



Response to Plaintiff's First Set of Interrogatories, etc.

This 30th day of March, 2021.

Frank G. Queen, PLLC

By: 

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Attorney for the defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on the opposing party or counsel in this matter by depositing a copy, enclosed in a first-class postage paid wrapper into a depository under the exclusive care and custody of the United States Postal Service, addressed as shown below on the date shown near his signature:

Derek J. Allen
Carolyn P. Small
Allen Stahl & Kilburne
20 Town Mountain Road, Ste 100
Asheville NC 28801

March 30, 2021



Frank G. Queen



STATE OF NORTH CAROLINA
HAYWOOD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE# 20 CVS 828

BURNETTE DOYLE SUTTON,)

Plaintiff,)

v.)

COUNTY OF HAYWOOD, acting by)
and through its Development)
Services Department and Board of)
Commissioners,)

Defendants.)

PLAINTIFF'S FIRST SET OF
INTERROGATORIES, REQUESTS
FOR PRODUCTION OF
DOCUMENTS, AND REQUESTS
FOR ADMISSIONS TO
DEFENDANT

PLEASE TAKE NOTICE that, pursuant to Rules 26, 33, 34, and 36 of the North Carolina Rules of Civil Procedure, Plaintiff Burnette Doyle Sutton, by and through the undersigned counsel, hereby requests that Defendant Haywood County answer separately and full in writing, under oath, within 30 days after service hereof, the following requests:

DEFINITIONS AND INSTRUCTIONS

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the North Carolina Rules of Civil Procedure.

1. **Communication.** The term "communication" means the transmittal of information by any means in the form of fact, ideas, inquiries or otherwise. The term "communication" includes posts and/or messages on social media, as well as text messages.
2. **Document.** The term "document" means the original and any copy of any material of any kind or nature, that is written, printed, typed, photographed, photostatted, microfilmed, recorded (electrically, electronically, magnetically, graphically, or otherwise) or which is capable of being recorded or reproduced in any form, whether prepared by you or by any other person. The term includes, but is not limited to; each and every note, memorandum, letter, correspondence, telefacsimile, cable, telegram, telex, circular, transmission,





communication, electronic mail, instant message, chat, social media post or message, blog, web page, RSS feed, text message, data processing input and output, voicemail message, telephone call record, telephone record or recording, interview, inter-office communication, conference, meeting or other conversation, release, paper, book, record, published or unpublished speeches or articles, report, agenda, bulletin, notice, announcement, advertisement, instruction, charge, manual, brochure, publication, schedule, statistical record, notation, desk calendar, appointment book, diary, list, tabulation, sound reporting, computer printout, lease, filing with governmental authority, license, permit, photograph, tangible thing, transcript, minute, tabulation, work paper, cost sheet, prospectus, memorandum of any telephone or in-person conversation, financial report or statement, bank statement, draft, check, canceled check, receipt, credit card receipt, credit card statement, contract, agreement, order, invoice, purchase order, bill of lading, book of accounts, bookkeeping and accounting record, affidavit, statement, summary, opinion, study, evaluation, analysis, plan, drawing, sketch, blueprint, graph, chart, account, notebook, sketchbook, scrapbook, draft, summary, transcript, computer data base, computer printout or other computer generated matter, technical report, laboratory report or notebook, engineering report, any notes and drafts related to the foregoing, and all things similar to any of the foregoing, however denominated.

The term "document" includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations. The term also includes any physical, digital, optical or magnetic storage device which may have contained stored data, but which has been entirely or partially deleted or erased, including but not limited to disks, hard drives, flash drives, memory cards, RAM and ROM computer memory chips, facsimile print cartridges, carbon paper, and the memory chips of digital copying machines scanners, and printers.

3. **Identify (with Respect to Natural Persons).** When referring to a natural person, "to identify" means to give, to the extent known or obtainable by reasonable means: (a) the person's full name; (b) his or her present or last known address; (c) his or her present or last known place of employment; (d) his or her present or last known phone number; and (e) his or her relationship with the Defendant. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of the person.



