact of wildfires can be classified as "negligible" for McDowell County.

McDowell County Hazard Index for Wildfires (see table A-33)

The hazard index for wildfires in McDowell County is categorized as "low" based on a "likely" occurrence, but "small" range of impact, and "negligible" level of impact. This hazard index of "low" indicates that the threat of wildfires does not warrant significant additional hazard mitigation activities at the local level beyond those already in place within the State. There is some risk of wildfire vulnerability increasing due to development on the sides of mountains with poor road access and located too far from a fire department to be adequately protected.

Winter Storms and Freezes

Severe Winter Storms

Severe winter weather is typically associated with much colder climates; however, in some instances winter storms do occur in the warmer climate of North Carolina. On occasion, McDowell County has had moderate winter weather as a result of a nor'easter originating in the Gulf Stream and producing frozen precipitation. Winter storms can paralyze a community by shutting down normal day-to-day operations. Winter storms produce an accumulation of snow and ice on trees and utility lines resulting in loss of electricity and blocked transportation routes. Frequently, especially in rural areas, loss of electric power means loss of heat for residential customers, which poses an immediate threat to human life.

Because of the rare occurrence of these events, central and eastern North Carolina communities are often not prepared because they can not afford to purchase expensive road and debris clearing equipment for these relatively rare events.

Historic Impact of Severe Winter Storms in McDowell County

The North Carolina Division of Emergency Management has rated McDowell County as a "high" risk for severe winter storms (Local Hazard Mitigation Planning Manual, p. 86).

Table A-30: Snow and Ice Storm Data for McDowell County 1993- 2003

Location	Date	Time	Type	Property Damages
17 Northern And Central	1/3/94	1800	Heavy Snow	0
18 Northern Interior And	2/10/94	1000	Ice Storm	0
26 Mountains And Foothil	12/9/95	0	Freezing Rain	20K
Multi-County	1/6/96	8:00 PM	Heavy Snow	0
Multi-County	1/11/96	6:00 PM	Winter Storm	0
Multi-County	1/26/96	11:00 AM	Ice Storm	0
Multi-County	2/2/96	3:00 AM	Ice Storm	50.0M
Multi-County	2/3/96	6:00 PM	Snow	0
Multi-County	2/16/96	2:00 AM	Snow	0
Multi-County	12/5/96	12:00 PM	Snow And Ice	0
Multi-County	12/6/96	5:00 AM	Icy Roads	0
Multi-County	1/8/97	12:00 PM	Snow And Sleet	0
Multi-County	1/9/97	12:00 AM	Ice Storm	2.0M
Multi-County	2/13/97	10:00 AM	Winter Storm	0
Multi-County	12/8/97	11:00 AM	Wintry Mix	0
Multi-County	12/27/97	12:00 AM	Snow	0
Multi-County	12/29/97	5:30 AM	Heavy Snow	0
Multi-County	1/18/98	10:00 PM	Heavy Snow	0
Multi-County	1/18/98	8:00 PM	Snow	0
Multi-County	1/27/98	4:00 AM	Heavy Snow	0
Multi-County	12/23/98	9:00 AM	Freezing Rain/sleet	0
Multi-County	12/24/98	12:00 AM	Ice Storm	0
Multi-County	12/24/98	10:00 PM	Snow	0
Multi-County	1/2/99	3:00 PM	Ice Storm	0
Multi-County	2/1/99	12:00 AM	Freezing Rain	0
Multi-County	2/13/99	8:00 AM	Snow	0
Multi-County	2/19/99	12:00 PM	Snow	0
Multi-County	2/23/99	6:00 AM	Snow	0
Multi-County	3/3/99	12:00 PM	Snow	0
Multi-County	3/9/99	3:00 AM	Heavy Snow	0
Multi-County	3/26/99	2:00 PM	Snow	0
Multi-County	4/29/99	4:00 PM	Snow	0
Multi-County	12/24/99	8:00 AM	Snow	0
Multi-County	1/18/00	4:00 AM	Snow	0
Multi-County	1/20/00	4:00 AM	Snow	0
Multi-County	1/22/00	3:00 PM	Heavy Snow	0
Multi-County	1/29/00	9:00 PM	Freezing Rain	0

Location	Date	Time	Type	Property Damages
Multi-County	11/19/00	6:00 AM	Snow	0
Multi-County	12/3/00	3:00 AM	Snow	0
Multi-County	12/13/00	5:00 PM	Freezing Rain	0
Multi-County	12/19/00	3:00 AM	Snow	0
Multi-County	2/22/01	3:00 AM	Heavy Snow	0
Multi-County	3/6/01	7:00 AM	Heavy Snow	0
Multi-County	3/20/01	8:00 AM	Heavy Snow	0
Multi-County	4/17/01	7:00 AM	Snow Showers	0
Multi-County	1/6/02	9:00 AM	Ice Storm	0
Multi-County	2/6/02	9:00 AM	Winter Weather	0
Multi-County	12/4/02	2:00 PM	Heavy Snow	0
Multi-County	12/4/02	11:00 AM	Heavy Snow	0
Multi-County	12/4/02	10:00 PM	Ice Storm	100.0M
Multi-County	1/16/03	8:00 PM	Heavy Snow	0
Multi-County	1/23/03	4:00 AM	Heavy Snow	0
Multi-County	2/6/03	11:00 PM	Winter Storm	0
Multi-County	2/16/03	11:00 AM	Sleet Storm	0
Multi-County	4/10/03	9:00 AM	Winter Weather/mix	0
Multi-County	11/28/03	3:00 PM	Winter Weather/mix	0
Multi-County	12/4/03	6:00 AM	Winter Weather/mix	0
Multi-County	12/18/03	8:00 PM	Winter Weather/mix	0
Multi-County	1/9/04	12:00 AM	Winter Weather/mix	0
Multi-County	1/25/04	12:00 PM	Heavy Snow	0
Multi-County	2/2/04	10:00 PM	Ice Storm	0
Multi-County	2/2/04	6:00 PM	Winter Weather/mix	0
Multi-County	2/5/04	6:00 PM	Winter Weather/mix	0
Multi-County	2/6/04	2:00 AM	Ice Storm	12K
Multi-County	2/12/04	4:00 AM	Winter Weather/mix	0
Multi-County	2/15/04	12:00 PM	Winter Weather/mix	0
Multi-County	2/26/04	10:00 AM	Heavy Snow	3.1M
Multi-County	3/27/04	12:00 AM	Frost/freeze	0
Multi-County	3/30/04	12:00 AM	Winter Weather/mix	0
Multi-County	12/19/04	6:00 PM	Winter Weather/mix	0
Multi-County	1/22/05	4:00 AM	Winter Weather/mix	0
Multi-County	1/29/05	11:00 AM	Winter Storm	0
Multi-County	2/27/05	8:00 PM	Winter Weather/mix	0
Multi-County	2/28/05	3:00 AM	Heavy Snow	0
Multi-County	3/17/05	2:00 AM	Winter Weather/mix	0

Source: National Climatic Data Center, *http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms*

Hazard Analysis – Severe Winter Storms

Likelihood of Occurrence of Severe Winter Storms

The numerous occurrences of severe winter storms in the McDowell County area gives the County a likelihood rating of "highly-likely.

Likely Range of Impact of Severe Winter Storms

When severe winter storms do occur, they affect the entire County giving the area a "large" range of impact.

Probable Level of Impact of Severe Winter Storms

Although severe winter storms cause a shutdown on normally daily activities until roads are passable, the probable level of impact remains "limited" since storm effects are normally temporary in nature.

Composite Hazard Index for Severe Winter Storms (see table A-33)

The hazard index for severe winter storms in McDowell County is categorized as "high" based on a "highly-likely" occurrence, "large" range of impact, and "limited" level of impact. This hazard index of "high" indicates that the severe winter storms are a serious threat that should be addressed with local hazard mitigation initiatives

where possible. Because of the regional impact of severe winter storms, however, many initiatives are more appropriately addressed and coordinated at the State level.

NC Emergency Management Hazard Analysis for McDowell County

The North Carolina Local Hazard Mitigation Planning Manual, published by the NC Division of Emergency Management, was used as another reference source for assessing natural hazards. Table A-29 shows the State's summary assessment for McDowell County for the nine natural hazards identified in the Local Hazard Mitigation Planning Manual.

Table A-31: Natural Hazard Summary Assessment for McDowell County

Natural Hazard [a]	Vulnerability of McDowell County [b]
Hurricane	Low
Flood	High
Tornado	Low
Nor'easter	Low
Thunderstorm [c]	Moderate
Severe Winter Storm	Moderate
Wildfire	Moderate
Earthquake	Moderate
Landslide	Low

Source: Local Hazard Mitigation Planning Manual, NCDEM, 1998, p. 84-5.

[a] **The "Local Hazard Mitigation Planning Manual" does not rate the following hazards for McDowell County - coastal erosion, levee failures, coastal storms, tsunamis, and volcanoes.**

[b] **The North Carolina Division of Emergency Management Methodology: Each of the one hundred counties in North Carolina was categorized into one of three levels of natural hazard likelihood – "Low", "Moderate", or "High" for eight natural hazards. Some assignments were made, in part, using the Climate Division (formulated by the National Climatic Data Center - Guttman and Quayle, 1995) to which each county was assigned. The Climate Division number for McDowell County is 8. For additional information on how ratings were developed, see Local Hazard Mitigation Planning Manual, North Carolina Division of Emergency Management, November 1998.**

[c] **Thunderstorms were not rated in the Local Hazard Mitigation Planning Manual. For the purposes of this report, thunderstorms were rated moderate.**

The manual also estimated the potential impact of various natural hazards for McDowell County as shown in Table A-30. This information from the Local Hazard Mitigation Planning Manual was considered as part of the analysis process.

Table A-32: Natural Hazards–Potential Impact Data for McDowell County

Natural Hazard	Range	McDowell County
Earthquake Vulnerability	Low =1 to High = 6	3
Landslide Vulnerability	Low =1 to High = 6	5
Frequency of All Hurricanes, 1900-2004	Saffir-Simpson Class 1-5	0
Frequency of Minor Hurricanes, 1900-2004	Saffir-Simpson Class 1-2	0
Frequency of Major Hurricanes, 1900-2004	Saffir-Simpson Class 3-5	0
Nor'easter Vulnerability	1 = some direct vulnerability	0
Frequency of Tornadoes, 1953-1995	Number of tornadoes	6
Extreme 1-day snowfall	In inches	N/A (>10")
Cold Air Damming Vulnerability	1 = some vulnerability	1
Wildfires, 1950-1993	Low = 1, Mod. =2, High = 3	2
Number of Acres Burned	Low = 1, Mod. =2, High = 3	1

Source: Local Hazard Mitigation Planning Manual, NCDEM, 1998, pp. 88-91.

Final Hazard Analysis – McDowell County Composite Hazard Index

Certain parts of the County, such as floodplains and steep slopes, are more prone to hazards. In addition, certain types of hazards are likely to produce only localized effects while others have wide spread effects. Some natural hazards have extraordinary impacts but occur infrequently. Other hazards occur annually or several times a decade, but cause little damage.

The total potential impact of each type of hazard can be projected using a combination of likely strength of the event, the size of the area(s) affected, and the density of human activity within the likely path of the hazard. Tables A-33 gives each natural hazard a "hazard index" rating

based on the combination of three factors – likelihood of occurrence, size of potential area affected, and the potential impact of the event – for each participating jurisdiction. An explanation of the terms for likelihood of occurrence and level of potential impact can be found in Tables A-1 through A-3 at the front of the section. (Note: Coastal erosion, tsunamis and volcanoes are not included in Table A-33 as the County has determined that no community or part or McDowell County is at risk from these natural hazards.)

Table A-33: Composite Hazard Index for McDowell County

McDowell County

Hazard Type	Likelihood of Occurrence	Potential Area Affected	Potential Impacts	Hazard Index (combined ranking)
Riverine Erosion	(3) Likely	(1) Small	(1) Negligible	(5) Low
Dam Failures	(2) Possible	(1) Small	(1) Negligible	(4) Low
Droughts and Heat Waves	(2) Possible	(3) Large	(1) Negligible	(6) Moderate
Earthquakes	(2) Possible	(3) Large	(1) Negligible	(6) Moderate
Floods	(4) Highly Likely	(1) Small	(2) Limited	(7) Moderate
Hurricanes and Coastal Storms	(3) Likely	(3) Large	(2) Limited	(8) Moderate
Landslides	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Severe Storms and Tornadoes	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Wildfires	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Winter Storms and Freezes	(4) Highly Likely	(3) Large	(2) Limited	(9) High

Marion

Hazard Type	Likelihood of Occurrence	Potential Area Affected	Potential Impacts	Hazard Index (combined ranking)
Riverine Erosion	(1) Possible	(1) Small	(1) Negligible	(4) Low
Dam Failures	(2) Possible	(1) Small	(1) Negligible	(4) Low
Droughts and Heat Waves	(2) Possible	(3) Large	(1) Negligible	(6) Moderate
Earthquakes	(2) Possible	(3) Large	(1) Negligible	(6) Moderate
Floods	(4) Highly Likely	(1) Small	(2) Limited	(7) Moderate
Hurricanes and Coastal Storms	(3) Likely	(3) Large	(2) Limited	(8) Moderate
Landslides	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Severe Storms and Tornadoes	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Wildfires	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Winter Storms and Freezes	(4) Highly Likely	(3) Large	(2) Limited	(9) High

Old Fort

Hazard Type	Likelihood of Occurrence	Potential Area Affected	Potential Impacts	Hazard Index (combined ranking)
Riverine Erosion	(1) Unlikely	(1) Small	(1) Negligible	(3) Low
Dam Failures	(2) Possible	(1) Small	(1) Negligible	(4) Low
Droughts and Heat Waves	(2) Possible	(3) Large	(1) Negligible	(6) Moderate
Earthquakes	(2) Possible	(3) Large	(1) Negligible	(6) Moderate
Floods	(4) Highly Likely	(1) Small	(2) Limited	(7) Moderate
Hurricanes and Coastal Storms	(3) Likely	(3) Large	(2) Limited	(8) Moderate
Landslides	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Severe Storms and Tornadoes	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Wildfires	(4) Highly Likely	(1) Small	(1) Negligible	(6) Moderate
Winter Storms and Freezes	(4) Highly Likely	(3) Large	(2) Limited	(9) High

Appendix Footnotes

[1-1] "Preventing Disasters through Hazard Mitigation", Ana K. Schwab, Popular Government, Spring 2000, p.4.
[1-2] State Climate Office of North Carolina, North Carolina State University.

[1-3] North Carolina Natural Hazards Mitigation (Section 409) Plan, North Carolina Department of Environment and Natural Resources, 1998, p. 14.

[1-4] **Local Hazard Mitigation Planning Manual, NC Division of Emergency Management, 1998, p. 77.**

Appendix B: Assessment of Vulnerability

A. Introduction

Hazard vulnerability measures the likelihood of property damage and personal injuries from a natural hazard occurrence. The current level of development within a community defines the conditions under which property and people are exposed to natural hazard dangers. As a community experiences an increase or decrease in development, the overall degree of vulnerability within the community will change, especially if development occurs within specific hazard areas, such as within flood hazard zones.

B. Community Description

McDowell County, with a 2000 Census population of 42,151, McDowell County, is located where the mountains begin - in the central eastern portion of the mountain region of North Carolina along the I-40 corridor. It is the gateway to the Blue Ridge Mountains. McDowell County has 441.7 sq. mi. of land area and 4.7 sq. mi. of water area. Most of the county is in the Catawba River basin except the some of the southern sections of the county which are in the Broad River basin.

Highways that serve McDowell County include Interstate 40, a major four-lane highway that bisects the County north to south. Other important highways serving the area include US 70, US 221, and NC 64. There are two major rail transportation corridors with one line of track running east-west north of I-40 and one line of track running north-south just east of the City of Marion. Shiflet Field Airport, serves McDowell County. It primarily handles small private single and twin engine aircraft. There are 13 public schools in McDowell County and one community college, McDowell Technical Community College located in Marion.

Land uses within the County range from primarily rural-agrarian to lakeside residential and urban/suburban development in and around the Marion and Old Fort. The Catawba River is a major river that flows through the northeastern portion of the county. Lake James is the largest body of water with a state park and recreational facilities located near Marion.

Major Employers and Demographics

Top Manufacturing Employers (December 2004)	Number of Employees
BAXTER HEALTHCARE CORP	1,000+
COATS AMERICAN INC	500-999
COLLINS & AIKMAN CORPORATION	500-999
ETHAN ALLEN INC	500-999
COLUMBIA CAROLINA CORP	250-499
GALEY & LORD INDUSTRIES INC	250-499
RESOLUTION PACKAGING	100-249
BROYHILL FURNITURE INDUSTRIES INC	100-249
JACKSONLEA JANESVILLE PRODUCTS	100-249
CRANE RESISTOFLEX	100-249

Top Non-Manufacturing Employers (December 2004)	
MCDOWELL COUNTY SCHOOLS	1,000+
STATE OF NORTH CAROLINA	500-999
THE MCDOWELL HOSPITAL INC	250-499
COUNTY OF MCDOWELL	250-499
MCDOWELL TECHNICAL	100-249
MANPOWER TEMPORARY SERVICES	100-249
WAL-MART ASSOCIATES INC	100-249
MCDOWELL NURSING CENTER	100-249
AUTUMN CORPORATION	100-249
N C DEPARTMENT OF TRANSPORTATION	100-249

The economy of McDowell County depends largely on manufacturing which employees about 43% of the total work force. The average travel time to work in McDowell County is 23.9 minutes. Employment sectors are as follows:

Economic Sector	Employees in McDowell County
Manufacturing	7022
Retail Trade	1709
Educational Services	1588
Health Care and Social Assistance	1274
Public Administration	1115
Accommodation and Food Services	975
Construction	682
Administrative and Waste Services	366
Wholesale Trade	357
Other Services Ex. Public Admin	268
Transportation and Warehousing	219
Professional and Technical Services	181
Finance and Insurance	161
Information	94
Real Estate and Rental and Leasing	79
Arts, Entertainment and Recreation	66

Table B-1: McDowell County Demographics

Demographics	
Population, July 2005	43,576
Population, 2000 Census	42,151
Population, 1990 Census	35,681
Percent population change, 1990-2000	18.1
Percent population change, NC, 1990-2000	21.4
Workforce & Education	
Employment, August 2005	20,384
Unemployed, August 2005	2,046
Percent unemployed, August 2005	9.1
Percent unemployed, 2004	6.7
Percent unemployed, NC, August 2005	5.5
Percent unemployed, NC, 2004	5.5

Percent high school graduates, 2000	70.2
Percent high school graduates, NC, 2000	78.1
Average SAT score, 2004	1,009
Average SAT score, NC, 2004	1,006
Percent bachelor's degree or higher, 2000	9.0
Percent bachelor's degree or higher, NC, 2000	22.5
Income, Housing & Poverty	
Average weekly wage per employee, Fourth Quarter 2004	$511
Median household income, 2000	$32,396
Per capita personal income, 1990	$13,543
Per capita personal income, 2003	$21,021
Per capita personal income, NC, 2003	$28,071
Median value of owner-occupied housing units, 2000	$64,945
Median value of owner-occupied housing units, NC, 2000	$108,300
Percent in poverty, 2000	11.6
Percent in poverty, NC, 2000	12.3

Developed and Undeveloped Areas

Developed land within the unincorporated area is composed primarily of larger parcels designated for agricultural activities. (Note: At this time, the County does not have a reproducible size zoning map to illustrate land use patterns. The County intends to create a digital zoning map as one of the 5-year mitigation actions included in Section II. Mitigation Action Plan.

As shown in Table B-2, the 2000 Census found that McDowell County had a total of 18,526 housing units; 5,458 (29.46%) units of the total number of units were mobile homes which are more susceptible to damage by natural hazards, especially wind hazards, than are site-built homes.

Scheduled Infrastructure Areas

Although the primary goal regarding water and sewer within McDowell County is to provide efficient, high quality public services in a manner which encourages planned growth and development, McDowell County is not a direct provider of these services. The County works in partnership with the City of Marion and Town of Old Fort and other utility service providers to encourage economic development through provision of adequate public services. At this time there are no areas scheduled for publicly funded infrastructure development.

Table B-2: 2000 Census of Housing Units/Year Built – McDowell County

Types of Housing Units

Type of Unit	Number of Units	Percent of Total Units
Single Family	11,808	63.74%
Multi-family	1,226	6.62%
Mobile homes	5,458	29.46%
Boat, RV, Van	38	0.21%
Total Units	18,526	100.00%

Housing Units by Year Built

Year Built	Number of Units	Percent of Total Units
1959 or earlier	5,200	28.3%
1960 - 1979	6,088	33.1%
1980 - 1989	3,057	16.6%
1990-March 2000	4,032	21.9%
Total	18,377	100.00%

Source: 2000 U.S. Census, Mini-Profiles, Table DP-4 Profile of Selected Housing Characteristics.

C. Critical Public Facilities (Map B-1 McDowell County Critical Facilities Map)

Critical public facilities are those facilities that are essential to the health, safety, and viability of the community. Critical facilities include buildings, services and utilities without which residents and businesses could not survive for long. Certain facilities are absolutely critical to response and recovery efforts in the wake of a disaster resulting from a natural or technological hazard. These include fire and rescue facilities, hospitals, major transportation facilities, communication facilities, and public water and sewer infrastructure.

The inventory of County-owned critical public facilities is shown in Table B-3 and the locations are shown on Map B-1. The ability to protect these facilities from damage from a future natural hazard event is critical to the welfare of the citizens of

McDowell County. Other publicly or privately owned facilities that are critical, essential or supportive of community functions are listed following Table B-3.

Rationale for Designating a Facility as Critical

Facilities within McDowell County have been divided into three categories of importance for hazard mitigation:

1. County – Owned
   - Critical (Table B-3) – county-owned facilities that are absolutely necessary for response and recovery efforts during and after a disaster. This category includes all county-owned and/or city-owned facilities that must either remain in operation without interruption or should be operational within 24 hours of an emergency.
2. Essential – facilities that are essential for normal community functions. Should be back in service within 72 hours following a disaster.
3. Supportive – facilities/services that are typically available to the public but which can be closed for a week or more following a disaster without undue harm to public health and safety.

Table B-3: McDowell County, and the Towns of Marion and Old Fort
Critical Public Facilities

- McDowell County EOC
- McDowell Hospital
- McDowell Rescue Squad
- Marion Police Department
- Town of Old Fort Police Department
- Lake James Lodge
- Rocky Pass Rest Home
- Pinnacle Rest Home
- Nebo Elementary School
- Old Fort Elementary School
- West Marion Elementary School
- West McDowell Junior High School
- North Carolina National Guard
- Ashford/North Cove Volunteer Fire Department
- Crooked Creek Volunteer Fire Department
- Dysartsville Volunteer Fire Department
- Glenwood Volunteer Fire Department
- Marion Fire Department
- Nebo Volunteer Fire Department
- Old Fort Volunteer Fire Department
- P.G. Volunteer Fire Department
- Sugar Hill Volunteer Fire Department
- Old Fort Volunteer Fire Department
- McDowell Technical Community College
- WBRM Radio
- N.C. State Highway Patrol Office
- N.C. Department of Transportation
- Autumn Care of Marion
- The Oaks Rest Home
- McDowell Nursing Center
- Mountain View Care
- Eastfield Elementary School
- Marion Elementary School
- North Cove Elementary School
- Pleasant Gardens Elementary School
- East Junior High School
- McDowell High School
- Glenwood Elementary School
- City of Marion Water intake
- City of Marion Water Filtration Plant
- City of Marion Wastewater Treatment Plant
- Town of Old Fort Water Treatment Plant
- McDowell County Administration Building

- Marion Town Hall
- Old Fort Town Hall
- Hankins Northfork Volunteer Fire Department
- Old Fort Post Office
- Marion Post Office
- Nebo Post Office
- Little Switzerland Post Office

D. Description of All-Hazards Exposure(Map A-1: McDowell County Multi-Hazards Map)

The entirety of McDowell County is susceptible to certain natural hazards, e.g., severe winter storms, hurricanes, tornadoes, that are not confined to specific identifiable areas. Developed properties along major transportation corridors have the highest potential risk of exposure to financial losses from future natural hazards. The only locations within the county that are known to be specifically susceptible to a natural hazard are floodplains/flood hazard areas.

Vulnerable Populations **(Map B-1)**

Vulnerable populations within McDowell County have been identified as special needs populations and mobile home parks as listed in Table B-4 and shown on Map B-1. Special needs populations are those McDowell residents in child day care or senior citizen centers that may need special assistance during a natural hazard event. Mobile home parks were identified as vulnerable due to their increased susceptibility to high wind hazards.

Table B-4: Vulnerable Populations – McDowell County Planning Jurisdiction

Child Day Care Providers	Child Day Care Providers
• 37 Licensed Child Care facilities in McDowell County.	•
•	•
•	•
•	•
•	• Senior Citizen Centers
•	• McDowell County Senior Center
•	•
•	•
• Mobile Home Parks	• Mobile Home Parks
• Total Number of Mobile Home Parks 126	•
•	•
•	•
•	•
•	•
•	•
•	•

Source: McDowell County Chamber of Commerce

McDowell County has a total number of 37 licensed Child Care facilities.

McDowell County has a total number of 126 Mobile Home Parks.

Flood Hazard Areas **(Map A-1: McDowell County Multi-Hazards Map)**

The flood hazard areas within McDowell County are located in the Catawba River Basin in the Northern portion of the County and the Broad River basin in the south. The number of structures located within FEMA identified floodplain areas are noted in the tables below. Because of the topography of McDowell County, acreage within floodplains is limited due to steeper stream banks and narrow floodway channels. However, areas that are located immediately adjacent to tributary creeks are still the most susceptible to the potential of localized flooding.

As detailed in Appendix A - Hazard Identification and Analysis, the entire area within McDowell County is exposed to general hazards such as severe storms, hurricanes, droughts and heat waves, and winter storms and freezes. Tornadoes are another common threat but the exact location of a future tornado event can not be predicted. Only flood hazards have a known hazard location – the floodplains along major streams and creeks.

Hazardous Area Intersections with Community Features

McDowell County has no community features or critical public facilities located within flood hazard areas. Sewer and wastewater plants are located in low areas, but outside the flood hazard area.

National Flood Insurance Program

McDowell County is an active participant in the National Flood Insurance Program (NFIP). Although the position of the Federal government is to discourage development within flood hazard areas, the NFIP was created to ensure that owners of flood susceptible properties could purchase flood insurance coverage. Data on current NFIP insurance policies and recent claims within McDowell County are shown in Table B-5.

Table B-5: National Flood Insurance Program Statistics – McDowell County

NFIP (National Flood Insurance Program) Info	
National Flood Insurance Program participation	**Yes, unincorporated areas only**
Community Rating System Class	**10**
Number of policies currently in V-Zones	**0**
Number of policies currently in A-Zones	**41**
Total number of policies	**66**
Total dollar amount of insurance in force	**$6,828,600.00**
Total premiums paid by NFIP policy holders	**$32,521.00**
Total number of claims made	**24**
Total dollars paid	**$128,107.00**
FIRM (Fed. Insurance Rate Map) Initial Date	**7/15/1988**
NFIP Regular Entry Date	**7/15/1988**
NFIP Effective Date	**7/15/1988**
2 to 4 Losses	**0**
5 plus Losses	**0**

Repetitive Loss Claims

One of the main objectives of the hazard mitigation planning process is to determine how best to reduce repetitive loss claims. Through FEMA, the Federal government annually makes available grants to local governments for the purchase and/or elevation of flood prone properties in order to reduce the re-occurrence of flood damages. NFIP statistics on repetitive loss claims indicate that McDowell County has no repetitive loss claims.

High Wind Hazard Vulnerability

Predicting where damage from high winds and tornadoes will occur is impossible. Mobile/manufactured homes, however, are more vulnerable to the damaging effects of high winds than are site-built structures.

Mobile/manufactured homes built prior to 1993 when more rigorous Department of Housing and Urban Development (HUD) wind resistance standards became effective are especially susceptible to wind damage (Table B-6). Building permit records do not specify the age of individual mobile/manufactured home units, nonetheless, in the 2000 Census, 5,458 (29.7%), of all residential units within in McDowell County are for mobile/manufactured home units. All of these units regardless of age are frequently more susceptible to wind damage than are site-built dwelling units.

Table B-6: HUD Wind Resistance Standards - Mobile/Manufactured Homes

Year	Wind Resistance[1]	Weight (lbs)	Anchor Requirements[2]
Pre-1993	75 mph	16,000	5-6 anchors/side
Post 1993	100 mph	40,000	11-14 anchors/side

Source: Manufactured Housing Institute, www.mfghome.org

[1] Wind resistance standards for coastal placement are more rigorous.

[2] An anchor is a weighted disc buried in the ground and attached to the manufactured unit with steel cable.

E. Future Hazard Vulnerability

Future vulnerability can be defined as the extent to which people are expected to experience harm and the likelihood of property damage by a hazard event if projected development were to occur. If development is allowed to occur within identified floodplains, then vulnerability will increase accordingly.

According to the 2000 Census (Table B-7), the population of McDowell County grew from 35,681persons in 1990 to 42,151persons in 2000 – an increase of 6,470 people (18.13%). The

Office of State Planning population projections for McDowell County are also shown in Table B-7.

Table B-7: Projected Population Figures for McDowell County

Year	McDowell County	
	Population Estimate	Ten-Year Growth Rate
1990 Census	35,681	
2000 Census	42,151	18.13%
2010 Projected	46,015	9.17%
2020 Projected	50,651	10.07%

Source: NC Office of State Planning; local population estimates.

The county's population is projected to increase by 3,864 people by the year 2010 and another 4,636 people by 2020. Using an average household size of 2.50 persons per household, an estimated 1,545 new residential units may be needed in McDowell County by 2010 and another 1,854 residential units may be needed by 2020.

This future growth and development must be encouraged in areas of low vulnerability. Strict enforcement of mitigation measures, such as hurricane building codes and the flood damage prevention ordinance, will decrease the County's vulnerability to hazards as future development occurs.

Redevelopment

Planning for redevelopment in the wake of a natural disaster also serves to reduce future vulnerability. Redevelopment should be encouraged in a manner which, will result in lower vulnerability by restricting rebuilding within high-risk areas and requiring, where building does occur, the use of mitigation measures such as higher finished floor elevations and floodproofing.

Urbanization

Urban development may eventually contribute to higher levels of flooding. Flash flood levels within small drainage basins also could be expected to increase long term if mitigation measures such as on-site storm water retention are not required for sites with high impervious surface coverage. Another long term problem may be a reduction in the amount of time between a rainfall event and actual flooding. Without mitigation, urbanization increases the likelihood of flash floods, increases the land susceptible to flooding, and reduces warning time for evacuation of susceptible populations.

F. Summary Conclusions

Current Vulnerability

McDowell County is vulnerable to a number of natural hazards that would impact the entire County, e.g., hurricanes and coastal storms, or hazards that do not have a predictable pathway, e.g., tornadoes. Total current (Year 2000) hazard exposure to hazards has been estimated using the 2000 Census housing and population count and Year 2000 property tax values. The left side of Table B-8 summarizes the total vulnerability of McDowell County and property values in the Year 2000. This information is presented in two categories - Private Development and Public Critical Facilities. Due to the limited amount of data that was available on specific monetary damages from past hazard events; it is difficult to predict exactly what monetary level of damages can be expected with future hazard events. With better data available at the first Plan update, a more detailed analysis will be possible.

Current Flooding Vulnerability

McDowell County currently has limited exposure to flood hazards primarily due to the County's location near the top of several watersheds. The County has a flood damage prevention ordinance, which protects floodplains from inappropriate development. The ordinance requires that structures constructed within flood hazard areas be elevated above base flood. The County estimates that there are no existing structures located within flood hazard areas.

Potential Future Vulnerability

McDowell County expects moderate growth in the next two decades. Using State population projections (Table B-7) the County estimates that total population will increase to approximately 46,015 by Year 2010 and to 50,651 by 2020. To estimate the number of housing units that will be required in 2020 (right side of Table B-8), 2020 population estimates were divided by the 2000 Census average household size. The number of commercial/industrial and other structures were then estimated to increase a comparable amount. Year 2020 values were predicted using the average per property values from Year 2000 multiplied by the number of projected units (constant Year 2000 dollars were assumed – no factor was used for inflation).

Future Flooding Vulnerability

Future flooding vulnerability should not increase over time as the County has in place regulations regarding limiting construction within flood hazard areas. If future flood damages do occur, the County will pursue voluntary acquisition of flood exposed structures through State and Federal funding sources. Map B-2 indicates that areas around or near flood hazard areas are primarily slated for very low-density residential development.

Table B-8: Vulnerability Assessment – McDowell County

Private Development				
Current Conditions (Year 2000)			Potential Future Conditions (Year 2020)[1]	
Type of Development	Number of Existing Private Buildings	Current Value (in 000s) (Year 2000 $)	Projected Number of Private Buildings	Projected Number of People
Single-Family Residential	**11,808**			
Multi-Family Residential	**1,226**			
Mobile Homes (Boat RV, Van)	**5,492**			
Subtotal Residential	18,526		**22,788**	**50,651**
Housing Units per Town				
Marion	2,351			
Old Fort	496			
Commercial/Industrial	**800**			
Other				
Subtotal Non-Residential				
Subtotal Private				

Public Buildings and Critical Facilities				
Current Conditions (Year 2000)			Potential Future Conditions (Year 2020)[1]	
Type of Development	Number of Existing Buildings and Critical Facilities	Current Replacement Value (in 000s) (Year 2000 $)	Projected Number of Public Buildings and Critical Facilities	Projected Number of People
Government Services	13	30 million	20	700
Fire Departments	11	6 million	12	650
Emergency Medical Services	2	1 million	4	75
Sheriff / Police Department	3	9 million	4	150
Community Facilities	6	3 million	15	900
Emergency Shelters	15	8 million	25	1150
Subtotal Public	50	57 million	80	3625
Total Community Vulnerability				

[1] 2000 Data based on 2000 Census data and local tax revenue data.
[2] 2020 Projections based on population projections and estimated number of new dwelling units with comparable increase in commercial/industrial properties and public facilities.

Marion

Marion is the county seat of McDowell County, North Carolina. As of the 2000 census, the city had a total population of 4,943, up from 4,765 in 1990 and with a projected population of 4,975 in 2004.

Geography

Marion is located at coordinates Latitude 35.68 & Longitude -82.01 and has a total land area of 4.7 square miles. There is no measurable water area within the city.

Demographics

As of the census of 2000, there were 4,943 people and 2,146 occupied housing units. There are 2,351 housing units at an average housing density of (690.67/mi). About 60 of occupied housing units are owner-occupied and about 40% are renter-occupied. There are 20 homes occupied on a seasonal basis. The institutionalized population is 149 and the non-institutional population in a group home is 88. The average household size is 2.19 and the average family size is 2.84. The median age of the population is 40.3. The population density is 1,087.6/square mile. The racial makeup of the town is 83.2% White, 10.5% African American, 0.3% Native American, and 1.1% Asian. 12.5% of the population is Hispanic or Latino of any race. 17.9% speak a language other than English at home.

There are 2,146 households out of which 24.4% have children under the age of 18 living with them, 41.1% are married couples living together, 2.7% have a female householder with no husband present, and 40.2% are non-families. 37% of all households are made up of individuals and 20.4% have someone living alone who is 65 years of age or older.

The median income for a household in the town is $24,753, and the median income for a family is $35,463. 12.4% of individuals and 12.6% of families are below the poverty line. Out of the total population, 0.0% of those under the age of 18 and 21.8% of those 65 and older are living below the poverty line.

Old Fort

Old Fort is a town located in McDowell County, North Carolina. As of the 2000 census, the town had a total population of 963 up from 720 in 1990 and with a projected population of 975 in 2004.

Geography

Old Fort is located at coordinates Latitude 35.63 & Longitude -82.18. According to the United States Census Bureau, the town has a total area of 1.25 square miles.

Demographics

As of the census of 2000, there are 963 people, 441 households, and 269 families residing in the town. The population density is 769.43/mi². There are 496 housing units at an average density of 396.30/mi². The racial makeup of the town is 79.1% White, 17.2% African American, 3.6: Asian, 0.2% Native American, and 0.8% from other races, and 2.5% from two or more races. 1.7% of the population is Hispanic or Latino of any race.

There are 441 households out of which 25.9% have children under the age of 18 living with them, 37.9% are married couples living together, 14.5% have a female householder with no husband present, and 39% are non-families. 35.8% of all households are made up of individuals and 16.1% have someone living alone who is 65 years of age or older. The average household size is 2.18 and the average family size is 2.76. 20% of the population is 65 years of age or older.

The median income for a household in the town is $25,000, and the median income for a family is $28,854. The per capita income for the town is $20,782. 17% of individuals and 8.7% of families are below the poverty line. Out of the total population, 15% of those under the age of 18 and 15.3% of those 65 and older are living below the poverty line.

MCDOWELL COUNTY

McDowell County is a county located in North Carolina. As of 2000, the population is 34,835. Its county seat is Marion.

Geography

According to the U.S. Census Bureau, the county has a total area of 446.41 mi². 441.68 mi² of it is land and 4.73 mi² of it is water.

Towns

There are two incorporated communities in McDowell County: The Town of Marion and the Town of Old Fort.

Adjacent Counties

- Yancy County, North Carolina - northwest
- Mitchell County, North Carolina – north
- Avery County, North Carolina - northeast
- Burke County, North Carolina - east
- Rutherford County, North Carolina – south
- Buncombe County, North Carolina – west

Demographics

As of the census[2] of 2000, there are 42,151 people, 16,604 households, and 11,962 families residing in the county. The population density is 51/km² (131/mi²). There are 18,377 housing units at an average density of 41.61/mi². The racial makeup of the county is 92.2% White, 4.2% Black or African American, 0.3% Native American, 0.9% Asian, 0.1% Pacific Islander, 1.6% from other races, and 0.8% from two or more races. 2.9% of the population is Hispanic or Latino of any race.

There are 16,604 households out of which 33.9% have children under the age of 18 living with them, 57.5% are married couples living together, 10.20% have a female householder with no husband present, and 28% are non-families. 24.30% of all households are made up of individuals and 10.3% have someone living alone who is 65 years of age or older. The average household size is 2.51 and the average family size is 2.91.

In the county the population is spread out with 25% under the age of 20; 14.3% who are 65 years of age or older. The median age is 38 years.

The median income for a household in the county is $32,396, and the median income for a family is $37,789. The per capita income for the county is $16,109. 11.6% of the population and 9% of families are below the poverty line. Out of the total people living in poverty, 10.40% are under the age of 18 and 15.7% are 65 or older.

Appendix C: Community Capability Assessment

A. Introduction

The ability of a community to develop an effective hazard mitigation plan depends upon five implementation factors specific to that unit of government:

1. Departments and Agencies
   a. Local government departments or agencies that have direct responsibility for hazard mitigation activities (e.g., public works department responsibility for storm water system maintenance);
   b. Other local departments or agencies that may, by virtue of their work, either increase or decrease local vulnerability (e.g., school system selection of new school construction sites);
2. Existing Policies, Programs and Ordinances;
   a. Local policies, programs and ordinances that affect hazard mitigation;
   b. State programs (e.g., NCDOT maintenance of state-owned roads and highways);
3. Legal Capability (State authorization for local government programs);
4. Fiscal Capability (Operating budget, capital improvement program);
5. Technical Capability (technical responsibilities)
6. Political Climate (local political will for implementation of hazard mitigation activities).

B. Departments and Agencies

McDowell County is a local government body with a board/manager form of government. The elected County Board of Commissioners is the decision making body for the County. The Planning Board and the Board of Adjustments serve as advisory panels to the County Commissioners on specific matters, including planning and land use. The County Manager serves as the chief executive officer and, along with other County personnel, carries out day-to-day administrative activities.

In the context of this section McDowell County will also refer to the City of Marion and Town of Old Fort. *Due to the limited capabilities of the Town of Old Fort, the County administers most of the ordinances, plans, regulations, etc. for the Town. The City of Marion administers its own ordinances, plans, regulations, etc.*

Departments and Agencies with Direct/Indirect Impact on Hazard Mitigation

Table C-1: Departments and Agencies – McDowell County

Department / Agency	Direct / Indirect Impact	Function
Administration	Direct	Responsible for managing and coordinating board polices and directives.
Finance	Indirect	Responsible for management of financial resources.
Tax Administration	Indirect	Responsible for appraising property within the county.
Public Works	Direct	Responsible for maintaining grounds.
Sheriff	Direct	Principal law enforcement within the County.
Emergency Management	Direct	Responsible for management and implementation of emergency programs.
Inspections	Direct	Responsible for administration and enforcement of inspection laws.
EMS	Direct	Provides Advance Life Support, pre-hospital care, and transportation to patients.
Animal Control	Indirect	Responsible for control of all animals.
Emergency Communications	Direct	Provides countywide 911 services.
McDowell Area Transit System	Indirect	Provides public transportation for residents.
Environmental Health	Direct	Provides health assistance
Health	Direct	Provide shelter to residents in event of a disaster.
Social Services	Direct	Provides shelter to residents in the event of a disaster.
Recreation	Direct	Provides shelter to residents in the event of a disaster.
Local Fire Departments	Direct	Responsible for fire suppression and providing basic emergency medical care.
Rescue Squad	Direct	Provide rescue and back up for EMS.

Source: McDowell County

Other Agencies/ Departments

McDowell County Public School System

The McDowell County Public School System provides public educational programming and is responsible for constructing and maintaining school facilities. When selecting new school sites, the school system considers environmental factors that would impact the development potential of each site under consideration.

NC Department of Transportation

The NC Department of Transportation is responsible for construction and maintenance of state-owned roads and highways, including the construction and maintenance of stormwater drainage systems. Sizing and maintenance of stormwater drainage systems can have an impact on hazard mitigation. If inadequately sized structural elements (e.g., piping, channels, etc.) cannot handle stormwater runoff, than upstream flooding will occur.

C. Existing Polices, Programs and Ordinances

McDowell County has the statutory authority to plan for growth and development including the power to make studies of the County, to determine growth objectives, to prepare and adopt plans for achieving those objectives and to develop policies, ordinances and the administrative means to implement plans. The County Board of Commissioners has created and appointed a Planning Board to serve as an advisory body on planning matters.

Local government enabling legislation requires that zoning regulations, when adopted by a municipality, be made in accordance with a comprehensive land use plan. The existence of a comprehensive plan ensures that County boards and staff are developing regulations and ordinances that are consistent with the overall goals of the community.

The McDowell County Mitigation Advisory Committee conducted an extensive review of existing plans, ordinances and regulations for their relevance to achieving the goals of the hazard mitigation plan. Various aspects of each were incorporated into the mitigation plan in order to produce the best possible mitigation plan.

Each County policy, ordinance or regulation has a unique and varying impact on hazard mitigation. Although policies and ordinances may have not been created specifically for hazard mitigation purposes, they have been and can be utilized to implement hazard mitigation initiatives. .Existing County policies and ordinances include:

- Land Use Plan
- Zoning Ordinance
- Building Code Enforcement (McDowell County)
- Flood Damage Prevention Ordinance
- Mobile Home Park Ordinance
- Street Address Ordinance

Planning Ordinance (Zoning)

Local governments use zoning to help mitigate the impact of natural hazards. The purpose section of the McDowell County Planning Ordinance states that this ordinance was "enacted to promote and protect the health, safety, and welfare of the people within the designated planning jurisdiction of McDowell County"

(Note: At this time the County does not have a reproducible size-zoning map. The County plans to create a digital zoning map as part of the mitigation action plan – see Section II. Mitigation Action Plan Table I-1.)

Building Code Enforcement

Under inter-local agreement, McDowell County provides building code enforcement not only for the County planning jurisdiction but also for the Town of Old Fort. The County will issue building permits for construction within the Town of Old Fort planning jurisdiction after the Town has issued zoning permits for the proposed development. The City of Marion operates its own building code enforcement program and issues its own building permits.

McDowell County and the City of Marion have local building code enforcement ordinances that incorporate the North Carolina State Building Code. The ordinances provide that any revisions, amendments, or additions to the State code are automatically incorporated in the McDowell Countyand City of Marion ordinances. In 2002, the State of North Carolina adopted the International Building Code, which is now enforced statewide.

Flood Damage Prevention Ordinance

McDowell County adopted a Flood Damage Prevention Ordinance in January 1994 This ordinance was enacted for the purpose of promoting the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

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

Mobile Home Park Ordinance

McDowell County adopted a Mobile Home Park Ordinance in 1996. This ordinance was enacted for the purpose of:

1. Regulating and guiding the establishment of mobile home parks in order to promote the health, safety, and general welfare of the citizens of McDowell County.
2. Furthering the orderly layout of mobile home parks in a manner which is consistent with the prevailing comprehensive plan.
3. Securing safety from fire, panic, and other dangers.
4. Providing for adequate light and air.
5. Ensuring that facilities for transportation, parking, water, sewage, and recreation are provided for mobile home park residents.
6. Guiding public and private policy and action in order to provide adequate and efficient transportation, water, sewage, schools, parks, playgrounds, recreation, and other public requirements and facilities.

Street Address Ordinance

The McDowell County Planning and Zoning Department coordinates the assignment of new street addresses, the replacement of street signs/poles, etc. with Public Works. Data Management Specialist, E-911 project contractor, also assists the County by performing various functions related to the McDowell County Address Maintenance System, including, but not limited to, maintaining the telephone company's E-911 Master Street Address Guide, providing information updates to U.S. Postal Offices, responding to citizen inquiries regarding existing addresses, addressing structures, etc.

Policies That Hinder Hazard Mitigation

None of the existing County policies, programs or ordinances has the effect of hindering hazard mitigation; however, there will be revision opportunities to make current policies more effective for mitigation. Existing County policies and ordinances are regularly reviewed and considered for updates/revisions to meet changing community needs and to stay in compliance with state and federal regulations. One of the critical issues to be considered and evaluated in the future will be the impact of revisions on mitigating the community's vulnerability to natural hazards. Recommendations for new or revised policies and programs are detailed in Section II Mitigation Action Plan.

Community Capability Assessment

Table C-2 summarizes existing County policies/programs and rates these policies/programs for effectiveness for hazard mitigation. The last column of Table C-4 provides for incorporating the policy or program into hazard mitigation strategies.

Table C-2: Community Capability Assessment – McDowell County

Policies and Programs	Document Reference	Effectiveness for Mitigation	Rationale for Effectiveness	Recommendations for Incorporating into Hazard Mitigation Strategy
Land Use Plan	Goals and Objectives /Strategies, page 7	Low	Allows development in flood hazard areas (Note: County planning jurisdiction does not currently include any flood hazard areas.)	Amend plan to include goals/strategies for environmental conservation, stormwater management and flood damage prevention.
Planning Ordinance	Article III District Regulations	Low	Allows development in flood hazard areas (Note: County planning jurisdiction does not currently include any flood hazard areas.)	Amend ordinance to restrict development in flood hazard areas prior to extending County limits or ETJ into areas with flood hazards.
Building Code Enforcement	McDowell County ordinance	High	Provides for proper building construction according to State Building Code standards.	Continue to incorporate any revisions to State Building Code standards.
Flood Damage Prevention Ordinance	McDowell County Ordinance	High	Regulates development within flood hazard areas.	Continue to monitor changing flood hazard areas.
Mobile Home Park Ordinance	McDowell County Ordinance	Low	Regulate building codes regarding mobile homes/parks	Continue considering natural hazards when regulating/improving mobile homes/parks.
Street Address Ordinance	McDowell County Ordinance	Medium	Coordinates the assignment of new addresses and street signs	Continue to update address and replace street signs for better response in times of emergencies.

Source: McDowell County.

D. Legal Capability

Local governments in North Carolina have a wide array of powers that enable counties and municipalities to adopt and implement policies and ordinances that may be used to mitigate the potential harmful effects of natural hazards. Below is a summary of the legal authority and powers that North Carolina has conferred on local governments within the state (*Local Hazard Mitigation Planning Manual*, NC Division of Emergency Management, 1998, Appendix B, pp. 61-64.) These powers fall into four broad categories: regulation, acquisition, taxation, and spending. McDowell County has made limited use of these powers.

Regulation (General Police Power)
Local governments in North Carolina have been granted broad regulatory powers. North Carolina bestows the general police power on local governments, allowing them to enact and enforce ordinances which define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, and welfare of the people and to define and abate nuisances (including public health nuisances). Since hazard mitigation can be included under the police power (as protection of public health, safety and welfare), cities and counties may include requirements for hazard mitigation in local ordinances. Local governments may also use their ordinance-making power to abate "nuisances," which could include, by local definition, any activity or condition making people or property more vulnerable to any hazard (NCGS 160A Art. 8 (Delegation and Exercise of the General Police Power to Cities and Counties); 153A, Art. 6 (Delegation and Exercise of the General Police Power to Counties)).

Building Codes and Building Inspection

Many structural mitigation measures involve constructing and retrofitting homes, businesses and other structures according to standards designed to make the buildings more resilient to the impacts of natural hazards. Most of these standards are imposed through the building code.

North Carolina has a state compulsory building code, which applies throughout the state (NCGS 143-438(c)). However, municipalities and counties may adopt codes for their respective areas if approved by the state as providing "adequate minimum standards" (NCGS 143-438(e)). Local regulations cannot be less restrictive than the state code. Exempted from the state code are: public utility facilities other than buildings; liquefied petroleum gas and liquid fertilizer installations; and farm buildings outside municipal jurisdictions. No state permit may be required for structures under $20,000. (Note that exemptions apply only to state, not local, permits).

Local governments in North Carolina are also empowered to carry out building inspections. NCGS 160A, Art. 19. Part 5; and 153A Art. 18, Part 4 empower cities and counties to create an inspection department, and enumerates department duties and responsibilities, which include enforcing state and local laws relating to the construction of buildings, installation of plumbing, electrical, heating systems, etc.; building maintenance; and other matters.

McDowell County

McDowell County enforces building codes within County planning jurisdiction and within the corporate limits and extraterritorial jurisdiction of the Town of Old Fort. The City of Marion operates its own Building Inspections Department. McDowell County has incorporated the regulations set forth by the North Carolina State Building Code.

Land Use

Land use regulatory powers granted by the state to local governments are the most basic manner in which a local government can control the use of land within its jurisdiction. Through various land use regulatory powers, a local government can control the amount, timing, density, quality and location of new development. All these characteristics of growth can determine the level of vulnerability of the community in the event of a natural hazard. Land use regulatory powers include the power to engage in planning, and to enact and enforce zoning ordinances, floodplain ordinances, and subdivision controls.

Each community possesses great power to prevent unsuitable development in hazard-prone areas. (NCGS 160A, Art. 8. (Delegation and Exercise of the General Police Powers to Cities and Counties); Art. 19 (Planning); Part 3 (Zoning); and 153A. Art. 6 (Delegation and Exercise of the General Police Power to Counties); Art. 18 (Planning and Regulation of Development); Part 2 (Subdivision Regulation); Part 3 (Zoning).

Planning

In order to exercise the regulatory powers conferred by the General Statutes, local governments in North Carolina are required to create or designate a planning agency (NCGS 160A-3 87). The planning agency may perform a number of duties, including: make studies of the area; determine objectives; prepare and adopt plans for achieving those objectives; develop and recommend policies, ordinances, and administrative means to implement plans; and perform other related duties (NCGS 160A-361).

The importance of the planning powers of local governments is emphasized in NCGS 160A-383, which requires that zoning regulations be made in accordance with a comprehensive plan. While the ordinance itself may provide evidence that zoning is being conducted "in accordance with a plan", the existence of a separate planning document ensures that the government is developing regulations and ordinances that are consistent with the overall goals of the community.

McDowell County

McDowell County has recently adopted a Land Use Plan. At the next update, the scope of the plan will be expanded to consider and more directly address hazard mitigation strategies.

Zoning

Zoning is the traditional and nearly universal tool available to local governments to control the use of land. Broad enabling authority for municipalities in North Carolina to engage in zoning is granted in NCGS 160A-381; and for counties in NCGS 153A-340. (Counties may also regulate inside a municipal jurisdiction at the request of a municipality (NCGS 160A-360(d)). The statutory purpose for the grant of power is to promote health, safety, morals or the general welfare of the community. Land uses controlled by zoning include the type of use (residential, commercial, industrial) as well as minimum specifications such as lot size, building height and set backs, density of population, etc.

Local governments are authorized to divide their territorial jurisdictions into districts, and to regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land within those districts (NCGS 160A-382). Districts may include general use districts, overlay districts, and special use or conditional use districts. Zoning ordinances consist of written text.

McDowell County

McDowell County has a planning ordinance that establishes zoning districts and sets minimum development regulations. The ordinance needs to be updated to more fully address development standards that would reduce stormwater runoff and the potential for downstream flooding.

Floodplain Regulation

In the summer of 2000, the North Carolina General Assembly adopted an act entitled "An Act to Prevent Inappropriate Development in the One Hundred-Year Floodplain and to Reduce Flood Hazards". By this act, the North Carolina statutes regulating development within floodways were rewritten to include floodplain regulation (NCGS 143-414.51-214.61). The purpose of the new law is to:

1. Minimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage.
2. Prevent and minimize loss of life, injuries, property damage and other losses in flood hazard areas.
3. Promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas.

The new statute authorizes local governments to adopt a flood hazard prevention ordinance to regulate uses in flood hazard areas and to grant permits for the use of flood hazard areas that are consistent with the requirements of the statute. The statute provides for certain uses within flood hazard areas without a permit consistent with local land use ordinances (NCGS 143-415.54).

The statute establishes minimum standards for local ordinances and provides for variances for prohibited uses as follows:

a. A flood hazard prevention ordinance adopted by a county or city pursuant to this Part shall, at a minimum:
   (1) Meet the requirements for participation in the National Flood Insurance Program and of this section.
   (2) Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as noted in Appendix (b) below.
   (3) Provide that a structure or tank for chemical or fuel storage incidental to a use that is allowed under this section or to the operation of a water treatment plant or wastewater treatment facility may be located in a 100-year floodplain only if the structure or tank is either elevated above base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

b. A flood hazard prevention ordinance may include a procedure for granting variances for uses prohibited under G.S. 143-415.54(c). A county or city shall notify the Secretary (of Crime Control and Public Safety) of its intention to grant a variance at least 30 days prior to granting the variance. A county or city may grant a variance upon finding that all of the following apply:
   (1) The use serves a critical need in the community.
   (2) No feasible location exists for the location of the use outside the 100-year floodplain.
   (3) The lowest floor of any structure is elevated above the base flood elevation or is designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
   (4) The use complies with all other applicable laws and regulations.

The statute authorizes priority ratings for local government applications for revolving loans or grants based on adoption of a local comprehensive land use plan, a zoning ordinance, or other measures that significantly contribute to the implementation of the comprehensive land use plan and the flood hazard prevention ordinance.

The Floodplain Act also instructed the Environmental Review Commission to study and report its findings to the 2001 General Assembly on the need to:

(1) Increase the minimum elevation requirement.
(2) Increase the authority of the Secretary of Crime Control and Public Safety to enforce the new statute.
(3) Increase protection against the potential recurrence of damage to public and private property that resulted from the hurricanes of 1999, and other measures to reduce the likelihood that public assistance will be needed in response to future hurricanes and other storm events.

McDowell County

McDowell County has in place a flood damage prevention ordinance that sets development standards for FEMA identified flood hazard areas. There is also a McDowell County Soil Survey that highlights limitations and hazards inherent in soils, and improvements needed to overcome soil limitations.

Acquisition

The power of acquisition can be a useful tool for pursuing mitigation goals. Local governments may find the most effective method for completely "hazard-proofing" a particular piece of property is to acquire the property (either in fee simple or a lesser interest, such as an easement). Public acquisition removes the property from the private market and eliminates or reduces the possibility of inappropriate development. North Carolina legislation empowers cities and counties to acquire property for public purpose by gift, grant, devise, bequest, exchange, purchase, lease or eminent domain (NCGS 153A. Art. 8; 160A. Art. 11).

McDowell County

Although McDowell County has suffered the effects of high winds from recent hurricanes passing through North Carolina, the County had very limited flood damages. Thus, the County has not applied for Hazard Mitigation Grant Program (HMGP) buyout grants to acquire and/or elevate flood loss properties. The County has not chosen to use the power of condemnation (eminent domain) to acquire properties.

Taxation

The power to levy taxes and special assessments is an important tool delegated to local governments by North Carolina law. The power of taxation extends beyond merely the collection of revenue and can have a profound impact on the pattern of development in a community. Communities can set preferential tax rates for areas, which are unsuitable for development (e.g., agricultural land, wetlands, and floodplains) to discourage development in hazardous areas.

Because the usual methods of apportionment seem mechanical and arbitrary, and because the tax burden on a particular piece of property is often quite large, the major constraint in using special assessments is political. Special assessments seem to offer little in terms of control over land use in developing areas. Assessments can, however, be used to finance the provision of necessary services within city or county boundaries. In addition, they are useful in distributing to new property owners the costs of the infrastructure required by new development.

McDowell County

McDowell County does not use special assessments to impact the pattern of development within the County. Although the County is on the northwestern edge of the Research Triangle region of North Carolina, the County remains for the most part very rural in nature.

Spending

The fourth major power that has been delegated by the North Carolina General Assembly to local governments is the power to make expenditures in the public interest. Hazard mitigation principles should be made a routine part of all spending decisions made by a local government, including adoption of annual budgets and a capital improvement plan (CIP).

A CIP is a schedule for the provision of city or county services over a specified period of time. Capital programming, by itself, can be used as a growth management technique, with a view to hazard mitigation. By tentatively committing itself to a timetable for the provision of capital to extend services, a community can control growth to some extent especially in areas where the provision of on-site sewage disposal and water supply are unusually expensive.

In addition to formulating a timetable for the provision of services, a local community can regulate the extension of and access to services. A CIP that is coordinated with extension and access policies can provide a significant degree of control over the location and timing of growth. These tools can also influence the cost of growth. If the CIP is effective in directing growth away from environmentally sensitive or high hazard areas, for example, it can reduce public costs associated with degradation of the environment and damages to properties caused by natural hazards.

McDowell County

McDowell County is developing a capital improvements program (CIP) to plan for major capital expenditures through 2008. Several proposed CIP projects are related to hazard mitigation including: 1) an addition to EMS records (2004-2005 - $40,000); 2) acquisition of open space land (2005-06 - $100,000; 3) new roof for McDowell High School/emergency shelter (2006-2007 - $1,200,000); and 4) completion of new emergency communications center for E911 dispatch service (2003-05 - $100,000).

The County has also recently spent and been reimbursed by FEMA for major storm clean-up costs associated with two winter storms (December 2002 and February 2003). McDowell County received $195,426.46 in assistance from FEMA to remove storm debris from public properties. Ice accumulation on tree limbs was determined to be the main contributor to the storm debris removal costs.

E. Fiscal Capability

Beyond legal authority and political willpower, fiscal capability is a key component to effectively developing and implementing a hazard mitigation plan. In addition to local tax funds, non-profits and other non-governmental organizations are often interested in helping to implement hazard mitigation projects. Local governments can also apply for State and Federal funds to implement hazard mitigation initiatives. Appendix D lists state and federal sources for information and funding of hazard mitigation initiatives. The NC Emergency Management website at http://www.ncem.org/Mitigation/additional_funding.htm includes a more exhaustive list of over 300 state and federal funding sources.

In North Carolina, property taxes provide the primary source of revenue for counties and municipalities. These taxes are typically used primarily to finance services that must be available and delivered on a daily basis, such as police and fire emergency services, solid waste collection and disposal, street maintenance, etc. and, leaving very little, if any, for additional services and projects. Fortunately, State and Federal funds are available to local governments for the development and implementation of hazard mitigation programs. More detail about State and Federal programs and funds is included in Section III Plan Implementation.

Ability to Pay

In recognition of the disparate economic prosperity of the State's one hundred counties, the North Carolina Department of Commerce ranks counties in an economic tier system. The impetus for this system was the William S. Lee Quality Jobs and Business Expansion Act of 1996 (Lee Act) which provides for a sliding scale of state tax credits for economic investment. The Lee Act has become the State's main development tool in an effort to help smaller rural counties be more economically competitive. The tier ranking is also used by the State as a measure of an individual county's ability to pay when applying for state and federal grants.

The most economically distressed counties are ranked in Tier 1 and the most economically prosperous in Tier 5. The rankings are evaluated annually using three factors – population growth, unemployment rate, and per capita income. The 2003 NC Department of Commerce ranking places McDowell County in Tier 3.

F. Technical Capability

McDowell County has a wide variety of technical capabilities available to aid in hazard mitigation efforts. The County's most valuable technological resource is the knowledge accumulated by its personnel through years of experience. Experienced personnel and technical resources can help build a more resilient community by implementing better planning before the occurrence of a natural hazard, as well as better response during the event and recovery period.

Geographic Information Systems (GIS)

McDowell County is in the process of adopting GIS capability and hopes to have the system up and running by December 2006. More about the system will be included in the first update of the plan.

Law Enforcement

The Sheriffs Department is the principle law enforcement office in unincorporated McDowell County. The Sheriff's staff is charged with general enforcement of criminal law throughout the County, *outside the city limits of Marion and Old Fort.* The department employs 34 full-time sworn officers and 21 auxiliary officers. Also, there are 7 North Carolina State Troopers assigned to McDowell County. The Marion Police Department employs 21 sworn positions, 5 full-time civilian positions, and 10 reserve positions. The Old Fort Police Department employs 5 full time officers and 3 reserve/part-time officers.

Department of Emergency Management

This department is responsible for redevelopment and implementation of countywide comprehensive emergency programs, specifically in regards to providing guidelines to govern County reaction to both natural and man-made disasters. The department coordinates work with other governments, businesses, agencies, organizations, and volunteer groups. Fire protection is provided countywide by a total of 411 dedicated and well-trained volunteer firefighters in 11 different departments.

Department of Inspections

This department's major function is administration and enforcement of inspection laws, specifically the State building code. The department is charged with determining habitability of structures damaged by natural and man-made disasters.

Department of Emergency Medical Services

This department provides Advance Life Support, pre-hospital treatment and transport for patients with injuries and illnesses.

Department of Animal Control

This department is responsible for the care, custody and control of animals, which have been abandoned or are otherwise not in a caring and safe management situation.

Department of Emergency Communications

This department is primarily the Public Safety Answering Point for the countywide E-911 service. The department receives all emergency and non-emergency assistance calls from residents of the County and routes the calls to the appropriate response agency. The department is essential in coordinating County response to all emergencies.

NC Division of Forestry – NCDENR

This department is funded in part by McDowell County. The division is charged with forest protection and coordinates local departments in detecting, controlling and distinguishing forest fires in the County.

Department of Environmental Health

This department is responsible for the following state mandated areas: food, lodging and institutional sanitation, sub-surface waste water disposal and management, swimming pools and spas, communicable disease control, and solid waste disposal.

Department of Social Services

This department works closely with Emergency Management to provide shelters when local residents are threatened by storms and natural disasters.

G. Political Climate

McDowell County has experienced the devastating effects of natural hazards (i.e., recent hurricanes and ice storms). The citizens, property owners, business owners, and elected officials of the County are committed to implementing a hazard mitigation plan in order to reduce community vulnerability. The McDowell County Board of Commissioners, the professional staff and the citizens of the County are continually striving to make McDowell County a safer community in which to live, work and play. The County recognizes that implementation of a hazard mitigation plan is an essential component in helping to achieve these goals.

City of Marion Capability Assessment

Planning and Zoning	
Land use plan?	**Yes**
Hazard mitigation plan?	**No**
Stormwater Management Ordinance?	**No**
Zoning ordinance?	**Yes**
Subdivision ordinance?	**Yes**
Extra-Territorial Jurisdiction Area?	**No**

NFIP (National Flood Insurance Program) Info	
National Flood Insurance Program participation	**Yes, full participation**
Community Rating System Class	**10**
Number of policies currently in V-Zones	**0**
Number of policies currently in A-Zones	**5**
Total number of policies	**8**
Total dollar amount of insurance in force	**$2,336,000.00**
Total premiums paid by NFIP policy holders	**$8,502.00**
Total number of claims made	**0**
Total dollars paid	**$0.00**
FIRM (Fed. Insurance Rate Map) Initial Date	**7/15/1988**
NFIP Regular Entry Date	**5/1/1987**
NFIP Effective Date	**5/1/1987**

Town of Old Fort Capability Assessment

Planning and Zoning	
Land use plan?	**unknown**
Hazard mitigation plan?	**unknown**
Stormwater Management Ordinance?	**unknown**

Zoning ordinance?	**unknown**
Subdivision ordinance?	**unknown**
Extra-Territorial Jurisdiction Area?	**No**

NFIP (National Flood Insurance Program) Info	
National Flood Insurance Program participation	**Yes, full participation**
Community Rating System Class	**10**
Number of policies currently in V-Zones	**0**
Number of policies currently in A-Zones	**4**
Total number of policies	**11**
Total dollar amount of insurance in force	**$1,676,700.00**
Total premiums paid by NFIP policy holders	**$6,031.00**
Total number of claims made	**0**
Total dollars paid	**$0.00**
FIRM (Fed. Insurance Rate Map) Initial Date	**7/15/1988**
NFIP Regular Entry Date	**7/15/1988**
NFIP Effective Date	**7/15/1988**

RESOLUTION OF ADOPTION

PLANNING BOARD APPOINTMENTS: The City Manager presented Council with an e-mail from Planning Board members Gary Walker, stating that Mr. Walker wishes to resign as a Regular Member of the Planning Board; however, he would like to remain as an Alternate Member. The City Manager stated that staff had attempted unsuccessfully to obtain a resignation letter from Planning Board Regular Member Craig Orange, who has not attended a meeting in many months and who has apparently relocated. The City Manager presented recommendations from the Planning Board to fill the two vacant Regular Member slots and for various reappointments needed for Regular and Alternate Members.

The City Manager stressed that these positions need to be filled as soon as possible so that Planning Board/Board of Adjustment meetings can have a quorum.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to appoint Mr. Dudley Thompson as a Regular Member of the Planning Board, said term to expire June 30, 2009, to appoint current Alternate Member Ms. Joan Keuper as a Regular Member of the Planning Board, said term to expire June 30, 2010, to reappoint Ms. Glenys Gilbert as a Regular Member of the Planning Board, said term to expire June 30, 2010, to appoint Mr. Gary Walker as an Alternate Member of the Planning Board, said term to expire June 30, 2009 and to reappoint Ms. Connie Martin as an Alternate Member of the Planning Board, said term to expire on June 30, 2010.

APPROVE CONTRACT WITH CGI COMMUNICATIONS – FREE WEBSITE VIDEO STREAMING: The City Manager advised that the North Carolina League of Municipalities (NCLM) has endorsed CGI Communications to provide free video streaming on City websites. The City Manager presented a proposal from CGI to provide four videos for the City website, along with 15 pole banners with the City logo and website address. CGI will solicit sponsors for the banners for a cost of $445.00 per year. The banners would list the business names on them. CGI will be responsible for obtaining the sponsors and will ask for a letter of introduction from the Mayor and approval of an agreement. The contract would be for three years and be a $15,000 value.

Mayor Clark noted that the NCLM Board enthusiastically endorsed CGI after viewing samples of their product.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to approve the agreement with CGI Communications to provide the streaming videos for the City website and the pole banners, as described above.

DISCUSS CONCORD-KANNAPOLIS REQUEST FOR INTERBASIN TRANSFER: The City Manager advised that for months the City had been seeing information from the Lake James Environmental Association on the request by the cities of Concord and Kannapolis to remove 36 million gallons of water per day (mgd) from the Catawba River and to discharge the water into the Yadkin/PeeDee basin downstream. The City Manager stated that information has recently been received, demonstrating that this request could have significant impacts upstream, even as far as Lake James, potentially harming recreation and future withdrawals from Lake James.

Public Works Director/Engineer Richard McMillian gave a brief overview of what would happen if the interbasin transfer request is approved and outlined how the transfer could affect future efforts to take water out of Lake James or, in conjunction with other pending withdrawal requests, eventually forcing Duke Power to lower levels in Lake James to ensure a good supply of water downstream, and also affecting recreation and development around Lake James. The City Manager advised that many jurisdictions downstream, including Valdese, Burke County, Catawba County and now McDowell County, are taking positions opposing this request, along with the McDowell Chamber of Commerce and many local individuals.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Marion, Council voted unanimously for the City to go on record as opposing the interbasin transfer request by the Cities of Concord and Kannapolis and to send a letter to that effect to the State.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager reported that the Federal Surface Transportation Board approved the City's request to delay the abandonment of the old Peavine Rail Line by Norfolk Southern (NS) for 180 days to allow the City to negotiate the possible acquisition of this right of way. Preliminary contact is being made with NS about this matter. The City Manager advised that the Street Committee, Mayor Clark and he will be meeting with NS and the DOT Tail Division on August 8 to discuss conditions on the possible closing of the Clary Street railroad crossing, to determine how much DOT and NS will offer.

The City Manager highlighted upcoming events, including the North Carolina STEP Program Kickoff event on Friday evening, August 4 on the Courthouse Lawn, a Downtown Cleanup scheduled for Saturday, July 29 and National Night Out, scheduled to begin at 6:00 PM on Main Street on Tuesday, August 1.

The City Manager and Public Works Director/Engineer Richard McMillan reported that the Community Building Basement kitchen renovations are almost complete, that the painting of the outside of the north and west sides of the Community Building is scheduled to be contracted out and that benches are being ordered for the Community Building tennis and basketball courts.

BLUEGRASS CONCERTS: The City Manager stated that recent bluegrass concerts at the Marion Depot have been successful and that Mr. Gene Padgett, who has been coordinating the concerts with Marion Downtown Business Association Executive Director Freddie Killough, is requesting that weekly concerts be permitted at the Depot on Thursday evenings, beginning in August. The City Manager stated that no City employees would be present at these concerts and that the City sound system would not be used. The Depot calendar showed no rentals on Thursday evenings through the end of 2006, so there would be no loss to the City and essentially no cost.

A discussion followed. Councilman Owenby stated that he had attended the past two bluegrass concerts and that these events provide a type of music that appealed to a different age group than other downtown concerts.

Upon a motion by councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the request of Mr. Gene Padgett and to authorize as a Downtown Advisory Committee project weekly bluegrass concerts on Thursday nights at the Depot, with the understanding that neither the City sound system nor City personnel will be used at the concerts.

CLOSING COMMENTS:

Public Works Director Richard McMillan noted that State Street is scheduled to be closed to make sewer line repairs and that smoke testing of the sewer lines is scheduled to start on Monday.

Councilman Cuthbertson advised that the sidewalk on Rutherford Road has some uneven places, just south of Morgan Street. The City Manager directed McMillan to look at the damaged sections and to make the necessary repairs.

Councilman Owenby advised that he is getting complaints regarding street light outages and requested that the Police Department take special note of these outages and report them.

Councilman Edwards advised that the burned out house on Blue Ridge Street still looks bad and should be placed on top of the priority list. Councilman Edwards also noted that a vehicle has been placed for sale on Pulliam Street that looks out of place. The City Manager stated that Planning and Inspections staff were working on the condemnation of the burned house on Blue Ridge Street and to get the property mowed. City Planner Heather Cotton is looking into further Nuisance Ordinance violations at the property at Pulliam and Blue Ridge Streets, including the vehicle that is for sale on the street.

Councilman Martin commended City employees for the tremendous work that has been done with the renovations to the basement of the Community Building.

Fire Chief Jim Neal advised that the new fire truck is scheduled to be delivered in September.

Councilman Cuthbertson asked that review of the Dangerous Dog/Animal Ordinance be placed on the next agenda, since this ordinance was last discussed in late 2005.

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 the acquisition of real property.
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 was taken during the Closed Session.

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

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, August 1, 2006 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; Heather Cotton, City Planner; Richard McMillian, Public Works Director; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT:

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 - July18, 2006 Regular & Closed Session

B. Approval of Personnel Policy Amendment

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on February 21, 2006, is hereby amended as follows:

Section 1. That Article VII, Leaves of Absences is amended by deleting Section 3, Holiday-When Work is Required in its entirety and by replacing it with the following:

Section 3. Holiday-When Work Is Required

Employees required to perform work on regularly scheduled holidays may be granted "holiday compensatory time off" or paid at their hourly rate for the hours actually worked in addition to any holiday pay to which they may be entitled. "Holiday compensatory time" shall be granted whenever feasible and shall be taken within three (3) months from the time it is earned. "Holiday compensatory time", not taken within three (3) months will be paid out to the employee, unless an extension of time is specifically requested by the employee. An extension of time up to, but not exceeding twelve (12) months may be granted by the City Manager upon written request of an employee and recommendation of the Department Head. Such written request must be made before the actual pay-out for "holiday compensatory time" is made. Accumulated "holiday compensatory time" shall be used before accumulated vacation leave. Should an employee leave prior to being able to use the holiday, the employee will be paid for the holiday time not taken.

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 1st day of August 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

POLICY NUMBER: P-06-08-01-1

C. Approval of Tax Refund

Howard Lee & Joan T. Patrick - 2005 City of Marion property tax bill, in the amount of $49.47, due to a clerical error by McDowell County.

The value of said property located at 91Gilkey Street (PIN 1701.08-99-6993) after the revaluation in 2003 was $80,260. She was billed that value in 2003 and 2004. In 2005 the McDowell County Tax Department changed that value to $89,960. Mrs. Patrick did not realize the difference until she received and paid the 2006 tax bill from McDowell County.

A value of $9,700, at $0.51/$100 results in a total refund of $49.47.

INTRODUCTION OF NEW EMPLOYEES: Fire Chief Jim Neal introduced Mr. Ray McDaniel. Ray is replacing Mr. Durwood Creson as a paid firefighter. He is already trained and has been a volunteer with Marion over a year, and prior to that, he was with the Sugar Hill Fire Department.

The Mayor and Council welcomed Ray and wished for him a long tenure with the City of Marion.

CONSIDER ADOPTION OF ORDINANCE: The City Manager reported that the Street Committee had reviewed the parking on Yancy Street and West Hudgins Street in West Marion and had recommended prohibiting parking on the south side of Yancy Street and the east side of West Hudgins Street, due to the narrow width of both streets, which pose problems if vehicles are parked on both sides of the street.

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, 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
YANCY STREET (WM)	PARKING PROHIBITED	SOUTH SIDE, ENTIRE LENGTH OF STREEET
HUDGINS STREET (WEST)	PARKING PROHIBITED	EAST SIDE, ENTIRE LENGTH OF STREET

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of August, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-08-01-1

PUBLIC COMMENT PERIOD: There were no unscheduled guests at this meeting.

DISCUSS REQUEST BY MCDOWELL COUNTY – EASTFIELD WATER AND SEWER ISSUES: The City Manager presented Council with a letter from County Manager Chuck Abernathy, asking for the City to consider reducing impact/Cost Recovery Charges for water and sewer connections promised by the County in exchange for Eastfield project easements by one-half. The City's records show that the County had about 31 water and 95 sewer connections promised in exchange for easements. The City Manager stated that these numbers were verified by Assistant to the County Manager Ashley Wooten of the County, minus two water and one sewer certificates that have subsequently been requested by property owners, with values as follows:

31 Water Connections @ $1,424 each	$ 44,144
95 Sewer Connections @ $820 each	$ 77,900
Total:	$ 122,044

Less Taps (2 Water 1 Sewer)	$ 3,668
Total, including Connections Requested	$ 118,376

The City Manager advised that the City Utility Committee met on July 17 and followed up on the discussion held regarding this matter at the January City council Planning Session. The City Manager reported that the Utility Committee recommends that the City assume the County's liability for the water and sewer connections for 60 percent of the value of the connections, payable at $10,000 per year for as many years as it takes for the County to pay off the 60 percent amount. Based on the $122,044 figure shown above, 60 percent of the value of the connections totals $71,025.60. Therefore, the County would have to pay the City $10,000 per year for just over seven years.

A discussion followed.

Motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to approve the recommendation of the City Utility Committee for the City to assume the County's liability for the water and sewer connections for 60 percent of the value of the connections, payable at $10,000 per year for as many years as it takes for the County to pay off the 60 percent amount.

Councilman Owenby commended the Utility Committee for the work they have been doing with the County during the monthly joint meetings.

DISCUSS SCHEDULING OF PLANNING SESSION: The City Manager advised that in May, the idea of a Council Planning Session in late summer or early fall was discussed.

A brief discussion followed.

Council members agreed to look at their calendars and come to the next meeting prepared to schedule a date for the Planning Session.

REVIEW DISCUSS ANIMAL ORDINANCE: The City Manager advised that Councilman Cuthbertson had requested that the Animal Ordinance last discussed in November be placed back on the agenda. The City Manager presented a proposed revised Animal Ordinance, including recommendations made by the volunteer committee last year in relation to dangerous animals, with some staff suggested changes. The City Manager outlined the changes, including revisions made to designate Council as the Dangerous Animals Appeals Board and to establish a volunteer committee as an Advisory Board to Council.

A lengthy discussion followed. Councilman Cuthbertson noted that the ordinance is breaking new ground for the City, but that the City needs to start down the path of having more up to date provisions for dealing with dangerous animals. Councilman Little noted that the references to the advisory committee to City Council, as prescribed in the ordinance, needs to be changed from "Appeals Board" to "Advisory Board."

The City Manager requested that, given the change to the ordinance and the complexity of several provisions, that staff be given time to assess the administrative difficulty of individual requirements of the ordinance. After discussion, Council settled on the idea of making the ordinance effective in 90 days, to allow staff review and identification of any problems in the ordinance.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to approve the following Ordinance, contingent upon changing references to the advisory committee to City Council from "Appeals Board" to "Advisory Board", to become effective on November 1, 2006.

ORDINANCE
AMENDING CHAPTER 3
ANIMALS
MARION CITY CODE

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

Section 1. That Chapter 3, Animals, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 3 is amended by deleting Chapter 3, Animals, in its entirety and replacing it with the following:

Chapter 3 ANIMALS*

***Cross reference(s)**--Human and animal waste, § 9-4; location of animal pens, § 9-7; removal of dead animals, § 9-42; animals and chicken fights prohibited, § 11-10.

Sec. 3-1. Definitions.

The following words and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shelter means any premises designated by action of the city for the purposes of impounding and caring for any animal found running at large in violation of this chapter.

City animal control officer means the person designated by the city as its enforcement officer.

County animal warden means the person designated by the county as its enforcement officer.

Dangerous dog means a dog that:

1. Without provocation has killed or inflicted severe injury on a person; or
2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed under the definition of "potentially dangerous dog"; or
3. Is owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or
4. Has inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

At large means any dog or cat when it is off the property of its owner and not under physical control of a competent person.

Kennel means any person engaged in the commercial business of breeding, buying, selling or boarding five (5) or more dogs or cats.

Owner means any person that owns, keeps or harbors a dog or cat.

Owner's real property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or townhouse development.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Potentially dangerous dog means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

1. Inflicted an unprovoked bite on a person that resulted in medical attention; or
2. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or
3. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Restraint means a dog or cat that is:

(1) Controlled by a leash;

(2) Within a vehicle being driven or parked on the street and unable to bite or scratch persons outside the vehicle; or

(3) Within the property limits of its owner or keeper.

Severe injury means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery, hospitalization or medical attention.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

(Ord. of 2-4-86, § 8-2001)

Cross reference(s)--Definitions and rules of construction generally, § 1-3.

Sec. 3-2. Rabies vaccination required.

No person shall own, keep or harbor any dog or cat over the age of six (6) months within the city limits unless it has been vaccinated for rabies and the rabies vaccination is current, meaning that the animal has received its first rabies vaccination within the preceding 12 months or its second or subsequent rabies vaccination within the previous 36 months.

(Ord. of 2-4-86, § 8-2002)

State law reference(s)--Rabies, G.S. § 130A-184 et seq.

Sec. 3-3. Enforcement.

The provisions of this chapter shall be enforced by the designated city animal control officer or the police department or both, under the organizational arrangement deemed appropriate by the City Manager; provided that the City shall at all times maintain a person designated as animal control officer.

(Ord. of 2-4-86, § 8-2003)

Sec. 3-4. Restraint.

(a) The owner shall keep his dog or cat under restraint at all times and shall not permit the dog or cat to be at large.

(b) For a first violation of this Section, the owner of a dog or cat at large will receive a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code. In addition to the civil citation, the owner of the dog or cat at large shall be required to implant a microchip on the animal, for future identification purposes. The City Council may choose to waive the civil penalty, at its discretion, if proof is given through the filing of a civil citation appeal under Sec. 1-20 of the City Code that a microchip has been implanted on the animal.

(c) For a second violation of this Section, the owner of a dog or cat at large will receive a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code. In addition to the civil citation, the owner of the dog or cat at large shall be required to have the dog or cat spayed or neutered. The City Council may choose to waive the civil penalty, at its discretion, if proof is given through the filing of a civil citation appeal under Sec. 1-20 of the City Code that the animal has been spayed or neutered.

(Ord. of 2-4-86, § 8-2004)

State law reference(s)--Dogs running at large at night, G.S. § 67-12.

Sec. 3-4.1. Tethering of animals.

(a) At no time shall a dog or cat deemed dangerous or potentially dangerous be fastened, chained or tied on any property within the City Limits of the City of Marion.

(b) All dogs, cats, horses or other domesticated animals, except for those described in subsection (a) above, may be houses, fenced or tethered. All dogs, cats, horses or other domesticated animals that are tethered shall be tethered in such a manner as to prevent said animal from being within ten (10) feet of any public or private street, sidewalk or pedestrian walkway. All dogs, cats, horses or other domesticated animals shall be tethered at least five (5) feet from any property line not adjacent to a public or private street, sidewalk or pedestrian walkway. Said animals shall be tethered with a metal chain or cable of a size appropriate to the size of the animal and not harmful to the animal.

Sec. 3-4.2. City Council to serve as Dangerous Animals Appeals Board; Creation of Dangerous Animals Advisory Board.

In accordance with N.C.G.S. 67-4.1 (c), the Marion City Council shall constitute the Dangerous Animals Appeals Board. A Dangerous Animals Advisory Board is hereby created to advise City Council in their capacity as the Dangerous Animals Appeal Board. The Dangerous Animals Advisory Board shall consist of no fewer than three (3) and no more than five (5) members. The members of the Dangerous Animal Advisory Board shall be appointed for three (3) year terms by the City Council, shall be residents of McDowell County and shall have demonstrated knowledge about animals or training in veterinary medicine. The members of the Dangerous Animals Advisory Board shall serve without pay, but may be reimbursed for expenses incurred in the performance of their official duties, with the approval of the City Manager. A majority of the members of the Dangerous Animals Advisory Board shall constitute a quorum at any meeting or hearing.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-4.3. Determination of dangerous or potentially dangerous dog or cat; appeal.

(a) Upon receipt of a complaint or observation that a dog or cat may have exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog", as found in Section 3-1 of this Chapter, sufficient to designate such dog or cat as dangerous or potentially dangerous, the animal control officer shall investigate the specific charges. If the animal control officer determines that the dog or cat is dangerous or potentially dangerous, the owner of the dog or cat shall be notified in writing by certified mail, return receipt requested, or by personal service. The notice shall state that the owner's dog or cat has been determined by the City to be dangerous or potentially dangerous, list the reasons for the determination and list the steps that must be taken under this ordinance, including confinement requirements listed under Section 3-5, for the animal to remain in the City. The notice shall state that the owner will be required to implant a microchip in the animal for identification purposes and to have the animal spayed or neutered. Upon receipt of the notice of

determination, the owner may appeal the determination by filing a written appeal stating his or her objections to the determination with the City Manager within three (3) days. Upon receipt of the appeal, the City Manager or his designee shall schedule a hearing with the Dangerous Animal Advisory Board within a reasonable time. The Dangerous Animal Advisory Board shall be required to issue a decision recommending to the City Council the upholding or overturning of the determination of the animal control officer within thirty (30) days from the date the appeal is filed. The City Council shall then receive the recommendation of the Dangerous Animals Advisory Board and render a decision upholding or overturning the determination of the animal control officer within sixty (60) days after receiving said recommendation. Any appeal from the City Council shall be taken to Superior Court, in accordance with N.C.G.S. 67-4.1(c).

(b) Upon receipt of a complaint or observation that a dog or cat previously determined to be dangerous or potentially dangerous may have again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall investigate the charges. If the animal control officer determines that a dog or cat previously determined to be dangerous or potentially dangerous has again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall transfer and impound the animal at the shelter designated as the McDowell County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner, or if the owners can be contacted through the implanted microchip described in Section 3-4(b). The owner will not permitted to keep the animal within the City Limits of the City of Marion at any point in the future.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-5. Confinement of dangerous or potentially dangerous dog or cat; muzzles.

The owner of every dangerous or potentially dangerous dog or cat shall confine the animal within a secure building or secure enclosure and not take it out of the secure building or secure enclosure into a public domain unless it is securely muzzled with a wire or cage muzzle. Such secure building or secure enclosure must be locked with a childproof locking device, must be of a height appropriate for the size of the animal to keep the animal confined inside and must be constructed of a material sufficient to keep the animal restrained (screen doors, windows, porches and other screen materials are not deemed sufficient for purposes of this subsection). In addition, the owner must prominently display in public view on the property a sign stating "Beware of Dog".

(Ord. of 2-4-86, § 8-2005)

State law reference(s)--Confinement or leashing of vicious animals, G.S. § 130A-200; Dangerous Dogs, G.S. § 67-4.1 et seq..

Sec. 3-6. Complaint procedures and impoundment.

When the police department receives a complaint that a dog or cat is at large, the person making the complaint shall be asked for permission to locate an animal cage on their property. If permission is granted, city employees will place a baited animal cage on the property of the person making the complaint. When a dog or cat is caught in the cage, the animal will be transferred and impounded at the shelter designated as the McDowell County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner. If the complaining party refuses to allow the cage to be located on their property no further action will be taken unless the animal has attacked someone or appears to be dangerous, potentially dangerous or sick, in which case the police department will transport the animal to the McDowell County Animal Shelter. The owner of the animal may appeal the taking of the animal and the determination that the animal is dangerous, potentially dangerous or sick by filing a written appeal stating his or her objections to the taking of the animal and the determination that the animal is dangerous, potentially dangerous or sick with the City Manager within three (3) days. Upon receipt of the appeal, the City Manager or his designee shall schedule a hearing with the Dangerous Animal Advisory Board within a reasonable time. The Dangerous Animal Advisory Board shall be required to issue a decision recommending to the City Council the upholding or overturning of the determination of the animal control officer within thirty (30) days from the date the appeal is filed. The City Council shall then receive the recommendation of the Dangerous Animals Advisory Board and render a decision upholding or overturning the determination of the animal control officer within sixty (60) days after receiving said recommendation. Any appeal from the City Council shall be taken to Superior Court, in accordance with N.C.G.S. 67-4.1(c). Pending a final decision by the City Council, the City shall request the Animal Shelter not to euthanize the animal in question, on the condition that the owner of the animal agrees to pay any applicable impoundment fees charged by the McDowell County Animal Shelter. However, the City cannot provide a guarantee that the animal will not euthanized by the McDowell County Animal Shelter prior to the appeal being filed, or even after the appeal is filed, in the event that the McDowell County Animal Shelter does not comply with the request of the City not to euthanize the animal in question.

(Ord. of 2-4-86, § 8-2006)

Sec. 3-7. Redemption of impounded animals.

The owner may reclaim his impounded dog or cat when he complies with regulations established by the McDowell County Commissioners and City Ordinances as found in this Chapter and pays the necessary impoundment fees imposed by the county.

(Ord. of 2-4-86, § 8-2007)

Sec. 3-8. Barking dogs.

It shall be unlawful for any dog owner to keep or have within the city a dog that habitually or repeatedly barks in such a manner or to such extent that it is a public nuisance.

(Ord. of 2-4-86, § 8-2008)

Sec. 3-9. Investigation.

To discharge the duties imposed by this chapter and to enforce its provisions the city animal control officer, any agent of the city animal control officer or any police officer may obtain an administrative search warrant to enter any premises where a dog or cat is kept or harbored and may require the animal's owner to show proof the animal has a current rabies vaccination, as described in Section 3-2.

(Ord. of 2-4-86, § 8-2009)

State law reference(s)--Administrative search and inspection warrants, G.S. § 15-27.2.

Sec. 3-10. Interference with animal control officer.

No person shall interfere with, hinder, or molest any agent of the city animal control officer in performing any of his duties or seek to release any animal from the custody of the city animal control officer, his agents or the instrument of capture except as provided in this chapter.

(Ord. of 2-4-86, § 8-2010)

Sec. 3-11. Records.

(a) The police department shall keep or cause to be kept accurate and detailed records of the impoundment of all animals that come into its custody.

(b) The police department shall keep or cause to be kept accurate and detailed records of all bite cases reported and of the investigation of the bites.

(Ord. of 2-4-86, § 8-2011)

Sec. 3-12. Fowl running at large prohibited.

It shall be unlawful for any person to permit turkeys, geese, ducks, chickens, or other domestic fowl to run at large upon any land in the city.

(Ord. of 2-4-86, § 8-2012)

Sec. 3-13. Grazing prohibited.

No person shall permit any cattle, sheep or other animals to graze, or tie such animal up, on any vacant lot or within fifty (50) feet of any dwelling or street within the city.

(Ord. of 2-4-86, § 8-2013)

Sec. 3-14. Hitching animals.

No person shall hitch any horse or other animal to any of the trees, lampposts, electric lights, power, telephone or telegraph poles, mailboxes, wires or hydrant on any of the streets, sidewalks, squares or parks in the city.

(Ord. of 2-4-86, § 8-2014)

Sec. 3-15. Hogs prohibited.

It shall be unlawful for any person to keep a hog within the corporate limits of the city.

(Ord. of 2-4-86, § 8-2015)

Sec. 3-16. Restriction as to certain animals in public places.

No person shall permit his horse, mule, donkey, hog, sheep, goat, or cattle of any kind, to run at large in the streets, sidewalks, parks, squares or cemeteries of the city. Horses or mules which are being used for riding or driving may be fastened to hitching posts or blocks, but no person shall stake or otherwise fasten any such animal, for grazing purposes, in any of the streets, sidewalks, parks, squares, or cemeteries of the city, nor shall any person feed any such animal in any of the streets, sidewalks, parks or squares of the city.

(Ord. of 2-4-86, § 8-2016)

Cross reference(s)--Streets, sidewalks and other public places, Ch. 15.

Sec. 3-17. Cleanliness and location of animal enclosures.

(a) Every stable and place where cattle, horses, chickens, geese or other animals are kept, shall be maintained in a clean and healthy condition at all times. No person shall erect upon any lot any cow, horse, mule, sheep or goat stable or any coop or pen for the keeping of any chickens, geese, turkeys, ducks, or any other gallinaceous birds, within one hundred (100) feet of any street or dwelling.

(b) This section shall not apply to animals located within the city prior to the date of adoption of the ordinance from which this section derives. However, the number of animals shall not be increased nor shall the animals be replaced or relocated to some other property in violation of this section.

(Ord. of 2-4-86, § 8-2017)

Cross reference(s)--Health and sanitation, Ch. 9.

Sec. 3-18. Bird sanctuary; eradication of pests.

(a) The entire area embraced within the corporate limits of the city is hereby designated as a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, however, that if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the city council, then the city council may bring the matter to the attention of the state commissioner of agriculture or state pesticide board which shall make such disposition of the matter as may be appropriate pursuant to the provisions of G.S. section 113-300.2.

(Ord. of 2-4-86, § 8-2018)

State law reference(s)--Declaring wild animal or bird a pest, G.S. § 113-300.2; bird sanctuaries, G.S. § 160A-188.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 1st day of August, 2006.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-06-08-01-2

DISCUSSION – SAVE CHIMNEY ROCK RESOLUTION - SALE OF CHIMNEY ROCK PARK:
The City Manager presented Council with information sent to Mayor Clark, from the Mayor Proctor of Lake Lure, advising that Chimney Rock Park is now listed for sale with Sotheby's International Realty.

The State of North Carolina is also negotiating with the owners to purchase the park and if successful, make it the centerpiece of the new Hickory Nut Gorge State Park.

The City Manager stated that, with Chimney Rock Park now on the open market, the very real possibility exists of the park falling into the wrong hands. Mayor Proctor is urging cities to consider passing a resolution to do all that is possible and necessary to acquire chimney Rock Park and add that acreage to the planned Hickory Nut Gorge State Park.

A discussion followed. Councilman Edwards noted that tremendous development is taking place in the Lake Lure area and spilling over into southern McDowell County, making it likely that a developer would want to purchase Chimeny Rock Park if it is not preserved as a State Park.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

RESOLUTION

Whereas Chimney Rock Park, a 1,000 acre privately held natural preserve in Rutherford County, North Carolina, has been offered for sale, and

Whereas this extraordinary parcel has been well maintained and has benefited from, the sound ecological practices employed by the same family for 104 years, and

Whereas the Park is home to numerous state and federally listed rare species, and

Whereas the Park has contributed to the local and state economy by hosting 200,000 to 250,000 visitors annually, the great majority of those being out of area tourists, and

Whereas Chimney Rock Park is situated in Rutherford County which in 2005 had the third highest unemployment rate in North Carolina out of 100 counties (USDA Economic Research Service), and

Whereas Chimney Rock Park being operated as a tourist destination has traditionally employed 60 full and part-time individuals, and

Whereas Rutherford County ranked 26th in tourism impact out of the state's 100 counties generating tourism revenues of over 118 million dollars, and

Whereas Rutherford County tourism, greatly aided by tourism in the Chimney Rock/Lake Lure area, contributed state and local tax receipts in 2005 of $7.1 million and $3.75 million respectively (NC Department of Commerce), and

Whereas the citizens of Hickory Nut Gorge strongly support continuation of park presence and facilities in the gorge area, and

Whereas the Rutherford County Daily Courier has opined that "It would be a disaster unprecedented in Rutherford County to see all that the Park has become and all that it still might be relegated to our memories." (Daily Courier 7/19/2006), and

Whereas the Asheville Citizen-Times has stated "Losing Chimney Rock Park to private development would severely harm the economy of Hickory Nut Gorge and be a sad end to a remarkable legacy of family stewardship" (Citizen-Times 7/21/2006), and

Whereas the North Carolina Division of Parks and Recreation, the legislators of Rutherford County, the General Assembly and Governor Easley have shown the desire, foresight and commitment to establish a state park in Hickory Nut Gorge, and

Whereas the 1,000 acre Chimney Rock Park would be an addition of inestimable value to a new state park and such has been previously recognized by the North Carolina Division of Parks and Recreation and state officials, and

Now Therefore Be it Resolved that the City Council of the City of Marion does hereby strongly urge and encourage the State of North Carolina through its various agencies, divisions, and legislative bodies, to do all that is possible and necessary to acquire Chimney Rock Park and add that acreage to the planned Hickory Nut Gorge State Park.

Adopted this the 1st day of August, 2006

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-06-08-01-1

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

A meeting was held with DOT Officials regarding I-40 detour routes. The City Manager advised that City staff is working with DOT to find alternate routes other than downtown Marion and to handle such detours better. Mayor Clark noted that both DOT and the Highway Patrol need to provide more assistance to the

City in such situations than they have in the past.

Bids are being solicited for the South Garden Street parking lot paving and curb and gutter work and for the installation of speed humps on Fern Avenue, Morgan Street and South Garden Street.

The City Manager suggested that signage is needed on Logan Street side of the Community Building. By consensus, Council agreed to authorize the placement of such as sign, to compliment the red wood sign on the Main Street side of the Community Building.

The NC STEP Program kickoff is scheduled for Friday evening, August 4, on the Courthouse lawn.

The City Manager advised that National Night Out, which is coordinated by the Police Department, is taking place on Main Street this evening, with a tremendous crowd.

A Downtown cleanup was held this past Saturday and persons that participated will be invited to the next City Council Meeting for recognition.

The new Welcome to Marion signs have been installed. Some are slightly off line but will be altered by the manufacturer soon. The landscaping will be trimmed and cleaned around the signs.

RESOLUTION – CLEAN AIR: The City Manager advised that information was sent from a regional clean air group out of Boone asking local governments to adopt resolutions requesting Congress not to roll back Federal clean air protection laws and therefore put North Carolina, with its more stringent Clean Air laws, at a competitive disadvantage.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

CITY OF MARION
CLEAN AIR RESOLUTION

WHEREAS, clean air is vital to the health and well-being of all of North Carolina's citizens, especially our children and senior citizens:

WHEREAS, the natural beauty of our mountain, costal, and forested landscapes is a source of pride and inspiration to the citizens of North Carolina and millions of other Americans who visit our state every year:

WHEREAS, the health of our agriculture, forestry, and tourism industries as well as our recreational and commercial fisheries are important to the economy of North Carolina;

WHEREAS, air pollution degrades our scenery, harms our health, compromises our commercial and recreational fisheries, and damages our forest, creeks and farms;

WHEREAS, in 2002, North Carolina's citizens, business leaders, electric utilities and elected officials established a clear, bipartisan, and nearly unanimous agreement to improve our air quality by passing the Clean Smokestacks Act;

WHEREAS, this legislations will, be 2013, limit the harmful effects of air pollution from our coal-fired power plants by reducing emissions of nitrogen oxides and sulfur dioxides by roughly 78% and 73% respectively;

WHEREAS, a large portion of North Carolina's air pollution originates from facilities operated by utilities in neighboring states that are not subject to our Clean Smokestacks Act;

WHEREAS, bills may soon be considered by Congress that would relax utilities' requirements to reduce pollution that were set forth in the 1990 amendments to the federal Clean Air Act and that would also undermine
North Carolina's legal authority to seek reductions in pollution that originates in upwind states;

WHEREAS, relaxing the pollution standards for other states, particularly upwind states, only harms North

Carolina's citizens, businesses and electric utilities and could jeopardize the progress our own state in making toward improving the quality of North Carolina's air;

WHEREAS, all North Carolinians, including our elected members of Congress, should work together to uphold our Clean Smokestacks Act and reduce air pollution in our state;

THEREFORE, BE IT RESOLVED, that the City of Marion respectfully urges the honorable members of North Carolina's Congressional delegation to support the health, economy and environment our city and state by working to reduce pollution that originates beyond our state's borders. We urge support for national legislation that would reduce pollution as quickly and to a similar extent as is required by our own Clean Smokestacks Act. Please oppose any legislation that would weaken pollution standards for neighboring states, as set forth in the clean Air Act and its amendments of 1990, or that would undercut or delay North Carolina's authority to seek reductions in the portion of our pollution that originates in upwind states.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

Resolution Number: R-06-08-01-2

CLOSING COMMENTS:

Councilman Cuthbertson noted that repairs are being made on the sidewalk on South Main, as he had previously requested.

Mayor Clark noted that the Community Building Park is in need of some work, including a thorough cleaning, updated landscaping, work done to stopped up drains and weeding of mulch beds. The City Manager reported that he and Public Works Director Richard McMillan had looked at needed work in the park. The City Manager stated that many of the items would be addressed by City forces, with some items being undertaken by inmate labor which will be available to the City in early September.

Councilman Edwards noted that a City owned lot on Blue Ridge Street has poison growing on it and needs to be cleaned.

Councilman Cuthbertson asked about the status of the Interbasin Transfer (IBT) request of Concord and Kannapolis. Mayor Clark noted that the time for public comment has been extended until September 30. The City Manager stated that he had sent the letter to NCDENR, as directed by Council, opposing the IBT request.

Councilman Cuthbertson reported that property owners on Elliott Street near Shady Lane are in need of City water. A brief discussion was held on the request.

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 Regular Session on Tuesday evening, August 15, 2006 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, Billy Martin, Mike Edwards, and Cecil Owenby.

Mayor A. Everette Clark was not present for this meeting due to a meeting with the North Carolina Department of Commerce.

Mayor Pro Tem Steve Little presided over this meeting.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Heather Cotton, City Planner; Lieutenant Scott Spratt, MPD; Freddie Killough, DBA; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Girl Scout Troop 359; Boy Scout Troops 806 and 807; Ken Lail 136 Virginia Avenue, Marion, NC; Charles Thomas 188 California Avenue, Marion, NC; Dawn Norman and April Noles, MPD; Bill Pool 46 Sunland Drive, Marion, NC; Carroll Kanipe PO Box 1356 Marion, NC; Tyler Smith 63 Ashe Ridge Road West, Marion, NC; Keith and Daniel byrd 184 Ken Tom Road, Old Fort NC; John Walker 1901 Nix creek Road, Marion, NC; Nathan and Jonathan Poole 150 Baldwin Avenue, Marion, NC; David Monosso PO Box 328 Nebo, NC.

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 - August 1, 2006 Regular Meeting

B. Adopt Resolutions – Begin Condemnation Proceedings – Dilapidated Houses

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, said Ordinance was amended on the 4th day of April, 2006 to change the public officer designated to exercise the powers of said Ordinance;

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: 65 Ridge Street, Marion, McDowell County, North Carolina, Tax I.D. 1711.13-14-4666.

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, as amended on the 4th day of April, 2006, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein.

ADOPTED THIS the 15th day of August, 2006.

CITY OF MARION

Stephen R. Little, Mayor Pro Tem

ATTESTED BY:

J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-08-15-1



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, said Ordinance was amended on the 4th day of April, 2006 to change the public officer designated to exercise the powers of said Ordinance;

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: 161 Blue Ridge Street, Marion, McDowell County, North Carolina, Tax I.D. 1701.11-56-0334.

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, as amended on the 4th day of April, 2006, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein.

ADOPTED THIS the 15th day of August, 2006.

CITY OF MARION

Stephen R. Little, Mayor Pro Tem

ATTESTED BY:

J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-08-15-2



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, said Ordinance was amended on the 4th day of April, 2006 to change the public officer designated to exercise the powers of said Ordinance;

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: Yancy Street, West Marion, Marion, McDowell County, North Carolina, Tax I.D. 1701.14-33-9687.

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, as amended on the 4th day of April, 2006, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein.

ADOPTED THIS the 15th day of August, 2006.

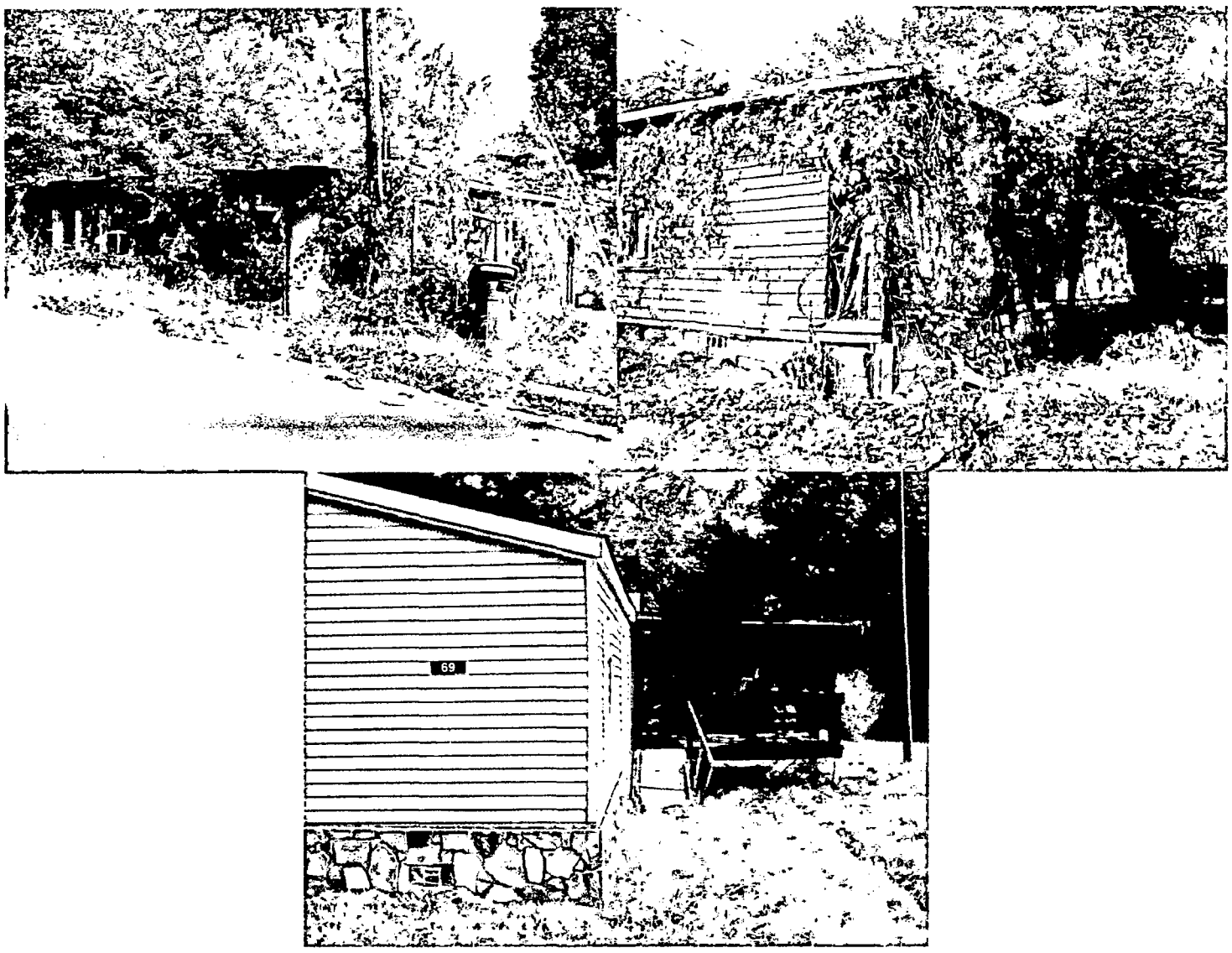
CITY OF MARION

Stephen R. Little, Mayor Pro Tem

ATTESTED BY:

J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-08-15-3



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, said Ordinance was amended on the 4th day of April, 2006 to change the public officer designated to exercise the powers of said Ordinance;

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: Yancey Street, Marion, McDowell County, North Carolina, Tax I.D. 1711.05-28-4571.

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, as amended on the 4th day of April, 2006, which governs hazardous abandoned structures, shall carry out the provisions and procedures contained therein.

ADOPTED THIS the 15th day of August, 2006.

CITY OF MARION

Stephen R. Little, Mayor Pro Tem

ATTESTED BY:

J. Robert Boyette, City Manager/City Clerk

Ordinance Number: O-06-08-15-4



C . Approve Waiver of Civil Citation:

Charles Thomas – 188 California Avenue – Noise Ordinance # - V 004403 in the amount of $100.00.

PRESENTATION OF CERTIFICATION – CITY PLANNER HEATHER COTTON: The City Manager presented City Planner Heather
Cotton with the American Institute of Certified Planner's (AICP) Certification.

The City Manager commended Ms. Cotton, advising that this is one of the highest achievements that can be obtained by a City Planner and requires intense study.

Mayor Pro Tem Steve Little and Council members congratulated Ms. Cotton.

INTRODUCTION OF NEW EMPLOYEES: Lt. Scott Spratt introduced new Officers Dawn Norman who has been with the City several years as Ordinance Enforcement Officer, R.J. Hink who is also an Eagle Scout, Eric Rodriguez, who is bilingual and April Noles who has taken Dawn Norman's position and is working out really well. All four of these officers come with a family history in law enforcement.

Mayor Pro Tem Little and Council Members thanked the Officers for coming and stated how proud they are our Police Department and noted that they are very supportive and no not try to micro manage their jobs.

The City Manager noted that this brings the department up to full staff.

RECOGNITION – BAXTER HEALTHCARE: The City Manager advised that officials from Baxter Healthcare were not available to attend this City Council Meeting.

Baxter's has graciously provided food and drink for over six hundred students at the City's Annual Open House for the past several years. A plaque was prepared and will be delivered to them with the following engraving:

PRESENTED TO

Baxter Healthcare

IN RECOGNITION OF CONTINUING
OUTSTANDING SERVICE AND DEDICATION

TO THE ANNUAL CITY OF MARION OPEN HOUSE
FOR ALL THIRD GRADERS IN MCDOWELL COUNTY

****

PRESENTED THIS 15TH DAY OF AUGUST 2006
BY
MAYOR A. EVERETTE CLARK and
THE MARION CITY COUNCIL

RECOGNITION – VOLUNTEERS ASSISTING WITH DOWNTOWN CLEANUP: The City Manager stated that the Downtown Cleanup held on Saturday, July 29th was a huge success, mainly due to the volunteers who helped.

These persons were invited to this City Council Meeting. The majority of persons helping with the clean-up were Boy and Girl Scout Members. There was three Troops represented at this meeting and were presented with certificates of Appreciation that read as follows:

CERTIFICATE OF APPRECIATION
PRESENTED TO
BOY and/or GIRL SCOUT TROOP NUMBER: 806, 807 and 359
FOR YOUR DEDICATED SUPPORT
IN THE CLEANUP PROJECT HELD SATURDAY, JULY 29, 2006
IN THE DOWNTOWN AREA
OF THE CITY OF MARION
PRESENTED THIS AUGUST 15, 2006
BY
MAYOR A. EVERETTE CLARK
AND THE MARION CITY COUNCIL

RECOGNITION – PEPSI – ASSISTANCE WITH N.C. STEP PROGRAM KICKOFF: The City Manager stated that he would also like to recognize Mr. Ronnie Pittman with Pepsi Cola for the contribution he made during the N.C. Step Program Kickoff held on August 4th. They supplied all the soft drinks for this event. Mr. Pittman was not present for this meeting. The certificate will be delivered to Mr. Pittman and read as follows:

CERTIFICATE OF APPRECIATION
PRESENTED TO
PEPSI-COLA BOTTLING COMPANY
FOR YOUR DONATION
OF PEPSI – COLA PRODUCTS
DURING THE N.C. STEP KICK-OFF CELEBRATION
HELD FRIDAY, AUGUST 4, 2006
IN THE CITY OF MARION
PRESENTED THIS AUGUST 15, 2006
BY
MAYOR A. EVERETTE CLARK
AND THE MARION CITY COUNCIL

PUBLIC COMMENT PERIOD – HOUSE BILL 635: There was one unscheduled item during this meeting.

Mr. Bill Pool and Mr. Carroll Canipe, representatives of the American Legion, appeared before Council requesting permission to have concessions at the Depot during the bluegrass activities being held on Thursday Nights. The purpose for this request is to raise money for the American Legion Post 56.

Mr. Owenby stated that land has been donated to the American Legion by McDowell County and they are looking for ways to make money to build a building on this property.

A discussion followed.

The City Manager noted that there would need to be several stipulations to this type of activity and listed them as follows:

- The American Legion will be allowed to sell only food and drink items that will generate income for the American Legion. No tobacco or alcohol products may be sold or consumed, nor may any items be sold that will generate income for private individuals or which advertise for private businesses or individuals.

- The American Legion will need to clean up after every use and remove all items that it brings to the Depot. The City cannot provide storage for the American Legion or any other group, since the premises must be kept free for any group or individual using the Depot. Clean up shall include wiping down the counter and sink, cleaning any food or drink spills in the kitchen and meeting room, sweeping and/or mopping as necessary, taking all trash from the kitchen and placing it in the outside trash cans on the west side of the Depot and cleaning any trash deposited in the outside area of the Depot.
- Any chairs or tables moved by the American Legion will need to be returned to the location in which they were found.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to allow Post 56 of the American Legion run concessions at the weekly bluegrass concerts being held at the Marion Depot, contingent upon following the guidelines set out by the City Manager as stated above.

CONSIDER REQUEST FROM MACA: The City Manager presented Council with a letter from Ms. Gina DeGrechie, Executive Director of the McDowell Arts council Association requesting assistance to complete the painting on the outside front façade of the building located at 50 South Main Street.

Total costs for the project was $4,200.00. Higgins Masonry and construction are currently completing the project.

Ms. Freddie Killough appeared before Council on behalf of MACA, and advised that Ms. DeGrechie has resigned and that Ms. Debra Lonon will be taking over as the new Director over MACA.

However, the façade has been completed with an eye towards historical detail and looks wonderful and ask is Council would consider a donation toward this cost.

Councilman Edwards stated that this project looks great and that he feels the City should assist with this cost.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Edwards Council voted unanimously to donate $2,500 toward this project.

CONSIDER REQUEST FROM MCDOWELL TECH: The City Manager presented Council with a letter from Ms. Juanita Doggett advising that McDowell Tech in association with Job Link and the Employment Security Commission will be hosting a JOB FAIR on August 30, 2006 for our local employers.

They have reserved the Marion Community Building Basement area for that date and would request that Council consider waiving the rental fee.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted unanimously for the City to pay the fees for the use of the Community Building Basement for the JOB FAIR.

The City Manager noted that the City gets lots of requests to use city properties for free and that he, when possible, try's to deter these requests before they reach Council.

DISCUSSION - CONSIDERATION - NEBO WATERLINE PROJECT: Mayor Pro Tem Little noted that at the Joint Utility Committee Meeting this morning County Manager Chuck Abernathy reported that construction is underway on the water extension to the Crescent Development in Nebo. He stated that tap and impact fees need to be set for this extension.

Mayor Clark was at that meeting and stated that Council would be considering the tap fee for Nebo at this City Council meeting.

Councilman Cuthbertson and Mayor Pro Tem Little stressed, at that meeting, to County Representatives the need for them to charge a high enough Cost Recovery charge to allow the county to save money for future

capital improvements. Mayor Pro Tem Little also advised of past city struggles with attracting customers on water lines outside the City, despite health and contamination reasons being cited by residents as the reason for extensions being made in the first place.

The County Manager reported, at that meeting, that the Community Development Block Grant had been awarded to allow the water extension to the Little Mountain Community on Highway 70 East to take place. This extension, along with the water extension to RDM on Harmony Grove Road, will take place after grant paperwork is completed.

The County Manager reported that he had spoken with many groups and developments in the Nebo area, including the Lake Club and others that want water to set the fees low initially to try to build a customer base. Mayor Clark inquired about the impact the additional extensions could have on the city's allocation for the Nebo water system, which the City Manager reported is $200,000 gallons per day according to the City/County Interlocal Agreement for Nebo. The County Manager stated that the engineer's projection do not show that the additional extensions would place the County in jeopardy of exceeding this allocation. Mayor Clark noted at that meeting that this allocation is important, since the City's primary obligation must be to provide service to properties inside the City Limits.

Chairman Webb was at that meeting and inquired about the inside vs. outside water tap fees, which the City Manager stated was $600 for inside customers and $900 for outside customers, and asked why there was a difference. The City Manager stated that the City's costs were higher to travel to outside locations and Mayor Clark noted that the city taxpayers are the owners of the water and sewer system and the one ultimately responsible for paying for improvements obligated by debt.

The City Manager reported that County Officials are asking for a reduction in the tap fee due to the fact that the County's contractor is installing water taps. The city Utility committee met on August 8th and recommends that Council reduce the tap fees for the three water extensions to be undertaken in the Nebo area by the county by 40 % or from $900 to $540 for a 3/4 " tap. The three areas will include an area along NC 126 to the new Crescent development, an area on Harmony Grove Road and the third will be US 70 East to the Little Mountain Community. No reduction is recommended for connections larger than ¾" and no discounts would be provided if City forces have to make a tap or if the City has to complete extra work due to a tap not being whole and complete. The 60% figure recommended to be charged is consistent with recent Council action for the Eastfield water and sewer connections. The recommendation further states that the reduced price would be good for time period of only six months after the date each water line extension is certified by the State, which will be a date that can be identified in writing. The recommendation would e not to offer any discount on tap fees for the crescent residential development and to further mandate that Crescent fund the installation of a master meter at the entrance of its development so that total water usage inside the development could be monitored.

The City Manager also noted that pursuant to the Nebo Interlocal Agreement with the County, the county may charge whatever impact/Cost Recovery Fee it chooses.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to approve the recommendation of the Utility Committee as stated above to include all three areas with a six month window.

CONSIDER CONTRACTS FOR SOUTH GARDEN STREET PARKING LOT PAVING AND CURB AND GUTTER, SPEED HUMP INSTALLATION, AND ROAD PAVING AT PRISON PUMP STATION: The City Manager advised that one bid had been received for the above listed projects as listed below in a report by Public Works Director Richard McMillan:

CITY OF MARION - PUBLIC WORKS DEPARTMENT *Bids received 03 AUG 06, 2:00 P*

South Garden Street Parking Lot, Speed Humps, & Driveway Paving

				City Estimate		APAC - Atlantic, Inc.	
Item	Discription	Quant.	Unit	Unit Price	Extension	Unit Price	Extension
1	Mobilization - Not to exceed 5% of Total Bid	1	LS	$5,000.00	$5,000.00	$3,465.00	$3,465.00
2	Removal of Ex.Conc. Curb, Apron & Pvmt. (for installation of 2'-6" conc. C&G)	170	LF	$7.00	$1,190.00	$9.73	$1,654.10
3	ABC/Misc. Stone - Compacted	100	TN	$20.00	$2,000.00	$23.89	$2,389.00
4	Catch Basin & Yard Inlet	2	EA	$1,500.00	$3,000.00	$1,632.00	$3,264.00
5	12-inch RCP & Connection	10	LF	$30.00	$300.00	$63.30	$633.00
6	2'-6" NCDOT Concrete C&G - Roadway	170	LF	$20.00	$3,400.00	$30.64	$5,208.80
7	1'-6" Concrete C&G - Parking Lot	435	LF	$17.00	$7,395.00	$21.85	$9,504.75
8	5-ft Conc. Sidewalk (4" thick)	50	SY	$30.00	$1,500.00	$50.29	$2,514.50
9	5-ft Conc. D/W Apron (6" thick)	30	SY	$45.00	$1,350.00	$74.91	$2,247.30
10	Scarify/Blend/Recompact Ex. ABC	1	LS	$2,500.00	$2,500.00	$2,229.00	$2,229.00
11	2-inch Bituminous Concrete Surface Course: Superpave S 9.5 or I-2	250	TN	$60.00	$15,000.00	$84.24	$21,060.00
12	Painting/Striping/Signs - per Plan & Spec.	1	LS	$5,000.00	$5,000.00	$3,086.00	$3,086.00
13	Survey/Layout	1	LS	$2,500.00	$2,500.00	$1,387.00	$1,387.00
14	Installation of Speed Humps (see Detail)	5	EA	$1,500.00	$7,500.00	$1,558.35	$7,791.75
15	Pave Driveway - 4872/4876 US 226 S: Prison Pump Station Site (approx 20 TN of S9.6 or I-2 @ 2" thick)	1	LS	$3,000.00	$3,000.00	$2,930.00	$2,930.00
			PROJECT TOTAL:		**$60,635.00**	**TOTAL**	**$69,364.20**
						Difference	*$8,729.20*
							114.40%

03 AUG 06
Richard D. McMillan, P.E.
Public Works Director/City Engineer

Councilman Owenby asked is APEC has experience putting in these speed humps.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, Council voted unanimously to accept the bid of $69,364.20 from APEC for the items stated above.

DISCUSS SCHEDULING OF PLANNING SESSION: The City Manager noted that he did not have Mayor Clark's Schedule. It was the consensus of Council to hold this discussion until the next meeting.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The N.C. Main Street Manager's meeting will be held from August 23-25 at the Depot. This will involve over thirty (30) people from across North Carolina.

The Isothermal rural Transportation Planning Organization (RPO) has been seeking planning projects to complete within our three county RPO region.

Councilman Cuthbertson advised that someone told him that they have seen measuring behind persons homes.

The General Assembly approved a bill that effectively ends local cable franchising as of January 1, 2007. The City consultant has stopped working on this matter. Our local franchise with Charter ends October 1, 2007.

City Staff has been working with DOT on ideas for I-40 Detour Routes.

N.C. STEP Program kickoff on Friday, August 4 was a tremendous success.

CLOSING COMMENTS:

Councilman Edwards asked if the Council's Lap Top Batteries were part of the ones being recalled. The City Manager advised that he would check on this recall.

Councilman Cuthbertson advised that there were weeds out of control on Willow Street.

Councilman Little advised that there is a problem with weeds at the Verizon Office on Garden Street.

Councilman Little also noted that the Noise Ordinance needs to be revisited by Council.

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

A. Everette Clark, Mayor
Stephen R. 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, September 5, 2006 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 7:30 PM, due to being involved with a court case out of town.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Richard McMillan, Public Works Director/Engineer; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Nicholas Padleckas, (Boy Scout Troop 805), PO Box 473, Marion, NC; Melody Henry, PO Box 473 Marion, NC; Joe Sephus and Barbara Conley PO Box 871, Marion, NC; Paul Lingerfelt, Bostic Street, Marion, NC; Jeff and Gwen Conley 1000 West Henderson, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN BILLY MARTIN: Councilman Billy Martin selected the Citizen of the Month for September 2006 and noted that he was proud to present and introduce

JEFFREY KEITH CONLEY

Mr. Conley is the son of Mr. and Mrs. Joe Sephus Conley of Marion. He is married to Ms. Gwendolyn Miller Conley and they have two sons.

Mr. Conley graduated from McDowell High School in 1976. He was a member of the McDowell High School basketball team that made it all the way to the state finals that year.

Mr. Conley attended Surry Community College from 1976-1978. He worked at Drexel furniture from 1996 until it closed and is currently employed at Collins & Aikman in Old Fort.

Mr. Conley attends Mt. Moriah Missionary Baptist Church where he serves as the Associate Pastor. Mr. Conley is a devoted family man, a hard worker, a good role-model in his church and community, always willing to help other and has sincere affection and concern for young people. Mr. Conley is a man who can be counted on when the chips are down.

Mayor Clark, Council Members, family and friends all had kind words to share about Mr. Conley.

RECOGNITION – BOY SCOUT TROOP 805: Mayor Clark recognized Nicholas Padleckas, a Boy Scout, working toward an Eagle Scout Badge. Nicholas is with Troop 805.

Nicholas described the Eagle Scout Project he recently finished, which involved upgrading and painting the dugouts and bases at West McDowell Junior High School.

Present with Nicholas was his mother, Ms. Melody Henry.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council presented voted to add item D to this consent agenda and to approve it as follows:

A. Approval of Minutes - August 15, 2006 Regular Session
B. Adopt Conflict of Interest Policy

CITY OF MARION
CONFLICT OF INTEREST POLICY

Conflict of Interest Defined:
A conflict of interest is defined as an actual or perceived interest by a (staff member/City Council Member) in an action that results in, or has the appearance of resulting in, personal, organizational, or professional

gain. A conflict of interest occurs when an employee/Council member has a direct or fiduciary interest in another relationship. A conflict of interest could include:

- Ownership with a member of the City Council or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Employment of or by a member of the City Council or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Contractual relationship with a member of the City Council or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Creditor or debtor to a member of the City Council or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Consultative or consumer relationship with a member of the City Council or an employee where one or the other has supervisory authority over the other or with a client who receives services.

The definition of conflict or interest includes any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group. An example, for instance, might involve a person who is an employee and a Council member, or a person who is an employee and who hires family members as consultants.

Employee Responsibilities:
It is in the best interest of the City, individual staff, and Council members to strengthen trust and confidence in each other, to expedite resolution of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict or interest.

Employees are to avoid any conflict of interest, even the appearance of a conflict of interest. This organization serves the community as a whole rather than only serving a special interest group.

The appearance of a conflict of interest can cause embarrassment to the organization and jeopardize the credibility of the organization. Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to an employee's supervisor immediately.

Employees are to maintain independence and objectivity with clients, the community, and organization. Employees are called to maintain a sense of fairness, civility, ethics and personal integrity even though law, regulation, or custom does not require them.

Acceptance of Gifts:
Employees, members of employee's immediate family, and members of the City Council are prohibited from accepting gifts, money or gratuities from the following:

a. Persons receiving benefits or services from the organization;
b. Any person or organization performing or seeking to perform services under contract with the organization; and
c. Persons who are otherwise in a position to benefit from the action of any employee of the organization.

Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If the employee is acting in any official capacity, honoraria received by an employee in connection with activities relating to employment with the City are to be paid to the City.

Adopted by the Marion City Council this the 5th day of September, 2006.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager

Policy Number: P-06-09-05-1

C. Approve Reimbursement to YMCA
Reimburse the irrigation tap fee paid $1,100, minus material cost for a 2" meter/radio transmitter plus a $50 inspection fee.

D. Parking Citation: Waive the $10.00 penalty for ticket # P001323, as requested by Westmoreland Funeral Home, for a parking ticket written to the Pastor of First Baptist Church during a funeral service.

PUBLIC COMMENT PERIOD: Mayor Clark recognized Mr. Paul Lingerfelt of Bostic Street, who advised that he had several concerns in his neighborhood since recently being annexed.

Mr. Lingerfelt advised that he needs a street light near his residence on Bostic Street. The City Manager advised that Street Lights have been placed on every other pole, in accordance with City Policy. Mr. Lingerfelt stated that the poles are too far apart on his street. The City Manager directed Public Works Director/Engineer Richard McMillan to meet with Mr. Lingerfelt and determine if another street light was needed on Bostic Street.

Mr. Lingerfelt also advised of a property with large amounts of trash at the intersection of Bostic and Yancey Street. The City Manager advised that the City is already working with property owners on this issue and that Council started the condemnation process on this property at their last meeting.

Mr. Lingerfelt also asked for dog cages to be set in his yard. Police Chief Mika Elliott advised Mr. Lingerfelt to contact the Public Works Department regarding having these cages set.

Mr. Lingerfelt also reported a culvert under Bostic Street that a neighboring property owner has raised, thereby not allowing water to flow through the pipe. Mr. McMillan stated that he would look at this problem and report it if necessary to the North Carolina Department of Transportation, since Bostic Street is a State maintained road.

DISCUSS AMENDMENTS TO CIVIL PENALTY ORDINANCE: The City Manager stated that at the August 15th City Council Meeting, it was suggested that the Civil Penalty Ordinance be reviewed, to allow for more frequent citations to be issued for certain violations such as Noise Ordinance violations.

The City Manager stated that a draft of an amended Ordinance has been forwarded to the City Attorney for review and will be presented to Council for consideration, hopefully in October.

REVIEW IRRIGATION TAP CHARGES: The City Manager stated that the recent request from the YMCA for an irrigation water tap brought to light the fact that the City Water and Sewer Fee Schedule does not clearly indicate in which category irrigation taps should fall: in regular taps or fire protection/sprinkler taps. The City Manager stated that he and Public Works Director/Engineer Richard McMillan had reviewed the fee schedule and would recommend that irrigation taps be charged as normal water taps, with applicable tap fees and Cost Recovery Fees being applied, instead of as fire protection/sprinkler taps.

Public Works Director Richard McMillan advised that when you talk about fire protection, you have to have the water capacity to serve this type line. However, an irrigation tap is a luxury and that in a water shortage or crisis, this type of tap could be cut off, thus conserving water. Mr. McMillan stated that irrigation itself puts a tremendous capacity demand on a water system and that many cities are therefore charging a higher rate for irrigation than other taps.

Councilman Edwards arrived during the discussion of this item at 7:30 P.M.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to direct the City Manager to draft an ordinance making the necessary changes to the Water and Sewer Rate/Connection Fee Ordinance to treat irrigation taps as normal water taps and to bring said ordinance back to the next City Council Meeting.

SELECT VOTING DELEGATE/ALTERNATE FOR N.C. LEAGUE OF MUNICIPALITIES CONFERENCE: The City Manager noted that a City voting delegate and alternate needs to be selected for the N.C. League of Municipalities Conference, scheduled to be held October 15th - 17th in Greensboro.

Both Mayor Clark and the City Manager will be attending this conference.

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to appoint Mayor Clark as the Voting Delegate and the City Manager as the Alternate.

DOWNTOWN ADVISORY COMMITTEE APPOINTMENT: The City Manager advised that Ms. Gina DeGrechie has asked to be allowed to step down from her Downtown Advisory Committee voting member slot and to be replaced by the new MACA Director, Ms. Deborah Lonon.

A brief discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Little, Council voted unanimously to appoint Ms. Deborah Lonon to fill the unexpired term of Ms. Gina DeGrechie on the Downtown Advisory Committee, said term to expire June 30, 2008.

The Advisory Board will be as follows:

Regular Members: (Nine Positions)

Carol Price	Term Expires June 30, 2007
Mike Rabb	Term Expires June 30, 2007
Dean Kanipe	Term Expires June 30, 2007
Deborah Lonon	Term Expires June 30, 2008
Harold Walker	Term Expires June 30, 2008
Cindy Ruel	Term Expires June 30, 2008
Denise Buck	Term Expires June 30, 2009
Chad Toney	Term Expires June 30, 2009
Bobbie Young	Term Expires June 30, 2009

Ex-Officio Members

Mayor Everette Clark
Bob Boyette, City Manager
Freddie Killough, Executive Director, Marion Downtown Business Association
Ashley Wooten, Assistant to the County Manager
Rod Birdsong, Executive Director, McDowell Chamber of Commerce

Staff

Heather Cotton, City Planner

DISCUSS SCHEDULING OF PLANNING SESSION: Council agreed by consensus to schedule a Planning Session on October 24, 2006 at 6:00 P.M. at City Hall.

CITIZEN COMPLAINT – MS. VERNICE FRANCIS: Ms. Vernice Francis arrived during this meeting and asked to speak to Council. She advised that she noticed a circus is setting up on property owned by a private citizen beside the Ingles Shopping Center on West Henderson Street.

She stated that she had several concerns about this type of function being held so close to a residential area and to food establishments. Ms. Frances especially noted her concerns about the disposal of human and animal waste.

A discussion followed.

It was the consensus of Council to direct the City Manager to look further into how temporary uses are treated in the Zoning Ordinance and to ensure that compliance with basic fire and building code and health and safety regulations is ensured.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager noted that he would be attending North Carolina Rural Center Training in Raleigh from September 12-14 and would therefore need to prepare the September 19 Council meeting agenda earlier than usual.

The City Manager reported that the Water Plant was recently inspected and given a favorable inspection. The City Manager stated that Mr. Ray McCall with the State commended the work of Water Plant Superintendent Steve Miller and stated that the plant was in the best shape he had seen it in for many years.

Mayor Clark and the City Manager will be attending the Public Hearing on the proposed Concord-Kannapolis Interbasin (IBT) Transfer in Valdese on Thursday, September 7, 2006. Council directed the City Manager to present the City's opposition to the IBT.

The City Manager reported that a request has been made from a tennis player to reinstall the access gate between the tennis and basketball courts, to make retrieval of errant tennis balls easier. Councilman Edwards stated several reasons why this fence should not be placed back, with the foremost reason being to prevent basketball players from walking across the tennis courts to access the basketball court. No direction was given by Council to change the current tennis court design.

The City Manager reported that painting of the north and west sides of the Community Building by a painting contractor would soon take place and that benches would soon be placed at the basketball and tennis courts in the Community Building Park. The inmates will be in this week to clean the Community Building Park grounds.

Richard McMillan reported that APAC will begin work on the curb and gutter installation, followed by paving, at the South Garden Street parking lot next Monday. The parking lot is scheduled to be closed during this work for four to five weeks. APAC will also install speed humps and complete paving at the Prison Pump Station on Highway 226 South.

Mayor Clark advised that a good meeting was held with Norfolk Southern Railway and the DOT Rail Division on August 8. The Norfolk Southern consultant will soon forward a proposal to the City for review, to include concessions to be made by the Railroad and DOT in exchange for the closing of the Clay Street crossing.

Councilman Martin stated that the Garden Street crossing is in poor condition and needs repair as part of this process. The City Manager stated that both the Railroad and DOT appeared willing to significantly improve this crossing in the near future, in conjunction with needed signal improvements. Mr. McMillan noted that the loaded concrete trucks are responsible for most of the damage at this crossing.

CLOSING COMMENTS:

Councilman Martin advised that since DOT had rejected the City's request for a traffic signal at West Henderson and Wilhemenia Streets, that perhaps a caution light should be sought. Councilman Owenby stated that the City should not give up on the traffic signal. Mayor Clark suggested that another meeting be sought with DOT about this matter.

Councilman Edwards advised that he had been contacted about problems with the concessions at the Depot bluegrass concerts. The City Manager stated that he had attempted to work through any concerns expressed by the concert organizer and that things appeared to be fine for the moment, but that this satisfaction was subject to change.

Councilman Little advised that coming onto South Garden Street from Spring Street is slightly off and needs to be adjusted.

Councilman Cuthbertson advised that he has seen Duke Power out working to repair street lights. The City Manager gave a brief report on improvements made to the street light outage identification and reporting process. Councilman Little noted that a street light in front of his office is still not working properly. The Police Chief stated that he would report this light again.

Councilman Owenby advised that the holly trees on Main Street are scraping cars. He stated that he realizes that the Downtown Streetscape Plan will address this problem eventually; however, he would suggest that the Street Committee look at this problem. A meeting will be scheduled to look at the trees.

CLOSED SESSION – UNDER N.C.G.S. 143-318.11 (a)(5) TO DISCUSS MATTERS INVOLVING THE ACQUISITION OF REAL PROPERTY: 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)(5) to discuss matters involving the acquisition of real property.

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 was taken in Closed Session.

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, September 19, 2006 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 being involved in a court case out of town.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Heather Cotton, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Mary Smith McDowell County Health Department, 408 Spaulding Road, 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 - September 5, 2006 Regular and Closed Session

B. Approve Auction List:

	Qty	Model/Brand	Serial #	Funds
Camera Kodak	1			City
Cameras Polaroid	3	With carry case		City
CB Antenna	1			City
Computer	1	Dell	Cx69108	City
Computer	1	AMP Duron	No Serial	City
Computer	1	AMP Duron	No Serial	City
Computer	1	Gateway	24878431	City
Computer	1	Gateway	2400800	City
Computer	1	Gateway	15408336	City
Computer	1	Gateway	1540345	City
Computer	1	Gateway	25681377	City
Computer	1	E3600	25681372	City
Computer	1	Micron		City
Computer Battery Back-up	1			City
Computer cables & adapters	1	Box of Misc		City
Computer Dock Station	1	In-Car	4656	City
Computer Dock Station	1	In-Car	2935	City
Computer Empty Towner	1			City
Computer Empty Towner	1			City
Computer keyboards & Mouse	1	Box of Misc		City
Computer Monitors	1	17 " Dell	Locator	City
Computer Monitors	1	17 " View Sonic	23X013804240	City
Computer Monitors	1	17" Dell	M770	City
Computer Monitors	1	17" Dell		City
Computer Monitors	1	17"	D010105254	City
Computer Monitors	1	17"	W500609	City
Computer Monitors	1	17"	01780R	City
Computer Monitors	1	14" Aopen		City
Computer Monitors	1	14"		City
Computer Processor	1	Ulrank		City
Computer Wall Mounts	2			City
Ethernet Card Bus	3			City
Flash Light	3	Mag Lights		City
Metal	1	Box of Misc Metal		City
Microwave	1	Emerson		School Board
Plastic Case	1	Black		City
Printer	1	HP		City
Printer	1	Lexmark	13075705397	School Board
Recorder, Cassette	1	GE		City
Reel to Reel Tapes	20	Dictaphone Brand		City
	1	Barracat	S-45025959	City

Scanner				
Security Cage	1	In-Car		City
Shredder	1			City
Spot Lights	3	With cig power cords		City
TV.	1	Magnavox		School Board
Traffic Counter w/ hose	1			City
Video Dual Player	1	Wizard		School Board
Video Player	1	Magnavox		School Board
Refrigerator	1	small		City
Vehicle	1	1999 Ford Crown	2FAFP71W6XX191443	City
Vehicle	1	1995 Chev Caprice	1G1BL52W8SR147513	City
Vehicle	1	2002 Chev Impala	2G1WF55K529255812	City
Vehicle	1	1997 Chev Cavalier	1GAJC1245VM135288	City

ITEM	QTY	SERIAL#	SOURCE
XEROX 6018 MEMORYWRITER TYPEWRITER	1		WH
BOX OF METAL WASHERS	1		WH
HANGING SCALE WITH TRAY	1		WH
MULTITECH MULTIMUX STATISTICAL MULTIPLEXER	1	54512	WH
TRANSLUCENT BLUE COVER	1		WH
VARIOUS HARDWARE/MOUNTING BRACKETS	1		WH
HP DESKJET 940C PRINTER	1	MX1956F18R	WH
SHARP COMPET VX 1652A ADDING MACHINE	1	3C012467	WH
HP DESKJET 694C	1	US84S1DOR7	WH
HP DESKJET 720C	1	US88E17016	WH
SCOTCH DESKTOP ORGANIZER W/TAPE DISPENSER	1		WH
MOTORASER ELECTRIC ERASER	1		ADMIN
DRUMMOND WALL MOUNT AIR FRESHENER DISPENSER	2		WH
PLASTIC 5-1/4 FLOPPY DISK HOLDER	1		WH
METAL PUSH BROOM	1		WH
ACROPRINT TIME CLOCK	1	20453JF	WH
JAMES RIVER FOLDED PAPER TOWEL DISPENSER	4		WH
ROYAL SE5000 C TYPEWRITER	1	47185807	WH
IRON-CRETE PATCHING COMPOUND PARTS A & B	2		WH
DRUMMOND NIX BIOLOGICAL ODOR CONTROL	2		WH
UNDER DESK MOUNTED MOUSE PAD	2		WH
HANDI CLEAN FOAMING COIL CLEANER	7		WH
DRUMMOND KIBOSH WASP KILLER	1		WH
DRUMMOND MIRAGE GLASS CLEANER	3		WH
DRUMMOND ESCORT METAL POLISH	1		WH
DRUMMOND SOVEREIGN ALL DUTY EMULSIFIER	1		WH
AIR FILTER 12X12X1	24		001-074
ALL STAR JAVELIN 12 VACUUM CLEANER	1	L42001562	ADMIN
BATES NUMBERING MACHINE STAMP	1		ADMIN
MOTOROLA PAGER W/CHARGER	1		ADMIN
AS-898 PC SPEAKERS	1		ADMIN
TYPESET/FONT BALLS	1		ADMIN
BELKIN USB HUB	1		ADMIN
QUALCOMM CELLPHONE W/CHARGER	1		ADMIN
DOSKOGIL CASE FOR LABELMAKER	1		ADMIN
IBM 1299095 RIBBON	2		ADMIN
COAXIAL CABLE	1		ADMIN
9PIN CABLE	2		ADMIN
25PIN PRINTER CABLE	3		ADMIN
FAUX LEATHER SATCHEL	1		ADMIN
ADJUSTABLE FOOTREST	1		WH
11X17 CANARY PAPER REAM	8		011-307
4x6 FILE GUIDES A-Z	6		011-602
PERFORMAX BLACK RIBBON CARTRIDGE	9		011-013
NUKOTE BLACK CART	25		011-010
OKIDATA 590 RIBBON	12		011-023
OKIDATA MICROLINE RIBBON	13		011-021
EPSON RIBBON 8750B	5		011-017
11X17 WHITE PAPER REAM	28		011-303

LABELS 4X1 BOX OF 10,000			
14X11 POST BINDER	6		011-050
MEMWRITER CORRECTION TAPE	24		011-002
NUKOTE TYPEWRITER RIBBON	5		ISF
MONITER STAND	1		ADMIN
5-1/4 DISK STORAGE UNIT W/DIVIDERS	1		ADMIN
ACCO NO.324 PAPER FASTENERS	1		ADMIN
9X13 BUSNIESS CHECK BINDER	1		ADMIN
TAPE DISPENSER	1		ADMIN
BUSINESS CARD FILE	1		PURCH
PC SPEAKERS	1		ADMIN
14-7/8X11 INDEX TAB DIVIDERS	1		ADMIN
COMPOST BINS	54		002-009
EMERSON MICROWAVE	1	0434182	PURCH
ELECTRIC PENCIL SHARPENER	1	03052112	PURCH
SOAP DISPENSER	1		WH
15" WINDSHIELD WIPER PAIR REFILL	11		ISF
14-7/8X11 BINDER	8		WH
KEYBOARD TEMPLATE FOR WORDPERFECT 5.1	4		WH
QUICK REFERENCE GUIDE WORDPERFECT 5.1	1		WH
FACTORY RADIO ASTRO VAN	1		PURCH
KONICA TONER 1290	4		WH
COPY HOLDER	1		WH
MOUSE W/SERIAL PORT	1		WH
PRINTER 25PIN CABLE	1		WH
CISCO 700 ROUTER/ETHERNET HUB	1		WH
PRINTER ATTACHMENTS & METAL RACKS	1		PURCH
NO SMOKING DESK SIGN	1		WH
PLASTIC VALVES, RUBBER WASHERS, CAN SPOUTS & STEMS	1		WH
DOOR STOP	1		WH
BOX OF WHITE BOTTLE LIDS	1		WH
BOX OF BOTTLE SPRAYERS	1		WH
BOX OF CLOTH RUBBER COATED GLOVES	1		WH
HEC 250BR COMPUTER POWER SUPPLY 250W	1		WH
CLASS 2 TRANSFORMER 12V DC	1		WH
HOOVER TYPE D VACUUM BAGS	2		PURCH
DIRT DEVIL UPRIGHT BELTS	2		PURCH
DIRT DEVIL BROOMVAC BELTS	1		PURCH
COMPUTER SERIAL CORD	1		WH
9PIN MALE TO SERIAL FEMALE ADAPTER	1		WH
SHARP COMPET QS-2770A ADDING MACHINE	1	5D00440Y	WH
HOOVER POWERMAX II VACUUM	1	080000124404	PURCH

Auction List - Public Works Administration:

Fax machine – Hewlett Packard – Model 920 – MY9BQE110C – (1)
Typewriter – AEG Olympia – Startype 130 – (1)
Vacuum – Hoover Wind Tunnel – bagless – Mach 4.3 – Serial # 09000024246 - (1)
Printer – Hewlett Packard – Deskjet 712C – MX95C1TOYG C-5894B – (1)
Glare screen for computer – 3M – Af100L – (1)
Adding machine – Sharp – Compet – VX-2652B – (1)
Answering machine – Panasonic – Digital – messaging machine –
KX – TM150B25AXB192437 – (1)

Auction List - Warehouse

		Fixed Asset Numbers
Dishes from Community Building (9 Boxes)		
Coffee Pot 12 to 42 cups		
Computer Wires (1 box)		
Computer SN: OL210900264		G3630
Monitor SN: 3892A050		G3673
Key Board		
Computer HSI KINGSPAO		00165
Computer		E2894
Printer		E2875
Printer		E2876
Fax		E2874
Typewriter 630 memory		
Key Board H0011275805		G3703
Key Board TCK3C05990		00133
Scanner for Computer SN: MX87A227MC		

Pitney Bowes SN: 23288
Desk (City Hall (Ann's)
Desk (City Hall)
Outside Benches (4)
File Search Micro Fish
Jacket Loader Micro Fish
Nikkormat Camera Lenses
Sink (from Depot)
Engineering Letter Set
Roller Desk Chairs (4)
Task Stool Chair (2)
Gas Heaters from Community Building (2)
Paper Towel Holder
Toilet Paper Holders (3)
Mirror
Barrel Rack
Table (sides fold down)
Large Table
Backup 3645 SN: B9
Large Bird Picture
Parking Traffic Stops

C. Approve Revised Water Connection Fee – Nebo:

Pursuant to agreement with McDowell County, a revised Nebo water extension tap fee in the amount of $300 was approved, subject to the following conditions:

(1) That tap fees for ¾" residential water connections for the water extensions along NC 126 to the Crescent Development, along Harmony Grove Road and along US 70 East to the Little Mountain Community be reduced to $300. The reduction shall apply for a period of six months after each line segment is certified and approved to be put into service. After the six month period, the applicable City of Marion outside tap fees shall be charged.

(2) The reduced tap fees listed in item 1 above shall not apply to the Crescent Development or to any line extensions not constructed by the County's contractor. Any connections within the Crescent Development or constructed by private developers shall be charged the applicable City of Marion outside tap fee.

(3) The reduced tap fees listed in item 1 above shall not apply to any water connection above ¾" size or to any taps for which the City has to complete extra work due to the tap not being whole and complete.

(4) Crescent Resources shall be required to install, at their expense, a master meter at the entrance of their proposed development so that water usage of said development can be monitored.

D. Approve Budget Ordinance Amendments:

CITY OF MARION, NORTH CAROLINA
2007-2007 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 2006-06 as adopted by the Marion City Council on the 20th day of June, 2006 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Fire Department, Account Number 10-530-1400, Travel and Training is increased from $6,000 to $22,800.

b. General Fund Expenditures, Police Department, Account Number 10-510-7400, Capital Outlay is increased from $71,700 to $144,200.

c. General Fund Expenditures, Inspections Department, Account Number 10-500-0400, Professional Services is increased from $4,000 to $14,000.

d. General Fund Expenditures, Police Department, Account Number 10-510-4200, Law Enforcement Equipment Grant Expense is increased from $-0- to $17,972.

e. General Fund Expenditures, Police Department, Account Number 10-510-1600, Maintenance – Equipment is decreased from $15,000 to $6,000.

f. General Fund Expenditures, Police Department, Account Number 10-510-3300, National Night Out Supplies is increased from $-0- to $4,150.

g. General Fund Revenues, Account Number 10-342-1300, National Night Out Revenue is increased from $-0- to $3,070.

h. General Fund Revenues, Account Number 10-334-1100, Law Enforcement Equipment Grant is increased from $-0- to $9,000.

i. General Fund Revenues, Account Number 10-340-0500, Cable TV Revenues is increased from $45,000 to $70,000.

j. General Fund Revenues, Account Number 10-334-1500, Bullet Proof Vest Grant is increased from $-0- to $1,000.

k. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is increased from $718,138 to $792,490.

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 September 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O–06–09–19–01

E. Adopt Amended Water and Sewer Rate/Connection Fee 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:	**$1.70 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $23.85 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.60**	**$26.50**
Master Meter Rate	**$1.70 per 1,000 Gallons, plus $7.63 Service Charge per Month**	**$4.25 per 1,000 Gallons, plus $19.08 Service Charge per month**

Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.90**	**$22.25**		
	INSIDE CITY	**OUTSIDE CITY**		
Sewer Rates:	**$1.70 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $23.85 Service Charge per month**		
Minimum Rate for	**2,000 gallons or less**		**$10.60**	**$26.50**
Master Meter Rate	**$1.70 per 1,000 Gallons, plus $7.63 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $19.08 Service Charge per month**		
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.90**	**$22.25**		
	INSIDE CITY	**OUTSIDE CITY**		
Sewer Rates for Private Wells	**$2.44 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$6.10 per 1,000 Gallons, plus $23.85 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 $7.63 for water and $7.63 for sewer in the City, and $19.08 for water and $19.08 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 $26.50 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 $10.60 per month per residential unit shall be charged for sewer service.

Customers with approved irrigation taps shall not be charged for sewer service, as long as said irrigation system is not connected in any part to the City Sewer system.

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 Charges listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

The Charges listed above shall apply to taps purchased for irrigation purposes.

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	$ 60.00

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 average 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
CUT – OFF FEES:		
1 - 3 OCCURANCES	$ 15.00	$ 15.00
4 - 10 OCCURANCES	$ 25.00	$ 25.00
OVER 10 OCCURANCES	$ 50.00	$ 50.00
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 37.50
TEMPORARY SERVICE (SEVEN OR LESS DAYS)	$ 15.00 PLUS ACTUAL WATER USAGE	$ 37.50 PLUS ACTUAL WATER USAGE
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
METER TAMPERING:		
1ST OFFENSE	$ 100.00	$ 100.00
2ND OFFENSE	$ 200.00	$ 200.00
3RD AND SUBSEQUENT OFFENSES	$ 500.00	$ 500.00
RETURNED 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	$ 25.00	$ 25.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on June 20th, 2006 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 19th day of September, 2006.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-09-19-2

F. Approve Extension of Cable Franchise with Charter Communications through December 31, 2006

RESOLUTION EXTENDING CHARTER CABLE TV FRANCHISE AGREEMENT UNTIL MIDNIGHT DECEMBER 31, 2006

WHEREAS, On September 6, 1996 the City Council for the City of Marion, NC by Resolution granted a ten year Franchise Agreement (Agreement) to Intermedia partners; and

WHEREAS, the City Council for the City of Marion, NC, by Resolution, ultimately granted a transfer of said Agreement to Charter Communications, Inc. to operate a cable television system in the City; and

WHEREAS, the current Agreement expired on August 31, 2006; and

WHEREAS, Section 4 (b) of said Agreement states that it shall be unlawful for any person to construct, operate or maintain a Cable Communications System in the City unless such person shall have first obtained and shall currently hold a valid Agreement; and

WHEREAS, Section 11 of said Agreement states that Franchisee shall at all times during the life of this Agreement be subject to the lawful exercise of the police power of the City...and shall comply with any and all ordinances which the City has adopted or shall adopt; and

WHEREAS, Section 13 (f) of said Agreement states "Upon either the expiration or revocation of this Agreement the City may contract with the Franchisee to grant the right to continue to operate the Cable Communications System under the applicable terms and conditions of this Agreement for a period of six (6) months from the date of such expiration"; and

WHEREAS, the State of North Carolina will commence collecting and distributing franchise fees on January 1, 2007; and

WHEREAS, the City intends to continue collecting franchise fees from Charter Communications as prescribed in the Franchise Agreement until such time as the State of North Carolina commences collecting and distributing franchise fees on January 1, 2007.

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

1. That Charter's Franchise Agreement for the City shall be extended for one hundred and twenty-two (122) days from August 31, 2006, until midnight, December 31, 2006.
2. This extension of time shall not operate to modify, revoke or terminate any other rights previously granted in the original franchise agreement, with the exception of Item 1 above.
3. That this resolution shall be effective upon its adoption.

ADOPTED by the City Council of the City of Marion this the 19th day of September, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

APPROVED AS TO FORM:

City Attorney

ACCEPTED AND AGREED TO BY:

ATTEST **CHARTER COMMUNICATIONS INC.**

NOTICES

Vice President and General Manager
Charter Communications
PO Box 367
Simpsonville, SC 29681

with copies to: Charter Communications ,12405 Powerscourt Drive, St. Louis, MO 63131
Attn: Corporate Vice President Government Affairs
RESOLUTION NUMBER: R-06-09-19-1

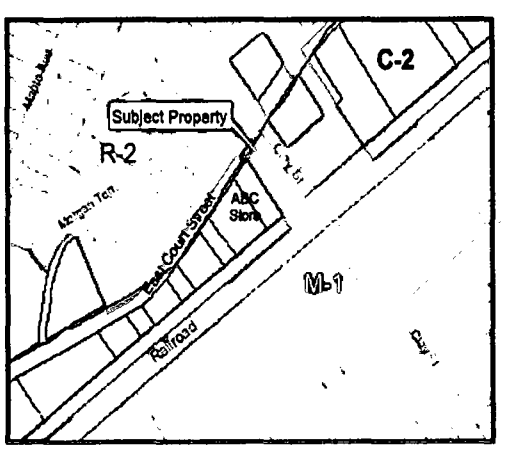
PUBLIC HEARING – REZONING – EAST COURT STREET: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton appeared before Council and advised that a petition was submitted by Joyce P. Wright to rezone property located at 520 East Court Street from the R-2 General Residential Zoning District to the C-2 General Commercial Zoning District.

Ms. Cotton reported that Ms. Wright is requesting an amendment to the Official Zoning Map to increase the sale value of the property. The general area in which this property is located has a mixture of existing residential and commercial uses including a large volume of auto related businesses. At the August 3rd Planning Board meeting, Ms. Cotton stated that she requested that the rezoning petition be tabled until further analysis of the area could be completed.

Ms. Cotton advised that she presented findings as a result of the land use analysis at the September 7, 2006 Planning Board meeting. The Planning Board discussed the findings and cited concerns that there was no intended commercial use for the property and questioned how the City wanted to see future growth occur. The Planning Board concluded that a petition to rezone the property could not be recommended due to the uncertainty of the intended commercial use and further concluded that with the City's current efforts to update the comprehensive plan that careful consideration of land use decisions should be made based on policies and data that provide clear direction on future growth.

It was the recommendation of the Planning Board to deny this request with a 4-0 vote at the duly noticed public hearing held September 7, 2006.



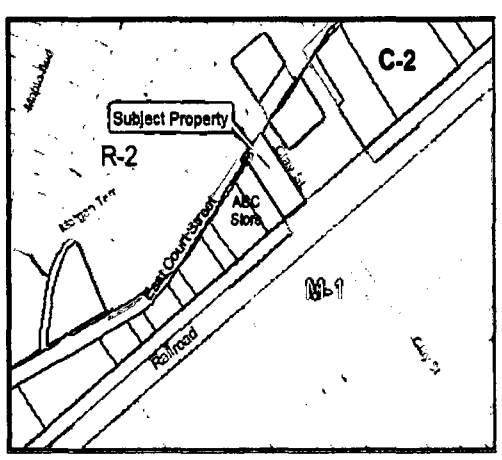


Figure One: Current Zoning District Figure Two: Proposed Zoning District

Mayor Clark asked what the person making this request wanted the property to be rezoned to. Ms. Cotton advised that the request was to rezone the property from R-2 General Residential to C-2 General Business.

Mayor Clark noted that the majority of the area on East Court Street is zoned Commercial and stated that he could not support denying Ms. Wright the ability to market her property as commercial.

Councilman Little stated that there had been very few times he has went against a recommendation of the Planning Board, however, he would be hard pressed to see this as a continued residential site and feels the owner should be granted the request.

Councilman Martin stated that he saw no problem with granting this request.

The City Manager advised that, even if the applicant had a proposed use, Council could not add any conditions to a rezoning to ensure that the proposed use would occur.

A discussion followed.

Mayor Clark closed the Public Hearing

Councilman Little stated that he understands the thought process used by the Planning Board, however, he would make a motion with the highest level of appreciation and respect for the Planning Board to respectfully decline to follow their recommendation. Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following ordinance to approve the request of Ms. Joyce P. Wright to rezone property located at 520 East Court Street from the R-2 General Residential Zoning District to the C-2 General Business Zoning District:

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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of Joyce P. Wright for property with the Parcel Identification Number 1701.08-88-9517 from R-2 General Residential to the C-2 General Commercial Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on September 07, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 19th day of September 2006.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-06-09-19-3

PUBLIC APPEARANCE – McDOWELL TRAILS ASSOCIATION CATAWBA RIVER GREENWAY UPDATE/REQUEST: Ms. Mary Smith appeared before Council on behalf of the McDowell Trails Association to provide an update on the Catawba River Greenway project. Ms. Smith advised that the initial feasibility study for the greenway, to be completed by McGill Associates, was beginning, with funding provided by the City and the McDowell Chamber of Commerce. Ms. Smith stated that the MTA was now working on a grant application for the next phases of the project, to possibly include surveying, design drawings and land easement negotiations with the property owner. The grant application will be made to the Blue Ridge National Heritage Area (BRNHA). A maximum of $50,000 can be requested through this grant; however, Ms. Smith reported that the MTA's request would likely be lower since any grant funds received would need to be matched. Ms. Smith stated that BRNHA grants funds are distributed on a reimbursement basis and that her employer, the Rutherford-McDowell-Polk Health District, has agreed to front the costs for the next phase of the project, subject to grant reimbursement.

Ms. Smith stated that community fundraising will soon be pursued and added that the MTA currently has over 100 members. Ms. Smith reported that the MTA will need letters of support to be included in the grants.

Councilman Owenby noted that it seems the MTA is headed in the right direction. He asked if the Phillips family had signed off on using their property for the greenway. Ms. Smith stated that the group had a verbal agreement with the Phillips family, but that Byron Phillips wanted to determine exactly where the greenway would go and how much property would be used before providing anything in writing.

Councilman Owenby stated that he would like to see something a written commitment from the property owner before the City commits to additional money for this project.

Mayor Clark noted that he and the City Manager had spoken to Byron and Van Phillips about the greenway project and that both appeared to be on board with this project.

PUBLIC COMMENT PERIOD:

Mayor Clark recognized Mr. Arthur Guffey, who was present to address Council.

Mr. Guffey appeared before Council to protest a civil citation he had received for outdoor display of appliances on his property on Baldwin Avenue. Mr. Guffey noted that he had put up a privacy fence to accommodate the City and that now he has been cited with appliances being placed out front of his business need to be moved.

Mr. Guffey stated that Lowe's and Spencers Hardware all have appliances and other items in front of their businesses and asked want the difference was in them and him.

The City Manager stated that the difference was that he is in a different zoning district, the B-1 district, that prohibits outside storage, unlike the C-2 zoning district. Several complaints have been made regarding the volume of appliances being placed in front of this business. City Planner Heather Cotton provided details on the enforcement effort.

Mr. Guffey stated that he would like to appeal this citation to Council.

Mayor Clark stated that there was a process to go through for such an appeal. Councilman Little noted that the appeal needs to be in writing, and then the process will begin. The City Manager added that appeals of zoning violations are heard by the Board of Adjustment.

Mr. Guffey asked Council members their opinion of his property. Councilman Cuthbertson stated that he thought this matter had been previously dealt with and that Mr. Guffey was in compliance. Councilman Martin and Little stated that they saw no problem with Mr. Guffey's current level of compliance.

The City Manager advised that he had understood that, based on the language of the B-1 district prohibiting outside storage, the City was working to clean up Mr. Guffey's recurring violation. The City Manager suggested that, if Council was satisfied with Mr. Guffey's current level of compliance and did not wish for further enforcement action to be taken, he would recommend that City staff work with Mr. Guffey on a zoning amendment to make what Mr. Guffey's current level of outside display legal.

After brief discussion, Council advised Mr. Guffey to work with City staff to draft a Zoning Amendment and to appeal his civil citation to the Board of Adjustment.

DISCUSS DISPOSAL OF CITY PROPERTY – PARK AVENUE: The City Manager advised that with the recent demolition of the house at 232 Park Avenue, the property can now be disposed of by the City. The City has incurred a total of $17,997.18 in expenses to acquire and clear this property.

The City Manager stated that State Law authorizes three methods for cities to dispose of real property (unless it is transferred to another unit of government of a non-profit, in which case a gift or private sale is permitted): sale by sealed bid, negotiated offer and upset bid and public auction. The City Manager stated that, based on the City's prior experience, negotiated offer and upset bid would be the most effective method to dispose of the property.

The possibility of setting a minimum price on the property, to ensure that the City recovered all expenses, was discussed. Mayor Clark stated that the property would likely not bring enough money to pay all expenses.

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 negotiate the sale of this property through the negotiated offer and upset bid process.

APPROVE AMENDED CITY EMERGENCY OPERATIONS PLAN:

The City Manager advised the Federal Government is requiring all Sate and local governments to adopt the National Incident Management System (NIMS) in their emergency plans. NIMS also carries some training

requirements, which the City is in the process of completing. The City Manager briefly described proposed changes to the City Emergency Operations Plan.

A discussion followed.

Upon a Motion by Councilman Martin, seconded by Councilman Owenby, those members of Council present voted to adopt the Emergency Operations Plan, with additions underlined 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 be a multi-hazard plan and 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.

The plan is consistent with and incorporates principles of the National Incident Management System (NIMS), as required by the Federal Government.

Adopted by City Council this the 19th day of September, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Policy Number: P-06-09-19-1

INTRODUCTION
EMERGENCY OPERATIONS PLAN
CITY OF MARION, NORTH CAROLINA

Plan Summary

The Marion Emergency Operations Plan establishes a comprehensive framework of policy and guidance for multi-hazard preparedness, response, recovery, and mitigation operations. The plan details authorities and responsibilities of each of the City's departments during a storm/emergency event. The plan describes a system for the effective use of the City's resources necessary to preserve the health, safety, and welfare of those persons affected during various emergencies. The plan also serves as the foundation for the maintenance of detailed standing operating procedures to implement City response and recovery activities efficiently and effectively.

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. The plan will be used to train and educate the City's staff about what will be expected of them before, during, and after a major storm event in Marion. The staff will be able to use this plan as a step-by-step guide in preparing for, responding to, and recovering from these events. All town staff should review this plan and the McDowell County Emergency Operations Plan on a regular basis to become familiar with these plans.

Scope

This plan is designed to address major storm events that could adversely affect the City. The plan applies to each of the City's departments. Each function is assigned to a City department, which has been selected based on that department's authorities, resources, and capabilities in a particular functional area. It describes the fundamental policies, strategies, and general concept of operations to be used in control of the storm/emergency from its onset through the post disaster phase.

Plan Maintenance

It shall be the responsibility of the City Manager or his/her designee to coordinate periodic review and update of this plan. In addition to this periodic review, the plan should be reviewed after the occurrence of any event where the plan or a portion thereof has been activated.

Geographic/Demographic Profile

The City of Marion is located in the foothills of the Blue Ridge Mountains of Western North Carolina. It is a small community centrally located in McDowell County and serves as the county seat. Marion is approximately 4.7 square miles in size and is bounded by the Catawba River to its north and the US Interstate 40 corridor to its south. The City is situated at the crossroads of three other major transportation routes including US Highway 70, US Highway 221 and US Highway 226 that serve as corridors between the Mountain Region and Piedmont Region.

The state's largest city, Charlotte, is approximately 96 miles to the east, and two other large urban centers, Asheville and Hickory, are both within 40 miles of Marion.

Based on figures from the NC Office of State Budget and Management, Marion had a population of 6,289 in 2005 representing a growth of 27 percent since the last decennial census. According to the 2000 Census, Marion had a population of 4,943, which comprised of 2,146 households and 1,283 families residing within the city. The median age was 40 and the population under the age of 18 as well as those 65 years of age or older each represented 21 percent of the population. Marion's growth within the last five years can largely be attributed to the physical expansion of Marion's municipal boundaries as a result of annexation.

Land Use

The pattern of development in Marion is that typical of rural small towns, with a mixture of residential, commercial, industrial and institutional land uses. The City is comprised of distinct residential neighborhoods, a central business district, highway commercial areas, a hospital/institutional area and isolated industrial and institutional sites. The City is characterized by medium to high densities, with limited vacant land remaining that is suitable for development.

Hazard Analysis

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.

The occurrence of any one or more of the emergency/disaster events previously listed could impact the City of Marion severely, and include several of the following consequences:

- Loss of electrical power
- Severance of road/highway network
- Necessity for mass care and feeding operations
- Evacuation of people from the City
- Need for debris clearance
- Multiple injuries and fatalities
- Drastic increase in media attention
- Damage to the communications network
- Economic impact
- Need for official public information and rumor control
- Need for State or Federal assistance
- Need to evacuate City resources
- Re-entry of essential personnel and equipment
- Re-entry of the public
- Damage to vital records
- Need for damage assessment
- Need for auxiliary power
- Contamination of private wells
- Over taxing local resources
- Need for additional staffing
- Loss of or damage to facilities vital to maintaining essential services
- Adverse environmental impacts
- Need to effectively manage reconstruction
- Coordination of staged resources
- Damage to historical sites
- Isolation of population
- Destruction of parts or all of the City

The severity of problems resulting from a storm/emergency event will depend on factors such as time of occurrence, severity of impact, existing weather conditions, area demographics, and nature of building construction. Collateral events such as fire, floods, and hazardous materials incidents will also increase the impact on the community, multiply property losses, and hinder the immediate emergency response effort.

It is necessary for the City to plan for and to carry out disaster response and short-term recovery operations utilizing local resources; however, it is likely that outside assistance would be necessary in most major disaster situations affecting the City.

Officials of the City are aware of the possible occurrence of a storm/emergency event and they have acknowledged their responsibilities in the execution of this plan and will fulfill these responsibilities as needed.

Plan Activation

The City of Marion Emergency Operations Plan will be activated when a storm/emergency event has occurred or is imminent. The City Manager will be responsible for plan activation. Once the plan has been activated, all City personnel will be responsible for reporting to their assigned base of operations and beginning their pre-event roles and responsibilities as laid out in the plan if such preparations have not already begun.

This plan does not account for every possibility that may arise during a storm/emergency event. The level of activation of this plan will depend on the magnitude of the situation. Employees should use their judgment when following the guidelines laid out in this plan. Employees will be expected to fill whatever role is needed of them if this plan is activated. Once this plan is activated by the City Manager all approved leave time, training, and travel is rescinded.

Local Preparedness

Coordination with the State and Other Local Governments

The City of Marion has entered into the North Carolina State Mutual Aid Agreement, which will allow Marion to receive aid from other participants in this agreement during emergency situations. The City of Marion, through its Police and Fire Departments, also has in place mutual aid agreement with other units of government and volunteer fire departments in McDowell County and surrounding counties.

These agreements will provide resources that the City will depend on during a storm/emergency event. The City recognizes that the State has emergency resources and expertise beyond the capabilities of local government. These resources can and will be used to relieve emergency or disaster related problems. Federal agency resources and expertise can be mobilized to augment local and state efforts in relieving emergency or disaster related problems that are beyond the capabilities of both state and local governments.

In order to better coordinate with Federal, State, and other local governments, the City hereby establishes the National Incident Management System (NIMS) as the City standard for incident management.

City staff will be required to complete the required NIMS and Incident Command System (ICS) training by Federally established deadlines. A list of the training that will be completed by position is included in the appendix.

CITY OF MARION
EMERGENCY OPERATIONS PLAN
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APPENDIX A NIMS COMPLIANCE

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 through a Joint Information System and Joint Information Center in conjunction with McDowell County Emergency Management. This duty shall also include 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:

Policy and General Direction:	Mayor/City Council
Chief Administrative Officer:	City Manager
Disaster Coordinators:	Police Chief
	Fire Chief
	Public Works Director
Water Plant Superintendent	
	Wastewater Treatment Superintendent
	Rescue Squad Chief
	County Emergency Management Director
Financial Coordinator:	Finance Director

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
Patrol Lieutenant

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
Assistant Fire Chief

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: Public Works Director
Street Superintendent
Utility Maintenance Superintendent
Water Plant Superintendent
Wastewater Treatment Superintendent
Sanitation Superintendent

ALERTING & MOBILIZATION:
Alerting Telephone or pager by Police Department

Mobilization: EOC, or Public Works facility, Water Plant or Wastewater Plant, 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
Rescue Squad Chief

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 EMEREGENCY RESPONSE TEAM (CERT)

MISSION(S)

PRIMARY: Search and Rescue and Traffic Control.
SECONDARY: Evacuation Operations and other assigned duties.

LEADERSHIP:

Police Chief
Patrol Lieutenant

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
Assistant Superintendents

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

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: District Manager
Local Supervisors

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

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

Richard McMillan	Public Works Director/ Engineer	(M) 442-6986
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
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
Ray McDaniel	Lieutenant	(H)

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

Steps the City's Emergency Management Coordinator Needs to Take at the Beginning of Each Hurricane Season (July):

1. **Review Emergency Plan for correctness and advise City Council of any recommended revisions.**
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.**
7. **Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.**

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.**
9. **Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.**

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.**
8. **Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.**

Strike Expected

1. **Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.**
   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. Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.
2. Dispatch the damage assessment team as quickly as conditions permit.
3. Working with the EOC control group, determine the plan to establish access to hospital and other public service facilities.
4. Organize the search teams necessary to enter damaged homes and buildings to look for victims.
5. 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.
6. 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

Steps the City's Emergency Management Staff Needs to Take at the Beginning of Each Winter Season (late November)

1. Review Emergency Plan for correctness and advise City Council of any recommended revisions.
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
6. Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.

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.
7. Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.

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.
7. Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.

Strike Expected

1. Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings. 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. Advise Mayor/City Council of situation and obtain any necessary policy direction, including scheduling any necessary emergency meetings.
2. Dispatch the damage assessment team as quickly as conditions permit.
3. Working with the EOC control group, determine the plan to establish access to hospital and other public service facilities.
4. Organize the search teams necessary to enter damaged homes and buildings to look for victims.
5. 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.
6. 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.

APPENDIX A

NIMS Compliance Training

The City of Marion has adopted the National Incident Management System (NIMS) in dealing with all emergency situations. In order to ensure that City staff members are familiar with the principles of NIMS, City staff will be required to complete the following training courses as outlined below. All training for current City staff must be completed as soon as possible, by September 30, 2006 if at all possible. All new hires will be required to complete the training courses listed for their respective position within 60 days of their date of hire.

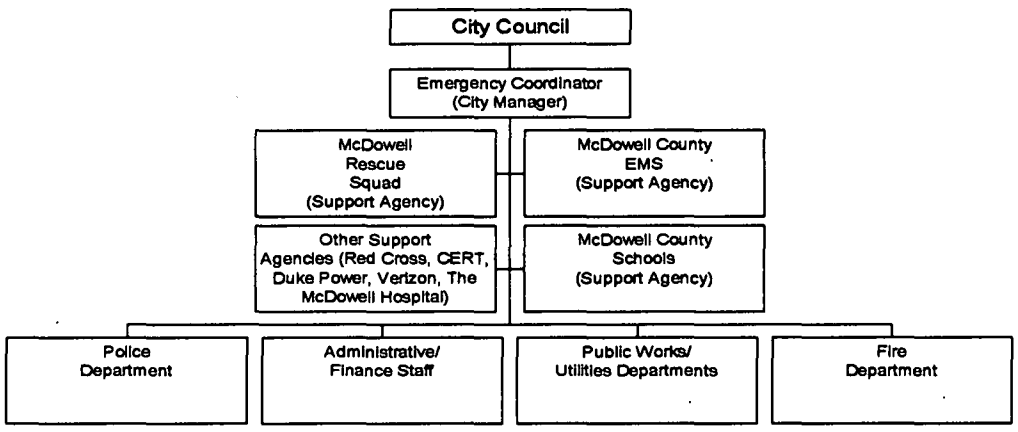
As additional courses are developed, staff will be notified if they are required to complete these courses and they will be expected to do so within 60 days of notification.

Department Heads have selected the courses to be completed for each position in their respective department. By completing these courses, and adopting NIMS, the City is in compliance with federal mandate for continued emergency preparedness, response, and mitigation funds. The courses necessary to meet these training requirements are:

ICS 100 - Introduction to Incident Command System (ICS)

IS 700 - National Incident Management System (NIMS): An Introduction
IS 800 - National Response Plan (NRP): An Introduction

The City Manager will develop a list and schedule of training for all departments and positions and direct implementation of this training by all City departments.



REVIEW PROPOSAL – NORFOLK SOUTHERN RAILWAY:

The City Manager presented Council with a draft proposal prepared by the consultant for Norfolk Southern Railway (NS) and the DOT Rail Division, for information only, outlining the proposed concessions NS and DOT will make in exchange for the closing of the Clay Street Railroad Crossing.

Draft

August 18, 2006

TERM SHEET FOR PREPARATION OF AN AGREEMENT BETWEEN THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT), NORFOLK SOUTHERN RAILWAY COMPANY (NSRW) AND THE CITY OF MARION, NC.

This document outlines terms for an agreement between the parties listed above as a result of a meeting held in Marion on August 8, 2006. The agreement involves grade crossings of the NS 'S' Line located at Clay Street (Crossing #729 469G, MP S98.98) and Garden Street (Crossing #729 468A, MP S99.40) both of which are part of the municipal street system. The terms listed below will form the basis for drafting a formal agreement to be executed by the parties.

Federal-aid funds will be used for the project.

I. The NCDOT Rail Division will provide for or contribute funding as outlined below:
   1. To mitigate the impacts of closing the Clay Street grade crossing, provide funds for design and construction of a one-block extension of McDowell Avenue to connect it to Oak Avenue north of US 70.
   2. Will work with NS to develop a proposed project at Garden Street to include new automatic warning devices, upgrade crossing surfaces and reprofile the industrial siding track to more closely match the profile of the mainline.

II. NS will participate in the project as outlined below:
   1. Provide $29,000 to the City for use in barricading, signing, landscaping, constructing a turnaround or for any other purpose in exchange for closing the Clay Street grade crossing.
   2. Work with the NCDOT as described in I.2 above.
   3. Conduct a separate evaluation of the Garden Street crossing to determine if measures can be taken to improve the crossing prior to the implementation of the proposed project discussed in I.2 above.
   4. Work with the City to secure access to and mitigate a drainage problem on railroad right-of-way east of the Garden Street crossing.
   5. Work with the City to develop a plan for addressing the stability/appearance of the railroad embankment between Garden Street and the depot.
   6. Work with the City to develop an agreement for transferring a portion of the Peavine Line right-of-way to the City for development of a trail.

III. The City of Marion will participate in the project as outlined below:
   1. Upon completion of the McDowell Avenue extension project, will close the Clay Street crossing and install appropriate safety devices (signing, barricades, etc) as specified by the NCDOT.
   2. Will acquire the necessary right-of-way for the extension of McDowell Avenue. Upon acquiring the right-of-way, the City will have it cleared of all obstructions including buildings, signs, walls, etc. The right-of-way will be acquired and cleared prior to the NCDOT authorizing development of planning and engineering documents for the street extension.
   3. Will relocate or cause to be relocated, any utility lines, both above and below ground, which may be in conflict with the extension of McDowell Avenue.
   4. Will complete construction of the McDowell Avenue extension project within 18 months of executing an agreement with the NCDOT.
   5. Will work with NS to provide access to the drainage problem discussed in II.4 above.
   6. Will work with NS to develop an acceptable plan for addressing the embankment issue discussed in II.5 above.

7. Will work with NS to develop an agreement pertaining to the transfer of the Peavine Line right-of-way to the City.
8. Continue to work with the ready-mixed concrete plant located in the southeast quadrant at the Garden Street crossing on alternative routing for loaded trucks such that they do not cross the railroad when leaving the plant.

The City Manager reported that NS has not returned phone calls made by the City regarding beginning negotiations on the City's acquisition of the old Peavine Rail Line; therefore, he would recommend that Council take no action until NS begins this negotiation.

Council stated no objections to the draft proposal presented above, but agreed to take no action until NS begins negotiations in earnest regarding the old Peavine Rail Line.

DISCUSS GRAY STREET PARKING: The City Manager advised that complaints have been received about parking on Gray Street off of State Street, across from McDowell Mission Ministries.

A brief discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to refer this item to the Street Committee.

DISCUSS PROPOSED FIRE INSPECTION FEES : The City Manager advised that in June, as part of the 2006-07 budget process, Council had briefly discussed the idea of new fire inspections fees. The City Manager asked if Council wished a presentation on this item or to place this item on a Planning Session agenda.

It was the consensus of those members of Council present to defer discussion of this item to a future Planning Session.

Mayor Clark suggested that Council think about topics for the upcoming October 24 Planning Session, since he would propose using the first part of that Planning Session identifying and prioritizing topics for discussion.

CEMETERY REQUEST: The City Manager presented Council with a letter from Ms. Elaine Penninger, requesting approval to use two grave plots that her family will not need for burials for markers in remembrance of her family members buried elsewhere.

The City Manager noted that this is the first request of this sort that he has seen, but advised that the City Cemetery Ordinance provided no guidelines on placement of grave markers. Therefore, nothing in the City Code would prevent Ms. Penninger from doing what she wishes to do.

Council members stated no objections to Ms. Penninger's request, as long as she keeps the markers on the sites owned by her family.

It was the consensus of Council to allow placement of this marker under the supervision of the City Manager.

ADD ONS:

FLOOD PLAIN MAPS – APPEAL: The City Manager advised that FEMA and the State have been working to update flood maps in McDowell County. Flood maps were first prepared for McDowell County in 1988. The flood maps for the Catawba River area were redone in 1997, after concerns that the 1988 maps were too restrictive on properties around the river. The City Manager stated that in mid August, the City received the proposed new flood maps. After further review, it was determined that the new flood maps go back to the 1988 restrictions, and perhaps are even more restrictive than the 1988 maps. The clarity of the maps is poor, therefore making it nearly impossible to do a thorough review of what properties in the City may be affected by the new maps.

The City Manager advised that staff had been able to determine that the Great Meadows property has about 80 additional acres along Highway 70 placed in the 100 year floodplain and base flood elevations along Highway 70 West from Legendary Ford to West of Lowe's appear to be increased by four or five feet. The proposed Food Lion Shopping center site along Highway 70 East would be placed in the 100 year floodplain.

The City Manager stated that, under Federal law, local governments and the public only have until mid November to file appeals or challenges to the maps.

The City Manager reported that this matter was discussed in the Joint Utility Committee meeting that morning. The McDowell County Board of Commissioners took action last night at their meeting to appeal this process and the Town of Old Fort will also supposedly take similar action. The City Manager recommended that Council authorize an appeal to be filed with the State, formally appealing the new maps and asking that the process stop until clear flood maps can be prepared that can be adequately reviewed by the City.

Mayor Clark reported on a meeting he attended with State and Federal officials on September 12 regarding the flood maps. Mayor Clark further advised that, in the 1980's, the Army Corp of Engineers was completing the flood maps and was doing one a year. In 2000, the State and Federal governments changed the way flood maps were prepared to have FEMA and the State preparing the maps. Mayor Clark added that McDowell County is the only County in North Carolina that does not have a Geographic Information System (GIS), which makes the flood map review process much more difficult.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, those members of Council present voted to authorize the City Manager to write a letter of appeal to the North Carolina Floodplain Mapping Program, stating Council's position on behalf of the City that the flood map update process should stop immediately until such time clear maps can be prepared that can be adequately reviewed by the City, so that possible grounds for further appeals can be prepared.

Mayor Clark stated that a copy of the letter needs to be mailed to Secretary Bryan Beatty of the North Carolina Crime Control and Public Safety also. Mayor Clark stated that he would be willing to make personal contact with Secretary Beatty if necessary.

REQUEST – McDOWELL COUNTY TOURISM: The City Manager advised that the McDowell Tourism Development Authority is completing a tourism publication and has invited the City to buy an advertisement for economic development purposes. The City Manager stated that the City does not typically advertise but that he wanted to present the opportunity to Council.

Councilman Little stated that he sees no benefit in placing an add and added that County occupancy tax revenues were supposed to be used to promote the community.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to decline the request of the McDowell Tourism Development Authority for the City to purchase an advertisement in the new tourism publication.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager reported that the Draft 2007-2013 Transportation Improvement Program (TIP) has been released by DOT. The TIP is now broken out by Rural Transportation Planning Organizations for rural counties. No changes have been made to listed projects in McDowell County for at least ten years. Construction of the US 221 widening in McDowell County is now delayed until 2013.

The City Manager reported that City Planner Heather Cotton is exploring possible zoning regulations on temporary uses such as circuses and will route suggested ordinance amendments through the Planning Board for recommendation to Council.

The City Manager advised that the final Corpening Creek Special Order by Consent (SOC) has been signed and is awaiting approval by the State. Richard McMillan is working with the State on an SOC application for the Catawba River Wastewater Plant.

The City Manager stated that DOT is closer to accepting the recommendation of the Highway Patrol and the City to use roads other than US 70 through the City as I-40 Detour routes.

COUNCILMAN COMMENTS:

Councilman Little inquired about the status of scheduling the sidewalk/curb replacement on North Madison Street. The City Manager stated that this was originally an in house project; however, Public Works Director/Engineer Richard McMillan has recommended that this project, along with at least the drainage/curb replacement on Forest Heights Drive be contracted out. The City Manager directed McMillan to work to prepare bid notices for at least the North Madison and Forest Heights projects as soon as possible.

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. 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 3, 2006 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 the Country.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Heather Cotton, City Planner; David Currie, Code Enforcement Officer; Mike Conley, News Reporter, McDowell News.

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 - September 19, 2006 Regular Session Minutes

B. Approve Waiver of Civil Citations –
Belinda Young - $10.00 Overtime Parking – Was on jury duty
Sonda P. Taylor – $50.00 - Weed and Grass Citation – Violation handled through Nuisance Ordinance
Barbara Roper - $100.00 – Weeds, Trash – Violation handled through Nuisance Ordinance

C. Award Contract – DOT I-40 Rest Area Water Connection
Completion of Water Connection for NCDOT I-40 Rest Area
Hobson Construction - $64,475.00 – This amount will be reimbursed to the City by NCDOT.

INTRODUCE NEW EMPLOYEE: City Planner Heather Cotton introduced the new Planning and Inspections Department Code Enforcement Officer David Currie. Ms Cotton stated that Mr. Currie is already making an excellent contribution to the City and doing a great job.

Mayor Clark and Council Members welcomed Mr. Currie and wished him a long tenure with the City of Marion.

CIVIL CITATION APPEAL – ANIMAL ORDINANCE VIOLATION:
The City Manager advised that a civil citation was issued to Ms. Barbara Roper for keeping a cat at a dilapidated, uninhabited structure at Bostic and Yancey Streets in Eastfield. Ms. Roper's sister, Ms. Linda Kay Stott, submitted a written appeal on Ms. Roper's behalf.

The City Manager advised that since this citation was written, the cat involved was struck and killed by a motor vehicle.

A discussion followed.

Councilman Martin advised that, in light of the fact that the cat was no longer at the residence in question, he would be willing to waive the penalty for this citation, if other Council Members agreed.

City Planner Heather Cotton advised that the property has also been mowed and that cleanup has begun.

Upon a Motion by Councilman Martin, seconded by Councilman Cuthbertson those members of Council present voted to waive the penalty for this citation.

Councilman Edwards noted that there was a problem with stray cats in his neighborhood.

PUBLIC COMMENT PERIOD: No citizens were present to speak to Council.

REQUEST – ADDIE'S CHAPEL UNITED METHODIST CHURCH:
The City Manager presented Council with a letter from members of Addie's Chapel United Methodist Church proposing to name the driveway going into the church and the West Marion Park as "Addie's Chapel Drive." This would be a private road on which a street sign could be installed. The Church currently has a 911 address of 107 Parker Drive West; however, the Church entrance is off of Ridley Street. This change would allow the Church to have an Addie's Chapel Drive address.

The City Manager advised that he had discussed this change with the Police Chief, the Fire Chief and the County Emergency Services Director and that they are all in agreement that this is a reasonable request.

A discussion followed.

Upon a motion by Councilman Owenby, seconded by Councilman Cuthbertson, those members of Council present voted to approve the request of Addie's Chapel United Methodist Church to name the driveway going into the church and the West Marion Park as "Addie's Chapel Drive."

DISCUSS EASTFIELD WATER AND SEWER CONNECTIONS/AGREEMENT WITH MCDOWELL COUNTY:
The City Manager advised that several months ago Council made an offer to the County to accept the liability for water and sewer connections in Eastfield promised in exchange for easements for $10,000 per year, until 60 percent of the total value of the connections, or around $70,000, was paid to the City.

The City Manager stated that, at the September 19 Joint Utility Committee meeting, the County representatives indicated that the County Board of Commissioners would not accept this proposal. The City Manager advised that the County does not wish to pay for water and sewer connections until they are to be used by property owners. Instead, the County has countered the City's proposal, and is now willing to pay 60 percent of the $820 Cost Recovery Charge for sewer and $1,424 cost Recovery charge for water.