4. **Identify (with Respect to Persons other than Natural Persons).** When referring to a person other than a natural person (such as a partnership, corporation, etc.) "to identify" means to give, to the extent known or obtainable by reasonable means: (a) its official name, (b) its organizational form; (c) its place of registration, if any, (d) its address, and (d) its officers, managers, or owners, and (e) its relationship to Defendant.
5. **Identify (With Respect to Documents).** When referring to documents, "to identify" means to give, to the extent known or obtainable by reasonable means: (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the location of the original, and (e) the author(s), signatory(ies), addressee(s) and recipient(s).
6. **Identify (With Respect to Communications).** When referring to communications, "to identify" means to give, to the extent known or obtainable by reasonable means: (a) the names, addresses, phone numbers, and last known places of employment of the participants to the communication; (b) the names, addresses, phone numbers, and last known places of employment of any witnesses to the communication; (c) the relationship of the participants and witnesses to Defendant; (d) the subject matter of the communication; (e) the location(s) of the communication; (f) the location of a copy, recording or transcription of the communication; (g) the mode of communication (e.g. written, by telephone, meeting, etc.); and (h) the date of the communication.
7. **Parties.** The terms "Plaintiff" and "Defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, means the party and, where applicable, its officers, agents, employees, and partners. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.
8. **Person.** The terms "person" and "persons" shall mean and include any natural person, government entity, business, firm, association, partnership, joint venture, corporation, estate, trust, receiver, syndicate, municipal corporation, and any other form of legal entity or other group or combination acting as a unit.
9. **Statement.** The terms "statement" and "statements" shall mean: (a) a written statement in the handwriting of the person making it, or signed, or initialed, or otherwise in writing adopted or approved by the person making it; or (b) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and which is contemporaneously recorded.
10. **Concerning.** The term "concerning" means relating to, referring to, describing, evidencing, or constituting.
11. **And/Or.** The connectives "and" and "or" shall be construed either disjunctively or conjunctively wherever they appear as necessary to bring within the scope

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of this discovery request all responses that might otherwise be construed to be outside of its scope, and neither of these words shall be interpreted to limit the scope of a request.

12. **Tense/ Grammatical Number/Grammatical Aspect/Case/Gender.** The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." "Each" or "every" encompasses "each and every." The use of a verb in any grammatical aspect shall be construed as the use of the verb in all other grammatical aspects. The use of a word in any case shall be construed as the use of the word in all cases. Words in the masculine, feminine or neutral form shall include each of the other genders.
13. **Relating to.** The phrase "relating to" is intended to include documents or communications which either support or refute the claim, matter, statement, proposition, or theory referred to in the documents referenced in the specific request for document production. The term "relating" (or "relate") shall mean: pertaining, describing, referring, evidencing, reflecting, discussing, showing, supporting, contradicting, refuting, constituting, embodying, containing, concerning, identifying, or in any way logically or factually connected with the matter discussed.
14. **Referring to.** The phrase "referring to" is intended to include documents or communications which mention, refer or allude to the claim, matter, statement, proposition or theory referred to in the specific request for document production. The term "referring" (or "refer") shall mean: pertaining, describing, relating, evidencing, reflecting, discussing, showing, supporting, contradicting, refuting, constituting, embodying, containing, concerning, identifying, or in any way logically or factually connected with the matter discussed.
15. **Describe:** The term "describe" shall mean to detail in full, with specificity, the event or situation at issue.
16. **Claims of Privilege.** If a claim of privilege is asserted concerning any information sought or any document for which identifications are requested, provide the following: (a) Identify all communications by stating the participants in the communication, the date of the communication, and the general subject matter of the communication; (b) Identify all documents by identifying the (i) type of document (letter, memo, and so forth); (ii) general subject matter of the document; (iii) date of the document; (iv) author(s), addressee(s), and recipient(s); and (c) State the nature of the privilege asserted; and (d) State in detail the factual and legal basis for the claim of privilege.

17. **You or Your** means you and all your present and former agents, employees, representatives, and all other persons acting in behalf of the party upon whom the interrogatories are served.
18. **Each Independent:** Each Interrogatory shall be construed independently, and no interrogatory limits the scope of any other interrogatory.

INTERROGATORIES

1. Identify and state with particularity the statutory authority under which Chapter 114 of the Haywood County Ordinances (hereinafter "Chapter 114") was adopted.

RESPONSE: N.C.G.S. 153A-4; 153A-121(a); 153A-124; 153A-132.2

2. Identify and state with particularity the statutory authority under which the specific requirement in Chapter 114 that wrecker services cannot be located closer than 500 feet of a residence, school, or business (hereinafter the "500-foot requirement") was adopted.

RESPONSE: N.C.G.S. 153A-4; 153A-121(a); 153A-124; 153A-132.2

3. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's contention that the 500-foot requirement is a proper exercise of the County's police powers (see Defendant's Answer, denying Paragraphs 21 and 22 of Plaintiff's Complaint).

RESPONSE: The Board of Commissioners was engaged in a discretionary, legislative act in adopting the specific provisions, including the spacing requirements. The ordinance was adopted after public notice, a public hearing, and the consideration of input from the public in settling on the specific provisions, including the spacing requirements.

4. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's denial of Paragraph 21 of Plaintiff's Complaint.

RESPONSE: Paragraph 21 states a series of legal conclusions, not any factual matter requiring answers. The legal conclusions are contrary to the ordinance's stated purposes and language.



5. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's contention that the 500-foot requirement "regulate[s], prohibit[s], or abate[s] acts, omissions, or conditions" of wrecker services (see Defendant's denial of Paragraph 21(c) of Plaintiff's Complaint).

RESPONSE: The ordinance authorizes wrecker services to be located throughout the county, subject only to the limitations set out in the ordinance. The ordinance's provisions are uniform throughout the county.

6. State whether Defendant contends that the 500-foot requirement is a zoning regulation as defined in N.C.G.S. § 160D-701 and/or § 160D-702 (formerly § 153A-340) and the legal and factual basis for that contention.

RESPONSE: Chapter 160D, by its terms, doesn't apply to this case. The county contends that the ordinance is the exercise of the county's statutory police powers, as cited in answers 1 and 2 of these interrogatories.

7. State whether Haywood County has a Comprehensive Plan (as that term is defined in N.C.G.S. § 160D-102, § 160D-501, and § 160D-701) (hereinafter, "Comprehensive Plan").

RESPONSE: Chapter 160D does not apply to this case and the definitions in that Chapter are inapplicable.

8. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's denial of Paragraph 26 of Plaintiff's Complaint.

RESPONSE: The ordinance does not conflict with any other county ordinance on the subject.

9. State all legal and factual bases for your contention that the 500-foot requirement is in accordance with Haywood County's Comprehensive Plan.

RESPONSE: "Comprehensive Plan" is a term from Chapter 160D, which is inapplicable to this ordinance.

10. If there is a Comprehensive Plan for Haywood County,

a. Describe the Comprehensive Plan and its contents;

RESPONSE: "Comprehensive Plan" is a term from Chapter 160D, which is inapplicable.

b. Identify all documents that comprise the Comprehensive Plan;

RESPONSE: "Comprehensive Plan" is a term from Chapter 160D, which is inapplicable.

c. State the date on which the Comprehensive Plan was adopted;

RESPONSE: "Comprehensive Plan" is a term from Chapter 160D, which is inapplicable.

d. State the method or procedure by which the Comprehensive Plan is updated or amended; and

RESPONSE: "Comprehensive Plan" is a term from Chapter 160D, which is inapplicable.

e. State the dates on which the Comprehensive Plan has been updated or amended.

RESPONSE: "Comprehensive Plan" is a term from Chapter 160D, which is inapplicable.

11. Do you contend that the 500-foot requirement was adopted using the procedures for adopting development regulations as described in N.C.G.S. § 160D-601 *et seq.* (previously N.C.G.S. § 153A-320 *et seq.*)? If so, identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support that contention.

RESPONSE: No.

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12. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's denial of Paragraph 31 of Plaintiff's Complaint.

RESPONSE: The County treated the Plaintiff's application for a permit the same as other applicants.

13. Provide a list of all persons, firms, or business entities that have been granted a permit pursuant to Chapter 114, and the locations for which the permits have been granted.

RESPONSE: The County is in the process of compiling this information and will respond as soon as the process is completed.

14. Provide a list of all applications for a permit or variance under Chapter 114 submitted (including the name of the applicant, the nature of the applicant's business, and the location specified by the applicant), and state whether the permit or variance requested by each application was granted or denied.

RESPONSE: The County is in the process of compiling this information and will respond as soon as the process is completed.

15. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's governmental immunity affirmative defense.

RESPONSE: The county's adoption of the ordinance was a discretionary, legislative act for which the county is immune from suit. The county's denial of a variance from the ordinance is a governmental function for which the county is immune from suit.

16. Does Defendant contend that Plaintiff's claims are related to a tort committed by Defendant? If so, identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support that contention.

RESPONSE: No.

17. To the extent that any of your responses to any of Plaintiff's Requests for Admissions is anything other than an unqualified admission, list all facts on



which you based any part of your response that is not an unqualified admission, identify all documents memorializing each such fact, and identify all persons with knowledge of each such fact.

RESPONSE: Defendant objects to this interrogatory as unduly burdensome and overbroad.

REQUESTS FOR PRODUCTION OF DOCUMENTS:

1. Provide any and all documents or things concerning, referred to, or identified in the interrogatories to Defendant served with these requests or Defendant's answers thereto.