The City Manager stated that the County has already paid for two connections provided in exchange for easements at the full price. One invoice sent to the County in June has yet to be paid for a water and sewer connection.

A discussion followed. Mayor Clark stated that the City had already made enough concessions regarding this project and that the City was in need of all available revenues to help fund capital improvement, particularly the planned $5.6 million Wastewater Plant improvements.

It was the consensus of the Council that the City Manager should send a letter to the County stating that the City would stand by the previous offer made regarding Eastfield water and sewer connections and that the outstanding invoice should be paid.

DISCUSS NEBO WATER CONNECTIONS: The City Manager reported that, at the September 19 Council meeting, Council set the revised Nebo water connection fees at $300 for residential customers, other than in the new Crescent Development, tapping on to the new Nebo water lines within six months after each line segment is certified. After the six month period, the fee rises to the normal outside tap fee of $900. The City Manager stated that the County has suggested that Council adopt a mid range fee in between the $300 and $900 fee that could apply for water connections made after the six month period. Otherwise, the County indicated that they may not allow their contractor to make water taps for customers not wishing to immediately tap on to water.

Mayor Clark advised that the $300 tap fee set by Council was and still is a good offer and that City residents must pay much higher connection fees than is being offered to Nebo. Mayor Clark stated that he felt that no further concessions are necessary.

A discussion followed.

No action was taken on this item, meaning that no further change in tap fees for the Nebo water project will be made.

AWARD CONTRACT FOR AUCTIONEER – ANNUAL CITY/COUNTY/SCHOOL SYSTEM AUCTION: The City Manager advised that he and Finance Director Harriett Thomas had agreed to coordinate the process to hire an auctioneer for the annual City/County/School System auction. Proposals were sought from 11 auctioneers in the community.

Only one proposal was received from Steve Lawing for a fee of ten (10) percent of gross sales. The City Manager stated that the County advised that the normal auction commission was in the nine to ten percent range.

A discussion followed. Councilman Owenby asked if the City had provided notice to all local auctioneers. The City Manager stated that it was his understanding that 11 auctioneers were notified of this opportunity and that only one chose to respond.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to award the contact for the Annual City/County/School System auction to Mr. Steve Lawing, for a commission fee of ten percent.

APPROVE CONTRACT WITH N.C. RURAL CENTER FOR N.C. STEP PROGRAM: The City Manager presented Council with an Agreement from the North Carolina Rural Economic Development Center that must be approved for the City's participation in the N.C. STEP Program.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to approve the contract with the North Carolina Rural Economic Development Center for the N.C. STEP Program.

A copy of the Agreement can be found on file at City Hall.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that the Public Hearing on the City's Special Order by Consent (SOC) application for the Corpening Creek Wastewater Plant is scheduled for Monday October 30, 2006 at the Community Building.

The City Manager gave an updated on the flood mapping process being conducted by the State and Federal Emergency Management Agency (FEMA). The City Manager advised that the City, County and Town of Old Fort had appealed the new maps, based on the maps being illegible. The City Manager stated that the County Manager has already received a phone call from the State advising that the appeal was denied, but that efforts were being made through the offices of Congressman Taylor and Senators Dole and Burr to obtain more time for review and appeal. The City Manager stated that the new flood maps could have devastating impacts in the City, particularly on prime commercial property, and that local government would soon have to initiate a public input process on the new maps. Mayor Clark noted that there is a Federal law stating that there is a 90 day appeal window, and that the State cannot change this period, so it is likely that local government will have to operate within this 90 day time period. The City Manager suggested that the City may wish to involve the City Attorney in evaluating possible grounds for appeals and to retain a professional consultant such as McGill to assist in developing technical arguments. Council agreed to take this suggestion under advisement as the appeal process develops.

The City Manager reported that he had spoken with the Real Estate person for Norfolk Southern Railway (NS) and that they were favorable to the idea of the City acquiring the old Peavine Rail Line, although no specific terms were discussed. The City Manager stated that the NS Real Estate representative is aware that NS wants to close the Clay Street crossing in the City, so the City should have good leverage with the acquisition of the Peavine.

The City Manager reported that a letter was sent to Charter Communications informing them that the City expects the cable franchise to stay in effect through December 31 and for the City to receive all applicable cable franchise fees. An e-mail has been received from Charter stating that they would get the franchise extension signed and sent back to the City. The City Manager proposed that a letter be sent to Charter, stating the City's desire to have a government access channel. The City Manager advised that, to avoid a conflict again over the WBTV issue, Council be willing to accept the placement of the City channel on a higher tier than basic cable. The Mayor and Council agreed by consensus for the City Manager to send this letter.

The City Manager reported that the North Carolina Main Street Program recently conducted a review of the City's Main Street Program and that Program Director Rodney Swink commended the City on a job well done but also noted some challenges, such as bringing more retail and residential development downtown.

The City Manager reported that painting on the north and west sides of the exterior of the Community Building had been completed. City crews are now working to develop a schedule for the drainage work/damaged fence removal between the basketball and tennis courts.

The City Manager reported that the new Tanker/Pumper Fire Truck has arrived. The new truck was present at City Hall and the Mayor and City Council had the opportunity to view the truck.

The City Manager reported that the Council Planning Session was scheduled for Tuesday, October 24, starting at 6:00 P.M. at City Hall.

The City Manager reported that speed humps had been installed on Fern Avenue, Morgan Street and South Garden Street. He suggested that Council and staff review the new speed humps for about 30 days before accepting any requests for new speed humps.

COUNCILMAN COMMENTS:

Councilman Martin made note that the Street Committee needs to set a date to meet and review some parking and drainage related items. A meeting date will be established.

Councilman Edwards stated that he would like to see the rules relaxed that deal with the City picking up tree limbs and brush cut by contractors. He advised of a recent situation that led him to believe that the City may not be providing good enough service in this area, particularly to elderly residents. Councilman Edwards suggested that as good a service as possible should be provided to City residents, even if it means possibly hiring more people. He suggested that this issue be a Planning Session topic.

Councilman Edwards also noted that the new benches look good in the Community Building basketball and tennis courts. He inquired about the manner in which people could turn on the lights at night at the basketball and tennis courts and suggested that signs be placed, explaining how lights could be turned on at night, if such signs are not already in place.

Councilman Owenby stated that the flashing caution lights in front of Marion Elementary School at Robert Street are flashing at different times than usual and need to be checked.

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

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, 2006 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 Billy Martin, Lloyd Cuthbertson, Mike Edwards and Cecil Owenby.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Freddie Killough, Downtown Business Association Director, Heather Cotton, City Planner.

GUESTS PRESENT: Mike & Pat Estes 42 Robert Street, Marion, NC; Connie Taylor 66 Turner Street, Marion, NC; Roy Taylor 56 Robert Street, Marion, NC; Opel Hendley 101 Turner Street Marion, NC; Tim & Martha Gouge 322 Park Avenue, Marion, NC; Woody & Brenda Harton Asheville, NC; Cliff McLarty Marion, NC; Todd & Robert Guffey Marion, NC; Kevin & Sandy Estes 311 Park Avenue, Marion, NC; Allen & Geraldine Bartlett 29 Robert Street, Marion, NC; Richard Sylvester 295 Park Avenue, Marion, 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 Minutes** - October 3, 2006 Regular Session Minutes

B. **Approve Contract with Nebo Volunteer Fire Department – Service to US 70 East/Stacy Hill Road Annexation Area:**

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

CONTRACT FOR FIRE
SUPPRESSION SERVICES

THIS CONTRACT is made this _____ day of _____, 2006, by and between the City of Marion, a municipal corporation (hereinafter referred to as "City") and the Nebo Volunteer Fire Department, a North Carolina non-profit corporation and a duly organized rural fire department (hereinafter referred to as "Department").

WITNESSETH:

WHEREAS, by an ordinance adopted June 20, 2006, the City annexed the area described in Exhibit "A" attached hereto (herein "Service Area"), which ordinance became effective on June 20, 2006; and

WHEREAS, the City wishes to minimize the impact of the annexation upon the Department and still provide satisfactory service to the areas as prescribed by State law; and

WHEREAS, pursuant to North Carolina General Statute § 160A-37.1, the City and Department have the statutory authority to enter into a fire contract where the Department will provide fire protection services for the Service Area;

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the City and the Department hereby agree to this contract for provision of fire protection services to the Service Area, according to the following terms and conditions:

1. SERVICE RESPONSIBILITY – FIRE SUPPRESSION SERVICE

The Department shall regularly serve as the first responding provider of fire suppression service to the Service Area with the minimum of the following: two firefighters with a fire truck capable of pumping at a rate of at least one thousand (1000) gallons per minute and carrying at least one thousand (1000) gallons of water. The Department's units and personnel, together with those of the City's Fire Department, shall both be routinely dispatched by the McDowell County Emergency Communications Center to all fire emergencies. The Department's services shall be in accordance with the minimum standards set forth by the North Carolina Department of Insurance/ Office of the State Fire Marshal.

It shall be the responsibility of the Department to equip and train its firefighters in a manner consistent with applicable regulations of the Occupational Safety and Health Administration of the U. S.

Department of Labor. The Fire Department shall maintain Workmen's Compensation Insurance applicable to all fire department personnel regardless of status, at least to the extent required by law.

It shall be the duty of the Department to maintain adequate communications equipment to allow efficient and professional dispatching of emergency calls.

Notwithstanding the obligation of the Department to initiate fire and emergency services when its units arrive first at the scene as provided hereinabove, the primary fire and emergency service responsibility within the service area shall always remain with the City's Fire Department.

The City and the Department hereby acknowledge that each party may relocate its own vehicles and equipment based on emergency requirements, but that long term or permanent changes of a nature that substantially change the ability to deliver service as intended by the City and the Department are maters on which the City and the Department representatives must confer and reach mutual agreement.

2. SERVICE RESPONSIBILITY – MUTUAL AID AND ASSISTANCE

In addition to other services provided for herein, the Department and the City's Fire Department will provide mutual aid and assistance, including backup equipment and personnel, in those cases where assistance from another department is necessary to adequately respond to large fires or other exceptional emergencies or disasters in the Service Area.

3. COMPENSATION FOR SERVICES

The Department will be compensated for fire, rescue and emergency medical response by receiving annual payment equal to $.04/$100 valuation of the property described in Exhibit A. For purposes of this payment, the City shall use the valuation used for tax purposes for each Fiscal Year, as set by the McDowell County Tax Assessor. The Department agrees that any funds paid by the City shall not be used for subcontracting of primary and additional services provided for herein.

4. MAINTENANCE

The Department shall be responsible for continuing its customary equipment maintenance activities and shall immediately advise the City if the condition of the equipment or lack of equipment will interfere with the Department's ability to respond to the service area. The Department is to keep at least the minimum equipment as listed by The North Carolina Department of Insurance/Office of State Fire Marshal at no additional cost to the City and shall strive to keep above minimum equipment standards.

5. RESPONSE

In providing support to the City's Fire Department, the Department's response shall continue to be immediate and in the most professional manner possible. Response times shall be consistent with present response times of the Department in the annexed area.

6. TERM

The term of this Contract shall be for five-years and commence on July 1, 2006 and end on June 30, 2011 at midnight.

7. WAIVER OF LIABILITY

The Department agrees to assume full responsibility of its provision of fire suppression services and emergency response services to the annexed area as required hereunder. Each party to this Contract shall assume any and all liability and responsibility for the death or injury to any personnel of their own command providing services hereunder. Neither party hereto shall assume responsibility or liability for property damaged or destroyed at the actual scene of any incident arising out of or related to firefighting and rescue operations, fire control tactics and strategy, emergency response actions or other operations as may be required due to the nature of the incident. Each party to this Contract shall assume all liability and responsibility for damage to its own apparatus and equipment. The execution of this Contract shall not be construed to be an assumption of any liability by either party hereto not otherwise imposed by law, and each party agrees to hold the other harmless and fully indemnify the other in the event in respect of any and all claims, losses and expenses, including reasonable fees and disbursements of counsel (before and at trial, in bankruptcy proceedings and in appellate proceedings), which may be incurred by a party (the "Indemnified Party") arising out of death or injury to personnel or property of the other party ("Indemnifying Party").

Whenever any claim shall arise for indemnification under this Section 7, the Indemnified Party shall notify the party or parties (as the case may be) against whom indemnification is sought (whether one party or more, the "Indemnifying Party") in writing by certified mail of the facts constituting the basis for such claim. Such notice shall specify all facts known to the Indemnified Party giving rise to such

indemnification right and the amount or an estimate of the amount of the liability arising there from. The right to indemnification hereunder and the amount or the estimated amount thereof, as set forth in such notice, shall be deemed agreed to by the Indemnifying Party unless, within 15 days after the receipt of such notice, the Indemnified Party is notified in writing that the Indemnifying Party disputes the right to indemnification as set forth or estimated in such notice.

If the facts giving rise to any such indemnification right shall involve any actual or threatened claim or demand by any third party against the Indemnified Party or any possible claim by the Indemnified Party against any third party, such claim by or against a third party shall be referred to as a "Third-Party Claim." If the Indemnifying Party gives the Indemnified Party an agreement in writing, in form and substance reasonably satisfactory to counsel to the Indemnified Party, agreeing to indemnify and save the Indemnified Party harmless from all costs and liability arising from any Third-Party Claim, the Indemnifying Party may at its own expense undertake full responsibility for the defense or prosecution of such Third-Party Claim and may contest or settle it on such terms as it may choose. If the Indemnifying Party fails to deliver such an agreement of indemnity to the Indemnified Party, (1) the Indemnifying Party at its own expense may nevertheless participate with the Indemnified Party in the defense or prosecution of the Third-Party Claim and in any and all settlement negotiations relating thereto, and (2) the Indemnified Party may contest or settle the Third-Party Claim on such terms at it may choose, although the Indemnified Party shall not reach a settlement until it has consulted in good faith with the Indemnifying Party. Any such participation shall not relieve the Indemnifying Party of its obligations to indemnify the Indemnified Party under this Section 6. If by reason of any Third-Party Claim a lien, attachment, garnishment or execution is placed upon any of the property or assets of the Indemnified Party, the Indemnifying Party, if it desires to exercise its right to defend or prosecute such suit, shall furnish a satisfactory indemnity bond to obtain the prompt release of such lien, attachment, garnishment or execution.

The Department agrees to maintain adequate liability insurance coverage at all times in an amount not less than $500,000.00 for apparatus and general liability. The Fire Department currently maintains liability insurance coverage in an amount of _____ dollars and apparatus coverage in an amount of guaranteed replacement cost.

8. NONDISCRIMINATION GUARANTEES

In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed or national origin with reference to the subject matter of this Contract, no matter how remote.

9. TERMINATION

This Contract may be terminated unilaterally by either party at the expiration of any contract year, provided that written notice is given to the non-terminating party not less than 180 days in advance of the termination date. For purposes of giving said notice, the Department shall notify the City Manager of the City of Marion; the City shall notify the Chief of the Nebo Fire Department, or its registered process agent.

10. AMENDMENT

This Contract may be amended by the agreement of both parties, reduced to writing and annexed hereto.

11. AGENT

The Department shall at all times comply with the laws of North Carolina regarding corporations, and shall at all times keep the City advised of the name and address of its registered agent for the service of process.

IN WITNESS WHEREOF, each party has caused this Contract to be executed by its duly authorized official as of the day and year first above written.

ATTEST:

_____
City Manager/Clerk
(official seal)

CITY OF MARION

By: _____
Mayor

NEBO VOLUNTEER FIRE DEPARTMENT

ATTEST:

_____
Secretary
(corporate seal)

By: _____
Fire Chief

****

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

I, a Notary Public of the County and State aforesaid certify that J. Robert Boyette personally came before me this day and acknowledged that he is the City Manager/Clerk of the City of Marion, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its Mayor and attested by himself as its City Manager/City Clerk.

Witness my hand and notarial seal this ___ day of _____, 2006.

_____
Notary Public
My Commission Expires: _____

****

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

I, a Notary Public of the County and State aforesaid certify that _____ personally came before me this day and acknowledged that __he is the Secretary of Nebo Volunteer Fire Department and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its President and attested by ____self as its Secretary.

Witness my hand and notarial seal this ___ day of _____, 2006.

_____
Notary Public
My Commission Expires: _____

Exhibit A - Description of Food Lion, LLC Property

TRACT ONE (1):

BEGINNING on a magnetic nail set in the centerline of intersection of NC Highway 70 and State Road No. 1747, Stacy Hill Road, said point of beginning being the 30th corner of Tract One (1) of the Roger Andrews lands as recorded in Deed Book 435 on Page 311 of the McDowell Deed Registry and running thence with the centerline of NC Highway 70 the following four courses and distances:

South 65 degrees 11 minutes 34 seconds East 536.88 feet to a point;
South 65 Degrees 48 minutes 25 seconds East 63.42 feet to a point;
South 68 degrees 27 minutes 29 seconds East 53.19 feet to a point;
South 73 degrees 39 minutes 25 seconds East 34.29 feet to a point, said point located North 89 degrees 42 minutes 29 seconds West 210.28 feet from an existing magnetic nail in the intersection of NC Highway 70 and Stacy Farm Street;

thence leaving said centerline of NC Highway 70 and with the western line of the Stacy Farms Subdivision as recorded in Plat Book 4 on page 425 of the McDowell Deed Registry the following courses and distances:

South 16 degrees 45 minutes 36 seconds West 26.07 feet to an existing iron pin located just north of concrete headwall;
South 16 degrees 45 minutes 36 seconds West 122.16 feet to an iron pin set;
South 39 degrees 58 minutes 10 seconds East 47.99 feet to an existing iron pin;
South 40 degrees 18 minutes 29 seconds West 36.14 feet to an existing iron pin;
South 05 degrees 38 minutes 44 seconds West 64.16 feet to an existing iron pin in branch;
South 05 degrees 38 minutes 44 seconds West 68.23 feet to a point in branch;
South 04 degrees 22 minutes 02 seconds West 80.70 feet to a point in branch;
South 04 degrees 45 minutes 12 seconds West 58.70 feet to a point in branch;
South 02 degrees 08 minutes 36 seconds East 88.81 feet to an iron pin set;
South 02 degrees 19 minutes 27 seconds East 64.67 feet to an existing iron pin;

South 02 degrees 19 minutes 27 seconds East 15.16 feet to a point in the centerline of the creek;

thence with the centerline of said creek the following thirteen courses and distances:

North 65 degrees 53 minutes 50 seconds West 94.57 feet to a point;
South 60 degrees 22 minutes 46 seconds West 46.36 feet to a point;
North 35 degrees 00 minutes 30 seconds West 29.33 feet to a point
North 75 degrees 09 minutes 46 seconds West 50.33 feet to a point;
North 21 degrees 13 minutes 14 seconds West 38.58 feet to a point;
North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West 68.22 feet to a point located in the line of David Holland (Book 504 On Page 205);
North 80 degrees 32 minutes 50 seconds West 28.69 feet along the line of David Holland (Book 504 on Page 205) to a point;
North 11 degrees 10 minutes 46 seconds West 74.84 feet along the line of David Holland (Book 504 on Page 205) to a point, said point located in the line of David Holland (Book 470 on Page 450) and also being the Northern most corner of David Holland lands recorded in Deed Book 504 on Page 205 of said registry;

thence continuing with said creek centerline and the line of David Holland (Book 470 on Page 450) the following six courses and distances:

North 40 degrees 10 minutes 46 seconds East 67.00 feet to a point;
North 14 degrees 13 minutes 28 seconds East 115.07 feet to a point;
North 34 degrees 30 minutes 20 seconds West 111.99 feet to a point;
North 16 degrees 14 minutes 54 seconds West 67.20 feet to a point;
North 08 degrees 01 minutes 32 seconds West 130.28 feet to a point;
North 33 degrees 17 minutes 33 seconds West 63.11 feet to a magnetic nail set in a bridge over center of creek, said bridge being a part of State Road No. 1747, Stacy Hill Road;

thence with the centerline of State Road No. 1747, Stacy Hill Road, North 29 degrees 43 minutes 21 seconds East 103.17 feet to the BEGINNING.

<u>TRACT TWO (2):</u>

BEGINNING on an iron pin set, said iron pin set being located in the line of the Roger Andrews lands as recorded in Deed Book 435 on Page 311, Tract One (1) of the McDowell Public Registry and being located North 51 degrees 24 minutes 39 seconds East 33.34 feet from an existing iron pin found at a Poplar Tree witness, the same being the Southern most corner of the Kathleen D. Taylor lands recorded in Deed Book 555 on Page 368 of said registry and running thence south 58 degrees 51 minutes 51 seconds East 421.02 feet to an iron pin set; thence, North 46 degrees 37 minutes 22 seconds East 60.34 feet to an iron pin set, thence North 29 degrees 49 minutes 02 seconds West 115.51 feet to an iron pin set; thence North 34 degrees 48 minutes 23 seconds West 133.75 feet to an iron pin set; thence North 38 degrees 38 minutes 45 seconds West 110.30 feet to an iron pin set; thence North 44 degrees 26 minutes 32 seconds East 59.85 feet to an iron pin set at a power pole; thence North 27 degrees 55 minutes 58 seconds East 65.11 feet to a iron pin set; thence North 66 degrees 07 minutes 11 seconds East 134.25 feet to an iron pin set; thence South 54 degrees 50 minutes 55 seconds East 16.22 feet to a point in the center of a creek; thence continuing with said creek centerline the following six courses and distance:

North 73 degrees 37 minutes 53 seconds East 44.26 feet to a point;
North 44 degrees 09 minutes 47 seconds West 125.27 feet to a point;
North 72 degrees 50 minutes 02 seconds West 100.38 feet to a point;
North 55 degrees 47 minutes 12 seconds West 80.24 feet to a point;
South 62 degrees 58 minutes 30 seconds West 43.94 feet to a point;
North 80 degrees 32 minutes 50 seconds West5 68.22 feet to a point located in the line of David Holland (Book 504 on Page 205);

thence continuing with the line of David Holland (Book 504 on Page 205) South 26 degrees 01 minutes 55 seconds East 84.52 feet to an existing iron pipe; thence South 26 degrees 01 minutes 55 seconds East 189.34 feet to an existing iron pipe in the northeastern margin of Andrews Road, a private soil roadway right of way; thence running along the eastern margin of Andrews Road South 36 degrees 55 minutes 54 seconds West 45.37 feet to an existing iron pin in the southeastern margin of Andrews Road, being the second (2^{nd}) corner of Kathleen D. Taylor lands recorded in Book 555 on Page 368 of said registry; thence leaving said southeastern margin of Andrews Road and with the marked line of Kathleen D. Taylor (Book 555 on Page 368) South 51 degrees 24 minutes 39 seconds West 242.33 feet to the BEGINNING.

C. Approve Purchase of Turkeys for City Employees

To be distributed prior to City employees prior to Thanksgiving, based on bid to provide turkeys for $.89 per pound from Bi Lo.

D. Approve Longevity Pay for City Employees

As approved in 2006-07 City budget, at a total cost of $37,743.84

E. Approve Mediated Settlement for Berryhill Lawsuit:

05 Cv9, 650,651 McDowell County
Terms of Mediated Settlement Agreement

1. Definitional provisions of Agreement:

a. Zoning Ordinance – means the city of Marion Zoning Ordinance and any lawful amendment thereto.
b. Subject Properties – means the properties that are owned by Defendant Berryhill and the subject of these three cases.

2. Defendant Berryhill agrees that the Subject Properties are subject to the Zoning ordinance; and, further agrees to comply with the provisions of the Zoning Ordinance.

3. Subject to paragraph 15 of this Agreement, Defendant Berryhill shall bring the three subject properties into compliance with the City of Marion Zoning Ordinance, specifically including, b but not limited to section 708 of Zoning ordinance.

4. This agreement is binding on the city only in the event it is approved by the City Council.

5. This paragraph intentionally has no provisions.

6. The parties agree to enter into a consent Order which contains the terms of this Agreement. Further the parties agree that such necessary findings of fact shall be contained in the Consent Order so as to allow the same to be enforceable by the contempt powers of the Court.

7. This paragraph intentionally has no provisions.

8. The parties agree that the city will inspect the 1952 North Main Street Property within 5 days of this Agreement. Furthermore the City will generate a list of all items of non-compliance, if any, on the said property and submit that list to Berryhill within 7 days of this Agreement. If there are no issues of non-compliance, then the City will issue a zoning permit, based on Berryhill's, or tenant based on tenant's application, previous application for this property, to Berryhill. If there are no issues of non-compliance the zoning permit shall be issued within 7 days of this Agreement.

9. The parties agree that the city will inspect the 802 Highway 70 West property and the 582 East Court property on or before August 16, 2006. Furthermore the City will general a list of all items of non-compliance, if any, on the said properties and submit that list to Berryhill by August 18, 2006.

10. In the event Berryhill agrees with the items of non-compliance provided by the City in accordance with paragraphs 8 and 9 above, then Berryhill shall bring those items into compliance by October 18, 2006.

11. In the event Berryhill disagrees with any of the items of non-compliance provided by the City in accordance with paragraphs 8 and/or 9 above, mediation will reconvene to attempt to resolve remaining issues before end of August.

12. Berryhill must comply with the terms of the Order to Compel discovery entered previously in this case by providing the ordered discovery on or before August 30, 2006. Furthermore Alvin Berryhill and Scott Berryhill will make themselves available for a deposition in the month of September, 2006. This paragraph only applies if the parties are unable to agree upon the list of non-compliance items.

13. City will continue to make reasonable efforts to properly enforce the Zoning Ordinance.

14. Each Party will bear their own costs of this litigation.

15. Notwithstanding the obligation of Berryhill to bring the three properties into compliance with the Zoning Ordinance as set out herein, Berryhill shall have the right to the following: The bulldozer located on the 802 Highway 70 West property can remain there in its current condition until January 1, 2007.

16. Mediation to be adjourned until after inspection and providing of list as set forth in paragraph No. 11.

17. All fines and penalties to date by City against Berryhill are waived.

18. All counterclaims of Berryhill will be dismissed with prejudice upon the filing of the consent judgment.

THIS THE 3RD DAY OF AUGUST 2006

_____
Attorney for City

_____
Attorney for City

_____
Attorney for Berryhill

_____
Alvin Berryhill

A copy of all the Original Consent Orders and other signed documents can be found on file at City Hall.

PRESENTATION TO LINWOOD (WOODY) HARTON IN HONOR OF RETIREMENT FROM NORTH CAROLINA DIVISION OF COMMUNITY ASSISTANCE: Mayor Clark introduced Mr. Woody Harton and his wife Brenda. Mr. Harton has recently retired from the North Carolina Division of Community Assistance in Asheville, where he worked for over 30 years as a Regional Planner.

Mayor Pro Tem Little advised that the City is grateful for all he has done for Marion and that we have been blessed with Mr. Harton's constant work and concern for the City.

The City Manager stated that if Mr. Harton couldn't help by phone, he would come over and help any time he was asked. The City Manager outlined many projects Mr. Harton had worked on over the years and stated that Woody Harton is the epitome of what Public Service is all about.

Downtown Business Association Director Freddie Killough advised that she was hired in 1990 by the City of Marion and that Mr. Harton was always a phone call away, that he had helped her with projects and has always been a steady guiding light for her.

On behalf of the Downtown Business Association, Ms. Killough presented Mr. Harton with a decorative tray and coaster set.

Mayor Clark advised that Woody Harton probably knows more about our Zoning Ordinance than any one at City Hall and has been a tremendous help to the City.

Mayor Clark presented Mr. Harton with a plaque honoring his willingness to assist and serve the City through the years with such outstanding service for over thirty years. He was also presented with a City of Marion Bronze Medallion that was struck during the City's Sesquicentennial Celebration.

Mr. Harton stated that a lot of things have changed since he first came affiliated with Marion. At one time the City limits ended at Logan Street. Marion is doing a good job annexing and building its tax base. The downtown area is the heart and soul of a community. He added that he hopes to

see passenger rail service come to Marion. Mr. Harton stated that Marion has always been a topic of discussion in the Asheville DCA office, as being a stable community. His co workers were often envious that he got to work with Marion. He always felt welcomed here and already misses working with Marion. However, he may some day be back possibly to retire here someday soon.

Other Council members shared their best wishes and words of appreciation with Mr. Harton.

PUBLIC HEARING – ZONING AMENDMENT – OPEN STORAGE IN B-1 NEIGHBORHOOD BUSINESS DISTRICT:
PUBLIC COMMENT PERIOD: Mayor Clark opened the Public Hearing.

Heather Cotton advised that the purpose of amending the City Code is to allow unenclosed open storage as an accessory use within the B-1 Neighborhood Business Zoning District. This amendment is in response to a civil citation issued to a commercial property on Baldwin Avenue for unenclosed open storage. The property owner, Mr. Arthur Guffey, addressed the City Council at a public meeting on September 19th to appeal the citation. Council advised the owner that the appeal must be brought before the City's Board of Adjustment. In addition, Council requested staff to evaluate and provide provisions within the current code to allow for a percentage of open storage to be permitted in an unenclosed area.

Ms. Cotton stated that the proposed amendment would allow for unenclosed open storage as an accessory use to a lawful business while continuing to provide a mechanism by which to regulate such use within the B-1 zoning district.

Ms. Cotton reported that the Planning Board recommended **Approval** with a 4-0 vote at a duly noticed public hearing held October 9, 2006.

The City Manager advised that this amendment would put Mr. Guffey's Appliance Store in compliance with the Zoning Ordinance.

Mr. Guffey asked that he agreed with the ordinance amendment but asked that he be allowed some lenience during a few months out of a year when his business is at its busiest time. Mayor Clark stated that once this Ordinance passes it becomes law and City staff does not have the discretion to be lenient, although common sense can be used during short periods of non-compliance.

Mr. Guffey stated that he would appreciate notification/warning in lieu of a fine if the City finds something he is out of compliance with in the future.

A discussion followed.

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. *Zoning*, Article VIII. *Use Requirements By District*, Section 807.3 *Open Storage* of B-1 Neighborhood Business is amended by the following:

807.3 Open Storage. Open storage is permitted as an accessory use in the B-1 Neighborhood Business District, provided that the open storage meets the following requirements.

1. The open storage is accessory to the principal use of the property.

2. The open storage area shall not exceed ten (10) percent of the total area of the footprint of the principal building. All additional open storage shall be located on the side of the building or in the rear of the property and shall be completely screened.
3. The open storage of junked or inoperable vehicles, auto parts or similar materials, raw materials, scrap or waste shall be prohibited unless such materials are completely screened.
4. All required screening shall be six (6) feet in height and constructed in such a manner that visually conceals the open storage from the public right-of-way and adjacent properties.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 17th day of October 2006.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/ Clerk

Ordinance Number: O-06-20-17-1

MAYOR PRO TEM STEVE LITTLE – RECOGNITION - MAYOR CLARK AS PRESIDENT OF THE NCLM: Mayor Pro Tem Little noted that he would like to take the opportunity to publicly commend Mayor A. Everette Clark for the great job he had done while serving as President of the North Carolina League of Municipalities during the last year. Mayor Clark's term as President of the League ended earlier that day at the annual League Conference in Greensboro.

PUBLIC COMMENT PERIOD: Mr. Kevin Estes appeared before Council and stated that a number of residents of Turner Street, Park Avenue and Robert Street had concerns about a zoning matter.

Mr. Estes advised that two lots have come up for sale in the vicinity of Turner Street and Park Avenue. It is possible that a mobile home may be placed on one of these properties. This area is made of single resident stick built homes and Mr. Estes, along with many other residents in the area, feel that a mobile home would not fit into this area. They have concerns about preserving the integrity of their neighborhood.

Their proposal would be to do what they feel is best for the community and ask Council to rezone the area along Park Avenue and Turner Street from Turner Street to Robert Street from R-2 to R-1, or else to have Council place a moratorium on development in the area until the rezoning request can be considered.

Another neighborhood resident stated that the property in question was scheduled to be closed today and that the neighborhood's main concern is finding out what to do to maintain the integrity of their community and to try to preserve this section of Park Avenue from incompatible development that could be detrimental to property values.

City Planner Heather Cotton advised that the neighborhood would need to file an application to rezone the area and that a Public Hearing would have to be held on the request before the Planning Board and City Council, with the request being advertised in the newspaper and with notices sent out to the area. Ms. Cotton stated that a moratorium would also require a Public Hearing before the Planning Board and City Council and public notice, meaning that the rezoning request could be heard as quickly as the moratorium request.

Mr. Mike Estes of Robert Street asked that if a mobile home was permitted before the rezoning was approved, would it be grandfathered?

Councilman Owenby stated that if this lot is already sold, they should be allowed to use it as they have a vested right in it.

The City Manager stated that the owner had not received a permit or submitted any plans, so therefore an argument could be made that vested rights did not yet apply. Just buying a property does not convey any vested rights until plans are submitted or permits are sought.

Mike Estes stated that he wants this property re-zoned to R-1 before anything can be done and would appreciate any help Council can give them.

Mayor Clark stated that there is nothing Council can do at this point, other than receive the appropriate application and go through the process required by State law. He stated that one mobile home may come in under current zoning, but that a possible rezoning could prevent future mobile home development.

Councilman Owenby stated that maybe the neighbors should try to buy this property from the owner. One resident stated that he was exploring this possibility.

Mayor Pro Tem Little stated that, procedurally, citizens present not wanting a mobile home being placed in their neighborhood have but one choice: to turn in a rezoning application to the City Planner and work through the rezoning process.

Mayor Clark stated that he is sympathetic to persons here tonight.

The City Manager stated that as many property owners that can sign the petition the better.

City Planner Heather Cotton worked with the neighborhood residents in the conference room on preparing the necessary rezoning application.

ADOPT ORDINANCES – PARKING – SOUTH MAIN STREET AND WEST HENDERSON STREET: The City Manager stated that it had recently been determined that the police parking only spaces on South Main Street in front of the Count y Courthouse and on West Henderson Street next to Killough's Music and Loan are not listed on the City's Traffic Schedule.

A discussion followed.

Upon a motion by Councilman Cuthbertson, 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 adding the following:

STREET NAME	REGULATION	REG. APPLICATION
MAIN STREET (SOUTH)	PARKING FOR STATE AND LOCAL POLICE VEHICLES ONLY	EAST SIDE, BEGIN 15 FT. SOUTH OF THE SE CORNER OF SOUTH MAIN AND EAST COURT STS. EXTENDING 21 FT. SOUTHERLY
HENDERSON (WEST)	PARKING FOR STATE AND LOCAL POLICE VEHICLES ONLY	SOUTH SIDE, BEGIN 35 FT. WEST OF THE SW CORNER OF SOUTH MAIN AND WEST HENDERSON STS. EXTENDING 23 FT. WESTERLY

Section 2. This ordinance shall take effect upon its adoption.

Adopted this the 17th day of October, 2006.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-06-10-17-2

DISCUSSION – SPEED HUMPS – MR. CLIFF MCLARTY: Mr. Cliff McLarty appeared before Council requesting that speed humps be placed on North Madison Street. They are experiencing problems with speed and with vehicles running the stop signs at the intersection of New and Madison Street.

A discussion followed.

There is a need for water lines and paving on this street and at that time further discussion can possibly talk about the speed humps.

Councilman Edwards stated that he would like to see more traffic enforcement on residential streets and a patrol car on each street twice a day like it used to be. He stated that the City should devote necessary resources to make this a reality and suggested that traffic enforcement be added as a Planning Session topic.

Mayor Clark agreed that this issue could be discussed further during up coming Planning Sessions.

SCHEDULE DECEMBER COUNCIL MEETING AND CHRISTMAS DINNER: The City Council Meeting and Christmas Dinner was rescheduled for December 12 instead of December 5, with the Council meeting starting at 6:00 P.M. instead of 7:00 P.M., and with the Christmas Dinner following at 7:00 P.M. at Carolina Chocolatiers.

REVIEW ANIMAL ORDINANCE: Mayor Clark asked that this action be held until a later date.

A discussion followed.

The City Manager advised that the new Animal Ordinance provisions for dangerous animals were due to take effect on November 1, but that staff had concerns about the practical enforceability of several provisions. The City Manager asked that Council delay the effective date of the ordinance.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted to adopt the following Ordinance, to take effect on April 1, 2007:

ORDINANCE
AMENDING CHAPTER 3
ANIMALS
MARION CITY CODE

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

Section 1. That Chapter 3, Animals, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 3 is amended by deleting Chapter 3, Animals, in its entirety and replacing it with the following:

Chapter 3 ANIMALS*

***Cross reference(s)--**Human and animal waste, § 9-4; location of animal pens, § 9-7; removal of dead animals, § 9-42; animals and chicken fights prohibited, § 11-10.

Sec. 3-1. Definitions.

The following words and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shelter means any premises designated by action of the city for the purposes of impounding and caring for any animal found running at large in violation of this chapter.

City animal control officer means the person designated by the city as its enforcement officer.

County animal warden means the person designated by the county as its enforcement officer.

Dangerous dog means a dog that:

1. Without provocation has killed or inflicted severe injury on a person; or
2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed under the definition of "potentially dangerous dog"; or
3. Is owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or
4. Has inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

At large means any dog or cat when it is off the property of its owner and not under physical control of a competent person.

Kennel means any person engaged in the commercial business of breeding, buying, selling or boarding five (5) or more dogs or cats.

Owner means any person that owns, keeps or harbors a dog or cat.

Owner's real property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or townhouse development.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Potentially dangerous dog means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

1. Inflicted an unprovoked bite on a person that resulted in medical attention; or
2. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or
3. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Restraint means a dog or cat that is:

(1) Controlled by a leash;

(2) Within a vehicle being driven or parked on the street and unable to bite or scratch persons outside the vehicle; or

(3) Within the property limits of its owner or keeper.

Severe injury means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery, hospitalization or medical attention.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

(Ord. of 2-4-86, § 8-2001)

Cross reference(s)--Definitions and rules of construction generally, § 1-3.

Sec. 3-2. Rabies vaccination required.

No person shall own, keep or harbor any dog or cat over the age of six (6) months within the city limits unless it has been vaccinated for rabies and the rabies vaccination is current, meaning that the animal has received its first rabies vaccination within the preceding 12 months or its second or subsequent rabies vaccination within the previous 36 months.

(Ord. of 2-4-86, § 8-2002)

State law reference(s)--Rabies, G.S. § 130A-184 et seq.

Sec. 3-3. Enforcement.

The provisions of this chapter shall be enforced by the designated city animal control officer or the police department or both, under the organizational arrangement deemed appropriate by the City Manager; provided that the City shall at all times maintain a person designated as animal control officer.

(Ord. of 2-4-86, § 8-2003)

Sec. 3-4. Restraint.

(a) The owner shall keep his dog or cat under restraint at all times and shall not permit the dog or cat to be at large.

(b) For a first violation of this Section, the owner of a dog or cat at large will receive a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code. In addition to the civil citation, the owner of the dog or cat at large shall be required to implant a microchip on the animal, for future identification purposes. The City Council may choose to waive the civil penalty, at its discretion, if proof is given through the filing of a civil citation appeal under Sec. 1-20 of the City Code that a microchip has been implanted on the animal.

(c) For a second violation of this Section, the owner of a dog or cat at large will receive a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code. In addition to the civil citation, the owner of the dog or cat at large shall be required to have the dog or cat spayed or neutered. The City Council may choose to waive the civil penalty, at its discretion, if proof is given through the filing of a civil citation appeal under Sec. 1-20 of the City Code that the animal has been spayed or neutered.

(Ord. of 2-4-86, § 8-2004)

State law reference(s)--Dogs running at large at night, G.S. § 67-12.

Sec. 3-4.1. Tethering of animals.

(a) At no time shall a dog or cat deemed dangerous or potentially dangerous be fastened, chained or tied on any property within the City Limits of the City of Marion.

(b) All dogs, cats, horses or other domesticated animals, except for those described in subsection (a) above, may be houses, fenced or tethered. All dogs, cats, horses or other domesticated animals that are tethered shall be tethered in such a manner as to prevent said animal from being within ten (10) feet of any public or private street, sidewalk or pedestrian walkway. All dogs, cats, horses or other domesticated animals shall be tethered at least five (5) feet from any property line not adjacent to a public or private street, sidewalk or pedestrian walkway. Said animals shall be tethered with a metal chain or cable of a size appropriate to the size of the animal and not harmful to the animal.

Sec. 3-4.2. City Council to serve as Dangerous Animals Appeals Board; Creation of Dangerous Animals Advisory Board.

In accordance with N.C.G.S. 67-4.1 (c), the Marion City Council shall constitute the Dangerous Animals Appeals Board. A Dangerous Animals Advisory Board is hereby created to advise City Council in their capacity as the Dangerous Animals Appeal Board. The Dangerous Animals Advisory Board shall consist of no fewer than three (3) and no more than five (5) members. The members of the Dangerous Animal Advisory Board shall be appointed for three (3) year terms by the City Council, shall be residents of McDowell County and shall have demonstrated knowledge about animals or training in veterinary medicine. The members of the Dangerous Animals Advisory Board shall serve without pay, but may be reimbursed for expenses incurred in the performance of their official duties, with the approval of the City Manager. A majority of the members of the Dangerous Animals Advisory Board shall constitute a quorum at any meeting or hearing.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-4.3. Determination of dangerous or potentially dangerous dog or cat; appeal.

(a) Upon receipt of a complaint or observation that a dog or cat may have exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog", as found in Section 3-1 of this Chapter, sufficient to designate such dog or cat as dangerous or potentially dangerous, the animal control officer shall investigate the specific charges. If the animal control officer determines that the dog or cat is dangerous or

potentially dangerous, the owner of the dog or cat shall be notified in writing by certified mail, return receipt requested, or by personal service. The notice shall state that the owner's dog or cat has been determined by the City to be dangerous or potentially dangerous, list the reasons for the determination and list the steps that must be taken under this ordinance, including confinement requirements listed under Section 3-5, for the animal to remain in the City. The notice shall state that the owner will be required to implant a microchip in the animal for identification purposes and to have the animal spayed or neutered. Upon receipt of the notice of determination, the owner may appeal the determination by filing a written appeal stating his or her objections to the determination with the City Manager within three (3) days. Upon receipt of the appeal, the City Manager or his designee shall schedule a hearing with the Dangerous Animal Advisory Board within a reasonable time. The Dangerous Animal Advisory Board shall be required to issue a decision recommending to the City Council the upholding or overturning of the determination of the animal control officer within thirty (30) days from the date the appeal is filed. The City Council shall then receive the recommendation of the Dangerous Animals Advisory Board and render a decision upholding or overturning the determination of the animal control officer within sixty (60) days after receiving said recommendation. Any appeal from the City Council shall be taken to Superior Court, in accordance with N.C.G.S. 67-4.1(c).

(b) Upon receipt of a complaint or observation that a dog or cat previously determined to be dangerous or potentially dangerous may have again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall investigate the charges. If the animal control officer determines that a dog or cat previously determined to be dangerous or potentially dangerous has again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall transfer and impound the animal at the shelter designated as the McDowell County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner, or if the owners can be contacted through the implanted microchip described in Section 3-4(b). The owner will not permitted to keep the animal within the City Limits of the City of Marion at any point in the future.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-5. Confinement of dangerous or potentially dangerous dog or cat; muzzles.

The owner of every dangerous or potentially dangerous dog or cat shall confine the animal within a secure building or secure enclosure and not take it out of the secure building or secure enclosure into a public domain unless it is securely muzzled with a wire or cage muzzle. Such secure building or secure enclosure must be locked with a childproof locking device, must be of a height appropriate for the size of the animal to keep the animal confined inside and must be constructed of a material sufficient to keep the animal restrained (screen doors, windows, porches and other screen materials are not deemed sufficient for purposes of this subsection). In addition, the owner must prominently display in public view on the property a sign stating "Beware of Dog".

(Ord. of 2-4-86, § 8-2005)

State law reference(s)--Confinement or leashing of vicious animals, G.S. § 130A-200; Dangerous Dogs, G.S. § 67-4.1 et seq..

Sec. 3-6. Complaint procedures and impoundment.

When the police department receives a complaint that a dog or cat is at large, the person making the complaint shall be asked for permission to locate an animal cage on their property. If permission is granted, city employees will place a baited animal cage on the property of the person making the complaint. When a dog or cat is caught in the cage, the animal will be transferred and impounded at the shelter designated as the McDowell County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner. If the complaining party refuses to allow the cage to be located on their property no further action will be taken unless the animal has attacked someone or appears to be dangerous, potentially dangerous or sick, in which case the police department will transport the animal to the McDowell County Animal Shelter. The owner of the animal may appeal the taking of the animal and the determination that the animal is dangerous, potentially dangerous or sick by filing a written appeal stating his or her objections to the taking of the animal and the determination that the animal is dangerous, potentially dangerous or sick with the City Manager within three (3) days. Upon receipt of the appeal, the City Manager or his designee shall schedule a hearing with the Dangerous Animal Advisory Board within a reasonable time. The Dangerous Animal Advisory Board shall be required to issue a decision recommending to the City Council the upholding or overturning of the determination of the animal control officer within thirty (30) days from the date the appeal is filed. The City Council shall then receive the recommendation of the Dangerous Animals Advisory Board and render a decision upholding or overturning the determination of the animal control officer within sixty (60) days after receiving said recommendation. Any appeal from the City Council shall be taken to Superior Court, in accordance with N.C.G.S. 67-4.1(c). Pending a final decision by the City Council, the City shall request the Animal Shelter not to euthanize the animal in question, on the condition that the owner of the animal agrees to pay any applicable impoundment fees charged by the McDowell County Animal Shelter. However, the City cannot provide a guarantee that the animal will not euthanized by the McDowell County Animal Shelter prior to the appeal being filed, or even after the appeal is filed, in the event that the McDowell County Animal Shelter does not comply with the request of the City not to euthanize the animal in question.

(Ord. of 2-4-86, § 8-2006)

Sec. 3-7. Redemption of impounded animals.

The owner may reclaim his impounded dog or cat when he complies with regulations established by the McDowell County Commissioners and City Ordinances as found in this Chapter and pays the necessary impoundment fees imposed by the county.

(Ord. of 2-4-86, § 8-2007)

Sec. 3-8. Barking dogs.

It shall be unlawful for any dog owner to keep or have within the city a dog that habitually or repeatedly barks in such a manner or to such extent that it is a public nuisance.

(Ord. of 2-4-86, § 8-2008)

Sec. 3-9. Investigation.

To discharge the duties imposed by this chapter and to enforce its provisions the city animal control officer, any agent of the city animal control officer or any police officer may obtain an administrative search warrant to enter any premises where a dog or cat is kept or harbored and may require the animal's owner to show proof the animal has a current rabies vaccination, as described in Section 3-2.

(Ord. of 2-4-86, § 8-2009)

State law reference(s)--Administrative search and inspection warrants, G.S. § 15-27.2.

Sec. 3-10. Interference with animal control officer.

No person shall interfere with, hinder, or molest any agent of the city animal control officer in performing any of his duties or seek to release any animal from the custody of the city animal control officer, his agents or the instrument of capture except as provided in this chapter.

(Ord. of 2-4-86, § 8-2010)

Sec. 3-11. Records.

(a) The police department shall keep or cause to be kept accurate and detailed records of the impoundment of all animals that come into its custody.

(b) The police department shall keep or cause to be kept accurate and detailed records of all bite cases reported and of the investigation of the bites.

(Ord. of 2-4-86, § 8-2011)

Sec. 3-12. Fowl running at large prohibited.

It shall be unlawful for any person to permit turkeys, geese, ducks, chickens, or other domestic fowl to run at large upon any land in the city.

(Ord. of 2-4-86, § 8-2012)

Sec. 3-13. Grazing prohibited.

No person shall permit any cattle, sheep or other animals to graze, or tie such animal up, on any vacant lot or within fifty (50) feet of any dwelling or street within the city.

(Ord. of 2-4-86, § 8-2013)

Sec. 3-14. Hitching animals.

No person shall hitch any horse or other animal to any of the trees, lampposts, electric lights, power, telephone or telegraph poles, mailboxes, wires or hydrant on any of the streets, sidewalks, squares or parks in the city.

(Ord. of 2-4-86, § 8-2014)

Sec. 3-15. Hogs prohibited.

It shall be unlawful for any person to keep a hog within the corporate limits of the city.

(Ord. of 2-4-86, § 8-2015)

Sec. 3-16. Restriction as to certain animals in public places.

No person shall permit his horse, mule, donkey, hog, sheep, goat, or cattle of any kind, to run at large in the streets, sidewalks, parks, squares or cemeteries of the city. Horses or mules which are being used for riding or driving may be fastened to hitching posts or blocks, but no person shall stake or otherwise fasten any such animal, for grazing purposes, in any of the streets, sidewalks, parks, squares, or cemeteries of the city, nor shall any person feed any such animal in any of the streets, sidewalks, parks or squares of the city.

(Ord. of 2-4-86, § 8-2016)

Cross reference(s)--Streets, sidewalks and other public places, Ch. 15.

Sec. 3-17. Cleanliness and location of animal enclosures.

(a) Every stable and place where cattle, horses, chickens, geese or other animals are kept, shall be maintained in a clean and healthy condition at all times. No person shall erect upon any lot any cow, horse, mule, sheep or goat stable or any coop or pen for the keeping of any chickens, geese, turkeys, ducks, or any other gallinaceous birds, within one hundred (100) feet of any street or dwelling.

(b) This section shall not apply to animals located within the city prior to the date of adoption of the ordinance from which this section derives. However, the number of animals shall not be increased nor shall the animals be replaced or relocated to some other property in violation of this section.

(Ord. of 2-4-86, § 8-2017)

Cross reference(s)--Health and sanitation, Ch. 9.

Sec. 3-18. Bird sanctuary; eradication of pests.

(a) The entire area embraced within the corporate limits of the city is hereby designated as a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, however, that if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the city council, then the city council may bring the matter to the attention of the state commissioner of agriculture or state pesticide board which shall make such disposition of the matter as may be appropriate pursuant to the provisions of G.S. section 113-300.2.

(Ord. of 2-4-86, § 8-2018)

State law reference(s)--Declaring wild animal or bird a pest, G.S. § 113-300.2; bird sanctuaries, G.S. § 160A-188.

Section 3. This ordinance shall become effective on April 1, 2007.

Adopted this the 17th day of October, 2006.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-06-10-17-3

CITY MANAGER'S REPORT:

The City Manager advised that Congressmen Taylor's office has indicated that FEMA would direct the State to provide the City and County with a full 90 day appeal period for the new flood maps and that the County was soon expecting a confirmation letter from the State confirming this point.

Mayor Clark stated that he and the City Manager had recently talked with N.C. Crime Control and Public Safety Secretary Bryan Beatty at the N.C. League of Municipalities Meeting and that Secretary Beatty had stated that he would do anything he could to help Marion.

The City Manager stated that he would meet with the State Division of Emergency Management the next day to go over the flood maps in detail as they effect the City. The City Manager reported that the State had offered to hold a public meeting just for City property owners, if that was Council's desire. Council directed the City Manager to schedule such a meeting as soon as he could.

The City Manager asked Council for authorization to work with the County to contract with McGill Associates to develop technical arguments to use for the flood map appeals. Council expressed willingness to contract with McGill, subject to review of a proposal from McGill.

The City Manager advised that the City is still working to lobby the N.C. Clean Water Management Trust Fund (CWMTF) regarding our grant application for our wastewater improvements project.

The City Manager reminded Council of the Public Hearing on the City's Special Order by Consent (SOC) application for the Corpening Creek Wastewater Plant scheduled for Monday, October 30, 2006 at 7:00 PM at the Community Building.

The City Manager reminded Council of the Planning Session scheduled for Tuesday, October 24, 2006 at 6:00 PM at City Hall.

Councilman Edwards advised that due to court changes, consequently, his work load is about 80 hours a week and that the two nights a month he has blocked out for Council meetings is already maxing him out. He may not be able to attend the Planning Sessions due to this work load

The City Manager advised that the Mountain Glory Festival this past weekend was huge success, and probably had one of the best crowds ever. The weather was also wonderful.

CLOSING COMMENTS:

Councilman Edwards advised that Keith Buchanan had assisted him with his computer and updated his Norton Antivirus and that Mr. Buchanan may need to update the Norton Antivirus on other laptops.

Councilman Edwards stated that the City should consider higher deposits and/or stricter measures to protect the Community Building and Depot from damage by rental events. These ideas can be discussed further at future Planning Sessions and/or Council meetings.

Councilman Little advised that citizens are frightened for children to play soccer at the YMCA soccer fields, due to there being no guardrail. The City Manager advised that the City and County Officials have contacted the Department of Transportation and asked for guardrails to be placed there. Councilman Little suggested that the City Manager contact State Representative Mitch Gillespie to see if he could assist with lobbying for the guardrail. The City Manager stated that he would contact Representative Gillespie.

Councilman Little noted that today is the 4th anniversary of Mr. Warren Hobbs' death.

Councilman Cuthbertson advised that he had heard rumors that there is a bakery being run out of the back of the Holiday Laundry. The City Manager stated that he would pass this information on to City Planner Heather Cotton and ask her to investigate.

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

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 Tuesday evening, October 24, 2006 at 6:00 P.M. in the Conference Room located at 194 North Main Street for the purpose of conducting a Planning Session.

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

Councilman Edwards could not attend this meeting due to work commitments.

Councilman Martin could not attend this meeting due to sickness.

OTHERS PRESENT: Bob Boyette, City Manager

GUESTS PRESENT: None

OPENING/DISCUSSION TOPIC PRIORITIZATION: Council began the Planning Session by prioritizing listed priorities, including the ones the City Manager had previously proposed and had posted in the Conference Room, plus a few others Council added.

The prioritization was as follows (with notes/prioritization listed in bold):

1. Growth/Annexation Priorities – Such as Eastfield Phase II, small pockets close in to the City and future priorities such as Sugar Hill Road to I-40. **Listed as High Priority due to long range planning/vision importance.**

2. Land Use/Comprehensive Plan and Zoning Issues – **Identified as a High Priority, but one that will be better reviewed as information and recommendations come forward from the Planning Board and staff in the future. Therefore, no recommended discussion during upcoming Planning Sessions.**

3. Economic Development Strategies/Priorities – **Identified as a High Priority.**

4. Downtown Streetscape/Traffic Flow Plan - **Identified as a High Priority, but one that will be better reviewed as information and recommendations come forward from the Downtown Advisory Committee and staff in the future. Therefore, no recommended discussion during upcoming Planning Sessions.**

5. Youth Council Idea – **Identified as a Lower Priority.**

6. Water and Sewer Connection Fees – Idea of higher connections fees outside the City, which would increase outside fees and could potentially lower inside fees – **Identified as a High Priority, related to long range growth/economic development vision for the City.**

7. Recycling Program – Costs of program and desired future – **Identified as a medium range priority, given its operational importance. To be combined with discussion about #8 and #9.**

8. Brush/Limb Pickup – Rules prohibiting City from picking up limbs and brush cut by contractors - **Identified as a medium range priority, given its operational importance. To be combined with discussion about #7 and #9.**

9. Solid Waste Collection – Problems with finding a replacement vehicle for the Cushman buggy - **Identified as a medium range priority, given its operational importance. To be combined with discussion about #7 and #8.**

10. Proposed Fire Inspection Fees – Should we seek to recover any costs, or should we provide fire inspection as a service and fine for non-compliance? – **Council agreed not to discuss this issue at all and to reject the idea outright of charging fire inspection fees.**

11. Community Building Park Improvements – Current year priorities and Master Plan – **Identified as a medium range priority, given its operational importance and the need to identify short and long term vision for improvements at the Community Building Park.**

12. Parks and Recreation – Current and future maintenance burden/needed staffing levels – **Identified as a lower priority, since this item relates to resources and is more of a 2007-08 and future year budget item.**

13. Downtown Traffic Enforcement - **Identified as a lower priority, since this item relates to resources and is more of a 2007-08 and future year budget item.**

14. Water and Sewer Fund Financial Picture/Staff Levels – Wastewater Plant Improvements Funding Strategy and needed staffing levels to adequately maintain water and sewer system – **Identified as a lower priority for Planning Session purposes, since this issue involves processes already in motion and is more of a budgetary item for future Fiscal Years.**

15. Water and Sewer Extensions - Desired direction of cooperation with outside agencies such as McDowell County to run water and/or sewer outside the City – **Identified as a High Priority item, related to long term growth and economic development vision for the City.**

16. Community Building/Depot Damage – Ideas to deter damage such as higher deposits or requiring City employee to monitor building. – **Identified as a low priority item since it is a narrowly focused issue that can be addressed as needed, perhaps at regular Council meetings.**

17. Animal Ordinance Revisions - **Identified as a low priority item since it is a narrowly focused issue that can be addressed as needed, perhaps at regular Council meetings.**

18. How to conduct further Planning Sessions – **Council agreed that it was important to discuss how to conduct future Planning Sessions, so discussion about this item did take place.**

19. Transportation/Road Improvements - **Identified as a High Priority related to long term growth and economic development vision of the City.**

The prioritization process took about 45 minutes to one hour.
FIRE INSPECTION FEES: As a result of item #10 listed above Fire Inspection Fees, was removed from the list, since Council agreed that fire inspection should not be a service for which fees were charged.

Before leaving item #10, Councilman Cuthbertson stated that he had heard from property owners in the Deacon Drive area (part of the new six mile MA Fire District) who were paying fire taxes to Nebo. The City Manager stated that he would have the Fire Chief make sure that people in this area that were in the MA District were paying their taxes to the MA District.

GROWTH/ANNEXATION ISSUES: Council then discussed future growth/annexation properties. The City Manager went over several annexation possibilities for 2006-07 and beyond, including:

1. Eastfield Phase II – Council agreed in concept to pursue a June 30, 2007 annexation of areas from Clark Street to the railroad tracks and Yancey Street to Baldwin Avenue, with an additional section of Seagle Street on which property owners have requested annexation. This annexation will likely involve around 100 homes. Council noted that ultimately the City will need to take in most all of the Eastfield Community, although concerns were expressed about taking in the new Berryhill auto repair shop on Carolina

Avenue, areas without water service on Pine Street, Westmoreland Street and Tunnel Road and higher crime areas on Tunnel Road. None of the areas in which concerns were expressed are part of the Phase II proposal.

2. Tate Street/Summit Street – This area involves about seven houses between the Credit Union and Pinnacle Street on Tate Street and the backs of some split properties on Summit Street. Most Council members thought this area was already within the City. The area has full City services, much like the end of Hillcrest Drive annexed two years ago. Council agreed that this area should be annexed effective June 30, 2007, for fairness.

3. Finley Road – I showed on a large City map that Finley Road was the area closest to the center of the City not already within the City. This area includes a few homes. The only service not available is sewer service, which could cost $30,000 or more to provide. Council agreed in concept to pursue a June 30, 2007 annexation of this area, for fairness, as long as the sewer extension can take place reasonably.

4. Sugar Hill Road – Council agreed that the Sugar Hill Road corridor between Shady Lane and I-40 should be annexed, for economic development potential, as soon as water and sewer can be provided. The ability of the City to fund this water and sewer extension is very limited right now, however.

Other small areas were discussed and identified as areas for the City to contact property owners and offer annexation based on water and sewer savings:

1. Westwood Drive, behind Lady Marian Plaza.

2. Laurelwood Drive Group Home, not to include Laurelwood Townhouses for now

3. Apartments on Airport Road adjacent to the City Limits

4. A few houses on Yancey Road immediately east of Oakwood Drive.

5. A few properties on Virginia Road in Clinchfield around Forsyth Street and Hill Road.

6. The Hampton Inn on Highway 221 South.

The City Manager proposed to Council that we ask the County to annex their 37 acre property on Barnes Road, so that we could lock this area in the City and grant requests made by industry on Barnes Road for streetlights. The road is not currently in the City, so annexation would be needed to justify the placement of streetlights. Council agreed for the City Manager to request this annexation, which he had already discussed with the County Manager.

Council expressed continued interest in acquiring property at the top of Mt. Ida for preservation purposes and directed the City Manager to work with Dennie Martin on possible recreation grant applications.

WATER AND SEWER EXTENSIONS: Council first briefly discussed the planned $5.6 million in Wastewater Plant improvements and resulting grant applications and likely City debt service, recognizing that these needs will dominate the Water and Fund financial picture for the next few years. Despite these limitations, Council expressed a strong desire to extend water and sewer on Sugar Hill Road to I-40 when possible. The City Manager advised that the water and sewer extension could cost around $1.4 million and that an upgrade or replacement of the Hospital Pump Station, costing around $300,000, would be necessary as well, since that pump station was near capacity. The City Manager proposed an idea of rolling this project into the wastewater plant debt service, if we obtain $3 million - $4 million of State and Federal grant money.

The idea of seeking grants for the Sugar Hill Road water and sewer extension was discussed, although it was acknowledged that no grant funds are available at the present time except for job creation. The City Manager suggested that if a development opportunity comes along, Council look at the tax base that could be created and look at earmarking new revenues for a few years if

necessary to pay debt service on such an extension, like is done for new industry. Council also directed that the City Manager see what developers could contribute to potential projects, then the City and perhaps County contribution could be determined. Council can then review potential projects on a case-by-case basis.

A discussion was held about water extensions out into the County. Council reiterated that such extensions, into areas that the City could not annex, had to be paid for solely by outside parties, be they the County or private developers. Mayor Clark cautioned against allocating further water capacity for such projects. The City has already allocated a total of 600,000 gallons of water per day for the current Industrial Park and Nebo. The City Manager suggested that if the County seeks additional water allocations, the County should have to use existing allocations, essentially borrowing from itself. Council agreed with this approach.

The Mayor also expressed concerns about the City losing Nebo water revenues in the future if the County constructed a Water Treatment Plant. The idea of not budgeting for water revenues from County customers was discussed. Instead, these revenues could be used for capital projects or a savings account.

WATER AND SEWER CONNECTIONS: The City Manager proposed to Council the idea of charging higher connection fees outside the City, as an incentive for development inside the City. This idea could involve lowering inside water and sewer connection fees and raising outside fees. Council felt that the current fee structure worked pretty well and was not interested in lowering fees. Councilman Little stated that if anything were done, he would recommend perhaps raising outside connection fees in the future. This item, #6, was therefore removed from the list of discussion topics.

WATER AND SEWER FINANCIAL PICTURE/AUDIT: Council did not discuss this topic in much detail, other than related to the Wastewater Plant improvements project and related grants and debt service. However, the City Manager did note that State regulators had stated that the City needed more staffing in the utility maintenance area and at the Water Plant. The City Manager advised that he acknowledged this need, but that paying for staff additions, especially out of the Water and Sewer Fund, would be very difficult in the near future. This will be a budgetary consideration.

On the positive side, through the first three months of the Fiscal Year, the City's water and sewer budgeted revenues are running 11.3% above budgeted amounts. If this trend continues, the City can build back Water and Sewer Fund reserves to some degree, have greater ability to absorb increased operating costs and put the City in better position to pay for debt service related to the wastewater plant improvements and other items such as perhaps Sugar Hill Road water and sewer.

ECONOMIC DEVELOPMENT: Council discussed this topic very briefly. Several members stressed the need to encourage downtown residential development, even if it took financial incentives. Residential development was viewed as one of the keys to continued downtown development by the N.C. Main Street Staff and the DAC and Council agreed that it was vitally important. Ideas will be studied by the DAC and staff.

The City Manager touched on recent interest expressed in the City's Residential Development Incentive Plan, to encourage residential development in the City. The City Manager noted that if residential development was substantial enough, Council may want to invest tax base created in water and sewer extensions to serve such development. Council can review proposals on a case-by-case basis.

PARKS AND RECREATION IMPROVEMENTS: This topic was not discussed, but Councilman Cuthbertson noted that discussion needed to take place as soon as possible, so that any needed changes in 2006-07 budget priorities could be made and allow for park construction this year.

SCHEDULING OF FUTURE COUNCIL PLANNING SESSIONS: Council expressed a desire to hold additional Planning Sessions, perhaps as soon as late November. The idea of a Planning Session on Tuesday evening, November 28 was discussed. However, Council felt it appropriate to set the date for the next Planning Session at the November 7 Council meeting.

The City Manager threw out the idea of canceling the November 21 Regular Council meeting, since it is so close to Thanksgiving and holding the November 28 Planning Session as a substitute. This idea can be discussed at the November 7 Council meeting.

ADJOURNMENT: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council 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, November 7, 2006 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 Mike Edwards, Billy Martin and Cecil Owenby.

Councilman Lloyd Cuthbertson 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; Harriett Thomas, Finance Director; Mike Conley, News Reporter, McDowell News; Phillip Jackson, City Attorney.

GUESTS PRESENT: David, Joyce and Nicolas Bingham 349 East Oak Street, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN OWENBY: Councilman Cecil Owenby selected the Citizen of the Month for November 2006:

Councilman Owenby advised that his Citizen of the Month is

Mr. David Bingham

Councilman Owenby stated that Council has been choosing a Citizen of the Month for several years and sometimes we look around for a citizen to honor and find a person that has not been noticed.

Mr. David Bingham is married to Joyce and they have three children Shannon, Michael and Nicolas.

David has worked at Bi Lo for a number of years.

He is involved with Marion Elementary School, has served as President of the PTO and has volunteered at the school in other areas. He has been a Scout Leader and attends the First Baptist Church where he works with the Youth.

Mr. Bingham likes to bike and fish and is a dedicated family man.

Councilman Cecil Owenby stated that it is with great pleasure that he presents Mr. David Bingham as his Citizen of the Month for November.

Mayor Clark, Council Members, Family and Friends all had kind words to share about Mr. Bingham.

CONSENT AGENDA: Upon a motion by Councilman Little , seconded by Councilman Martin, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - October 17, 2006 Regular Session Minutes
October 24, 2006 Planning Session Minutes

B Approve Waiver of Civil Citation – Failure to Display Handicapped Placard: Phyllis Biggerstaff – Citation Number - P003346

C. Approve Waiver of Civil Citation – Failure to Display Handicapped Placard: Bertie Wilson – Citation Number - P003343

D. Approve Waiver of Civil Citation – Failure to Display Handicapped Placard: Bonnie Goldsmith – Citation Number - P003217

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

DISCUSS/CONSIDER APPROVAL OF DEBT COLLECTION CONTRACT: The City Manager advised that he and Finance Director Harriett Thomas had been talking for several months with a local man representing a world wide debt collection agency headquartered in charlotte. This collection agency is working with the County and other cities and counties. The cities main problem area for debt collection has been civil citations such as parking and ordinance tickets. Letters have been sent demanding payment, without success.

Ms. Thomas advised that the contract from Trans Work Systems would require that the City buy a certain number of accounts (100 proposed) at a cost of $1,225. Trans World would send a series of letters demanding payment and guarantees that the City would receive back at lease twice their investment, or they would receive back their purchase price or the difference between the amount collected and double their investment. For the guarantee to be valid, the average account balance must be $50.00 (multiple citations to the same person can be combined into one account). Many of the City's parking citations are $35.00, so many individual parking tickets cannot be pursued.

Ms. Thomas stated that the City has a total of around $9,000 in unpaid parking tickets and ordinance violations and could likely submit a little under half of the amount and stay over the $50 threshold.

Mayor Clark stated that he understood that civil penalties received by the City would have to go to the School System. Mayor Clark also stated that
he had used this type of service in the past without success. The City Manager stated that the North Carolina constitution did speak to civil citation going to the School System, but that there were different interpretations regarding whether the Constitution meant profits or all revenues.

A discussion followed.

Mayor Clark stated that he agreed that the citations should be collected, but that he would rather not have the City spend money to collect revenues that would end up going to the School System.

Councilman Martin advised that he would like to see us give the debt collection agency a try, since current collection efforts are not working.

The City Manager suggested that if City Council was concerned about how civil citation revenues must be distributed, then the North Carolina League of Municipalities staff attorneys could be contacted for guidance.

It was the consensus of Council to have the city Manager contact the North Carolina League of Municipalities staff attorneys regarding the treatment of civil citation revenues and to report back at the next city council meeting, if information is received.

REVIEW/CONSIDER APPROVAL OF REVISED TRAVEL POLICY:
Finance Director Harriett Thomas advised that she had recently compared the City's meal reimbursement rates to other jurisdictions and found that we are low.

Many Cities are using the IRS per diem rate of $39.00 per day, but the average of surveyed cities was $36.00 per day.

Currently, the City has been using two forms, one for in state rates and one for out of state rates. The IRS does not have an in state versus out of state standard, but does recognize certain high cost cities such as Washington, D.C.

Ms. Thomas proposed that the City use standard IRS reimbursement rates for mileage and meals, rather than adjusting such reimbursement rates periodically.

A discussion followed.

Councilman Edwards sated that it made sense to go with the IRS standard rates, with automatic adjustments, so that Council would not have to revisit this issue.

Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to amend the City of Marion travel Policy to adopt the IRS standard per diem rates for meal reimbursements and the IRS standard mileage reimbursement rates, with automatic adjustments as such rates are changed by the IRS.

DISCUSS/CONSIDER APPROVAL OF FALSE ALARM ORDINANCE: The City Manager presented Council with a copy of the false alarm policy approved in 1994. This policy states that there is a $50.00 penalty for the fourth and subsequent false alarms in each calendar year.

After a discussion with the Police Chief, the City Manager advised that the penalties would be more defensible if the City had a False Alarm Ordinance, instead of a False Alarm Policy. The City Manager advised that he had taken the policy and put it in ordinance form, with the addition of definitions and the inclusion of false fire alarms in the ordinance.

A discussion followed.

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

ORDINANCE
AMENDING CHAPTER 11
OFFENSES
MARION CITY CODE

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

Section 1. That Chapter 11, Offenses, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 11 is amended by adding Section 11-20 as follows:

Sec. 11-20. False alarms.

(a) Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alarm system means any electronic or mechanical device which transmits an electronic alarm signal or recorded message to the City or County Communications Center or other receiving station indicating an actual or attempted unauthorized entry into a building, indicating the commission or attempted commission of a crime in or about a building or indicating a possible fire or chemical or gas contamination of a building. For purposes of this definition, the term "other receiving station" means any person or business that receives an electronic alarm signal or recorded message and transmits information regarding such signal or message to the City Police or Fire Departments or to the County Communications Center.

Alarm system owner means any person, corporation, partnership, governmental or education entity owning or leasing an alarm system.

Audible alarm system means any alarm owned by an alarm system owner that, by sound of a whistle, bell, buzzer, siren or other noise generator, alerts those inside or outside a home, building or vehicle, and in the near vicinity, of a break-in, robbery, possible fire or chemical or gas contamination, but does not transmit a signal by telephone or other communications device.

False alarm means activation of an alarm system that elicits a response by the Police or Fire Departments when no situation requiring such a response does, in fact, exist. This includes accidental, avoidable and unnecessary alarm activation due to user error, equipment malfunction, improper or unsuited equipment, but does not include alarm activation caused by violent conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm user including disruption of the telephone circuits, an area power failure, or failure of the equipment at the receiving station.

(b) Penalties for excessive false alarms.

There shall be a fee of fifty ($50.00) dollars per false alarm for the fourth and each subsequent false alarm received by the City Police or Fire Department per calendar year. For purposes of this ordinance, a false alarm is defined as any signal communicated by any means to solicit police or fire response, when the signal originated due to defective or poorly operating equipment or the alarm was otherwise sent accidentally.

(c) Continuous sounding audible alarms

If an audible alarm system is activated and the sound does not cease after fifteen (15) minutes, then the City Police or Fire Department may use any reasonable means to silence the alarm.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 7th day of November, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-11-7-1

SCHEDULE NEXT COUNCIL PLANNING SESSION: City Council set the next Planning session was set for Tuesday, November 28th at 6:00 PM at City Hall. Mayor Clark noted that the December Regular City Council Meeting would be held on December 12, 2006 instead of December 5, with the meeting beginning at 6:00 P.M. and the annual City Council Christmas Dinner following the meeting at Carolina Chocolatiers.

DISCUSS PARKS AND RECREATION TRUST FUND GRANT APPLICATION: The City Manager advised that he had spoken with Dennie Martin about grant possibilities for the possible acquisition of the top of Mt. Ida for future recreational use. The City Manager has also met with Ellen McKinnon, Dennie's grant writer. The City Manager stated that Ellen feels that the City would have a good chance of obtaining a 50-50 matching grant from the N.C. Parks and Recreation Trust Fund (PARTF) for land acquisition. The City Manager advised that there are several steps that have been added to the PARTF grant process since the last time the city obtained a PARTF grant for Cross Mill Park in 2003.

The City Manager reported that, along with the basic application, the City would need a letter from the City Attorney related to site control, a council resolution authorizing the application, Council adoption

of a Recreation System Master Plan and Capital Improvements Plan (CIP), which Ellen can simply complete for us, and Council approval of the site plan. In addition, the City will need to hold three public meetings on the application, with notice of each meeting published in the paper. These meetings could be held at the November 21 Council meeting and at two Council meetings either in December or January. The City Manager stated that the city will need to conduct a recreation survey and have a good number returned, to show additional public input, and made presentations to tow local civic groups. For maximum points, there would need to be presentations of the plan to a parks and Recreation Advisory group. The City Manager suggested that council designate the Tree Board as the Parks and Recreation Advisory Board. The City will also need to document presentation of the project to Council and obtain a survey, which should already exist, and an appraisal.
The City Manager reported that the property in question is 35 acres. Ideals for future uses, which the city must identify but would not be absolutely committed to, include walking/biking trails, picnic area and a retreat center. The retreat center could perhaps give us leverage for funding support from the Chamber and maybe even the County. The City Manager stated that he would propose bringing these two groups together to discuss the project. The grant application deadline is January 31, so the city will have time to work with McGill to prepare the application. Preparing the application, including preparation of the park master plan and CIP, and the appraisal could cost us up to $5,000, but the City could see a possible return of $150,000-$180,000.

The City Manager advised that before the City starts on the application, he wanted to see if Council wished to pursue the PARTF application. The listing real estate agent Ken Harris indicates that the property owner, Mr. Hamill would probably be willing to provide the City an option at a minimal charge. Mr. Harris has advertised that Mr. Hamill has authorized him to stop advertising this property for sale and that the option question can be discussed.

Councilman Owenby asked if there is clear access to the property.

Mayor Pro Tem Little stated that he is confident that there will be no problem with accessing the land, since City attorney Mia Lorenz and local surveyor Larry Greene both agree on the location of the road access.

Mayor Clark advised that, under PARTF rules, no money can be spent on the property acquisition, until the land is acquired. Therefore, it will be vital for the City to obtain an option on the property.

The City Manager noted that money will have to be spent on the grant application itself.

A discussion followed.

The Mayor and Council members stated that acquisition of this property was important in order to protect the top of Mt. Ida from possible development and to protect the view corridor from Downtown Marion.

Upon a motion by Councilman Martin, seconded by Councilman Little, those members of Council present voted to authorize the city Manager to apply for a North Carolina Parks and Recreation Trust Fund grant for property acquisition of approximately 35 acres at the top of Mt. Ida and to start the application and to designate the Tree Board as the Parks and Recreation Advisory Board for the City of Marion.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager noted that Johnson, Price & Sprinkle (JPS), would present the 2005-06 City audit report in January, without objection.

The City Manager advised that the DOT Transportation Improvement Program (TIP) public hearing for Division 13 is scheduled for November 16 in Morganton to receive public comments on the 2007-2013

and 2009-2015 State TIP. The City Manager proposed the following City TIP priorities, which have been unchanged for several years:

City of Marion Transportation Improvement Program (TIP) Priorities

	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 (Old Glenwood Road) to include widening along NC 226 adjacent to McDowell Technical Community College and SR 1794 leading to Marion Correctional Institution. Traffic counts along NC 226 are beyond capacity, and traffic has increased substantially in recent years. The City of Marion has annexed most of this section of the highway, so its widening is extremely important to the City. The Moving Ahead Project currently underway to widen NC 226 to three lanes will help to provide better traffic flow with vehicles turning into business and residential driveways, but high traffic counts warrant a multi-lane section for optimum traffic flow and to address the extremely high traffic counts in place along NC 226, especially as compared to the capacity of the highway.

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.

These recommendations are based on the Marion Thoroughfare Plan adopted on October 5, 1999 by the Marion City Council.

The City Manager reported that a public comment meeting was scheduled for Thursday, November 9, 2006 at 6:00 PM at the Community Building to discuss the City Flood Maps. The State and city staff will be present at this meeting to provide information about the new flood maps to property owners. Written notices have been sent to all property owners that appear to be in the flood plain and floodway within the City Limits and also to realtors and surveyors in the county, along with the media. The State will have appeal forms at this meeting, so property owners will have an opportunity to file appeals in advance of the November 15 initial appeal deadline.

The City Manager advised that the City was close to obtaining the written commitment of the Phillips family for the Catawba river greenway, to be located behind Wal Mart and Lowe's on US 70 West. The City Manager noted that he would be asking City Attorney Mia Lorenz to draw up a deed for the Phillips family to donate this property to the City, without objection. Council agreed by consensus for the City Attorney to prepare this deed.

The City Manager reported that the Holiday Parade is scheduled for Sunday, November 19, 2006 at 3:00 P.M. Line up will take place in the Advance Auto parts and Marion City Square parking lot.

The City Manager noted that estimates for the North Madison street sidewalk/curb project and for the Forest heights curb/drainage project have been presented and that staff would propose bidding these projects out in February or march, for spring construction, depending on the amount of the bids. Council agreed by consensus with this bid schedule,

The City Manager noted that the Department of Transportation and Representative Mitch Gillespie have advised that there will be no guardrails placed on Sugar Hill Road at the YMCA Soccer field, due to the location not meeting warrants for guardrail installation.

cted project to one or two blocks and have our Street Crew complete the rest of the work. In the meantime, Street Crews will be working on some curb replacement on James Drive and some sidewalk repairs/replacement on Logan Street. Both of these projects are on the Street and Sidewalk Priority List.

The City Manager noted that the Department of Transportation and Representative Mitch Gillespie have advised that there will be no guard rails placed on Sugar Hill Road at the Y.M.C.A Soccer Field.

The City Manager noted that he and Public Works superintendent Roger Estes had met with Mr. Pat Boone of McDowell Cement to discuss the recent repairs that have been made to the road at the Railroad Crossing on Garden Street and that Mr. Boone has agreed to instruct his truck drivers not to go across the tracks with loaded cement trucks, in order to preserve the integrity of the pavement at the crossing. The city Manager noted that council could consider a future truck prohibition at this location if this voluntary agreement did not work.

CLOSED SESSION – UNDER N.C.G.S. 143-318.11(a)(3) TO DISCUSS A LEGAL MATTER IN CONSULTATION WITH CITY ATTORNEY AND UNDER N.C.G.S. 143-318.11(a)(5) TO DISCUSS A MATTER INVOLVING THE ACQUISITION OF REAL PROPERTY: Upon a motion by Councilman Little, seconded by Councilman Owenby, those members of Council present voted to go into Closed Session accordance with N.C.G.S. 143-318.11(a)(3) to consult with the City Attorney regarding the case of 05-CvS 649, City of Marion, a North Carolina Corporation, as Plaintiff vs. Alvin Ray Berryhill, Sr. a/k/a Subavettes Retail Lot; Matthew Donald Horn and wife, Barbara W. Horn, (Beneficiaries of that certain Deed of Trust recorded at Deed Book 724, Page 816, McDowell County Public Registry); William Hill Evans, (Trustee of that certain Deed of Trust recorded at Deed Book 724, Page 816, McDowell County Public Registry);

Defendants regarding the case of 05 CvS 650, City of Marion, a North Carolina Corporation, as Plaintiff vs. Alvin Ray Berryhill, Sr. a/k/a Berryhill's Radiator and Muffler Shop, a/k/a Bill's Radiator Shop, a/k/a The Muffler Shop, Billy R. Poteat and wife, Jean W. Poteat (Beneficiaries of that certain deed of trust recorded at deed Book 531, Page 522, McDowell County Public Registry); Hugh J. Franklin (Trustee of that certain Deed of Trust recorded in Deed Book 531, Page 522, McDowell Country Public Registry;) Defendants and regarding the case of 05 CvS 651, City of Marion, A North Carolina Corporation, as Plaintiff vs. Alvin Ray Berryhill, Sr. a/k/a Subavettes Retail Lot, a/k/a Subavettes; Defendants and 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 Martin, those members of Council present voted to go back into Regular Session.

Mayor Clark noted that no action was taken during Closed Session.

CLOSING COMMENTS:

Councilman Martin stated that he would like to see action taken at the next meeting to authorize the demolition of dilapidated houses on Morehead Road. The City Manager stated that ordinances to authorize the demolition of tow such house on Morehead Road would be placed on the November 21 Council agenda for consideration.

Councilman Owenby advised that Mr. Guy Jackson wants a water meter checked at 30 Jackson Street. The City Manager advised that he would check on the location.
Mayor Clark stated that he was in the basement of the Community Building last week and that the roof sheds are deteriorating due to leaking and the seals and shingles needing replacing. The City Manager stated that he would look into the situation immediately and direct necessary repairs.

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. 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 21, 2006 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; Heather Cotton, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Jacie and Frank White Jr., 50 Ashworth Circle Marion, NC; Mike Estes 42 Robert Street, Marion, NC; Jane and Dennis Lytle, Romine Road, Marion, NC; Steven Fortenberry 13600 Jacks Drive, Woodbridge, Virginia; Martha and Tim Gouge 322 Park Avenue, Marion, NC; Kevin Estes 311 Park Avenue, Marion NC.

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 7, 2006 Regular Session and
November 7, 2006 Closed Session

B. Adopt Ordinances – Authorize Demolition of Particular Uninhabitable Dwellings – Morehead Road:

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, and on the 4th day of April, 2006 amended said 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 at 201 Morehead Road, Parcel Identification Number 1711.09-05-3759, described on the attached Exhibit A in McDowell County Deed Book 708, Page 378, was found to be unfit for human habitation or hazardous; and

WHEREAS, the owner(s) of the above-described property is as follows: William N. Twitty, Albert Franklin Twitty and Mariam Jordan

WHEREAS, on the 24th day of May, 2006, 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 23rd day of June, 2006 (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 21st day of November, 2006.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-11-21-5

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, and on the 4th day of April, 2006 amended said 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 at 203 Morehead Road, Parcel Identification Number 1711.09-05-4803, described on the attached Exhibit A in McDowell County Deed Book 452, Page 971, was found to be unfit for human habitation or hazardous; and

WHEREAS, the owner(s) of the above-described property is as follows: Juanita Waller

WHEREAS, on the 24th day of May, 2006, 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 23rd day of June, 2006 (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:

3. 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

4. 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 21st day of November, 2006.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-11-21-3

C. Approve Resolution Directing the Clerk to Investigate a Petition for Voluntary Annexation – Great Meadows Property – US 70 West

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 – GREAT MEADOWS – US 70 WEST - 2006

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 9, 2006 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 21st day of November, 2006.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number: R-06-11-21-1

D. Receive Certificate of Sufficiency – Great Meadows Voluntary Annexation – US 70 West

CERTIFICATE OF SUFFICIENCY – GREAT MEADOWS – US 70 WEST - 2006

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 21st day of November, 2006.

(Seal)

J. Robert Boyette, City Clerk

E. Approve Resolution Fixing Date of Public Hearing on the Question of Annexation – Great Meadows Voluntary Annexation – US 70 West

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31 – GREAT MEADOWS – US 70 WEST - 2006

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, December 12, 2006.

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

Being a 1.322 acre parcel located in Marion Township, McDowell County North Carolina and being a portion of Deed Book 184 Page 355 bound on the North by U.S. Highway 70 and on the East, West and South by Great Meadows, Inc., Deed Book 184 Page 355 and being more particularly described as follows:

Beginning on an existing iron pipe being located N 60-24-20 E 250.84' from an existing iron pipe thence from the beginning N 60-24-20 E 244.82' to a right-of-way disc thence S 30-26-48 E 12.06' to a right-of-way disc thence N 60-12-26 E 8.86' to a right-of-way disc thence N 26-42-38 W 11.99' to a right-of-way disc thence N 60-02-22 E 7.90' to an iron pipe set thence leaving U.S. Highway 70 and with a new line S 24-05-41 E 220.00' to an iron pipe set thence S 60-24-20 W 262.36' to an iron pipe set being located N 29-05-41 W 30.00' from an existing iron pipe thence N 29-05-41 W 220.00' to the point of beginning containing 1.322 acres computed by coordinate geometry.

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 21st day of November, 2006.

Stephen R. Little,
Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number: R-06-11-21-2

F. Approve Payment of Honoraria to Volunteer Firemen – in appreciation of service during the past year.

Marty Coward	$ 360.00
Jacob Crowder	$ 2,568.00

Bradley Styles	$ 1,440.00
Terry Depoyster	$ 1,188.00
Mike Fulbright	$ 180.00
Steve King	$ 144.00
Ray McDaniel	$ 2,376.00
Chris Powell	$ 2,700.00
Craig Walker	$ 288.00
Total	$ 11,238.00

G. Approve Tax Refund:

2005 Tax Refund – Incorrect billing due to a portion of the property being located outside the City Limits - PIN 171118408278 - Robert Z. & Kathy Hawkins - $547.57

H. Approve Resolution Directing the Clerk to Investigate a Petition for Voluntary Annexation – Barnes Road:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 – MCDOWELL COUNTY – BARNES ROAD - 2006

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 16, 2006 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 21st day of November, 2006.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number: R-06-11-21-3

I. Receive Certificate of Sufficiency – Barnes Road Voluntary Annexation:

CERTIFICATE OF SUFFICIENCY – MCDOWELL COUNTY – BARNES ROAD - 2006

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 21st day of November, 2006.

(Seal)

J. Robert Boyette, City Clerk

J. Approve Resolution Fixing Date of Public Hearing on the Question of Annexation – Barnes Road:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 – MCDOWELL COUNTY – BARNES ROAD - 2006

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 16, 2006 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 21st day of November, 2006.

Stephen R. Little, Mayor Pro Tem

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number: R-06-11-21-3

PUBLIC HEARING - PARK AVENUE – TURNER STREET – ROBERT STREET REZONING: Mayor Pro Tem Steve Little opened the Public Hearing.

City Planner Heather Cotton advised that the area included in the petition for rezoning includes properties on Park Avenue, Turner Street and Robert Street, including Marion Elementary School, from the intersection of Park Avenue and Turner Street northward to the intersection of Park Avenue and Robert Street. (See Figure One)

The existing land use of the area is single-family residential and institutional.

The area is contiguous to other single-family residential uses and institutional uses.

The rezoning petition is a request to protect properties with existing single-family residential uses from future residential development that may not be compatible with the community character and that may have a negative impact on property values. No development is being proposed as part of the proposed zoning map amendment. The area proposed for the zoning district map amendment is shown below in Figure One.

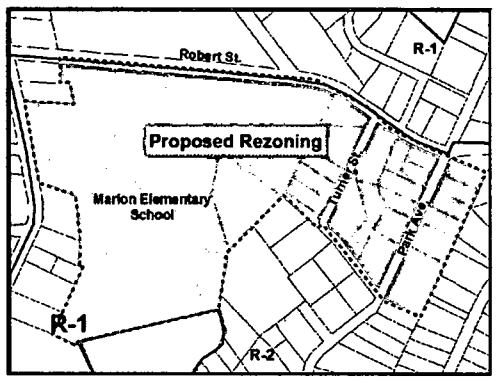


Figure One: Proposed Zoning District

The application proposes to rezone the area to the R-1 Single-Family Residential Zoning District. The zoning amendment would further limit the type and density of development within the area. Currently, mobile homes and multi-family residential units of eight (8) dwellings or less is a permitted use. The amendment would limit multi-family units to two (2) units within existing structures and prohibit mobile homes. Section 801 of the Code provides more specific regulations for both permitted uses and special exceptions for the proposed R-1 Zoning District.

The uses within the area are consistent with the R-1 Single-Family Residential Zoning District. Sixteen of the 23 properties included in the proposed rezoning formally petitioned for the zoning map amendment. An additional three property owners outside the proposed area and within the R-1 Zoning District signed the formal petition in favor of the rezoning.

The proposed zoning map amendment was a voluntary petition submitted by current property owners within the area to be rezoned. Of the seven properties in which the property owners did not sign the petition three (3) of the properties are vacant two (2) of which are under the same ownership and are currently listed for sale and the other two (2) properties are owned by the Board of Education.

Ms. Cotton went over the listed permissible uses in the R-1 district.

Mr. Kevin Estes, a property owner on Park Avenue, stated that the neighborhood has spoken clearly of its intent to protect the community from incompatible development.

Mayor Pro Tem Little stated that he would hope that any motion made regarding this area would exclude Marion Elementary School from the Ordinance. The City Manager advised that School officials did not ask to be included in this rezoning, that instead a neighborhood resident asked that the School property be added to the rezoning request. Mayor Pro Tem Little stated that the school property should not be rezoned without consultation with the School System and further noted that temporary mobile trailers placed at a school did not have the same impact on a neighborhood as did permanent manufactured housing.

Mr. Steven Fortenbury, a property owner on Turner Street, inquired about the difference between the R-1 and R-2 district and stated that it is his understanding that the reason this rezoning was proposed was to restrict mobile homes in the area.

City Planner Heather Cotton went over the differences between the R-1 and R-2 districts and stated that this Ordinance would not affect any existing manufactured housing on Park Avenue, just new development.

Mayor Pro Tem Steve Little Closed the Public Hearing.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted unanimously to remove the Marion Elementary School property from this proposed Ordinance.

Upon a motion by Councilman Martin, 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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of property owners on Park Avenue and Turner Street for properties with the Parcel Identification Numbers 170108799898, 170108890793, 170108799758, 170108892762, 170108799710, 170108798684, 170108894616, 170108892636, 170108891682, 170108890504, 170108893681, 170108798559, 170108891586, 170108890459, 170108893555, 170108893530, 170108891459, 170108892492, 170108890398, 170108892229, and 170108891772 from R-2 General Residential to the R-1 Single-Family Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on November 02, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 21st day of November 2006.

Stephen R. Little
Mayor Pro Tem

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: 06-11-21-1

PUBLIC HEARING – REZONING REQUEST – WEST COURT STREET: Mayor Pro Tem Steve Little opened the Public Hearing.
City Planner Heather Cotton advised that the property proposed for rezoning is located at 149 West Court Street directly across from the McDowell County Recreation Center. The property's PIN No is 1701.11-57-7070.

The property is adjacent to residential rental properties, Rock-Tenn Industries, McDowell Recreation Center, McDowell County Library as well as various other commercial uses.

The petition is a request by the owner to rezone the subject property in order to develop the site into commercial use for the purpose of a dance studio. The applicant has stated that the area is a more compatible location for the dance studio than its current location on 221 North given its

close proximity to the recreation center, library, and downtown. The property proposed for the zoning district map amendment is shown below in Figure One.

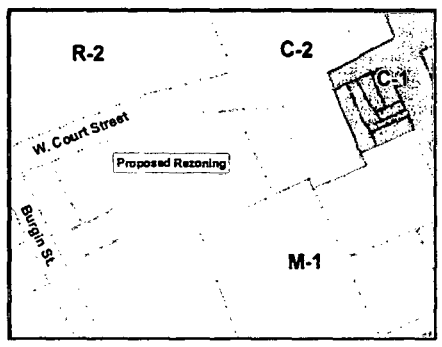


Figure One: Proposed Zoning District

The application proposes to zone the property to the C-2 General Commercial Zoning District. The purpose of the C-2 General Business Zoning 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 concentrations of general commercial activities.

The proposed use for the property as a dance studio is consistent with the intent of the C-2 General Commercial Zoning District.

Frank and Jacie White were present for this meeting and advised that the property is located in close proximity to similar and compatible uses, which would provide more convenience for existing and future clients than would her existing location. They need more parking and more space.

The City Planner advised that the Comprehensive Land Use Plan indicates that the future land use designation of the property is industrial. The land use designation was most likely identified in this location to accommodate for any future expansion of the adjacent industrial site, which is now the Rock-Tenn packaging and paper board company.

Councilman Edwards asked the Whites about what the building would look like. Mrs. White stated that she did not know at this point what building material she would use, but stated that she wanted to have a quality building so that she could recover her investment in the future.

Councilman Edwards stated that he was concerned with the appearance of the building, given that the West Court Street neighborhood had a predominance of nice, brick structures. Councilman Edwards also stated that the proposed use of a dance studio was not objectionable but that he would be concerned about other uses allowed in the C-2 district that could be permitted at the location, if the property was sold in the future.

The City Manager stated that Council approved a Downtown Overlay District a few years ago, that contained some simple appearance guidelines for downtown such as a prohibition on metal buildings, and that the Overlay District extended within a few parcels of the property included in this request. Council agreed that this concept should be discussed with the Whites to offer some possible protection for the neighborhood.

A brief discussion followed.

Mayor Pro Tem Steve Little closed the Public Hearing.

Upon a motion by Councilman Martin, seconded by Councilman Owenby, Council voted unanimously to accept the recommendation of the Planning Board and 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, (hereinafter "City Code") is amended as follows:
Section 2. The City of Marion is amending the Official Zoning District Map at the request of Jacqueline and Frank White, Jr for property with the Parcel Identification Number 1701.11-57-7070 from R-2 General Residential to the C-2 General Commercial Zoning District.
Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on November 2, 2006.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 21st day of November, 2006.

Stephen R. Little
Mayor Pro Tem

ATTEST:

J. Robert Boyette
City Manager/Clerk

Ordinance Number: 06-11-21-2

PUBLIC HEARING ZONING AMENDMENT – TEMPORARY USES:
Mayor Pro Tem Steve Little opened the Public Hearing.

The City Planner advised that the purpose of adding temporary use regulations within the City Code is to allow for controlled, time-limited uses while ensuring that such uses will not impose an adverse impact on the community and its permanent uses. This amendment will provide a mechanism for which to regulate and eliminate to the greatest extent possible any problems, threats or dangers to the public health, safety and welfare of the community.

There were no citizens present to discuss this item.

Mayor Pro Tem Little closed the Public Hearing.

A motion was made by Councilman Martin and seconded by Councilman Cuthbertson to approve the proposed ordinance. Council discussed the ordinance and expressed concerns about permit and fee requirements for church and non-profit temporary uses. After discussion, the motion and second to approve the ordinance were withdrawn and direction was given to send the ordinance back to the Planning Board with instructions to change the manner in which temporary events held by church and non-profit organizations were treated by the ordinance.

PUBLIC HEARING ZONING AMENDMENT – MAXIMUM SIZE OF FREESTANDING SIGNS: Mayor Pro Tem Little opened the Public Hearing.

The City Planner advised that the Planning Board requested that City Staff review the proposed Zoning Ordinance and draft language to reduce the size of freestanding signs within the City of Marion. Based on a draft ordinance, the Planning Board is recommending that Section 706 Signs be amended to reduce the size of permitted signage from 200 square feet to 100 square feet and provides for additional criteria and approval by the Board of Adjustment for signs exceeding the maximum area of 100 square feet, up to a maximum of 300 square feet.

Mayor Pro Tem Closed the Public Hearing.

There were no citizens present to discuss this issue.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted to adopt the following Ordinance as recommended by the Planning Board.

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. *Zoning*, Article VII. *General Provisions*, Section 706 *Signs* is amended as follows:

706.2 Permits, fees, and non-conforming signs.

(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 Zoning administrator 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 Zoning administrator, with the exception of section 706.11(1) ~~(H)~~ (I), 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)~~ (I), spectacular signs.

***

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]~~ 706.10.

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 Zoning administrator, 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.

***

706.11 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 one hundred (100) square feet in sign area as defined in section 706.1(11) 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.

A freestanding on-premises sign may exceed the one hundred (100) square foot sign area provided the following conditions are met:

1. The scale of the sign is in proportion with the building or site to which it pertains and does not overshadow the building or surrounding area.
2. The sign is consistent with building design and surrounding structures, and is appropriate to the type

of use to which it pertains. Design elements, such as the size, shape, materials, lighting, color, lettering style, and arrangement of the sign shall present a professional quality appearance.

3. Special circumstances exist that require deviation from the standard requirements.
4. The sign area is no larger than three hundred (300) square feet.
5. The sign application is approved by the Board of Adjustment.

(E) No freestanding on-premises sign attached to the ground shall be erected to exceed thirty (30) feet above ground level ~~Free-standing on-premise signs attached to the ground may exceed the maximum sign height~~ except 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 two (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 three hundred (300) 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 706.12 The regulations for Off-premises signs, billboards and other advertising structures are enumerated below:

(4) Regulation of off-premises advertising signs. Off-premises advertising signs are permitted in accordance with the following regulations:

(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 be 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 (100) 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.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of November 2006.

Stephen R. Little
Mayor Pro Tem

ATTEST:

J. Robert Boyette
City Manager/ Clerk

Ordinance Number: O-06-11-21-4

PUBLIC COMMENT – NORTH CAROLINA PARKS AND RECREATION TRUST FUND (PARTF) GRANT APPLICATION:

The City Manager stated that the City was planning to apply for a North Carolina Parks and Recreation Trust Fund (PARTF) grant for the acquisition of 35 +/- acres on the top of Mt. Ida overlooking downtown Marion. The purpose of the land acquisition will be to protect this mountain top from threatened development. The City Manager reported that, as part of the grant application, the City must identify a future site plan for the property. The City Manager stated that the City's current idea was to use the property for walking and/or biking trails, picnic areas and a future conference/retreat center. The City Manager stated that

tonight's Council meeting was the first of three advertised meetings to solicit public comments on the proposed grant application. Additional public comments will take place at Council meetings in December and January.

There were no citizens present to discuss this issue.

PUBLIC COMMENT PERIOD: There were no unscheduled guests at this meeting.

DISCUSS/CONSIDER APPROVAL OF DEBT COLLECTION CONTRACT: The City Manager advised that he is still waiting on requested information from the North Carolina League of Municipalities General Counsel regarding the proper handling of revenues received from civil penalties; therefore this item would need to be held to a future Councicl meeting. No action was taken by Council.

CONSIDER AWARD OF CONTRACT – PURCHASE OF LEAF VACUUM: The City Manager advised that the following bids had been received for the purchase of one Giant–Vac Leaf Loader.

Carolina Industrial Equipment – Charlotte, NC:
$28,970.00 for a Model 6600-JD-TR-20 and
$31,070.00 for a Model 6600-JD-TR-25

A discussion followed.

The City Manager recommended that Council award the contract for the larger 25 cubic yard hopper model, given the relatively small price difference of $2,100 for a leaf machine with 25 percent more capacity. The City Manager advised that $31,000 had been included in the 2006-07 budget for the purchase of the leaf machine.

Upon a motion by Councilman Ownby, seconded by Councilman Martin, Council voted unanimously to award the contract for the purchase of a trailer mounted leaf vacuum machine with a 25 cubic yard hopper Carolina Industrial Equipment for the bid amount of $31,070.00.

REVIEW N.C. LEAGUE OF MUNICIPALITIES STRATEGIC DIRECTIONS INITIATIVE/ADOPT RESOLUTION OF SUPPORT/COMPLETE SURVEY: The City Manager presented Council with information from the N.C. League of Municipalities stating

that the League had been working on a visioning process known as the Strategic Directions Initiative for the past year.

The League has developed a Mission Statement, Core Values and Strategic Goals and is asking for input from all member municipalities and the approval of a Resolution of support. After watching a short CD, Council had several suggestions regarding the wording of the Mission Statement, Core Values and Strategic Goals. Council took no action regarding the adoption of the Resolution of Support, until input is provided regarding the visioning effort.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager stated that he sent in a request to the Federal Surface Transportation board, asking for a 90 day extension in the required negotiating period with Norfolk Southern (NS) for the old Pea Vine Rail Line. The extension would give the City until April 4th to negotiate the acquisition of the Pea Vine Rail Line with NS.

The City Manager reported that, after the first of the year, the Downtown Advisory Committee will look to hold a workshop on the downtown residential development to promote this idea to interested property owners and developers.

The City Manager advised that the "Melodies on Main Street" downtown Christmas event is scheduled for Thursday evening, December 7, with music on the courthouse lawn, food available from downtown restaurants, children's stories, horse-drawn hayrides downtown, merchants staying open late and Santa Claus.

The City Manager advised that the Public Comment meeting for the City's flood maps was held on November 9. There were about six city property owners and six people from out in the county present. Each property owner was able to examine the impact of the flood maps on their property. No new areas of needed appeals have been received. The City Manager stated that the City is awaiting a proposal from McGill on what they can provide in terms of technical data to potentially fight the new flood maps.

The City Manager advised that the Tree Board, acting as the City Park and Recreation Advisory Board, endorsed the PARTF grant application for the Mt. Ida property acquisition on November 9.

The City Manager advised that Representative Mitch Gillespie provided formal notice on November 15 that we were awarded a $2.5 million grant from the N.C. Clean Water Management Trust Fund (CWMTF) for our wastewater improvements project. The City Manager stated that work is continuing to assess how best to lobby our Senators and the offices of Congressman Taylor and Congressman-Elect Shuler concerning our Federal STAG Grant request. The City Manager stated that the CWMTF has indicated that we could submit a request in March for the remainder of the $500,000 we requested. The McDowell Trails Association may also be expecting to apply for CWMTF funding for the Catawba River Greenway, so the City Manager suggested that Council may wish to think about how the City should proceed with these grant applications.

The City Manager reported that the December Council Meeting date is set for 6:00 P.M. on Tuesday, December 12, with the Christmas dinner to follow at 7:00 P.M. at Carolina Chocolatiers, and that the next Council planning Session is scheduled for Tuesday, November 28th at 6:00 P.M. at City Hall. Dinner will be served at 5:30 P.M.

GREENWAY DISCUSSION: The City Manager advised that City Attorney Mia Lorenz is working on a draft deed for Byron and Van Phillips to review that would involve the donation of an approximate 100 foot wide, 6,000 linear foot strip along the Catawba River to the City for a greenway. The deed will contain provisions for a future road/bridge crossing the river to access the 850 acres the Phillips family owns north of the river. He stated that he would advise Council of the response of the Phillips to this document.

The City Manager stated that the McDowell Trails Association has raised all but about $1,700 of the $18,000 cost for surveying of the greenway. The City Manager asked Council for direction regarding the City's acceptance of the greenway property, proceeding with the surveying and filling any funding gaps needed for the survey.

A discussion followed.

Councilman Martin stated that he had recently visited the Morganton greenway for the first time and that he wanted Marion to be able to have a similar recreational treasure.

Councilman Owenby asked how the greenway would affect taxes on the land and what the cost would be to keep up the Greenway.

The City Manager stated that with the donation of the property, the Phillips family would not be liable for any property taxes.

Councilman Edwards stated that maintenance costs would be whatever it took to properly maintain the greenway and that such costs would be worth it.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Martin, Council voted to proceed with the survey of the Catawba River Greenway, with the City providing necessary funding of up to $1,700 toward the cost of the survey, with ownership of the greenway coming to the City.

CLOSING COMMENTS:

COUNCILMAN MARTIN stated that he would like for the Street Committee to meet and discuss the possibility of speed humps on California Avenue and to look at other locations.

COUNCILMAN CUTHBERTSON inquired about the patching of the recently repaired sink hole on Forest Heights Drive. The City Manager stated that City staff were likely letting the fill dirt settle a bit before matching the location but that he would check with the Public Works Superintendent on the planned patching.

Councilman Cuthbertson also asked that City staff be vigilant about removing yard sale signs posted on utility poles, particularly on weekends. The City Manager stated that he would pass this on to City staff, particularly the Code Enforcement Officer.

COUNCILMAN OWENBY commented on the Christmas decorating at City Hall stating that everything looked festive. The City Manager stated that all the credit for the City Hall decorations should go to Administrative Assistance Debi Sherlin, who worked hard to make City Hall look so beautiful.

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

Steven R. Little, Mayor Pro Tem

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, December 12, 2006 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 Billy Martin, Lloyd Cuthbertson, and Cecil Owenby.

Councilman Mike Edwards was not present for this meeting due to work commitments.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Harriett Thomas, Finance Director.

GUESTS PRESENT: Steve Brown 350 South Garden Street, Marion, NC, Bill Hendley 1476 Roby Conley Road, 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 - November 21, 2006 Regular Council Minutes
November 28, 2006 Planning Session Minutes

B. Approve Annual Certification of Firemen/Fire Department Roster

2006
ANNUAL CERTIFICATION OF FIREMEN

North Carolina General Statute 58-86-25 requires that all certified fire departments submit a complete roster of its eligible firemen annually. This certified list determines eligibility for the $50,000 line of duty death benefit as well as eligibility for pension fund credit. Failure to accurately and promptly report this information is violation of G.S. 58-86-25 and will automatically result in a loss or reduction of benefits.

Fire Chief Jim Neal determined that the roster is a valid and accurate list of all eligible Firemen, within the definition contained in the above Statute. A copy of the Roster can be found on file at the Marion Fire Department.

C. Approve Budget Ordinance Amendment

CITY OF MARION, NORTH CAROLINA
2007-2007 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 2006-06 as adopted by the Marion City Council on the 20th day of June, 2006 is hereby amended as follows:
GENERAL FUND

a. General Fund Expenditures, Administration, Account Number 10-420-7400, Capital Outlay is increased from $22,700 to $24,700.

b. General Fund Expenditures, Inspections Department, Account Number 10-500-0400, Professional Services is increased from $14,000 to $17,000.

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 Tuesday evening, November 28, 2006 at 6:00 P.M. in the Conference Room located at 194 North Main Street for the purpose of conducting a Planning Session.

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 6:30 due to work commitments.

OTHERS PRESENT: Bob Boyette, City Manager

GUESTS PRESENT: None

OPENING DISCUSSION: The City Manager advised Council of an alleged wastewater spill reported by a citizen that afternoon on Lake James that proved to be unfounded after investigation. City and State staff located the problem and determined it to be an algae bloom and not the result of a wastewater spill.

The City Manager presented Council with a proposal from McGill Associates to complete a detailed flood study of the US 70 West and US 221 North Business corridors fro the City, County and great Meadows Inc. for $15,000. Council agreed by consensus to fund this study on an equitable basis with the county and great Meadows.

PLANNING SESSION: City Council held a Planning Session and discussed the following topics:

I. Water and Wastewater Improvement/Debt – Council agreed that long term debt should be issued for any funding gaps in the $5.6 million wastewater improvements. The first priority will be seeking a 20 year State Revolving Fund Loan, with a 15 year conventional bank loan as a backup option. Extension of water and sewer to Interstate 40 on Sugar Hill Road will be held until grant funding is available.

II. Develop Plans – Review of water and sewer issues involving two potential residential developments was referred to the City Utility Committee for discussion and recommendations.

III. Solid Waste Issues – The City Manager discussed options for vehicles for residential garbage collection. The consensus was that a non tagged four wheel Cushman vehicle, which was in service in the City of Morganton, was the best option for continued back yard garbage collection in Marion. Further exploration will be made to see if this vehicle can be made street legal. The City Manager stated that the City's insurance agent, Marsh Dark, had stated that there would be no insurance problems with putting such a vehicle on the road.

A discussion was held on the cost of the City's recycling program and future service options.

A discussion was held on the City's policy not to pick up yard waste, limbs and brush cut by landscapers or tree trimmers. After discussion, Council agreed that no changes should be made to the policy, but asked the City Manager to use some discretion and

flexibility when enforcing the policy, particularly when elderly people with a reasonable amount of yard waste were involved.

IV. Community ~~Building Park Improvements – The City Manager~~ showed Council a Master Plan prepared for the Community Building Park by HSMM. Council endorsed the Master Plan, including current and future projects, except for not agreeing with adding another row of parking next to the basketball courts.

V. Water Deposits – Council directed the City Manager to draft an amendment to the Water and Sewer Rate and Connection Fee Ordinance to create allowances for long term institutional customers with multiple water meters and a good payment history to not have to pay additional water and sewer deposits when adding or acquiring an additional water meter.

VI. Future Planning Sessions – Mayor Clark suggested that Council hold a quarterly Planning Session. It was agreed that Council would hold the next Planning Session at some point after the Town Meeting to be held in mid to late January.

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

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

c. General Fund Expenditures, Inspections Department, Account Number 10-500-1400, Travel & Training is decreased from $5,000 to $4,000.

d. General Fund Expenditures, Inspections Department, Account Number 10-500-7400, Capital Outlay is increased from $-0- to $1,000.

e. General Fund Expenditures, Inspections Department, Account Number 10-500-5000, Code Enforcement is increased from $20,000 to $31,000.

f. General Fund Expenditures, Public Works Administration, Account Number 10-545-2600, Advertising is increased from $200 to $1,850.

g. General Fund Expenditures, Recreation, Account Number 10-620-1500, M & R Buildings & Grounds is increased from $1,500 to $2,500.

h. General Fund Expenditures, Sanitation, Account Number 10-580-7400, Capital Outlay is increased from $67,500 to $96,900.

i. General Fund Revenues, Account Number 10-334-1500, Bullet Proof Vest Grant is increased from $1,000 to $2,250.

j. General Fund Revenues, Account Number 10-336-0000, Rural Center NCSTEP Grant is increased from $-0- to $10,000.

k. General Fund Revenues, Account Number 10-354-1000, Miscellaneous Revenues is increased from $100 to $30,000.

l. General Fund Revenues, Account Number 10-370-0000, Powell Bill Allocation is decreased from $204,000 to $200,274.

m. General Fund Revenues, Account Number 10-390-0000, Cemetery Revenues is increased from $4,000 to $12,000.

n. General Fund Revenues, Account Number 10-392-0000, Downtown Streetscape Donations is increased from $-0- to $10,000.

o. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is decreased from $792,490 to $785,116.

GENERAL CAPITAL PROJECT FUND

a. General Capital Project Fund Revenues, Account Number 11-380-0000, Transfer from General Fund is increased from $203,254 to $247,060.

b. General Capital Project Fund Revenues, Account Number 11-375-0000, Depot – NCDOT Grant, is increased from $1,125,000 to $1,200,281.

c. General Capital Project Fund Revenues, Account Number 11-385-0000, Depot – Contributions, is increased from $-0- to $500.

d. General Capital Project Fund Expenditures, Account Number 11-171-0800, Depot Renovation Expense is increased from $1,265,000 to $1,375,506.

e. General Capital Project Fund Expenditures, Account Number 11-171-0900, Skate Park Const. Expense is increased from $95,000 to $104,081.

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues, Account Number 30-392-1100, Sale of Surplus Equipment is increased from $10,000 to $22,500.

b. Water and Sewer Fund Expenditures, Non-departmental, Account Number 30-660-8000, Transfer to Capital Projects is increased from $50,000 to $100,000.

c. Water and Sewer Fund Expenditures, Water Filter Plant, Account Number 30-812-7400, Capital Outlay is increased from $43,404 to $64,904.

d. Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated is increased from $232,199 to $291,199.

WATER AND SEWER CAPITAL PROJECT FUND

a. Water and Sewer Capital Project Fund Revenues, Sugar Hill/Shady Lane Water and Sewer Improvements Project, Account Number 31-376-0000, NCDOT Reimbursement is decreased from $473,430 to $452,457.

b. Water and Sewer Capital Project Fund Revenues, Sugar Hill/Shady Lane Water and Sewer Improvements Project, Account Number 31-385-0000, Transfer from Water and Sewer Fund is increased from $53,205 to $74,178.

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 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number O–06–12–12–5

D. Approve Ordinance – Parking Issues

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. 18-244. Collection of civil penalties for parking violations.

When a civil citation for payment of a penalty for a parking violation remains unpaid for a period of seven (7) days, the owner of the offending vehicle shall become liable for an additional penalty of twenty-five dollars ($25.00). When a civil citation for payment of a penalty for a parking violation remains unpaid for a period of thirty (30) days, the owner of the offending vehicle shall become liable for an additional penalty of fifteen dollars ($15.00), for a total penalty of forty dollars ($40.00) beyond the original civil citation. The city shall have the power and authority, in its discretion, to institute and prosecute civil actions for the collection of any and all civil penalties which may become due by reason of violation of parking rules and regulations. Any civil penalties which may be paid or recovered as a result of violations of parking regulations or ordinances shall be the sole and exclusive property of the city.

(Ord. of 10-7-97, § 2)

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of December, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-12-12-3

E. Approve Amendment to Water/Sewer Connection Fee and Rate 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:	**$1.70 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $23.85 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.60**	**$26.50**
Master Meter Rate	**$1.70 per 1,000 Gallons, plus $7.63 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $19.08 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.90**	**$22.25**

	INSIDE CITY	**OUTSIDE CITY**
Sewer Rates:	**$1.70 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$4.25 per 1,000 Gallons, plus $23.85 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$10.60**	**$26.50**
Master Meter Rate	**$1.70 per 1,000 Gallons, plus $7.63 Service Charge per**	**$4.25 per 1,000 Gallons, plus $19.08 Service Charge per**

	month	month
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$8.90**	**$22.25**
	INSIDE CITY	**OUTSIDE CITY**
Sewer Rates for Private Wells	**$2.44 per 1,000 Gallons, plus $9.54 Service Charge per month**	**$6.10 per 1,000 Gallons, plus $23.85 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 $7.63 for water and $7.63 for sewer in the City, and $19.08 for water and $19.08 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 $26.50 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 $10.60 per month per residential unit shall be charged for sewer service.

Customers with approved irrigation taps shall not be charged for sewer service, as long as said irrigation system is not connected in any part to the City Sewer system.

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 Charges listed for a ¾" domestic water service includes the cost of a back-flow preventor required by the City.

The Charges listed above shall apply to taps purchased for irrigation purposes.

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	$ 60.00

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.

In cases where an existing institutional water and/or sewer customer with multiple (more than one) existing meters or services has been a water and/or sewer customer of the City of Marion for a period of no less than 20 consecutive years, and has made no late payments in the previous twelve months, and installs or acquires an additional meter or service, no additional deposits shall be charged for said additional meter or service, beyond what the customers has previously paid to the City.

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 average 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
CUT – OFF FEES:		
1 - 3 OCCURANCES	$ 15.00	$ 15.00
4 - 10 OCCURANCES	$ 25.00	$ 25.00
OVER 10 OCCURANCES	$ 50.00	$ 50.00
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 37.50
TEMPORARY SERVICE (SEVEN OR LESS DAYS)	$ 15.00 PLUS ACTUAL WATER USAGE	$ 37.50 PLUS ACTUAL WATER USAGE
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
METER TAMPERING:		
1ST OFFENSE	$ 100.00	$ 100.00
2ND OFFENSE	$ 200.00	$ 200.00
3RD AND SUBSEQUENT OFFENSES	$ 500.00	$ 500.00
RETURNED 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	$ 25.00	$ 25.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on September 19th, 2006 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 12th day of December, 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-06-12-12-4

F. Approve Request for Variance From Driveway Standards:

Daniel Thornton – 366 State Street - Variance approved to allow second driveway on a residential property to be located 14 feet from an existing driveway, below limit of 20 feet as required in the City Code. The variance was granted due to the fact that the second driveway cannot be constructed 20 feet apart from the existing driveway due to topography and the size of the lot.

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – GREAT MEADOWS VOLUNTARY ANNEXATION – HIGHWAY 70 WEST: Mayor Clark opened the Public Hearing.

The City Manager advised that the public hearing followed by the adoption of the annexation ordinance is the final step in this voluntary annexation of 1.322 acre Great meadows property on US 70 West across from the Wal Mart entrance.

There were no citizens present for this Public Hearing.

Mayor Clark Closed the Public Hearing,

Upon a motion by Owenby, seconded by Councilman Little, those members of Council present voted to adopt the following Ordinance to annex the Great Meadows property effective December 31, 2006.

**AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA –
GREAT MEADOWS/US 70 WEST - 2006**

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 6:00 P.M. on Tuesday, December 12, 2006, after due notice by publication on Tuesday, November 28, 2006; 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 December 31, 2006:

Being a 1.322 acre parcel located in Marion Township, McDowell County North Carolina and being a portion of Deed Book 184 Page 355 bound on the North by U.S. Highway 70 and on the East, West and South by Great Meadows, Inc., Deed Book 184 Page 355 and being more particularly described as follows:

Beginning on an existing iron pipe being located N 60-24-20 E 250.84' from an existing iron pipe thence from the beginning N 60-24-20 E 244.82' to a right-of-way disc thence S 30-26-48 E 12.06' to a right-of-way disc thence N 60-12-26 E 8.86' to a right-of-way disc thence N 26-42-38 W 11.99' to a right-of-way disc thence N 60-02-22 E 7.90' to an iron pipe set thence leaving U.S. Highway 70 and with a new line S 24-05-41 E 220.00' to an iron pipe set thence S 60-24-20 W 262.36' to an iron pipe set being located N 29-05-41 W 30.00' from an existing iron pipe thence N 29-05-41 W 220.00' to the point of beginning containing 1.322 acres computed by coordinate geometry.

Section 2. Upon and after December 31, 2006, 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 12th day of December, 2006.

A. Everette Clark, Mayor

ATTEST: **Approved As To Form:**

J. Robert Boyette, City Clerk **City Attorney**

Ordinance Number: O-06-12-12-1

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE – MCDOWELL COUNTY VOLUNTARY ANNEXATION – BARNES ROAD: Mayor Clark opened the Public Hearing.

The City Manager advised that the Public Hearing followed by the adoption of the annexation ordinance is the final step in the voluntary annexation of the 25 acre McDowell County Property on Barnes Road. The City Manager advised that the County Manager was concerned about the zoning of this property and wanted to discuss this request further with the County Board of Commissioners. The City Manager suggested that Council hold the public hearing and then consider adoption of the annexation ordinance at a future meeting, after further discussions with the County are held.

Mayor Clark Closed the Public Hearing.

A discussion followed.

No action was taken regarding this item.

PUBLIC COMMENT – NORTH CAROLINA PARKS AND RECREATION TRUST FUND (PARTF) GRANT APPLICATION:

The City Manager advised that the City was planning to apply for a North Carolina Parks and Recreation Trust Fund (PARTF) grant for the acquisition of 35 acres on the top of Mt. Ida overlooking downtown Marion. The City Manager stated that the purpose of the acquisition of the property is to protect the top of the mountain from threatened development and to utilize the property for public recreational purposes. The City Manager reported that the City's idea for the future use of the property included walking and/or biking trails, picnic areas and a future conference/retreat center. The City Manager stated that tonight's Council meeting was the second of three advertised meetings to solicit public comments on the proposed grant application. Additional public comments will take place at a Council meeting in January.

Steve Brown, Board member of the McDowell Chamber of Commerce and a local business person, was present for this meeting and offered his support for the City's grant application and the acquisition of property on Mt. Ida.

Ms. Harriett Thomas, President of the McDowell Chamber of Commerce, was present for this meeting and gave the support of the Chamber of Commerce for the City's grant application and the acquisition of property on Mt. Ida. Ms. Thomas presented letters from Ms. Nancy Spencer of Spencer's Hardware and from Rod Birdsong, Executive Director of the McDowell Chamber of Commerce, also expressing support for the City's grant application and the acquisition of property on Mt. Ida. The letters received are inserted as follows:

McDowell Chamber of Commerce
1170 W. Tate Street ♦ Marion NC 28752
Tel. 828-652-4240 Fax 828-659-9620
mountains@mcdowellchamber.com • www.mcdowellchamber.com

December 05, 2006

Everette Clark, Mayor
City of Marion
PO Drawer 700
Marion, NC 28752

Dear Everette:

This is to express our support for Marion's grant request to the N.C. Division of Parks & Recreation for assistance in purchasing property on Mt. Ida.

We appreciate the City's concern for the scenic significance of Mt. Ida and the interest which the City Council has expressed in providing an additional location for the public to enjoy the outdoors and the natural beauty near the center of Marion.

Our Business Development Committee has discussed the possibility of working with the City in planning a retreat center near downtown Marion. The Mt. Ida property could be an ideal opportunity for that project in the future.

Everette, you can count on the chamber's cooperation and support in this initiative.

Best Regards,

Rod

Rod Birdsong
Executive Director

The City Manager stated that the City currently enjoys the best relationship ever with the Chamber of Commerce, due to the cooperation of the Chamber Director and Board Members.

Mr. Bill Hendley was also present for this meeting and stated that the McDowell Trails Association members are very enthusiastic about the possibility of the City purchasing land on Mt. Ida and applying for a PARTF grant. Mr. Hendley stated that the 300 members of the Trails Association are at the City's service to help with planning, supporting, funding as well as with maintenance of the land.

McDowell Trails Association

December 15, 2006

City of Marion
P.O. Drawer 700
Marion, North Carolina 28752

McDowell Trails Association
1476 Roby Conley Road
Marion, NC 28752

Dear Sirs:

The McDowell Trails Association is excited over the City of Marion's decision to pursue purchase of a portion of Mount Ida for the purpose of preserving its natural beauty and establishing it as a public park with a walking trail. This decision is in concert with the mission of the Association which is to support and assist with the building of non-motorized trails, greenways, and blueways in McDowell County for the purpose of promoting better health, recreational and economic opportunities for the residents of and visitors to the county.

The creation of trails in the City of Marion will improve access to existing businesses and cultural sites, improve Marion's overall image, and may encourage the proliferation of so-called "niche" along its trails. The development of trails will also reduce health care costs by increasing physical activity in daily living and lowering the risk of chronic diseases.

Since the partners are in place, and the community has a proven desire and need for trail development, the Association fully supports this decision and offers its assistance to the City of Marion for this very worthwhile project.

Sincerely,

Bill Hendley
McDowell Trails Association President

PUBLIC COMMENT PERIOD: There were no citizens present other than those on the Agenda.

REQUEST – DEPOT BLUEGRASS CONCERT CONCESSIONS: The City Manager presented Council with a letter from Mr. Gene Padgett stating that the American Legion had resigned from doing

concessions at the Blue Grass Music at the Depot on Thursday Evening and that the wives of band members want to do concessions with Council's permission.

A discussion followed. Council members asked the City Manager to confirm from the American Legion directly that the American Legion was withdrawing from the concessions.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council present voted to allow the spouses of band members to take over the concessions at the Depot Bluegrass Concerts, subject to following the same rules regarding clean-up and conduct as the American Legion and subject to the City Manager receiving confirmation that the American Legion was withdrawing from the concessions.

CIVIL CITATION APPEAL: The City Manager presented Council with a letter from Mr. Steve L. Williams stating that he received a parking citation for parking in a loading zone on Main Street, near the entrance of McDowell Distributing for approximately ten minutes. Mr. Williams was in his personal vehicle dropping off an item of work. He is the plant manager at NCCE's Marion sewing plant housed in the Marion correctional Institution. The City Manager stated that he had received verification from McDowell Distributing that Mr. Williams was engaged in loading, but noted that the Ordinance Enforcement Officer had no way of knowing that Mr. Williams was loading his vehicle.

Councilman Martin made a Motion to deny this request to waive the citation.

A discussion followed.

The motion died from a lack of a second.

Councilman Little stated that the tone of the letter probably did not warrant forgiving the penalty, but that he would be in favor of waiving the penalty as long as Mr. Williams was informed in writing that Council felt that the Ordinance Enforcement Officer acted appropriately and that Mr. Williams may wish to take future steps to indicate when he is engaged in loading activity for his employer.

Upon a motion by Councilman Little, Seconded by Councilman Owenby, those members of Council present voted to waive the $10.00 penalty issued to Mr. Steve Williams for parking in a loading zone on Main Street and to direct the City Manager to send Mr. Williams a letter stating the points noted above.

SCHEDULE TOWN MEETING: By consensus, Council scheduled the Town Meeting for Thursday, January 25, 2007, at 7:00 p.m. in the Marion Community Building.

DISCUSS DEBT COLLECTION CONTRACT: The City Manager advised that he had contacted the N.C. League of Municipalities General Counsel, Andy Romanet, regarding issues involving debt collection and payment of civil citations. Mr. Romanet indicated that if the City wishes to keep civil penalties, then the City must decriminalize all or selected ordinances. The City Manager reported that, in North Carolina, N.C.G.S. 14-4 makes all municipal ordinance violations a misdemeanor. In such a case, if civil penalties are charged, they technically may have to go the School System. However, under current case law, if a City Council decriminalizes certain ordinance that are not listed as criminal offenses under State law, then the City may keep the civil penalty, regardless of whether the City is simply covering its enforcement costs or not. The City Manager stated that since he has been working with the City Attorney on updating the handling of civil penalties in the City Code, he would draft an ordinance to state that violations of certain ordinances are not a misdemeanor under N.C.G.S. 14-4 and bring back to Council. The City Manager suggested decriminalizing parking and noise citations, which make up the vast majority of civil penalties collected by the City.

CONSIDER APPROVAL OF RESOLUTION – N.C. LEAGUE OF MUNICIPALITIES STRATEGIC DIRECTION INITIATIVE: Mayor Clark stated that the North Carolina League of

Municipalities will celebrate its 100 year anniversary in 2008 and was going through a strategic planning process for the first time in many years.

Mayor Clark noted that Council had reviewed the core values and goals that the League had developed at a previous meeting. Mayor Clark asked that Council adopt a resolution of support for the strategic planning process, noting that the plan will be a living document that can be changed in the future as necessary.

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

CITY OF MARION
RESOLUTION

WHEREAS, the North Carolina League of Municipalities has undertaken a strategic visioning process to determine how to continue to meet the needs
of its members as the League approaches its second century of operation;

WHEREAS, the Strategic Directions Initiative Steering Committee studied the history of the organization, the forces that shaped the League and the trends that are likely to occur;

WHEREAS, the NCLM Strategic Directions Initiative Steering Committee has examined the strengths, weaknesses, opportunities and threats that face the League in the years ahead;

WHEREAS, the committee has talked with municipal elected and appointed officials, as well as NCLM staff members, to determine what members value about the League;

WHEREAS, the committee has proposed to strengthen the League by developing a mission statement that makes explicit why the League exists;

WHEREAS, the committee is proposing core values that define how the League lives its mission, with these being; ethical; fair and equitable; financially sound; good government and public service are valuable; inclusive, collaborative, engage partners, stakeholders and external actors; innovative and forward-thinking; municipalities matter; nonpartisan; open and transparent; and unity;

WHEREAS, the committee is proposing that the League focus on strengthening member communication, participation and engagement; strengthening the League's governance capacity; and strengthening the policy development and representation of municipal interest in an increasingly regional, global and intergovernmental world; and

WHEREAS, the governing Board of the City of Marion has reviewed the proposed mission statement, core values and strategic directions, developed by the Strategic directions initiative Steering committee;

NOW THEREFORE BE IT RESOLVED that the governing board of the City of Marion hereby endorses the findings of the committee, encourages the NCLM Board of Directors to adopt the recommendations and move the League forward to its preferred future.

Adopted this the 12th day of December 2006.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-06-12-12-1

CITY MANAGER'S REPORT:

The City Manager advised that the Phillips Family has hired their own firm to conduct a flood study on their property, in an attempt to refute the recent flood map updates. The City Manager stated that the City and County would still contract with McGill Associates to conduct a flood study in the US 221 North Business area, as was previously authorized by Council, for a cost not to exceed $5,000 per local government.

The City Manager advised that Mr. Dennie Martin of Martin-McGill had created an amortization schedule for the projected $3.1 million in debt service to be issued for the Wastewater Improvements Project, comparing a 20 year State Revolving Fund loan to a 15 year bank loan. Based on direction from Council at the November 28 Planning Session, the City Manager stated that he had given Mr. Martin the direction to apply for a State Revolving Fund loan first, with a 15 year bank loan as a back-up option. The City Manager advised that the outgoing U.S. Congress had not passed nine of eleven spending bills, including the Interior Department budget, meaning that the City may not receive the $1 million STAG grant previously sought. As a result, the total debt financed for the Wastewater Improvements Project will be around $3.1 million.

The City Manager asked Council for direction concerning the wording of signage for the Community Building Park. By consensus, Council agreed that the park should be called the "Community Building Park."

CLOSING COMMENTS:

Councilman Little stated that there is a real need for a camera at the Skate Park due to people abusing the park at night. Councilman Little stated that the Joint Utility Committee may need to revisit this issue and suggest that the County start locking the park at night again.

The City Manager advised that Street Superintendent Roger Estes has got revised estimates for the Skate Park camera and that it should be installed by Spring.
Mayor Clark reported that he, Councilman Little and Councilman Martin recently attended the National League of Cities Conference in Reno. Mayor Clark stated that a major topic of discussion at the Conference was problems associated with immigration. Mayor Clark noted that there is no money from the Federal Government to address these problems.

Mayor Clark suggested that the School System should teach Spanish beginning in Kindergarten.

Councilman Little reiterated the tremendous importance of teaching Spanish and stated that is sad when children are placed in the public schools that no one can understand.

Mayor Clark stated that he was upset about the overcrowding situation at Marion Elementary, resulting in mobile classrooms being placed at the School. Mayor Clark stated that the overcrowding is due to North Cove Elementary not being full and the School Board not requiring people to abide by school district lines and due to the year round program at Eastfield Elementary School. Mayor Clark stated that when parents have children going to Eastfield and to a Junior High School or the High School, this creates problems with schedules. Therefore, Mayor Clark stated that this issue needed to be brought to the attention of the School Board.

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 2, 2007 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 for this meeting due to being out of state.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Freddie Killough, Executive Director, Marion Downtown Business Association; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Cliff McLarty, North Madison Street, Marion, NC.

OPEN MEETING: Mayor Clark asked that we open this meeting with a moment of silence in memory of former President Gerald Ford who passed away over the weekend.

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 - December 12, 2006 Regular Session

B. Approve Resolution Authorizing N.C. Parks and Recreation Trust Fund Grant Application

RESOLUTION
THE CITY OF MARION CITY COUNCIL
AUTHORIZING A
NORTH CAROLINA PARKS AND RECREATION
TRUST FUND (PARTF) GRANT APPLICATION

WHEREAS, the Park and Recreation Trust Fund has been authorized by the North Carolina General Assembly to award grant funds to eligible park, recreation and open space projects.

WHEREAS, the City of Marion seeks to preserve a scenic mountain top for public recreational use by purchasing it with funds from this grant program.

WHEREAS, the City of Marion intends to request $_____ which is 50% of the total project cost which is anticipated to be $_____.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARION THAT:

Section 1. The City Council will allocate $_____from the City's General Fund to match the amount awarded by the State, if its application is approved. These funds will be available when the grant is awarded in the Summer of 2007.

Section 2. The City Council will provide for the efficient operation and maintenance of the project on completion of the land acquisition thereof.

Section 3. J. Robert Boyette., City Manager, and successors so titled is hereby authorized to submit an application to the Park and Recreation Trust Fund and directed to provide such information as the appropriate State agency may request in connection with

the City's application.

Section 4. The City of Marion has substantially complied or will substantially comply with all Federal, State and local laws, rules, regulations and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Section 5. This Resolution shall be effective upon its adoption.

Adopted this the 2nd day of January, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Mayor

RESOLUTION NUMBER: R-07-01-02-1

RECOGNITION OF EMPLOYEE AWARD: Chief Mike Elliott announced that he would like to recognize Sergeant Mike Hensley who has recently received his Intermediate Law Enforcement Certification. Chief Elliott stated that it took 120 hours to earn one point and Sergeant Hensley had to have sixty points to earn this award. The Award read as follows:

From the N.C. Criminal Justice Department of the State of North Carolina Criminal Justice Education and Training Standards Commission - By virtue of this authority vested in the laws of the State and in recognition of the satisfactory completion of the basic training requirements and the demonstrated ability to perform those tasks required of a criminal justice officer, the North Carolina Criminal Justice Education and training Standards Commission hereby awards to Michael Scott Hensley this Intermediate General Certificate singed the 22nd day of November 2006

Chief Elliott, the Mayor and Council Members all congratulate Sergeant Hensley for a job well done in earning this achievement.

PUBLIC COMMENT – NORTH CAROLINA PARKS AND RECREATION TRUST FUND (PARTF) GRANT APPLICATION:

The City Manager advised that this is the third public meeting to obtain comments on the grant application for the Mt. Ida property acquisition.

Ms. Freddie Killough was present for this meeting on behalf of the Downtown Business Association and stated that the DBA is wholeheartedly in support of the City applying for a N.C. Parks and Recreation Trust Fund (PARTF) grant to acquire the 35 acres on top of Mt. Ida, in order to preserve this scenic mountain from development and to allow for public recreational use.

Ms. Killough also presented a letter of support for the PARTF grant application from Ms. Mary Smith, Health Educator for the Rutherford Polk McDowell District Health Department.

Ms. Smith's letter read as follows and can be found on file at City Hall:

To Whom It May Concern:

As the Public Health Educator for McDowell County and a Board Member of the McDowell trails Association, I would like to express my full endorsement of the purpose of preserving its natural beauty and establishing a public park and walking trail.

The city of Marion is to be commended for its foresight in planning for a walkable community as it will help to address the high obesity rate in McDowell County. The Mt. Ida trail will be part of a system of trails that will connect residential areas with retail areas, neighborhoods with schools, and homes with work. People in McDowell County need safe and pleasant environments to be physically active and the Mt. Ida trail will encourage people to enjoy the outdoors.

Ms. Killough presented another letter received in support of the PARTF grant application from Ms. Carol Price, Executive Director of the McDowell Tourism Development Authority. The letter read as follows:

Dear Mayor:

The prospect of purchasing and preserving Mount Ida as a natural resource for the Marion Community is a crucial decision for the City Council. Marion's new welcome sign message, "Where Main Street Meets the Mountains" illustrates the downtown image of Mount Ida joining South Main Street.

Conserving Mount Ida will guarantee that residents and visitors will always be able to enjoy the view of "Where Main Street Meets the Mountains" and guarantee the preservation of an important natural resource. The possibility exists to provide additional outdoor recreation to the public with hiking trails conveniently located in the downtown area.

Preservation and cultivation of our heritage, culture and natural resources are important components of our marketing program for McDowell County. I support the City's decision to protect this important asset and wish you great success with this vital endeavor.

Best Regards,

Carol B. Price
Executive Director

The City Manager advised that there are letters of support expected from many other organizations in the near future.
The City Manager detailed efforts underway to complete a City recreation survey for the grant. Councilman Cuthbertson has worked with McDowell County Schools to have school students at the High School and at East McDowell Junior High School to complete the surveys.

Mike Conley of the McDowell News stated that the McDowell News is also doing an on line poll for the citizens to take regarding desired recreational amenities in the City.

PUBLIC APPEARANCE - CLIFF McLARTY – REQUEST CHANGE TO BROWN DRIVE PARKING PATTERN: Mr. Cliff McLarty appeared before Council. He stated that he has recently purchased the Old City Hall property on Logan Street.

Mr. McLarty stated that his plans are to build three loft apartments in the upstairs of the building. He has experienced some problems with parking when trying to utilize the bay areas on the back of the property. Mr. McLarty requested that Council remove two parallel parking spaces on Brown Drive that block his bay doors.

Councilman Cuthbertson advised that he looked at the parking in this area, and wondered if there was any way to make one of these spaces requested for removal a handicapped space.

Mayor Clark asked if Mr. McLarty would be willing to give the City two of his parking spaces for these two spaces.

Mr. McLarty expressed concern over both these suggestions.

Councilman Cuthbertson suggested that perhaps the Street Committee needs to look at this request and to bring a recommendation back to Council.

It was the consensus of Council present to refer this request to the Street Committee.

PRESENTATION OF 2005 – 06 AUDIT REPORT – JOHNSON PRICE AND SPRINKLE:
The City Manager stated that Ms. April Westmoreland of Johnson, Price & Sprinkle was sick and unable to present the City's 2005-06 Audit Report to Council. The City Manager stated that Ms. Westmoreland had suggested that Finance Director Harriett Thomas present the City's 2005-06 Audit Report, without objection from City Council.

Ms. Thomas presented the audit report to City Council. She stated that Johnson, Price & Sprinkle gave the City an unqualified, or clean, opinion.

A copy of the audit report can be found on file at City Hall.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

ADOPT ORDINANCE – REVISE CITY MASTER METER POLICY:
The City Manager advised that the Utility Committee met on December 19, 2006 to discuss water and sewer issues related to possible residential developments. The Utility Committee recommended changes in the City's Water and Sewer Ordinance to clearly state that townhouse and condominium developments were eligible for master meters, as long as the homeowner's association for such development paid the water and sewer bill.

A discussion followed.

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

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). Townhouse and condominium developments under the management of a homeowner's association, where the homeowner's association is responsible for the water and sewer bill, are also eligible for a master meter. Each separate business, mobile home, apartment, townhouse, condominium 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 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 set in the ordinance adopted by City Council setting water and sewer rates, connection fees, cost recovery charges and other miscellaneous charges.

Section 3. This Ordinance shall become effective upon its adoption.

Adopted this the 2nd day of January 2007.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number O–07–01–02–1

The City Manager asked Council for direction about how to handle a request from a townhouse development to go from master meters to individual meters. After brief discussion, Council determined by consensus that the City would charge the full connection fee less any amount paid for the master meter. It was also agreed that the decision to go to individual meters would have to be unanimous on the part of the development.

DISCUSS CEMETERY PROJECTS: The City Manager advised that a few months ago the Street Department crew repaired a rock wall near the front of Oak Grove Cemetery. The mortar used did not match the existing aged concrete, causing the wall to stand out as a mixture of old and new concrete. The City Manager noted that Councilman Edwards had suggested that this issue be addressed, to make sure the appearance of the Cemetery was not compromised.

Councilman Edwards stated that he hoped that a mortar of appropriate color could be found to better match the old with the new. Councilman Edwards also complimented recent work to sand and paint handrails in the Cemetery.

It was the consensus of Council to refer review of the rock wall repairs to the Cemetery Committee.

Councilman Owenby stated that he would still like to see trash cans placed in the Cemetery.

The City Manager stated that this item had been discussed previously and that he could get some information together on the styles and prices of trash cans.

It was suggested that staff contact the City of Asheville and get information on the style of trash cans being used in Downtown Asheville.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager presented Council with a draft copy of the County's Solid Waste Plan. He stated that this Plan was required by State law and that City staff had reviewed the Plan in detail, correcting errors in relation to the City. The City Manager stated that Council will likely be asked to adopt this Plan in the near future.

The City Manager advised that Norfolk Southern sent a letter to the Federal Surface Transportation Board stating that they did not object to the City's request to extend the negotiating period for the old Pea Vine Rail Line until April. The City Manager stated that Norfolk Southern will likely not offer the City the section of track south of Jacktown Road, where the Peavine tracks blend into the CSX right of way, since Norfolk Southern can likely sell this right of way to CSX.

The City Manager presented Council with information that was received from the N.C. Attorney General's (AG) Office, explaining the process for consumer cable complaints, given new State legislation regarding cable franchising that took effect on January 1. The City Manager advised that the City's franchise with Charter expired at Midnight on December 31, 2006. The AG's office will immediately take over consumer complaints in Marion as of January 1. Mayor Clark inquired about the status of the City receiving its governmental channel back. The City Manager stated that a letter had been sent to Charter in the Fall, requesting that the City channel be put back on the air, but that he would check on this matter. Councilman Edwards stated that it would be good if the AG could be contacted and involved in this issue.

The City Manager advised that a letter had been received from the State Division of Emergency Management that verified some revisions to the new City flood maps. The State did remove part of the immediate highway frontage on Highway 221 North Business from the restrictive floodway classification, due to most of the frontage being already elevated above the base flood elevation. The City Manager stated that McGill is completing a flood study for the city on the rest of the 221 North Business corridor, so that technical arguments can be submitted to the State by the January 6 deadline.

The City Manager advised that he had asked DOT District Engineer Doug McNeal before Christmas to repair rough pavement on West Court Street across from the Library. The City Manager noted that DOT had milled down the road a bit, making the road somewhat smoother.

The City Manager advised that the aerial photos have arrived, allowing working on the Downtown Streetscape/Traffic Flow Plan to begin.

The City Manager also noted that City crews are currently working on the splash pad at the Community Building.

CLOSING COMMENTS:

Councilman Owenby asked if contracted wrecker drivers were not supposed to clean up glass and debris on accident sites. He advised that the wrecker companies are leaving glass and debris in the road at times. Chief Elliot stated that the City's expectation was that wrecker drivers were supposed to clear the accident scene of debris. Chief Elliott stated that he would remind all officers to check the accident scene and to remind the wrecker driver of their duty to clear debris and glass from the road.

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

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, 2007 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 for this meeting due to being out of the country.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Heather Cotton, City Planner; David Currie, Code Enforcement Officer; Steve Miller, Water Plant Superintendent; Mike Hensley, Police Sergeant; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Ronnie and Lovina Smith 96 Foxwood Drive, Marion, NC; Glen Sherlin, 119 3rd Street, Marion, North Carolina; Billy Mack 40 Reservoir Road, Marin, NC; Cliff McLarty, Madison Street, Marion, NC; Wanda and Keith Byrd, Post Office Box 209 Old Fort, NC.; Troy McAbee, 1300 Rutherford Road, Marion, NC; Vernice Francis, PO Box 62, Marion, NC.

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 - December 12, 2006 Regular Session

B. Approve Waiver of Civil Citation Penalty

Ms. Jean Whitson – Failure to display handicapped placard. Ms. Whitson verified that she possessed a valid handicapped placard.

C. Adopt Resolution Approving McDowell County Solid Waste Plan

A Resolution of the City Council of the City of Marion to Approve the 2006 McDowell County Ten Year 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, N.C.G.S. 130A-309.09A(b) requires each unit of local government, either individually or in cooperation with other units of local government, to develop a ten 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 THE CITY COUNCIL OF THE CITY OF MARION RESOLVES THAT:

Section 1. The City Council of the City of Marion hereby approves the McDowell County Comprehensive Solid Waste Management Plan.

Section 2. This resolution shall be effective upon its adoption.

Adopted this the 16th day of January, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-07-01-16-01

D. Approve Personnel Policy Amendment

City of Marion
Personnel Policy Amendment

The Personnel Policy of the City of Marion, as adopted on February 21, 2006, is hereby amended as follows:

Section 1. That Article VI, Work Conditions and Expectations, Section 2. Designated On-Call Time, Payment for Call Duty, first paragraph, is amended as follows:

Section 2. Designated On-Call Time

Payment for Call Duty

The on-call person will receive an established payment amount as determined by the City Manager (necessary tax deductions etc. will apply) as compensation fro taking weekend call duty. If the individual is called out, they will received their regular rate of pay for all hours worked up to forty and time and half for all hours over forty.

Section 2. This amendment shall become effective upon its adoption.

Adopted this the 16th day of January 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Policy Number: P-07-01-16-01

PRESENTATION OF RETIREMENT AND MEMORIAL CERTIFICATES FROM THE N.C. LEAGUE OF MUNICIPALITIES:

The City Manager advised that Resolutions had been received from the N.C. League of Municipalities, including a memorial resolution for the family of former Water Plant Superintendent Buck Byrd and two retirement resolutions for former Public Works/Public Utilities Director Glen Sherlin and former Grants Administrator Lovina Smith.

Mayor Clark presented Ms. Wanda Byrd and son Keith Byrd with a memorial resolution from the NCLM that read as follows:

Resolution
Of the
North Carolina League of Municipalities

WHEREAS, during the past year death has taken from our midst, Gilmer T. Byrd who served the City of Marion faithfully and well for 21 years; and

WHEREAS, Gilmer T. Byrd contributed materially over these years to the advancement of good municipal government in North Carolina;

NOW, THEREFORE, BE IT RESOLVED by the North Carolina League of Municipalities, in Annual Conference assembled this 17th day of October 2006, that the delegates do hereby express their sorrow at the passing of Gilmer T. Byrd, former Water Filter Plant Superintendent 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 Gilmer T. Byrd and to the City of Marion.

Attest: Ellis Hankins, Executive Director / A. Everette Clark, President

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Resolution
Of the
North Carolina League of Municipalities

WHEREAS, Glen S. Sherlin retired during the past year, after serving the City of Marion faithfully and well for 30 years; and

WHEREAS, Glen S. Sherlin contributed materially over these years to the advancement of good municipal government;

NOW, THEREFORE, BE IT RESOLVED by the North Carolina League of Municipalities in Annual Conference assembled this 17th day of October 2006, that the delegates do hereby honor Glen S. Sherlin, former Utilities/Projects Director of the City of Marion for faithful service and lasting contributions to good municipal government.

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 Glen S. Sherlin and to the City of Marion.

Attest: Ellis Hankins, Executive Director A. Everette Clark, President

****

Resolution
Of the
North Carolina League of Municipalities

WHEREAS, Lovina Smith retired during the past year, after serving the City of Marion faithfully and well for 26 years; and

WHEREAS, Lovina Smith contributed materially over these years to the advancement of good municipal government;

NOW, THEREFORE, BE IT RESOLVED by the North Carolina League of Municipalities in Annual Conference assembled this 17th day of October 2006, that the delegates do hereby honor

Lovina Smith former Grants Administrator of the City of Marion for faithful service and lasting contributions to good municipal government.

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 Glen S. Sherlin and to the City of Marion.

Attest: Ellis Hankins, Executive Director A. Everette Clark, President

PRESENTATION OF STATE AWARD FOR WATER PLANT: The City Manager advised that we had recently received for the third time, a certificate recognizing excellence in turbidity removal at the Water Plant.
The City Manager stated that only about 10 percent of water systems typically receive this certificate annually.

The City Manager presented Steve Miller, Water Plant Superintendent, with this certificate of excellence for the Water Plant.

The Certificate read as follows:

North Carolina Area Wide Optimization Program
Certificate of Facility Optimization for Turbidity Removal - 2005
City of Marion Water Treatment Plant
from the NCDENR, North Carolina Public Water Supply Section.

PUBLIC APPEARANCE – MS. VERNICE FRANCIS: Ms. Vernice Francis appeared before Council. Ms. Francis advised that she had lived in Marion for approximately seven years, and has waited for someone to make a request to name a road or other public facility in the City of Marion after Dr. Martin Luther King, Jr. Ms. Francis stated that she had decided to make this request herself at this time, being the day after the observance of the birthday of Dr. King.

The Mayor and Council Members stated that this request had merit and should warrant consideration.

Councilman Martin advised that he feels this request should be discussed further at the next City Council Planning Session.

Ms. Francis stated that she would like to be a part of the team that makes this happen.

Mayor Clark stated that we need to seriously consider this request and that he could envision a Committee made up of several Council Members and citizens.

Councilman Edwards stated that Charlotte had recently completed a similar process.

Council agreed by consensus to discuss the process to review this request at the next Planning Session.

PUBLIC HEARING – REZONING - NORTH MAIN STREET:
Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that an application for Zoning Map Amendment was submitted to the City of Marion by David and Patricia Currie to rezone property located on North Main Street next to the new Crestview Animal Hospital from R-2 General Residential to C-2 General Business to allow greater flexibility of commercial use. Ms. Cotton advised that a

portion of the property is currently zoned C-2 and that this request would change the remainder of the tract to C-2 Zoning.
Ms. Cotton stated that the property in question, 4.8 acres, was surrounded by existing C-2 zoning. She advised that a portion of the property is located outside of the City limits.

The property is surrounded by a mix of existing commercial uses. The existing and proposed zoning district is shown in figure one.

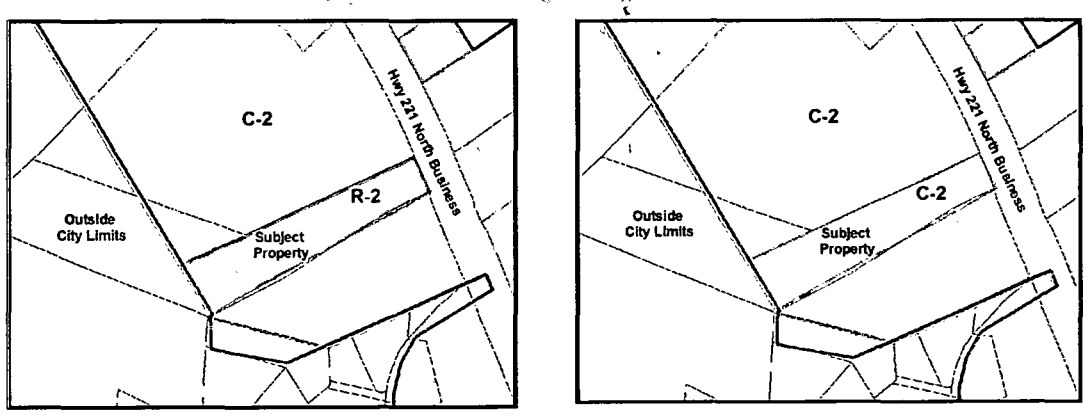


Figure One: Existing and Proposed Zoning District

Ms. Cotton stated that a proposed use has not been proposed for the subject property.

Ms. Cotton reported that the Planning Board voted 5-0 in a duly noticed meeting on January 4, 2007 to recommend approval of rezoning the property from the R-2 General Residential Zoning District to the C-2 General Business Zoning District designation.

Mr. David Currie was present for the Public Hearing.

There were no other citizens present to discuss this request.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted 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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of David and Patricia Currie for property with the Parcel Identification Number 1702.17-12-0339 from R-2 General Residential to the C-2 General Business Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on January 4, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 16th day of January 2007.

A. Everette Clark
Mayor

ATTEST:

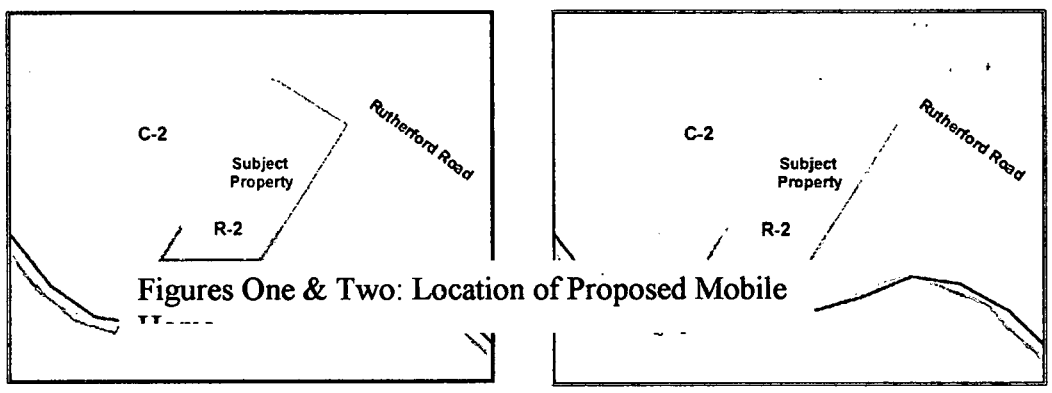
J. Robert Boyette
City Manager/Clerk

Ordinance Number: 07-01-16-02

PUBLIC HEARING – REZONING – RUTHERFORD ROAD: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that an application for rezoning was submitted to the City of Marion by Mr. Troy B. McAbee requesting rezoning of property located on Rutherford Road next to Eddie's Italian Restaurant from R-2 General Residential to C-2 General Business in order to redevelop a residential property to commercial for the purpose of an office.

Ms. Cotton stated that the existing use of the property includes a vacant residential dwelling unit. Based on the McDowell County Property Record Card, the property is approximately 0.36 acres in size. Ms. Cotton stated that the property is surrounded by existing C-2 zoning and a mix of commercial uses including Eddie's Italian Restaurant, Fullers Cycle Shop, and John's Precision Auto Body. The existing and proposed zoning district is shown below in figure one.



Figures One & Two: Location of Proposed Mobile

Figure One: Existing and Proposed Zoning District

Ms. Cotton reported that the proposed use as an office for Allstate Insurance is consistent with the intent of the C-2 General Commercial Zoning District.

Ms. Cotton advised that the Planning Board voted 5-0 in a duly noticed meeting on January 4, 2007 to recommend approval of the rezoning of this property from the R-2 General Residential Zoning District to the C-2 General Business Zoning District designation.

Mr. Troy McAbee was present for the Public Hearing.

There were no other citizens present to discuss this request.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Edwards, seconded by Councilman Martin, those members of Council present voted 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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of Troy B. McAbee for property with the Parcel Identification Number 1711.13-13-4661 from R-2 General Residential to the C-2 General Commercial Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on January 4, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 16th day of January 2007.

A. Everette Clark, Mayor

ATTEST:

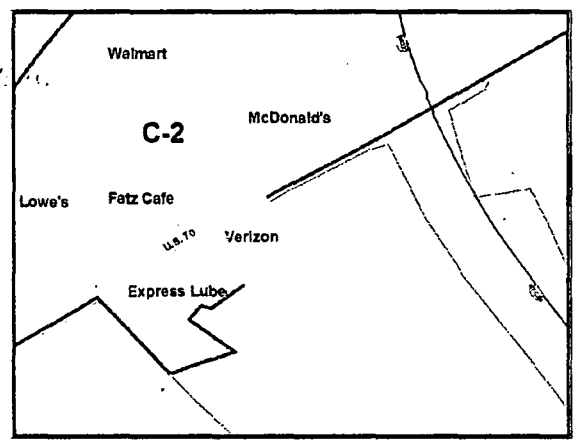
J. Robert Boyette, City Manager/Clerk

Ordinance Number: 07-01-16-03

PUBLIC HEARING – ASSIGN ZONING TO VOLUNTARY ANNEXATION AREA – US 70 WEST: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that the area to be zoned includes a parcel of land recently annexed by the City and located on US Highway 70 West across from the Wal Mart entrance. The parcel is owned by Great Meadows and is currently being developed into a retail shopping center to include the Verizon Wireless Service Center and two additional commercial uses. The property owner has received approval from McDowell County for the development.

Ms. Cotton stated that the property is surrounded by C-2 zoning, including property owned by Great Meadows LLC, which includes multiple commercial uses including retail, restaurants, offices, and auto repair. The proposed Zoning District Map is shown below in Figure One.



Note: Boundaries subject to change upon final survey of property.

Figure One: Proposed Zoning District

Ms. Cotton stated that the application proposes to zone the area into the C-2 General Business Zoning District. Ms. Cotton reported that the Planning Board voted 5-0 in a duly noticed meeting on January 4, 2007 to recommend Approval of zoning the newly annexed area into the C-2 General Business Zoning District designation.

There were no citizens present to discuss this Public Hearing.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted 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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map to include property owned by Great Meadows LLC located on Highway 70 West annexed by the City on December 31, 2006 to the C-2 General Commercial Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on January 04, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 16th day of January 2007.

A. Everette Clark, Mayor

ATTEST:

I. Robert Boyette, City Manager/Clerk

Ordinance Number: 07-01-16-04

PUBLIC HEARING – ZONING AMENDMENT – TEMPORARY USES: Mayor Clark opened the Public Hearing.

Ms. Cotton stated that the purpose of adding temporary use regulations within the City Code is to allow for controlled, time-limited uses while ensuring that such uses will not impose an adverse impact on the community and its permanent uses. This amendment will provide a mechanism for which to regulate and eliminate to the greatest extent possible any problems, threats or dangers to the public health, safety and welfare of the community.

The proposed ordinance was brought before the City Council on November 7, 2006. After a review of the ordinance, Council requested that the Planning Board take a second look at the ordinance to reduce the number of yard sales per site from twelve time per year to four (4) times per year. In addition, Council asked that the Board revise language that regulates temporary uses located at or hosted by churches within the City of Marion.

Ms. Cotton stated that the ordinance had been amended to change the maximum frequency of yard sales per property to four times per year and to exempt non-profit or other institutional organizations located within the City of Marion from permit and fee requirements.

Ms. Cotton reported that the Planning Board recommended Approval of this Zoning Amendment with a 5-0 vote at a duly noticed public hearing held January 4, 2007.

There were no citizens present to discuss this item.

Mayor Clark Closed the Public Hearing

Councilman Cuthbertson suggested that the ordinance be adopted to explicitly state that governmental units were also exempt from permit and fee requirements. Council agreed to make this change to the ordinance.

Upon a motion by Councilman Martin, 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. *Zoning*, Article VII. *General Provisions*, Section 709 Yard Sales is amended in its entirety and replaced by adding the following:

Section 709. Temporary Uses

709.1 General Provisions

(1) Purpose and Intent. It is the purpose of this section to permit temporary uses within the city on a controlled, time-limited basis to minimize adverse impacts on the community. The intent of this section is to establish specific regulations to allow temporary uses while eliminating to the greatest possible extent, any problems, threats, or dangers to the public health, safety or welfare as may exist with any and all such uses.

(2) Permitted temporary uses. Temporary uses shall be limited to a use or use of land, building, or structure not intended to be of a permanent duration. Such uses shall be limited to the following:

a. Circuses and/or carnivals.
b. Evangelistic and religious events.
c. Outdoor bazaars, cookouts and/or similar activities by churches or other nonprofit institutions or organizations.
d. Open lot sale area for farm produce made or grown by the farm producer or immediate family.
e. Open lot sales area for Christmas trees.
f. Contractors' office and/or construction shed including mobile offices during construction on the development site.
g. Temporary special sales, yard sale or "flea" markets in commercial or industrial zoned districts.
h. Yard sales conducted outdoors by a resident in their respective yard area.
i. Other temporary recreational or entertainment related events or activities such as fairs or concerts.
j. Temporary relocation of manufactured housing for displaced persons as a result of natural or manmade disaster.

Itinerant merchants, as defined by the North Carolina General Statutes, shall not be considered a temporary use pursuant to this section. Itinerant merchants shall be subject to the regulations of Chapter 10, Article VII of the Marion City Code, rather than the regulations of this section.

(3) Duration, frequency and permitted zoning districts. The following table defines the requirements for duration, frequency, and permitted zoning districts for which a temporary use may occupy a site.

Temporary Use	Maximum Duration per separate use per site	Maximum Frequency of event per person or group per site	Permitted Zoning Districts
Circuses and/or carnivals.	Seven (7) days	One (1) per calendar year	All non-residential

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Mayor Clark Closed the Public Hearing

Councilman Cuthbertson suggested that the ordinance be adopted to explicitly state that governmental units were also exempt from permit and fee requirements. Council agreed to make this change to the ordinance.

Upon a motion by Councilman Martin, 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. *Zoning*, Article VII. *General Provisions*, Section 709 Yard Sales is amended in its entirety and replaced by adding the following:

Section 709. Temporary Uses

709.1 General Provisions

(1) Purpose and Intent. It is the purpose of this section to permit temporary uses within the city on a controlled, time-limited basis to minimize adverse impacts on the community. The intent of this section is to establish specific regulations to allow temporary uses while eliminating to the greatest possible extent, any problems, threats, or dangers to the public health, safety or welfare as may exist with any and all such uses.

(2) Permitted temporary uses. Temporary uses shall be limited to a use or use of land, building, or structure not intended to be of a permanent duration. Such uses shall be limited to the following:

a. Circuses and/or carnivals.
b. Evangelistic and religious events.
c. Outdoor bazaars, cookouts and/or similar activities by churches or other nonprofit institutions or organizations.
d. Open lot sale area for farm produce made or grown by the farm producer or immediate family.
e. Open lot sales area for Christmas trees.
f. Contractors' office and/or construction shed including mobile offices during construction on the development site.
g. Temporary special sales, yard sale or "flea" markets in commercial or industrial zoned districts.
h. Yard sales conducted outdoors by a resident in their respective yard area.
i. Other temporary recreational or entertainment related events or activities such as fairs or concerts.
j. Temporary relocation of manufactured housing for displaced persons as a result of natural or manmade disaster.

Itinerant merchants, as defined by the North Carolina General Statutes, shall not be considered a temporary use pursuant to this section. Itinerant merchants shall be subject to the regulations of Chapter 10, Article VII of the Marion City Code, rather than the regulations of this section.

(3) Duration, frequency and permitted zoning districts. The following table defines the requirements for duration, frequency, and permitted zoning districts for which a temporary use may occupy a site.

Temporary Use	Maximum Duration per separate use per site	Maximum Frequency of event per person or group per site	Permitted Zoning Districts
Circuses and/or carnivals.	Seven (7) days	One (1) per calendar year	All non-residential

			zoning districts
Evangelistic and related religious congregations.	Fourteen (14) days	Four (4) per calendar year	All non-residential zoning districts.
Outdoor bazaars, cookouts and/or similar activities by churches or other nonprofit institutions or organizations	Three (3) days	One (1) every three (3) months	All zoning districts
Open lot sales for farm produce	Two (2) days	Twenty-four (24) per calendar year	All commercial zoning districts
Open lot sales for Christmas trees.	Forty-five (45) days	One (1) per year	All commercial zoning districts
Contractors' office and/or construction shed including mobile offices during construction on the development site.	Between issuance of a building permit and a final certificate of occupancy, annual renewal is required.	None	All zoning districts
Temporary special sales, yard sale or "flea" markets in commercial or industrial zoned districts.	Two (2) days	Four (4) times per year	All non-residential zoning districts
Yard sales conducted outdoors by a resident in their respective yard area.	Two (2) days	Four (4) times per year	All residential zoning districts
On-Site Estate Auctions	Two (2) days	One (1) per year	All zoning districts
Other temporary recreational or entertainment related events or activities such as fairs or concerts.	One (1) day except fourteen (14) days for an annual event.	One (1) per month for one (1) day events; one (1) per year for fourteen (14) day events.	All non-residential zoning districts.
Temporary relocation of manufactured housing for displaced persons as a result of natural or manmade disaster	Eighteen (18) months unless authorized by City Council	None	Within a designated disaster relief area.

(4) Criteria. A temporary use permit may be issued to the owner, tenant or lessee of any property located within the city. A temporary use permit may be issued provided the proposed use meets the following criteria:

a. The temporary use must be compatible with the surrounding uses.
b. The temporary use shall not generate noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.
c. If the temporary use is anticipated to draw less than 100 people at any given time, then it shall be approved by the zoning administrator.
d. If the temporary use is anticipated to draw more than 100 people at any given time, then it shall be approved by the city manager. If the event is anticipated to draw over 1,000 people, it must be approved by the city council and an application must be submitted no less than 30 calendar days prior to the event.
e. No more than two temporary use permits may be issued at any given time to the same applicant, unless approved by the city manager.
f. The City shall refuse to issue a permit when the activity or purpose stated in the application would violate any ordinance of the city or statue of the state, or when the activity or purpose would constitute a clear and present danger to public health or safety.

(5) Permit required. Any person desiring to conduct a permitted temporary use, as defined in subsection (2) and (3) above with the exception of residential yard sales or activities conducted by a church, nonprofit or public institution that has a permanent location within the city limits of Marion, must first obtain a

permit from the city. Such permit will establish the requirements for the particular use set out in subsection (c) and (d) below.

a. Purpose. The purpose of this permit is to insure that a temporary use meets the requirements set out herein and to coordinate traffic, parking, and other inspections as necessary to the safe and healthful operation of the event.
b. Application. Application for a temporary use permit shall be made to the city of Marion at least five (5) business days prior to the start of such use with the exception of temporary uses requiring city council approval in which the application must be submitted no less than 30 calendar days prior to the event.
c. Requirements. A temporary use permit shall not be issued until evidence is shown that the following requirements have been or will be complied with:
    1. The temporary use is permitted under subsection (2) and (3) above.
    2. Ample parking is provided for the temporary use, in addition to required parking for any permanent use or uses located on the same property as the proposed temporary use.
    3. Written authorization is given from the property owner or his/her agent for the temporary use to take place.
    4. Any temporary use held outside of a building and within five (5) hundred feet of any residence shall cease operation by 10:00 p.m.
    5. Noise shall be controlled so that no adjoining property owner or occupant is unduly disturbed by the temporary use.
    6. Restroom facilities are provided at a rate of not more than 100 persons per toilet seat unless otherwise approved by the county health officer. All facilities shall be located and screened in a manner not to be visible from the public right-of-way or adjacent to a residential use.
    7. All solid waste, human waste and animal waste shall be removed off-site and transported to an approved sanitary facility pursuant to Chapter 9 Health and Sanitation of the Marion City Code.

d. Additional Requirements. The following additional requirements shall apply:
    1. Where a tent or similar structure is to be used, the following requirements or documentation shall be met:
        (a) A limitation on the number of occupants in a structure shall be observed as per the fire inspector.
        (b) If a tent is to be used for human occupancy, a certificate of insurance must be submitted which will cover liability on the part of the applicant or sponsor in the event of an accident.
        (c) A certificate of flame resistance shall be submitted which will provide assurance that the structure has been properly treated with flame retardant and has been maintained as such.
    2. Contractors' office and/or construction shed including mobile offices shall be removed prior to receiving a certificate of occupancy.
    3. Any temporary use deemed by the Chief of Police to have a potential risk to health, safety or public order may require the applicant to provide private protective services.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 16th day of January 2007.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/ Clerk

Ordinance Number: 07-01-16-05

PUBLIC COMMENT PERIOD: Mr. Billy Mack appeared before Council and advised that he lived at the intersection of Finley and Reservoir Road and has a problem with traffic issues and possible drug dealing around the intersection near his home.

A discussion followed.

Chief Elliott advised that he had talked with Mr. Mack about his problems before the meeting and that he would instruct his officers to patrol the area as much as possible. In addition, efforts will be made to look into allegations of criminal activity in the area.

ADOPT ORDINANCE – BROWN DRIVE PARKING: The City Manager advised that the Street Committee met on January 5th, with Mr. McLarty concerning his request to eliminate two marked parallel parking spaces on Brown Drive that he says impair his ability to access the bays in the back of the building.

The Street Committee recommends shifting parking spaces on brown Drive toward Logan Street about six feet. This will allow the City to clear the area in front of the Old City Hall Bay doors while only losing one parallel parking space. Mr. McLarty is willing to allow public use of his handicapped parking space behind old City Hall, which will eliminate the need to place a handicapped space in the City parking lot. As "rent" for this parking space, he simply asked that the City restripe these parking spaces when we restripe the city parking lot this Spring or Summer.

A discussion followed.

Upon a motion by Councilman Cuthbertson, 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
BROWN DRIVE	PARKING	NORTH SIDE, LENGTH
PROHIBITED	OF STREET	
		SOUTH SIDE, BEGINNING AT THE SE CORNER OF BROWN DRIVE AND NORTH LOGAN ST. CONTINUING 27 FT. EASTERLY.
		SOUTH SIDE, BEGINNING 112 FT. EAST OF THE SE CORNER OF BROWN DRIVE AND NORTH LOGAN ST. CONTINUING EASTERLY TO SW CORNER OF BROWN DRIVE AND NORTH MAIN ST.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 16th day of January, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-01-17-01

APPROVE CONTRACT FOR WASTEWATER PLANT IMPROVEMENTS ENGINEERING REPORT: The City Manager presented Council with information from McGill Associates, advising that authorization is needed to complete an engineering report on our Wastewater Improvements so that the City can start the process to permit the planned $5.6 million in Wastewater Improvements and to apply for a 20 year State Revolving Fund loan.

The City Manager stated that the agreement with McGill would authorize the completion of the needed engineering report at a cost of $19,700.

A discussion followed.

Upon a Motion by Councilman Martin, seconded by Councilman Cuthbertson, those members of Council present voted to authorize McGill Associates to complete an engineering report for the City's Planned Wastewater Improvement, for a cost of $19,700.

AWARD CONTRACT – PURCHASE OF GRANT FUNDED POLICE MOTORCYCLE: The City Manager advised that several months ago, Police Chief Mika Elliott had obtained about 75 percent funding from the Governor's Highway Safety Program for a motorcycle to assist with traffic enforcement. The City Manager reported that bids were sought for the purchase of this motorcycle.

Only one bid was received, from Capital BMW Triumph of Raleigh for a 2007 BMW Police Motorcycle, in the amount of $23,260.86. The City Manager stated that this bid is within the amount specified in the Governor's Highway Safety Program Grant and meets the specifications for the motorcycle and the needs of the Police Department.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Edwards, those members of Council present voted to award the contract for the purchase of the grant funded police motorcycle to Capital BMW Triumph of Raleigh for a 2007 BMW police motorcycle in the amount of $23,260.86.

DISCUSS PARKING ISSUE – ROBERT STREET: The City Manager advised that Reverend Sonny Reaves who lives off of Robert Street has experienced problems associated with cars parked at Marion Elementary School blocking his driveway.

The City Manager advised that putting up "Do Not Block Driveway" signs and painting the curbs yellow would address the problem, but noted that Council may wish to look at the parking pattern in the surrounding area of Robert Street.

Council agreed by consensus for the City Manager to address this problem with the placement of "Do Not Block Driveway" signs and by painting the curbs yellow. The issue can be examined again in the future if these measures do not solve the problem.

Mayor Clark noted that he had recently been told by School Board Members that the mobile classroom placed at Marion Elementary School last year will be gone by next year.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that McGill has completed the review of the State flood maps and had sent a report to the State in support of our appeal. Many errors were found that caused McGill to recommend that local governments refuse to accept the new flood maps. McGill believes that the new maps should be much less restrictive than the State's consultant recommended. The City Manager stated that the City and County can see what the State's response is and then can determine what can be done legally, as far as not accepting the maps or pursuing further action, if the State does not act quickly to uphold the appeal of the new flood maps.

Mayor Clark stated that the City's problems with the new flood maps need to be brought to the attention of State and Federal elected officials. He noted that the restrictive flood maps are preventing development by property owners (Food Lion and the Great Meadows/Phillips Property) as well as the entire City of Marion. Mayor Clark stated that the City should also ask for reimbursement of costs incurred for the McGill study from the State, since it is wrong for local government and private property owners to pay to correct the mistake of the State and Federal Governments.

Council agreed to direct the City Manager to draft letters to State and Federal elected officials concerning the City's issues with the flood mapping process.

The City Manager advised that the City has received more letters of support for the Parks and Recreation Trust Fund (PARTF) grant for the Mt. Ida property acquisition. Letter of support have been received from McDowell County Schools, the Kiwanis Club and the McDowell Rotary Club. Additional letters of support are still expected. The City Manager stated that, as of January 10, he City had received 1,050 recreation surveys, with hundreds more expected from the High School. The City Manager stated that he expected to receive Brent Anderson's appraisal of the Mt. Ida property in the near future and that everything looked good to have the PARTF application submitted by the deadline of January 31.

The City Manager advised that the Federal Surface Transportation Board (FSTB) sent a letter, officially approving the City's requested extension of the negotiating period with Norfolk Southern Railway (NS) for the old Peavine Rail Line. The City Manager stated that the N.C. Rail Trails representative believes that the Clay Street crossing closing is adequate compensation for the Peavine, but NS appears to still be conducting an appraisal or, more likely, still negotiating with CSX. If the City has not made good progress by mid February, the City will probably need to ask for another six month extension from the FSTB.

The City Manager presented Council with information on various types of possible Cemetery trash cans. Unfortunately, the nicer looking trash cans are anywhere from $400 to $700 apiece. The City Manager advised that Public Works Superintendent Roger Estes had reminded him that the City had experienced some difficulty in the past finding City owned locations in each block of the Cemetery in which to locate trash cans. The City Manager stated that trash cans that Asheville has in their downtown cost about $700 apiece and were funded by a public-private partnership according to City of Asheville Planner Nate Pennington.

Councilman Cuthbertson stated that there is several places in the cemetery that have rusty rod iron fences that need some attention and could possibly be dangerous.

It was agreed that the Cemetery Committee would address both this issues in an upcoming meeting, along with repairs to a particular rock wall.

The City Manager advised that the Town Meeting is scheduled for January 25, 2007 at 7:00 p.m. at the Marion Community Building.

The City Manager advised that the National League of Cities Congressional Cities Conference will be held in Washington, D.C. from Saturday, March 10th through March 14th and that Mayor Clark, Mayor Pro Tem Little and himself would be attending. Due to being out most of the week of March 10-14, the City Manager asked that Council consider canceling the March 20, 2007 meeting. Upon a motion by Councilman Martin, seconded by Councilman Edwards, those members of Council present voted unanimously to cancel the March 20, 2007 City Council meeting.

CLOSING COMMENTS:

Councilman Edwards asked about the maximum number of unrelated persons that are allowed to live in one house, under the City Code. The City Manager reviewed the ordinance requirements with Councilman Edwards.

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

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, 2007 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.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: V. Ann Searcy 129 Old River Road, Marion, NC;

CITIZEN OF THE MONTH – SELECTED BY COUNCILMAN CUTHBERTSON:
Councilman Lloyd Cuthbertson selected the Citizen of the Month for February 2007

NANCY PLYBON GUTHRIE

Mrs. Guthrie was born in York, South Carolina to Charles and Kathryen Hanks Plybon. She is married to Norman Guthrie, who is the retired Plant Manager and Vice President of Marion Manufacturing Plant. Mr. and Mrs. Guthrie are members of the First United Methodist Church on Robert Street. They have three children and two grandchildren.

Mrs. Guthrie earned a Master of Arts in Educational Administration at Western Carolina University in 1989, and a Bachelor of Arts in English and Psychology at Winthrop University, in 1962.

Mrs. Guthrie was Magna Cum Laude, in the Senior Order, Who's Who Among Students in American Universities and Colleges, Phi Kappa Phi and President of the Student Government Association. Her training includes Basic Programming I at Isothermal Community College, Graduate Hours in Middle Grade Education at Western Carolina University, Permanent Certification – Junior Great Books Instructor and Extensive In-Service Training.
Mrs. Guthrie has served as Instructional Coach for Bridgewood Educational Services, LLC, as Principal and Vice Principal at East McDowell Junior High School, as McDowell County Supervisor for Secondary Education and has taught various grades and classes for McDowell County.

Mrs. Guthrie has been a wonderful example to youth and adults alike.

Mayor Clark and Council Members shared kind words about Mrs. Guthrie.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, those members of Council presented voted to approve the consent agenda as follows:

A. **Approval of Minutes** - January 16, 2007 Regular Session & January 25, 2007 Town Meeting Minutes

B. **Approve Termination of Contracts**
Street Right of Way and Cemetery Mowing Contracts with
Brian and Judy Kelly, d/b/a LandWorx – Effective upon written notification.

C. **Approve Resolution of Intent to Annex – Eastfield Phase II Area**

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDERANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION – EASTFIELD PHASE II

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 at the intersection of the current Marion Corporate Limits and the southwestern corner of Lot 5015 in Block 19 on McDowell County Tax Map 1711.05, thence following the current Marion Corporate Limits in a generally easterly direction approximately 1,527 feet to a point at the southeast corner of Lot 8999 in Block 29 on the McDowell County Tax Map 1711.06, thence following the eastern boundary of said Lot 8999 approximately 87 feet in a northerly direction to a point at the northeast corner of said Lot 8999, said point also being the southern boundary of Tunnell Street (SR 1729), thence crossing SR 1729 in a straight line approximately 50 feet in a northerly direction, thence following the eastern boundary of Lots 8166, 8256, 8374, 8483, 8489, and 8567 in Block 29 on the McDowell County Tax Map 1711.06 in a northerly direction approximately 518 feet to a point at the northeast corner of said Lot 8567, said point also being the western boundary of Forest Park Road (SR 1727); thence crossing SR 1727 in a straight line approximately 25 feet in an easterly direction to a point at the southwest corner of Lot 1651 Block 29 on the McDowell County Tax Map 1711.06, thence following the southern boundary of said lot 1651 in an easterly direction approximately 219 feet to a point at the southeast corner of said Lot 1651, thence following the eastern boundary of said Lot 1651 approximately 11 feet in a northerly direction to the southwest corner of Lot 2683 Block 29 on the McDowell County Tax Map 1711.06, thence following the southern boundary of said Lot 2683 and Lot 3749 Block 29 of the McDowell County Tax Map 1711.06 in an easterly direction approximately 172 feet to a point at the southeast corner of said Lot 3749, thence following the eastern boundary of said Lot 3749 in a northerly direction approximately 235 feet to a point at the northeast corner of said Lot 3749, said point also being the southern boundary of Seagle St (SR 1724), thence crossing SR 1724 in a straight line approximately 40 feet in a northerly direction to a point, said point being at the intersection of the northern boundary of SR 1724 and the southern boundary of Lot 2184 Block 20 on the McDowell County Tax Map 1712.18, thence following the southern boundary of said Lot 2184 approximately 70 feet in an easterly direction to a point at the southeast corner of said Lot 2184, thence following the eastern boundary of said Lot 2184 approximately 449 feet in a northerly direction to a point at the northeast corner of said Lot 2184, thence following the northern boundary of said Lot 2184 and Lots 1193, 1131, 0099 Block 30 on the McDowell County Tax Map 1712.18 approximately 190 feet in a southwesterly direction to a point at the northwest corner of said Lot 0099, said point also being the eastern boundary of Lot 0118 Block 20 on the McDowell County Tax Map, thence following the eastern boundary of said Lot 0118 approximately 65 feet in a southerly direction to a point at the southeast corner of said Lot 0118, said point also being the northeast corner of Lot 0023 in Block 20 on the McDowell County Tax Map 1712.18, thence in a southwesterly direction following the northern boundaries of said Lot 0023 and Lots 9940 and 8862 in Block 29 on the McDowell County Tax Map 1711.06 approximately 398 feet to a point at the northwest corner of said Lot 8862, said point also being the northeast corner of Lot 7756 and the southeast corner of Lot 6894 Block 29 on the McDowell County Tax Map 1711.06, thence following first the eastern boundary of said Lot 6894, then following the northern boundary of said Lot 6894, first approximately 150 feet in a northwesterly direction then approximately 60 feet in a southwesterly direction to a point at the southwest corner of said Lot 6894, said point also being the southern boundary of Matilda Avenue (SR 1725), thence crossing SR 1725 in a straight line approximately 60 feet in a northerly direction to a point at the intersection of the northern boundary of SR 1725 and the southeast corner of Lot 5044 Block 20 on the McDowell County Tax Map 1712.18, thence following the northeastern boundary of said Lot 5044 and Lot 4133 Block 20 on the McDowell County Tax Map 1712.17 approximately 300 feet to a point at the intersection of the northeastern corner of said Lot 4133 and the southern boundary of Carolina Avenue, thence crossing Carolina Avenue in a straight line approximately 60 feet in a northerly direction to a point at the intersection of the northern boundary of Carolina Avenue and the southern boundary of Lot 3340 in Block 19 on the McDowell County Tax Map 1712.17, thence following the southern boundary of said Lot 3340 approximately 120 feet in a northeasterly direction to a point at the southeast corner of said Lot 3340, thence in a straight line following the eastern boundary of said Lot 3340 and crossing the Southern Railroad right-of-way approximately 220 feet to a point, said point being the boundary of the current Marion Corporate Limits, thence following the boundary of the current Marion Corporate Limits approximately1390 feet in a generally westerly direction to a point at the northwest corner of Lot 3862 Block 19 on the McDowell County Tax Map 1711.05, said point also being the boundary of the current Marion Corporate Limits, thence following the current Marion Corporate Limits in a generally southerly direction approximately 920 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 March 27, 2007, 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 1, 2007, 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 6th day of February 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

RESOLUTION NUMBER: R-07-02-06-1

D. Approve Resolution of Intent to Annex Tate Street Area

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDERANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION – TATE STREET

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 at the intersection of the current Marion Corporate Limits and the western boundary of Lot 1198 Block 36 on the McDowell County Tax Map 1701.10, thence following in a straight line the boundary of the current Marion Corporate Limits first in an easterly direction approximately 200 feet, then in a southerly direction approximately 225 feet to a point, said point being the boundary of the current Marion Corporate Limits and the boundary of Lot 4854 Block 35 on the McDowell County Tax Map 1701.10, thence following the current Marion Corporate Limits in a generally westerly direction approximately 927 feet to a point at the intersection of the current Marion Corporate Limits and margin of Tate Street (SR 1214), thence following in a straight line the current Marion Corporate Limits in a northwesterly direction approximately 188 feet, thence following the current Marion Corporate Limits in a generally northeasterly direction approximately 316 feet to a point, said point being the northern boundary of Lot 8960 Block 25 on the McDowell County Tax Map approximately 15 feet from the northwest corner of said Lot 8960, thence following the northern boundary of said Lot 8960 and the northern boundary of Lots 9052 Block 26 and Lot 0999 Block 35 on the McDowell County Tax Map 1701.10 in a

generally easterly direction approximately 487 feet to a point, said point being the northeast corner of said Lot 0999 and the southwest corner of said Lot 1198, then following the western boundary of said Lot 1198 in a northerly direction approximately 72 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 March 27, 2007, 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 1, 2007, 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 6th day of February 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

RESOLUTION NUMBER: R-07-02-06-2

E. Approve Resolution of Intent to Annex – Finley Road Area

A RESOLUTION STATING THE INTENT OF THE CITY COUNCIL OF MARION TO CONSIDERANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION – FINLEY ROAD

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 at the intersection of the northeast corner of Lot 1704 Block 37 on the McDowell County Tax Map 1701.06 and the current Marion Corporate Limits, thence following the current Marion Corporate Limits first in a northeasterly direction approximately 935 feet, then in a southeasterly direction approximately 256 feet to a point at the southeast corner of Lot 9446 Block 38 on the McDowell County Tax Map 1701.06, thence following the southern boundary of said Lot 9446 in a southwesterly direction approximately 325 feet to a point, said point being the northwest corner of Lot 0066 Block 48 on the McDowell County Tax Map 1701.06, thence following the western boundary of said Lot 0066 approximately 87 feet to a point, said point being the southeast corner of Lot 7350 Block 38 on the McDowell County Tax Map 1701.06, thence following the southern boundary of said Lot 7350 approximately 203 feet to a point at the intersection of the southern boundary of said

Lot 7350 and a point on the eastern boundary of Lot 5010 Block 38 on the McDowell County Tax Map 1701.06, thence following the eastern boundary of said Lot 5010 in a southerly direction approximately 28 feet to a point at the southeast corner of said Lot 5010, thence following the southern boundary of said Lot 5010 and Lot 2369 Block 37 on the McDowell County Tax Map 1701.06 approximately 359.14 feet to a point at the southwest corner of said Lot 2369, thence following the western boundary of said Lot 2369 in a westerly direction approximately 150 feet, thence following the western boundary of Lot 7814 Block 37 on the McDowell County Tax Map in a southerly direction approximately 163 feet to a point, said point being the southwest corner of said Lot 7814 and the northwest corner of Lot 5556 Block 37 on the McDowell County Tax Map, thence following first the northern boundary of said Lot 5556 then the eastern boundary of said Lot 5556 then southern boundary of said lot 5556 then the western boundary of said Lot 5556 first approximately 579 feet in an easterly direction then approximately 302 feet in a southerly direction then 210 feet in a southwesterly direction then approximately 458 feet in a northwesterly direction to a point at the northeast corner of Lot 3377 Block 37 on the McDowell County Tax Map 1701.10, thence following the northern boundary of said Lot 3377 approximately 192 feet in a southwesterly direction to a point, said point being the intersection between the northwest corner of said Lot 3377 and the northeastern boundary of Lot 3151 Block 37 on the McDowell County Tax Map 3151, thence following the northeastern boundary of said Lot 3151 approximately 33 feet in a northerly direction to a point, said point being at the intersection of the northeast corner of said Lot 3151 and the eastern margin of Finley Road (SR 1209), thence crossing SR 1209 in a straight line to a point, said point being at the intersection of the western margin of SR 1209 and the eastern boundary of Lot 0463 Block 37 on the McDowell County Tax Map 1701.10, thence following the eastern boundary of said Lot 0463 and Lot 8359 Block 27 on the McDowell County Tax Map 1701.10 approximately 97 feet to a point at the southeast corner of said Lot 8359, thence following first the southern boundary of said Lot 8359 then following the western boundary of said Lot 8359 first approximately 410 feet in a westerly direction then approximately 385 feet in a northerly direction to a point, said point being the intersection of the northwest corner of said Lot 8359 and the current Marion Corporate Limits, thence following the current Marion Corporate Limits first in an easterly direction approximately 213 feet then in a northerly direction approximately 258 feet then in an easterly direction approximately 345 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 March 27, 2007, 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 1, 2007, 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 6th day of February 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, Clerk

RESOLUTION NUMBER: R-07-02-06-3

F. Approve Tax Refund

Ms. Mildred Causby - Property off of School Street – Property located behind house on School Street and is outside City Limits – The necessary refund under State law is $193.45 for five years of taxes paid on this property.