RESPONSE: The defendant objects to this as overly broad and burdensome.

2. Provide any and all documents relied upon or referenced in preparing your answers to any interrogatories in this action.

RESPONSE: See the attachments to later interrogatories. Some additional documents may be located in the search of County records and this will be supplemented.

3. Provide any and all documents or communications concerning Plaintiff's application to operate a wrecker service or for a variance.

RESPONSE: These will be provided in a supplementary response.

4. Provide any and all documents or communications from any member of the public to the Haywood County Board of Commissioners (or any member thereof), Haywood County Manager, or Haywood County Development Services concerning Plaintiff's application to operate a wrecker service or for a variance.

RESPONSE: See attached minutes for the public meetings and the quasi-judicial hearing on the application. This may be supplemented after further inquiries.

5. Provide a copy of the minutes from each meeting of the Haywood County Board of Commissioners during which Chapter 11A was adopted or amended.



RESPONSE: See attached minutes of the meetings of September 8, 1997; October 6, 1997; March 6, 2000, April 3, 2000; May 1, 2000.

6. Provide a copy of all documents evidencing the public notice (if any) and procedures by which the Haywood County Board of Commissioners' adopted or amended Chapter 114.

RESPONSE: See attached copy of Waynesville Mountaineer "Public Notice" for April 17, 2000.

7. Provide copies of all applications for a permit or variance under Chapter 114 submitted.

RESPONSE: The County is in the process of compiling this information and will respond as soon as the process is completed.

8. Provide copies of the minutes from each meeting of the Haywood County Board of Commissioners during which an application for a permit or variance under Chapter 114 was heard.

RESPONSE: The County is in the process of compiling this information and will respond as soon as the work is completed.

9. Provide copies of all documents evidencing permits granted under Chapter 114.

RESPONSE: The County is in the process of compiling this information and will respond as soon as the work is completed.

10. Provide copies of all documents evidencing permits denied under Chapter 114.

RESPONSE: The County is in the process of compiling this information and will respond as soon as the work is completed.

11. Provide a copy of the current version of the Comprehensive Plan.

RESPONSE: "Comprehensive Plan" is a term from N.C. G.S. 160D, which is inapplicable.

12. Provide copies of each version of the Comprehensive Plan that has been adopted or approved by the Haywood County Board of Commissioners.

RESPONSE: See Answer to #11.

13. Provide copies of the minutes from each meeting of the Haywood County Board of Commissioners during which the Comprehensive Plan was updated or amended within.

RESPONSE: See Answer to #11.

14. Provide copies of each ordinance adopted in relation to the Comprehensive Plan.

RESPONSE: See Answer to #11.

REQUESTS FOR ADMISSIONS

1. Admit that the 500-foot requirement is a zoning regulation as defined in N.C.G.S. § 160D-102(35), § 160D-701, and § 160D-702 (formerly N.C.G.S. § 153A-340).

RESPONSE: The references to Chapter 160D and N.C.G.S. 153A-340 are inapplicable and therefore this is denied.

2. Admit that the 500-foot requirement is a development regulation as defined in N.C.G.S. § 160D-102(14).

RESPONSE: The reference to Chapter 160D is inapplicable and therefore this is denied.



3. Admit that the 500-foot requirement regulates the location of buildings and the use of land.

RESPONSE: The spacing requirement is one of the requirements in Chapter 114 for the issuance of a permit under that Chapter. Except as explained, this is denied.

4. Admit that the 500-foot requirement "substantially affects land use."

RESPONSE: See answer to #3.

5. Admit that the 500-foot requirement does not "substantially affect land use."

RESPONSE: See answer to #3.

6. Admit that the 500-foot requirement was not adopted using the procedures for adopting development regulations as described in N.C.G.S. § 160D-601 *et seq.* (previously N.C.G.S. § 153A-320 *et seq.*).

RESPONSE: Chapter 114 was not adopted using the procedures of N.C.G.S. 153A-320. The reference to Chapter 160D is inapplicable.

7. Admit that wrecker services are not detrimental to the health, safety, or welfare of County citizens and the peace and dignity of the County.

RESPONSE: Wrecker services established and operated under the provisions of Chapter 114 are not detrimental to the health, safety or welfare of the citizens of the County.

8. Admit that wrecker services are not defined as nuisances.

RESPONSE: Permitted wrecker services established and operated under the provisions of Chapter 114 are not defined as health nuisances in the ordinance.

9. Admit that the 500-foot requirement as applied to wrecker services is not reasonably necessary to promote the accomplishment of a public good.

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RESPONSE: Denied.

10. Admit that there are significantly less burdensome means than the 500-foot requirement by which Haywood County could achieve its purported purposes.

RESPONSE: This is a discretionary, legislative judgment not subject to admission and it is therefore denied.

This the 27th day of January, 2021.

ALLEN STAHL & KILBOURNE, PLLC

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Verification

The undersigned Manager of Haywood County, after being duly sworn, says:

1. I have read the foregoing Answers, Requests, and Admissions and have made inquiry of the relevant officials in county government with knowledge of the matters and things stated.
2. I believe the foregoing responses to be true and complete.

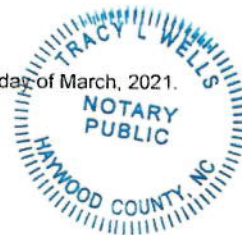
This 30th day of March, 2021.


Bryant Morehead, County Manager

Sworn to and subscribed before me, this 30th day of March, 2021.


Notary Public Tracy L. Wells 13

11-14-2021
My commission expires



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REGULAR MEETING - SEPTEMBER 8, 1997 - ALL MEMBERS PRESENT

Chairman Russell called the meeting to order at 9:00 a.m.

Chairman Russell declared a Public Hearing in session at 9:00 a.m. for the purpose of receiving nominations for appointment of one member to the Town of Canton Planning Board and one member to the Town of Canton Board of Adjustment for the extended extraterritorial jurisdiction. County Manager Jack Horton stated that this public hearing is in accordance with new requirements by the law for appointment to the extended ETJ and that no one has contacted him asking that they be appointed to either board. Commissioner Jack Rice received two recommendations from a Canton town official: Buz Swanger and Lester Milden. Appointment of members to serve on these Boards was postponed until the next board meeting to allow sufficient time to contact these nominees and receive other recommendations. Chairman Russell declared the Public Hearing concluded.

Commissioner Forga made a motion to approve the minutes of the August 25, 1997 meeting as presented. Commissioner Edwards seconded the motion and the board unanimously passed the motion.

No one addressed the board during the Public Session.

County Manager Jack Horton requested that the agenda be adjusted to accommodate consideration of the appointment of Land Records Manager Peggy Medford as the maps and plats Review Officer for Haywood County as required by G.S. §47-30. Also Judge Hyatt has requested that the County appoint someone to the Jury Commission, preferable from the east end of the County. The Haywood County Board of Education has requested a joint meeting with the Board of Commissioners to discuss current construction projects. The County has been notified that the 4th Circuit Court of Appeals will hear an oral argument concerning the Ten Commandments on the ACLU and Richard Suhre's motion to reverse Judge Thornburg's decision on October 1, 1997 in Richmond, Virginia. A short Closed Session for discussion of personnel is also being requested.

Following review of the proposed amendments to the Planning Board Ordinance, Commissioner Edwards made a motion to schedule a Public Hearing to be held Monday, September 22, 1997 at 9:00 a.m. in the Commissioners Board Room of the Haywood County Courthouse Annex to receive comments on these proposed amendments. Commissioner Forga seconded the motion and the board unanimously passed the motion.

County Attorney Chip Killian and members of the board reviewed the proposed Automobile Graveyards and Junkyards Ordinance. Commissioner Edwards made a motion to schedule a Public Hearing to be held Monday, October 6, 1997 at 9:00 a.m. in the Commissioners Board Room of the Haywood County Courthouse Annex to receive comments on the proposed



Automobile Graveyards and Junkyards Ordinance. Commissioner Bradshaw seconded the motion and the board unanimously passed the motion.

Chairman Russell made a motion to change the road name for a portion of Tumbling Fork Road to Murphys Way, Waynesville as presented by petition by Addressing Coordinator Kathy Hoglen. Commissioner Bradshaw seconded the motion and the board unanimously passed the motion.

Department of Social Services employees Renee Cable and Valerie Sutton presented an update on Carolina ACCESS, a program which links Medicaid recipients to a primary physician who can manage their medical care and provide better care than they would otherwise receive and also help to reduce Medicaid costs. The Carolina ACCESS program was implemented in Haywood County in October 1992.

Social Services Director Tony Beaman presented information regarding new legislation concerning Welfare Reform which requires that each county must decide by a 60% vote of its commissioners whether it wishes to remain a "Standard Program County" or become an "Electing County". As an electing county, the county would have to develop its own local Work First program. Commissioner Edwards made a motion that Haywood County remain a "Standard Program County" following a standard Work First program developed by DHR (Department of Human Resources). Commissioner Forga seconded the motion and the board unanimously passed the motion.