G. Receive Report of Unpaid 2006 Real Property Taxes/Authorize Advertisements of Tax Liens on Unpaid 2006 Real Property Taxes

$141,885.06 in unpaid 2006 real property taxes as of January 31, 2007 – The advertisement of tax liens was approved to run May 9, 2007 in the McDowell News

H. Approve Section 125 Pre Tax Deduction Plan

A Section 125 Cafeteria Plan allows for certain employees' medical and/or life insurance premiums to be paid with pre-tax dollars resulting in a tax savings for employees. Our current plan only allows for our Group Insurance premiums (medical, vision, dental) to be handled this way. This amendment allows for all Group Insurance premiums and Supplemental Insurance premiums, such as cancer, accidental and other medical insurances as well as Group Term Life Insurance $50,000 or less to be included. Disability Insurance, both long-term and short-term continues to be excluded in order to be non-taxable when received.

(A copy of the Plan is available at City Hall.)

PRESENTATION OF RETIREMENT CERTIFICATE FROM THE N.C. LEAGUE OF MUNICIPALITIES: The City Manager advised that a Resolution had been received from the N.C. League of Municipalities for former Bookkeeper Victoria Ann Searcy.

Mayor Clark presented Ms. Searcy with a Resolution from the NCLM that read as follows:

Resolution
Of the
North Carolina League of Municipalities

WHEREAS, Victoria Ann Searcy retired during the past year, after serving the City of Marion faithfully and well for 6 ½ years; and

WHEREAS, Victoria Ann Searcy contributed materially over these years to the advancement of good municipal government;

NOW, THEREFORE, BE IT RESOLVED by the North Carolina League of Municipalities in Annual Conference assembled this 17th day of October 2006, that the delegates do hereby honor Victoria Ann Searcy, former Bookkeeper of the City of Marion for faithful service and lasting contributions to good municipal government.

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 Victoria Ann Searcy and to the City of Marion.

Attest: Ellis Hankins, Executive Director A. Everette Clark, President

Mayor Clark stated that the door to the City will always open to Ms. Searcy.

INTRODUCTION OF NEW EMPLOYEE: Fire Chief Jim Neal advised that it was his pleasure to introduce Mr. Roger McCarthy as the new Assistant Fire Chief for the Marion Fire Department. Mr. McCarthy comes to the City recently retired from Baxter Healthcare. Mr. McCarthy has over 30 years volunteer fire experience with the City and has served as a Captain in the Fire Dpeartment for over twenty years. Chief Neal stated that Mr. McCarthy has already hit the ground running and has proven to be a quick learner.

Mayor Clark and Council Members welcomed Roger and wished him a long tenure with the City.

PUBLIC APPEARANCE – MS. SADIE ANDREWS – REQUEST PARKING CHANGES ON CIRCLE LANE, CLINCHFIELD: The City Manager advised that Ms. Andrews was present for this meeting to discuss a parking issue on Circle Lane in Clinchfield. Council Members where presented with a copy of a petition from Ms. Andrews and other residents of Circle Lane asking that parking restrictions on both sides of Circle Lane be repealed.

The City Manager advised that the Police Department received a complaint last week about vehicles parked on Circle Lane in Clinchfield. Ordinance Enforcement Officer April Noles responded to the location and determined that the Traffic Schedule prohibits parking on both sides of Circle Lane, although no signs were in place. Officer Noles advised the property owner with the vehicles (about five in total) of this prohibition and suggested that she make plans to provide for off-street parking.

Ms. Andrews was present for this meeting and states that she and others on Circle Lane would like to request allowance of on-street parking on both sides of Circle Lane.

Mayor Clark suggested that the Street Committee look at this request.

Mayor Pro Tem Steve Little stated that Ms. Andrews is an excellent community representative.

It was the consensus of Council to refer this item to the Street Committee.

REQUEST – PROHIBIT COMMERCIAL VEHICLES FROM RESIDENTIAL STREETS: The City Manager presented a request from Ms. June Shope of 661 State Street to prohibit large vehicles such as tractor trailers from parking on residential streets. Ms. Shope's request noted a tractor trailer recently parked on State Street in front of East McDowell Junior High School that she felt posed a safety hazard as well as a visual blight.

The City Manager presented memos from former Police Chief Pruett from 1998 proposing that ordinances be adopted to prohibit large vehicles from taking up more than one marked on and off street parking space and to prohibit commercial vehicles from parking on residential streets. The City Manager stated that these ordinances were never adopted, but could perhaps be a guide.

Mayor Clark suggested that this request also be referred to Street Committee.

It was the consensus of Council to refer this item to the Street Committee.

PUBLIC COMMENT PERIOD: No one was present to speak to Council during the Public Comment Period.

CONSIDER ADOPTION OF ORDINANCE – AMEND SIDEWALK

PARKING PROHIBITION: The City Manager advised that the City has had some problems recently with utility vehicles parked on sidewalks. In looking at our ordinances, he has determined that an allowed exception for parking on sidewalks was "when necessary to avoid conflict with other traffic." The City Manager stated that the Police Chief and he feel that this general statement defeated the whole purpose of the sidewalk parking ban, since it could be argued that a vehicle was parked on the sidewalk simply to avoid being on the street in conflict with traffic. Therefore, the City Manager proposed an ordinance amendment to delete this exception and to make it clear that parking on sidewalks was not permitted.

A discussion followed.

Councilman Little advised that he did not realize until recently that the main reason that sidewalk parking had to be discouraged was that concrete sidewalks are not as thick as driveways and therefore and much more prone to cracking and breaking.

Mayor Clark noted that such parking practices cost City taxpayers money, due to needed repairs.

Councilman Edwards suggested that we send out notices to utility customers and subcontractors, advising them of these restrictions.

Mayor Clark stated that there was also a need for contractors of utility companies to have their names on their vehicles. The City Manager will stress that point along with advising utility companies and contractors to stay off of curbs and sidewalks in a letter.

Upon a motion by Councilman Edwards, seconded by Councilman Little, 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 18-223 in its entirety and replacing it with the following:

Sec. 18-223. Stopping, standing, or parking prohibited in designated places.

(a) No person operating a vehicle shall stop, stand, or park, except in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

(1) On a sidewalk;

(2) In front of a public or private driveway;

(3) Within an intersection;

(4) Within fifteen (15) feet of a fire hydrant;

(5) On a crosswalk;

(6) Within twenty (20) feet of a crosswalk at an intersection;

(7) Within thirty (30) feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(8) Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless signs or markings indicate a different length;

(9) Within fifty (50) feet of the nearest rail of a railroad crossing;

(10) Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of such entrance, when properly signposted;

(11) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(12) On a roadway side of any vehicle stopped or parked at the edge or curb of a street;

(13) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(14) At any place where official signs prohibit stopping;

(15) In the area between the curb/street edge and a public sidewalk.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.
(Code 1982, § 7-1151; Ord. of 2-4-97, § 1)

State Law References: Parking in front of a private driveway, fire hydrant, fire station, intersections of curblines or fire lane, G.S. § 20-162.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of February, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-02-06-1

CONSIDER ADOPTION OF ORDINANCE – PROHIBIT DRIVING ACROSS SIDEWALKS AND CURBS: The City Manager advised that he had directed the Police Chief to look at the parking pattern on the lot at Pulliam and Blue Ridge Street, as mentioned at the last meeting by Councilman Edwards. The people living at the house in question have created another driveway by driving across the curb and sidewalk at the intersection where the curb is ramped down for handicapped access to the sidewalk. To prohibit this type of situation, the City Manager recommended adoption of a ordinance, which would amend the existing ordinance, to prohibit people from driving across curbs and sidewalks, except at permitted driveways.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Edwards, 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 18-61 in its entirety and replacing it with the following:

Sec. 18-61. Driving within sidewalk area or across curbs.

The driver of a vehicle shall not drive within or across any sidewalk area or across any curbs located on a public street within the City except at a permanent or temporary driveway that has been permitted by the City and for which a curb cut and approach has been constructed by the City, if a curb is present next to the property. The term vehicle as used in this section shall include but not be limited to bicycles, motorcycles, minibikes, automobiles, other motor vehicles, and vehicles drawn by animals.

Exceptions to this section shall apply only in cases where a driver of a vehicle is ordered to drive across a sidewalk or curb by a police officer or traffic-control device, or in situations where emergency or maintenance work is undertaken or authorized by the City.

(Code 1982, § 7-1094)

Cross References: Sidewalks, § 15-131 et seq.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 6th day of February, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-02-06-2

APPROVE FIRE COLLEGE HOUSE BURNING: Fire Chief Jim Neal was present for this discussion and stated that the Fire College is planning to burn two houses in the City, one belonging to Mitch Gillespie just east of Marion Oil Company and behind Eastwood Reality off of East Court Street and Baldwin Avenue, and one on Shady Lane owned by the School System adjacent to the School Maintenance and Head Start Facility.

The City Manager stated that Council has previously directed that all house burnings in the City be reviewed. Approval is needed for the fire college to proceed with this burning in March.

The City Manager stated that Chief Neal has talked to the Fire College and that the Fire College is not currently planning to burn the house next to the Church of Christ on State Street about which a complaint had been received. The City Manager noted that neither the Church nor the Fire College had talked to the City about this burning, so no formal request has been made to Council.

A discussion followed.

Mayor Clark stated that the Fire College needed to understand that coordination with and approval by the City was needed before plans were made to burn any houses in the City. Mayor Clark stated that this communication had been made before, but was obviously not understood. Chief Neal stated that he would communicate this point to the Fire College.

Mayor Clark also stated that the fires needed to be put out by the Fire College and not allowed to smolder for days, thus creating more work for the City Fire Department.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council approved the request to allow the Fire College to burn in March the house off of East Court Street and Baldwin Avenue owned by Mitch Gillespie and the house off of Shady Lane owned by McDowell County Schools.

DISCUSS CEMETERY IMPROVEMENTS: The City Manager advised that the Cemetery Committee had looked at various issues in Oak Grove Cemetery in mid January. The Committee recommended that the City obtain a contractor to rebuild the rock wall near the front of the Cemetery with a colored mortar to match existing rock work as close as possible.

The Cemetery Committee also proposed purchasing up to 10 decorative trash cans, using ones in Downtown Asheville, costing about $700 each, as a model. The City Manager presented a map from Public Works Superintendent Roger Estes showing possible locations for these trash receptacles. The goal would be to have trash cans at accessible locations at the front and back sections of the five north-south streets in the Cemetery, not counting Maple Avenue running by the Mausoleum, which already has trash cans at the Mausoleum.

A discussion was also held about contacting families who have plots surrounded by rusty, dilapidated fences. There are four such fences in Oak Grove, and three of them are in poor condition. The City Manager advised that Ms. Christine Ledbetter at the Library had agreed to help the City locate such families, who could then be asked to make repairs or to allow the removal (or possible repair) of said fences.

Councilman Little stated that placing trash cans in the cemetery is something his brother-in-law Warren Hobbs spoke of often. However, Councilman Little stated that he had never agreed with the placement of trash cans in the cemetery and the costs involved with such purchase; therefore, he would ask that this item be voted on separately than the other cemetery issues.

Councilman Edwards stated that he understands Councilman Little's thoughts, however, he has had complaints about people not having a place to dispose of old flower arrangements, particularly when the City asks people to remove such arrangements each Spring. Councilman Edwards stated that he would not support tax money being used for such purpose but noted that the City had a Cemetery Fund, with revenues received from sale of grave plots, mausoleum vaults and columbarium niches, and that such Fund was specifically set up to pay for capital improvements in the Cemetery.

A discussion followed. Council members discussed options for purchasing anywhere between five and ten trash receptacles.

Upon a motion by Councilman Edwards, seconded by Councilman Owenby, Council voted to purchase and place six trash cans in the Oak grove Cemetery.

The vote was as follows:

Cuthbertson	Yes
Edwards	Yes
Martin	Yes
Owenby	Yes
Little	No

Upon a motion by Councilman Martin, seconded by Councilman by Little, Council voted unanimously to authorize the City Manager to hire a contactor to rebuild the rock wall near the front of Oak Grove Cemetery, as long as matching colored mortar is used, and to proceed with locating ownership for the four fence areas that need repair or removal.

Council stated that if family members will not repair such fences, then the City should remove the fences to protect public safety.

SCHEDULE NEXT CITY COUNCIL PLANNING SESSION: The City Manager advised that Council had previously stated that the next Planning Session would be held after the Town Meeting, perhaps in late February. The City Manager stated that there are several remaining topics from the last Planning Session, plus some recent additions to the topic list, including discussing a way to honor Dr. Martin Luther King, Jr. and the continuing County request for further reductions to the Eastfield water and sewer easement connection fee costs.

Councilman Little suggested that Council try one more night meeting and then go with a Saturday meeting if necessary. Council agreed by consensus to hold the next Planning Session on Tuesday, February 27 at 6:00 P.M. at City Hall. Dinner will be provided before the meeting.

AWARD CONTRACT – PURCHASE OF FULLY EQUIPPED POLICE DEPARTMENT PATROL CAR: The City Manager advised that bids had been solicited for the purchase of a fully equipped marked patrol car. After the second round of bid notices were sent out, the only proposal received was from Vic Bailey Ford in Spartanburg in the amount of $31,325, which is less than the $38,000 included for the purchase of this vehicle in the 2006-07 budget. The City Manager recommended that Council award the contract for the purchase of this patrol car to Vic Bailey Ford in the amount of $31,325.

A discussion followed.

Upon a motion by Councilman Little , seconded by Councilman Cuthbertson, Council voted unanimously to award the contract for the purchase of a fully equipped patrol car to Vic Bailey Ford in Spartanburg in the amount of $31,325.

AWARD CONTRACT – PURCHASE OF PICKUP TRUCK FOR POLICE DEPARTMENT: The City advised that bids were sought for the purchase of a mid size pickup truck for the Police Department Ordinance Enforcement Officer. After the second round of bid notices were sent out, the low bid was received from Vic Bailey Ford in Spartanburg in the amount of $18,499, which is less than the $20,000 budgeted for this vehicle in the 2006-07 budget. The City Manager recommended that Council award the contract for the purchase of this pick-up truck to Vic Bailey Ford in the amount of $18,499.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to award the contract for the purchase of a pickup truck for the Police Department to Vic Bailey Ford in Spartanburg in the amount of $18,499.

AWARD CONTRACT – COMMUNITY BUILDING PARK SPLASH PAD EQUIPMENT AND INSTALLATION: The City Manager advised that informal bids were sought for the purchase and installation of equipment for the Community Building Splash Pad. A proposal was received from Carolina Recreation Products, Inc. of Greensboro, the only North Carolina company that could be found to complete this kind of work, for $61,928.83. This company also installed the splash pad in Morganton. Finance Director Harriett Thomas attempted to find other quotes from other states and found three companies, none of which could do the same work for less than $100,000. The City Manager stated that City crews will also need to perform some work installing a retaining wall and some additional site preparation. Even with this additional work, the total cost of the project should be less than the $75,000 budgeted for the project. The City Manager stated that one option that the City does not have to accept, but which he would recommend, is the addition of a crumb rubber coating to the concrete surface. The City Manager advised that this rubber surface will cost $7,779.84, but will soften the surface quite a bit. Morganton has the rubber surface on their splash pad. The rubber surface is only guaranteed for three years and will eventually start to come up and fade, but it will enhance the safety of the facility for children.

The proposed option 2, which matches the features of the Morganton splash pad, includes the following breakdown:

1 Cylinder Spray	$3,200.00
1 Ground Geyser	500.00
3 Directional Water Jets - $480.00 each	1,440.00
2 Water Jelly - $810.00 each	1,620.00
6 Jet Stream - $430.00 each	2,580.00
1 Magic Touch – Bollard	3,090.00
1 6 Valve Eq. Vault 3" Inlet 10 Ctrl	14,360.00
1 Deck Drain, Fiberglass 12"x12"x16"	610.00
Sub Total	$27,400.00
Freight	1,100.00
Total	$28,500.00
Installation of Splash Pad	$26,000.00
Crumb rubber Coating	$7,428.83
Grand Total	$61,928.83

The City Manager presented Council with detailed information as listed above, on the proposal of Carolina Recreation Products, including a site layout and an artist's rendition of the facility. The recommended option was for Option 2 with the added water features to match Morganton's facility. The $61,928.83 price includes the water features listed in Option 2 and the crumb rubber surface.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to award the contract for the installation of the Community Building Park Splash Pad to Carolina Recreation Products, Inc. of Greensboro, for Option 2 with a crumb rubber coating as recommended by the City Manager, for an amount of $61,928.83.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that with the City's Right of Way and Cemetery Mowing contracts terminated under the Consent Agenda, he would recommend putting both contracts out for immediate bid. The Mayor and Council members agreed that this would be the proper course of action.

The City Manager reported on the City's continuing flood map appeals, presenting information that was received from the State in reference to the City's flood map appeal. The City Manager stated that City Consulting Engineer McGill Associates has already submitted the additional information requested by the State and that he is communicating with the County Manager regarding how local government can refuse to accept and enforce the new maps. The City Manager presented letters sent by Mayor Clark to Federal and State elected officials, protesting the process and the new maps.

The City Manager also advised that he had the opportunity to talk with Mr. Steve Green from Senator Burr's Office about the flood maps and that Mayor Clark and he had spoken with Graham Fields of Senator Dole's office about the same issue. Both gentleman were concerned about the situation and pledged for their offices to do anything possible to assist the City and County with this situation.

The City Manager stated that he had finally obtained from the City of Hickory information on the funding of the Interbasin Transfer (IBT) legal defense fund. E-mail has been received stating that the group originally developed a per capita funding formula to obtain the needed $1,000,000. The City Manager stated that this formula would have charged Marion just over $10,000. However, since Hickory has agreed to put in more money and some smaller local governments have not been able to contribute anything, the coalition has decided to let each local government make its own decision. The City Manager advised that McDowell County appears to be leaning toward a five year commitment of $20,000 per year. Marion's population is 15.44% of the McDowell County total. Therefore, if Council wished to give money in proportion to the County, the City's contribution would be just over $3,000 per year or just over $15,000 over five years. The City Manager stated that, as an alternative, Council could go with the $10,090.07 figure identified for Marion on a per capita basis, making the City's contribution around $2,000 per year.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously for the City to donate $3,000.00 per year to the IBT legal defense fund for a period of five years starting this fiscal year.

Mayor Clark stated that he still feels that the water should be put back into the basin that it was taken from. If this was the case with the Concord-Kannapolis request, there would be no legal fight.

Councilman Little stated that he sat on a N.C. League of Municipalities advisory board when the whole IBT concept first came about around 15 years ago. Councilman Little stated that the IBT process made sense back then; however, requests such as the one made by Concord and Kannapolis are now breaking the spirit and intent of the legislation.

The City Manager advised that the City's PARTF grant application for the Mt. Ida property acquisition was delivered to the State Parks and Recreation office on January 31. The City Manager stated that the City appeared to have maximized the grant application and should receive credit for every point possible. It will probably be around May before word is received about funding.

The City Manager presented Council with an agenda for the February 22 public meeting at the Community Building to kick-off the public input process for the City Land Use/ Comprehensive Plan and the Downtown Streetscape/Traffic Flow Plan. The meeting will begin at 6:00 p.m. at the Community Building, with refreshments available at 5:30 p.m.

The City Manager advised that he had received a letter from DOT requesting Notice of any changes the City may have for the Powell Bill Map. The City Manager stated that he was not aware of any needed changes, but that he has asked Public Works Superintendent Roger Estes to identify any recommended changes.

The City Manager advised that he wrote a letter of support for the possible relocation of the Post Office to the former Winn Dixie property to Marion's new Postmaster, Mr. Phil Ervin.

The City Manager advised that the Tree Board met that morning and that Arbor Day is scheduled for Friday, March 23, at 9:00 a.m. at Marion Elementary. The program will continue with a tree planting at the Skate Park on West Court Street, if permission is granted by the County.

The City Manager advised that HB 39, the Endangered Manufacturer's Act, has been introduced in the North Carolina General Assembly, with Representative Mitch Gillespie listed as a co-

sponsor. The City Manager stated that the bill has a noble intent and some good points; however, one part of this bill would exempt manufacturing from paying property taxes, which could cost the City over $65,000 per year in revenue, an amount equivalent to two cents on the tax rate. Mayor Clark asked that the City Manager draft a letter of opposition to this bill.

CLOSING COMMENTS:

Councilman Edwards stated that a citizen had asked if the City charges the Marion Downtown Business Association for rent at the Depot. The City Manager advised that the City does not charge rent or utilities.

Councilman Owenby that a citizen has inquired about the City installing a street sign on Smokerise Drive off of Yancey Road. Mayor Clark noted that this road is a private drive and that requests for City maintenance of this road have been turned down in the past.

Mayor Clark stated that his son, Todd Clark, has been named as the new City Manager of the City of Newton, moving up from his current job as Town Manager of the Town of Maiden.

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, February 20, 2007 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; Heather Cotton, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Jennifer Frew 445 Randall Road, Marion, NC; Lee Carmel 209 Crisp Drive, Marion, NC; Charles and Sherry Presnell 515 Worley Road, Marion, NC; Darren Waugh 25 Alma Morgan Drive, Marion, NC; Phillip Crawford 28 Alma Morgan Drive, Marion, NC; Brad Ledbetter 134 Sunny Street, Marion, NC; Jeff Kanipe 154 Mamaw Little House Drive, Marion, NC; Rev. Will Winchester 28 Ann Street, Marion, NC; Mickey Poteat 50 Euclid Avenue, Marion, NC; Duane Clark 133 Steve Clark Drive, Marion, NC; Lee Sutton PO Box 2186 Old Fort, NC; Jill Prior 830 Town Mountain Road, Asheville, NC 28804; Terry DePoyster 69 Grove Street, Marion NC; Sadie Andrews, Circle Lane, Marion, 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 Minutes - February 6, 2007 Regular Session

B. Approve Resolution – Authorize N.C. Clean Water Management Trust Fund Grant Application Wastewater Improvements

THE CITY OF MARION, NORTH CAROLINA
RESOLUTION APPROVING GRANT APPLICATION

WHEREAS, the North Carolina Clean Water Management Trust Fund has authorized the making of grants to aid eligible units of government or non-profit organizations in financing the cost of improvements and/or studies that will impact the quality of affected waterways and

WHEREAS, the City of Marion has need for and intends to significantly improve its wastewater system by improving the Corpening Creek basin collection and treatment system. The project will include the making of much needed repairs to the Corpening Creek WWTP so that flow can be accepted from a decommissioned Catawba River WWTP.

WHEREAS, the City of Marion intends to request grant assistance from the State of North Carolina in order to complete this 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 State grant.

That the City of Marion will perform the functions and obligations of the grant recipient as set out in a grant agreement should this project be chosen for funding.

That J. Robert Boyette, City Manager, and successors so titled, is hereby authorized to execute and file a grant application on behalf of the City of Marion with the North Carolina Clean Water Management Trust Fund to aid in the construction of the project described above.

That J. Robert Boyette, City Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency 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.

Adopted this the 20th day of February, 2007 at Marion, North Carolina.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Resolution Number: R-07-02-20-01

C. Approve Annexation report and Plan of Services – Eastfield Phase II Area:

EASTFIELD PHASE II ANNEXATION AREA 2007 – ANNEXATION REPORT AND PLAN OF SERVICES

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INTRODUCTION TO ANNEXATION

North Carolina's Constitution (Art. VII, Sec. 1) directs the General Assembly to "...provide for the organization and government and the fixing of boundaries..." In response to this charge the General Assembly has provided three general law procedures to effect municipal annexations. Those procedures embody the principle that land development for urban purposes should be within an incorporated municipality.

Annexation is the procedure whereby the corporate limits of a municipality are extended to encompass additional land, which, in most cases, is "urban in character." In addition to providing urban services to people that need them, annexation is a tool to implement policies and plans adopted by the community. Annexation is one method of achieving the community's growth objective, which is balanced and directed growth. Annexation is also a method of strengthening the tax base of a municipality, which will allow the locality to provide an adequate level of services to its citizens.

The City of Marion has four (4) methods available to it for annexation; these are: (1) action by the General Assembly, (2) annexation of contiguous areas upon petition of all owners of real property by G.S. Chapter 160-A, Article 4A, Part 1 (G.S. 160A-31 and G.S. 160A-31.1, (3) annexation of non-contiguous (satellite) areas upon petition of all owners of real property by G.S. Chapter 160A, Article 4A, Part 4 (G.S. 160A-58 through G.S. 160A-58.8 and (4) by authority granted to municipalities under 5,000 population by G.S. Chapter 160A, Article 4A, Part 2 (G.S. 160A-33 through G.S. 160A-42).

Action by General Assembly. The General Assembly may at any time enlarge the boundaries of a municipality by special act. This method is especially useful in annexing territory that cannot be annexed under one of the general law procedures because of some local condition. It is thus an important method even though not often used.

Annexation of Contiguous Areas upon Petition of All Owners of Real Property. The governing body of any municipality may annex by ordinance any areas contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all real property located within such area. (G.S. 160A-31 and 160A-31.1)

This procedure, first enacted in 1947 in a more restricted form, involves a public hearing and a finding that the petition and the area to be annexed meet the statutory requirements. The procedure is most often used to annex small areas, new subdivisions, and tracts with only a few property owners. Of all methods, this is the most frequently used.

Annexation of Non-Contiguous (Satellite) Areas Upon Petition of All Owners of Real Property. Upon petition signed by all owners of real property in the area, the governing body of a qualified municipality may annex by ordinance certain 'satellite' areas whose boundaries do not at any point touch its primary corporate limits. The primary corporate limits consist of the boundaries of a municipality as defined in its charter and as enlarged by annexation of contiguous territory according to applicable laws or diminished by exclusion of contiguous territory of the General Assembly. (G.S. 160-58 through G.S. 160A-58.8)

Before July 1, 1974, the effective date of the general satellite annexation statute, eleven cities had secured satellite annexation authority by special acts, starting with Raleigh in 1967. The satellite procedure, although not often used, is typically employed when owners of satellite property want municipal services or regulations for their property – usually retail establishments, new subdivisions, and occasionally industry.

Annexation of Areas meeting Statutory Standards. On the recommendation of the Municipal Government Study Commission (created by the 1957 General Assembly) the 1959 General Assembly enacted a new and comprehensive municipal annexation statute. The statute defines "developed for urban purposes" and provides that such an area that is contiguous to a municipality's boundaries may be annexed by ordinance if the municipality can provide the area with services on the same basis that it provides services within its existing boundaries. Reports must be prepared that (1) show that urban development in the area proposed for annexation meets the statutory standards and (2) detail the municipality's plans for extending and financing services to the area upon annexation. A special examination of the proposed annexation's effect on any rural fire department must be made. Under some circumstances, arrangements to contract with these departments for services, to assist in meeting their financing needs, or to employ their personnel must be offered. The statute requires extensive notice to affected property owners and a public hearing. After following these steps and finding that all the statutory standards and requirements

have been met, the municipal governing board may effect an annexation by ordinance. The statute includes extensive safeguards to assure that citizens in the areas that are annexed receive municipal services as planned. There is no requirement for a petition or a referendum, either within the area proposed for annexation or within the existing municipality. These annexations, based on statutory standards, are subject to the following requirements.

Standards the Area Must Meet Under G.S. 160A-36:

(1) Contiguity. The area must be contiguous to the existing municipal boundary. "Contiguous area" means any area which, at the time the annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street pr street right-of-way, a creek or river, the right-of- way of a railroad or other public service corporation, or lands owned by the municipality, another political subdivision or the State. (G.S. 160A-41(1).

If the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any non-contiguous pieces of the district so long as the largest part of the district is contiguous.

(2) One-Eighth Common Boundary. At least one-eighth (12.5%) of the total external boundary of the area must coincide with the municipal boundary.

(3) Unincorporated. No part of the area may be within another incorporated municipality.

(4) Developed to Urban Standards. The area must be "developed for urban purposes" under G.S. 160A-36(c) as of the time of the approval of the annexation report. That means the area must meet one of the tests set forth in (A) through (C) below. Note that areas of streets and street right-of-way may not be used to determine total acreage in making these calculations:

(A) Use + Subdivision Test. The area is developed such that it meets both of the following tests:

(1) Use Test. At least sixty percent (60%) of the total number of lots and tracts are used for residential, commercial, industrial, Institutional or governmental purposes; and

(2) Subdivision Test. The area is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.

OR

Nonresidential Urban Areas. The area is developed such that at the time of the approval of the annexation report, all tracts in the area are used for commercial, industrial, governmental, or institutional purposes.

OR

(C) Water/Sewer District. The annexation area is the entire area of any county water and sewer district created under G.S. 162A-86(b1), so long as the municipality contracts with the district to operate the sewer system and the contract provides that the area is developed for urban purposes. The area of an abolished water and sewer district is still considered a water and sewer district even after its abolition under G.S. 162A-87.2(b).

(5) Boundaries. Recorded property lines and streets must be used in setting the boundaries of the annexation area. Some or all of the boundary of a county water and sewer district may be used when the entire district not already within corporate limits of a municipality is being annexed.

ADVANTAGES OF ANNEXATION

Many of the property owners in the area proposed for annexation may feel that annexation offers no advantages for them. This assessment is only superficial, as the following advantages will prove:

Water and Sewer – Areas unserved by Marion's water and sewer system will be served within a reasonable time after annexation. These services are needed to protect the health and safety of the residents.

Police Protection – Police protection would be provided by the Marion Police Department on a 24-hour basis. City police protection involves more frequent patrols and a more rapid response rate when emergencies arise. The McDowell County Sheriff's Department now provides protection to unincorporated areas of McDowell County.

Fire Protection – Usually a change in fire insurance ratings occurs when an area is annexed into the city limits. The City now has a Class 5 rating while areas outside the municipality have a Class 9 rating.

Some insurance companies will give a reduction in rates once the property has been annexed into the city limits and the class rating has been changed; however, the practice of a reduction in rates is not uniform among insurance companies.

Streetlights – Areas annexed by the City of Marion will be provided with streetlights, which help prevent crime and accidents.

Solid Waste Collection and Disposal – Marion will provide for the collection and disposal of solid waste (garbage and trash) for all newly annexed areas. The property owners now must dispose of their solid waste themselves or purchase this service from a private contractor.

Streets – The City of Marion will maintain all streets which meet City requirements except those which are continually maintained by the North Carolina Department of Transportation.

Right to Vote – Residents in the areas annexed by the City of Marion will be able to vote in City elections and hold City office.

Tax Exemption – Real and personal property taxes are an allowable exemption on both the State and Federal income tax forms.

Annexation will offer some advantages to the City of Marion also. These advantages are as follows:

Increased Revenues – The property tax levy would provide the largest source of new revenue from newly annexed areas. Revenues from water and sewer services would provide funds for general operation of those services.

Such revenues as franchise taxes, intangible taxes, sales taxes and Powell Bill funds are collected by the State and returned to the municipalities. Intangible taxes are based on the ad valorem taxes levied in the preceding fiscal year. The distribution of franchise taxes to the municipalities is based on the gross receipts from sales. Powell Bill funds are based on a combination of local street mileage and population.

Increased Tax Base – The new values of real and personal property will increase the appraised tax valuation for Marion. This will increase the City's debt limit and enable it to expand its borrowing capability, and its service and facilities.

Increased Population – The increased population will enhance Marion's desirability as a site for new commercial and industrial expansion, and support new levels of community service. An increase in population quite often results in an increase in State and Federal funding.

SECTION I

SUMMARY OF REPORT

Pursuant to the authority vested in the City Council of the City of Marion by Part 3, Article 4A, Chapter 160-A of the General Statutes of North Carolina, a Resolution of Intent to consider annexation of the area covered by this report was adopted by the City Council at a regular meeting held on the 6th day of February 2007. A notice of the public informational meeting to be held on the 27th day of March, 2007 and the public hearing to be held on the 1st day of May, 2007, on the question of annexation is being published in accordance with legal requirements and the Resolution of Intent.

A municipality exercising its authority to annex shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-35, prepare a report setting forth such plans to provide services to such areas. The report shall include:

Annexation Report and Services Plan
G.S. 160A-35

G.S. 160A-35 requires a detailed annexation report and services plan. The report must include the following information:

1. A map or maps of the municipality and the adjacent territory to show:

   A. The present and proposed boundaries.

   B. The present major trunk water mains and sewer interceptors and outfalls and any proposed extensions of water mains and sewer outfalls to serve the area to be annexed. The map must bear the seal of a registered professional engineer.

2. A statement showing that the area meets the standards of G.S. 160A-36.

3. A statement setting forth the plans for extending to the annexation area such major services performed within the municipality. The plan must specifically provide for:

   A. Police protection, fire protection, solid waste collections, and street maintenance services on substantially the same basis and in the same manner as provided in the rest of the municipality as of the effective date of the annexation. If a water distribution system is not available in the area to be annexed, the plans must provide for reasonably effective fire protection until such time as water lines are made available under existing municipal extension policies. A contract with a rural fire department is an acceptable method of providing fire protection, and a contract with a private solid waste collection firm is an acceptable method of providing solid waste collection services.

   B. Extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such services to individual lots or subdivisions. If requested in writing by any owner of an occupied dwelling unit or an operating commercial or industrial property no later than five (5) days after the public hearing, the report and plans must be amended, at the time of adoption of the ordinance to provide for the extension of water and sewer lines to the property or a point on a public street or road right-of-way adjacent to the property, in accordance with the current financial policies of the municipality for making such extensions. Where extension of water and sewer is necessary, the plans must set out a timetable for completion of construction as soon as possible but not more than two (2) years after the effective date of annexation. In areas where the installation of sewer is not economically feasible due to the unique topography of the area, the city must provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.

4. A statement of the method under which the municipality plans to finance extension of services to the annexed area.

5. A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area is in an insurance district, a rural fire protection district or a county fire protection service district. The rural fire department is required to make available to the municipality within thirty (30) days following the municipality's written request, information within its possession or control necessary for preparation of the impact statement, including but not limited to operational, financial and budgetary information. If the rural fire department fails to respond within forty-five (45) days following receipt of a written request, it forfeits its rights to negotiate a contract to provide fire protection under G.S. 160A-37.1 or receive a proportionate share of debt payments under G.S. 160A-37.2. The city must include in its written request reference to the section containing the requirements [G.S. 160A-35(4)] or no forfeiture will occur.

6. A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement must also be delivered to the clerk of the county board of commissioners at least thirty (30) days before the date of the public information meeting.

This report has been prepared by the City of Marion in compliance with the foregoing requirements and is available for public inspection at the office of the City Clerk.

SECTION II

EASTFIELD PHASE II ANNEXATION AREA 2007 BOUNDARY DESCRIPTION

BEGINNING at a point at the intersection of the current Marion Corporate Limits and the southwestern corner of Lot 5015 in Block 19 on McDowell County Tax Map 1711.05, thence following the current Marion Corporate Limits in a generally easterly direction approximately 1,527 feet to a point at the southeast corner of Lot 8999 in Block 29 on the McDowell County Tax Map 1711.06, thence following the eastern boundary of said Lot 8999 approximately 87 feet in a northerly direction to a point at the northeast corner of said Lot 8999, said point also being the southern boundary of Tunnel Street (SR 1729), thence crossing SR 1729 in a straight line approximately 50 feet in a northerly direction, thence following the eastern boundary of Lots 8166, 8256, 8374, 8483, 8489, and 8567 in Block 29 on the McDowell County Tax Map 1711.06 in a northerly direction approximately 518 feet to a point at the northeast corner of said Lot 8567, said point also being the western boundary of Forest Park Road (SR 1727); thence crossing SR 1727 in a straight line approximately 25 feet in an easterly direction to a point at the southwest corner of Lot 1651 Block 29 on the McDowell County Tax Map 1711.06, thence following the southern boundary of said lot 1651 in an easterly direction approximately 219 feet to a point at the southeast corner of said Lot 1651, thence following the eastern boundary of said Lot 1651 approximately 11 feet in a northerly direction to the southwest corner of Lot 2683 Block 29 on the McDowell County Tax Map 1711.06, thence following the southern boundary of said Lot 2683 and Lot 3749 Block 29 of the McDowell County Tax Map 1711.06 in an easterly direction approximately 172 feet to a point at the southeast corner of said Lot 3749, thence following the eastern boundary of said Lot 3749 in a northerly direction approximately 235 feet to a point at the northeast corner of said Lot 3749, said point also being the southern boundary of Seagle St (SR 1724), thence crossing SR 1724 in a straight line approximately 40 feet in a northerly direction to a point, said point being at the intersection of the northern boundary of SR 1724 and the southern boundary of Lot 2184 Block 20 on the McDowell County Tax Map 1712.18, thence following the southern boundary of said Lot 2184 approximately 70 feet in an easterly direction to a point at the southeast corner of said Lot 2184, thence following the eastern boundary of said Lot 2184 approximately 449 feet in a northerly direction to a point at the northeast corner of said Lot 2184, thence following the northern boundary of said Lot 2184 and Lots 1193, 1131, 0099 Block 30 on the McDowell County Tax Map 1712.18 approximately 190 feet in a southwesterly direction to a point at the northwest corner of said Lot 0099, said point also being the eastern boundary of Lot 0118 Block 20 on the McDowell County Tax Map, thence following the eastern boundary of said Lot 0118 approximately 65 feet in a southerly direction to a point at the southeast corner of said Lot 0118, said point also being the northeast corner of Lot 0023 in Block 20 on the McDowell County Tax Map 1712.18, thence in a southwesterly direction following the northern boundaries of said Lot 0023 and Lots 9940 and 8862 in Block 29 on the McDowell County Tax Map 1711.06 approximately 398 feet to a point at the northwest corner of said Lot 8862, said point also being the northeast corner of Lot 7756 and the southeast corner of Lot 6894 Block 29 on the McDowell County Tax Map 1711.06, thence following first the eastern boundary of said Lot 6894, then following the northern boundary of said Lot 6894, first approximately 150 feet in a northwesterly direction then approximately 60 feet in a southwesterly direction to a point at the southwest corner of said Lot 6894, said point also being the southern boundary of Matilda Avenue (SR 1725), thence crossing SR 1725 in a straight line approximately 60 feet in a northerly direction to a point at the intersection of the northern boundary of SR 1725 and the southeast corner of Lot 5044 Block 20 on the McDowell County Tax Map 1712.18, thence following the northeastern boundary of said Lot 5044 and Lot 4133 Block 20 on the McDowell County Tax Map 1712.17 approximately 300 feet to a point at the intersection of the northeastern corner of said Lot 4133 and the southern boundary of Carolina Avenue, thence crossing Carolina Avenue in a straight line approximately 60 feet in a northerly direction to a point at the intersection of the northern boundary of Carolina Avenue and the southern boundary of Lot 3340 in Block 19 on the McDowell County Tax Map 1712.17, thence following the southern boundary of said Lot 3340 approximately 120 feet in a northeasterly direction to a point at the southeast corner of said Lot 3340, thence in a straight line following the eastern boundary of said Lot 3340 and crossing the Southern Railroad right-of-way approximately 220 feet to a point, said point being the boundary of the current Marion Corporate Limits, thence following the boundary of the current Marion Corporate Limits approximately1390 feet in a generally westerly direction to a point at the northwest corner of Lot 3862 Block 19 on the McDowell County Tax Map 1711.05, said point also being the boundary of the current Marion Corporate Limits, thence following the current Marion Corporate Limits in a generally southerly direction approximately 920 feet to the point of BEGINNING.

SECTION III

STATEMENT SHOWING THAT THE AREA PROPOSED TO BE ANNEXED MEETS THE LEGISLATIVE STANDARDS PRESCRIBED BY G. S. 160A-36

The proposed annexation area meets the general standards of G. S. 160A-36 as follows:

The area is adjacent and contiguous, as defined by G. S. 160A-41(1) as of the 6th day of February 2007, the date upon which this annexation proceeding was begun, and shown on the map included herein marked Exhibit A.

The aggregate external boundary line of the area to be annexed is 7,752 feet, of which 4,160 feet (or 53.66%), coincides with the City boundary, as shown on the map included herein marked Exhibit A. Therefore, at least one eighth (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 (See Exhibit B).

The area to be annexed is developed for urban purposes in that 83.93% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes as is shown below. 100% of the total of residential and vacant acreage consists of lots and tracts three (3) acres or less in size.

Total number of lots and tracts	112
Number of lots and tracts used for:	
Residential	86
Commercial	0
Industrial	0
Institutional	8
Governmental	0
Total	94
Percentage of lots and tracts developed for urban purposes	83.93%
Total Residential and Vacant Acreage	32.95
Total Residential and Vacant Acreage in lots and tracts three (3) acres or less	32.95
Percentage of Residential and Vacant Acreage in lots and tracts three (3) acres or less	100.00%

SECTION IV

STATEMENT SETTING FORTH PLANS FOR EXTENDING CITY SERVICES TO THE AREA PROPOSED TO BE ANNEXED AND METHODS OF FINANCING THESE SERVICES

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 animals running at-large. The full-time force is composed of the Chief of Police, 22 other sworn officers, 4 telecommunication officers and 1 police aide/ordinance enforcement officers. At least 1 telecommunication officer and 3 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 the North Carolina 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 1.22 miles. Assuming the area is patrolled a minimum of six (6) times a day, a 1.5 mile patrol route would require approximately 2,671 traveled miles. An estimate of 179 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 additional expenses to provide police services to the proposed area of annexation would be $605.00 per year ($460.00 for gas and $145.00 for maintenance.) The funding for this additional expense will come from anticipated revenues in this area and be budgeted in the City's General Fund.

Additional personnel will be required to provide service to this area, including one Patrol Officer at an estimated cost of $41,271.85 annually. The figure includes salaries and fringe benefits and equipment.

The total annual cost to provide police protection to this area is estimated to be $41,876.85.

The one-time expenditure for the purchase of one (1) fully equipped patrol vehicle is estimated to be $38,000.00.

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 4 minutes depending on traffic conditions. The route to this area is easily accessible to fire fighting equipment.

The fire department has two diesel-powered pumpers, one 1,000 GPM (gallons per minute) pumper and two 1,250 GPM pumpers. The department also has two diesel powered pumper/tankers that carry 1,000 gallons of water. The pump capacity of each truck are 1,250 GPM and 1,500 GPM, respectively. The department also has an 85 foot aerial platform with a 1,000 GPM pump, a four-wheel drive brush unit and an equipment van.

There are five paid firefighters and at least one is on duty at all times. The duty firefighter and 25 volunteers are dispatched by the 911 County Emergency Operations Center. All firefighters have pagers and many have portable hand held radios. The fire department also maintains a fire inspections department that handles fire safety inspections of businesses and industries in 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 $1,726.01 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.

There should be no change in property insurance rating when the area is annexed into the city. Since the area to be annexed is already served by existing city water lines and fire hydrants, property owners in the area to be annexed should already be receiving the insurance rating in effect for the city. However, 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, there are 103 residential customers currently on City water and sewer service. Revenues from these customers average $5,247.00 monthly or $62,964.00 annually.

Once the area is annexed, the loss in revenues is estimated to be approximately $3,063.40 monthly or $36,760.80 annually

Both water and sewer service is available to all properties located in the area proposed for annexation. No water or sewer improvement will be necessary.

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 the area and be budgeted in the City's Water and Sewer Fund.

STREET MAINTENANCE

All of the streets in the area proposed for annexation are paved, with the exception of East Railroad Street, Forest Park Road and part of Finley Street. All streets in the annexation area are maintained by the State of North Carolina or are private streets. It is proposed that the State of North Carolina will continue maintenance on the public streets in the area and that privately maintained streets will remain private.

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 D 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 15 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 $11.21 per month per streetlight.

The estimated cost for providing streetlights to the area proposed for annexation will be $168.15 monthly or $2,017.80 annually.

The funds to provide streetlights in the annexation area will come from anticipated revenues in this area and be budgeted in the City's General Fund.

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 collection once a week at each residence in the city.

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 2,454 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 106 residential units in the area proposed for annexation. A curbside recycling truck will be used to provide recycling pickup at each residence once each week.

No additional employees or equipment will be required to provide solid waste collection service to this area. It is estimated that $2,310.00 will cover annual fuel cost. An additional $675.00 is estimated for vehicle maintenance for a total annual cost of $2,985.00 to provide solid waste and recyclable collections to the residential units. One time costs, involving $530 for the purchase of recycling bins, will also be needed to serve the area to be annexed. Solid waste collection and recycling collection service is currently provided in the city by City of Marion personnel and equipment and will also be provided to the area to be annexed by City of Marion personnel and equipment. These funds for this service will come from revenues collected in this area and budgeted in the City's General Fund.

The City will attempt to contact any solid waste firm servicing the annexation area as required, or which has stated its interest in contracting with the City. If required by the General Statutes, the City will offer to contract with the solid waste firms or will pay such firms for their monetary loss in compliance with the General Statutes.

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 V

ESTIMATED REVENUES

PROPERTY TAXES

Based on tax listings at the beginning of January 2007, it is estimated that the proposed annexation will bring in the following tax revenues based on the current City tax rate of $.51 per $100.00 of property value.

Current Taxable Value	$4,315,520.00
Estimated Property Taxes	22,009.15

WATER AND SEWER REVENUES

Almost all structures in the area to be annexed are already connected to City water and sewer. The annexation of this area will result in water and sewer rates being reduced by 60 percent, resulting in a savings for residents and property owners and a revenue loss for the City of an estimated $36,760.80 per year

OTHER REVENUES

Because of changes in distribution formulas from year to year estimates on the following revenues may fluctuate. These estimates are based on formulas and information received from the North Carolina Department of Commerce (Division of Community Assistance), North Carolina Department of Transportation, North Carolina Department of Revenue, Isothermal Planning and Development Commission, North Carolina Office of Budget and Management and Duke Energy.

Local Sales Tax	$51,385.68
Powell Bill Revenue	5,250.16
Utility Franchise Tax	3,816.00
Beer and Wine Tax	1,024.72

POPULATION INCREASE

The City's current population is based on the 2000 Census and annual population certifications from the State of North Carolina. Annexation of this area and other proposed annexations to take effect on June 30, 2007 will increase the population by approximately 260 people for a population of 6,927.

SECTION VI

REVENUES AND COST ESTIMATES

ESTIMATED ANNUAL REVENUES	
Property Tax	$22,009.15
Local Sales Tax	51,385.68
Powell Bill	5,250.16
Utility Franchise Tax	3,816.00
Beer and Wine Tax	1,024.72
Total Estimated Annual Revenues	$83,485.71
ESTIMATED ANNUAL EXPENDITURES	
Police Department	$41,876.85
Fire Department	0.00
Street Department	0.00
Streetlights	2,017.80
Solid Waste/Recycling	2,985.00
Total Estimated Annual Expenditures	$46,879.65
ESTIMATED LOSS IN REVENUE	
Fire Service District Tax	$ 1,726.01
Water and Sewer Revenues	36,760.80
Total Estimated Revenue Loss	$38,486.81
ESTIMATED ONE-TIME EXPENDITURES	
Police Department	$38,000.00
Recycling Containers	530.00
Total One-Time Expenditures	$38,530.00

D. Approve Annexation Report and Plan of Services – Tate Street Area

TATE STREET ANNEXATION AREA 2007 – ANNEXATION REPORT AND PLAN OF SERVICES

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INTRODUCTION TO ANNEXATION

North Carolina's Constitution (Art. VII, Sec. 1) directs the General Assembly to "...provide for the organization and government and the fixing of boundaries..." In response to this charge the General Assembly has provided three general law procedures to effect municipal annexations. Those procedures embody the principle that land development for urban purposes should be within an incorporated municipality.

Annexation is the procedure whereby the corporate limits of a municipality are extended to encompass additional land, which, in most cases, is "urban in character." In addition to providing urban services to people that need them, annexation is a tool to implement policies and plans adopted by the community. Annexation is one method of achieving the community's growth objective, which is balanced and directed growth. Annexation is also a method of strengthening the tax base of a municipality, which will allow the locality to provide an adequate level of services to its citizens.

The City of Marion has four (4) methods available to it for annexation; these are: (1) action by the General Assembly, (2) annexation of contiguous areas upon petition of all owners of real property by G.S. Chapter 160-A, Article 4A, Part 1 (G.S. 160A-31 and G.S. 160A-31.1, (3) annexation of non-contiguous (satellite) areas upon petition of all owners of real property by G.S. Chapter 160A, Article 4A, Part 4 (G.S. 160A-58 through G.S. 160A-58.8 and (4) by authority granted to municipalities under 5,000 population by G.S. Chapter 160A, Article 4A, Part 2 (G.S. 160A-33 through G.S. 160A-42).

Action by General Assembly. The General Assembly may at any time enlarge the boundaries of a municipality by special act. This method is especially useful in annexing territory that cannot be annexed under one of the general law procedures because of some local condition. It is thus an important method even though not often used.

Annexation of Contiguous Areas upon Petition of All Owners of Real Property. The governing body of any municipality may annex by ordinance any areas contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all real property located within such area. (G.S. 160A-31 and 160A-31.1)

This procedure, first enacted in 1947 in a more restricted form, involves a public hearing and a finding that the petition and the area to be annexed meet the statutory requirements. The procedure is most often used to annex small areas, new subdivisions, and tracts with only a few property owners. Of all methods, this is the most frequently used.

Annexation of Non-Contiguous (Satellite) Areas Upon Petition of All Owners of Real Property. Upon petition signed by all owners of real property in the area, the governing body of a qualified municipality may annex by ordinance certain 'satellite' areas whose boundaries do not at any point touch its primary corporate limits. The primary corporate limits consist of the boundaries of a municipality as defined in its charter and as enlarged by annexation of contiguous territory

according to applicable laws or diminished by exclusion of contiguous territory of the General Assembly. (G.S. 160-58 through G.S. 160A-58.8)

Before July 1, 1974, the effective date of the general satellite annexation statute, eleven cities had secured satellite annexation authority by special acts, starting with Raleigh in 1967. The satellite procedure, although not often used, is typically employed when owners of satellite property want municipal services or regulations for their property – usually retail establishments, new subdivisions, and occasionally industry.

Annexation of Areas meeting Statutory Standards. On the recommendation of the Municipal Government Study Commission (created by the 1957 General Assembly) the 1959 General Assembly enacted a new and comprehensive municipal annexation statute. The statute defines "developed for urban purposes" and provides that such an area that is contiguous to a municipality's boundaries may be annexed by ordinance if the municipality can provide the area with services on the same basis that it provides services within its existing boundaries. Reports must be prepared that (1) show that urban development in the area proposed for annexation meets the statutory standards and (2) detail the municipality's plans for extending and financing services to the area upon annexation. A special examination of the proposed annexation's effect on any rural fire department must be made. Under some circumstances, arrangements to contract with these departments for services, to assist in meeting their financing needs, or to employ their personnel must be offered. The statute requires extensive notice to affected property owners and a public hearing. After following these steps and finding that all the statutory standards and requirements have been met, the municipal governing board may effect an annexation by ordinance. The statute includes extensive safeguards to assure that citizens in the areas that are annexed receive municipal services as planned. There is no requirement for a petition or a referendum, either within the area proposed for annexation or within the existing municipality. These annexations, based on statutory standards, are subject to the following requirements.

Standards the Area Must Meet Under G.S. 160A-36:

(6) Contiguity. The area must be contiguous to the existing municipal boundary. "Contiguous area" means any area which, at the time the annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street pr street right-of-way, a creek or river, the right-of- way of a railroad or other public service corporation, or lands owned by the municipality, another political subdivision or the State. (G.S. 160A-41(1).

If the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any non-contiguous pieces of the district so long as the largest part of the district is contiguous.

(7) One-Eighth Common Boundary. At least one-eighth (12.5%) of the total external boundary of the area must coincide with the municipal boundary.

(8) Unincorporated. No part of the area may be within another incorporated municipality.

(9) Developed to Urban Standards. The area must be "developed for urban purposes" under G.S. 160A-36(c) as of the time of the approval of the annexation report. That means the area must meet one of the tests set forth in (A) through (C) below. Note that areas of streets and street right-of-way may not be used to determine total acreage in making these calculations:

(A) Use + Subdivision Test. The area is developed such that it meets both of the following tests:

(3) Use Test. At least sixty percent (60%) of the total number of lots and tracts are used for residential, commercial, industrial, Institutional or governmental purposes; and

(4) Subdivision Test. The area is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.

OR

Nonresidential Urban Areas. The area is developed such that at the time of the approval of the annexation report, all tracts in the area are used for commercial, industrial, governmental, or institutional purposes.

OR

(C) Water/Sewer District. The annexation area is the entire area of any county water and sewer district created under G.S. 162A-86(b1), so long as the municipality contracts with the district to operate the sewer system and the contract provides that the area is developed for urban purposes. The area of an abolished water and sewer district is still considered a water and sewer district even after its abolition under G.S. 162A-87.2(b).

(10) Boundaries. Recorded property lines and streets must be used in setting the boundaries of the annexation area. Some or all of the boundary of a county water and sewer district may be used when the entire district not already within corporate limits of a municipality is being annexed.

ADVANTAGES OF ANNEXATION

Many of the property owners in the area proposed for annexation may feel that annexation offers no advantages for them. This assessment is only superficial, as the following advantages will prove:

Water and Sewer – Areas unserved by Marion's water and sewer system will be served within a reasonable time after annexation. These services are needed to protect the health and safety of the residents.

Police Protection – Police protection would be provided by the Marion Police Department on a 24-hour basis. City police protection involves more frequent patrols and a more rapid response rate when emergencies arise. The McDowell County Sheriff's Department now provides protection to unincorporated areas of McDowell County.

Fire Protection – Usually a change in fire insurance ratings occurs when an area is annexed into the city limits. The City now has a Class 5 rating while areas outside the municipality have a Class 9 rating.

Some insurance companies will give a reduction in rates once the property has been annexed into the city limits and the class rating has been changed; however, the practice of a reduction in rates is not uniform among insurance companies.

Streetlights – Areas annexed by the City of Marion will be provided with streetlights, which help prevent crime and accidents.

Solid Waste Collection and Disposal – Marion will provide for the collection and disposal of solid waste (garbage and trash) for all newly annexed areas. The property owners now must dispose of their solid waste themselves or purchase this service from a private contractor.

Streets – The City of Marion will maintain all streets which meet City requirements except those which are continually maintained by the North Carolina Department of Transportation.

Right to Vote – Residents in the areas annexed by the City of Marion will be able to vote in City elections and hold City office.

Tax Exemption – Real and personal property taxes are an allowable exemption on both the State and Federal income tax forms.

Annexation will offer some advantages to the City of Marion also. These advantages are as follows:

Increased Revenues – The property tax levy would provide the largest source of new revenue from newly annexed areas. Revenues from water and sewer services would provide funds for general operation of those services.

Such revenues as franchise taxes, intangible taxes, sales taxes and Powell Bill funds are collected by the State and returned to the municipalities. Intangible taxes are based on the ad valorum taxes levied in the preceding fiscal year.

The distribution of franchise taxes to the municipalities is based on the gross receipts from sales. Powell Bill funds are based on a combination of local street mileage and population.

Increased Tax Base – The new values of real and personal property will increase the appraised tax valuation for Marion. This will increase the City's debt limit and enable it to expand its borrowing capability, and its service and facilities.

Increased Population – The increased population will enhance Marion's desirability as a site for new commercial and industrial expansion, and support new levels of community service. An increase in population quite often results in an increase in State and Federal funding.

SECTION I

SUMMARY OF REPORT

Pursuant to the authority vested in the City Council of the City of Marion by Part 3, Article 4A, Chapter 160-A of the General Statutes of North Carolina, a Resolution of Intent to consider annexation of the area covered by this report was adopted by the City Council at a regular meeting held on the 6th day of February 2007. A notice of the public informational meeting to be held on the 27th day of March, 2007 and the public hearing to be held on the 1st day of May, 2007, on the question of annexation is being published in accordance with legal requirements and the Resolution of Intent.

A municipality exercising its authority to annex shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-35, prepare a report setting forth such plans to provide services to such areas. The report shall include:

Annexation Report and Services Plan
G.S. 160A-35

G.S. 160A-35 requires a detailed annexation report and services plan. The report must include the following information:

7. A map or maps of the municipality and the adjacent territory to show:

   C. The present and proposed boundaries.

   D. The present major trunk water mains and sewer interceptors and outfalls and any proposed extensions of water mains and sewer outfalls to serve the area to be annexed. The map must bear the seal of a registered professional engineer.

8. A statement showing that the area meets the standards of G.S. 160A-36.

9. A statement setting forth the plans for extending to the annexation area such major services performed within the municipality. The plan must specifically provide for:

   C. Police protection, fire protection, solid waste collections, and street maintenance services on substantially the same basis and in the same manner as provided in the rest of the municipality as of the effective date of the annexation. If a water distribution system is not available in the area to be annexed, the plans must provide for reasonably effective fire protection until such time as water lines are made available under existing municipal extension policies. A contract with a rural fire department is an acceptable method of providing fire protection, and a contract with a private solid waste collection firm is an acceptable method of providing solid waste collection services.

   D. Extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such services to individual lots or subdivisions. If requested in writing by any owner of an occupied dwelling unit or an operating commercial or industrial property no later than five (5) days after the public hearing, the report and plans must be amended, at the time of adoption of the ordinance to provide for the extension of water and sewer lines to the property or a point on a public street or road right-of-way adjacent to the property, in accordance with the current financial policies of the municipality for making such extensions. Where extension of water and sewer is necessary, the plans must set out

a timetable for completion of construction as soon as possible but not more than two (2) years after the effective date of annexation. In areas where the installation of sewer is not economically feasible due to the unique topography of the area, the city must provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.

10. A statement of the method under which the municipality plans to finance extension of services to the annexed area.

11. A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area is in an insurance district, a rural fire protection district or a county fire protection service district. The rural fire department is required to make available to the municipality within thirty (30) days following the municipality's written request, information within its possession or control necessary for preparation of the impact statement, including but not limited to operational, financial and budgetary information. If the rural fire department fails to respond within forty-five (45) days following receipt of a written request, it forfeits its rights to negotiate a contract to provide fire protection under G.S. 160A-37.1 or receive a proportionate share of debt payments under G.S. 160A-37.2. The city must include in its written request reference to the section containing the requirements [G.S. 160A-35(4)] or no forfeiture will occur.

12. A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement must also be delivered to the clerk of the county board of commissioners at least thirty (30) days before the date of the public information meeting.

This report has been prepared by the City of Marion in compliance with the foregoing requirements and is available for public inspection at the office of the City Clerk.

SECTION II

TATE STREET ANNEXATION AREA 2007 BOUNDARY DESCRIPTION

BEGINNING at a point at the intersection of the current Marion Corporate Limits and the western boundary of Lot 1198 Block 36 on the McDowell County Tax Map 1701.10, thence following in a straight line the boundary of the current Marion Corporate Limits first in an easterly direction approximately 200 feet, then in a southerly direction approximately 225 feet to a point, said point being the boundary of the current Marion Corporate Limits and the boundary of Lot 4854 Block 35 on the McDowell County Tax Map 1701.10, thence following the current Marion Corporate Limits in a generally westerly direction approximately 927 feet to a point at the intersection of the current Marion Corporate Limits and margin of Tate Street (SR 1214), thence following in a straight line the current Marion Corporate Limits in a northwesterly direction approximately 188 feet, thence following the current Marion Corporate Limits in a generally northeasterly direction approximately 316 feet to a point, said point being the northern boundary of Lot 8960 Block 25 on the McDowell County Tax Map approximately 15 feet from the northwest corner of said Lot 8960, thence following the northern boundary of said Lot 8960 and the northern boundary of Lots 9052 Block 26 and Lot 0999 Block 35 on the McDowell County Tax Map 1701.10 in a generally easterly direction approximately 487 feet to a point, said point being the northeast corner of said Lot 0999 and the southwest corner of said Lot 1198, then following the western boundary of said Lot 1198 in a northerly direction approximately 72 feet to the point of BEGINNING.

SECTION III

STATEMENT SHOWING THAT THE AREA PROPOSED TO BE ANNEXED MEETS THE LEGISLATIVE STANDARDS PRESCRIBED BY G. S. 160A-36

The proposed annexation area meets the general standards of G. S. 160A-36 as follows:

The area is adjacent and contiguous, as defined by G. S. 160A-41(1) as of the 6th day of February 2007, the date upon which this annexation proceeding was begun, and shown on the map included herein marked Exhibit A.

The aggregate external boundary line of the area to be annexed is 2,445 feet, of which 1,873 feet (or 76.61%), coincides with the City boundary, as shown on the map included herein marked Exhibit A. Therefore, at least one eighth (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 (See Exhibit B).

The area to be annexed is developed for urban purposes in that 60.00% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes as is shown below. 100% of the total of residential and vacant acreage consists of lots and tracts three (3) acres or less in size.

Total number of lots and tracts	10
Number of lots and tracts used for:	
Residential	6
Commercial	0
Industrial	0
Institutional	0
Governmental	0
Total	6
Percentage of lots and tracts developed for urban purposes	60.00%
Total Residential and Vacant Acreage	3.76
Total Residential and Vacant Acreage in lots and tracts three (3) acres or less	3.76
Percentage of Residential and Vacant Acreage in lots and tracts three (3) acres or less	100.00%

SECTION IV

STATEMENT SETTING FORTH PLANS FOR EXTENDING CITY SERVICES TO THE AREA PROPOSED TO BE ANNEXED AND METHODS OF FINANCING THESE SERVICES

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 animals running at-large. The full-time force is composed of the Chief of Police, 22 other sworn officers, 4 telecommunication officers and 1 police aide/ordinance enforcement officers. At least 1 telecommunication officer and 3 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 the North Carolina 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 0.18 miles. However, this area is already patrolled by the Marion Police Department, given that properties across and farther out Tate Street are in the City Limits. Therefore, no costs would be incurred for patrol of the area. No additional personnel will be required to provide service to this area. The funding for this additional expense will come from anticipated revenues in this area and be budgeted in the City's General Fund.

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 4 minutes depending on traffic conditions. The route to this area is easily accessible to fire fighting equipment.

The fire department has two diesel-powered pumpers, one 1,000 GPM (gallons per minute) pumper and two 1,250 GPM pumpers. The department also has two diesel powered pumper/tankers that carry 1,000 gallons of water. The pump capacity of each truck are 1,250 GPM and 1,500 GPM, respectively. The department also has an 85 foot aerial platform with a 1,000 GPM pump, a four-wheel drive brush unit and an equipment van.

There are five paid firefighters and at least one is on duty at all times. The duty firefighter and 25 volunteers are dispatched by the 911 County Emergency Operations Center. All firefighters have pagers and many have portable hand held radios. The fire department also maintains a fire inspections department that handles fire safety inspections of businesses and industries in 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 $1,726.01 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.

There should be no change in property insurance rating when the area is annexed into the city. Since the area to be annexed is already served by existing city water lines and fire hydrants, property owners in the area to be annexed should already be receiving the insurance rating in effect for the city. However, 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, there are 103 residential customers currently on City water and sewer service. Revenues from these customers average $5,247.00 monthly or $62,964.00 annually.

Once the area is annexed, the loss in revenues is estimated to be approximately $3,063.40 monthly or $36,760.80 annually

Both water and sewer service is available to all properties located in the area proposed for annexation. No water or sewer improvement will be necessary.

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 the area and be budgeted in the City's Water and Sewer Fund.

STREET MAINTENANCE

All of the streets in the area proposed for annexation are paved. All streets in the annexation area are maintained by the State of North Carolina. It is proposed that the State of North Carolina will continue maintenance on the public streets in the area.

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 D 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 2 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 $11.21 per month per streetlight.

The estimated cost for providing streetlights to the area proposed for annexation will be $22.42 per month or $269.04 annually.

The funds to provide streetlights in the annexation area will come from anticipated revenues in this area and be budgeted in the City's General Fund.

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 collection once a week at each residence in the city.

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 2,454 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 6 residential units in the area proposed for annexation. A curbside recycling truck will be used to provide recycling pickup at each residence once each week.

No additional employees or equipment will be required to provide solid waste collection service to this area. It is estimated that $340.81 will cover annual fuel cost. An additional $99.59 is estimated for vehicle maintenance for a total annual cost of $440.40 to provide solid waste and recyclable collections to the residential units. One time costs, involving $30 for the purchase of recycling bins, will also be needed to serve the area to be annexed. Solid waste collection and recycling collection service is currently provided in the city by City of Marion personnel and equipment and will also be provided to the area to be annexed by City of Marion personnel and

equipment. These funds for this service will come from revenues collected in this area and budgeted in the City's General Fund.

The City will attempt to contact any solid waste firm servicing the annexation area as required, or which has stated its interest in contracting with the City. If required by the General Statutes, the City will offer to contract with the solid waste firms or will pay such firms for their monetary loss in compliance with the General Statutes.

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 V

ESTIMATED REVENUES

PROPERTY TAXES

Based on tax listings at the beginning of January 2007, it is estimated that the proposed annexation will bring in the following tax revenues based on the current City tax rate of $.51 per $100.00 of property value.

Current Taxable Value	$370,170.00
Estimated Property Taxes	1,887.87

WATER AND SEWER REVENUES

Almost all structures in the area to be annexed are already connected to City water and sewer. The annexation of this area will result in water and sewer rates being reduced by 60 percent, resulting in a savings for residents and property owners and a revenue loss for the City of an estimated $1,653.60 per year

OTHER REVENUES

Because of changes in distribution formulas from year to year estimates on the following revenues may fluctuate. These estimates are based on formulas and information received from the North Carolina Department of Commerce (Division of Community Assistance), North Carolina Department of Transportation, North Carolina Department of Revenue, Isothermal Planning and Development Commission, North Carolina Office of Budget and Management and Duke Energy.

Local Sales Tax	$ 2,879.37
Powell Bill Revenue	294.19
Utility Franchise Tax	216.00
Beer and Wine Tax	57.46

POPULATION INCREASE

The City's current population is based on the 2000 Census and annual population certifications from the State of North Carolina. Annexation of this area and other proposed annexations to take effect on June 30, 2007 will increase the population by approximately 260 people for a population of 6,927.

SECTION VI

REVENUES AND COST ESTIMATE

ESTIMATED ANNUAL REVENUES	
Property Tax	$1,887.87
Local Sales Tax	2,879.37
Powell Bill	294.19
Utility Franchise Tax	216.00
Beer and Wine Tax	57.46
Total Estimated Annual Revenues	$5,334.89

ESTIMATED ANNUAL EXPENDITURES		
Police Department		$ 0.00
Fire Department		0.00
Street Department		0.00
Streetlights		269.04
Solid Waste/Recycling		440.40
Total Estimated Annual Expenditures	$ 709.44	
ESTIMATED LOSS IN REVENUE		
Fire Service District Tax		$ 148.07
Water and Sewer Revenues		1,653.60
Total Estimated Revenue Loss		$1,801.67
ESTIMATED ONE-TIME EXPENDITURES		
Recycling Containers		$ 30.00
Total One-Time Expenditures	$ 30.00	

E. Approve Annexation Report and Plan of Services – Finley Road Area:

FINLEY ROAD ANNEXATION AREA 2007 – ANNEXATION REPORT AND PLAN OF SERVICES

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INTRODUCTION TO ANNEXATION

North Carolina's Constitution (Art. VII, Sec. 1) directs the General Assembly to "...provide for the organization and government and the fixing of boundaries..." In response to this charge the General

Assembly has provided three general law procedures to effect municipal annexations. Those procedures embody the principle that land development for urban purposes should be within an incorporated municipality.

Annexation is the procedure whereby the corporate limits of a municipality are extended to encompass additional land, which, in most cases, is "urban in character." In addition to providing urban services to people that need them, annexation is a tool to implement policies and plans adopted by the community. Annexation is one method of achieving the community's growth objective, which is balanced and directed growth. Annexation is also a method of strengthening the tax base of a municipality, which will allow the locality to provide an adequate level of services to its citizens.

The City of Marion has four (4) methods available to it for annexation; these are: (1) action by the General Assembly, (2) annexation of contiguous areas upon petition of all owners of real property by G.S. Chapter 160-A, Article 4A, Part 1 (G.S. 160A-31 and G.S. 160A-31.1, (3) annexation of non-contiguous (satellite) areas upon petition of all owners of real property by G.S. Chapter 160A, Article 4A, Part 4 (G.S. 160A-58 through G.S. 160A-58.8 and (4) by authority granted to municipalities under 5,000 population by G.S. Chapter 160A, Article 4A, Part 2 (G.S. 160A-33 through G.S. 160A-42).

Action by General Assembly. The General Assembly may at any time enlarge the boundaries of a municipality by special act. This method is especially useful in annexing territory that cannot be annexed under one of the general law procedures because of some local condition. It is thus an important method even though not often used.

Annexation of Contiguous Areas upon Petition of All Owners of Real Property. The governing body of any municipality may annex by ordinance any areas contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all real property located within such area. (G.S. 160A-31 and 160A-31.1)

This procedure, first enacted in 1947 in a more restricted form, involves a public hearing and a finding that the petition and the area to be annexed meet the statutory requirements. The procedure is most often used to annex small areas, new subdivisions, and tracts with only a few property owners. Of all methods, this is the most frequently used.

Annexation of Non-Contiguous (Satellite) Areas Upon Petition of All Owners of Real Property. Upon petition signed by all owners of real property in the area, the governing body of a qualified municipality may annex by ordinance certain 'satellite' areas whose boundaries do not at any point touch its primary corporate limits. The primary corporate limits consist of the boundaries of a municipality as defined in its charter and as enlarged by annexation of contiguous territory according to applicable laws or diminished by exclusion of contiguous territory of the General Assembly. (G.S. 160-58 through G.S. 160A-58.8)

Before July 1, 1974, the effective date of the general satellite annexation statute, eleven cities had secured satellite annexation authority by special acts, starting with Raleigh in 1967. The satellite procedure, although not often used, is typically employed when owners of satellite property want municipal services or regulations for their property – usually retail establishments, new subdivisions, and occasionally industry.

Annexation of Areas meeting Statutory Standards. On the recommendation of the Municipal Government Study Commission (created by the 1957 General Assembly) the 1959 General Assembly enacted a new and comprehensive municipal annexation statute. The statute defines "developed for urban purposes" and provides that such an area that is contiguous to a municipality's boundaries may be annexed by ordinance if the municipality can provide the area with services on the same basis that it provides services within its existing boundaries. Reports must be prepared that (1) show that urban development in the area proposed for annexation meets the statutory standards and (2) detail the municipality's plans for extending and financing services to the area upon annexation. A special examination of the proposed annexation's effect on any rural fire department must be made. Under some circumstances, arrangements to contract with these departments for services, to assist in meeting their financing needs, or to employ their personnel must be offered. The statute requires extensive notice to affected property owners and a public hearing. After following these steps and finding that all the statutory standards and requirements have been met, the municipal governing board may effect an annexation by ordinance. The statute includes extensive safeguards to assure that citizens in the areas that are annexed receive

municipal services as planned. There is no requirement for a petition or a referendum, either within the area proposed for annexation or within the existing municipality. These annexations, based on statutory standards, are subject to the following requirements.

Standards the Area Must Meet Under G.S. 160A-36:

(11) Contiguity. The area must be contiguous to the existing municipal boundary. "Contiguous area" means any area which, at the time the annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street pr street right-of-way, a creek or river, the right-of- way of a railroad or other public service corporation, or lands owned by the municipality, another political subdivision or the State. (G.S. 160A-41(1).

If the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any non-contiguous pieces of the district so long as the largest part of the district is contiguous.

(12) One-Eighth Common Boundary. At least one-eighth (12.5%) of the total external boundary of the area must coincide with the municipal boundary.

(13) Unincorporated. No part of the area may be within another incorporated municipality.

(14) Developed to Urban Standards. The area must be "developed for urban purposes" under G.S. 160A-36(c) as of the time of the approval of the annexation report. That means the area must meet one of the tests set forth in (A) through (C) below. Note that areas of streets and street right-of-way may not be used to determine total acreage in making these calculations:

(A) Use + Subdivision Test. The area is developed such that it meets both of the following tests:

(5) Use Test. At least sixty percent (60%) of the total number of lots and tracts are used for residential, commercial, industrial, Institutional or governmental purposes; and

(6) Subdivision Test. The area is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.

OR

Nonresidential Urban Areas. The area is developed such that at the time of the approval of the annexation report, all tracts in the area are used for commercial, industrial, governmental, or institutional purposes.

OR

(C) Water/Sewer District. The annexation area is the entire area of any county water and sewer district created under G.S. 162A-86(b1), so long as the municipality contracts with the district to operate the sewer system and the contract provides that the area is developed for urban purposes. The area of an abolished water and sewer district is still considered a water and sewer district even after its abolition under G.S. 162A-87.2(b).

(15) Boundaries. Recorded property lines and streets must be used in setting the boundaries of the annexation area. Some or all of the boundary of a county water and sewer district may be used when the entire district not already within corporate limits of a municipality is being annexed.

ADVANTAGES OF ANNEXATION

Many of the property owners in the area proposed for annexation may feel that annexation offers no advantages for them. This assessment is only superficial, as the following advantages will prove:

Water and Sewer – Areas unserved by Marion's water and sewer system will be served within a reasonable time after annexation. These services are needed to protect the health and safety of the residents.

Police Protection – Police protection would be provided by the Marion Police Department on a 24-hour basis. City police protection involves more frequent patrols and a more rapid response

rate when emergencies arise. The McDowell County Sheriff's Department now provides protection to unincorporated areas of McDowell County.

Fire Protection – Usually a change in fire insurance ratings occurs when an area is annexed into the city limits. The City now has a Class 5 rating while areas outside the municipality have a Class 9 rating.

Some insurance companies will give a reduction in rates once the property has been annexed into the city limits and the class rating has been changed; however, the practice of a reduction in rates is not uniform among insurance companies.

Streetlights – Areas annexed by the City of Marion will be provided with streetlights, which help prevent crime and accidents.

Solid Waste Collection and Disposal – Marion will provide for the collection and disposal of solid waste (garbage and trash) for all newly annexed areas. The property owners now must dispose of their solid waste themselves or purchase this service from a private contractor.

Streets – The City of Marion will maintain all streets which meet City requirements except those which are continually maintained by the North Carolina Department of Transportation.

Right to Vote – Residents in the areas annexed by the City of Marion will be able to vote in City elections and hold City office.

Tax Exemption – Real and personal property taxes are an allowable exemption on both the State and Federal income tax forms.

Annexation will offer some advantages to the City of Marion also. These advantages are as follows:

Increased Revenues – The property tax levy would provide the largest source of new revenue from newly annexed areas. Revenues from water and sewer services would provide funds for general operation of those services.

Such revenues as franchise taxes, intangible taxes, sales taxes and Powell Bill funds are collected by the State and returned to the municipalities. Intangible taxes are based on the ad valorum taxes levied in the preceding fiscal year.
The distribution of franchise taxes to the municipalities is based on the gross receipts from sales. Powell Bill funds are based on a combination of local street mileage and population.

Increased Tax Base – The new values of real and personal property will increase the appraised tax valuation for Marion. This will increase the City's debt limit and enable it to expand its borrowing capability, and its service and facilities.

Increased Population – The increased population will enhance Marion's desirability as a site for new commercial and industrial expansion, and support new levels of community service. An increase in population quite often results in an increase in State and Federal funding.

SECTION I

SUMMARY OF REPORT

Pursuant to the authority vested in the City Council of the City of Marion by Part 3, Article 4A, Chapter 160-A of the General Statutes of North Carolina, a Resolution of Intent to consider annexation of the area covered by this report was adopted by the City Council at a regular meeting held on the 6th day of February 2007. A notice of the public informational meeting to be held on the 27th day of March, 2007 and the public hearing to be held on the 1st day of May, 2007, on the question of annexation is being published in accordance with legal requirements and the Resolution of Intent.

A municipality exercising its authority to annex shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-35, prepare a report setting forth such plans to provide services to such areas. The report shall include:

Annexation Report and Services Plan
G.S. 160A-35

G.S. 160A-35 requires a detailed annexation report and services plan. The report must include the following information:

13. A map or maps of the municipality and the adjacent territory to show:

    E. The present and proposed boundaries.

    F. The present major trunk water mains and sewer interceptors and outfalls and any proposed extensions of water mains and sewer outfalls to serve the area to be annexed. The map must bear the seal of a registered professional engineer.

14. A statement showing that the area meets the standards of G.S. 160A-36.

15. A statement setting forth the plans for extending to the annexation area such major services performed within the municipality. The plan must specifically provide for:

    E. Police protection, fire protection, solid waste collections, and street maintenance services on substantially the same basis and in the same manner as provided in the rest of the municipality as of the effective date of the annexation. If a water distribution system is not available in the area to be annexed, the plans must provide for reasonably effective fire protection until such time as water lines are made available under existing municipal extension policies. A contract with a rural fire department is an acceptable method of providing fire protection, and a contract with a private solid waste collection firm is an acceptable method of providing solid waste collection services.

    F. Extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such services to individual lots or subdivisions. If requested in writing by any owner of an occupied dwelling unit or an operating commercial or industrial property no later than five (5) days after the public hearing, the report and plans must be amended, at the time of adoption of the ordinance to provide for the extension of water and sewer lines to the property or a point on a public street or road right-of-way adjacent to the property, in accordance with the current financial policies of the municipality for making such extensions. Where extension of water and sewer is necessary, the plans must set out a timetable for completion of construction as soon as possible but not more than two (2) years after the effective date of annexation. In areas where the installation of sewer is not economically feasible due to the unique topography of the area, the city must provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.

16. A statement of the method under which the municipality plans to finance extension of services to the annexed area.

17. A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area is in an insurance district, a rural fire protection district or a county fire protection service district. The rural fire department is required to make available to the municipality within thirty (30) days following the municipality's written request, information within its possession or control necessary for preparation of the impact statement, including but not limited to operational, financial and budgetary information. If the rural fire department fails to respond within forty-five (45) days following receipt of a written request, it forfeits its rights to negotiate a contract to provide fire protection under G.S. 160A-37.1 or receive a proportionate share of debt payments under G.S. 160A-37.2. The city must include in its written request reference to the section containing the requirements [G.S. 160A-35(4)] or no forfeiture will occur.

18. A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement must also be delivered to the clerk of the county board of commissioners at least thirty (30) days before the date of the public information meeting.

This report has been prepared by the City of Marion in compliance with the foregoing requirements and is available for public inspection at the office of the City Clerk.

SECTION II

FINLEY ROAD ANNEXATION AREA 2007 BOUNDARY DESCRIPTION

BEGINNING at a point at the intersection of the northeast corner of Lot 1704 Block 37 on the McDowell County Tax Map 1701.06 and the current Marion Corporate Limits, thence following the current Marion Corporate Limits first in a northeasterly direction approximately 935 feet, then in a southeasterly direction approximately 256 feet to a point at the southeast corner of Lot 9446 Block 38 on the McDowell County Tax Map 1701.06, thence following the southern boundary of said Lot 9446 in a southwesterly direction approximately 325 feet to a point, said point being the northwest corner of Lot 0066 Block 48 on the McDowell County Tax Map 1701.06, thence following the western boundary of said Lot 0066 approximately 87 feet to a point, said point being the southeast corner of Lot 7350 Block 38 on the McDowell County Tax Map 1701.06, thence following the southern boundary of said Lot 7350 approximately 203 feet to a point at the intersection of the southern boundary of said Lot 7350 and a point on the eastern boundary of Lot 5010 Block 38 on the McDowell County Tax Map 1701.06, thence following the eastern boundary of said Lot 5010 in a southerly direction approximately 28 feet to a point at the southeast corner of said Lot 5010, thence following the southern boundary of said Lot 5010 and Lot 2369 Block 37 on the McDowell County Tax Map 1701.06 approximately 359.14 feet to a point at the southwest corner of said Lot 2369, thence following the western boundary of said Lot 2369 in a westerly direction approximately 150 feet, thence following the western boundary of Lot 7814 Block 37 on the McDowell County Tax Map in a southerly direction approximately 163 feet to a point, said point being the southwest corner of said Lot 7814 and the northwest corner of Lot 5556 Block 37 on the McDowell County Tax Map, thence following first the northern boundary of said Lot 5556 then the eastern boundary of said Lot 5556 then southern boundary of said lot 5556 then the western boundary of said Lot 5556 first approximately 579 feet in an easterly direction then approximately 302 feet in a southerly direction then 210 feet in a southwesterly direction then approximately 458 feet in a northwesterly direction to a point at the northeast corner of Lot 3377 Block 37 on the McDowell County Tax Map 1701.10, thence following the northern boundary of said Lot 3377 approximately 192 feet in a southwesterly direction to a point, said point being the intersection between the northwest corner of said Lot 3377 and the northeastern boundary of Lot 3151 Block 37 on the McDowell County Tax Map 3151, thence following the northeastern boundary of said Lot 3151 approximately 33 feet in a northerly direction to a point, said point being at the intersection of the northeast corner of said Lot 3151 and the eastern margin of Finley Road (SR 1209), thence crossing SR 1209 in a straight line to a point, said point being at the intersection of the western margin of SR 1209 and the eastern boundary of Lot 0463 Block 37 on the McDowell County Tax Map 1701.10, thence following the eastern boundary of said Lot 0463 and Lot 8359 Block 27 on the McDowell County Tax Map 1701.10 approximately 97 feet to a point at the southeast corner of said Lot 8359, thence following first the southern boundary of said Lot 8359 then following the western boundary of said Lot 8359 first approximately 410 feet in a westerly direction then approximately 385 feet in a northerly direction to a point, said point being the intersection of the northwest corner of said Lot 8359 and the current Marion Corporate Limits, thence following the current Marion Corporate Limits first in an easterly direction approximately 213 feet then in a northerly direction approximately 258 feet then in an easterly direction approximately 345 feet to the point of BEGINNING.

SECTION III

STATEMENT SHOWING THAT THE AREA PROPOSED TO BE ANNEXED MEETS THE LEGISLATIVE STANDARDS PRESCRIBED BY G. S. 160A-36

The proposed annexation area meets the general standards of G. S. 160A-36 as follows:

The area is adjacent and contiguous, as defined by G. S. 160A-41(1) as of the 6th day of February 2007, the date upon which this annexation proceeding was begun, and shown on the map included herein marked Exhibit A.

The aggregate external boundary line of the area to be annexed is 5,996 feet, of which 2,533 feet (or 42.24%), coincides with the City boundary, as shown on the map included herein marked Exhibit A. Therefore, at least one eighth (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 (See Exhibit B).

The area to be annexed is developed for urban purposes in that 75.00% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes as is shown below. 65.19% of the total of residential and vacant acreage consists of lots and tracts three (3) acres or less in size.

Total number of lots and tracts	8
Number of lots and tracts used for:	
Residential	5
Commercial	0
Industrial	0
Institutional	0
Governmental	1
Total	6
Percentage of lots and tracts developed for urban purposes	75.00%
Total Residential and Vacant Acreage	10.63
Total Residential and Vacant Acreage in lots and tracts three (3) acres or less	6.93
Percentage of Residential and Vacant Acreage in lots and tracts three (3) acres or less	65.19%

SECTION IV

STATEMENT SETTING FORTH PLANS FOR EXTENDING CITY SERVICES TO THE AREA PROPOSED TO BE ANNEXED AND METHODS OF FINANCING THESE SERVICES

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 animals running at-large. The full-time force is composed of the Chief of Police, 22 other sworn officers, 4 telecommunication officers and 1 police aide/ordinance enforcement officers. At least 1 telecommunication officer and 3 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 the North Carolina 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 0.26 miles. Assuming the area is patrolled a minimum of six (6) times a day, a 0.26 mile patrol route would require approximately 569 traveled miles. An estimate of 38 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 additional expenses to provide police services to the proposed area of annexation would be $128.93 per year ($98.03 for gas and $30.90 for maintenance.) The funding for this additional expense will come from anticipated revenues in this area and be budgeted in the City's General Fund.

No additional personnel will be required to provide service to this area.

The total annual cost to provide police protection to this area is estimated to be $128.93.

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 4 minutes depending on traffic conditions. The route to this area is easily accessible to fire fighting equipment.

The fire department has two diesel-powered pumpers, one 1,000 GPM (gallons per minute) pumper and two 1,250 GPM pumpers. The department also has two diesel powered pumper/tankers that carry 1,000 gallons of water. The pump capacity of each truck are 1,250 GPM and 1,500 GPM, respectively. The department also has an 85 foot aerial platform with a 1,000 GPM pump, a four-wheel drive brush unit and an equipment van.

There are five paid firefighters and at least one is on duty at all times. The duty firefighter and 25 volunteers are dispatched by the 911 County Emergency Operations Center. All firefighters have pagers and many have portable hand held radios. The fire department also maintains a fire inspections department that handles fire safety inspections of businesses and industries in 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 $1,726.01 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.

There should be no change in property insurance rating when the area is annexed into the city. Since the area to be annexed is already served by existing city water lines and fire hydrants, property owners in the area to be annexed should already be receiving the insurance rating in effect for the city. However, 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, there are 10 residential customers currently on City water and/or sewer service. Revenues from these customers average $265.00 monthly or $3,180.00 annually.

Once the area is annexed, the loss in revenues is estimated to be approximately $53.00 monthly or $636.00 annually

Water is available to all properties located in the area proposed for annexation. No water improvements will be necessary. Sewer service is currently not available to the area. The City will extend an 8" sewer line for an approximate distance of 1160 feet along Finley Road to serve the annexation area. The estimated costs of such extension are $46,150, plus any needed road or driveway repairs.

The City will ensure that on the effective date of annexation water service will be provided in the area annexed on substantially the same basis as provided in the rest of the City. Sewer improvements will be completed in accordance with the time schedule for such improvements as set in the General Statutes.

Funds for water and sewer service will come from anticipated revenues in the area and be budgeted in the City's Water and Sewer Fund. Funds for the needed sewer improvements will come from funds budgeted for capital outlay in the City's Water and Sewer Fund.

STREET MAINTENANCE

All of the streets in the area proposed for annexation are paved. All streets in the annexation area are maintained by the State of North Carolina. It is proposed that the State of North Carolina will continue maintenance on the public streets in the area.

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 D 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 3 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 $11.21 per month per streetlight.

The estimated cost for providing streetlights to the area proposed for annexation will be $33.63 per month or $403.56 annually.

The funds to provide streetlights in the annexation area will come from anticipated revenues in this area and be budgeted in the City's General Fund.

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 collection once a week at each residence in the city.

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 2,454 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 6 residential units in the area proposed for annexation. A curbside recycling truck will be used to provide recycling pickup at each residence once each week.

No additional employees or equipment will be required to provide solid waste collection service to this area. It is estimated that $492.28 will cover annual fuel cost. An additional $143.85 is estimated for vehicle maintenance for a total annual cost of $636.13 to provide solid waste and recyclable collections to the residential units. One time costs, involving $30 for the purchase of

recycling bins, will also be needed to serve the area to be annexed. Solid waste collection and recycling collection service is currently provided in the city by City of Marion personnel and equipment and will also be provided to the area to be annexed by City of Marion personnel and equipment. These funds for this service will come from revenues collected in this area and budgeted in the City's General Fund.

The City will attempt to contact any solid waste firm servicing the annexation area as required, or which has stated its interest in contracting with the City. If required by the General Statutes, the City will offer to contract with the solid waste firms or will pay such firms for their monetary loss in compliance with the General Statutes.

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 V

ESTIMATED REVENUES

PROPERTY TAXES

Based on tax listings at the beginning of January 2007, it is estimated that the proposed annexation will bring in the following tax revenues based on the current City tax rate of $.51 per $100.00 of property value.

Current Taxable Value	$346,470.00
Estimated Property Taxes	1,767.00

WATER AND SEWER REVENUES

Almost all structures in the area to be annexed are already connected to City water and sewer. The annexation of this area will result in water and sewer rates being reduced by 60 percent, resulting in a savings for residents and property owners and a revenue loss for the City of an estimated $636.00 per year

OTHER REVENUES

Because of changes in distribution formulas from year to year estimates on the following revenues may fluctuate. These estimates are based on formulas and information received from the North Carolina Department of Commerce (Division of Community Assistance), North Carolina Department of Transportation, North Carolina Department of Revenue, Isothermal Planning and Development Commission, North Carolina Office of Budget and Management and Duke Energy.

Local Sales Tax	$ 3,322.35
Powell Bill Revenue	339.45
Utility Franchise Tax	216.00
Beer and Wine Tax	66.30

POPULATION INCREASE

The City's current population is based on the 2000 Census and annual population certifications from the State of North Carolina. Annexation of this area and other proposed annexations to take effect on June 30, 2007 will increase the population by approximately 260 people for a population of 6,927.

SECTION VI

REVENUES AND COST ESTIMATE

ESTIMATED ANNUAL REVENUES	
Property Tax	$1,767.00
Local Sales Tax	3,322.35
Powell Bill	339.45

Utility Franchise Tax	216.00
Beer and Wine Tax	66.30
Total Estimated Annual Revenues	$5,711.10
ESTIMATED ANNUAL EXPENDITURES	
Police Department	$ 128.93
Fire Department	0.00
Street Department	0.00
Streetlights	403.56
Solid Waste/Recycling	636.13
Total Estimated Annual Expenditures	$1,168.62
ESTIMATED LOSS IN REVENUE	
Fire Service District Tax	$ 138.59
Water and Sewer Revenues	636.00
Total Estimated Revenue Loss	$ 774.59
ESTIMATED ONE-TIME EXPENDITURES	
Sewer Line Extension	$46,150.00
Recycling Containers	$ 30.00
Total One-Time Expenditures	$46,180.00

F. ADOPT RESOLUTION DIRECTING THE CITY CLERK TO POST NOTICE ON PARCELS WHERE OWNERS COULD NOT BE IDENTIFIED:

RESOLUTION
DIRECTING THE CITY CLERK TO POST NOTICE ON PARCELS
WHERE OWNERS COULD NOT BE IDENTIFIED
BY TAX RECORDS

WHEREAS, It is the intent of the City Council of the City of Marion to consider the annexation of territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina; and

WHEREAS, The City shall provide notice of public meetings pursuant to procedural requirements as stated in Chapter 160A-37 of the General Statutes of North Carolina; and

WHEREAS, The City Council finds that certain tax records are not adequate to identify owners of parcels of real property within the annexation territory; and

WHEREAS, The City Council directs the City Clerk to post notice at least thirty (30) days prior to the date of the public information meetings on all buildings on such parcels, and in at least five (5) other places within the area to be annexed; and

WHEREAS, The City Clerk shall certify that fact to the City Council pursuant to the procedural requirements of Chapter 160A-37 of the General Statutes of North Carolina.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL, AS FOLLOWS:

Section 1. The above recitals are true and correct and incorporated herein by this reference.

Section 2. The City Clerk shall post notice at least thirty (30) days prior to the date of the public information meeting on all buildings on such parcels in which ownership could not be adequately identified by the tax records and in at least five (5) places within the area to be annexed.

Section 3. The City Clerk shall certify to the City Council that such parcels have been duly noticed.

Section 4. This Resolution shall become effective immediately upon its adoption.

ADOPTED the 20th day of February 2007.

A. Everette Clark, Mayor

J. Robert Boyette, Clerk

RESOLUTION NUMBER: R-07-02-20-02

RECOGNITION OF RETIREMENT – ASSISTANT FIRE CHIEF CHARLES PRESNELL: The City Manager advised that the Fire Department hosted a retirement reception for Charles Presnell on February 2, 2007. The City Manager asked him to come to this meeting so that Council could officially recognize him.

Charlie and his wife Sherry were present for this meeting. The City Manager advised that Charlie retired on December 31, 2006 with 35 years of service with the Marion Fire Department, including more than 34 years full time service. The City Manager stated that Charlie always put forth his best effort and was one of the City's most dependable employees. Amazingly, Charlie used only one sick day in over 34 years while serving the City.

Councilman Owenby advised that he couldn't make the reception, however, he wanted to thank Charlie for all his years of service to the city as well as the county. Councilman Owenby advised that he knew Charlie's father was always proud of him and so was he.

Councilman Cuthbertson congratulated Charlie and stated that he had known Charlie for over fifty years. Their families grew up together.

Councilman Little stated that there is one thing about the City of Marion, we have been blessed with finest people anywhere. Charlie is the ultimate example of top quality and continuity of a man. Councilman Little stated that he would rank Charlie up there with the Mayor in terms on long term dedicated service to the City of Marion.

Councilman Edwards advised that he grew up knowing Charlie through his Dad. He has also seen Charlie testify in arson cases as an expert and that his knowledge is very impressive and effective in Court. Councilman Edwards stated that his father trusted Charlie without question when it came to everything to do with the Fire Department.

Councilman Martin advised that he had known Charlie and his family a long time and had worked with his mother at the High School. Councilman Martin stated that when he rode by the Fire Department and saw Charles there, he knew the City was in good hands. Councilman Martin also stated that he remembered in 1965 or 1966 when he was one of the first African-American students to attend Marion High School, that Charlie made him feel comfortable.

Mayor Clark stated that behind every good man is good woman and thanked Sherry for allowing Charlie to serve the City all of these years. Mayor Clark stated that he is honored to be compared to Charlie, as Mayor Pro Tem Little stated. Mayor Clark stated that he had seen Charlie in the coldest as well as hottest of weather conditions, and that he had always served above and beyond the call of duty. Mayor Clark added that he would like it entered into the records of the minutes that Charlie has retired from the City. However, no key to the City is needed for the doors to the City will always be open to him.

PUBLIC HEARING – EXTEND DOWNTOWN OVERLAY DISTRICT ON WEST COURT STREET: Mayor Clark opened the Public Hearing.

The City Manager advised that a few meetings ago, Council approved the request of Mr. and Mrs. White to rezone a vacant lot on West Court Street across from the McDowell County

Recreation Department from R-2 General Residential to C-2 General Business for a new dance studio. Concerns were expressed at that meeting about the appearance of the proposed dance studio. One idea that was discussed to address this concern was to extend the Downtown Overlay (D-O) District from the edge of Doug Taylor's property (on which a Mexican Store stands) farther down West Court Street to include the White's property. The D-O district was adopted by Council a few years ago and established some minor architectural standards for buildings in the defined downtown area. The main requirement in the D-O District is that no metal buildings are allowed. The City Planner has discussed this idea with Mr. and Mrs. White, who stated no objection to the request. The City Manager advised that he and the City Planner had discussed this area and would recommend extending the D-O District on West Court Street westward to Pulliam Street, to include the vacant lot at the intersection of West Court and Pulliam Streets that has been sold several times over the past few years.

City Planner Heather Cotton advised in November 2006, a property owner raised general concern regarding future development along West Court Street, which was prompted by the rezoning of an adjacent property for commercial use. The owner's specific concerns related to the type of construction that would occur on the adjacent commercial property.

In January 2007, the Planning Board discussed the potential of extending the Downtown Overlay (DO) District. Ms. Cotton reported that the Planning Board listened to public comments regarding the importance of protecting the community character and the historic context of several properties including two residential homes and Saint Matthew's Lutheran Church. The Planning Board agreed that an extension of the Downtown Overlay District would be in the best interest of the community and requested Staff to bring forward a formal request of the extension at the next Board meeting.

Ms. Cotton stated that, upon serving notice of the request upon the community, Staff received three inquiries regarding the overlay extension, none of which were in opposition to the extension. A letter of support for the extension was received from St. Matthew's Lutheran Church, which owns two properties between Burgin Street and Pulliam Street located within the proposed extension area (attached hereto for reference).

Ms. Cotton advised that; on February 8, 2007, the Planning Board having discussed the extension and hearing no opposition to the proposed extension, recommended approval in a 4-0 vote.

Ms. Cotton stated that the extension of the Downtown Overlay District would include all properties located on the south side of West Court Street between Academy St. and Pulliam St. with the PIN Nos. 1701.11-57-9034, 1701.11-57-8072, 1701.11-57-7070, 1701.11-56-6919, 1701.11-56-5956, 1701.11-56-3990, and 1701.11-56-3721. Ms. Cotton advised that the area contains a mixture of well-established uses including multi-family and single-family residential, institutional and commercial. Most of the existing structures within the proposed extension area are constructed of brick and mortar with the two remaining single-family structures comprised of stick-built construction. There are no metal buildings within the proposed overlay extension. Ms. Cotton stated that the purpose of the extension is protect the existing character and historic context of the community by prohibiting incompatible development in the future. The proposed extension of the DO Downtown Overlay District is shown below in Figure One.

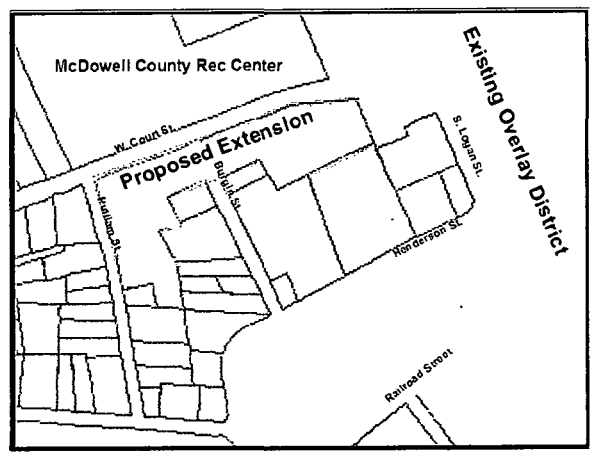


Figure One: Proposed Zoning District

Ms. Jill Prior, of Asheville, was present for this meeting and advised that she owns two homes on West Court Street. Ms. Prior stated that she is very much in favor of extending the Downtown Overlay to preserve the integrity of the neighborhood

A discussion followed.

Mayor Clark Closed the Public Hearing.

Upon a motion by Councilman Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following Ordinance as recommended by the Planning Board:

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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map to extend the Downtown Overlay District for properties located on the south side of West Court Street between Academy Street and Pulliam Street with the Parcel Identification Numbers 1701.11-57-9034, 1701.11-57-8072, 1701.11-57-7070, 1701.11-56-6919, 1701.11-56-5956, 1701.11-56-3990, and 1701.11-56-3721.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on February 8, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 20th day of February 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: 07-02-20-03

CONSIDER ADOPTION OF ORDINANCE – CIRCLE LANE, CLINCHFIELD PARKING: The City Manager advised that at the February 6th Council meeting, Ms. Sadie Andrews requested that Council repeal the ordinance that prohibits parking on both sides of Circle Lane in Clinchfield. The City Manager presented council with a copy of the ordinance that established parking and traffic regulations for the Clinchfield area shortly after the area was annexed in 1989, including prohibiting parking on both sides of Circle Lane. Signs showing these parking restrictions were never installed on Circle Lane after the adoption of the 1989 ordinance, according to Ms. Andrews, and are certainly not in place now.

The City Manager reported that the Street Committee reviewed this request on February 12th and recommends prohibiting parking on part of the north side of Circle Lane adjacent to Church Street (since this area is next to a ditch and a house with a very large yard capable of parking many vehicles) and on both sides of the street close to the Main Street intersection. On the rest of the street, vehicles typically park almost all of the way off of the road on the shoulder. The Street Committee felt that Council should restrict parking to no more than two feet onto the pavement, which would still allow for a 12 foot travel lane on the 16 foot wide Circle Lane. During the Street Committee meeting, a resident of the street., Mr. Terry McKinney, spoke with City Officials and stated that he saw no problems with the proposed recommendations to enhance safety on the street, while also ensuring emergency vehicle access.

Mayor Clark stated that there could be problems with signage for this type of recommendation.

Councilman Martin stated that he did not feel that there would be a problem.

Mayor Clark stated that he would suggest that the present ordinance be rescinded.

Mayor Pro Tem Little noted that Council could revisit the location if problems occurred in the future.

A discussion followed.

Upon a motion by Councilman Little, seconded by Councilman Martin , Council voted unanimously to adopt the following Ordinance to rescind all parking restrictions on Circle Lane:

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
CIRCLE LANE	PARKING	EITHER SIDE, LENGTH
PROHIBITED	OF ROAD	

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 20th day of February, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-02-20-01

CONSIDER REQUEST FOR HOUSE BURNING FROM MARION CHURCH OF CHRIST: The City Manager advised that in 2001, City Council directed that it review and approve all structure burnings in the City Limits. The City Manager noted that this is a local requirement and does not supersede State Law. The City Manager stated that the Marion Church of Christ has apparently been planning to burn a house adjacent to their church on State Street for some time. The City Manager advised that the City had not been aware of these plans. The Church recently made a formal request to the City, requesting approval to burn the house at the Fire College on March 17, which request is being reviewed for the first time by Council tonight. There were eight members of the Church of Christ present for this meeting to answer any questions Council might have.

The City Manager advised that he had spoken to a neighboring property owner, Mr. Bob Reynolds, who was opposed to the burning of the house. The City Manager stated that Mr. Reynolds advised that he and other community residents with respiratory ailments were opposed to this burning. The City Manager presented a petition in opposition to the burning that Mr. Reynolds brought by City Hall.

Mayor Clark read aloud the petition as follows:

To whom it may concern;

Let it be known that we, the undersigned, are protesting the burning down of the house located on the 800 block of State street. The reason for our concern is that the smoke may become a health issue for some of the neighborhood.

Thank You

The petition was signed by:

Robert James Reynolds	831 State Street
Tommy Stines	55 Gray Street
Annette Stines	55 Gray Street
David & Joyce	41 Gray Street
Mark Kuls	59 East Tate Street
Clarence J. Boyd	59 East Tate Street
Ronald V. Brown	59 East Tate Street
Betty Brown	59 East Tate Street
Robert L. Harris	31 East Tate Street
Anthony Frady	851 State Street
Jessica Frady	851 State Street
Amie Lindner	830 State Street
Ken Hughes	830 State Street
Terri Rhoder	838 State Street
Cecil Mosteller	838 State Street
Homer Jenkins	805 State Street
Kathy Mace	850 State Street

No one who signed this petition was present at this meeting.

The City Manager advised that at the February 6th City Council meeting, Council approved two other structures inside the City for the Fire College to burn.

The City Manager gave Council a copy of Section 9-39, which simply states that a permit from the Fire Chief is required before solid waste can be burned in the City, and a copy of State rules related to Open Burning. There are fewer restrictions in some ways for fire training burns, but a permit still must be issued by the State (which has already taken place in this case).

The City Manager stated that he had attempted to go over these State rules for live burns with Mr. Reynolds. The City Manager reported that Mr. Reynolds had stated that the fire must be put out if someone complains, but the City Manager advised that he could not find anything in the rules to support this claim. Apparently Mr. Reynolds is thinking of the section involving non-permitted burns of yard waste, which can take place unless such burns create a nuisance for neighbors (involving ash or soot being deposited on other properties, creating a visual impairment or creating a worsening of a documented medical condition).

Mayor Clark stated that there are two sides to this request, the Church wants the house to be burned and some neighbors do not want the house burned.

Mayor Clark advised that one of the reasons why council got involved in reviewing requested structure burns is because years ago on South Main Street the Fire College burned a house that smoldered for three days. Council wanted this type of review to ensure that a burn will not last for multiple days. Mayor Clark stated that, when this is the case, there is unnecessary smoke and soot going onto adjacent properties and creating problems.

Mayor Clark asked the distance between the house to be burned and the nearest house adjacent to it. Brad Ledbetter of the Fire College advised that the distance from the house to be burned is 40 feet to the Church, 60 feet to the house behind the Church property, 20 feet to the utility wiring and 50 feet to the house on the other side of Gray Street owned by Mr. Reynolds. Mr. Ledbetter further advised that he had looked at this house when the request was initially made and stated that there is a lot of preplanning when there is a proposed burn request.

Councilman Martin asked if the house could be burned without problems in the neighborhood and within a one day period. Mr. Ledbetter stated that he did not think that the burning would cause problems within the neighborhood and that the burning would take place in one day, over an eight to ten hour period.

Members of the Church were asked if they have plans to remove debris immediately. They stated that they would take necessary steps to remove the debris promptly.

Fire Chief Jim Neal stated that the smoke from a fire will depend on atmospheric conditions. However, fire is fire. There is no way to prevent smoke even though this is a good time of year to burn. If it ends up being a clear day, the smoke will go straight up.

One of the members of the Church present for this meeting stated that he knew of persons down the block that have no problem to this burn and did not sign the petition. The Church indicated that many of the people signing the petition are not immediately adjacent to the house to be burned.

Councilman Little stated that he would ask that the Church have plans to doze and clear as soon as possible after the burn.

One of the members of the Church present stated that they are already $6,000 into this project and would appreciate Council approving it. Councilman Little stated that he appreciated this information, but that financial considerations should not factor into Council's decision, just public health and safety.

Mayor Clark asked if a law suit was filed, would McDowell Tech hold the City harmless. Mr. Ledbetter stated that he could not answer that question, but stated that the Fire College was insured. Councilman Little stated that the Fire College could add the City as an additional insured party.

Councilman Edwards advised that he did not think that the harm of the burning would outweigh the benefit, but that anyone could sue if something happened.

Councilman Little also suggested that the Church may want to consider speaking to persons opposed to the burning and offer to buy their lunch or provide them with some money to go shopping for the day.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to approve the request by the Marion Church of Christ to burn the house next to their Church on State Street during the Fire College on March 17, 2007.

Councilman Edwards asked that citizens in the area get a notice prior to the burn so that they can make plans accordingly. Chief Neal stated that he would make sure such a notice was delivered.

ACKNOWLEDGE MCDOWELL TECH STUDENT: Mayor Clark acknowledged and welcomed Ms. Jennifer Frew. Ms. Frew is a Photography Major at McDowell Tech and needed to attend and photograph a public meeting as part of her coursework.

REQUEST – PROHIBIT COMMERCIAL VEHICLES FROM RESIDENTIAL STREETS: The City Manager advised that at the February 6th Council meeting, a letter was presented from Ms. June Shope, who lives on State Street across from East Junior High. Ms. Shope reported that a tractor trailer was parking in the marked parking spaces in front of East Junior High and suggested in her letter that such vehicles should not be allowed on residential streets and particularly in front of a school. The City Manager stated that the Street Committee reviewed this request on February 12 and recommended that an ordinance be adopted much as

recommended years ago by former Chief Pruett to prohibit large vehicles from taking up more than one marked parking space.

The City Manager stated that the Street Committee also suggested that an ordinance be adopted to prohibit large vehicles, such as tractor trailers, from parking on residential streets. The City Manager polled other cities for examples of such ordinances and sought to avoid weight based definitions of large vehicles.

A discussion followed. Council decided that the first recommended ordinance, to prohibit large vehicles from taking up more than one marked parking space, would address Ms. Shope's complaint.

Upon a motion by Councilman Little, seconded by Councilman Martin, 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 adding Section 18-230.1, as follows:

Sec. 18-230.1. Obedience to designated parking spaces on streets.

No single vehicle or combination of hitched vehicles shall park in such a manner as to occupy more than one designated parking space at a time nor extend beyond the painted lines of the designated space, except that travel trailers and/or recreational vehicles may park in marked spaces not to exceed two (2) hours as long as such vehicles do not impede the flow of traffic on the street.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 20th day of February, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-02-20-2

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

AWARD CONTRACT – PURCHASE OF PUBLIC WORKS ADMINISTRATION VEHICLE: The City Manager advised that the 2006-07 budget contains funding for a new SUV for Public Works Administration (the new Public Works Director). Bids were solicited for the purchase of this vehicle. The City Manager stated that five bids were received. The low bid was received from Ilderton Dodge Chrysler Jeep out of High Point in the amount of $18,066.00 for a Jeep Liberty. The City Manager advised that he and Public Works Superintendent Roger Estes discussed the Jeep Liberty and felt that the vehicle was a bit small for the Public Works Director's vehicle. The City Manager reported that Jim Cook Chevrolet submitted a bid for a 4x4 Chevrolet Trailblazer that is larger in size for $19,978.00. There is $25,000 included in the 2006-

07 budget for the purchase of this vehicle, so both bids were well under the budgeted amount. Due to the relatively small price differential between the Chevrolet Trailblazer and the Jeep Liberty, especially given the size difference, the City Manager recommended that Council award the contract for the purchase of this vehicle to Jim Cook Chevrolet for a 4x4 Chevrolet Trailblazer in the amount of $19,978.00.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to accept the recommendation of the City Manager and award the contract for the Public Works Administration SUV to Jim Cook Chevrolet for a 2007 4x4 Chevrolet Ttrailblazer in the amount of $19,978.00.

REQUEST FOR VARIANCE DRIVEWAY WIDTH GREAT MEADOWS - VERIZON: The City Manager advised that he was contacted today by DOT to sign off on a driveway permit for the new Great Meadows Verizon wireless building on US 70 West across from the Wal Mart Entrance. Public Works Superintendent Roger Estes inspected the location and the plans and determined that the driveway is 40 feet, wider that the 36 foot maximum for commercial driveways as established in Section 15-72 in the City Code, but much narrower than the 57 foot driveway width into the Wal Mart Shopping Center. The City Manager stated that this driveway would function as a service road for several lots to be developed in the future by Great Meadows, since DOT will allow no additional driveways in this area.

The City Manager advised that this property was annexed by the City on December 31, 2006. The building had been permitted under the County and was designed under County regulations, which are non-existent in this area of driveway.

A discussion followed.

Upon a motion by councilman Little, seconded by Councilman Martin, council voted unanimously to approve a variance from Section 15-72 of the City Code to authorize Great Meadows to construct a 40 wide driveway for the new Verizon Wireless Building on US 70 West, across from the Wal Mart entrance.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that Public Works Superintendent Roger Estes took photos of trash receptacles in Downtown Asheville. He found two very similar styles to these trash cans. The styles cost $664 and $724 each, respectively, with little noticeable difference, except at the bottom of the can. Asheville uses the more expensive $724 RS-12 model. The City Manager stated that he would recommend that the City purchase the less expensive $664 FC-12 model. Council agreed by consensus to purchase six of the FC-12 model trash cans, as previously approved.

The City Manager advised that Thursday, February 22nd is the public meeting to kick-off the public input process for the Land Use Comprehensive Plan and the Downtown Streetscape/Traffic Flow Plan. The meeting will begin at 6:00 p.m. at the Community Building, with refreshments available at 5:30 P.M.

The City Manager advised that he had sent a request to the Federal Surface Transportation, asking for six additional months to negotiate with Norfolk Southern Railway (NS) for the acquisition of the old Pea Vine Rail Line, since there had been no significant developments in the negotiation.

The City Manager advised that the next Council Planning Session is scheduled for Tuesday, February 27, at 6:00 p.m. at City Hall.

The City Manager advised that Police Chief Mika Elliott had arranged for Community Service workers to start picking up trash starting the weekend of March 1. A schedule has been developed to pick up trash in many areas of the City, including typical problem areas for litter. The City Manager noted that if Council Members know of problem areas for litter, to please let him know, and such areas will be added to the list. Inmate labor will be used to pick up the Five Lane, since trash pickup on US 221 is part of the Prison's primary mission.

The City Manager noted that there have been several new features added to the City website recently, including permit forms and Zoning Maps.

The City Manager stated that, over the next few months, he had directed Department Heads to focus on defensive driving in their safety meetings. The City is working with the N.C. League of Municipalities on a new program called Safety Catch that includes a driving component. The City Manager also stated that Police Chief Mika Elliott had scheduled specialized defensive driving training at the March in-service training for the Police Department. The City Manager also stated that Chief Elliott and his staff were reviewing the Department's call response policy and the appropriate level of response to different types of calls, with opportunities to downgrade certain types of calls to a lower priority response being considered.

Councilman Edwards stated that the Police Department should do such training on a yearly basis to remind young officers of the dangers associated with driving.

CLOSING COMMENTS:

Councilman Edwards advised that he had recently learned that home delivery of the Charlotte Observer would soon be ended to Marion and all of Western North Carolina. This decision comes from a corporate decision that the newspaper can no longer justify home delivery to this area. Councilman Edwards stated that he had stated his displeasure about this decision to the Charlotte Observer. Mayor Clark stated that he had also complained about this decision.

Councilman Cuthbertson advised that paint has been emptied into the street on Broad Street. The City Manager stated that staff would look at the paint, but that it likely could not be removed, much like a similar instance on Morgan Street a few years ago.

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 Regular Session on Tuesday evening, March 6, 2007 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; Heather Cotton, City Planner; Chris Hollifield, Public Works Director/Engineer; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Donna Ledford, 750 Vernon Bradley Road, Old Fort, NC; Linda Doran, 169 Cross Creek Drive, Marion, NC; Iris, Elijah and Isaiah Lawing, 676 Deep Woods Estate, Marion, NC; Kelly Lewis, 10 Willow Street, Marion, NC; Hayley Taylor 115 Great Hill Drive Marion, NC; Madison Waycaster 1969 Old Greenlee Road, Marion, NC; Sherri Hawkins 160 Hemlock Hills Estates Drive, Marion, NC; Tom Hawkins 160 Hemlock Hills Estate Drive, Marion, NC.

RECOGNITION – P.G. ELEMENTARY SCHOOL: Mayor Clark took time from the Regular Meeting to introduce a special group of students and several teachers present for this meeting. Mayor Clark advised that Ms. Donna Ledford and Ms. Linda Doran, teachers at Pleasant Gardens Elementary School, had recently worked with Fourth Grade students to complete a project to incorporate technology into a study about local government. The students had interviewed the Mayor, City Manager and several department heads, while visiting most City facilities. Ms. Ledford and Ms. Doran displayed brochures and information the students had prepared about City services and facilities. Several students and their parents were present for this meeting. The students all shared what they had learned during this project.

Ms. Ledford stated that it is hoped that this will be an on-going project to introduce fourth graders at all elementary schools in McDowell County to local government and a better understanding of their City.

Mayor Clark thanked all the parents, students and teachers for coming to this meeting and for doing an excellent job with this project.

Mayor Pro Tem Little advised that he is serving on a Committee with the National League of Cities and that he will proudly share this information in Washington D.C. next week on what the students have done.

Councilman Cuthbertson advised that these forth graders have done a great job and have actually outdone the ninth graders he works with.

Councilman Owenby advised that this is a great idea for the young people and that they are to be commended, especially for doing this after school.

Councilman Edwards advised that he was recently attended a Little Miss McDowell Padgett and now sees this and is most impressed with what these students are capable of doing at this age. It is a positive example of hard work and good teaching.

Councilman Martin advised that he is very proud of these students for what they have accomplished at such a young age and thanked the teachers for their hard work and dedication to the students. He noted that the key to success for these students is to keep learning

The City Manager advised that this was a wonderful presentation. These students got some information from the City through thoughtful interviews and then supplied a wonderful finished product.

Police Chief Mika Elliott advised that the students had performed an excellent job and that he and the Police Department staff enjoyed the kids coming to the Marion Police Department. Chief Elliott challenged the students to continue their hard work and to stay out of trouble.

CITIZEN OF THE MONTH – SELECTED BY MAYOR PRO TEM STEVE LITTLE:
Mayor Pro Tem Steve Little selected the Citizen of the Month for March 2007

KELLY DALE LEWIS

Mayor Pro Tem Little advised that it is with tremendous pleasure that he had selected Mr. Kelly Lewis as his Citizen of the Month for March. Mr. Lewis is a native of Marion and the son of Lonnie and Linda Lewis.

Mr. Lewis was educated in Marion and has stayed in his hometown. With his culinary art and talent, Mr. Lewis has developed a style of his own consisting of food, his unique style of decorating and created an adventure for food and its surroundings at Carolina Chocolatiers.

Mr. Lewis was raised in the East Marion Pentecostal Holiness Church. Over the years his hobbies and goals was to own a restaurant. Several years ago, Mr. Lewis made a strategic move by moving Carolina Chocolatiers to the downtown area from I-40. Mr. Lewis' restaurant has been seen on public television, and serves many people, many who come from out of town just to eat at Carolina Chocolatiers.

The Mayor and Council Members all shared kind words about Mr. Lewis and thanked him for being one of the catalysts of Marion's recent downtown revitalization.

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 20, 2007 Regular Session & February 27, 2007 Planning Session Minutes

B. Receive Certification of Mailing of Annexation Notice - Eastfield Phase II, Tate Street and Finley Road Areas:
City Planner Heather Cotton presented written certification that notices were mailed by First Class Mail on February 23, 2007 to all persons owning property in the Eastfield Phase II, Tate Street and Finley Road Annexation Areas.

C. Approve Budget Amendments:

CITY OF MARION, NORTH CAROLINA
2006-2007 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 2006-06 as adopted by the Marion City Council on the 20th day of June, 2006 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Administration, Account Number 10-420-7400, Capital Outlay is increased from $24,700 to $33,700.

b. General Fund Expenditures, Police Department, Account Number 10-510-7400, Capital Outlay is increased from $144,200 to $162,800.

c. General Fund Expenditures, Fire Department, Account Number 10-530-5400, Insurance - Property is increased from $14,000 to $16,890.

d. General Fund Expenditures, Fleet Maintenance Department, Account Number 10-555-0500, Retirement is increased from $3,218 to $6,124.

e. General Fund Expenditures, Non-departmental, Account Number 10-660-9000, Transfer to General Fund Capital Projects is increased from $-0- to $464.

f. General Fund Expenditures, Fire Department, Account Number 10-530-1700, Maintenance & Repairs - Vehicles is increased from $17,000 to $27,000.

g. General Fund Revenues, Account Number 10-361-0000, Interest Earned is increased from $86,000 to $136,000.

h. General Fund Revenues, Account Number 10-361-1000, Interest Earned –Powell Bill is increased from $1,100 to $1,900.

i. General Fund Revenues, Account Number 10-392-1100, Sale of Surplus Equipment is increased from $5,000 to $9,172.

j. General Fund Revenues, Account Number 10-392-2000, Property & Insurance Reimbursement is increased from $-0- to $10,907.

k. General Fund Revenues, Account Number 10-390-0000, Cemetery Revenues is increased from $12,000 to $14,172.

l. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is decreased from $785,116 to $760,925.

GENERAL CAPITAL PROJECT FUND

a. General Capital Project Fund Revenues, Account Number 11-380-0000, Transfer from General Fund is increased from $247,060 to $273,068.

b. General Capital Project Fund Revenues, Account Number 11-380-1000, Skate Park Donations, is decreased from $31,525 to $9,000.

c. General Capital Project Fund Expenditures, Account Number 11-171-0900, Skate Park Const. Expense is increased from $104,081 to $107,564.

WATER AND SEWER FUND

a. Water and Sewer Fund Revenues, Account Number 30-361-0000, Interest Earned is increased from $10,000 to $16,000.

b. Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated is decreased from $291,199 to $285,199.

CAPITAL RESERVE FUND

a. Capital Reserve Fund Revenues, Account Number 75-361-0000, Interest on Investments – General Fund is increased from $9,500 to $10,500.

b. Capital Reserve Fund Revenues, Account Number 75-361-1000, Interest on Investments – Water & Sewer is increased from $7,500 to $10,500.

c. Capital Reserve Fund Revenues, Account Number 75-399-0000, Fund Balance Appropriated – General Fund is decreased from $325,750 to $324,750.

d. Capital Reserve Fund Revenues, Account Number 75-399-1000, Fund Balance Appropriated – Water & Sewer is decreased from $207,500 to $204,500.

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 6th day of March 2007.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-03-06-01

D. Approve Tax Refund
Ford Miller Holding Company LLC – Pin number 171109250179 – Approved for refund of $12.62 for property located on Woody Street, located outside the City Limits and incorrectly coded by McDowell County as being inside the City.

E. Approve Waiver of Civil Citation Late – Ms. Patricia Stinson – Ticket Number 002800 - $25.00 – Late fee waived due to statement by Ms. Stinson that she did not see the original ticket and due to the fact that she paid the original $10.00 ticket after she learned she had received a ticket.

F. Approve Resolution Directing Clerk to Investigate the Sufficiency of a Petition for Voluntary Non-Contiguous Annexation – Pyatt Property – Yancey Road:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-58.1 – PYATT – YANCEY ROAD - 2007

WHEREAS, a petition requesting annexation of an area described in said petition was received on February 26, 2007 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 W 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 6th day of March, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number: R-07-03-06-01

INTRODUCTION OF NEW EMPLOYEE: The City Manager introduced his new selection for the position of Public Works Director/Engineer, Chris Hollifield. The City Manager advised that Mr. Hollifield, who started work on February 26, came well qualified and was off to a good start with the City.

The Mayor and Council welcomed Mr. Hollifield to the City and wished him a long tenure with the City of Marion.

PUBLIC HEARING – REZONING REQUEST – WEST HENDERSON STREET: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that an application for Zoning Map Amendment was submitted to the City of Marion on January 11, 2007. The Applicant is Gurley Properties LLC.

Ms. Cotton stated that the Applicant is requesting an amendment to the Official Zoning Map from R-2 General Residential to C-2 General Business Zoning District to allow for the future development of commercial use on the subject property. Currently the property is zoned both R-2 General Residential and C-2 General Business. This request would amend the property to the C-2 General Business Zoning District.

The property is located on West Henderson Street with the Parcel Identification Numbers (PIN) 1701.15-54-1850, and 1701.15-54-1714.

Ms. Cotton reported that the existing use of the properties includes two residential dwelling unit that front on Old West Henderson Street. Based on the McDowell County Property Record Card, the properties are approximately 0.71 acres.

The subject properties are surrounded by a mix of commercial, industrial and residential uses. These uses include Broyhill, McDonald's, the Ingles Shopping Center, as well as single-family residential dwelling units located on Hudgins Street. The existing and proposed zoning district is shown in figures one and two with enhanced aerial photography.

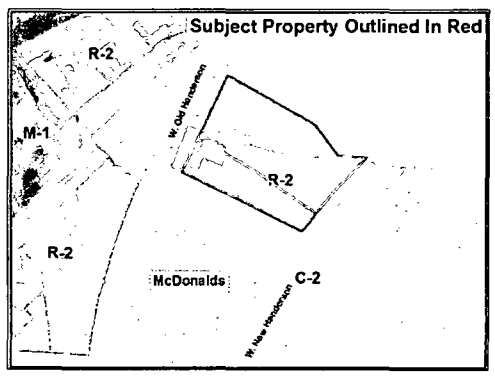


Figure One: Existing Zoning District

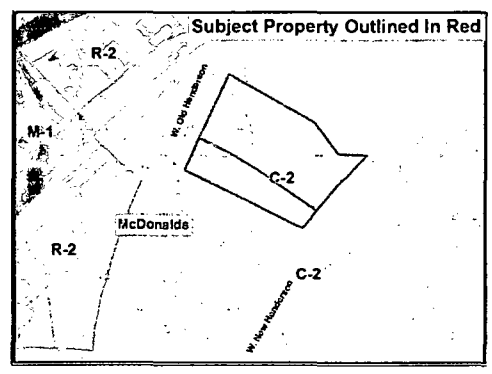


Figure Two: Proposed Zoning District

Ms. Cotton stated that a proposed use of the property was not indicated in the application for zoning map amendment. However, in the past there have been inquiries as to the permitted use of the property for commercial purposes. The property for which a rezoning is being requested is located on a main thoroughfare making it an ideal location for businesses needing highway access. Historically, the surrounding area has been developed for commercial uses. One (1)

residential dwelling unit exists on each of the subject properties and each would be considered a non-conforming use if the Official Zoning Map were to be amended. However, it is the Applicant's intent to market the property for commercial use. Under the current City Code once a non-conforming use is removed or destroyed it cannot be replaced.

Ms. Cotton advised that the Planning Board recommends Approval of the proposed C-2 General Business Zoning District designation in a 5-0 vote at duly noticed public meeting on March 1, 2007.

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 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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of Gurley Properties LLC for property with the Parcel Identification Number 1701.15-54-1850 and 1701.15-54-1714 from R-2 General Residential to the C-2 General Business Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on March 1, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 6th day of March 2007.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-07-03-06-03

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present at this meeting.

AWARD CONTACTS – STREET RIGHT OF WAY MOWING AND OAK GROVE CEMETERY MOWING: The City Manager advised that, as discussed previously with Council, bids were sought for the City's Street right of way and Cemetery mowing contracts. Three bids were received for each contract.

The City Manager reported that the low bid for the Street right of way mowing and Cemetery mowing contracts were both received from Cutting Edge Lawn Care (Judy Kelley owner). Ms. Kelley bid the same amount, $1,250 per week for street right of way mowing and $800 per week for the Cemetery mowing contract, as the City had paid last year to the company she and her husband formerly owned, Landworx. The next low bids were several hundred dollars per week higher. Given the price differential and the fact that Ms. Kelley and her crew have familiarity with the City's expectations, the City Manager stated that he would recommend that Council award the contracts for the Street right of way and Cemetery mowing to Cutting Edge Lawn Care.

The City Manager also suggested that Council use the same contract as was previously signed by Mr. and Ms. Kelley, that would seek to lock in the price for two more years and give the City broad termination rights for non-performance during the mowing season or for any reason at the end of the mowing season. The City Manager further recommended that a provision be added to the contract stating that the contractor could not employ for purposes of this contract any person convicted of a sex crime or violent crime.

A discussion followed. Council members agreed that the contract provision to prohibit the contractor from employing people working on this contract who have been convicted of a sex crime or violent crime would be a good idea.

Upon a motion by Councilman Little, seconded by Councilman Martin, Council voted unanimously to award the contract for Street right of mowing to Cutting Edge Lawn Care in the amount of $1,250 per week and to award the contract for Oak Grove Cemetery mowing to Cutting Edge Lawn Care in the amount of $800 per week, with stipulations that a provision be added to both contracts stating that no one convicted of a sex or violent crime shall be allowed to be employed by the contractor and work on this contract.

AWARD CONTRACT – LANDSCAPING SERVICES: The City Manager advised that bids were sought for the City's landscaping contract, which includes planting and maintenance of downtown trees and flowers and mowing at several City buildings such as City Hall, the Community Building, the Police Department and the Depot. The City Manager stated that two bids were received for this contract. The low bid was received from Cutting Edge Lawn & Landscape (Clay Duncan owner), at an amount of $476.00 per week, $19.00 per week less than the bid of the City's current landscaping contractor, L.L. Moore Landscapes & Lawn Service (Lawrence Moore owner). The City Manager reported that the City currently pays $487.23 per week to Mr. Moore to perform this service. The City Manager stated that, after talking to staff, he would recommend that the City stay with Mr. Moore for this contract due to his more extensive knowledge of flowers and trees and City expectations. The City Manager advised that State law set no requirements for bidding of service contracts or for accepting low bids.

A discussion followed.

Upon a motion by Councilman Little, seconded by Martin, Council voted unanimously to award the City's Landscaping contract to L.L. Moore Landscapes & Lawn Service (Lawrence Moore owner) in the amount of $495.00 per week.

CONSIDER APPROVAL OF CONTRACT WITH HERSEY METERS: The City Manager advised that, as previously reported, the City has struggled to have as high a percentage of automated water meters read by radio frequency as desired, due to problems with the Ramar

radio transmitter. The City Manager stated that Hersey has replaced about 730 radio units for the City at no charge, but that the City still has between 800-1100 radio units that are defective. The registers are fine in almost all cases for these units, but the radios do not transmit a signal.

The City Manager advised that he, Harriett and Steve Basney met recently with Hersey to demand a solution to the City's on-going problems with the water meters. The City Manager reported that Hersey came back with a written offer to provide the City 800 radio units at no charge, plus up to 300 additional meter registers and/or radio units (based on the City's diagnosed problem for zero read meters), on the condition that the City purchases 2,500 radio units for a special discount price of $40 each. The City Manager stated that, if Hersey replaces around 1,100 radio units for no charge and the City purchases 2,500 units, the City will be able to remove all the remaining Ramar radio units from the system. The City Manager advised that many of the Ramar units have not failed, but staff feels that it is a matter of time before most or all do stop transmitting. Hersey will also provide the City with a new 10 year warranty on the radio units.

The City Manager reported that the City has over $115,000 left in the Water Meter Capital Project Fund, which came in well under budget, so the purchase of 2,500 new radio units would still keep the City within the original $900,000 project budget.

A discussion followed. Mayor Clark stated that this is the best deal the City will get and that the proposal should be accepted. He stated that the technology was good and would continue to be a benefit for the City.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Little, Council voted unanimously to authorize the acceptance of the agreement with Hersey Meters as stated above.

CONSIDER ADOPTION OF REVISED ANIMAL ORDINANCE: The City Manager advised that, for over a year, Council has discussed the idea of revisions to the City's Animal Ordinance, particularly in regard to dangerous animals. An advisory committee had recommended setting up a Dangerous Animals Appeals Board, to allow for due process requirements, and setting up additional standards for animal care and alternate punishments for violators of the ordinance. The City Manager stated that in August, Council adopted an ordinance, to take effect in November. The effective date of this ordinance was later delayed until April. The City Manager reported that he and Police Chief Elliott have discussed at length the ordinance and its practical enforceability. Based on this discussion and in-depth review of the ordinance, the City Manager advised that he had drafted a revision to the Animal Ordinance previously adopted by Council.

The City Manager reported that the revised Animal Ordinance would take away the microchip implantment and spaying and neutering requirements. Instead, civil citations would be incurred for violations. The civil penalties follow the City's general pattern of punishment for ordinance violations. The City Manager also proposed that Council constitute the Dangerous Animals Appeals Board, since Council hears all other non-zoning appeals and would be the best body to hear dangerous animal appeals as well, instead of creating another advisory board.

A discussion followed.

Councilman Edwards stated that it has taken a long time and a great deal of work to arrive at this point, but that he believed that the proposed Ordinance served the purpose of protecting the public from Dangerous Animals.

Councilman Cuthbertson stated that, despite the proposed changes, the original intent of Council remains in the Ordinance.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Edwards, Council voted unanimously to adopt the following Ordinance:

ORDINANCE
AMENDING CHAPTER 3
ANIMALS
MARION CITY CODE

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

Section 1. That Chapter 3, Animals, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 3 is amended by deleting Chapter 3, Animals, in its entirety and replacing it with the following:

Chapter 3 ANIMALS*

***Cross reference(s)**--Human and animal waste, § 9-4; location of animal pens, § 9-7; removal of dead animals, § 9-42; animals and chicken fights prohibited, § 11-10.

Sec. 3-1. Definitions.

The following words and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shelter means any premises designated by action of the city for the purposes of impounding and caring for any animal found running at large in violation of this chapter.

City animal control officer means the person designated by the city as its enforcement officer.

County animal warden means the person designated by the county as its enforcement officer.

Dangerous dog means a dog that:

1. Without provocation has killed or inflicted severe injury on a person; or
2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed under the definition of "potentially dangerous dog"; or
3. Is owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or
4. Has inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

At large means any dog or cat when it is off the property of its owner and not under physical control of a competent person.

Kennel means any person engaged in the commercial business of breeding, buying, selling or boarding five (5) or more dogs or cats.

Owner means any person that owns, keeps or harbors a dog or cat.

Owner's real property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or townhouse development.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Potentially dangerous dog means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

1. Inflicted an unprovoked bite on a person that resulted in medical attention; or
2. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or
3. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Restraint means a dog or cat that is:

(1) Controlled by a leash;

(2) Within a vehicle being driven or parked on the street and unable to bite or scratch persons outside the vehicle; or

(3) Within the property limits of its owner or keeper.

Severe injury means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery, hospitalization or medical attention.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

(Ord. of 2-4-86, § 8-2001)

Cross reference(s)--Definitions and rules of construction generally, § 1-3.

Sec. 3-2. Rabies vaccination required.

No person shall own, keep or harbor any dog or cat over the age of six (6) months within the city limits unless it has been vaccinated for rabies and the rabies vaccination is current, meaning that the animal has received its first rabies vaccination within the preceding 12 months or its second or subsequent rabies vaccination within the previous 36 months.

(Ord. of 2-4-86, § 8-2002)

State law reference(s)--Rabies, G.S. § 130A-184 et seq.

Sec. 3-3. Enforcement.

The provisions of this chapter shall be enforced by the designated city animal control officer or the police department or both, under the organizational arrangement deemed appropriate by the City Manager; provided that the City shall at all times maintain a person designated as animal control officer.

(Ord. of 2-4-86, § 8-2003)

Sec. 3-4. Restraint.

The owner shall keep his dog or cat under restraint at all times and shall not permit the dog or cat to be at large.

(Ord. of 2-4-86, § 8-2004)

State law reference(s)--Dogs running at large at night, G.S. § 67-12.

Sec. 3-4.1. Tethering of animals.

(a) At no time shall a dog or cat deemed dangerous or potentially dangerous be fastened, chained or tied on any property within the City Limits of the City of Marion.

(b) All dogs, cats, horses or other domesticated animals, except for those described in subsection (a) above, may be housed, fenced or tethered. All dogs, cats, horses or other domesticated animals that are tethered shall be tethered in such a manner as to prevent said animal from being within ten (10) feet of any public or private street, sidewalk or pedestrian walkway. All dogs, cats, horses or other domesticated animals shall be tethered at least five (5) feet from any property line not adjacent to a public or private street, sidewalk or

pedestrian walkway. Said animals shall be tethered with a metal chain or cable of a size appropriate to the size of the animal and not harmful to the animal.

Sec. 3-4.2. City Council to serve as Dangerous Animals Appeals Board.

In accordance with N.C.G.S. 67-4.1 (c), the Marion City Council shall constitute the Dangerous Animals Appeals Board.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-4.3. Determination of dangerous or potentially dangerous dog or cat; appeal.

(a) Upon receipt of a complaint or observation that a dog or cat may have exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog", as found in Section 3-1 of this Chapter, sufficient to designate such dog or cat as dangerous or potentially dangerous, the animal control officer shall investigate the specific charges. If the animal control officer determines that the dog or cat is dangerous or potentially dangerous, the owner of the dog or cat shall be notified in writing by certified mail, return receipt requested, or by personal service. The notice shall include a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code and state that the owner's dog or cat has been determined by the City to be dangerous or potentially dangerous, list the reasons for the determination and list the steps that must be taken under this ordinance, including confinement requirements listed under Section 3-5, for the animal to remain in the City. Upon receipt of the notice of determination, the owner may appeal the determination by filing a written appeal stating his or her objections to the determination with the City Manager within three (3) days. Upon receipt of the appeal, the City Manager shall schedule a hearing with the Dangerous Animal Appeals Board within a reasonable time at a Regular City Council meeting. The City Council shall render a decision upholding or overturning the determination of the animal control officer within sixty (60) days after receiving said appeal. Any appeal from the City Council shall be taken to Superior Court, in accordance with N.C.G.S. 67-4.1(c).

(b) Upon receipt of a complaint or observation that a dog or cat previously determined to be dangerous or potentially dangerous may have again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall investigate the charges. If the animal control officer determines that a dog or cat previously determined to be dangerous or potentially dangerous has again exhibited one or behaviors listed under the definition for "Dangerous Dog" or "Potentially Dangerous Dog" as found in Section 3-1 of this Chapter, or has been found at large in violation of Section 3-4 of this Chapter, the animal control officer shall issue a civil citation in accordance with the provisions of Sec. 1-16 – 1-18 of the City Code and transfer and impound the animal at the shelter designated as the McDowell County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner. The owner will not permitted to keep the animal within the City Limits of the City of Marion at any point in the future.

State law reference(s)—Dangerous Dogs, G.S. § 67-4.1 et seq.

Sec. 3-5. Confinement of dangerous or potentially dangerous dog or cat; muzzles.

The owner of every dangerous or potentially dangerous dog or cat shall confine the animal within a secure building or secure enclosure and not take it out of the secure building or secure enclosure into a public domain unless it is securely muzzled with a wire or cage muzzle. Such secure building or secure enclosure must be locked with a childproof locking device, must be of a height appropriate for the size of the animal to keep the animal confined inside and must be constructed of a material sufficient to keep the animal restrained (screen doors, windows, porches and other screen materials are not deemed sufficient for purposes of this subsection). In addition, the owner must prominently display in public view on the property a sign stating "Beware of Dog".

(Ord. of 2-4-86, § 8-2005)

State law reference(s)--Confinement or leashing of vicious animals, G.S. § 130A-200; Dangerous Dogs, G.S. § 67-4.1 et seq..

Sec. 3-6. Complaint procedures and impoundment.

When the police department receives a complaint that a dog or cat is at large, the person making the complaint shall be asked for permission to locate an animal cage on their property. If permission is granted, city employees will place a baited animal cage on the property of the person making the complaint. When a dog or cat is caught in the cage, the animal will be transferred and impounded at the shelter designated as the McDowell

County Animal Shelter. The police department will notify the owner of any animal transferred to the animal shelter, if the animal has a collar on which is written the name, address and phone number of the owner. If the complaining party refuses to allow the cage to be located on their property no further action will be taken unless the animal has attacked someone or appears to be dangerous, potentially dangerous or sick, in which case the police department will transport the animal to the McDowell County Animal Shelter. The owner of the animal may appeal the taking of the animal and the determination that the animal is dangerous, potentially dangerous or sick by filing a written appeal stating his or her objections to the taking of the animal and the determination that the animal is dangerous, potentially dangerous or sick with the City Manager within three (3) days. Upon receipt of the appeal, the City Manager shall schedule a hearing with the Dangerous Animal Appeals Board within a reasonable time at a regular City Council meeting. The City Council shall render a decision upholding or overturning the determination of the animal control officer within sixty (60) days after receiving said appeal. Any appeal from the City Council shall be taken to Superior Court, in accordance with N.C.G.S. 67-4.1(c). Pending a final decision by the City Council, the City shall request the Animal Shelter not to euthanize the animal in question, on the condition that the owner of the animal agrees to pay any applicable impoundment fees charged by the McDowell County Animal Shelter. However, the City cannot provide a guarantee that the animal will not euthanized by the McDowell County Animal Shelter prior to the appeal being filed, or even after the appeal is filed, in the event that the McDowell County Animal Shelter does not comply with the request of the City not to euthanize the animal in question.

(Ord. of 2-4-86, § 8-2006)

Sec. 3-7. Redemption of impounded animals.

The owner may reclaim his impounded dog or cat when he complies with regulations established by the McDowell County Commissioners and City Ordinances as found in this Chapter and pays the necessary impoundment fees imposed by the county.

(Ord. of 2-4-86, § 8-2007)

Sec. 3-8. Barking dogs.

It shall be unlawful for any dog owner to keep or have within the city a dog that habitually or repeatedly barks in such a manner or to such extent that it is a public nuisance.

(Ord. of 2-4-86, § 8-2008)

Sec. 3-9. Investigation.

To discharge the duties imposed by this chapter and to enforce its provisions the city animal control officer, any agent of the city animal control officer or any police officer may obtain an administrative search warrant to enter any premises where a dog or cat is kept or harbored and may require the animal's owner to show proof the animal has a current rabies vaccination, as described in Section 3-2.

(Ord. of 2-4-86, § 8-2009)

State law reference(s)--Administrative search and inspection warrants, G.S. § 15-27.2.

Sec. 3-10. Interference with animal control officer.

No person shall interfere with, hinder, or molest any agent of the city animal control officer in performing any of his duties or seek to release any animal from the custody of the city animal control officer, his agents or the instrument of capture except as provided in this chapter.

(Ord. of 2-4-86, § 8-2010)

Sec. 3-11. Records.

(a) The police department shall keep or cause to be kept accurate and detailed records of the impoundment of all animals that come into its custody.

(b) The police department shall keep or cause to be kept accurate and detailed records of all bite cases reported and of the investigation of the bites.

(Ord. of 2-4-86, § 8-2011)

Sec. 3-12. Fowl running at large prohibited.

It shall be unlawful for any person to permit turkeys, geese, ducks, chickens, or other domestic fowl to run at large upon any land in the city.

(Ord. of 2-4-86, § 8-2012)

Sec. 3-13. Grazing prohibited.

No person shall permit any cattle, sheep or other animals to graze, or tie such animal up, on any vacant lot or within fifty (50) feet of any dwelling or street within the city.

(Ord. of 2-4-86, § 8-2013)

Sec. 3-14. Hitching animals.

No person shall hitch any horse or other animal to any of the trees, lampposts, electric lights, power, telephone or telegraph poles, mailboxes, wires or hydrant on any of the streets, sidewalks, squares or parks in the city.

(Ord. of 2-4-86, § 8-2014)

Sec. 3-15. Hogs prohibited.

It shall be unlawful for any person to keep a hog within the corporate limits of the city.

(Ord. of 2-4-86, § 8-2015)

Sec. 3-16. Restriction as to certain animals in public places.

No person shall permit his horse, mule, donkey, hog, sheep, goat, or cattle of any kind, to run at large in the streets, sidewalks, parks, squares or cemeteries of the city. Horses or mules which are being used for riding or driving may be fastened to hitching posts or blocks, but no person shall stake or otherwise fasten any such animal, for grazing purposes, in any of the streets, sidewalks, parks, squares, or cemeteries of the city, nor shall any person feed any such animal in any of the streets, sidewalks, parks or squares of the city.

(Ord. of 2-4-86, § 8-2016)

Cross reference(s)--Streets, sidewalks and other public places, Ch. 15.

Sec. 3-17. Cleanliness and location of animal enclosures.

(a) Every stable and place where cattle, horses, chickens, geese or other animals are kept, shall be maintained in a clean and healthy condition at all times. No person shall erect upon any lot any cow, horse, mule, sheep or goat stable or any coop or pen for the keeping of any chickens, geese, turkeys, ducks, or any other gallinaceous birds, within one hundred (100) feet of any street or dwelling.

(b) This section shall not apply to animals located within the city prior to the date of adoption of the ordinance from which this section derives. However, the number of animals shall not be increased nor shall the animals be replaced or relocated to some other property in violation of this section.

(Ord. of 2-4-86, § 8-2017)

Cross reference(s)--Health and sanitation, Ch. 9.

Sec. 3-18. Bird sanctuary; eradication of pests.

(a) The entire area embraced within the corporate limits of the city is hereby designated as a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, however, that if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or

property in the opinion of the city council, then the city council may bring the matter to the attention of the state commissioner of agriculture or state pesticide board which shall make such disposition of the matter as may be appropriate pursuant to the provisions of G.S. section 113-300.2.

(Ord. of 2-4-86, § 8-2018)

State law reference(s)--Declaring wild animal or bird a pest, G.S. § 113-300.2; bird sanctuaries, G.S. § 160A-188.

Section 3. This ordinance shall become effective on April 1, 2007.

Adopted this the 6th day of March, 2007.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-03-06-02

APPROVE REVISED GARBAGE PLAN DESCRIPTION/APPLICATION: The City Manager advised that since the last time Council approved the description of the City's contracted garbage service plans, the City has annexed some mobile home parks. Staff has interpreted that a mobile home park with more than 10 mobile homes is required to have a dumpster (at the low rate of $7 per month for one pick-up per week), rather than be eligible for door to door garbage collection. However, the City Manager stated that the approved commercial garbage plan description does not list mobile home parks, so that he would propose approving the attached garbage plan description and application to add mobile home parks to Plan "B".

The City Manager also advised that off of Highway 221 North Business, there is now a campground in the City on the Catawba River. This campground has inquired about qualifying for a dumpster at the reduced residential rate, since they have some permanent residents (about six at the current time). The campground also leases spaces on a short term basis. City Staff has discussed this request and believes that a campground should be treated as a business, unless it truly has all permanent residents, which this one does not. Therefore, the City Manager stated that he would not propose adding campgrounds to the list of residential developments under Plan "B".

Mayor Clark stated that residential pickup applying to campgrounds may not be fair and suggested that additional research be conducted to determine how other cities handle campgrounds.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Cuthbertson, Council voted unanimously to approve the following revised City Garbage Plan description/application:

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/MOBILE HOME PARKS - All apartment complexes, townhouse/condominium developments or mobile home parks having more than ten (10) apartment, townhouse or condominium units or mobile homes will be required to have a dumpster (metal container). The monthly charge for service is based on the number of pick-ups.

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:

The City Manager stated that staff would conduct research into how campgrounds were treated by other cities for garbage service and bring back such information to Council at an upcoming meeting.

SCHEDULE CITY COUNCIL PLANNING SESSION: It was the consensus of Council to schedule the next planning session for Tuesday, March 20 at 6:00 P.M. with dinner to be served at 5:30 P.M. prior to the meeting. The regular Council meeting on March 20 had already been cancelled by prior action of Council.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that he sent a letter to the Attorney General's office, asking for assistance with requiring Charter to provide the City's requested City government access channel.

The City Manager advised that Arbor Day is scheduled for Friday, March 23, at 9:00 a.m. at Marion Elementary. The program will continue with a tree planting at the Skate Park.

The City Manager advised that a meeting was held with Mayor Clark, Senator Joe Sam Queen, Rep. Mitch Gillespie, Mayor Garland Norton of Old Fort, Chuck Abernathy, Dean Buff, Rod Birdsong and representatives from McGill met with representatives from the N.C. Department of Crime Control and Public Safety and the N.C. Floodplain Mapping Program on February 28 in Raleigh to continue to push flood mapping appeals. The State essentially continues to defend the process and states that they are reviewing the appeals. The City Manager stated that, within 30 days, revised maps are supposed to be presented for local government to review.

Mayor Clark stated that the State representatives at this meeting were civil and pleasant, but not particularly helpful or supportive. Mayor Clark stated that N.C. Secretary of Crime Control and Public Safety Bryan Beatty told him that he would do what he could to assist with this problem. The City Manager advised that after the February 22nd Public Meeting to kick-off the public input process for the Land Use Comprehensive Plan and the Downtown Streetscape/Traffic Flow Plan, committee meetings have been set for each area. The committees will meet over the next few months and develop a recommendation that will be reviewed by staff and the appropriate advisory boards (Planning Board, DAC) prior to presentation to Council. Notices have been sent out inviting pastors of churches and other interested citizens to attend a follow up meeting at the Depot on March 15.

The City Manager advised that he has submitted a new Federal Grant request for our wastewater improvements project to Senator Dole, Senator Burr and Congressman Shuler. Federal funding may be a longshot, but is certainly worth the effort to apply. The City Manager also reported that a Clean Water Management Trust Fund grant application, in which the City requested $500,000 in funding for the wastewater improvements project, was submitted to the State on March 1.

The City Manager also noted that Norfolk Southern Railway had consented to the City's request for a six month extension to the negotiating period for the possible City acquisition of the old Peavine Rail Line.

CLOSING COMMENTS:

Councilman Cuthbertson asked how many bridges the City has that have to be inspected.

The City Manager advised that the City has four bridges, all of which must be inspected every two years.

Councilman Cuthbertson asked if any of the City's bridges were on the State's deficiency list, which was recently publicized Statewide.

The City Manager stated that he did not believe that any of the City's bridges were on this list.

CLOSED SESSION – DISCUSS ACQUISITION OF REAL PROPERTY UNDER N.C.G.S. 143-318.11(a)(5): Upon a motion by Councilman Little, seconded by Councilman Edwards, Council voted unanimously to go into Closed Session in accordance to 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 Edwards, seconded by Councilman Martin, 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 Martin, seconded by Councilman Owenby, 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 Tuesday evening, March 20, 2007 at 6:00 P.M. in the Conference Room located at 194 North Main Street for a Planning Session.

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

GUESTS PRESENT: None

PLANNING SESSION: The following items were discussed during the Planning Session:

RECYCLING PROGRAM: Ideas for making the recycling program more cost effective were discussed. The City Manager was directed to explore several options for improving the cost effectiveness of the City's recycling program.

HONORING OF DR. MARTIN LUTHER KING, JR.: Council agreed that no outside committee would be used to review this idea. Instead, the Street Committee will look at possibilities for naming a street or other public facility after Dr. King and will bring a recommendation back to Council.

FORECLOSURE OF DILAPIDATED HOUSES: Council agreed that the City should foreclose on properties for which demolition expenses of more than $1,500 had been incurred. The City Manager will obtain an estimate from the City Attorney for performing such foreclosures.

Regarding foreclosed properties for which the City has received no bids, Council stated that the City should look at an open listing for such properties with the McDowell County Multiple Listing Service. Council thought that a commission of 10 percent paid to a realtor that brought forth a buyer would be reasonable.

CATAWBA RIVER GREENWAY/MCDOWELL HOUSE: Mayor Clark suggested that the City appropriate $100,000 toward the acquisition and preservation of the McDowell House on US 70 West and challenge McDowell County to do the same. Mayor Clark stated that this level of local government support could be seed money to obtain private funds. Council stated that a plan would be needed for the building and that any City donation would be one-time money. Council stated that the City would not be responsible for on-going maintenance of the building, although assistance could perhaps be given to maintaining part of the grounds that could be used as a parking lot/trailhead for a future Catawba River Greenway. Council also stated that the donation would be conditioned on McDowell County contributing a like amount and adequate private funds being raised. Council authorized for this idea to be communicated to the McDowell House Preservation Committee at a meeting on March 30.

COMMUNITY BUILDING/DEPOT DAMAGE: The City Manager stated that vandalism and damage at the Community Building and Depot had been greatly reduced, due to some administrative changes in rental procedures. The City Manager stated that he would not recommended increases in rents or deposits or requiring a City employee or contracted security to be present at events at the buildings at the present time, but that the matter could be revisited in the future if circumstances change.

YOUTH COUNCIL: Council agreed that no one had been identified yet who could coordinate a potential City Youth Council. Therefore, the idea of a Youth Council will be taken under advisement for possible future action.

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

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager

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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, 2007 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 Edwards advised that he would have to leave early due to a speaking engagement at McDowell Technical Community College.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Chris Hollifield, Public Works Director/Engineer; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Bill Hall 127 Anne Street, Rutherfordton, NC; Gary Walker, 72 N. Madison Street, Marion, NC; Cliff & Sharon McLarty, N. Madison Street, Marion, NC; Kim Thomas, Marion, NC; Ted Remington, N. Madison Street, Marion, NC; Nancy Clark, 330 Fleming Avenue Marion, NC; Sylvia Davis, Marion, NC; Ansel, Amy, Sarah and Emily Clark, Richard Drive, Marion, NC.

CONSENT AGENDA: Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the consent Agenda as follows:

A. Approval of Minutes - March 6, 2007 Regular Session, March 6, 2007 Closed Session and March 20, 2007 Planning Session Minutes

B. Approve Certificate of Sufficiency – Voluntary Satellite Annexation – Pyatt Property – Yancey Road in accordance with G.S. 160A-58.1

CERTIFICATE OF SUFFICIENCY – YANCEY ROAD/PYATT ANNEXATION - 2007

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 3rd day of April, 2007.

(Seal)

J. Robert Boyette, City Clerk

C. Approve Resolution Fixing the Date of Public Hearing on the Question of Annexation – Voluntary Satellite Annexation – Pyatt Property Yancey Road

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.1 – YANCEY ROAD/PYATT - 2007

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 1, 2007.

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

Being all of Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the Subdivision of the Franklin Property, according to map of the same by J. L. Field, Licensed Surveyor, as recorded in McDowell County Map Book 2, Page 102; and more particularly described as follows:

BEGINNING at a point where the Eastern margin of the right-of-way of Yancey Road intersects with the Eastern margin of the right-of-way of Midway Street, and runs North 53° 18' 51" East 154.66 feet to a point in the Southern margin of the right-of-way of Midway Street; thence continuing with the Southern margin of the right-of-way of said Midway Street South 48° 41' 09" East 120 feet to a stake and then South 56° 07' 42" East 179.40 feet to an iron pin; thence continuing South 42° 35' 17" West 249.60 feet, then South 31° 16' 51" West 80 feet , then South 22° 18' 51" West 95.09 feet; thence continuing North 28° 51' 21" West 70.80 feet; then North 40°51' 21" West 232.57 feet; thence North 20° 15' 21" East 201.46 feet to the BEGINNING, containing 2.542 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 3rd day of April, 2007.

A. Everette Clark,
Mayor

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number: R-07-04-03-01

D. Endorse Governor's Proclamation – Spring Litter Sweep 2007 – April 14-28, 2007

E. Approve Waiver of Charges for Collection of Bulky Trash – Spring Litter Sweep 2007 – Approval was given by Council to waive charges for collection of bulky trash items from April 16-20, as part of Spring Litter Sweep 2007.

F. Approve Waiver of Civil Citation – Diane Ray – Citation Number P003455 – March 15, 2007 – Parking within 15 feet of a fire hydrant - $10.00 – Council approved the waiver of the penalty for this civil citation due to Ms. Ray being parked on the property of Marion Elementary School and not in a location which blocked street side access to the fire hydrant.

G. Approve Budget Ordinance Amendment

CITY OF MARION, NORTH CAROLINA
2007-2007 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 2006-06 as adopted by the Marion City Council on the 20th day of June, 2006 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Inspections, Account Number 10-500-5000, Code Enforcement is increased from $31,000 to $43,500.

b. General Fund Expenditures, Sanitation, Account Number 10-580-1700, Auto Supplies & Maintenance is increased from $30,000 to $40,000.

c. General Fund Expenditures, Recreation, Account Number 10-620-6000, Mountain Glory Expenses is increased from $18,000 to $24,700.

d. General Fund Revenues, Account Number 10-330-0000, Planning & Zoning Fees is increased from $1,500 to $4,000.

e. General Fund Revenues, Account Number 10-334-1600, Federal Drug Asset Revenue is increased from $-0- to $5,717.

f. General Fund Revenues, Account Number 10-335-0100, MIT-Wellness Grant is decreased from $2,820 to $1,070.

g. General Fund Revenues, Account Number 10-341-1000, Court Costs, Fees & Charges is increased from $6,000 to $8,255.

h. General Fund Revenues, Account Number 10-341-1100, Parking Tickets / Civil Citations is increased from $6,000 to $9,000.

i. General Fund Revenues, Account Number 10-342-1350, Explorer Post Revenue is increased from $-0- to $1,140.

j. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is increased from $760,925 to $777,263.

WATER AND SEWER FUND

a. Water and Sewer Fund Expenditures, Account Number 30-660-8000, Transfer to Capital Projects is increased from $100,000 to $120,000.

b. Water and Sewer Fund Expenditures, Account Number 30-810-4500, Contracted Services is increased from $230,000 to $294,000.

c. Water and Sewer Fund Revenues, Account Number 30-377-0500, DOT I-40 Rest Area Reimbursement is increased from $-0- to $64,000.

d. Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated is increased from $285,199 to $305,199.

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 2007.

A. Everette Clark, Mayor

ATTEST:
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-04-03-01

SPECIAL PRESENTATION BY MAYOR PRO TEM STEVE LITTLE: Mayor Pro Tem Steve Little stated that it was with great pleasure he make a very special presentation to Mayor Everette Clark. Mayor Pro Tem Little stated that he would like to honor Mayor Everette Clark on an achievement that is close to unprecedented in Marion and in most local governments in our State: attaining 35 consecutive years of service. Mayor Pro Tem Little provided the following historical information about Mayor Clark's association with the City of Marion:

On February 13, 1972 former Mayor Albert M. Neal passed away. On February 22, 1972, the City Council appointed Mayor Pro Tem James H. Segars as Mayor to replace the late Mayor Neal. At the same meeting, Councilman William R. Ledbetter was appointed Mayor Pro Tem to replace former Mayor Pro Tem Segars. These appointments left a vacancy on the City Council.

On March 22, 1972, the City Council appointed Everette Clark to fill the unexpired term of the newly appointed Mayor Segars on City Council. On April 4, 1972, Robert G. Jarrett, Clerk of Court for McDowell County, administered the oath of office to Councilman Clark.

On November 6, 1973, Councilman Clark was elected to City Council with the highest vote total of the four candidates running for Council.

On December 6, 1977, Everette Clark was elected as Mayor Pro Tem by the City Council.

On November 7, 1985, Everette Clark was elected as Mayor, replacing the retiring Mayor James H. Segars. Mayor Clark was administered the oath of office on December 3, 1985 and has served as Mayor ever since.

Mayor Pro Tem Little reported that the voters of Marion have shown their confidence in Everette Clark by electing him to office nine consecutive times since his initial appointment to City Council in 1972.

Mayor Pro Tem Little noted that Mayor Clark has served as President of North Carolina League of Municipalities and numerous other committees with the League as well as the National League of Cities. He has served many thousands of hours in public service for the City of Marion.

Mayor Pro Tem Little presented Mayor Clark with a City of Marion 35 Year Service Pin.

Mayor Clark thanked Mayor Pro Tem Little for all his kind words.

Mayor Clark's wife, Nancy and other family members were present to share in this recognition.

Council Members, Family and friends all shared kind words about Mayor Clark.

PUBLIC APPEARANCE – DOWNTOWN ADVISORY COMMITTEE PROMOTION COMMITTEE: Ms. Sharon McLarty and Ms. Kim Thomas, members of the Downtown Advisory Committee Promotions Committee, appeared before Council to discuss the First Friday concert series.

Ms. McLarty advised that this year the Downtown Advisory Committee's Promotions Committee took the responsibility of booking bands for this year's First Friday Night Concerts. The musician/bands are booked as follows:

May 4	Kat Williams Jazz/Rock
June 1	Jim Huskins Band – Music /Storytelling/Livermush Festival
July 6	Street Dance, DJ With Impersonators
August 3	Brother Dave Band
September 1	Teaser and the Firecatz

Ms. McLarty stated that the total cost for this year's concerts comes to $3,300.00, with no funds available to the Committee at the beginning of the year to assist with scheduling the concerts. Ms. McLarty advised that as of March 15, 2007, the committee has received $1,100.00 to cover the cost of the bands.

Ms. McLarty stated that the Promotions Committee was working on a sponsorship program for the concerts, through e-mail, mail and personal contacts. Ms. McLarty stated that it was the intention of the Committee to raise enough sponsorship money to pay the musicians/bands and have an overflow of funds for the 2008 concert season.

Ms. McLarty reported that the concert season will have food vendors available to the public. The Committee will ask local downtown restaurant owners to participate as food/drink vendors and that the Committee hopes to offer hamburgers/hot dogs, wraps and ice cream.

Ms. McLarty advised that the McDowell News, Media General, has offered the Committee $1,000.00 of advertising as their sponsorship. The advertising will reach readers in Marion, Morganton, Hickory and possibly Statesville.

It was also noted that Ms. Freddie Killough has already applied for the road closure request with the Department of Transportation ahead of time.

REQUEST – MR. BILL HALL – SEWER ONLY SERVICE – SUGAR HILL ROAD: The City Manager advised that he and the Public Works Director Chris Hollifield had spoken to Mr. Bill Hall, owner of the small mobile home park on Sugar Hill Road across from the Rankin Drive intersection. This property is inside the City but is not currently connected to water and sewer.

The City Manager stated that he had advised Mr. Hall that City policy does not permit sewer only connections and that Council has traditionally not waived this requirement when water service is available.

Mr. Hall appeared before Council and asked to first take the opportunity to thank Mayor Clark for all his hard work over the last thirty five years.

Mr. Hall then stated that the mobile home park he owns on Sugar Hill Road is up for sale. It is currently being served by a septic tank system that is old and starting to deteriorate. He fully expects to sale this property soon and would request that Council allow them to hook to sewer only at this time. Mr. Hall stated that he does not need City water at this time.

The City Manager recapped the present policy that states no sewer only connections. City Council has permitted sewer only connections only in situation where water is available, and stated that no situation such as being requested by Mr. Hall has been approved since he has served as City Manager. The City Manager reported on the billing and disconnection problems created by sewer only connections.

Mayor Pro Tem Little stated that Council appreciates the Hall family and that they have been wonderful members of our community for a long time. However, he stated that City Council cannot approve requests because people are friends of Council. Mayor Pro Tem Little stated that Council must instead look at the facts which in this case involves Council knowing that water produces more revenue than it costs to produce the water while sewer service costs a great deal more than the City receives back in revenues.

Mr. Hall stated that he would be willing to pay for the sewer connection and fees for each unit. He presently has seven mobile homes in this park.

Councilman Cuthbertson asked Mr. Hall if the potential buyer would not want City water. Mr. Hall stated that his concerns were the added expense to the present tenants.

Councilman Edwards apologized and advised that he had a speaking engagement at McDowell Technical Community College and would have to leave this meeting at this time, the time being 7:45 P.M.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, those members of Council present voted to excuse Councilman Edwards from this meeting.

Mayor Clark stated that the bottom line is that it would be better for the City for this property to take both water and sewer service and that the present policy has been in place for years and creates real problems when you start making exceptions. Mayor Clark also stated that in his opinion water and sewer service to this property would be a positive point in the sale of this property.

Councilman Owenby stated that he understands Mr. Hall's allegiance to persons living in the mobile home park. However, he noted that Council has to look at the whole picture and what is the best for the City and that he could not vote to go against long standing City policy.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, those members of Council present, voted to respectfully deny the request of Mr. Bill Hall for a sewer only connection at his mobile home park property on Sugar Hill Road across from the Rankin Drive intersection.

PUBLIC COMMENT PERIOD: Mr. Gary Walker appeared before Council with concerns regarding traffic on North Madison Street.

Mr. Walker stated that he was proud to be here on a night that Mayor Clark was being honored.

Mr. Walker went on to state that stop signs were placed on North Madison Street years ago to assist with the speeding problem on this Street. However, the stop sins are not serving the need of the neighborhood, as motorists often do not stop at the stop signs. Mr. Walker complimented the Police Departments on improved efforts to patrol the street and to write citations, but Mr. Walker noted that without constant presence, problems persist. Mr. Walker asked Council to consider authorizing speed humps to be installed on North Madison Street, since he thought the speed humps installed on other streets in the City last year had been a success.

Mr. Ted Remington, a resident of North Madison Street, was also present for this discussion and added that that the stop signs are not working at all. He saw 17 vehicles go through the stop signs in one given morning during school hours. He has even seen a school bus go through the stop sign.

Mr. Remington stated that traffic calming devices are used in Ireland to discourage people from going through these residential neighborhoods and would like to see something done whether it involves speed humps or barricading North Madison Street to prevent through traffic.

Mayor Clark stated that speed humps are working on the Streets where they have been placed. Mr. Remington that there is a need for two humps on Madison.

Mayor Clark stated that when you look at the bigger picture, there are developments from the Lake James/Nebo area growing bigger every day and that the City has the few streets that motorists can cut across going to and from various designations, creating higher than normal residential traffic counts in many locations. Mayor Clark advised that the City has talked with the North Carolina Department of Transportation about the need for additional connector roads, such as a Highway 70 Bypass, to no avail.

The City Manager stated that there is a list of streets being studied by Publi Works Director Chris Hollifield to see if such streets meet the specifications for installing speed humps and that North Madison Street could be added to this study. The City Manager advised that he hoped to have the study completed and ready for presentation to Council on April 17. The following seven streets for which speed hump requests have been received are being studied: Lincoln Avenue, Hoyle Street, Academy Street, Oak Street/Virginia Road, Hillcrest Drive, California Avenue and North Madison Street.

Council members expressed their willingness to approve speed humps on North Madison Street, pending presentation of the study.

Mr. Walkers inquired about the timing of speed hump installation, given needed street repair work. The City Manager reported that the City was also seeking bids for a sidewalk and curb replacement on North Madison Street, along with some water line work. These bids may be ready for presentation to Council at the May 1 Council meeting. The City Manager advised that such work would be followed by the resurfacing of the street, meaning that speed hump installation would need to be done last, but that at least the residents of the street would know that speed humps would be installed in the future if authorization is given in the near future by Council.

APPROVE SPRING 2007 RESURFACING PRIORITY LIST: The City Manager advised that staff have developed a recommended Street Resurfacing Priority List for Spring 2007 paving, based on a recent survey of all streets in the City. The City Manager stated that the list needs to be approved by Council this month, so that staff can seek bids for the Spring resurfacing, which normally starts in May. The City Manager reported that the list contains seven streets and is somewhat shorter than normal. The shorter list is due to the fact that some of our worst streets are awaiting curb and/or water projects, such as North Madison Street, Park Avenue and Crescent

Drive. The City Manager stated that if the City save some money on street paving this year, we can devote those funds to contracting out more for curb/sidewalk/drainage projects on Forest Heights Drive and North Madison Street.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Owenby, those members of Council present voted to approve the following street resurfacing priority list:

Street Resurfacing Priorities – Spring 2007

Recommended for Spring 2007 Paving

1. State Street – From Baldwin Avenue to Ann Street
2. High Street – From West Henderson Street to cul-de-sac
3. Church Street – Entire length of street
4. Morehead Road – From West Fourth Street to Baldwin Avenue
5. Ridge Road – From Church Street to 219 Ridge Road (bad section of pavement)
6. West Grayson Street – From Oak Avenue to previously paved portion
7. East Oak Street – From Clay Street to North McDowell Street (if water line replacement is completed)

Mayor Clark urged staff not to focus only on the worst streets, but also streets beginning to show signs of distress so that potential costly repairs could be avoided in the future.

CONSIDER APPROVAL OF PUBLIC RECORDS REQUEST POLICY: The City Manager presented Council with a proposed Public Records Request Policy, to require such records requests to be in writing and to provide the City with a target of five business days to fill most request. The City Manager advised that he had obtained draft Public Records Request policies from other cities and discussed what could be included in such policies with David Lawrence with the UNC School of Government and the City Attorney. The City Manager stated that Mr. Lawrence advised that the City can clearly require such requests to be in writing, which the City Manager said he would recommend to ensure that the City properly understands the request. The City Manager also suggested asking the requester to provide their contact information, although the City cannot require the requester to provide their name or the reason they want the records. The City Manager stated that hopefully most requests can be taken care of sooner than five business days. For very routine requests, the City Manager suggested that he retain the discretion to waive the requirement that requests be in writing.

A brief discussion followed. Mayor Pro Tem Little stated that it made good sense to require non-routine records requests to be in writing, so that there was no misunderstanding about the records being requested.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, Council voted to approve the following policy:

PUBLIC RECORDS POLICY – CITY OF MARION

Statement of Policy: The City of Marion endeavors to fully and enthusiastically comply with the laws of the State of North Carolina mandating the timely release of information upon request by members of the general public, subject to appropriate confidentiality guidelines established by state and federal law.

1. Request To Be In Writing: All requests by members of the general public for the disclosure of information pursuant to Chapter 132 of the General Statutes shall be made in writing, dated, and signed by the requester, with the exact records requested listed as specifically as possible. These written requests shall be submitted to the City Manager, who shall cause the request to be noted with the time and date of receipt. Failure for the requester to provide their name shall not in itself authorize the City to refuse to comply with the records request, as long as adequate information is provided to allow the requester to be contacted; however, provision of contact information, to the degree provided by the requester, is encouraged and is necessary to allow for the

requested information to be sent or for contact to be made regarding the request. For minor or routine requests, the City Manager may, in his discretion, waive the requirement for written requests.

2. Timely Compliance by City Officials: When possible, the records requested shall be disclosed in the manner set forth in Chapter 132 within five (5) working days. If for any reason the records cannot be delivered within this period, or should the City Manager determine that the request is seeking information which may not be disclosed pursuant to the law of North Carolina or the United States, the City Manager shall authorize additional time to comply with the request. If the City Manager determines that the request is seeking information which may not be disclosed pursuant to the law of the State of North Carolina or the United States of America, the City Manager shall advise the requester in writing of the refusal of the City to comply with a portion or all of the request, and the express reason for declining to publish the information. If the City Manager deems that additional time for compliance is required, the City Manager shall advise the requester in writing of the estimated time of delivery. Depending on the nature of the request, the City Manager may elect to seek the guidance of the City Attorney

3. Objection to City Manager Response: If the requester of the information believes that the City's position is unreasonable or incorrect with respect to the timing of the delivery of the information, or the refusal to release information, the objection shall be placed in writing, signed, and dated, and delivered to the City Manager. Upon receipt of such an objection, the City Manager may reconsider his or her position, or may defer the matter to the consideration of the City Council, as the City Manager deems appropriate.

4. Records of Public Information Request Activities: The City Clerk shall cause records to be maintained of all requests for public information made of the City of Marion pursuant to this policy, and of the responsive actions taken by City employees. These records shall be fully disclosed to members of the general public upon appropriate request.

Adopted by the City Council of the City of Marion this the 3rd day of April, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Policy Number: P-07-04-03-01

SCHEDULE DATE FOR VOLUNTEER/ADVISORY BOARD DINNER: The City Manager advised that for the past three years, the City has held an Advisory Board dinner, expanded to include all City volunteers last year. Last year's event was held on June 8. The City Manager suggested a late May to early June date to get past the April 20 City Open House.

It was the consensus of Council present to set Thursday, May 24 as the date for the Advisory Board/Volunteer Dinner.

REVIEW GARBAGE PLAN FEES/CONTRACT FOR CAMPGROUNDS: The City Manager advised that, as discussed at the March 6 Council meeting, off of Highway 221 North Business, there is now have a campground in the City on the Catawba River. This campground has inquired about qualifying for a dumpster at the reduced residential rate, since they have some permanent residents (about six at the current time). The campground also leases spaces on a short term basis.

The City Manager stated that he and Harriett Thomas had discussed this request and believes that a campground should be treated as a business, unless it truly has all permanent residents, which it does not. The City Manager stated that Council directed him last month that we seek information on how other cities handle campgrounds. Many cities do not provide commercial garbage collection and campgrounds are not common uses in most cities, so very few responses were received, but among those cities that did respond, all considered campgrounds to be businesses, not residential uses.

The City Manager advised that Mr. Bost, owner of the campground, has elected to go with bi-weekly commercial pickup at $54 per month. The frequency of the collection could be reduced to monthly in winter months, if Mr. Bost wants. The City Manager also noted that, under the City's Floodplain Ordinance, Mr. Bost was approved only for a transient campground, with spaces supposed to turn over every 30 days. Endorsement of permanent residents at the campground would be in violation of the Floodplain Ordinance. Therefore, the City Manager stated that it was the recommendation of staff to continue to treat campgrounds as commercial uses for garbage collection purposes. Campgrounds could choose the appropriate frequency of collection or make arrangements for their own garbage collection.

A brief discussion followed.

No action was taken by Council, thereby meaning that the City's commercial garbage contract will continue to treat campgrounds as commercial uses.

REQUEST BY McDOWELL COUNTY BOARD OF ELECTIONS TO USE COMMUNITY BUILDING AS ALTERNATE POLLING SITE: The City Manager presented Council with a memo from Ms. Kim Welborn, Director of the McDowell County Board of Elections, requesting to use Community Building as an Alternate Polling Site in the event of an emergency. The Community Building is used as the City election polling place in odd numbered years, so the request would be for the Community Building to be a back-up site in the event of an emergency in an even numbered year.

The City Manager advised that he had spoke to Kim and that she envisioned the Community Building being the back-up site for Marion #1, which normally votes at Marion Elementary, and for Marion #2, which typically votes at East McDowell Junior High School. The Kiwanis Club meets every Tuesday and would be displaced, but this is already the case every other year during the City election.

A brief discussion followed.

Upon a motion by Councilman Cutherberson, seconded by Mayor Pro Tem Little, those members of Council present voted to approve the request of the McDowell County Board of Elections to use Community Building as an Alternate Polling Site in the event of an emergency.

APPROVE CONTRACT FOR PURCHASE OF SANITATION TRUCKS: The City Manager presented Council with a memo from Finance Director Harriett Thomas showing that bids were sought for the purchase of three pickup trucks for residential garbage collection. The City Manager stated that, although bid packages were sent to many dealers, Legendary Ford submitted the only bid. Legendary Ford proposed to sell the City three 2007 four wheel drive Ford Rangers for $16,044.95 each, for a total of $48,134.85 for the three trucks. The City Manager stated that other dealers could perhaps provide quotes if given more time, but that the City needed to go ahead with ordering the vehicles in order to receive the vehicles before the end of the Fiscal Year.

The City Manager reported that when the cost of the dump hoppers is added ($4,000 for each truck), the total cost for the trucks is $20,044.95 each, for a total of $60,134.85. This amount is less than the remaining $63,402.90 Capital Outlay Budget for 2006-07 for Sanitation. The City Manager stated that the final product will end up being about $9,000 per vehicle cheaper than the projected cost of four wheel Cushman scooters.

A discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Councilman Owenby, those members of Council present voted to award the contract for the purchase of three 2007 four wheel drive Ford Ranger pickup trucks to Legendary Ford in the amount of $48,134.85.

APPROVAL OF MT. IDA PROPERTY OPTION: The City Manager presented Council with a proposed option to purchase 36 acres of property owned by Mr. and Mrs. William Hamill on

top of Mt. Ida for $275,000, which is $25,000 under the recent appraisal for the property. The option would cost the City $1,000 and prevent the property for being sold until January 1, 2008. The City would acquire the property for preservation and recreational purposes. The City Manager noted that the property purchase was essentially contingent on the award of a grant from the North Carolina Parks and Recreation Trust Fund.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, those members of Council present voted to approve the option to purchase the Mt. Ida property as follows:

STATE OF NORTH CAROLINA
FIRST OPTION TO PURCHASE
COUNTY OF McDOWELL REAL PROPERTY

THIS OPTION AGREEMENT, made and entered into this the 1st day of January, 2007, by and between **WILLIAM H.B. HAMILL and wife LEITA V. HAMILL**, hereinafter collectively called Seller, and, the **CITY OF MARION, NC**, hereinafter called Buyer;

WITNESSETH:
That for and in consideration of the sum of One Thousand and No/100 Dollars ($1,000.00), which shall be applied to the purchase price, and other valuable consideration to them in hand paid, the receipt of which is hereby acknowledged, said Seller does hereby give and grant unto the Buyer, the right and first option to purchase from said Seller a certain tract or parcel of real property, lying and being in McDowell County, North Carolina and more particularly described as follows and referred to herein as
either the "premises" or the "property":

Being all of that certain real property more fully described in Deed Book 186, Page 493, McDowell County Public Registry, less and excepting that property described and conveyed in Book 421, Page 683, McDowell County Registry; Parcel identification number: 1701.16-82-1836.

The terms and conditions of this option are as follows:

First. This option shall begin on the date of full execution of this First Option to Purchase Real Property and shall end one (1) year thereafter, and during such time Seller shall not engage in any grading or harvesting of timber on the property.

Second. At any time during the option period, Buyer may exercise this option by written notice by hand delivery or deposit of by certified or registered mail, return receipt requested, to Seller at the following address: William H.B. Hamill, c/o Harris Realty, 70 North Main Street, Marion, NC, 28752.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager presented Council with a proposed Climate Change Resolution that was adopted by several cities in Western North Carolina. Mayor Pro Tem Little stated that he would be in favor of approving something acknowledging the City's concerns about this issue; however, he had great concerns about the ability of the City to verify many statements in the proposed resolution. After brief discussion, Council declined to take action on the resolution.

The City Manager presented Council with information obtained by DBA Director Freddie Killough on a possible historic marker for the Depot from the company that provides historic markers for the State of North Carolina. Council discussed and endorsed the South Dakota style with a gold letters on a green background to match the Depot outside trim as closely as possible. The City Manager stated that he would be back in contact with the marker company to obtain a price quote. The cost of the marker will come from excess Depot project funds.

The City Manager reminded Council that the 5th Annual City Open House is scheduled for Friday, April 20. Lunch will be provided again by Baxter Healthcare. Invitations to eat lunch

have been extended to School Superintendent Dr. Ira Trollinger and members of the School Board.

The City Manager advised that as previously reported, he had directed City Departments to include defensive driving training in their safety training over the next two months, with the goal of having every City employee or volunteer that drives a vehicle go through such training. The police department has taken the lead on this issue and had undergone such training for full time and reserve officers in March. The City Manager stated that he would continue to stress this matter to ensure as much as possible the safety of City employees, volunteers and the general public.

The City Manager advised that Public Works Director Chris Hollifield has looked at a request to replace the sidewalk on South Main Street and has recommended that the entire South Main sidewalk (west side) from around First Charter Bank to West Henderson needs to be replaced. The City Manager also stated that an asphalt curb addition and repair was planned adjacent to property owned by First Presbyterian Church on Hillcrest Drive. The City Manager stated that, without objection, City crews will make these two projects the next in-house projects, after the conclusion of on-going work on the Community Building splash pad and steps.

The City Manager advised that after the February 22 public meeting to kick-off the public input process for the Land Use Comprehensive Plan and the Downtown Streetscape/Traffic Flow Plan, committee meetings have been taking place for each area. The committees will meet over the next few months and develop a recommendation that will be reviewed by staff and the appropriate advisory boards (Planning Board, DAC) prior to presentation to Council.

The City Manager advised that the City had received relatively good news from the SBI regarding our crime rate. Overall, reported crimes in the City were up 4.48 percent from 2005 to 2006. However, the City's population was up 6.01 percent from 2005 to 2006, meaning that the per capita crime rate actually decreased 1.48 percent from 2005 to 2006. Part I crimes (generally representing violent crimes of murder, rape, robbery and aggravated assault) declined 16.67 percent from 2005 to 2006. On a per capita basis, Part I crimes decreased by 21.05 percent from 2005 to 2006. The actual number of Part I crimes in 2006, a total of 30, was the City's lowest total since 2001.

The City Manager advised that he had received a request to look at intersection of Viewpoint Drive/Hillside Drive/Crescent Drive for placement of an additional stop sign. It was the consensus of Council to refer this request to Street Committee.

Mayor Pro Tem Little stated that, in addition to the above complaint, he has major concerns about sight visibility for traffic coming from the Lady Marian Plaza into North Main Street at the traffic signal, due to the presence of cars parked next to the curb at Jim Cook's Used Car Lot. Mayor Pro Tem Little advised that Nations Automotive on North Main Street may have a similar problem. The City Manager stated that he would check into both locations and direct the car dealerships to move any vehicles causing sight distance problems.

The City Manager presented Council with a request from the McDowell Arts Council Association (MACA) for a one time increase in City funding of $10,000 in addition to the $10,000 annually given by the City to MACA. The letter outlined budget problems being faced by MACA in 2007-08, due to the loss of the SOS Program State Grant. The City Manager asked Council for direction on how to handle this matter in the 2007-08 budget.

A discussion followed. Councilman Owenby stated that this was the third time in the past several years that MACA had requested a one-time additional contribution from the City.

Mayor Pro Tem Little stated that he had no problem with the frequency of requests for additional money from MACA.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, those members of Council present voted to approve the request.

The vote was as follows:

Little	Yes
Cuthbertson	Yes
Martin	Yes
Owenby	No

The motion to approve the request carried three to one. The City Manager stated that he would put $20,000 of funding for MACA in his recommended 2007-08 budget for Council review and consideration.

CLOSING COMMENTS:

Councilman Cuthbertson stated he recently observed a school bus cut across the curb and sidewalk while making a turn at the intersection of South Garden and State Streets. He asked that this matter be addressed with the School System. The City Manager stated that he would make sure that this matter was brought to the attention of the School Bus Garage so that bus drivers can be advised to take care to avoid such movements at tight intersections.

Mayor Clark stated that he was concerned about teachers and staff parking all day on Robert Street in front of Marion Elementary School. He noted that when the City widened Robert Street several years ago to accommodate parking on the street, it was not intended for all day parking. Mayor Clark noted that parents and visitors often have difficulty finding parking places on the street due to the faculty and staff parking. He suggested that Council may want to consider instituting two hour parking on Robert Street. After discussion, it was the consensus of Council members to direct the City Manager to communicate with Elaine Seals, Principal of Marion Elementary School, and ask for voluntary compliance by the School to move teacher and staff parking off of Robert Street, or else Council may consider future time restricted parking on Robert Street.

CLOSED SESSION – DISCUSS THE LOCATION OF BUSINESS OR INDUSTRY UNDER N.C.G.S. 143-318.11(A)(4): Upon a motion by Councilman Little, seconded by councilman Martin, those members of Council present voted to go into Closed Session in accordance to N.C.G.S. 143-318.11(A)(4) in order to discuss a matter involving the location of business or industry within the City.

REGULAR SESSION: Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, 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 Martin, seconded by Councilman Owenby, 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, April 17, 2007 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.

Councilman Owenby was not present for this meeting due to the passing of his wife on April 16, 2007.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Mika Elliott, Police Chief; Chris Hollifield, Public Works Director/Engineer; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Cliff McLarty, 190 North Madison Street, Marion, N.C. 28752.

CONSENT AGENDA: Upon a motion by Mayor Pro Tem Little , seconded by Councilman Cuthbertson, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - April 3, 2007 Regular & Closed Session City Council Minutes

B. Approve Marion Downtown Business Association Sidewalk Sale
Saturday, May 5, 2007

C. Approve Proclamation – Gold Festival

Proclamation
City of Marion, North Carolina
"Gold Festival Days"

Whereas, the discovery of local gold deposits in 1799 contributes directly to the eventual formation of McDowell County;

Whereas, the subsequent influx of miners and mining companies made a significant contribution to the establishment and prosperity of many small lawns in this area;

Whereas, the people of this region recognize the value of preserving and publicizing McDowell County's unique history for future generations, and

Whereas, the County of McDowell and the City of Marion seeks to encourage an influx of both tourists and the supporting businesses said tourism might bring,

The Marion City Council hereby declare their enthusiastic support for the Gold Festival now celebrating its fourth season, and for the Gold Foundation which is the sponsor for this unusual and festive event.

In recognition of the Festival's unique contributions to the deeper appreciation of one aspect of our local history, and in recognition of the Festival's aim of encouraging both tourism and business growth to this region, the Mayor for the City of Marion hereby designates the days of April 21st and 22nd , 2007 as official "Gold Festival Days."