The Board reviewed bids presented by Solid Waste Management Director Joe Walker for a service contract for refuse collection for Haywood County's ten convenience center locations. Following a discussion of the bids received and the feasibility of including waste collection for Haywood County Schools, Haywood Community College, Haywood Vocational Opportunities and the Health Department, Chairman Russell made a motion to award the contract for refuse collection of the County's ten convenience sites to the low bidder GDS, Inc. for \$198,000 for the period 1997/1998 with the provision that we negotiate with the schools, the community college and HVO for the best possible pick up for them and then work out provisions so they can be billed directly without having to go through the County's books to allow more efficient full cost accounting for the County. Commissioner Edwards seconded the motion and the board unanimously passed the motion. The contract will extend for a period of one (1) year with an option period of three (3) years.

Mr. Walker also presented information on construction of a building at the White Oak Landfill to be used for maintenance and service of equipment. He recommends a 30' x 60', 14' high insulated steel building be constructed at an estimated cost of \$18,839, or \$10.46 per square foot. Chairman Russell made a motion to allow construction of an insulated steel building at the

REGULAR MEETING - OCTOBER 6, 1997 - ALL MEMBERS PRESENT

Chairman Russell called the meeting to order at 9:00 a.m.

Chairman Russell declared a Public Hearing in session at 9:00 a.m. to consider adoption of Chapter 114, "Automobile Graveyards and Junkyards" to Title 11, Business Regulations of the County of Haywood, North Carolina Code of Ordinances. County Manager Jack Horton stated that the proposed ordinance is the result of several years of discussion and consideration of a junkyard ordinance for the County. Two citizens who signed up to speak at the Public Hearing were heard at this time. Elaine Schenck of Canton supports the proposed ordinance and voiced her concerns regarding a garage which is in front of her home. Mildred Judy supports the proposed ordinance and is concerned about public health and the effects of junkyards. At this time, Chairman Russell opened the floor for public comment regarding the proposed ordinance. On behalf of the citizens along the Hwy 110 area in Bethel, Jerry Stamey spoke of a petition bearing 300 names of his neighbors in this area who requested that a salvage dealer erect a fence around his salvage yard; the junkyard owner has since relocated. David Vance, a junkyard owner in Bethel, asked the Board of Commissioners how many of the junkyards they visited, how many junkyard owners did they talk with, and how many junkyards in the County did they check to see how they operated prior to the drafting of the proposed ordinance, and did the Tax Assessors Office not clean up the biggest part of the abandoned vehicles in the County. Chairman Russell stated that the regulating of junkyards has been a topic of discussion by the Board for many years, and he and County Manager Jack Horton have visited several of the junkyards throughout the County. Mr. Vance disagrees with the requirement for fencing and screening, and feels that "junk" businesses should be checked to make sure they are properly permitted and taxed. Jack Fisher stated that he has been asking for something to be done for three years. He is not against junkyards, but thinks they should be regulated and should be fenced or screened, and that an enforceable ordinance must be in place. David Ashe representing the Haywood County Community Development Association stated that they are not against junkyards, they feel they are necessary, but they should be controlled, screened, and run like a business. Charles Millwood of Lake Junaluska is concerned about the farmer and the effects the ordinance may have on the farm equipment which he may have sitting around on his property. Commissioner Bradshaw and County Attorney Chip Killian stated that the proposed ordinance exempts legitimate farm operations from the regulations. Joe Haynes inquired if you should control as far as you see or as far as you pay taxes; he is opposed to controlling as far as you can see. Maxine Phillips who has a junkyard in front of her house is in support of the proposed ordinance for junkyard regulation. Canton Mayor Bob Phillips stated that junkyards which are run the proper way have a place in the

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County, but they should be regulated and have fencing and screening. Ray VandenBergh inquired as to the enforcement procedure for the proposed ordinance. Chairman Russell stated that the Planning Department would probably be in charge of the ordinance enforcement without hiring another person; Mr. Killian stated that the County would designate an enforcement officer. Dick Alexander stated that he is in favor of something, maybe not the ordinance as it now stands, but some type of regulations for junkyards is essential. He stated that his biggest concern with junkyard and salvage operations in Haywood County is the lack of personal pride in businesses. A gentleman who operates a small yard in Maggie Valley stated that he thinks each junkyard owner should have been sent a copy of the proposed ordinance, and said that this is the first time he has heard about it. In the event that the ordinance is adopted as written, Chairman Russell encouraged citizens to register any specific complaints they may have with the ordinance as the ordinance may be amended at any time. County Attorney Chip Killian reminded the citizens that this ordinance will not apply to incorporated towns and their extraterritorial jurisdiction, if the town exercises zoning rights in the ETJ. Don Rankin of the Beaverdam Community Development Club voiced his support for the ordinance, and stated that he thinks the Commissioners have come up with a reasonable solution for a problem that will serve the majority of the citizens and at the same time preserve the business opportunities for legitimate businesses. Bud Phillips stated that he is not against any legal junkyards which are operating, and is very much in favor of the proposed ordinance. Brad Blalock stated that he is against the ordinance. There being no further comments, Chairman Russell declared the Public Hearing concluded.

Economic Development Commission Director Leon Turner announced that the manufacturing plant in Waynesville that has housed Dayco Products Corporation will be sold to Thermal Products Corporation of Knoxville, Tennessee. Projections at this time are that a minimum of 500 jobs will be created in the first three years of operation, and it is their belief that even more job opportunities will be realized in the future. The terms of the sale will be disclosed at the closing which is tentatively scheduled for the first or second week of December. The assembly operation is slated to begin in January 1998, developing into full manufacturing and warehousing. Thermal Products Corporation will be manufacturing a new product which will be specified at a later date. In conjunction with the locating of this company in Haywood County, another project which EDC has worked on is exploring the possibility of a general aviation airport for Haywood County. The Economic Development Commission has worked with three large major projects in the last few months all of which need general aviation facilities. The engineering firm of W. K. Dickson and Co., Inc. has been engaged to prepare a feasibility study, site selection and master plan for providing a general aviation airport to serve our community.



currently members of the Board of Directors remain in these positions at least through the end of their term on the Board.

Commissioner Edwards made a motion to adopt Chapter 114, "Automobile Graveyards and Junkyards" to Title 11, Business Regulations of the County of Haywood, North Carolina Code of Ordinances, effective November 1, 1997. Commissioner Forga seconded the motion and the board unanimously passed the motion.

CHAPTER 114: AUTOMOBILE GRAVEYARDS AND JUNKYARDS

Section

- 114.01 Definitions
- 114.02 Purposes and Objectives
- 114.03 Geographic Coverage
- 114.04 General Standards
- 114.05 Exemptions
- 114.06 Fencing and Screening Requirements
- 114.07 Maintenance
- 114.08 Registration and Permitting of Pre-Existing Junkyards
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- 114.11 Enforcement Provisions
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§ 114.01 DEFINITIONS.

For the purposes of this Chapter, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number; and the plural the singular; and the word "shall" is mandatory and not directory.

ABANDONED VEHICLE. As authorized and defined in G.S. § 153-A-132, the term "abandoned vehicle" means a vehicle that:

- (1) is left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking; or
- (2) is left for longer than 24 hours on property owned or operated by the county; or
- (3) is left longer than two hours on private property without the consent of the owner, occupant, or lessee of the property; or
- (4) is left for longer than seven days on public grounds.

AUTOMOBILE GRAVEYARD. More than 10 vehicles meeting the definition of junked motor vehicles as defined in this chapter.



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BUILDING. Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

ENFORCEMENT OFFICER. A person or persons employed by the county through its sheriff's department. The Enforcement Officer is also referred to as the "Officer" in this chapter.

ESTABLISHMENT. Any real property on which, or in which, there is operated or maintained any commercial, industrial, or service business or activity for profit.

FARM. Singularly or jointly owned land parcels or contiguous parcels on which agricultural operations are conducted as the substantial use. Farm operations include the cultivation of crops, or the husbandry of livestock, poultry, fish and forestry.

FENCE. A continuous, opaque, unperforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of dirt, wood, stone, steel or other metal, or any substance of a similar nature and strength.

GARAGE. An establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles, and which is not used to store more than six motor vehicles that are not capable of being driven under their own power and are not being restored to operable condition, regardless of the length of time that individual motor vehicles are stored or kept at such property.

GATE. A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

HEALTH NUISANCE OR SAFETY HAZARD VEHICLE. A motor vehicle, used machinery or other used materials may be declared to be a health nuisance or safety hazard when it is found to be:

- (1) A breeding ground or harbor for mosquitoes or other insects, snakes, rodents or other pests; or
- (2) A point of collection of pools or ponds of water; or
- (3) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or
- (4) One which has areas of confinement which cannot be operated from the inside such as trunks, hoods, etc. or is a source of danger from exposed surfaces of metal, glass or other rigid materials; or
- (5) So located that there is a danger of the vehicle falling or turning over; or
- (6) A point of concentration of car radiators, batteries or other materials that pose either immediate or long-term environmental degradation.