A. Everette Clark
Mayor

D. **Adopt Resolution – Clean Water Act of 2007:**

CITY OF MARION
RESOLUTION OF SUPPORT
FOR THE CLEAN WATER ACT OF 2007

WHEREAS, North Carolina's continued prosperity depends on protecting the State's water resources for current use and future generations; and,

WHEREAS, North Carolina is expected to grow by 3.5 million people to exceed 12 million by the year 2030, placing pressures on the state's water resources and local water providers; and

WHEREAS, North Carolina's businesses, traditional and emerging industries all depend on reliable supplies of clean water, reasonable utility costs, well maintained water infrastructure and an attractive natural environment; and,

WHEREAS, the 1998 Clean Water Bonds delivered significant benefits to North Carolina communities and citizens, supporting 1,103 projects in 97 counties, which

- Helped create or retain 42,000 jobs
- Corrected major regulatory violations in 97 communities
- Addressed failing septic systems and contaminated wells in 59 counties
- Resulted in 50 communities receiving sewer service for the first time
- Encouraged regional efficiencies, sound planning and conservation practices; and,

WHEREAS, North Carolina's public water, sewer and storm water utilities will require investments totaling $16.63 billion to keep pace with necessary improvements and population growth over the next 25 years, including $6.85 billion in investments within the next five years;

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Marion urges the North Carolina General Assembly to enact the "Clean Water Act of 2007", which provides for a $500 million bond issue to be expended over the next five years, and an annual appropriation of $50 million in recurring funding to address urgent needs.

Adopted this the 17th day of April, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager /Clerk

Resolution Number: R-07-04-17-1

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

REVIEW SPEED HUMP REQUESTS: The City Manager advised that since the first speed humps were installed last year on Morgan Street, South Garden Street and Fern Avenue, the City has received numerous requests for speed humps on many other streets. The streets include Hoyle Street, Oak Street/Virginia Road, Lincoln Avenue, Academy Street, Hillcrest Drive, California Avenue and North Madison Street. Other requests have been received for speed humps on DOT streets such as Fleming Avenue and Baldwin Avenue that we have had to turn down due to DOT's absolute prohibitions on speed humps on State maintained roads.

Public Works Director Chris Hollifield was present for this meeting and presented Council with an overview of the evaluations and recommendations of each street as follows:

Academy Street / W. Fort Street:
Limits: West Court St. to Logan St.
Length: Approx. 657 feet
Posted Speed Limit: 25 mph
24 Hour Average Daily Traffic: 1632
Intersections: None

Evaluation: Academy St. is being used by many motorists as a by-pass of the Logan St. / W. Court St. stoplight. The length of Academy St. falls short of the 1,000 ft. limit spelled out in the Traffic Calming Policy. I had originally studied the street without the addition of W. Fort St. continuing from Academy to Logan St.. The original length made it impossible to locate a speed hump 250' from either of the two limits of the street. After

now considering Academy St. to progress from Logan St. to W. Court St., a speed hump could be located 250' from either street limit.

Recommendation: If City Council would waive the street length requirement, Academy could become a candidate for traffic calming measures. Academy St. meets all other policy requirements.

Recommended Locations:
Evaluate a location located roughly 250' up from the W. Court St. intersection.

Oak Street:
Limits: Clay St. to Virginia Rd.
Length: Approx. 1838 feet
Posted Speed Limit: 20 mph
24 Hour Average Daily Traffic: 2640
Intersections: N. McDowell Ave., Highland Dr., Martin St., Greenwood Dr., Gilkey St., Lamar St.

Evaluation: Oak St. is being used by many motorists as a cut-through to get to the north end of the city. Motorists either come from the Virginia Rd. area or cut up through Gilkey St. in order to by-pass a large portion of E. Court St.. From observing traffic, many motorists are exceeding the posted

speed limit of 20 mph by 10+ mph. Due to the large number of intersections on Oak, it would be difficult to locate a traffic calming device 250' from an intersection.

Recommendation: If City Council would waive the requirement of placement of traffic calming devices a minimum of 250' from an intersection, Oak St. could become a candidate for traffic calming measures. Oak St. meets all other policy requirements.

Recommended Locations:
Due to the amount of traffic coming up Gilkey St. and turning onto Oak St., evaluate a location located mid-way of the block between Gilkey St. and Highland Dr.. This location would serve to slow down traffic from both Virginia Rd. as well as Gilkey St..

N. Madison Street:
Limits: Fleming Ave to Hwy 70 E
Length: Approx. 1,300 feet
Posted Speed Limit: 20 mph
24 Hour Average Daily Traffic: 960
Intersections: New St. & Fort St.

Evaluation: N. Madison St. currently has two intermediate intersections: New St. (four-way stop) and Fort St. (three-way stop). Roughly 300 feet exist between these intersections. The upper portion between New and Fleming has a low sight distance vertical curve in a 500-foot segment. The lower portion between Fort and Hwy 70 E has a moderate, consistent grade with multiple commercial driveways and is only 500'. There is no location to place traffic calming devices within 250' of an intersection, as spelled out in the Traffic Calming Policy.

Recommendation: If City Council would waive the requirement of placement of traffic calming devices a minimum of 250' from an intersection, N. Madison St. could become a candidate for traffic calming measures.

Recommended Locations: Evaluate locations mid-way of the Hwy. 70 E. and E. Fort St. block and/or mid-way of the E. Fort St. and New St. block.

California Avenue:
Limits: West Henderson St. to City Limits
Length: Approx. 1519 feet
Posted Speed Limit: 25 mph
24 Hour Average Daily Traffic: 1200
Intersections: None

Evaluation: Upon evaluation, California Avenue is not being used by motorists as a cut through or a by-pass street. Many vehicles observed were moderately exceeding the posted speed limit of 25 mph. The fact that two Apartment complexes exist on California Ave. may explain the traffic volume. The area of California is residential, with the exception of the back entrance to Duke Power. The Duke Power back entrance is padlocked and is rarely used.

Recommendation: California Ave. is not used as a cut-through street; however it does meet all the policy requirements. It could be a candidate for traffic calming measures.

Recommended Locations: Evaluate a location mid-way of the W. Henderson St. intersection and the crest of the hill.

Hillcrest Drive:
Limits: N. Logan St. to Reservoir Rd.
Length: Approx. 2861 feet
Posted Speed Limit: 25 mph
24 Hour Average Daily Traffic: 432
Intersections: Forest Rd., Woodvine Dr.

Evaluation: Upon evaluation, Hillcrest Dr. is not being used by motorists as a cut through or a by-pass street. The area of Hillcrest Dr. is residential with no commercial entrances.

Recommendation: Hillcrest Dr. meets all of the policy requirements and could be a candidate for traffic calming measures.

Recommended Locations: Evaluate a location mid-way of the Forest Rd. intersection and the crest of the hill.

Lincoln Avenue:
Limits: S. Garden St. to Spring St.
Length: 1,193 feet
Posted Speed Limit: 25 mph
24 Hour Average Daily Traffic: 432
Intersections: Teal St. & Vale St.

Evaluation: Lincoln currently has two intermediate intersections: Teal St and Vale St. Only 500 feet exists between these intersections. In my estimation, Lincoln is neither being used as a cut through nor a by-pass street.

Recommendation: Based on the information, Lincoln would not be a candidate for traffic calming measures.

Hoyle Street:
Limits: Tate St. to Roane St.
Length: 1143 feet
Posted Speed Limit: 25 mph
24 Hour Average Daily Traffic: 528
Intersections: Thole St.

Evaluation: Hoyle has only one intersection: Thole St. The entire area of Hoyle is primarily residential. In my estimation, Hoyle is neither being used as a cut through nor a by-pass street.

Recommendation: Based on the information above, Hoyle would not be a candidate for traffic calming measures.

Mr. Hollifield summarized that five of the streets he studied, Academy Street, Oak Street, Hillcrest Drive, California Avenue and North Madison Street, could meet the qualifications set out by Council in the Traffic Calming Policy, if some minor waivers were granted, while two streets, Hoyle Street and Lincoln Avenue do not meet the requirements.

Mr. Hollifield stated that the 250 separation requirement between intersections and speed humps is a particular problem on many streets.

Councilman Cuthbertson asked how the City came up with 250 foot separation in the Traffic Calming Policy.

The City Manager advised that the policy guidelines were borrowed from Winston Salem and can be amended if Council so desires.

Mayor Clark noted that the density of the City would seem to make such an amendment necessary.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Martin, those members of Council present voted to approve the recommendations of the Public Works Director and to approve speed humps on Academy Street, Oak Street, Hillcrest Drive, California Avenue and North Madison Street.

The City Manager advised that the installation of the speed hump on North Madison Street will be delayed until water line and curb and sidewalk work are completed. The speed humps for the other four streets can be bid out with the Spring 2007 Street Resurfacing Project.

Upon a motion by Councilman Cuthbertson, seconded by Mayor Pro Tem Little, those members of Council present voted to amend the traffic calming policy to reduce the separation requirement between intersections and speed humps from 250 feet to 100 feet, as follows:

City of Marion
Traffic Calming Policy
Speed Hump / Speed Cushion
April 2007

PURPOSE:
The purpose of this Traffic Calming Policy is to provide guidance to the request, evaluation, approval, and application/installation of traffic calming measures such as speed humps, speed cushions and other approved devices.

DEFINITIONS:

- Average Daily Traffic (ADT): The actual traffic volume passing a point in both directions on an average day (24-hours).
- City Maintained Street: A street that is currently on the City's list of streets which it maintains.
- NCDOT Maintained Street: A street that is maintained by the North Carolina Department of Transportation. The City cannot approve any Traffic Calming Devices on these streets.
- Posted Speed Limit: Speed limit posted on a street based on design criteria such as vertical and horizontal sight distances.
- Speed Bump: An abrupt bump in a travel way (usually in parking lots), 3-4 inches high and 1-3 feet in length. These devices are not allowed on City Maintained Streets and not addressed in this Policy.
- Speed Cushion: A series of smaller humps (2 or 3, depending on street width) across a street design to slow normal vehicular traffic, but with breaks in the pattern as to allow for the passage of emergency vehicles with a wider wheelbase without hitting a hump.
- Speed Hump: A traffic calming device consisting of a raised hump in the roadway, generally 3 inches high and 12 feet long, stretching across the entire roadway.
- Traffic Calming Measure: Measures, such as speed humps, cushions, traffic islands/medians, and etc., intended to reduce the speed of the motorist and/or prevent or decrease neighborhood cut-through traffic.

REQUESTS:
The City Council and/or City Manager may direct staff to look at a street for traffic calming measures to facilitate reducing vehicular speed and/or non-residential cut-through traffic.

A citizen, property owner or business within the corporate limits of Marion may formally request a traffic calming measure on their street. The request must be done in writing and must include all contact information such as name, address, phone number, and requested street. This request must be sent to the City Manager and/or the Public Works Director.

With each request, and upon approval for consideration by the City Council, the Public Works Director (PWD) shall evaluate the request for traffic calming measure(s) on a particular street and the ability to comply with the required standards.

After the PWD completes the evaluation, the recommendation for a traffic calming measure must be accompany with approvals from the PWD, Fire Chief, and Police Chief. This recommendation shall be forwarded to the City Manager for presentation to City Council. The City Council shall approve, approve with conditions, or disapprove the request.

Once a request has been denied by the City Council, the specific section of street may not be evaluated again for one year (12 months).

APPLICATION OF MEASURES:
The following are evaluation characteristics that must be met in order for a traffic calming measure to be considered:

Roadway Characteristics:

- The Street must be a public street, maintained by the City of Marion.
- The Street shall be classified as a local residential street. Collectors, thoroughfares, NCDOT maintained, or private roads will not be considered for traffic calming measures by the City of Marion.
- Posted speed limit shall be 25 mph or less.
- The Street must not exceed 36 feet wide from curb to curb.
- The Street must not be more than two travel lanes wide (two lanes with common left turn would ***not*** qualify).

Roadway Volumes, Design, and Measure Placement:

- The Average Daily Traffic (ADT) for the street being considered should not be less than 400 vehicles per day (VPD) and not greater than 3,000 vpd. Actual traffic counts may be taken or evaluated by City Staff at various times of the day.
- The Street must be at least one thousand (1,000) feet in length.
- The Street shall not have a grade greater than 8% within 250 feet of the traffic calming measure.
- Traffic calming measures shall be a minimum of 100 feet from an intersection.
- The Street shall have adequate horizontal and vertical sight distances as determined by the Public Works Director, as to not present a safety issue.

Upon review and approval of the Public Work Director, Police Chief and Fire Chief, as well as approval of the City Manager and City Council, minor variations in the criteria list above may be considered depending on site specific conditions.

Speed Hump:
The installation of a speed hump shall consist of one raised hump across the width of the entire roadway. The speed hump shall be approximately 12 feet in length and 3 inches high, with a parabolic curved surface. The entry and exit points of the hump shall be milled one inch into existing surface of the roadway as to allow for a smooth transition from the existing roadway, proper bonding of the asphalt, and to prevent the asphalt from raveling.

A Speed Hump detail is provided below.

Speed Cushion:
In cases where the roadway in question is considered a primary emergency response route by Fire, Police, and/or EMS, speed cushions may be installed as an option to speed humps.

The installation of speed cushions shall consist of two or three rounded humps across a roadway with gaps between the rounded humps to allow for wide emergency vehicles to "straddle" the humps as not to delay response time or possibly damage the frame of the emergency vehicle. Standard width emergency vehicles may not be able to straddle the humps.

A Speed Cushion detail is provided below.

INSTALLATION OF TRAFFIC CALMING DEVICES:
Upon approval of City Council, the Public Works Department will schedule the installation of the approved traffic calming measure. The Public Works Department shall determine the proper location for the installation of the traffic calming measures. Speed Humps or Speed Cushions shall be placed as follows:

- Speed Hump/Cushions shall not be installed at driveways, but should be placed on property lines and other locations to avoid impeding ingress and egress.
- On open-street sections, consideration should be made to install speed humps/cushions in areas where "drive-around" is not possible.
- Drainage should not be compromised with the installation of the traffic calming measure. Humps and cushions should be tapered on the edge down to the edge of pavement at the gutter line.
- Advance Warning: The City shall install one yellow diamond-shaped warning sign (36"x36") at least 200 feet in advance of the measure in each direction. The warning sign should state "SPEED HUMP".
- The advanced warning signs and raised pavement markings should be installed immediately upon the installation of the speed hump/cushion.

COST FOR TRAFFIC CALMING DEVICES:
The cost for the installation, maintenance, and removal of any traffic calming measure on existing City maintained street, unless otherwise approved by City Council, shall be the responsibility of the City of Marion. Funds for the construction of the traffic calming measures will be funded from the Streets Department budget.

In the case of a neighborhood, business, or other entity requesting a device and the Roadway Volumes, Design, and Measure Placement do not justify installation, the City Council may approve the installation of a traffic calming measure and pay for all, a portion or none of the costs. The requesting party would be required to pay all approved costs in advance before the City would install the device. The City Council may also deny the request in its entirety.

In the event that a developer desires to install traffic calming measures in a new development, with streets to be maintained by the City, such installation may be considered as part of the street improvement costs under the City's Residential Development Incentive Policy. Otherwise, the costs of any and all measures shall be the sole responsibility of the developer.

Where practical, an effort should be made to install other traffic calming measures prior to installing speed humps/cushions, such as traffic round-abouts, traffic islands/medians, and other approved methods. Speed humps and cushions should only be considered on existing residential streets.

Upon the City accepting the streets for maintenance, the maintenance and/or removal of these measures shall be the responsibility of the City.

This policy replaced the Traffic Calming Policy adopted by City Council on June 6, 2006.

Adopted by the City Council of the City of Marion this the 17th day of April, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Policy Number: P-07-04-17-1

DISCUSS IMPROVEMENTS TO CITY FIRING RANGE: The City Manager advised that he and Police Chief Mika Elliott had discussed some possible repairs and improvements to the City Firing Range across from the Water Plant.

Chief Elliott was present for this meeting and outlined some of the proposed repairs and improvements, including demolition of the existing building, construction of a new building with a small classroom and storage area, drainage work, paving and expanding the parking area, installation of better lighting, construction of a tower for the range master, purchase of new targets, paving of the range and other improvements. Most of these items could be considered for 2007-08 budget and subsequent years if necessary. In addition, Chief Elliott described offers of assistance received from the North Carolina Department of Correction and McDowell Technical Community College.

It was the consensus of Council that any offer of assistance cannot come with strings attached, or involve outside agencies expecting favorable treatment or increased use of the range.

Chief Elliott reported that, at present the City contracts with McDowell Tech to use the Firing Range for their Basic Law Enforcement Training Program and we allows the Department of Correction to use the range, when not in conflict with our needs.

Chief Elliott advised that years ago improvements were made and they cut the bank back and that it is now eroded off again. He visited a firing range in Hickory and found that they use old used tires and cover with dirt to keep the erosion down.

Chief Elliott advised that a new metal building that could be used for class room training would run approximately $ 50,000 for building. He has talked to Mr. Wayne Edwards with the College and with the Department of Corrections and both agencies are interested in assisting with the improvements, simply so that their use of the range can be enhanced.

Mayor Clark stated that if improvements to the range are done, then they need to be done in a first class manner. Mayor Clark suggested that the City could front the costs for the improvements, financing such improvements if needed, and ask for outside agencies to pay a substantial rent each year.

Councilman Cuthbertson stated that the reason the declined financial assistance from the other agencies previously for the firing range was because such agencies wanted to share ownership. He stated that charging rent for the facility would be preferable to accepting upfront donations that could imply some ownership on the part of other agencies.

Mayor Pro Tem Little questioned whether the classroom would be needed by the City. Chief Elliott stated that the classroom would not necessarily help the City, but would make the range more attractive to outside agencies and make such agencies more likely to pay a substantial amount of rent.

A discussion followed.

It was the consensus of Council that staff come back to a future meeting with a defined plan for the firing range improvements, more firm cost estimates and a plan for funding, using City funds and rent charged to outside agencies.

ADD ON: APRIL 16TH WIND STORM REPORT: The City Manager reported on the April 15-16 wind storm that affected the City. He stated that the City sustained winds of 30 – 40 mph with gusts of 70 – 80 mph with damage throughout the City. The City Manager stated that the Fire Department received approximately 70 storm related calls, that the Police Department worked a considerable amount of overtime, along with Public Works and the Water and Wastewater Plants. Fortunately, structural damage was at a minimum. The City Manager reported that there were brush fires in the County, but that the main problem with the storm was power outages at City facilities, including treatment plants and pump stations. The City Manager advised that the control room at the water tanks on Summit Street was damaged. The City Manager further reported that Duke Power had 12,000 customers in McDowell County without power Tuesday morning and that the number of customers without power was down to 4000 as of late Tuesday afternoon. The City Manager stated that debris removal would be significant with this storm.

The City Manager advised that he had spoken with Mr. Gary Laws, Duke Energy District Manager, to communicate the City's needs and priorities, but that many of the City's priorities were not shared by Duke Energy, leaving many residential streets still without power.

The City Manager stated that City staff had met with County Emergency Management Director Carroll Hemphill and a representative from the State Division of Emergency Management about the wind storm. The City Manager stated that the chances of a State disaster declaration were slim, but that he would recommend the adoption of a Declaration of State of Emergency just in case City damages met the State threshold.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, those members of Council present voted to approve the following Declaration of State of Emergency:

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 City of Marion Emergency Operations Plan, do hereby declare a "Local State of Emergency" for the City of Marion as a result of the April 15-17, 2007 wind storm producing damaging winds, utility outages, property damages and other life threatening events.

WHEREAS, said wind storm has produced and may continue to produce in the next 24 to 48 hours structural damage, utility outages, fires and other severe damages; and

WHEREAS, the City of Marion is experiencing severe conditions as a result of said storm due to high winds of such severity as to cause damage to homes, businesses and public buildings, many tons of debris, fallen trees, utility outages, fires and other severe damages; and further, that such conditions are likely to continue or 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 storm are such as to constitute an imminent threat of 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 City of Marion Emergency Operations 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 Operations Plan for Multi-Hazards.

I further proclaim that the Emergency Operations 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 17th day of April 2007 at 7:00 p.m.

APPROVED BY

A. Everette Clark, Mayor
City of Marion

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects as follows:

The City Manager advised that he along with City Planner Heather Cotton and Public Works Director Chris Hollifield met with Byron Phillips, Jeff Benfield, Frank Dean and Bill Hendley at the proposed Catawba River Greenway site behind Wal Mart and Lowe's on April 4 to discuss Mr. Benfield's concerns about people walking on the greenway being affected by pesticide spraying. The City Manager stated that Mr. Benfield indicated that his insurance carrier wanted a 100 foot separation between the trees and the greenway. Such a separation is possible on part of the property, but not in the area behind the Wal Mart Shopping Center itself. The City Manager reported that Byron Phillips offered an alternative to allow the greenway to cross the river and go on the north side of the river across and under the Bypass. The greenway would then need to cross the river again to connect with the McDowell House. The City Manager stated that he would work to obtain an estimate to build two pedestrian bridges, but that such bridges could be costly.

The City Manager reported that staff would soon be ordering the Depot Historic marker. He reviewed the proposed wording for the marker with Council and obtained input on how to improve the wording.

The City Manager advised that Friday, April 20 will be the date of the City's Fifth Annual Open House, in which all Third Graders in the County except for Old Fort Elementary will visit six City facilities.

The City Manager advised that the Interbasin Transfer (IBT) coalition was seeking $5,000 from all member jurisdictions to pay for a $105,000 lobbying effort, in addition to funds already committed for the legal defense effort. It was the consensus of Council present to table this matter for now way and to see if the IBT coalition truly needs funds from the City.

The City Manager advised that Mayor Clark had recently received an email from a historical researcher in Maryland, Ms. Tina Jones, regarding research she had done about a painting that is displayed in the U.S. Capitol. The painting shows the City of Marion's namesake, General Francis Marion and a previously unidentified African-American man. Ms. Jones proved through her research that the African-American man was her ancestor, Oscar Marion, and recently received recognition for Oscar Marion from President Bush and Congress. The City Manager stated that the City has an opportunity to obtain a reproduction of this painting to display in City Hall if the quality of the copy is sufficient.

CLOSING COMMENTS:

Mayor Pro Tem Little advised that the mirror at South Garden and Spring Streets is on the ground after the recent windstorm.

Councilman Cuthbertson stated that the City needs to make sure debris removal from the recent windstorm does not extend for weeks, even if overtime is necessary or if brush pickup needs to run an extra day. The City Manager stated that he had already authorized Public Works Director Chris Hollifield to use overtime for this purpose, within reason.

Police Chief Mika Elliott stated that the Police Department is a few weeks away from getting in the new grant funded motorcycle.

Mayor Clark stated that he would like for the City to look at establishing a wireless internet system for downtown and perhaps the entire City. He cited examples of other cities nationwide that have installed such systems.

ADJOURNMENT IN MEMORY OF MARGARET OWENBY: Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, those members of Council present voted to adjourn in memory of Councilman Cecil Owenby's wife, Margaret Owenby, who passed away on Monday, April 16, 2007.

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 1, 2007 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; Chris Hollifield, Public Works Director/Engineer; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Scottie Williams, 67 East Railroad Street, Marion, NC; Yang & Daniel (McDowell High Student) Kim 95 Hedge Drive Marion, NC; Robert & Sandra Ayers, 94 Glenview Street, Marion, NC; Fred & Doris Proctor 324 Finley Road, Marion, NC; Viola Briggs 356 Finley Road, Marion, NC; Anne Allison, 244 Allison Hollow Marion, NC; Jonas Smith 174 Park Avenue Marion, NC; Earl & Jonelle Daniels, 95 Broad Street, Marion, NC; Woody & Robin Ayers 24 Glenview Street, Marion, NC; Jeff Ayers & Leighann Briggs, 56 Morgan Street, Marion, NC; Harold Noblitt 64 Carolina Avenue, Ext. Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY MAYOR A. EVERETTE CLARK: Mayor Clark selected the Citizen of the Month for May 2007

Robert L. Ayers

Mayor Clark stated that he had been good friends with Robert Ayers for over forty 40 years and was proud to present him as his citizen of the month.

Mr. Ayers has been married to Sandra Wilson Ayers for forty years. They have three sons, one daughter and one granddaughter. All four of their children have a college degree.

Mr. and Mrs. Ayers are active members of the First Presbyterian Church.

Robert graduated from Pleasant Gardens High School. He has a Bachelor of Technology Degree from Appalachian State University, a Master of Arts degree in Higher Education/Administration from Appalachian, holds a designation as a School food service and nutrition specialist and has had additional course work in leadership from the University of North Carolina at Chapel Hill. He served as Nutrition Director and Finance Officer for McDowell High Schools, retiring in 2006.

Mr. Ayers serves on the Board of Directors McDowell Hospital, serves on the ABC Board and is President of the McDowell Rotary Club. He has owned and operated several businesses in Marion over the past thirty plus years and also worked in real estate.

Mr. Ayers served twelve years on the Marion City Council and served for nine years as Mayor Pro Tem.

Robert also served in the U.S. Army and was stationed in Vietnam.

Council Members, family and friends all shared kind words about Mr. Robert L. Ayers and all he has contributed to his community through the years.

CONSENT AGENDA: Upon a motion by Mayor Pro Tem Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent agenda as follows:

A. Approval of Minutes - April 17, 2007 Regular Session Minutes

B. Approve Resolution Directing Clerk to Investigate the Sufficiency of a Petition for Voluntary Annexation – Loftis – Finley Road:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G. S. 160A-31
LOFTIS – FINLEY ROAD – 2007**

WHEREAS, a petition requesting annexation of an area described in said petition was received on April 13, 2007 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 1st day of May, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Resolution Number: R-07-05-01-1

PUBLIC HEARING AND ADOPTION OF ANNEXATION ORDINANCE – YANCEY ROAD/PYATT VOLUNTARY SATELLITE ANNEXATION: Mayor Clark opened the Public.

The City Manager advised that a public hearing is required for the voluntary satellite annexation requested by Mr. Everett Pyatt for his property on Yancey Road, on which he plans to construct 20 townhouses and a clubhouse.

A discussion followed.

There were no citizens present to discuss this proposed satellite annexation.

Mayor Clark closed the Public Hearing.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Ordinance, to be effective June 30, 2007:

**AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA –
YANCEY ROAD/PYATT-2007**

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, May 1, 2007, after due notice by publication on Monday, April 16, 2007; and

WHEREAS, the City Council finds that the petition meets the requirements of G.S. 160A-58.1(b);

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, 2007:

Being all of Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the Subdivision of the Franklin Property, according to map of the same by J. L. Field, Licensed Surveyor, as recorded in McDowell County Map Book 2, Page 102; and more particularly described as follows:

BEGINNING at a point where the Eastern margin of the right-of-way of Yancey Road intersects with the Eastern margin of the right-of-way of Midway Street, and runs North 53° 18' 51" East 154.66 feet to a point in the Southern margin of the right-of-way of Midway Street; thence continuing with the Southern margin of the right-of-way of said Midway Street South 48° 41' 09" East 120 feet to a stake and then South 56° 07' 42" East 179.40 feet to an iron pin; thence continuing South 42° 35' 17" West 249.60 feet, then South 31° 16' 51" West 80 feet , then South 22° 18' 51" West 95.09 feet; thence continuing North 28° 51' 21" West 70.80 feet; then North 40°51' 21" West 232.57 feet; thence North 20° 15' 21" East 201.46 feet to the BEGINNING, containing 2.542 acres, more or less.

Section 2. Upon and after June 30, 2007, 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 1st day of May, 2007.

A. Everette Clark, Mayor

ATTEST: **Approved As To Form:**

J. Robert Boyette, City Clerk **City Attorney**

Ordinance Number: O-07-05-01-1

PUBLIC HEARING – EASTFIELD PHASE II ANNEXATION AREA: Mayor Clark opened the Public Hearing.

The City Manager advised that a public hearing is required for the Eastfield Phase II Annexation Area, which includes areas shown on a map presented to Council in the Eastfield Community from Clark Street northward to the railroad tracks and roughly from near Baldwin Avenue eastward to include properties fronting on Yancey Road, along with a few additional properties on Seagle Street. The City Manager stated that a total of 106 dwelling units are included in this annexation area and that the annexation is scheduled to take effect on June 30, 2007.

The City Manager presented an overview of the Annexation Report and Plan for Services for this annexation area, as is required by State law.

There were no citizens present to discuss this proposed annexation.

Mayor Clark Closed the Public Hearing.

No Council action was necessary for this item.

PUBLIC HEARING – TATE STREET ANNEXATION AREA: Mayor Clark opened the Public Hearing.

The City Manager advised that a public hearing is required for the Tate Street Annexation Area, which includes areas shown on a map presented to Council along Tate Street that are nearly surrounded by existing properties in the City Limits. The City Manager stated that a total of six dwelling units are included in this annexation area and that the annexation is scheduled to take effect on June 30, 2007.

The City Manager gave an overview of the Annexation Report and Plan for Services for this annexation area, as is required by State law.

Councilman Owenby emphasized the need for all citizens to recycle.

There were no citizens present to discuss this proposed Annexation area.

Mayor Clark closed the Public Hearing.

No Council action was necessary for this item.

PUBLIC HEARING – FINLEY ROAD ANNEXATION AREA: Mayor Clark opened the Public Hearing.

The City Manager advised that a public hearing is required for the Finley Road Annexation Area, which includes areas shown on a map presented to Council along Finley Road that are nearly surrounded by existing properties in the City Limits. The City Manager stated that a total of seven dwelling units are included in this annexation area, which is scheduled to take effect on June 30, 2007. The City Manager advised that Finley Road is just about the closest area to the center of the City that is not currently in the City Limits. Some concerns were expressed about certain properties not being included in the annexation area. The City Manager noted that the City has since received a request for voluntary annexation for one adjacent parcel and is working to receive a petition from another parcel.

The City Manager gave an overview of the Annexation Report and Plan for Services for the annexation area, as is required by State law.

Ms. Ann Allison asked if property owners would get a break on their fire insurance if this area is approved for Annexation. The City Manager advised that if property owners are not within 1000 feet of a fire hydrant, the City would install one or more fire hydrants. In the event a hydrant was indeed placed closer, property owners should expect a substantial insurance savings of 30-35 percent.

Mayor Pro Tem Little stated that one requirement the City has is that persons being annexed have to receive the same level of services as current City residents including access to fire hydrants which would have the effect of reducing homeowner's insurance premiums.

Mayor Pro Tem Little also stated that the annexation process has to make good sense for both the property owner and the City.

Mr. Barry McPeters stated that his mother lives on Finley Road and is on a fixed income. Mr. McPeters said that his mother's property was not in this annexation area but asked when Phase II of this annexation would take place. The City Manager stated that the City had no plans to annex additional properties on Finley Road.

Mr. Fred Proctor stated that it appeared to him that because one person wanted to be annexed, City Officials are forcing others and that some of them lived on fixed incomes and could not pay the taxes.

Councilman Edwards stated that the monthly savings from the reduction of water rates would more than offset the increased taxes, not to mention the reduction in insurance premiums.

Mr. Barry McPeters stated that he had the figures in front of him that do show a savings but that the taxes would still be a burden to people on fixed incomes. Mr. Proctor also stated that the taxes would be a financial burden.

Councilman Edwards stated again that it was not correct or truthful to state that the annexation would be a financial burden on property owners, when the evidence and figures provided by the City instead showed that there would be a clear savings for most property owners. He asked Mr. Proctor to share if there were other reasons he did not want to be annexed other than financial reasons.

Mayor Pro Tem Little advised that State law requires that City Council hold these public hearings. However, the Marion City Council has always had an open forum and listened to the citizens. He stated that the City Council cares how the public feels and is here to serve each person and to do what is right for the community as a whole. Mayor Pro Tem Little stated that Finley Road is the closest area to the center of Marion not currently in the City Limits and that it is quite reasonable to expect the City Limits to be extended to include this area, since residents of the road enjoy the benefits and services of the City without currently paying for such benefits and services.

Mr. Yang Kim asked how Council determines which areas are chosen for annexations.

Mayor Clark stated that, most of the time, persons ask to be annexed. At other times, the City initiates annexations that make sense for the City and for the annexation area. Mayor Clark added that almost every person in this proposed annexation area will save money

Mr. Scottie Williams asked if services for newly annexed areas would be received on a certain timeline. The City Manager stated that all services, except for needed water and sewer extensions, would begin as of the effective date of the annexations, June 30, 2007. The City will have up to two years after the effective date of the annexations to complete any needed water and sewer extensions.

Mr. Barry McPeters stated that he appreciates the job the City does for all the citizens.

Mayor Pro Tem Little added that someday, down the road, there was a possibility of a sidewalk being placed on Finley Road.

Property owners on Finley Road also noted speeding issues and their desire for a speed hump in the future.

Mr. Yang Kim asked about water ponding near the bridge on US 221 North Business. The City Manager advised that US 221 North Business is a state maintained road and bridge and that any problems would need to be directed to DOT.

Mayor Clark closed the Public Hearing.

No Council action was necessary for this item.

PUBLIC APPEARANCE – MR. FRANK DEAN – REQUEST CITY ASSISTANCE WITH MEMORIAL DAY SERVICE: The City Manager advised that Mr. Frank Dean is requesting City assistance with the Memorial Day Service scheduled to be held on the Courthouse Lawn on Sunday, May 27, at 2:00 p.m. Mr. Dean was present for this meeting and presented an overview of the plans for the Memorial Day Service which would include use of the City's portable stage and blocking off Main Street from Court Street to Henderson Street during the event. Mr. Dean

stated that he would find his own P.A. system for use during the event. Mr. Dean invited the Mayor and City Council to attend the event.

A Copy of Mr. Dean's letter is inserted as follows:

Frank Dean & Associates
75 Main Street, Suite 2
Marion, NC 28752

April 24, 2007

Mr. Bob Boyette
City Manager
City Hall
200 North Main Street
Marion, N.C. 28752

Reference: Memorial Day Service

Dear Bob,

The Memorial Day Veterans Committee would like to request the use of the public platform and public address system. They will be used as part of our 9th Annual Memorial Day Service. It is planned from 2:00 - 3:00 P.M., Sunday, May 27, 2007, on the courthouse lawn. The platform would be located against the exterior north wall of the City Barber Shop. The McDowell County Band will be featured with a series of patriotic songs. Seating for these activities is not necessary. Attendees will be asked to bring their lawn chairs.

We would ask Main Street be blocked off from East Court Street to West Henderson Street during this solemn service. We would like to invite City Council to join us. Your favorable acceptance of this request is appreciated.

Sincerely,

Frank Dean
Chairman
Memorial Day Veterans Committee

A brief discussion followed.

Upon a motion by Councilman Cuthbertson, seconded by Mayor Pro Tem Little, Council voted unanimously to approve the request of Mr. Frank Dean to allow use of the City stage and the blocking of Main Street between Court and Henderson Streets during the Memorial Day Service on Sunday, May 27, 2007 at 2:00 p.m. at the Courthouse Lawn.
The City Manager noted that the request for closing Main Street would need to be forwarded to the North Carolina Department of Transportation for approval.

Mr. Dean took the opportunity while before Council to thank them for their support of the Catawba River Greenway project and their partnership with the McDowell Trails Association.

REQUEST – RELOCATE NO PARKING AREA ON PARK AVENUE:

The City Manager stated that as indicated on the inserted below letter, Mr. Jonas Smith is requesting to relocate the no parking area approved by Council two years ago on Park Avenue approximately 12 feet closer to Cardinal Lane to allow one additional parking space in front of his house at 174 Park Avenue. The actual no parking designation fell in the middle of a driveway, so the sign was relocated on the other side of the driveway.

Mr. Smith was present for this meeting and advised that he now has a second vehicle and needs the parking space.

Councilman Owenby stated that he lives in this area and that if Council grants this request, then the City could possibly have the same visibility problems that supposedly existed before the change was made.

Mayor Clark stated the Street Committee might want to look at this request.

174 Park Avenue
Marion, N.C. 28752

April 2nd, 2007

Dear Council Members,

My name is Jonas Smith, and I am writing this letter to request an extension of the parking area in front of my house.

Some time ago there was a request submitted for a no parking zone at the intersection of Cardinal Lane, and Park Ave. The request was fulfilled resulting in my being limited to eight feet of parking area in front of my house. At that time this was not an inconvenience. Recently however necessity has required us to purchase a second car and now parking has become a problem.

My request is that the "NO Parking Beyond This Point", sign be moved twelve feet and six inches towards Cardinal Lane. This would give me sufficient parking and would not interfere with the traveling or exiting of Cardinal Lane.

Included are the signatures of some of the residents of Cardinal Lane, and the intersection in favor of this process. Your approval would be greatly appreciated.

Thank you for your time, and consideration of this request.

Sincerely,

Jonas D. Smith

It was the consensus of Council to refer this item to the Street Committee.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

CIVIL CITATION APPEAL: The City Manager presented Council with a letter requesting Council to waive a $10.00 civil citation. Mr. Jordan Frisbee received the citation on April 18th for being parked within in a fire lane in front of Cato's in the Wal Mart Shopping Center. Mr. Frisbee presented documentation from the EMS and the Hospital indicating that he was responding to an emergency situation involving a family member. The City Manager stated that the time of the citation matches up with the EMS call and the time that Mr. Frisbee and his family member were in the Hospital Emergency Room.

A brief discussion followed.

Upon a motion by Councilman Edwards, seconded by Councilman Cuthbertson, Council voted unanimously to waive the $10.00 civil citation issued to Mr. Jordan Frisbee for parking in the fire lane at Cato's in the Wal Mart Shopping Center.

REVIEW AUDIT CONTRACT: The City Manager advised that Johnson, Price & Sprinkle (JPS) submitted a contract for our 2006-07 City audit. JPS proposes to increase our audit fee by about 17 percent, from $17,075 to $19,950.

Harriett Thomas, Finance Director, was present for this meeting and advised that she sees no reason why the audit fee is going up so much this year. Ms. Thomas stated that JPS has stated that they are trying to cover more of the audit costs. Despite the City's long standing relationship with JPS, Ms. Thomas advised that it may be time to seek bids for audit services, since there are many qualified auditing firms in Western North Carolina. Ms. Thomas stated that she believed that a price lower than the one quoted by JPS could be obtained.

Mayor Clark stated that the City would have to have an auditor in place by July 1, 2007 and asked if there was enough time to seek proposals. Ms. Thomas stated that a Request for Proposals could be quickly prepared and that proposals could likely be obtained for Council review on June 5, which would allow enough time for the City's 2006-07 audit to take place.

A brief discussion followed.

Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, Council voted unanimously to authorize staff to seek proposals from auditing firms for completion of the City's 2006-07 audit.

Councilman Owenby asked if a more reasonable fee was not obtained, could the City still use the one presented by JPS.

Harriett stated that JPS could be given the opportunity to submit a revised bid; however, she felt confident that the City could find a firm to complete the audit for a more reasonable fee than has been quoted by JPS.

RESOLUTION REQUESTING INCREASE IN OCCUPANCY TAX: The City Manager advised that as discussed a few weeks ago, Senator Queen and Representative Gillespie have expressed their willingness to support a bill to increase the County's occupancy tax from three percent to five percent to fund heritage and cultural tourism projects such as the Carson house, McDowell House, Davidson Fort and possibly even the greenway projects. Although the bill filing deadlines in the House and Senate have expired, Senator Queen can still strip out an existing bill and substitute it with a bill to increase the occupancy tax. The City Manager stated that, in order for Senator Queen to introduce the bill, he has asked for a Resolution from the City, County, Chamber of Commerce and the Tourism Development Authority requesting an increase in the County occupancy tax.

Mayor Clark stated that Council has challenged the County and others in the community to match a possible $100,000 City contribution for the renovation of the McDowell House and that the increased occupancy could provide a sustainable revenue source for the maintenance of the building. Mayor Clark added that the McDowell House could be used as the trail head and parking lot for the planned greenway on the Catawba River.

Councilman Owenby asked if the County has committed to a $100,000 contribution. Mayor Clark stated that he had spoken with Chuck and that he and the County Commissioners are supportive of the City's offer and proposal, but no commitment has been made.

Councilman Cuthbertson stated that the good thing about an occupancy tax is that it does not tax our local citizens and that people do not generally worry about what the occupancy tax is when booking a hotel room.

A brief discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt the following Resolution:

A Resolution
Supporting an Increase in the McDowell County Occupancy Tax
To Fund Heritage and Cultural Tourism Projects

WHEREAS, McDowell County and the City of Marion have a rich and proud history extending back to the 18th Century long before the County and City were chartered by the State of North Carolina; and

WHEREAS, McDowell County and the City of Marion have for many years sought to promote the history of our community and heritage and cultural tourism; and

WHEREAS, efforts are underway to undertake several heritage and cultural tourism projects and restore many historic sites within McDowell County, including the McDowell House, the Carson House, the Davidson Fort and heritage and cultural greenways; and

WHEREAS, the local community needs funds for these projects in the area of heritage and cultural tourism and to sustain these projects and heritage and cultural sites; and

WHEREAS, the current County occupancy tax of three percent is not adequate to fund these proposed heritage and cultural tourism projects, thereby creating the need for an additional revenue source.

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

The City Council of the City of Marion does respectfully request that the McDowell County occupancy tax be increased from three percent to five percent, with the increased amount being designated for heritage and cultural tourism capital projects and for maintaining and advertising heritage and cultural tourism sites within McDowell County, to include the McDowell House, the Carson House, the Davidson Fort and heritage and cultural tourism greenways or other priorities identified by the McDowell County Tourism Development Authority.

Adopted this the 1st day of May, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

RESOLUTION NUMBER: R-07-05-01-2

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager advised that the 5th Annual City Open House held on April 20 went extremely well. The City excellent weather and great efforts put forth by employees and volunteers. All elementary schools in the County participated except for Old Fort Elementary. The City Manager stated that tank you notes had been sent to Baxter Healthcare, to the volunteers and to City departments.

The City Manager advised that with the purchase of a motorcycle, the Police Chief has proposed obtaining a small storage building to put behind the Police Department in which to store the motorcycle. A brief discussion was held regarding the location and appearance of the building. The Mayor and City Council agreed by consensus to authorize the purchase of such a building.

The City Manager advised that the Street Committee will need to meet to look at a request for additional stop signs at the intersection of Crescent Drive, Hillside Drive and Viewpoint Drive. There is also a similar request for an additional stop sign and/or speed hump at the intersection of Miller Avenue and Ridgecrest Drive. Council expressed no objection to referring these matters to the Street Committee.

The City Manager advised that he is working on the recommended 2007-08 Budget and hopes to have the budget ready to be distributed to Council no later than the May 15th Council meeting. The City Manager suggested that Council can set dates at the May 15 meeting for one or more budget workshops.

Councilman Edwards stated that he would be on vacation the week of May 14-18 and would not be present for the May 15th City Council meeting.

The City Manager advised that the City will not come anywhere close to qualifying for State Disaster Assistance for the April 15-16 wind storm, given the high State threshold local governments must meet to qualify for such State assistance. City Crews are working to clear storm related debris as quickly as possible. The City Manager noted that he had authorized the Public Works Director to have employees work overtime, within reason, to clear the storm debris as soon as possible.

COUNCILMAN COMMENTS:

Councilman Owenby thanked Mayor Clark, Council Members and the City Manager for all their support during the recent passing of his wife, Margaret.

Mayor Clark stated that he would like see the City do a Report to the People, as the City had done many years ago. Councilman Edwards noted that such a document could perhaps simply be posted on the City's website, to eliminate the high cost of printing.

CLOSED SESSION – UNDER N.C.G.S. 143-318.11(A)(6) TO DISCUSS A PERSONNEL MATTER: Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, 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 Martin, seconded by Councilman Edwards, 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 Mayor Pro Tem 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 15, 2007 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 Councilman Cecil Owenby.

Councilman Mike Edwards was not present for this meeting due to being out of town.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Administrative Assistant; Mika Elliott, Police Chief; Chris Hollifield, Public Works Director/Engineer; Heather Cotton, City Planner; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Jennifer Crowder 5 Hunt Street, Marion, NC; Shannon Buchanan 55 Baldwin Avenue, Marion, NC; Ruth Medford 61 4th Street, Marion, NC; Dave Medford 465 Baldwin Avenue Marion, NC; Bobbie Young 318 Forest Heights Drive, Marion, NC; Brian Butts, 137 Finley Road, Marion, NC; Fred Proctor 234 Finley Road, Marion, NC; David Workman 21 4th Street Marion, NC; Jonas Smith 174 Park Avenue Marion, NC.

CONSENT AGENDA: Upon a motion by Mayor Pro Tem Little, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - May 1, 2007 Regular & Closed Session City Council Minutes

B. Receive Certificate of Sufficiency – Request for Voluntary Annexation – Loftis Property – Finley Road:

CERTIFICATE OF SUFFICIENCY – LOFTIS/FINLEY ROAD ANNEXATION - 2007

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 May, 2007.

(Seal)

_____
J. Robert Boyette, City Clerk

C. Approve Resolution fixing the Date of Public Hearing on the Question of Annexation – Loftis Property – Finley Road:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31 – LOFTIS/FINLEY ROAD - 2007

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 5, 2007.

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

BEING THE REMAINING AMOS G. FORTENBERRY AND WIFE, ELOISE
FORTENBERRY PROPERTY as recorded in Deed Book 206 at Page 1246 in the McDowell County Register of Deeds, hereby incorporated by reference as if fully set out and being more fully described by the new plat of survey as follows:

BEGINNING on an existing ½" iron rod located in a common northeast boundary of the
Property described in a deed to Amos G. Fortenberry and wife, Eloise Fortenberry recorded in Deed Book 206, Page 1246 and a southwest boundary of the property described in a deed to Craig S. Orange, et al recorded in Deed Book 573, Page 315 with a survey by R. L. Greene, RLS dated June 1, 1996 being Map # 96-127, said rod having NAD83 coordinate values of: X=336,472.796 meters and Y= 218,894.814 meters, said rod being located South 37 degrees 53 minutes 47 seconds West – 1267.37' – ground (386,235 meters- grid) from NCGS monument "Machine" which has NAD 83 coordinate values of: X= 336,710.036, Y = 219199.601 meters, elevation = 423.153 meters and combined scale factor = 0.99984418; thence, from said beginning with a common boundary described in Deed Book 206 Page 1246 and Deed Book 573, Page 315 the next two courses and distances: South 29 degrees 30 minutes 36 seconds East -200.16 feet to an existing ½" iron rod and South 29 degrees 30 minutes 36 seconds East – 208.95 feet to an existing ½" iron rod, said rod being the 3rd corner of the property described in a deed to Herman H. Huffman and wife, Augusta I. Huffman recorded in Deed Book 272, Page
376, the 4th corner of Deed Book 573, Page 315 and the second corner of Deed Book 206, Page 1246; thence, with a common southeastern boundary described in Deed Book 206, Page 1246 and the northwest boundary described in Deed Book 272, Page 376, being the northwest boundary of the City of Marion Corporate Limits, South 67 degrees 37 minutes 34 seconds West - 256.15 feet to a ¾" iron pipe set at the beginning corner of the property described in Tract I of a deed to Linda Gail Hall recorded in Deed Book 677, page 317, the 2nd corner of Deed Book 272, Page 376 and the beginning corner of deed Book 206, Page 1246; thence with a common southern boundary described in Deed Book 206, Page 1246; and a northern boundary described in Tract I in Deed Book 677, Page 317, South 86 degrees 48 minutes 35 seconds West - 550.54 feet to an ¾" iron pipe set, at the beginning corner of the property described in a deed to Ivan's Restaurant and Bar, LLC recorded in Deed Book 674, Page 515, survey by R. L. Greene, RLS dated June 12, 1985 said pipe located North 86 degrees 40 minutes 58 seconds East - 326.40 feet from an existing 1" iron pipe, the second corner of Deed Book 674, Page 515; thence with a
common western boundary described in Deed Book 206, page 1246 and eastern boundary
described in Deed Book 674, Page 515, North 01 degrees 03 minutes 28 seconds East – 74.72 feet to a spike set near the east edge of pavement of Finley Road, State Road 1209; said spike located South 01 degrees 03 minutes 28 seconds West – 155,29 feet from a ¾" iron pipe, the 4th corner of Deed Book 674, Page 515; thence, with a western boundary described in Deed Book 206, Page 1246 running near the eastern edge of pavement of Finley Road, State Road 1209, North 18 degrees 35 minutes 06 seconds East = 98.13 feet to an existing railroad spike, the southwest corner of the property described in a deed to Van Harold Davis and wife, Joyce Ann Davis recorded in Deed Book 442, Page 527; thence leaving said road and crossing an overhead power line and 4' metal pipe with a southwestern boundary described in Deed Book 442, Page 527, South 75 degrees 39 minutes 17 seconds East – 149.95 feet to a 1" existing iron rod, the
southeast corner of Deed Book 442, Page 527; thence, with a southeastern boundary described in Deed Book 442, Page 527, the next 2 courses and distances: North 39 degrees 16 minutes 54 seconds East - 79.09 feet to a existing 1" iron rod and North 39 degrees 30 minutes 46 seconds East - 78.86 feet to an existing ½" iron pipe, the 2nd corner of Deed Book 442, Page 527, and being the 6th corner of the property described in a deed to Kenneth Presnell and wife Jacqueline Presnell recorded in Deed Book 343, Page 318 with survey by Suttles Surveying, P. A. dated June 4, 1985; thence, with the property described in Deed Book 343, Page 318, the next 5 courses and distances: North 35 degrees 08 minutes 39 seconds East – 86.09 feet to an existing 1" iron rod, the 5th corner of Deed Book 343, Page 318, North 43 degrees 45 minutes 28 seconds
East – 110.12 feet to a ¾" iron pipe set, North 43 degrees 45 minutes 28 seconds East – 5.00 feet to a 15" white oak marked for a corner, said white oak is the 4th corner of Deed Book 443, Page 318, North 48 degrees 16 minutes 57 seconds West- 5.00 feet to a ¾" iron pipe set and North 48 degrees 16 minutes 57 seconds West 23.49 feet to an existing 2" iron rod, in the southeast boundary of the property described in a deed to Janie Shelton

recorded in Deed Book 630, Page 514 with a survey by Toney E. Carpenter, RLS dated January 12, 1989, the 3rd corner of Deed Book 343, Page 318, located North 37 degrees 23 minutes 51 seconds East - 10.85 feet from an existing 2" iron pipe, the 2nd corner of Deed Book 343, page 318 and the 3rd corner of Deed Book 630, Page 514; thence with the general direction of and down a branch, with the boundary as described in Deed Book 630, page 514 the following seven courses and distances; North 49 degrees 14 minutes 18 seconds East – 42.65 feet to a point, North 72 degrees 02 minutes 37 seconds East – 30.24 feet to a point; North 52 degrees 19 minutes 34 seconds East- 72.66 feet to a point, North 76 degrees 44 minutes 55 seconds East – 15.57 feet to a point, South 01 degrees 40 minutes 30 seconds West – 5.72 feet to a point, South 63 degrees 53 minutes 30 seconds East – 17.56 feet to a point and North 22 degrees 18 minutes 55 seconds East – 46.99
feet to a point the 3rd corner of Deed Book 206, page 1246 and the east corner of Deed Book 630, Page 514 in the boundary of the aforesaid property recorded in Deed Book 573, page 315; thence with a common northeast boundary described in Deed Book 206, page 1246 and a southwest boundary described in Deed Book 573, Page 315, South 29 degrees 30 minutes 36 seconds East –64.49' to the **BEGINNING, containing 4.82 acres,** and being shown on a plat prepared by Suttles Surveying, P.A., entitled "Survey for Janie Shelton, Marion Township, McDowell County, North Carolina, dated April 28, 2004, Project Number 12785A".

SUBJECT TO the right of way for State Road No. 1209, Finley Road, to its full legal width.

SUBJECT TO the riparian rights of others in and to an unnamed branch.

FOR BACK REFERENCE see Deed Book 206, Page 1246.

ALSO SEE a previous survey by J. L. Haney, dated December 31, 1969.

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 15th day of May, 2007.

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A. Everette Clark, Mayor

ATTEST:

_____

J. Robert Boyette, City Clerk

Resolution Number: R-07-05-15-1

D. Approve Clean Water Management Trust Fund Grant Contract & Resolution:

The City Manager reported that the N.C. Clean Water Management Trust Fund (CWMTF) has directed that Council approve a contract by the end of June for the City's $2.5 million grant for the planned wastewater improvements. City Staff is working with CWMTF on some final technical modifications to the contract, but the vast majority of the contract is non-negotiable. The City Manager recommended that Council approve the contract and authorize staff to work out the final contract language with the CWMTF.

For information, the City Manager copied Council a letter sent to the State, asking for assurances that, for purposes of the CWMTF grant, we can qualify for the needed $3.1 million in loan funding for this project.

A copy of the approved contract is on file at City Hall.

April 12, 2007

Mr. Bobby Blowe
North Carolina Department of Environment
and Natural Resources
Division of Water Quality

Construction Grants and Loans Section
1633 Mail Service Center
Raleigh, North Carolina 27699-1633

RE: Wastewater Collection and Treatment Plant Improvements
City of Marion, North Carolina

Dear Mr. Blowe:

The City of Marion has recently initiated the planning phase of improvements to many aspects of its wastewater collection and treatment systems. These steps have included entering into a Special Order by Consent (SOC) which encompasses the City's existing Corpening Creek WWTP, as well as portions of the collection system draining to the facility. The SOC was put in place to allow the City to make improvements to the WWTP, restore the capacity of the facility, and allow it to operate more consistently within its NPDES permit limits. The improvements within the collection system are intended to reduce infiltration and inflow (I/I) which is currently dramatically impacting the non-compliance of the treatment plant.

In addition, the City of Marion has also made application to the Division of Water Quality for an SOC related to its Catawba River WWTP. This facility is also experiencing difficulties consistently meeting its NPDES permit requirements. In the case of this facility however, the primary issue is the high strength of the influent wastewater entering the facility. While the volume of flow entering this facility is less than half its design capacity, some of its influent flow parameters are several times those of typical municipal wastewater. To resolve the issues at the Catawba River facility, the City of Marion is proposing to abandon the existing treatment plant and deliver the flow from this drainage basin into the Corpening Creek basin.

To accomplish the proposed abandonment of the existing Catawba River WWTP, it will be necessary to construct two (2) pump stations and force mains designed to deliver the wastewater from the site of the existing WWTP into the Corpening Creek basin. However, before this work can be completed, it will be necessary to complete the work described above to the Corpening Creek WWTP and collection systems.

As you can imagine, the completion of such tasks will require a significant amount of project funding. The estimated cost of these improvements is $6.1 million. To provide a portion of the necessary funding for these improvements, the City of Marion has applied for and received a $2.5 million grant from the Clean Water Management Trust Fund (CWMTF). The City of Marion is currently reviewing the content of the agreement for these funds and will execute the agreement shortly. In addition, the City has also applied for an additional $500,000 in grant funding from the CWMTF. Therefore, we are hopeful we will secure a total of $3.0 million in grant funding for this project. The balance of the funds for this project, $3.1 million, will require an alternate funding source. To fill this void, the City of Marion intends to apply for a low interest loan through the State Revolving Fund for this balance. However, we understand that the City cannot formally apply for this financing until the Engineering Report for this project has been approved by the Construction Grants and Loans Section (CG&L) and the plans and specifications for the improvements have been submitted for an Authorization to Construct.

In the interim, however, the City has been asked by the CWMTF to provide some assurance that the remainder of the funds for this project can be secured. Understanding that no formal application for this funding has yet to be requested, and no definitive response can be provided at this time, I am hopeful that you can provide assurances satisfactory to the CWMTF that the necessary funds can be made available for a project of this type and magnitude. I understand that this documentation must be provided to the CWMTF prior to their release of any grant funds. Therefore, your prompt attention and response to this request is greatly appreciated.

Should you have any questions or require additional information, please do not hesitate to contact me at 828-652-3551 or Randy Hintz of McGill Associates, our consulting engineering firm, at 828-252-0575.

Sincerely,

J. Robert Boyette
City Manager
City of Marion

cc: Mayor/City Council
Chris Hollifield, Public Works Director/Engineer
Larry Carver, Wastewater Treatment Superintendent
Mike Waresak, P.E., McGill Associates
Randy Hintz, P.E., McGill Associates

CITY OF MARION
RESOLUTION OF SUPPORT
FOR THE CLEAN WATER ACT OF 2007

WHEREAS, North Carolina's continued prosperity depends on protecting the State's water resources for current use and future generations, and,

WHEREAS, North Carolina is expected to grow by 3.5 million people to exceed 12 million by the year 2030, placing pressures on the state's water resources and local water providers; and

WHEREAS, the 1998 Clean Water Bonds delivered significant benefits to North Carolina communities and citizens, supporting 1,103 projects in 97 counties, which

- Helped create or retain 42,000 jobs
- Corrected major regulatory violations in 97 communities
- Addressed failing septic systems and contaminated wells in 59 counties
- Resulted in 50 communities receiving sewer service for the first time
- Encouraged regional efficiencies, sound planning and conservation practices; and

WHEREAS, North Carolina's public water, sewer and storm water utilities will require investments totaling $16.63 billion to keep pace with necessary improvements and population growth over the next 25 years, including $6.85 billion in investments within the next five years;

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Marion urges the north Carolina general assembly to enact the "Clean Water Act of 2007", which provides for a $500 million bond issue to be expended over the next five years, and an annual appropriation of $50 million in recurring funding to address urgent needs.
Adopted this the 17th day of April, 2007.

_____
A. Everette Clark, Mayor

ATTEST:

_____
J. Robert Boyette, City Manager/Clerk

Resolution Number: R-07-04-17-1

E. Approve Budget Amendments:

CITY OF MARION, NORTH CAROLINA
2007-2007 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 2006-06 as adopted by the Marion City Council on the 20th day of June, 2006 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Administration, Account Number 10-420-0600, Insurance is increased from $38,482 to $40,482.

b. General Fund Expenditures, Administration, Account Number 10-420-5300, Dues and Subscriptions is increased from $10,500 to $11,500.

c. General Fund Expenditures, Inspections Department, Account Number 10-500-2600, Advertising is increased from $2,000 to $4,000.

d. General Fund Expenditures, Police Department, Account Number 10-510-3320, Explorer Post is increased from $-0- to $800.

e. General Fund Expenditures, Police Department, Account Number 10-510-3330, National Night Out Supplies is increased from $4,150 to $4,850.

f. General Fund Expenditures, Police Department, Account Number 10-510-3340, Safe Neighborhood Grant is increased from $-0- to $700.

g. General Fund Expenditures, Recreation, Account Number 10-620-6000, Mountain Glory Expenses is increased from $24,700 to $25,700.

h. General Fund Expenditures, Non-Departmental, Account Number 10-660-5500, Wellness Programs is increased from $1,500 to $3,250.

i. General Fund Revenues, Account Number 10-334-1500, Bullet Proof Vest Grant is increased from $2,250 to $3,850.

j. General Fund Revenues, Account Number 10-335-0100, MIT - Wellness Grant is increased from $1,070 to $1,750.

k. General Fund Revenues, Account Number 10-341-1000, Court Costs, Fees & Charges is increased from $8,255 to $10,000.

l. General Fund Revenues, Account Number 10-341-1100, Parking Tickets/Civil Citations is increased from $9,000 to $10,000.

m. General Fund Revenues, Account Number 10-342-1000, Police Department Copies/Fingerprints is increased from $100 to $950.

n. General Fund Revenues, Account Number 10-349-0000, Federal Grants – Department of Justice is increased from $-0- to $500.

o. General Fund Revenues, Account Number 10-390-0000, Cemetery Revenues is increased from $14,172 to $16,487.

p. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is increased from $777,263 to $778,523.

GENERAL CAPITAL PROJECT FUND

a. General Capital Project Fund Revenues, Account Number 11-390-0000, McDowell County Reimbursement is decreased from $100,000 to $37,500.

b. General Capital Project Fund Revenues, Account Number 11-391-0000, Transfer from General Fund Capital Reserve, is increased from $100,000 to $200,000.

c. General Capital Project Fund Expenditures, Account Number 11-171-0400, Transfer to General Fund Capital Reserve is increased from $-0- to $44,221.

d. General Capital Project Fund Expenditures, Account Number 11-171-0500, South Garden Street Parking Lot Expense is decreased from $200,000 to $193,279.

GENERAL FUND CAPITAL RESERVE

a. General Fund Capital Reserve Revenues, Account Number 75-391-0000, Transfer from General Capital Projects is increased from $-0- to $44,221.

b. General Fund Capital Reserve Revenues, Account Number 75-399-0000, Fund Balance – General Fund, is decreased from $324,750 to $280,529.

WATER AND SEWER FUND

a. Water and Sewer Fund Expenditures, Utility Line Maintenance, Account Number 30-810-3300, Supplies and Materials is increased from $55,000 to $85,000.

b. Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated is increased from $305,199 to $335,199.

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 May 2007.

_____
A. Everette Clark, Mayor

ATTEST:_____
J. Robert Boyette, City Manager/Clerk

Ordinance Number: O–07–05–15–4

ADOPTION OF ANNEXATION ORDINANCE – EASTFIELD PHASE

2 AREA: The City Manager advised that the annexation process for the Eastfield Phase 2 Area has been completed, except for adoption of the following ordinance to annex the area effective June 30, 2007.

The City Manager noted that the City has heard nothing but support for this annexation from the area.

Upon a motion by Mayor Pro Tem 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 UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA – EASTFIELD PHASE 2 AREA - 2007

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 1, 2007, 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 at the intersection of the current Marion Corporate Limits and the southwestern corner of Lot 5015 in Block 19 on McDowell County Tax Map 1711.05, thence following the current Marion Corporate Limits in a generally easterly direction approximately 1,527 feet to a point at the southeast corner of Lot 8999 in Block 29 on the McDowell County Tax Map 1711.06, thence following the eastern boundary of said Lot 8999 approximately 87 feet in a northerly direction to a point at the northeast corner of said Lot 8999, said point also being the southern boundary of Tunnel Street (SR 1729), thence crossing SR 1729 in a straight line approximately 50 feet in a northerly direction, thence following the eastern boundary of Lots 8166, 8256, 8374, 8483, 8489, and 8567 in Block 29 on the McDowell County Tax Map 1711.06 in a northerly direction approximately 518 feet to a point at the northeast corner of said Lot 8567, said point also being the western boundary of Forest Park Road (SR 1727); thence crossing SR 1727 in a straight line approximately 25 feet in an easterly direction to a point at the southwest corner of Lot 1651 Block 29 on the McDowell County Tax Map 1711.06, thence following the southern boundary of said lot 1651 in an easterly direction approximately 219 feet to a point at the southeast corner of said Lot 1651, thence following the eastern boundary of said Lot 1651 approximately 11 feet in a northerly direction to the southwest corner of Lot 2683 Block 29 on the McDowell County Tax Map 1711.06, thence following the southern boundary of said Lot 2683 and Lot 3749 Block 29 of the McDowell County Tax Map 1711.06 in an easterly direction approximately 172 feet to a point at the southeast corner of said Lot 3749, thence following the eastern boundary of said Lot 3749 in a northerly direction approximately 235 feet to a point at the northeast corner of said Lot 3749, said point also being the southern boundary of Seagle St (SR 1724), thence crossing SR 1724 in a straight line approximately 40 feet in a northerly direction to a point, said point being at the intersection of the northern boundary of SR 1724 and the southern boundary of Lot 2184 Block 20 on the McDowell County Tax Map 1712.18, thence following the southern boundary of said Lot 2184 approximately 70 feet in an easterly direction to a point at the southeast corner of said Lot 2184, thence following the eastern boundary of said Lot 2184 approximately 449 feet in a northerly direction to a point at the northeast corner of said Lot 2184, thence following the northern boundary of said Lot 2184 and Lots 1193, 1131, 0099 Block 30 on the McDowell County Tax Map 1712.18 approximately 190 feet in a southwesterly direction to a point at the northwest corner of said Lot 0099, said point also being the eastern boundary of Lot 0118 Block 20 on the McDowell County Tax Map, thence following the eastern boundary of said Lot 0118 approximately 65 feet in a southerly direction to a point at the southeast corner of said Lot 0118, said point also being the northeast corner of Lot 0023 in Block 20 on the McDowell County Tax Map 1712.18, thence in a southwesterly direction following the northern boundaries of said Lot 0023 and Lots 9940 and 8862 in Block 29 on the McDowell County Tax Map 1711.06 approximately 398 feet to a point at the northwest corner of said Lot 8862, said point also being the northeast corner of Lot 7756 and the southeast corner of Lot 6894 Block 29 on the McDowell County Tax Map 1711.06, thence following first the eastern boundary of said Lot 6894, then following the northern boundary of said Lot 6894, first approximately 150 feet in a northwesterly direction then approximately 60 feet in a southwesterly direction to a point at the southwest corner of said Lot 6894, said point also being the southern boundary of Matilda Avenue (SR 1725), thence crossing SR 1725 in a straight line approximately 60 feet in a northerly direction to a point at the intersection of the northern boundary of SR 1725 and the southeast corner of Lot 5044 Block 20 on the McDowell County Tax Map 1712.18, thence following the northeastern boundary of said Lot 5044 and Lot 4133 Block 20 on the McDowell County Tax Map 1712.17 approximately 300 feet to a point at the intersection of the northeastern corner of said Lot 4133 and the southern boundary of Carolina Avenue, thence crossing Carolina Avenue in a straight line approximately 60 feet in a northerly direction to a point at the intersection of the northern boundary of Carolina Avenue and the southern boundary of Lot 3340 in Block 19 on the McDowell County Tax Map 1712.17, thence following the southern boundary of said Lot 3340 approximately 120 feet in a northeasterly direction to a point at the southeast corner of said Lot 3340, thence in a straight line following the eastern boundary of said Lot 3340 and crossing the Southern Railroad right-of-way approximately 220 feet to a point, said point being the boundary of the current Marion Corporate Limits, thence following the boundary of the current Marion Corporate Limits approximately1390 feet in a generally westerly direction to a point at the northwest corner of Lot 3862 Block 19 on the McDowell County Tax Map 1711.05, said point also being the boundary of the current Marion Corporate Limits, thence following the current Marion Corporate Limits in a generally southerly direction approximately 920 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 6th day of February, 2007, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 7,752 feet, of which 4,160 feet (or 53.66%) coincides with the City boundary. Therefore, at least one eighth (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 83.93% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 100.0% 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 February 20, 2007 and filed in the office of the Clerk for public inspection on February 21, 2007.

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, 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. (No water and sewer extensions are necessary in the area to be annexed).

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 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 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 Board of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2007.

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 15th day of May, 2007.

_____
A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Ordinance Number: O-07-05-15-1

ADOPTION OF ANNEXATION ORDINANCE: TATE STREET:

The City Manager advised that the annexation process for the Tate Street Area has been completed, except for adoption of the following ordinance to annex the area effective June 30, 2007.

The City Manager noted that the City has heard no opposition to this annexation from the area.

Upon a motion by Councilman Owenby, seconded by Mayor Pro Tem Little, 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 AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA – TATE STREET AREA - 2007

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 1, 2007, 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 at the intersection of the current Marion Corporate Limits and the western boundary of Lot 1198 Block 36 on the McDowell County Tax Map 1701.10, thence following in a straight line the boundary of the current Marion Corporate Limits first in an easterly direction approximately 200 feet, then in a southerly direction approximately 225 feet to a point, said point being the boundary of the current Marion Corporate Limits and the boundary of Lot 4854 Block 35 on the McDowell County Tax Map 1701.10, thence following the current Marion Corporate Limits in a generally westerly direction approximately 927 feet to a point at the intersection of the current Marion Corporate Limits and margin of Tate Street (SR 1214), thence following in a straight line the current Marion Corporate Limits in a northwesterly direction approximately 188 feet, thence following the current Marion Corporate Limits in a generally northeasterly direction approximately 316 feet to a point, said point being the northern boundary of Lot 8960 Block 25 on the McDowell County Tax Map approximately 15 feet from the northwest corner of said Lot 8960, thence following the northern boundary of said Lot 8960 and the northern boundary of Lots 9052 Block 26 and Lot 0999 Block 35 on the McDowell County Tax Map 1701.10 in a generally easterly direction approximately 487 feet to a point, said point being the northeast corner of said Lot 0999 and the southwest corner of said Lot 1198, then following the western boundary of said Lot 1198 in a northerly direction approximately 72 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 6th day of February, 2007, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 2,445 feet, of which 1,873 feet (or 76.61%) coincides with the City boundary. Therefore, at least one eighth (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 60.00% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or

governmental purposes, and 100.0% 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 February 20, 2007 and filed in the office of the Clerk for public inspection on February 21, 2007.

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, 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. (No water and sewer extensions are necessary in the area to be annexed).

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 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 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 Board of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2007.

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 15th day of May, 2007.

_____
A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Ordinance Number: O-07-05-15-2

ADOPTION OF ANNEXATION ORDINANCE – FINLEY ROAD AREA: The City Manager advised that the annexation process for the Finley Road Area had completed, except for adoption of the enclosed ordinance to annex the area effective June 30, 2007. The City Manager advised that the City has received broad support for this annexation, with owners of six parcels in or adjacent to the area (Shelton/Loftis, Shelton/Loftis, Briggs, Presnell, Hall/Buchanan and Rev. Davis) signing statements in support of the annexation. Another parcel is owned by the County, which has stated no objection and yet another owned by Orange/Butler/Collins, who have stated that they will voluntarily request annexation. The only property owner in the area to be annexed expressing concern about the annexation at the public hearing, Mr. Proctor, will save between $104 and $326 (depending on whether he contracts with someone to collect his garbage and

whether he could possibly eliminate a private area light), plus an estimated 30 percent reduction (worth over $100 per year) in his homeowner's insurance.

The City Manager further advised that Finley Road is the closest area to the center of the City that is not currently within the City Limits. Several property owners will save money off of the annexation and others (such as Orange, Loftis/Shelton and Davis) will be able to develop their property once sewer service is extended. The City Manager stated that both ends of Finley Road are already within the City Limits.

Mayor Pro Tem Little stated that Mr. Fred Proctor was present at the Public Hearing held several weeks ago regarding the annexation of Finley Road and is present for this meeting.

Mr. Proctor, along with Mr. Brian Butts, both residents of Finley Road, stated that State Law says that an annexation has to be meaningful to the Property owners. They feel that this annexation will not be meaningful to them and stated their opposition.

Mayor Clark stated that he feels Council has weighted their options, and that after this area is annexed the citizens will see and understand the benefits. Mayor Clark stated that, had the City of Marion not completed annexations over the years, the City would be a small dot on the map. Mayor Clark stated that Council wants to help citizens and provide services.
Upon a motion by Mayor Pro Tem Little , 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 UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 2 OF THE GENERAL STATUTES OF NORTH CAROLINA – FINLEY ROAD AREA - 2007

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 1, 2007, 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 at the intersection of the northeast corner of Lot 1704 Block 37 on the McDowell County Tax Map 1701.06 and the current Marion Corporate Limits, thence following the current Marion Corporate Limits first in a northeasterly direction approximately 935 feet, then in a southeasterly direction approximately 256 feet to a point at the southeast corner of Lot 9446 Block 38 on the McDowell County Tax Map 1701.06, thence following the southern boundary of said Lot 9446 in a southwesterly direction approximately 325 feet to a point, said point being the northwest corner of Lot 0066 Block 48 on the McDowell County Tax Map 1701.06, thence following the western boundary of said Lot 0066 approximately 87 feet to a point, said point being the southeast corner of Lot 7350 Block 38 on the McDowell County Tax Map 1701.06, thence following the southern boundary of said Lot 7350 approximately 203 feet to a point at the intersection of the southern boundary of said Lot 7350 and a point on the eastern boundary of Lot 5010 Block 38 on the McDowell County Tax Map 1701.06, thence following the eastern boundary of said Lot 5010 in a southerly direction approximately 28 feet to a point at the southeast corner of said Lot 5010, thence following the southern boundary of said Lot 5010 and Lot 2369 Block 37 on the McDowell County Tax Map 1701.06 approximately 359.14 feet to a point at the southwest corner of said Lot 2369, thence following the western boundary of said Lot 2369 in a westerly direction approximately 150 feet, thence following the western boundary of Lot 7814 Block 37 on the McDowell County Tax Map in a southerly direction approximately 163 feet to a point, said point

being the southwest corner of said Lot 7814 and the northwest corner of Lot 5556 Block 37 on the McDowell County Tax Map, thence following first the northern boundary of said Lot 5556 then the eastern boundary of said Lot 5556 then southern boundary of said lot 5556 then the western boundary of said Lot 5556 first approximately 579 feet in an easterly direction then approximately 302 feet in a southerly direction then 210 feet in a southwesterly direction then approximately 458 feet in a northwesterly direction to a point at the northeast corner of Lot 3377 Block 37 on the McDowell County Tax Map 1701.10, thence following the northern boundary of said Lot 3377 approximately 192 feet in a southwesterly direction to a point, said point being the intersection between the northwest corner of said Lot 3377 and the northeastern boundary of Lot 3151 Block 37 on the McDowell County Tax Map 3151, thence following the northeastern boundary of said Lot 3151 approximately 33 feet in a northerly direction to a point, said point being at the intersection of the northeast corner of said Lot 3151 and the eastern margin of Finley Road (SR 1209), thence crossing SR 1209 in a straight line to a point, said point being at the intersection of the western margin of SR 1209 and the eastern boundary of Lot 0463 Block 37 on the McDowell County Tax Map 1701.10, thence following the eastern boundary of said Lot 0463 and Lot 8359 Block 27 on the McDowell County Tax Map 1701.10 approximately 97 feet to a point at the southeast corner of said Lot 8359, thence following first the southern boundary of said Lot 8359 then following the western boundary of said Lot 8359 first approximately 410 feet in a westerly direction then approximately 385 feet in a northerly direction to a point, said point being the intersection of the northwest corner of said Lot 8359 and the current Marion Corporate Limits, thence following the current Marion Corporate Limits first in an easterly direction approximately 213 feet then in a northerly direction approximately 258 feet then in an easterly direction approximately 345 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 6th day of February, 2007, the date upon which this annexation proceeding was begun.

The aggregate external boundary line of the area to be annexed is 5,996 feet, of which 2,533 feet (or 42.24%) coincides with the City boundary. Therefore, at least one eighth (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 75.00% of the total number of lots and tracts in said area are used for residential, commercial, industrial, institutional or governmental purposes, and 65.19% 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 February 20, 2007 and filed in the office of the Clerk for public inspection on February 21, 2007.

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 $46,150, plus any needed road or driveway repairs, 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 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 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 Board of Elections, as required in G.S. 163-288.1.

Section 8. This ordinance shall become effective on June 30, 2007.

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 15th day of May, 2007.

A. Everette Clark, Mayor

ATTEST:

APPROVED AS TO FORM:

J. Robert Boyette, City Clerk

City Attorney

Ordinance Number: O-07-05-15-3

PUBLIC HEARING – REZONING – WEST HUDGINS STREET:
Mayor Clark opened the Public Hearing.

City Planner Heather Cotton stated that Mr. Perry Smith is requesting an amendment to the Official Zoning Map from C-2 General Business Zoning District to R-2 General Residential to allow for residential use on his property located on 240 West Hudgins Street with the Parcel Identification Numbers (PIN) 1701.14-33-5064.

Ms. Cotton reported that the property was rezoned from R-2 General Residential to C-2 General Business in May 2002 to accommodate a local neighborhood retail store due to concerns over child and elderly safety crossing Sugar Hill Road. The applicant would like to rezone the property back to residential stating that the property is not large enough to accommodate heavy traffic and is difficult for neighbors in close proximity due to disturbances.

Ms. Cotton further stated that the property is surrounded by residential uses. The existing and proposed zoning district is shown in figures one and two.

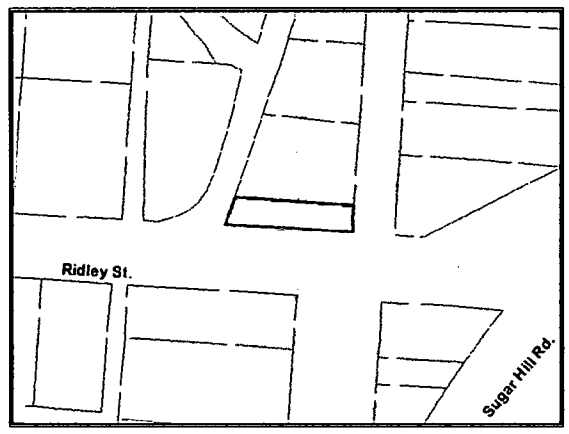


Figure One: Existing Zoning District

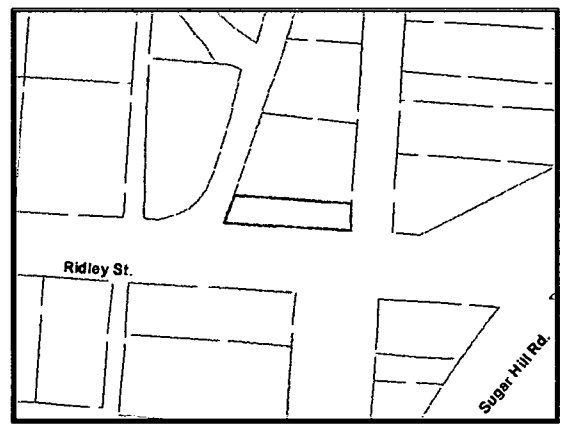


Figure Two: Proposed Zoning District

Ms. Cotton stated that City Staff has found that the proposed rezoning would not have a negative impact on adjacent properties and that the rezoning would be consistent with the character of the area and the surrounding uses.

Ms. Cotton reported that the Planning Board recommended, at a duly notices meeting on May 3, 2007, the approval of the request to rezone the property to R-2 General Residential at a duly noticed meeting on May 3, 2007.

There were not citizens present to discuss this request.

Mayor Clark closed the Public Hearing.

Upon a motion by Mayor Pro Tem Little , seconded by Councilman Cuthbertson, those members of Council present voted to approve the rezoning of the property on West Hudgins Street, as requested by Mr. Perry Smith, and to adopt the following Ordinance accordingly:

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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of Perry L. Smith for property with the Parcel Identification Number 1701.14-33-5064 from C-2 General Business Zoning District to the R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on May 3, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 15th day of May 2007.

_____
A. Everette Clark
Mayor

ATTEST: _____
J. Robert Boyette
City Manager/Clerk

Ordinance Number: 07-05-15-5

PUBLIC APPEARANCE – DOWNTOWN ADVISORY COMMITTEE/N.C. STEP PROGRAM
CHAIRPERSON BOBBIE YOUNG: Ms. Bobbie Young, Chairperson of the Downtown Advisory

Committee and the NC STEP Program Committee, appeared before Council to give an updated report of the NC STEP Program activities and Comprehensive Plan.

Ms. Young advised that two Community Information Meetings had been held, one on February 22nd and the other on March 15th.

Ms. Young reported that a total of 25 focus group meetings in the eight plan areas have been held to date regarding the Comprehensive Plan, involving 73 participants. All focus groups with the exception of Civic Capital, Land Use, and Public Facilities/Transportation, have completed identifying priorities and setting goals.

Ms. Young advised that City Planner Heather Cotton and DBA Director Freddie Killough had staffed all the focus group meetings and that reports would continue to be made to City Council during the process.

Mayor Clark advised that he had participated in some of these meetings and that Ms. Young and all the volunteers were doing a great job with the NC STEP Program. Mayor Clark stated that he feels the City of Marion will reap great benefits from the upcoming Comprehensive Plan.

PUBLIC APPEARANCE – MR. DAVID MEDFORD – DISCUSS NOISE/ZONING ISSUES-BALDWIN AVENUE: The City Manager advised that Mr. David Medford and others have asked to address Council about concerns regarding noise and potential uses at the old Marion Manufacturing Plant. Mr. Medford and Mr. David Workman of the East Marion Community advised Council of concerns involving a loud party held on Sunday afternoon and evening, May 6 in the Marion Manufacturing facility in the space adjacent to the new Fun Time Factory. Mr. Medford and Mr. Workman also expressed concerns about future possible uses announced by the Fun Time Factory that they feel would be detrimental to their neighborhood. Specifically, Mr. Medford noted concerns about a possible flea market and a go-cart track.

The City Manager reported that the property owner, Mr. Ford Miller, verified that he allowed the space to be used for a church/private party. Mr. Miller asked his caretaker, Mr. Harmon Strickland, to make sure the party did not get out of hand and that no alcohol was consumed. The City Manager stated that neighboring residents, including Mr. Medford, were disturbed by the party and called the Police Department out six times. The presence of the Police led the music to be turned down and the party eventually terminated one hour before our "quiet hours" go into effect at 11:00 p.m. The City Manager advised that Mr. Strickland and Mr. Miller say that the music was not loud and could barely be heard from Baldwin Avenue.

The City Manager stated that City Planner Heather Cotton had determined that the Zoning Ordinance does not allow an assembly hall type use at this location in the M-1 District and that Ms. Cotton was officially notifying Mr. Miller of this determination in writing.

The City Manager stated that recreational uses are given fairly wide latitude as permitted uses in the M-1 Industrial District, while flea markets are listed as special exceptions in M-1, and subject to case by case review by the Board of Adjustment. The City Manager suggested that if neighbors wish to restrict permitted uses and uses allowed by special exception in the M-1 District, they will need to file a request for a Zoning Text Amendment with Ms. Cotton. Such a request would have to be advertised, reviewed by the Planning Board and then would come to City Council for a decision.

Ms. Ruth Medford of 4th Street and Ms. Shannon Buchanan of 515 Baldwin Avenue were also present for this meeting and also expressed concerns about noise from Marion Manufacturing and concerns about future uses of the facility. A letter expressing similar concerns was also presented on behalf of Ms. Donette Mills Medford of Hunt Street, who could not be present for the meeting.

The City Manager stated that sometimes a bad thing can lead to a good thing. The City has not been asked by the owner of the Mill to let his business be used as an assembly hall, which is not permitted according to City Code. The City Manager stated that he has spoken to Mr. Miller by phone advising him that the assembly hall type use may not be permitted and again stated that a letter would be sent as well.

Mayor Pro Tem Little asked if the assembly hall use is undertaken again by the property owner and residents call the Police Department, can the use be shut down? The City Manager stated that it was his opinion that City staff would not have the authority to immediately shut down the use, unless there were immediate Building and Fire Code violations, and that the City would then deal with the property owner through enforcement of the Zoning Ordinance.
Mayor Clark stated that it is his opinion that go-carts should not be allowed in a residential area. However the citizens would have to go through proper procedures such as a petition supporting the desires of the community.

Councilman Martin stated that he would also be opposed to uses such as go-carts and flea markets next to residential areas.

A lengthy discussion followed.

Mr. David Workman stated that he had seen City Staff doing some smoke testing in the East Marion Area and asked what the reason was. Public Works Director/Engineer Chris Hollifield explained that the City was conducting smoke testing in the area to identify sources of inflow and infiltration into the City's wastewater system.

No action was taken by Council.

PUBLIC APPEARANCE – MS. JENNIFER CROWDER – DISCUSS STREET ISSUES – HUNT STREET/WEST FOURTH STREET: Ms. Jennifer Crowder of Hunt Street appeared before Council and stated that traffic, alleged drug activity and improper street lighting is a major problem on Hunt Street and West Fourth Street. She does not feel safe leaving her teenage daughter in her own home alone due to these concerns.

Speeding is a problem when the ball fields are used near her residence and Ms. Crowder asked if a speed hump could be placed on Hunt Street. She also suggested that West Fourth Street next to her house be closed to prevent access between Morehead Road and Baldwin Avenue.

Ms. Crowder stated that several recent drug raids and arrests in the Morehead Road area had helped reduce drug related traffic but that problems remained.

The City Manager stated that City staff had determined that the City had no street lights in place on either Hunt Street or West Fourth Street and that this deficiency would be explored and then corrected.

A discussion followed.

It was the consensus of Council that the Street Committee would look at the possibility of closing West Fourth Street between Morehead Road and Hunt Street.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

CONSIDER APPROVAL OF AGREEMENT WITH N.C. DEPARTMENT OF TRANSPORTATION/NORFOLK SOUTHERN RAILWAY: The City Manager presented Council with a Crossing Closure Agreement to authorize the Clay Street Railroad Crossing to be

closed. The City Manager stated that, as previously reported, in exchange for the closing of Clay Street Railroad Crossing, DOT will provide up to $350,000 for the design and construction of the extension of McDowell Avenue and Norfolk Southern (NS) will provide $29,000 to barricade Clay Street, a commitment to make further improvements to the Garden Street crossing, agree to work with the City regarding the old Peavine Rail Line right of way, solving a drainage problem off of East Court Street and improving the appearance of the railroad banks on either side of the Main Street bridge. The City Manager stated that McGill Associates estimates that the street extension improvements could run $425,000 once a 20 percent construction contingency is added. McGill is trying to refine this estimate with DOT. The City Manager stated that he had concerns about being able to complete the street extension for $350,000 and that the agreement can wait until June, but will need to be approved before any property is acquired.

Mayor Pro Tem Little stated that we need to make sure we have more than an agreement just to agree on some of the issues.

Mayor Clark stated that the City should not pursue the project unless it is given enough money to complete the street extension.

It was the consensus of Council to hold this item until the next meeting and to direct the City Manager to talk further with DOT about providing enough money to complete the McDowell Avenue street extension.

CONSIDER APPOINTMENTS/REAPPOINTMENTS TO ABC BOARD/TREE/DOWNTOWN ADVISORY COMMITTEE: The Manager advised that Council needs to consider Appointments/Reappointments to ABC Board/Tree Board/Downtown Advisory Committee. The City Manager stated that the term of Robert Ayers on the ABC Board actually expired on April 30. Mr. Ayers is willing to be reappointed and the City Manager advised that he would suggest reappointing him to a three year term to expire June 30, 2010. This appointment will put all our advisory board members on terms that expire on June 30.

The City Manager stated that Pat Brown and Phil Tate are willing to serve another term on the Tree Board, to expire June 30, 2010.

The City Manager reported that Mike Rabb, Carol Price and Dean Kanipe all are willing to serve a new term on the Downtown Advisory Committee (DAC), to expire June 30, 2010.

The City Manager stated that Council will need to replace Denise Buck's unexpired term, since she has relocated out of state. This slot has typically been filled with the Keep McDowell County Beautiful Director and the DAC recommended continuing this practice. The City Manager stated that he will provide a name for this appointment as soon as it is available.

The City Manager stated that there are no terms on the Planning Board/Board of Adjustment that are expiring this June 30.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, those members of Council present voted to make the following appointments to City advisory boards:

ABC Board - Robert Ayers – Three year term to expire June 30, 2010

Tree Board - Pat Brown and Phil Tate – Three year terms to expire June 30, 2010

Downtown Advisory Committee – Mike Rabb, Carol Price and Dean Kanipe – Three year terms to expire June 30, 2010

DISCUSS COMMUNITY BUILDING RULES: The City Manager reported that Mayor Clark had asked that Council review the Community Building Rules related to religious services, based on an e-mail sent by Rev. Scott Hagaman of First Baptist Church reports to Mayor Clark. Mayor Clark stated that three downtown churches are planning a combined non-denominational service on Sunday evening, September 9. It has been suggested that the Community Building be used for this service. However, the Community Building Rules (#14), states that "no person(s), organization, etc. may use the Community Building for religious services." Mayor Clark previously suggested that consideration could be given for community services involving more than one church.

Mayor Pro Tem Steve Little stated that he had major concerns with this request and that the present policy seems to work well.

A discussion followed.

No action was taken by Council to amend the Community Building Rules.

RECEIVE STREET COMMITTEE RECOMMENDATION – STOP SIGN REQUESTS – NO PARKING REQUEST AND SIGHT DISTANCE OBSTRUCTION: The City Manager advised that the Street Committee had not been able to meet to review several requests. The City Manager stated that the Street Committee needed to review requests for additional stop signs at the Hillside Drive/Crescent Drive/Viewpoint Drive, Azalea/North McDowell and Ridgecrest Drive/Miller Avenue intersections, the no parking area relocation request by Mr. Jonas Smith at 174 Park Avenue, a sight distance obstruction reported by DOT involving City trees at the intersection of Logan Street and West Henderson Street and the request to close West Fourth Street between Morehead Road and Baldwin Avenue.

The City Manager further noted that the City has received a total of six speed hump requests in the past few weeks since Council approved the second round of speed humps. The requests came from West Fourth Street and Hunt Street in East Marion, State Street at East McDowell Junior High School, Azalea Street, Miller Avenue and Dogwood Lane. The City Manager advised that he has told people that it may be next year before any additional speed humps are authorized, since the City will likely exhaust nearly all Powell Bill Funds this year to complete the street resurfacing, Forest Heights Drive and North Madison Street projects.

It was the consensus of Council present to table this item until the next Regular Scheduled City Council meeting. Council also agreed by consensus to hold annual review of speed hump requests during the review of the Street Resurfacing priorities, to take advantage of lower unit prices for installation of speed humps in conjunction with street paving.

The Street Committee set Friday, May 18 at 9:15A.M. for their Committee Meeting to discuss the items stated above.

SCHEDULE 2007-08 BUDGET WORKSHOP: The City Manager distributed the recommended 2007-08 City of Marion Budget. The City Manager advised that Council typically holds a budget workshop to review the recommended budget.

It was the consensus of Council to hold the Budget workshop on May 29th 6:00 PM in the Conference Room at City Hall. Dinner will be served.

Mayor Pro Tem Little asked that sentences be added to the Budget Message to state the minimum bill for water and sewer for inside and outside customers, along with the gallons of water used per month by an average customer. The City Manager stated that he would make these additions to the Budget Message.

Mayor Clark suggested that the City consider a newsletter, which could contain such information.

DISCUSS SCHEDULING OF PUBLIC HEARING ON POSSIBLE ECONOMIC DEVELOPMENT INCENTIVES: Mayor Pro Tem Little advised that his Law Firm represents the Fun Time Factory and asked that he be excused from this discussion.

Upon a motion by Councilman Owenby, seconded by Councilman Martin, those members of Council present voted to excuse Mayor Pro Tem Little from this discussion. Mayor Pro Tem Little left the meeting during discussion of this item.

The City Manager advised that since the inflatable games manufacturer has already announced their intentions and has opened in the Marion Manufacturing building, he did not feel that a Closed Session would be appropriate to discuss this business. The City Manager presented an Incentive Agreement, for Council's review, that would provide City funding of $10,000 for the company in two installments, much like what the City did for Key Gas. Performance targets are set for Capital Investment ($200,000), Employment Levels (24), Retail Sales ($100,000 per year) and for opening an indoor recreation and arcade facility. If Council believes that this agreement is on target, a public hearing could be scheduled for the June 5 meeting on the incentive package. The City Manager advised that he could make any changes to the agreement that Council deems necessary.

Mayor Clark stated that before Council votes on this item he would like to see the company's financial statements. He also stated that Council had not met the owners of the company and were therefore not in a position to approve an incentive package.

Councilman Martin noted that he is not in favor of giving this money until more information is presented and questioned whether $10,000 would be of much use to the company.

Councilman Owenby stated that he would like to know what the company is investing themselves.

A discussion followed.

It was the consensus of Council to invite the owners of the Fun Time Factory to make a presentation for Council at an upcoming meeting on their future plans. At that time, Council may then consider having a public hearing to further discuss the idea of incentives.

REVIEW/CONSIDER AWARD OF CONTRACTS FOR STREET RESURFACING/SPEED HUMP INSTALLATION/FOREST HEIGHTS DRIVE DRAINAGE AND CURB WORK/NORTH MADISON STREET WATER LINE, SIDEWALK AND CURB WORK: The City Manager advised that bids were sought for the Spring Resurfacing Project, speed hump installation on four streets (all five approved streets except for North Madison Street), the Forest Heights Drive drainage and curb work and the North Madison Street water line, sidewalk and curb work. The low bids for each of the three projects came from Burke Grading and Paving, as follows:

Street Resurfacing/Speed Hump Installation	$ 104,175.32
Forest Heights Project	$ 67,876.25
North Madison Project	$ 172,662.00
Total	$ 344,713.57

The City Manager stated that, as of May 8, the City had just over $327,000 in the Powell Bill account. The City Manager advised that he has budgeted for a carry over of $20,000 in Powell Bill Fund Balance to the 2007-08 budget. Therefore, the City Manager stated that he would estimate that the City has up to about $305,000 to spend on these projects. This amount of

money should allow the City to complete the street resurfacing (our normal 1.25" resurfacing), the speed hump installation, the Forest Heights project and part of the North Madison Street project. The City Manager stated that Public Works Director Chris Hollifield has reviewed the bids and would recommend awarding all three contracts to Burke Grading and Paving, a company that is capable of completing this work successfully.

Mayor Clark expressed concerns about spending the Powell Bill account down too much, in case emergency street repairs were needed.

Mayor Pro Tem Little stated that he would not want to see part of North Madison Street not improved or patched, even if the City had to advance part of the money from the General Fund to pay for the project. The City Manager noted that some of the project on North Madison Street involved water line work that would be charged to the Water and Sewer Fund.

A lengthy discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded By Councilman Martin, those members of Council present voted to award contracts for the Spring Resurfacing Project, speed hump installation on five streets, the Forest Heights Drive drainage and curb work and the North Madison Street water line, sidewalk and curb work to Burke Grading and Paving, in the following amounts:

Street Resurfacing/Speed Hump Installation	$ 104,175.32
Forest Heights Project	$ 67,876.25
North Madison Project	$ 172,662.00
Total	$ 344,713.57

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects as follows:

The City Manager advised that the City had achieved 96.19% property tax collection through May 7, the best collection effort ever at this point of the year. The delinquent tax advertisements ran in the newspaper on May 9th.

The City Manager advised that Councilman Edwards had inquired about the adopted speed limit on Logan Street between North Main Street and the first posted sign, which is around Hillcrest Drive. The City Manager stated that DOT had verified that all of Logan Street was a 20 mph zone, based on an ordinance approved by DOT on June 3, 1971 to reduce the speed limit on Logan Street from 35 mph to 20 mph. The City Manager stated that he would direct DOT to post the speed limit properly between North Main and Hillcrest, unless Council wishes to request modifications to the speed limit. No action was taken by Council.

The City Manager advised that he and DBA Director Freddie Killough had met with a group interested in the concept of a tailgate farmer's market, perhaps in the West Henderson Street parking lot. The idea of a mid week market (Tuesday afternoon) was discussed, since most farmers are already committed to markets in other communities on Saturday. The City Manager stated that a farmer's market would be a good opportunity to draw people downtown. The Mayor and Council members expressed support for this idea.

The City Manager advised that the DAC has scheduled a Downtown Cleanup for Saturday, June 2 and that local merchants, citizens and scout troops will be invited to participate. The City

Manager reported that other communities will be invited to participate across the City as well. Mayor Pro Tem Little suggested that an incentive be given to participation by scout troops and other groups by allowing first use of the new Community Building Park Splash Pad, before such facility is opened to the public. The City Manager stated that he would talk to DBA Director Freddie Killough about incorporating this idea into the Cleanup.

The City Manager advised that City crews and the project vendor continue to make progress on the new Community Building Park Splash Pad. City crews are replacing three sets of rock steps with concrete steps, two of which have already been completed. The goal remains to have the new facility open by the time school is dismissed on June 11.

The City Manager advised that the local officer with the Wildlife Resources Commission, Mr. Jacob Rash, had told him on May 7 that he was concerned about the loss of the Catawba River Wastewater Plant because the presence of this Plant provides nutrients and improves the water quality for fish. Mr. Rash stated that the impact on fish downstream of our current plant and in Lake James could be significant. The City Manager stated that he suggested that Mr. Rash relay this information to the Lake James Environmental Association and others since the City has often been falsely accused of harming the Lake.

The City Manager advised that the Advisory Board/Volunteer Dinner will be held on Thursday evening, May 24, at 6:30 p.m. at the Community Building.

CLOSING COMMENTS:

Councilman Cuthbertson noted that several properties on the back side of Morgan Street, with frontage on Willow Street, need to be mowed. The City Manager stated that City staff would check on this location.

Councilman Cuthbertson reported that sewage appeared to be seeping out of a manhole in front of the Dollar General Store in the Marion City Square parking lot. The City Manager stated that City staff could check on whether this manhole was maintained by the City or the property owner.

Councilman Cuthbertson asked if anyone had heard about rumors regarding problems at Swift Galey. No such rumors had been heard by Council or the City Manager.

ADJOURNMENT: Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, those members of Council present voted to adjourn.

_____
A. Everette Clark, Mayor

ATTEST:

_____
J. Robert Boyette, City Manager

Council can set dates at the May 15 meeting for one or more budget workshops.

Councilman Edwards stated that he would be on vacation the week of May 14-18 and would not be present for the May 15th City Council meeting.

The City Manager advised that the City will not come anywhere close to qualifying for State Disaster Assistance for the April 15-16 wind storm, given the high State threshold local governments must meet to qualify for such State assistance. City Crews are working to clear storm related debris as quickly as possible. The City Manager noted that he had authorized the Public Works Director to have employees work overtime, within reason, to clear the storm debris as soon as possible.

COUNCILMAN COMMENTS:

Councilman Owenby thanked Mayor Clark, Council Members and the City Manager for all their support during the recent passing of his wife, Margaret.

Mayor Clark stated that he would like see the City do a Report to the People, as the City had done many years ago. Councilman Edwards noted that such a document could perhaps simply be posted on the City's website, to eliminate the high cost of printing.

CLOSED SESSION – UNDER N.C.G.S. 143-318.11(A)(6) TO DISCUSS A PERSONNEL MATTER: Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, 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 Martin, seconded by Councilman Edwards, 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 Mayor Pro Tem 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 on Tuesday evening, May 8, 2007 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 could not attend the meeting due to a work conflict.

OTHERS PRESENT: Bob Boyette, City Manager; Harriett Thomas, CPA, Finance Director

BUDGET WORKSHOP: Mayor Clark stated that the purpose of this meeting was to review the proposed 2007-08 City budget. The City Manager provided an overview of his proposal 2007-08 City budget. The budget was reviewed in detail by the Mayor and City Council asked the City Manager presented the City's current financial picture and outlook. The City Manager also presented proposed water and sewer rate increases.

After discussion and review, Council directed no changes to be made to the budget as presented by the City Manager.

The public hearing on the budget and consideration of adoption of the 2007-08 City budget to be held on Tuesday, June 19, 2006 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
CITY OF MARION

The City Council for the City of Marion met in Regular Session on Tuesday evening, June 5, 2007 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; Lieutenant Scott Spratt, Marion Police Department; Chris Hollifield, Public Works Director/Engineer; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Cliff & Sharon McLarty, 190 North Madison Street, Marion, NC; Dave Medford 465 Baldwin Avenue, Marion, NC; Ruth Medford 61 4th Street, Marion, NC; Osvaldo Lapido 115 Little Creek Drive, Marion, NC; Shannon Buchanan 515 Baldwin Avenue, Marion, NC; Jennifer Crowder 5 Hunt Street; Marion, NC; Walter & Alejandra Martinez 166 Seventh Street, Marion, NC; Adriana Lapido 155 Little Creek Drive, Marion, NC; Melissa Lapido 155 Little Creek Drive, Marion, NC; Alsela Lapido 155 Little Creek Drive, Marion, NC; Jonas Smith, 174 Park Avenue, Marion, NC; David Workman 21 4th Street, Marion, NC.

CITIZEN OF THE MONTH – SELECTED BY A. MICHAEL EDWARDS: Councilman Edwards selected the Citizen of the Month for June 2007:

LOTO GREENLEE CAVINESS

Councilman Mike Edwards announced that his choice for Citizen of the Month is no stranger to the City. Her family ties go back for many years with the City and McDowell County.

Judge Caviness has been married to husband Harold for seventeen years. She is a native of McDowell and the daughter of Jane and Charles Greenlee.

Judge Caviness graduated from Lenoir Rhyne College and Wake Forest Law School. She was appointed as District Court Judge in 1980 by Governor Hunt. In 1990, Judge Caviness became the first female Superior Court Judge in North Carolina, and served until her retirement in 2002.

Judge Caviness enjoys gardening and antiques.

Mayor Clark and Council Members all shared kind words about Judge Caviness and all she has contributed to the community through the years.

CONSENT AGENDA: Upon a motion by Councilman Little, seconded by Councilman Owenby, Council voted unanimously to approve the consent agenda as follows excluding item B. to discuss later:

A. Approval of Minutes - May 15, 2007 Regular City Council Session Minutes

B. Approve Agreement For Use of City Firing Range with McDowell Technical Community College:

APPROVE AGREEMENT FOR USE OF CITY FIRING RANGE WITH MCDOWELL TECHNICAL COMMUNITY COLLEGE: Councilman Cuthbertson asked that this item be removed from the Consent Agenda for further discussion.

The City Manager advised that McDowell Technical Community College has requested approval again of the use of the City Firing Range for classes including Basic Law Enforcement Training. The rent for the use of the Range would remain ten dollars per day. The agreement presented would be for a period of one year. As part of the lease, McDowell Tech agrees to hold the City harmless from any liability that could arise from the use of the Firing Range.

Councilman Cuthbertson asked if improvements to the City Firing Range that were discussed the previous month would be completed before the end of the one year lease term and necessitate the City charging additional rent. The City Manager stated that the exact improvements to be proposed to the range had not yet been finalized or quantified, so the completion date of such improvements was uncertain.

A discussion followed. Council members discussed a lease term of shorter duration than proposed by McDowell Tech, to extend through the end of 2007.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Owenby, Council voted unanimously to approve the Agreement for use of the city Firing Range with McDowell Technical for a period of six months after the end of the current month, which will extend the lease through December 31, 2007.

A copy of the agreement can be found on file in the legal documents at City Hall.

PUBLIC HEARING/ADOPTION OF ANNEXATION ORDINANCE – LOFTIS/FINLEY ROAD VOLUNTARY ANNEXATION: Mayor Clark opened the Public Hearing.

The City Manager advised that the final step in the voluntary annexation of the Loftis/Finley Road property is this public hearing and the adoption of the annexation ordinance. This annexation will become effective June 30, 2007.

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 adopt the following Ordinance, to be effective June 30, 2007:

AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA –
LOFTIS/FINLEY ROAD-2007

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 5, 2007, after due notice by publication on Monday, May 21, 2007; 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, 2007:

BEING THE REMAINING AMOS G. FORTENBERRY AND WIFE, ELOISE FORTENBERRY PROPERTY as recorded in Deed Book 206 at Page 1246 in the McDowell County Register of Deeds, hereby incorporated by reference as if fully set out and being more fully described by the new plat of survey as follows:

BEGINNING on an existing ½" iron rod located in a common northeast boundary of the Property described in a deed to Amos G. Fortenberry and wife, Eloise Fortenberry recorded in Deed Book 206, Page 1246 and a southwest boundary of the property described in a deed to Craig S. Orange, et al recorded in Deed Book 573, Page 315 with a survey by R. L. Greene, RLS dated June 1, 1996 being Map # 96-127; said rod having NAD83 coordinate values of: X=336,472.796 meters and Y= 218,894.814 meters, said rod being located South 37 degrees 53 minutes 47 seconds West – 1267.37' – ground (386,235 meters- grid) from NCGS monument "Machine" which has NAD 83 coordinate values of: X= 336,710.036, Y = 219199.601 meters, elevation = 423.153 meters and combined scale factor = 0.99984418; thence, from said beginning with a common boundary described in Deed Book 206 Page 1246 and Deed Book 573, Page 315 the next two courses and distances: South 29 degrees 30 minutes 36 seconds East -200.16 feet to an existing ½" iron rod and South 29 degrees 30 minutes 36 seconds East – 208.95 feet to an existing ½" iron rod, said rod being the 3rd corner of the property described in a deed to Herman H. Huffman and wife, Augusta I. Huffman recorded in Deed Book 272, Page 376, the 4th corner of Deed Book 573, Page 315 and the second corner of Deed Book 206, Page 1246; thence, with a common southeastern boundary described in Deed Book 206, Page 1246 and the northwest boundary described in Deed Book 272, Page 376, being the northwest boundary of the City of Marion Corporate Limits, South 67 degrees 37 minutes 34 seconds West - 256.15 feet to a ¾" iron pipe set at the beginning corner of the property described in Tract I of a deed to Linda Gail Hall recorded in Deed Book 677, page 317, the 2nd corner of Deed Book 272, Page 376 and the beginning corner of deed Book 206, Page 1246; thence with a common southern boundary described in Deed Book 206, Page 1246; and a northern boundary described in Tract I in Deed Book 677, Page 317, South 86 degrees 48 minutes 35 seconds West - 550.54 feet to an ¾" iron pipe set, at the beginning corner of the property described in a deed to Ivan's Restaurant and Bar, LLC recorded in Deed Book 674, Page 515, survey by R. L. Greene, RLS dated June 12, 1985 said pipe located North 86 degrees 40 minutes 58 seconds East - 326.40 feet from an existing 1" iron pipe, the second corner of Deed Book 674, Page 515; thence with a common western boundary described in Deed Book 206, page 1246 and eastern boundary described in Deed Book 674, Page 515, North 01 degrees 03 minutes 28 seconds East – 74.72 feet to a spike set near the east edge of pavement of Finley Road, State Road 1209; said spike located South 01 degrees 03 minutes 28 seconds West – 155,29 feet from a ¾" iron pipe, the 4th corner of Deed Book 674, Page 515; thence, with a western boundary described in Deed Book 206, Page 1246 running near the eastern edge of pavement of Finley Road, State Road 1209, North 18 degrees 35 minutes 06 seconds East = 98.13 feet to an existing railroad spike, the southwest corner of the property described in a deed to Van Harold Davis and wife, Joyce Ann Davis recorded in Deed Book 442, Page 527; thence leaving said road and crossing an overhead power line and 4' metal pipe with a southwestern boundary described in Deed Book 442, Page 527, South 75 degrees 39 minutes 17 seconds East – 149.95 feet to a 1" existing iron rod, the southeast corner of Deed Book 442, Page 527; thence, with a southeastern boundary described in Deed Book 442, Page 527, the next 2 courses and distances: North 39 degrees 16 minutes 54 seconds East - 79.09 feet to a existing 1" iron rod and North 39 degrees 30 minutes 46 seconds East - 78.86 feet to an existing ½" iron pipe, the 2nd corner of Deed Book 442, Page 527, and being the 6th corner of the property described in a deed to Kenneth Presnell and wife Jacqueline Presnell recorded in Deed Book 343, Page 318 with survey by Suttles Surveying, P. A. dated June 4, 1985; thence, with the property described in Deed Book 343, Page 318, the next 5 courses and distances: North 35 degrees 08 minutes 39 seconds East – 86.09 feet to an existing 1" iron rod, the 5th corner of Deed Book 343, Page 318, North 43 degrees 45 minutes 28 seconds East – 110.12 feet to a ¾" iron pipe set, North 43 degrees 45 minutes 28 seconds East – 5.00 feet to a 15" white oak marked for a corner, said white oak is the 4th corner of Deed Book 443, Page 318, North 48 degrees 16 minutes 57 seconds West- 5.00 feet to a ¾" iron pipe set and North 48 degrees 16 minutes 57 seconds West 23.49 feet to an existing 2" iron rod, in the southeast boundary of the property described in a deed to Janie Shelton recorded in Deed Book 630, Page 514 with a survey by Toney E. Carpenter, RLS dated January 12, 1989, the 3rd corner of Deed Book 343, Page 318, located North 37 degrees 23 minutes 51 seconds East - 10.85 feet from an existing 2" iron pipe, the 2nd corner of Deed Book 343, page 318 and the 3rd corner of Deed Book 630, Page 514; thence with the general direction of and down a branch, with the boundary as described in Deed Book 630, page 514 the following seven courses and distances; North 49 degrees 14 minutes 18 seconds East – 42.65 feet to a point, North 72 degrees 02 minutes 37 seconds East – 30.24 feet to a point; North 52 degrees 19 minutes 34 seconds East- 72.66 feet to a point, North 76 degrees 44 minutes 55 seconds East – 15.57 feet to a point, South 01 degrees 40 minutes 30 seconds West – 5.72 feet to a point, South 63 degrees 53 minutes 30 seconds East – 17.56 feet to a point and North 22 degrees 18 minutes 55 seconds East – 46.99

feet to a point the 3rd corner of Deed Book 206, page 1246 and the east corner of Deed Book 630, Page 514 in the boundary of the aforesaid property recorded in Deed Book 573, page 315; thence with a common northeast boundary described in Deed Book 206, page 1246 and a southwest boundary described in Deed Book 573, Page 315, South 29 degrees 30 minutes 36 seconds East –64.49' to the **BEGINNING, containing 4.82 acres,** and being shown on a plat prepared by Suttles Surveying, P.A., entitled "Survey for Janie Shelton, Marion Township, McDowell County, North Carolina, dated April 28, 2004, Project Number 12785A".

SUBJECT TO the right of way for State Road No. 1209, Finley Road, to its full legal width.

SUBJECT TO the riparian rights of others in and to an unnamed branch.

FOR BACK REFERENCE see Deed Book 206, Page 1246.

ALSO SEE a previous survey by J. L. Haney, dated December 31, 1969.

Section 2. Upon and after June 30, 2007, 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 June, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Clerk

Approved As To Form:

City Attorney

Ordinance Number: O-07-06-05-1

PUBLIC APPEARANCE – MR. OSVALDO LAPIDO – DISCUSS PLANS FOR FUN TIME FACTORY IN MARION MANUFACTURING FACILITY: The City Manager advised that Mr. Osvalso Lapido is present for this meeting to address Council and discuss his short term and long term plans for the Fun Time Factory in the former Marion Manufacturing Facility and the possible recreational/arcade facility.

The City Manager presented Council with a draft incentive agreement for Fun Time Factory for information and reference, as had been discussed at a previous Council meeting.

Mr. Lapido stated that he was really excited about his plans for the Fun Time Factory and thanked everyone for the opportunity to be here. He had lived in Florida and has relocated his family to Marion.

Mr. Lapido presented Council with copies of information about his business, which involves the manufacture, repair and rental of inflatable games. He stated that he and a partner discovered this business three years ago with inflatable business and now have the need to expand.

Mr. Lapido stated that he had moved his wife and two daughters here and that Mr. Ford Miller gave him the opportunity to begin his business here with low rent and the first three months free. He stated that the first 45 days he was in Marion that he did a lot of running back and forth from Florida to move his company here. He has six people working at the facility and hopes to hire three more in the next couple of weeks. Mr. Lapido stated that he plans to open another business with 17,000 square feet for an entertainment center for families, to include a snack bar, arcade games, slot car racing and inflatable games.

Mr. Lapido stated that he would like to create a small scale entertainment center like Hickory Dickory Dock and/or Fun Depot in Asheville for the City of Marion residents and well as the County.

Mr. Lapido stated that he has no plans for anything that would create sound or pollution and no plans for outdoor activities such as a go cart track, only indoor activities. Mr. Lapido also advised that he had no plans for a flea market in the Marion Manufacturing facility.

Mayor Clark stated that the City had been approached about an incentive for this company in the amount of $10,000. Mayor Clark questioned the projected sales of the company.

Mr. Lapido stated that the company had about $20,000 in sales in the first 45 days and hoped to have about $30,000 a month in gross sales.

Mayor Pro Tem Little stated that he had been to Fun Depot in Asheville and feels that a similar facility in Marion is a fascinating and positive idea.

Mayor asked what the operating hours would be of the arcade.

Mr. Lapido stated that he would like to open six days a week from 10:00 AM until 6:00 PM.

Ms. Jennifer Crowder asked about the traffic this type of business would bring. Mr. Lapido stated that all parking would be on site for this type of facility and should not generate a tremendous amount of traffic.

Mr. David Medford stated that he is opposed to more traffic, noise and other issues, he felt this type of facility would generate in the East Marion area and asked that Council not allow a flea market, go cart tracks and other outside entertain that would alter the present way of life in the East Marion Village.

City Planner Heather Cotton noted the various uses that are permitted and allowed by special exception in the M-1 Industrial District.

Mayor Clark stated that Council Members are concerned about noise and the impact on the surrounding neighborhood but also believe that a property owner should be able to put their own property to reasonable use in compliance with the Zoning Ordinance. Mayor Clark stated that it was positive for all parties to come and discuss issues of concern about this matter.

Mayor Pro Tem Little thanked all parties for coming.

Mr. David Medford stated that the village has no problem with present operations, only concerns about rumored proposals of the property. He stated that at the last meeting he spoke of disapproval of flea markets and go cart tracks. Mr. Medford stated that he is not trying to block

paying jobs, but with proposals of flea markets and go cart tracks the gain that would be experienced would not cover the loss of quiet to the surrounding village.

The City Manager stated that the neighborhood had submitted a Zoning Amendment request to restrict flea markets and recreational uses from the M-1 district. The residents also want the City's Noise Ordinance to contain language restricting noise to specific decibel levels, instead of the vague language we currently have. The City Manager stated that the Planning Board would review this request on June 7 and that the request could be brought back to City Council as soon as the June 19 Council meeting.

Mr. Cliff McLarty stated that he is a local businessman and has been intrigued by articles in the McDowell News about culture clash and types of crime the East Marion residents fear from this type of establishment. McMcLarty stated that he recently visited the Fun Depot in Asheville, and Hickory Dickory Dock in Hickory. He also asked the local police for crime that results from these locations and determined that the facilities generate very few police calls and no violent crime at all. Mr. McLarty stated that he hoped the words "culture clash" that had previously been used by the community meant something other than people being different. He stated that he has traveled around the world and always learns from different cultures and feels that we need to open our arms to all citizens and cultures. Mr. McLarty stated that he went on his on time and met Mr. Lapido and his family and talked about their plans. Mr. McLarty stated that Mr. Lapido knows that he has to follow rules, just like everyone else does, that Mr. Lapido has been in the United States for eighteen (18) years and that Mr. Lapido's business was wiped out by a hurricane in Florida and moved to Marion to escape further storms. Mr. McLarty stated that from everything he saw while touring the Marion Manufacturing building, the facility could support this type of business with no problems.

Mr. David Medford stated that the culture clash statement referred to the types of people that a flea market would attract.

Mayor Clark stated that the purpose of this meeting was not to hold a public hearing on the proposed Fun Time Factory, but for Council to receive more information from Mr. Lapido regarding a request for an economic development incentive from the City to assist the business.

Mr. Don Markum stated that Mr. Lapido was not yet ready to formally request the economic development incentive and would like to reserve the right to come back at a future time with a possible request for incentives.

No action was taken by Council regarding this matter. Council agreed by consensus to defer action on the economic development incentive until such time as Mr. Lapido submits a formal request.

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present for this meeting.

CONSIDER APPROVAL OF AGREEMENT WITH N.C. DEPARTMENT OF TRANSPORTATION/NORFOLK SOUTHERN RAILWAY: The City Manager advised that the N.C. Department of Transportation (DOT) and Norfolk Southern Railway (NS) sent a revised Crossing Closure Agreement to authorize the Clay Street Railroad Crossing to be closed. The City Manager stated that DOT and NS will now provide up to $400,000 for the design and construction of the extension of McDowell Avenue, $29,000 to barricade Clay Street, a commitment to make further improvements to the Garden Street crossing, agree to work with the City regarding the old Peavine Rail Line right of way, solving a drainage problem off of East Court Street and improving the appearance of the railroad banks on either side of the Main Street bridge. McGill's office has estimated that the street extension improvements could run $425,000 once a 20 percent construction contingency is added. However, the City Manager noted that the

$13,000 listed figure for plats and easements on these improvements would not be needed, so he felt that the McDowell Avenue street extension could be built for the $400,000 being offered by DOT.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, Council voted unanimously to adopt a resolution approving the Crossing Closure Agreement with the North Carolina Department of Transportation and Norfolk Southern Railway as follows:

Railroad: Norfolk Southern Railway | Milepost: S-98.98 S-99.40 | County of McDowell

DEPARTMENT OF TRANSPORTATION

AND

CITY OF MARION

AND

NORFOLK SOUTHERN RAILWAY

CROSSING CLOSURE AGREEMENT

4/9/07

Project ID: Y-4813 A

THIS AGREEMENT, made and entered into this ____ day of _____, 20___, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, acting by and through its Rail Division Director - Engineering & Safety, hereinafter referred to as the "Department", the CITYOF MARION, a municipal corporation, hereinafter referred to as the "Municipality" and NORFOLK SOUTHERN RAILWAY, a corporation of Virginia, hereinafter called "Railroad";

WITNESSETH:

WHEREAS, the Department plans to eliminate redundant and/or unsafe at-grade railroad crossings statewide in order to improve rail and highway safety along heavily used corridors; and,

WHEREAS, the Resolution executed on the ___ day of _____, (Exhibit A) by the City Council of the City of Marion which involves grade crossings of the NS 'S' Line located at Clay Street crossing **(Crossing #729 469G)** and Garden Street **(Crossing #729468A)** both of which are part of the municipality system; and,

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. This project consists of at-grade crossings of the NS 'S' Line located at Clay Street **(Crossing #729 469G)** and Garden Street **(Crossing #729468A)**, both of which are part of the municipal street system.

2. To mitigate the closure of the Clay Street crossing, the Department will be responsible for providing funds for the actual costs, not to exceed $350,000 for design and construction of a one-block extension of McDowell Avenue to connect to Oak Avenue north of US 70. Construction funding shall be contingent upon the reallocation of the federal earmark for future Western North Carolina Rail Service and environmental documentation/approvals as per the National Environmental Protection Act (NEPA). All work

shall be performed by the Municipality in accordance with departmental standards, specifications, policies, procedures, and local codes and ordinances. Progress payments based upon actual costs, for periods of not less than one (1) month, may be made upon receipt of an itemized invoice, supported by documentation of costs from the Municipality. The Municipality agrees that it shall bear all costs of any item for which it is unable to substantiate actual costs. All invoices must be submitted within one (1) year of completion and acceptance of the project by the Department. Any invoices submitted after this time will not be eligible for reimbursement. Prior to final approval and payment by the Department, the Department and/or a representative of the Federal Highway Administration will be given the opportunity to make a final inspection of the completed work.

1 Upon execution of this Agreement by the Department, the Department will request Preliminary Engineering authorization from the FHWA. Upon receipt of the executed agreement, the Municipality shall submit a letter of request to the Department's Rail Division Project Manager for an initial environmental screening and to set up preliminary engineering funds. The Department will proceed with said environmental screening and authorizing funds for preliminary engineering to guarantee availability of the funds for project authorization. The Department will notify the Municipality, in writing, once project funds have been authorized and can be expended. The Municipality shall not contract for, or perform, any work prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be deemed ineligible for reimbursement.

2 If the Municipality causes the professional engineering services required by this Agreement to be performed by contracting with a private engineering firm and seeks reimbursement for said services under this Agreement, it is agreed as follows:

(A) The Municipality shall ensure that an engineering firm is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner, at a just and reasonable cost.

(B) The Municipality, when procuring architectural, professional and engineering services, must adhere to Title 23 of the Code of Federal Regulations (CFR), Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference, and currently available at **http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm**.

(C) The Municipality shall submit all professional services contract proposals to the Department's Rail Division Project Manager for review and approval prior to execution of the professional services contract by the Municipality. In the event that the professional services contract

proposal (engineering) exceeds $30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

(D) Reimbursement for construction contract administration costs cannot exceed fifteen percent 15% of the actual construction contract cost of the Project. This applies to private engineering firms and/or work performed by the Municipality and/or the Department. The Municipality, and/or its agent, shall perform project administration in accordance with all Departmental and Federal policies and procedures.

5. The Department shall develop all environmental documents as per the National Environmental Protection Act (NEPA), with the Municipality providing all necessary design information, surveys and engineering data.

6. The Department and Railroad will work with the Municipality to develop a safety project at Garden Street to include new automatic warning devices, upgrade crossing surfaces and re-profile the industrial siding track to more closely match the profile of the mainline.

7. The Railroad agrees to remove the Clay Street crossing at no cost to the Municipality. The Railroad shall remove related whistle posts, the roadway surface, and any grade crossing protection devices previously installed by the Department at this location and perform all work with its forces at no cost to the Department or Municipality.

7. The Railroad agrees to reimburse the Municipality $29,000 toward the cost of necessary signing, landscaping, and barricading, constructing a turnaround, removal of approaches or for any other purpose in exchange for closing the Clay Street crossing. Upon permanent closure of the Clay Street crossing, the Municipality shall submit an invoice to the Railroad for said amount. Reimbursement to the Municipality shall be made in one final payment within sixty (60) days of invoice.

8. The Railroad shall conduct a separate evaluation of the Garden Street crossing to determine if near-term measures can be taken to improve the crossing prior to the implementation of the project referenced in Provision 3.

7. The Railroad shall work with the Municipality to provide access to and mitigate a drainage problem in railroad right-of-way east of the Garden Street crossing.

8. The Railroad shall work with the Municipality to develop a plan for addressing the stability/appearance of the railroad embankment between Garden Street and the depot.

9. The Railroad and Municipality shall work to develop an agreement for transferring a portion of the old "Peavine Line" right-of-way which is owned by the Railroad, to the Municipality for development of a trail, which will be more specifically defined in said agreement.

10. Upon completion of the McDowell Avenue extension project, the Municipality will close and remove the Clay Street crossing and approaches as necessary and install appropriate safety devices (signing, barricades, etc.) as specified by the Department. Said work shall be scheduled and coordinated with the Department and Railroad.

11. The Municipality shall acquire any and all necessary right-of-way for the extension of McDowell Avenue. Upon acquiring the right-of-way, the Municipality shall have it cleared of all obstructions, including buildings, signs, walls, etc. The right-of-way will be acquired and cleared prior to the Department

authorizing development of any planning and engineering documents for the street extension project.

12. The Municipality shall relocate or cause to be relocated any utility lines, both above and below ground, which may be in conflict with the extension of McDowell Avenue.

13. The Municipality shall complete construction of the McDowell Avenue extension project within 18 months of receiving a written notice to proceed by the Department. The notice to proceed will be dependent on the availability of funds for this project.

14. The Municipality shall continue to work with the concrete plant located in the southeast quadrant at the Garden Street crossing on alternative routing for loaded trucks such that they do not cross the railroad when leaving the plant.

15. The Municipality, and/or its agent, shall also comply with the following federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; and (c) Title VI – Civil Rights Act of 1964.

16. The Municipality, and/or its agent, shall also comply with the following federal policy: Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26.

DISADVANTAGED BUSINESS ENTERPRISE 03-15-07$_R$ POLICY

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises shall have the opportunity to participate in the performance of contracts financed in whole or in part by Federal Funds in order to create a level playing field.

The Firm is also encouraged to give every opportunity to allow DBE participation in Supplemental Agreements.

OBLIGATION

The Firm, subcontractor, and sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The firm shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted contracts. Failure by the firm to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems necessary.

GOALS

A. Disadvantaged Business Enterprises (DBE) goals will not be established for the scope of work identified in Provisions 2-13 of this agreement. For those items of work, the Municipality shall report the anticipated utilization of DBE's during the completion of this work as defined in the LISTING OF DBE SUBCONTRACTORS below.

B. Goals for participation by Disadvantaged Business Enterprises (DBE) shall be established for this contract and approved by NCDOT's Contractual Services Unit prior to advertising for construction bids. In accordance with Rail Crossing Safety guidelines, a Disadvantaged Business Enterprise special provision will be submitted along with the funding authorization for the construction phase of the project.

The Firm shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate up to the level submitted in the firms Letter of Interest (LOI) or project proposal.

LISTING OF DBE SUBCONTRACTORS

All firms, at the time the project proposal is submitted, must also submit a listing of DBE participation on the appropriate form (or facsimile thereof) contained elsewhere in this proposal in order for the project proposal to be considered responsive. Firms must indicate the total dollar value of DBE participation for the contract. In the event the firm has no DBE participation, it is still required to indicate this on the forms by entering the word or number zero. Blank forms will not be deemed to represent zero participation. PROJECT PROPOSALS SUBMITTED WHICH DO NOT HAVE DBE PARTICIPATION INDICATED ON THE APPROPRIATE FORM WILL NOT BE READ PUBLICLY DURING THE OPENING OF PROJECT PROPOSALS. The Department will not consider these project proposals for award and they will be returned to the firm.

Firms have the option of submitting their DBE participation in an abbreviated format as required in Paragraph A below, or the firm may submit their DBE participation in the additional detail required by Paragraph B below. In the event the firm elects to submit DBE participation in accordance with Paragraph A and is selected, that firm must deliver to the Department no later than 12:00 noon of the sixth day following the opening of project proposals, a detailed DBE submittal as required by Paragraph B below.

Only those DBE firms with current certification by the Department will be considered acceptable for listing in the firm submittal of DBE participation.

A. The Firm shall indicate on the form for listing of DBE subcontractors contained elsewhere in this proposal the following required information:

REQUIRED INFORMATION

(1) The names and federal tax ID of DBE firms committed to participate in the contract

(2) The description of the Service or Item to be performed and/or provided by each DBE firm; and

(3) The anticipated utilization of each DBE based on planned efforts.

Failure to indicate the required information on the specified form will cause the LOI or project proposal to be considered nonresponsive and it may be rejected.

B. In lieu of submitting the information required by (A) above, the firm may submit the detailed information that required below along with the LOI or project proposal form.

REQUIRED INFORMATION

(1) The names and federal tax ID of DBE firms committed to participate in the contract

(2) The Contract Item Numbers and Contract Item Descriptions and agreed upon unit prices of work to be performed by each DBE firm; and

(3) The total dollar amount to be paid to each DBE based on agreed upon unit prices.

Failure to indicate the required information on the specified form will cause the LOI or project proposal to be considered nonresponsive and it may be rejected.

The firm is required to submit written documentation of the firm's commitment to use a DBE subcontractor and written confirmation from each DBE, listed in the proposal form, indicating their participation in the contract.

The Department will not allow any substitutions, deletions, or other alterations to the listing of firms committed for DBE participation and/or the respective listed contract item numbers after the opening of the LOI or proposal. The Department will not allow adjustments to total dollar amount of DBE participation after the opening of LOI or project proposals that would result in the DBE participation being less than the anticipated utilization.

DBE DIRECTORY

Firms can access a list of Disadvantaged Business Enterprises (DBE) which have been certified as such by the North Carolina Department of Transportation by clicking on the following **http://apps.dot.state.nc.us/vendor/directory/**. Only those DBE firms with current certification may be listed in the proposal form.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firms' capability to perform certain work.

DEFINITIONS

For purposes of this provision the following definitions will apply:

(1) Socially and economically disadvantaged individuals means a person who has a net worth of $750,000.00 or less and is a citizen or lawful permanent resident of the United States and who is:

(a) A Black American

(b) A Hispanic American

(c) A Subcontinent Asian American

(d) A Native American

(e) An Asian-Pacific American

(f) A Woman

(g) Members of other groups, or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)).

(h) Members of other groups, or other individuals found to be economically and socially disadvantaged by the N. C. Department of Transportation under the Criteria for Disadvantaged Business Enterprises as published by the Department.

(2) Disadvantaged Business Enterprise (DBE) means a for-profit small business concern.

(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and

(b) Whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it,

REPORTING DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

When payments are made to Disadvantaged Business Enterprise firms, including material suppliers, firms at all levels (prime, subcontractor, or second tier subcontractor) shall provide the Engineer or Contract Administrator with an accounting of said payments. This accounting shall be furnished the Engineer or Contract Administrator for any given month by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved Firm from the prequalified bidders list or the removal of other entities from the approved subcontractors list. The accounting shall list for each payment made to a Disadvantaged Business Enterprise firm the following:

DOT Project Number
Payer Firm Name and Federal Taxpayer ID
Receiving Subcontractor or Material Supplier and Federal Taxpayer ID
Amount of Payment
Date of Payment

This document shall be on the Department's DBE Subcontractor Payment Information Form.

A responsible fiscal officer of the payee firm, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the Engineer or Contract Administrator.

17. The Municipality shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18 **http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm** and Office of Management and Budget (OMB) Circular A-102 **(www.whitehouse.gov/omb/circulars/a102/a102.html)**.

18. Prior approval is required from FHWA if the Municipality desires to perform any work by force account. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Said Federal Highway Administration regulations are contained in Federal-Aid Policy Guide, 23 CFR Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference **www.access.gpo.gov/nara/cfr/waisidx_03/23cfr635_03.html** as fully as if herein set out. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87. Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality or its project partners. Reimbursement for rates of equipment owned by the Municipality or its project partners cannot exceed the Department's rates in effect for the time period in which the work is performed. If a contractor performs the work, said invoices shall show the contract cost.

19. In the event the Railroad fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Railroad hereby authorizes the Department to withhold so much of the Railroad's share of funds allocated to said Railroad as defined under G.S. 136-20(h), until such time as the Department has received payment in full.

20. The Railroad agrees to provide flagging protection as necessary at no cost to the Department or Municipality for work related to the crossing closure and said improvement project including but not limited to landscaping, roadway revisions and barricading.

21. The Municipality agrees to indemnify and hold harmless the Department and Railroad, to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the Department in connection with this project.

22. Upon completion of the project, the Municipality shall be responsible for the maintenance of all improvements located on municipal streets at no expense to the Department or Railroad.

23. The Railroad will notify the Department's Engineering Services Manager, Arthur Petteway, PE in

writing: NCDOT Rail Division, Engineering & Safety Branch, 1556 Mail Service Center, Raleigh, NC 27699-1556, upon completion of all work required to affect the crossing's closure by Railroad forces.

24. Per OMB Circular A-110, Railroad is prohibited from contracting with or making subawards under transactions covered by this agreement to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of $25,000 and all nonprocurement transactions (e.g., subawards to subrecipients). Contractors receiving individual awards for $25,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. Railroad may rely upon the certification unless it knows that the certification is erroneous. Railroad agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by Federal department or agency.

25. The Department, Railroad, and Municipality fully recognize that this closing is intended to be perpetual, and that one party shall not petition any other party or entity to reopen the subject at-grade crossing to be closed or to open any new at-grade public or private crossing in proximity to the closure location.

26. No member, officer or employee of the Department or of the Municipality shall have any interest, direct or indirect, in this Agreement or the proceeds therefrom.

27. Municipality shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, Municipality shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by the Department's Financial Management Section.

28. All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set for in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IN WITNESS WHEREOF, this agreement has been executed, in triplicate, the day and year heretofore set out, on the part of the Department, Railroad 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 MARION**

BY: _____ BY: _____

TITLE: _____ TITLE: _____

(MUNICIPAL SEAL)

ATTEST: **DEPARTMENT OF TRANSPORTATION**

_____

Secretary to the Board of Transportation — Director - Engineering & Safety
Rail Division

ATTEST: **NORFOLK SOUTHERN RAILWAY**

BY: _____ **BY:** _____
Assistant Secretary of the Company

AS ITS _____

(CORPORATE SEAL)

EXHIBIT A

RESOLUTION OF SUPPORT
WESTERN NORTH CAROLINA AREA CROSSING STUDY RECOMMENDATIONS

WHEREAS, the North Carolina Department of Transportation (NCDOT) has been studying the Salisbury-Asheville railroad corridor for an extension of conventional rail passenger service to Western North Carolina and the necessary related track and crossing safety improvement; and

WHEREAS, the North Carolina Board of Transportation approved a resolution at its meeting on October 6, 1995, directing that the number of highway/rail at-grade crossings be reduced on the State Highway System, adopted procedures by which to do so, and encouraged municipalities to implement crossing consolidation projects; and

WHEREAS, NCDOT, and its professional engineers and transportation planners have made certain safety and crossing consolidation recommendations in the Municipality of Marion, attached as "Exhibit B" as part of the Western North Carolina Area Crossing Studies; and

WHEREAS, NCDOT has stated its intent to fund these crossing safety projects through the Federal-Aid Crossing Hazard Elimination Program as eligible and available, and future funding that may be appropriated for development of Western North Carolina rail passenger service; and

WHEREAS, utilization of our rail network offers significant economic development, environmental, and safety benefits, and is a solution to increasing highway congestion; and

WHEREAS, public safety is a prime objective of NCDOT in planning and improving transportation facilities, including rail passenger service extensions; and

WHEREAS, rail-highway at-grade crossings are a significant obstacle to the safe and efficient movement of passenger and freight traffic; and

WHEREAS, that safety and integrity of a freight and passenger rail corridor is diminished with each additional at-grade crossing limiting the ability of the corridor to serve these useful purposes for present and future users; and

WHEREAS, it is in the public interest for NCDOT and the Municipality of Marion to adopt and implement policy that reduces the number of at-grade crossings, and

WHEREAS, grade separated intersections eliminate the possibility of collisions and the resulting accidents and fatalities.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Municipality of Marion endorses the recommendations made by NCDOT in "Exhibit B" and will make a best effort to work with NCDOT to implement said improvements and crossing closures as part of initiatives to improve crossing safety and extend rail passenger service to Western North Carolina.

2. The Municipality of Marion will continue to work with NCDOT to reduce the number of at-grade crossings to the minimum number possible along the Salisbury-Asheville corridor through the transportation planning process.

3. The Municipality of Marion will encourage land development that is harmonious with the development of the Salisbury-Asheville corridor for future freight and passenger rail options.

THIS, THE ____ DAY OF _____, 2007.

A. Everette Clark, Mayor

Attest:

J. Robert Boyette, City Manager:

APPROVE PURCHASE OF PROPERTY AND RENTAL AGREEMENT PROPERTY ON EAST COURT STREET: The City Manager advised that Dr. Jim Peppers has agreed to sell to the City his property on East Court Street that will be the location of the extended North McDowell Avenue. The City Manager reported that the agreed upon sale price will be $160,000, the same amount as the property appraisal, payable over two fiscal years (2007-08 and 2008-09). The closing will take place in July and the property will then be leased back to Dr. Peppers. The City Manager stated that the interest on the City's payments and the rent charged to Dr. Peppers for six months will offset. The majority of the purchase price can be charged to Powell Bill funds, since most of the property is needed for the North McDowell Avenue right of way.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, Council voted unanimously to approve the Offer to Purchase and Contract, Seller Financing Addendum and Commercial Lease Agreement.

A copy of said Agreement can be found on file in the Legal Documents at City Hall.

DISCUSS WEST FOURTH STREET/HUNT STREET REQUESTS:

The City Manager advised that the Street Committee met on May 18 and reviewed the requests of residents on West Fourth Street in East Marion for a speed hump or to barricade the road to prevent through traffic. The Street Committee agreed that street lights are needed on both streets. In keeping with City policy, the City Manager stated that he directed the Public Works Director Chris Holllifield to work immediately to determine locations for an adequate number of street lights on both West Fourth and Hunt Streets. The Street Committee did not favor barricading the

street, due to possible needed emergency access. The Street Committee discussed the possibility of additional stop signs at the Hunt/West Fourth intersection but also did not endorse that idea. The City Manager advised that the Street Committee suggests that speed hump requests on both streets can be considered next Spring and that the City contact DOT and inquire about the possibility of the State paving the street. If DOT will not pursue the paving of the street, the City Manager stated that Council may wish to consider having the City take over maintenance of the street and having the road widened and paved. The paving of the road would likely increase traffic and the speed of the traffic on the street, which may not be desired by residents of Hunt and West Fourth Streets. The City Manager stated that staff will also seek to monitor the need for trash pickup on the street, although recent visits to the street have not revealed any trash at all.

The City Manager also advised that staff would be looking at dilapidated houses in this area with two of the houses on the dirt road being placed on the priority list over next year.

Lt. Scott Spratt stated that he could have Community Service Workers address trash pickup in the area as soon as possible and add the area to the rotation for trash pickup by Community Service Workers.

Mayor Clark stated that the City needs to do something to assist with getting the street paved, since DOT has not been successful in acquiring right of way in the past.

Councilman Martin stated that he agreed with Mayor Clark that the City could probably do something faster than the Department of Transportation.

Councilman Owenby stated that we should just check with property owners about their willingness to have the road paved and proceed from there.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, Council voted unanimously to approve recommendations of Street Committee as stated above, to include placement of street lights on Hunt and West Fourth Streets, denial of the request to barricade West Fourth Street, agreeing to consider possible speed humps on West Fourth and Hunt Streets next Spring and authorizing the City Manager to explore with DOT the possible paving of West Fourth Street or to explore the possibility of the City paving the street, if DOT will not assist.

Ms. Jennifer Crowder of Hunt Street was present for this meeting and thanked Council for their attention to her requests.

CONSIDER ADOPTION OF ORDINANCE – STOP SIGNS AT HILLSIDE DRIVE/VIEWPOINT DRIVE INTERSECTION: The City Manager advised that the Street Committee met on May 18 and reviewed the Crescent/Viewpoint/Hillside Drive intersection. The Street Committee felt that Hillside Drive should have to stop at the intersection and that a stop bar could be painted close enough to the intersection to easily allow vehicles to see oncoming traffic from Crescent Drive. The City Manager stated that the recommendation would be to eliminate the stop sign on Crescent Drive at the intersection. Therefore, Crescent and Viewpoint going down to North Main Street would be a free flowing road with no stop signs. Hillside and Viewpoint going back to North Garden Streets would have to stop at the intersection as side streets.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Owenby, 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
CRESCENT DRIVE	STOP SIGN	AT VIEWPOINT DRIVE

Section 3. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
HILLSIDE DRIVE	STOP SIGN	AT VIEWPOINT DRIVE

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 5th day of June, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-06-05-2

DISCUSSION OF NO PARKING AREA RELOCATION REQUEST – PARK AVENUE: The City Manager advised that the Street Committee met on May 18 and reviewed the request of Mr. Jonas Smith to relocate the no parking area on Park Avenue near Cardinal Lane to allow room for one car to park in front of 174 Park Avenue. The Street Committee felt that the current no parking area on Park Avenue is adequate and that allowing parking any closer to Cardinal Lane would defeat the purpose of the no parking area. The Street Committee also noted that Mr. Smith has a driveway that could be graded to accommodate greater use.

Mr. Smith was present for this meeting and stated that he had an off street driveway on his property; however, it is not sufficient to park a vehicle.

It was the consensus of Council to deny Mr. Smith's request to relocate the no parking area and to ask City staff to explore opportunities to assist Mr. Smith with work on the City right of way to allow better access to his property to allow for off-street parking.

RECEIVE STREET COMMITTEE RECOMMENDATION – STOP SIGN REQUESTS AND SIGHT DISTANCE OBSTRUCTION: The City Manager advised that the Street Committee met on May 18 and reviewed two stop sign requests. The Street Committee did not believe that requests for additional stop signs at the intersections of North McDowell Avenue and Azalea Street and at Ridgecrest Drive and Miller Avenue were warranted.

It was the consensus of Council to take no action on the above request.

The City Manager advised further that the Street Committee also reviewed a reported sight distance obstruction involving City trees blocking sight distance for vehicles turning right at

Logan Street onto West Henderson Street. The Department of Transportation suggested that the City either remove the trees blocking the sight distance or authorize a no right turn on red restriction at the traffic signal. The Street Committee and staff agreed that a sight distance problem exists at the intersection. The City Manager reported that it was felt that removal of the minimum number of trees needed (preferably one to two) would be better than inconveniencing motorists with a right turn on red prohibition.

A discussion followed.

It was the consensus of Council to remove two of the Foster Holly Trees or as many as necessary to clear the sight distance obstruction at West Henderson and Logan Streets.

CONSIDER APPROVAL OF REQUEST TO PLACE ADDITIONAL TABLES AND CHAIRS ON MAIN STREET SIDEWALK – WINE RUELS: The City Manager advised that Ms. Cindy Ruel Fletcher has submitted a request to authorize additional tables and chairs on the sidewalk in front of her expanded Wine Ruels location on South Main Street. Council originally authorized the existing tables and chairs in March, 2005. The City Manager stated that Ms. Ruel would be required to sign another Release and Agreement Form, as is required by City Code that authorizes tables and chairs on the Main Street sidewalk.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, Council voted to unanimously to approve Ms. Ruel's request and authorize the placement of additional tables and chairs on the sidewalk in front of her expanded Wine Ruels location on South Main Street, on the condition that Ms. Ruel signs another Release and Agreement Form, holding the City harmless from any liability resulting from the placement of said tables and chairs on the sidewalk.

AWARD CONTRACT – 2006-07 AUDIT SERVICES: The City Manager advised that as authorized by Council in May, Finance Director Harriett Thomas sought proposals from CPA firms interested in completing the City's 2006-07 audit.

Ms. Harriett Thomas was present for this meeting and advised that proposals were received from six CPA firms to complete the City's audit. Ms. Thomas stated that she reviewed the bids and found that the most qualified firm was Martin, Starnes & Associates of Hickory due to their extensive experience statewide with municipal audits. Ms. Thomas further reported that Martin, Starnes & Associates had also submitted the lowest bid, in the amount of $13,000. This amount is $4,000 less than we are currently paying to Johnson, Price & Sprinkle (JPS) and nearly $7,000 less than the bid JPS submitted for the City's 2006-07 audit. Ms. Thomas advised that she had worked extensively with the Martin Starnes staff in the past. Based on a combination of qualifications and cost, Ms. Thomas recommended the award of the contract for the City's 2006-07 audit to Martin, Starnes & Associates of Hickory in the amount of $13,000.

Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, Council voted unanimously to award the contract for the City's 2006-07 audit to Martin, Starnes & Associates of Hickory in the amount of $13,000.

CONSIDER REJECTION OF BIDS FOR RESIDENTIAL RECYCLING CONTRACT: The City Manager advised that, as directed by Council at the Planning Session, bids were solicited for a possible residential recycling contract. Two proposals were received, although the Request for Proposals was sent to additional firms, both local and regional. The City Manager stated that both proposals would involve the City paying substantially more than the City currently pays for its recycling program.

The two bids received are as follows:

Curbside Management, Inc.	2.95 per month per residential unit
Republic Services of NC (GDS)	3.05 per month per residential unit

The City Manager reported that the annual costs for above, based on 2,454 customers would be $86,871.60 and $89,816.40, respectively, plus the loss of the City's recycling contribution of $7,500 per year, since the company awarded the contract would receive the recyclables, instead of the County. The City Manager stated that the Sanitation Division is currently providing these services for $2.09 per month per residential unit, an annual cost of $61,546.32.

The City Manager recommended rejecting both bids and continuing to provide these services in-house.

The City Manager stated that a new program of eliminating curbside sorting of recyclables will hopefully soon be implemented and free up one position that currently rides the recycling truck to be used for brush pickup on Wednesday, Thursday and Friday. The City Manager stated that the only downside of this change is that the City would not be able to collect glass, but could collect other items such as detergent bottles. The City could also take its recycling truck off the road and potentially sell it.

The City Manager also reported that Public Works Director Chris Hollifield had determined that the County actually received only $12,455 for City recyclables for calendar year 2006, in contrast to the "waste reduction value" of $32,987.25 for City recyclables listed in the County's Solid Waste Plan. The City Manager stated that the City appears to be better off continuing to receive the County's current $7,500 contribution. The City Manager reported that the Public Works Director also looked at the current market values for recyclables and determined that the City would have no better success obtaining any better market prices than the County and would have to incur close to $100,000 or more in capital costs to start sorting and baling our own recyclables.

The City Manager stated that options appear limited at this time if the City wishes to continue providing curbside recycling, other than trying to eliminate curbside sorting of recylables.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, Council voted unanimously to reject the bids received from Curbside Management, Inc. and Republic Services of NC (GDS) for residential recycling services and to continue providing this service in house, as recommended by the City Manager.

DISCUSS MASTER METER FOR NEBO WATER SYSTEM: The City Manager stated that as previously reported, the Public Works Director Chris Hollifield obtained an estimate of $25,600 to install a 10" master meter on the Nebo water system. The purpose of the meter would be for tracking of water usage and to assess unmetered water or water loss. The City Manager stated that it had been previously suggested that the City offer to split the cost of the meter with the County. The County's contractor will soon be leaving the scene of the project, which will cause the cost of the meter installation to rise. Therefore, direction is needed on this matter.

Mayor Pro Tem Little stated that he would be in favor of the City paying for half of the master meter.

It was the consensus of Council to direct the City Manager to present a proposal to the County for the City to pay for half the cost of a 10 inch Master Meter for the Nebo water system on US 70 East.

DISCUSS POSSIBLE SEWER EXTENSION – NC 226 SOUTH: The City Manager advised that, as previously reported, Mr. Roland Bass and Mr. Patrick Bryant are developing a 30 acre

commercial site on Highway 226 South at the I-40 interchange across from McDowell Tech. This property has been identified as the potential site of a motel, restaurant(s) and other retail shops, possibly to include a small shopping center. The City Manager stated that the cost of a needed sewer extension to the site is about $120,000, according to McGill. The City Manager stated ideally, the City could wait for State funds for job creation to undertake the sewer extension. However, Mr. Bass and Mr. Bryant have also suggested that the City go ahead and design and permit the extension to minimize any time delays. Also, as a backup option, in case time becomes an issue, the City Manager stated that he discussed with Mr. Bass and Mr. Bryant the City, County and property owner splitting the extension cost three ways. The City Manager stated that he told Mr. Bryant and Mr. Bass that the property would have to be annexed, as phases were developed.

A discussion followed. The Mayor and Council members expressed willingness to proceed with design and permitting of the sewer line, but also to wait for available State funds for job creation to fund the sewer extension itself.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, Council voted unanimously to authorize the City Manager to proceed with design and permitting of a sewer extension to the Bass/Bryant development site on NC 226 South, across from McDowell Technical Community College, not to include construction of the line.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects.

The City Manager presented Council with a copy of the notice of the award of the N.C. Parks and Recreation Trust Fund (PARTF) Grant to the City in the amount of $165,000 for the Mt. Ida property acquisition. The City Manager advised that a study has been started for the road access to this property in earnest.

The City Manager advised that the Downtown Advisory Committee held a Downtown Cleanup on Saturday, June 2. Several citizens, along with City staff and Boy and Girl Scout Troops, participated in the cleanup, which yielded over three truckloads of trash and debris being collected in the downtown area.

The City Manager presented the final proposed wording for the new Depot historic marker. Council agreed on the wording. The City Manager stated that the marker would be ordered and would take several weeks to be constructed and delivered.

The City Manager advised that the construction on the Community Building Splash Pad should be completed by mid to late June.

COUNCILMAN COMMENTS:

Councilman Edwards advised that he had been approached by several residents on Glenview Street regarding the build up of debris at the Claremont Street bridge causing the creek flow to be reduced and erosion of private property to occur.

Public Works Director Chris Hollifield stated that City crews had been over to the bridge at Claremont Street that day with a backhoe and had removed a great deal of debris from the creek bed.

Councilman Edwards asked about the possibility of the creek being cleaned again using inmate labor. The City Manager advised that, if all property owners in the areas signed waivers and release forms, Prison officials had advised that inmate labor could be used again in colder weather to clean the creek as had been done several years ago. The City Manager stated that staff would obtain the necessary form from the Prison for property owners to sign.

Councilman Cuthbertson asked if anyone had seen the bears that are being spotted in the area. Lt. Spratt advised that officers had seen the bears, but had been warned by State Wildlife Official not to harm the bears in any way.

CLOSED SESSION – UNDER N.C.G.S 143-318.11(A)(4) TO DISCUSS A MATTER INVOLVING THE LOCATION OF BUSINESS OR INDUSTRY: Upon a motion by Mayor Pro Tem 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 business or industry.

REGULAR SESSION: Upon a motion by Councilman Owenby, seconded by Councilman, 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 Mayor Pro Tem 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 19, 2007 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 absent from this meeting due to a work conflict.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Secretary; Gaye Noblitt, Marion Police Department; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Cliff McLarty, 190 North Madison Street, Marion, N.C.; Dave Medford, 465 Baldwin Avenue, Marion, NC; Jack Wood 271 Cobblestone Drive, Marion, NC; Brady Brooks 20 Meridith Drive – C-1 Marion, NC; Shannon Buchanan 515 Baldwin Avenue Marion, NC; Dwayne Hamilton, 112 Matilda Avenue, Marion, NC; Jim Neal, 40 Hillside Drive, Marion, NC; David Clay, 518 Carolina Avenue, Marion, NC, 28752.

CONSENT AGENDA: Upon a motion by Mayor Pro Tem Little, seconded by Councilman Owenby, those members of Council present voted to approve the consent Agenda as follows:

A. Approval of Minutes - May 29, 2007 Budget Workshop
June 5, 2007 Regular & Closed Session Minutes
B. Approve Revised City Pay and Classification Plan

GRADE		CLASSIFICATION	HIRING RATE	MAXIMUM
7		Equipment Operator I	21,214	31,821
		Maintenance Worker		
		Receptionist		
8		Animal Control and Parking Officer	22,275	33,413
		Billing and Collections Clerk		
		Collection/Distribution Technician		
		Equipment Operator II		
		Inventory Specialist		
		Meter Reader		
		Telecommunicator		
		Treatment Plant Operator Trainee		
		Zoning & Codes Enforcement Officer		
9		Administrative Support Specialist	23,389	35,084
		Treatment Plant Operator		
10		Maintenance Technician/Plant Operator	24,558	36,839
11		Crew Leader/Equipment Operator	25,787	38,679
		Fire Inspector		
		Fleet Mechanic		
		Laboratory Technician		
		Lead Telecommunicator		
		Senior Treatment Plant Operator		
		Tax Collector		
12		Accounting Technician	27,075	40,614
		Administrative Assistant		
		Fire Equipment Officer / Field Supervisor		
		Police Officer		
		Purchasing Agent		
13		Fleet Maintenance Supervisor/Mechanic	28,430	42,645
		Payroll and Personnel Technician		
		Streets Crew Leader I /Maintenance Technician		
14		Crew Leader/ Equipment Operator II	29,851	44,778
		Laboratory Supervisor		
		Police Assistant Shift Supervisor		
		Police Officer - Special Assignment		
		Streets Crew Leader II /Maintenance Technician		
15		Administrative Officer	31,345	47,017
		Assistant Water Utility Maintenance Superintendent		
		Police Investigator		
		Police Shift Supervisor		
		Sanitation Superintendent		
16		Assistant Fire Chief	32,912	49,368
17		Investigations Supervisor	34,557	51,835
		Public Works Superintendent		
		Water Utility Maintenance Superintendent		
18		Building Codes Inspector	36,285	54,429
		Water Treatment Plant Superintendent		
19		Patrol Commander	38,100	57,150
		Wastewater Collection/Treatment Superintendent		
		Planning & Development Director		
20		Public Utilities/Projects Director	40,005	60,008
22		Fire Chief	44,106	66,158

C. Approve Budget Amendments

CITY OF MARION, NORTH CAROLINA
2007-2007 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 2006-06 as adopted by the Marion City Council on the 20th day of June, 2006 is hereby amended as follows:

GENERAL FUND

a. General Fund Expenditures, Non-Departmental, Account Number 10-660-6100, Downtown Development is increased from $56,000 to $66,000.

b. General Fund Expenditures, Non-Departmental, Account Number 10-660-9950, Special Projects is increased from $50,000 to $57,000.

c. General Fund Revenues, Account Number 10-334-1600, Federal Drug Asset Revenue is increased from $5,717 to $28,147.

d. General Fund Revenues, Account Number 10-342-1300, National Night Out Revenue is increased from $3,070 to $8,000.

e. General Fund Revenues, Account Number 10-354-1000, Miscellaneous Revenue is increased from $30,000 to $39,000.

f. General Fund Revenues, Account Number 10-390-0000, Cemetery Revenues is increased from $16,487 to $23,730.

g. General Fund Revenues, Account Number 10-399-0000, Fund Balance Appropriated is decreased from $778,523 to $751,920.

GENERAL CAPITAL PROJECT FUND

a. General Capital Project Fund Revenues, Account Number 11-375-0000, Depot – NCDOT Grant is increased from $1,200,281 to $1,201,027.

b. General Capital Project Fund Expenditures, Account Number 11-171-0800, Depot Renovation Expense is increased from $1,375,506 to $1,376,252.

INTERNAL SERVICE FUND

a. Internal Service Fund Revenues, Account Number 35-391-0000, Sales to General Fund is decreased from $150,000 to $120,000.

b. Internal Service Fund Revenues, Account Number 35-391-1000, Sales to Water & Sewer Fund is increased from $-0- to $50,000.

c. Internal Service Fund Expenditures, Account Number 35-660-3300, Inventory Purchases, is increased from $150,000 to $170,000.

WATER AND SEWER FUND

a. Water and Sewer Fund Expenditures, Non-Departmental, Account Number 30-660-8000, Transfer to Capital Projects is increased from $120,000 to $121,000.

b. Water and Sewer Fund Revenues, Account Number 30-372-0000, Cut on Fees – Late Penalties is increased from $60,000 to $67,000.

c. Water and Sewer Fund Revenues, Account Number 30-373-0100, Water Taps is increased from $100,000 to $118,000.

d. Water and Sewer Fund Revenues, Account Number 30-373-1000, Cost Recovery Charge - Water is decreased from $25,000 to $-0-.

e. Water and Sewer Fund Revenues, Account Number 30-373-1100, Cost Recovery Charge - Sewer is decreased from $25,000 to $-0-.

f. Water and Sewer Fund Revenues, Account Number 30-374-0100, Water Service Charge is increased from $632,000 to $700,000.

g. Water and Sewer Fund Revenues, Account Number 30-299-0000, Fund Balance Appropriated is increased from $335,199 to $293,199.

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 June 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O–07–06–19–1

INTRODUCE NEW EMPLOYEES: Sergeant Gaye Noblitt introduced Mr. Jack Woods who will be serving as the City's Community Policing Coordinator. Officer Eric Lipe was reintroduced to Council. He had served on the Department several years ago and recently moved back to Marion from Texas.

PUBLIC HEARING/ADOPTION OF 2007-08 BUDGET ORDINANCE: Mayor Clark opened the Public Hearing.

The City Manager presented Council with a copy of the proposed 2007-08 City Budget Ordinance, as was endorsed by Council at the May 29 Budget Workshop.

There were no citizens present to discuss this Ordinance.

Councilman Owenby commended the City Manager and staff for doing a great job holding the present rate down.

Mayor Clark Closed the Public Hearing.

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

CITY OF MARION
2007-2008 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 its activities for the fiscal year beginning July 1, 2007 and ending June 30, 2008 in accordance with the chart of accounts heretofore established by the City:

Administration	$ 481,983	Purchasing and
Warehousing	58,067	
Inspection	242,440	

Police	1,703,842
Fire	456,241
Public Works Administration	92,500
Fleet Maintenance	60,661
Street	787,982
Powell Bill	239,000
Sanitation	531,273
Recreation	112,000
Cemetery	37,000
Non-Departmental	653,607
Total	**$ 5,456,596**

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2007 and ending June 30, 2008:

Prior Year's Taxes	$ 40,000
Vehicle Tax-Collected by County	140,000
Current Taxes	1,607,634
Tax Penalties & Interest	16,000
Privilege License Sales	21,010
Peddler's Permit	200
Interest Earned	140,000
Powell Bill Interest Earned	1,900
Rents and Concessions	30,720
Misc. Revenues	1,250
Drink Commissions	1,000
Mowing Reimbursement	500
Bad Check Fees	150
P/D Ser Copies Fingerprints	500
Refunds/ Reimbursements	1,000
Utilities Franchise Tax	540,000
Beer/Wine Revenue	29,500
Powell Bill Allocation	219,000
Sales Tax Distribution	1,550,000
ABC Revenues	185,000
ABC Officer Revenues	7,500
Court Costs, Fees & Charges	10,000
Parking Violations	10,000
County Fire Protection	210,000
State Fire Protection Reimbursement	2,400
County Contribution – Recycling	7,500
Recycling Bin Deposit	100
Cemetery	10,000
DOT Reimbursement Grass Mowing	1,850
Garbage Fees	153,000
Zoning Income - Inspection Fees	22,000
Sale of Garbage/Leaf/Recycling Bags	800
Cable TV Revenues	54,000
Sales of Surplus Equipment	6,000
McDowell County Schools	21,636
Wellness Grant	1,750
Mountain Glory Revenues	18,000
Fund Balance	374,696
Powell Bill Fund Balance	20,000
TOTAL	$5,456,596

Section 3. The following amounts are hereby appropriated in the Capital Reserve Fund – General for the fiscal year beginning July 1, 2007 and ending June 30, 2008:

Reserve for Future Appropriations	$ 469,100
TOTAL	**$469,100**

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, 2007 and ending June 30, 2008:

Fund Balance Appropriated	$ 454,000
Interest on Investments	15,100
TOTAL	**$ 469,100**

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, 2007 and ending on June 30, 2008 in accordance with the accounts heretofore approved for the City:

Utility Line Operation	$ 1,271,977
Water Filter Plant	539,726
Waste Treatment Plant	974,639
Non-Departmental	628,865
TOTAL	**$3,415,207**

Section 6. It is estimated that the following revenues will be available in the Water / Sewer Fund for the fiscal year beginning July 1, 2007 and ending June 30, 2008:

Fund Balance	$ 205,327	
Interest Earned	16,000	
Miscellaneous Income	2,500	
Property & Insurance Reimbursement	100	
Bad Check Fees	2,000	
Time Payment Interest	1,000	
Fire Protection Taps	5,000	
Transfer Fee	1,000	
Reimbursement – Septic	9,000	Reimbursement - Pump
Stations	1,500	
Reimbursement – Pretreatment	4,000	
Owner Temporary Sales	1,100	
Water Sales	967,055	
Water Sales – Nebo	1,000	
Cut on Fees/Late Penalties	60,000	
Sewer Service	632,414	
Water Taps	125,000	
Sewer Taps	75,000	
Delinquent Accounts Collected	500	
Tank Truck Charges	1,000	
Water Service Charge	758,756	
Sewer Service Charge	400,703	County
Reimbursement – 221N	14,252	
Free Water Reimbursement - Annex Subsidy	100,000	
Gain on Sale of Assets	10,000	
County Payment – Nebo Maintenance	21,000	
TOTAL	**$ 3,415,207**	

Section 7. The following amounts are hereby appropriated in the Capital Reserve Fund – Water/Sewer for the fiscal year beginning July 1, 2007 and ending June 30, 2008:

Reserve for Future Appropriations:	$ 239,500
TOTAL	**$ 239,500**

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, 2007 and ending June 30, 2008:

Fund Balance Appropriated	$ 228,000
Interest on Investments	11,500
TOTAL	**$ 239,500**

Section 9. The following amounts are hereby appropriated in the Internal Service Fund for the fiscal year beginning July 1, 2007 and ending June 30, 2008:

Inventory (Supplies)	$ 165,000
TOTAL	**$165,000**

Section 10. It is estimated that the following revenues will be available in the Internal Service Fund for the fiscal year beginning July 1, 2007 and ending June 30, 2008:

Purchase by Other Funds	$ 165,000
TOTAL	$ 165,000

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, 2007 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 $ 329,582,160 and estimated rate of collection of 96%.

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 19th day of June, 2007

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O–07–06–19–2

ADOPT WATER AND SEWER RATE AND CONNECTION FEE ORDINANCE: The City Manager presented Council with a copy of a proposed ordinance to increase water and sewer rates, service charges and minimum charges by six percent for inside and outside water and sewer customers. The 2007-08 Budget included this six percent increase. The rate increase will take effect with the August 1 billing.

A discussion followed.
Upon a motion by Mayor Pro Tem 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:	**$1.80 per 1,000 Gallons, plus $10.13 Service Charge per month**	**$4.50 per 1,000 Gallons, plus $25.35 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$11.25**	**$28.15**
Master Meter Rate	**$1.80 per 1,000 Gallons, plus $8.08 Service Charge per month**	**$4.50 per 1,000 Gallons, plus $20.28 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$9.20**	**$23.08**

	INSIDE CITY	OUTSIDE CITY
Sewer Rates:	**$1.80 per 1,000 Gallons, plus $10.13 Service Charge per month**	**$4.50 per 1,000 Gallons, plus $25.35 Service Charge per month**
Minimum Rate for 2,000 gallons or less	**$11.25**	**$28.15**
Master Meter Rate	**$1.80 per 1,000 Gallons, plus $8.08 Service Charge per month**	**$4.50 per 1,000 Gallons, plus $20.28 Service Charge per month**
Master Meter Minimum Rate for 2,000 gallons Or less (per unit served)	**$9.20**	**$23.08**

	INSIDE CITY	OUTSIDE CITY
Sewer Rates for Private Wells	**$2.59 per 1,000 Gallons, plus $10.13 Service Charge per month**	**$6.48 per 1,000 Gallons, plus $25.35 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 $9.20 for water and $9.20 for sewer in the City, and $23.08 for water and $23.08 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 $28.15 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 $11.25 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	$ [illegible]	$ 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	$ 60.00

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 average 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
CUT – OFF FEES:		
1 - 3 OCCURANCES	$ 15.00	$ 15.00
4 - 10 OCCURANCES	$ 25.00	$ 25.00
OVER 10 OCCURANCES	$ 50.00	$ 50.00
RECONNECT SERVICE SUMMER/SEASONAL RESIDENT	$ 15.00	$ 37.50
TEMPORARY SERVICE (SEVEN OR LESS DAYS)	$ 15.00 PLUS ACTUAL WATER USAGE	$ 37.50 PLUS ACTUAL WATER USAGE
TRANSFER EXISTING ACCOUNT TO NEW ADDRESS	UPGRADE TO PROPER DEPOSIT (IF DEPOSIT IS ADEQUATE) CHARGE $ 15.00 TRANSFER FEE	
METER TAMPERING:		
1ST OFFENSE	$ 100.00	$ 100.00

2ND OFFENSE	$ 200.00	$ 200.00
3RD OFFENSE	$ 500.00	$ 500.00
RETURNED 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	$ 25.00	$ 25.00
LARGER METERS	AT COST	AT COST
DETERMINATION OF FLOW AND SERVICE CAPABILITIES	AT COST	AT COST

Section 2. The Ordinance adopted on June 20th, 2006 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 19th day of June, 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-06-19-3

Councilman Martin noted that this increase is making a difference, slowly, over a period of time.

The City Manager stated that trying to make up a portion of the difference from losing the textile mills over the years has been hard. However, our goal is still to reach a point where the water and sewer fund is self supporting.

PUBLIC HARING – REZONING REQUEST – GARDEN CREEK ROAD: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that an application for a Zoning Map Amendment was submitted to the City of Marion on May 22, 2007, by Mr. William R. Ledbetter.

Mr. Ledbetter is requesting an amendment to the Official Zoning Map from C-2 General Business Zoning District to R-2 General Residential. The property is vacant and is surrounded by existing residential uses. The property is located on Garden Creek Road with the Parcel Identification Number (PIN) 1702.03-04-8491.

The property is the back portion of a larger tract of land that fronted on US 221 N. Business/N. Main Street. The property was subdivided into two parcels along the bank of garden creek, which naturally bifurcated the property. The back portion of the property and subject parcel for the rezoning request now fronts on Garden Creek Road. Garden Creek Road is mostly residential in nature with some intermittent commercial and institutional uses. The rear of the subject property is contiguous to properties that face US Highway 221 N. Business.

There were no citizens present to discuss this request.

Mayor Clark closed the Public Hearing.

Upon a motion by Councilman Owenby, seconded by Mayor Pro Tem 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, (hereinafter "City Code") is amended as follows:

Section 2. The City of Marion is amending the Official Zoning District Map at the request of William R. Ledbetter for property with the Parcel Identification Number 1702.03-104-8491 from C-2 General Business Zoning District to the R-2 General Residential.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on June 7, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective upon adoption.

Adopted this the 19th day of June 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-07-06-19-5

PUBLIC HEARING – ZONING AMENDMENT – AMEND PERMITTED USES AND USES ALLOWED BY SPECIAL EXCEPTION IN M-1 INDUSTRIAL DISTRICT: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that Ms. Jennifer Crowder, representing the East Marion Homeowner's Association, submitted a request to amend the Marion City Code Section 805 *M-1 Industrial District* restricting certain types of recreation and commercial uses within the zoning district. Ms. Crowder requested that the following language from Section 805 *M1 Industrial Zoning District* be stricken from the City Code:

Permitted Uses

- Section 805.2(2) Golf or baseball driving ranges, miniature golf and similar recreation facilities;
- Section 805.2(9) Skating rinks, permanent; and

Special Exception

- Section 805.3 (4) Trade lots and/or Flea Markets located totally within an existing structure.

On June 7, 2007, the Planning Board held a meeting to discuss the Applicant's proposed text amendment. Based on their discussion, the Planning Board recommends that Section 805 M1 Industrial Zoning District be amended as outlined in the below ordinance to allow recreational uses within enclosed buildings as a permitted use; allow recreational uses outside, within partially enclosed structure, or in a screened area as a Special Exception; and make no changes to trade lots/flea markets as a Special Exception.

Mr. David Medford was present for this meeting and advised that the East Marion Residents are willing to compromise. He feels that East Marion is different from the Cross Mill and Clinchfield Mill Villages and opposes anything going into the mill that will create noise and/or traffic. Mr. Medford stated that their petition with 98 percent of citizens signing it represented what the people want.

Mayor Pro Tem Little stated that he felt the Planning Board recommendation was a fair and reasonable compromise, and would serve as a win, win situation for all parties.

A brief discussion followed.

Mayor Clark closed the Public Hearing.

Upon a motion by Mayor Pro Tem Little, 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. *Zoning*, Article VIII. *Use Requirements By District*, Section 805 M-1 Industrial District is amended in its entirety and replaced by adding the following:

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.~~ Commercial recreation conducted entirely within an enclosed building.

(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 section 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.

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.

(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.

(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 graveyards, Automobile wrecking, junkyards 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 (L) of Section 805.3(1) of this Ordinance are 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 (L).

(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 developments, in accordance with the requirements in Section 1003.

(4) Trade lots and/ or Flea Markets located totally within an existing structure.

(4) Commercial recreation conducted in open, partially enclosed or screened facilities.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 19th day of June 2007.

A. Everette Clark
Mayor

ATTEST:

J. Robert Boyette
City Manager/ Clerk

Ordinance Number: O-07-06-19-1

PUBLIC HEARING – ASSIGN ZONING – EASTFIELD PHASE II ANNEXATION AREA: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that on May 15, 2007, City Council adopted Ordinance No. O-07-05-15-1 extending the corporate limits of Marion to include the Eastfield Phase II Area. The annexation would become effective on June 30, 2007.

The purpose of this ordinance is to assign a zoning designation to the annexation area that is most compatible with the existing uses within the area and to provide a mechanism to regulate such uses. Based on Marion City Code, the Eastfield Phase II Annexation Area is most compatible

with Section 802 *R-2 General Residential Zoning District.* The R-2 General Residential Zoning District is established as a district where the principal use of land is for residential purposes. The Eastfield Phase II area is approximately 32.95 acres in size and consists of 112 lots of which 86 are used for residential purposes. All other remaining land within the area is vacant or predominantly used for religious institutional purposes.

The Planning Board recommended **Approval** of the proposed R-2 General Residential Zoning District designation in a 5-0 vote at duly noticed public meeting on June 7, 2007.

There were no citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

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

ORDINANCE
AMENDING APPENDIX A ZONING
MARION CITY CODE
EASTFIELD PHASE II

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, (hereinafter "City Code") is amended as follows:

Section 2: The City of Marion is amending the Official Zoning District Map to include Eastfield Phase II Annexation Territory, as adopted by City Council on May 15, 2007 Ordinance Number O-07-05-15-1, zoning the area as R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on June 7, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective June 30, 2007.

Adopted this the 19th day of June 2007.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-07-06-19-6

PUBLIC HEARING ASSIGN ZONING – TATE STREET ANNEXATION AREA: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that on May 15, 2007, City Council adopted Ordinance No. O-07-05-15-2 extending the corporate limits of Marion to include the Tate Street Annexation Area. The annexation would become effective on June 30, 2007.

The purpose of this ordinance is to assign a zoning designation to the annexation area that is most compatible with the existing uses within the area and to provide a mechanism to regulate such uses. Based on Marion City Code, the Tate Street Annexation Area is most compatible with Section 802 *R-2 General Residential Zoning District:* The R-2 General Residential Zoning District is established as a district where the principal use of land is for residential purposes. The Tate Street Annexation Area is approximately 3.76 acres in size and consists of 9 lots of which 6 are used for residential purposes. All other remaining land within the area is vacant or part of a split lot in which the developed portion of the property is already within the City Limits.
The Planning Board recommended **Approval** of the proposed R-2 General Residential Zoning District designation in a 5-0 vote at duly noticed public meeting on June 7, 2007.

There were no citizens present to discuss this item.

Mayor Clark Closed the Public Hearing.

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

ORDINANCE
AMENDING APPENDIX A ZONING
MARION CITY CODE
TATE STREET - 2007

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, (hereinafter "City Code") is amended as follows:

Section 2: The City of Marion is amending the Official Zoning District Map to include Tate Street Annexation Territory, as adopted by City Council on May 15, 2007 Ordinance Number O-07-05-15-2, zoning the area as R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on June 7, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective June 30, 2007.

Adopted this the 19th day of June 2007.

A. Everette Clark
Mayor

ATTEST: J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-07-06-19-9

PUBLIC HEARING ASSIGN ZONING – FINLEY ROAD ANNEXATION AREA: Mayor Clark opened the Public Hearing

City Planner Heather Cotton advised that on May 15, 2007, City Council adopted Ordinance No. O-07-05-15-3 extending the corporate limits of Marion to include the Finley Road Annexation Area. The annexation would become effective on June 30, 2007.

The purpose of this ordinance is to assign a zoning designation to the annexation area that is most compatible with the existing uses within the area and to provide a mechanism to regulate such uses. Based on Marion City Code, the Finley Road Annexation Area is most compatible with Section 802 *R-2 General Residential Zoning District.* The R-2 General Residential Zoning District is established as a district where the principal use of land is for residential purposes. The Finley Road Annexation Area is approximately 10.63 acres in size and consists of 8 lots of which 5 are used for residential purposes. All other remaining land within the area is either vacant or part of the McDowell County Maple Leaf Ballpark. One property within the Finley Road Annexation Area is utilized for both residential and commercial (Tropical Tan). Tanning Salon businesses are not a permitted use within the R-2 Zoning District, however the business would be considered a lawful nonconforming use. As such, the business shall be allowed to remain under the provisions of Section 700.1 *Continuance of Nonconforming Use* of the City Code.

The Planning Board recommended **Approval** of the proposed R-2 General Residential Zoning District designation in a 5-0 vote at duly noticed public meeting on June 7, 2007.
There were no Citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

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

ORDINANCE
AMENDING APPENDIX A ZONING
MARION CITY CODE
FINLEY ROAD - 2007

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, (hereinafter "City Code") is amended as follows:

Section 2: The City of Marion is amending the Official Zoning District Map to include Finley Road Annexation Territory, as adopted by City Council on May 15, 2007 Ordinance Number O-07-05-15-3, zoning the area as R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on June 7, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective June 30, 2007.

Adopted this the 19th day of June 2007.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-07-06-19-7

PUBLIC HEARING – ASSIGN ZONING YANCEY ROAD/PYATT ANNEXATION AREA: Mayor Clark opened the Public Hearing.

City Planner Heather Cotton advised that on May 1, 2007, City Council adopted Ordinance No. O-07-05-01-1 extending the corporate limits of Marion to include the Yancey Road/Pyatt Annexation Area. The annexation would become effective on June 30, 2007.

The purpose of this ordinance would be to assign a zoning designation to the annexation area that is most compatible with the existing uses within the area and to provide a mechanism to regulate such uses. Based on Marion City Code, the Yancey Road/Pyatt Annexation Area is most compatible with Section 802 *R-2 General Residential Zoning District*. The R-2 General Residential Zoning District is established as a district where the principal use of land is for residential purposes. The Yancey Road/Pyatt Annexation Area was a voluntary annexation petitioned by the property owner. The purpose of the request is to help extend public services to the property in order to develop the site for residential use. The area is approximately 2.54 acres in size and consists of ten lots under single-ownership.

The Planning Board recommended **Approval** of the proposed R-2 General Residential Zoning District designation in a 5-0 vote at duly noticed public meeting on June 7, 2007.

Mr. Brady Brooks was present for this meeting and advised that he would like properties he owns near this location to be annexed as well.

Mayor Clark instructed Mr. Brooks that he would need to file a voluntary annexation request with the City of Marion.

There were no other citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Martin, those members of Council present voted to approve the following Ordinance:

ORDINANCE
AMENDING APPENDIX A ZONING
MARION CITY CODE
YANCEY ROAD/PYATT-2007

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, (hereinafter "City Code") is amended as follows:

Section 2: The City of Marion is amending the Official Zoning District Map to include the Yancey Road/Pyatt Annexation Territory, as adopted by City Council on May 1, 2007 Ordinance Number O-07-05-01-1, zoning the area as R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on June 7, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective June 30, 2007.

Adopted this the 19th day of June 2007.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette , City Manager/Clerk

Ordinance Number: O-07-06-19-10

PUBLIC HEARING – ASSIGN ZONING – FINLEY ROAD/LOFTIS ANNEXATION AREA: Mayor Clark opened the Public Hearing

City Planner Heather Cotton advised that on May 1, 2007, City Council adopted Ordinance No. O-07-05-01-1 extending the corporate limits of Marion to include the Yancey Road/Pyatt Annexation Area. The annexation will become effective on June 30, 2007.

The purpose of this ordinance is to assign a zoning designation to the annexation area that is most compatible with the existing uses within the area and to provide a mechanism to regulate such uses. Based on Marion City Code, the Yancey Road/Pyatt Annexation Area is most compatible with Section 802 *R-2 General Residential Zoning District*. The R-2 General Residential Zoning District is established as a district where the principal use of land is for residential purposes. The Yancey Road/Pyatt Annexation Area was a voluntary annexation petitioned by the property owner. The purpose of the request is to help extend public services to the property in order to develop the site for residential use. The area is approximately 2.54 acres in size and consists of ten lots under single-ownership.

The Planning Board recommended **Approval** of the proposed R-2 General Residential Zoning District designation in a 5-0 vote at duly noticed public meeting on June 7, 2007.

There were no citizens present to discuss this item.

Mayor Clark closed the Public Hearing.

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

ORDINANCE
AMENDING APPENDIX A ZONING
MARION CITY CODE
YANCEY ROAD/PYATT-2007

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, (hereinafter "City Code") is amended as follows:

Section 2: The City of Marion is amending the Official Zoning District Map to include the Yancey Road/Pyatt Annexation Territory, as adopted by City Council on May 1, 2007 Ordinance Number O-07-05-01-1, zoning the area as R-2 General Residential Zoning District.

Section 3. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 4. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on June 7, 2007.

Section 5. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 1300.1 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 6. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 7. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 8. This ordinance shall become effective June 30, 2007.

Adopted this the 19th day of June 2007.

A. Everette Clark
Mayor

ATTEST:
J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-07-06-19-10

PUBLIC COMMENT PERIOD: Mr. Jim Neal appeared before Council stated that he did not approve a decision made by Council to place a stop sign on his street, Hillside Drive, and would request that Council rescind their decision.

Mayor Clark stated that the Street Committee may need to revisit this request.

A discussion followed.

It was the consensus of Council to refer this request back to the Street Committee.

REVIEW STREET AND SIDEWALK PRIORITY LIST: The City Manager advised that with various street and sidewalk projects recently approved and underway, staff had prepared the following revised Street and Sidewalk Project Priority list. Projects 1-3 will hopefully be completed this summer. Project 4 and subsequent projects could then be considered. Project 7 will be quite involved and might warrant waiting for DOT assistance.

Mayor Pro Tem Little stated that we need to ensure that business owners have adequate notice prior to work effecting their business.

Councilman Cuthbertson stated that we needed to make sure the schedule for Main Street does not effect the 4th of July.

Mayor Clark stated that we should write to Alan Thornburg with the Department of Transportation regarding the discretionary money being distributed to various cities.

The sidewalk priority list presented to Council was as follows:

Street and Sidewalk Priority List
June 2007

Priority	Project
1	Street repair, drainage work, asphalt curb additions – top of Forest Heights Drive – **Being completed by contractor – City crews to complete needed spot curb and pavement repairs in other places on street.**
2	Curb, gutter, sidewalk – North Madison Street (must wait on needed water line replacement) – **Being completed by contractor**
3	Sidewalk repairs – Sections of South Main Street between Court and Henderson Streets – **Requested January 2007 – To be completed by City crews in Summer 2007**
4	Sidewalk - Add new section of sidewalk behind Wachovia Bank – **Have asked DOT for assistance**
5	Sidewalk repairs – Sections of State Street from Clay Street to old Railroad – **City crews to complete**
6	Sidewalk on West Henderson Street from Wilhemenia Street to Reid Street – **Have asked DOT for assistance**
7	Sidewalk from Railroad Street/Willow Street to Ingle's Shopping Center on West Henderson Street – **City crews to complete Railroad Street section; have asked DOT for assistance on West Henderson Street section**
8	Crescent Drive – Curb and gutter replacement (Needs a new water line)
9	Curb, gutter, sidewalk – Park Avenue (needs new water line)
10	Curb, gutter, sidewalk – Cross Street (Needs new water line, as existing water line is among the oldest in the City)
11	Curb and gutter – Morgan Terrace (Needs a small amount of sewer work)
12	Morehead Road

DISCUSS LUKIN STREET WATER AND SEWER REQUEST: The City Manager advised that as mentioned previously, the School System is requesting that water and sewer be extended to the new Accelerated Learning Center/Phoenix Academy facility in the former Foothills Industries

building on Lukin Street. The School System is willing to fund the request, but asked for consideration of the City paying for the difference between a 6" and 12" water line on Sugar Hill Road. In addition, we would need to make upgrades to the Hospital Pump Station, including a larger wet well and purchase of an on-site generator. These items would cost about $100,000, per an estimate of McGill Associates.

A discussion followed.

It was the consensus of Council to ask Danny Bridges with McGill Associates to get a quote on this proposed project.

DISCUSSION DATE FOR DEDICATION OF FRANCIS MARION PAINTING: The City Manager advised that our new Francis Marion painting is framed and hanging in City Hall.

A discussion was held regarding holding a dedication ceremony and invite Ms. Tina Jones from Rockville, Maryland, members of the Historic Society and all other interested persons to attend.

The McDowell news is scheduled to do a story on the painting.

It was the consensus of Council to hold a dedication ceremony and to invite Ms. Jones to come down and speak prior to a council meeting.

DISCUSS DEMOLITION OF OLD TRESTLE – WEST HENDERSON STREET NEXT TO OLD BROYHILL PLANT: The City Manager advised that as previously discussed by Council, he contacted Jim Phillips of Bryant & Young Lumber Company to discuss the possible demolition of the old trestle on the former Broyhill property. The Public Works Director, Chris Hollifield, Street Superintendent, Roger Estes, Building Inspector, Jay Suttles and the City Manager met with Mr. Phillips on June 13. Mr. Phillips is willing to assist the City or railroad in removing the trestle, but does not want to undertake the whole project due to financial reasons. The City Manager discussed with Mr. Phillips the possibility of his company deeding part of the property to the City, but he says that will not be possible due to the property being financed and being on the railroad right of way. We are attempting to contact Norfolk Southern (NS) to see if they would assist with the demolition. If NS will not help, the City Manager wanted to ask Council about the City assisting with this project in the interest of community appearance. We normally would not go on private property and complete such work, but this property is also on the railroad right of way (just like the banks near the Main Street bridge are), so perhaps that could justify City involvement. With the assistance of Bryant & Young personnel and equipment, our costs would not be as much as if we were given the property and had to take the entire trestle down by ourselves. We would probably want Bryant & Young Lumber to sign a hold harmless agreement.

A discussion followed.

Upon a motion by Councilman Martin, seconded by Councilman Cuthbertson, Council voted to assist with removing this trestle, contingent upon Bryant and Young signing a hold harmless clause agreement.

ADD ON ITEM: The City Manager advised that McDowell County Officials are requesting an extension to allow customers until December 31st to connect to the Nebo water line.

A discussion followed.

Upon a motion by Mayor Pro Tem Little, seconded by Councilman Cuthbertson, those members of Council present voted to extend the deadline on this agreement to December 31, 2007.

CITY MANAGER'S REPORT: The City Manager gave a brief report on current projects as follows:

The City Manager advised that the updated Dilapidated Housing Priority List now reflects 27 houses cleared or repaired since 2002. 15 additional houses remain on our priority list. The City Manager stated that he had challenged staff to address these houses over the next three Fiscal Years.

The City Manager advised that as previously reported, we hope to start the farmer's market in the West Henderson Street Parking Lot the week of July 3. The tailgate market will operate on Tuesday afternoons from 3:00 p.m. to 6:00 p.m. or 7:00 p.m. It appears that we can obtain grant funds for a nice sign for the market. City Planner Heather Cotton has asked HSMM to provide us with a design of a sign that would fit in with our downtown streetscape. Rules are also being developed for the market to include, among other things, that people may only sell items that they have produced. County Extension Director Dan Smith has a number of producers interested in selling at the market. Without objection, we will likely operate the market under the umbrella of the DBA. The draft rules for the market and an announcement from Dan Smith about an organizational meeting was presented to Council.

The City Manager advised that he had met with Duke Power and will have three streetlights installed on Hunt Street and West Fourth Street. This number of street lights is the same as found on other streets. The City Manager checked with DOT District Engineer Doug McNeal, who indicated that DOT has attempted, without success, to acquire right of way to pave West Fourth Street. Mr. McNeal indicated that DOT had given up on this project, but that the City can request to take over maintenance of the street. Without objection, the City Manager advised that he would ask DOT to allow the City to take over maintenance of West Fourth Street. The Public Works Director Chris Hollifield has been directed to study how paving could take place. Cost estimates will be developed and presented to Council in the near future.

The City Manager advised that the July 4th Celebration will be held on on Wednesday, July 4 and includes, as usual, the parade, street dance and fireworks display. Line-up for the parade will take place at 5:30 p.m. in the Bank of America parking lot. We will have the van at City Hall prior to this time and it can be moved to the Bank of America parking lot at 5:30 p.m.

The City Manager advised that the Joint Utility Committee Meeting was held this morning and that County Officials are looking for grant money to hook up Harmony Grove Road. The City Manager stated that he had spoken with Teresa Spires with Isothermal regarding Eastfield persons who missed the last project.

It was the consensus of Council to work with McDowell County to pick up water customers.

CLOSING COMMENTS:

Councilman Cuthbertson expressed concerns with the parking in the west Henderson Street Parking lot scheduled to be used for the Farmers Market.

Councilman Cuthbertson advised that the City had received compliments from Duke Energy representative Mr. Phil Ray regarding the clean up of several properties on North Main Street.

ADJOURNMENT: Upon a motion by Councilman Martin, seconded by Mayor Pro Tem Little, those members of Council present voted to adjourn.

A. Everette Clark, Mayor

ATTEST:

J. Robert Boyette, City Manager