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HOUSING UNIT. A house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters.

JUNK. Scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, dismantled or wrecked motor vehicles, other motorized equipment or parts thereof, iron, steel, and other scrap ferrous or non-ferrous materials.

JUNKED MOTOR VEHICLE. As authorized and defined in G.S. § 153A-132, the term "junked motor vehicle" means a vehicle 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 five years old and appears to be worth less than \$100.00; or
- (4) Does not display a current license plate.

Vehicles that do not display a current license plate but that can be self-propelled and are used only on the owner's property for farm-related or other activities are specifically excluded from this definition and these regulations.

JUNKYARD. Any land parcel which is maintained, operated, or used for storing, keeping, buying or selling junk, or for maintenance or operation of an automobile graveyard. The term "junkyard" shall not include any county-operated sanitary landfills or any collection facilities.

JUNKYARD CONTROL ACT. G.S. § 136-141 through 155 (Article 12) which delegates to the N.C. Department of Transportation the responsibility to regulate "junkyards" and "automobile graveyards" located on interstate and federal-aid primary system highways.

MOTOR VEHICLE. Any machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

MOTOR VEHICLE STORAGE AREA. An area where 4 to 10 vehicles that meet the definition of junked motor vehicles as defined in this chapter are kept or stored.

RECYCLING FACILITY. A temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and moved off site or kept on site in buildings, storage bins, solid waste containers, truck trailers and other rolling stock.

SERVICE STATION. An establishment which is maintained and operated for the purpose of making mechanical repairs, servicing and/or washing of motor vehicles and which is not used to store more than six motor vehicles that are not capable of being driven under their own power and are not being restored to operable condition, regardless of the length of time that individual motor vehicles are stored, or kept at such property.

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VECTOR. An organism that carries pathogens from one host to another.

VEGETATION. All season or evergreen vegetation including evergreen trees with leaves or foliage at all seasons of the year. Examples are white pine, southern yellow pine, hemlock and spruce trees.

WIRE FENCE. A continuous, translucent, perforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of wire, steel or nylon mesh, or any substance of a similar nature and strength, but which perforations or openings are no larger than 16 square inches.

§ 114.02 PURPOSES AND OBJECTIVES.

The purposes and objectives of this chapter include the following:

- (1) To promote the health, safety and welfare of the citizens of Haywood County.
- (2) To protect the citizens and residents of Haywood County from inherently dangerous automobile graveyards and junkyards.
- (3) To promote or enhance the protection of property values throughout the county.
- (4) To attract tourists and promote the prosperity, economic well-being and general welfare of the county.
- (5) To protect surface and groundwater quality.
- (6) To preserve and protect the natural environment in Haywood County.

§ 114.03 GEOGRAPHIC COVERAGE.

These regulations shall be in effect in all unincorporated portions of Haywood County which are not under the jurisdiction of any municipal zoning ordinance.

§ 114.04 GENERAL STANDARDS.

(A) All junkyards which are established from and after the effective date of this chapter, or that have been issued a current valid permit to establish, operate or maintain a junkyard, as provided in § 114.10 hereof shall meet the following standards:

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- (1) The junkyard shall have a minimum setback of 30 feet from any public or private road surface and outside the right of way of any public or private road.
- (2) The junkyard shall be screened as herein provided, or not visible from the main-traveled way and adjacent properties at any season of the year, or
- (3) The junkyard shall be fenced, or fenced and screened and maintained as provided for in § 114.06, subsection (B).
- (4) The junkyard cannot be located closer than 500 feet of a residence, school or business.

(B) The following criteria shall be applicable to pre-existing junkyards which are registered within 180 days of the effective date of this chapter, and no portion of any such junkyard shall be operated, maintained or expanded, except those junkyards meeting at least one of the following conditions:

- (1) Those which are screened by natural land features or vegetation, berms, plantings, fences or other appropriate means which sufficiently preserves the policy and intent of this chapter.
- (2) Those which are either not visible from adjoining properties because of screening with natural land features or vegetation, berms, plantings, fences or other appropriate means or are screened and/or fenced in accordance with § 114.06; or
- (3) Those which are located where the topography and terrain of adjacent lands is such that screening would be ineffective or useless. In these instances, the Enforcement Officer may waive all or part of the fencing or screening requirements, but shall require fencing and screening insofar as is practical and feasible, at all points where such fencing and/or screening shall be necessary to screen or partially screen the view of property adjacent to or near the junkyard.

§ 114.05 EXEMPTIONS

The following businesses or establishments are exempted from the provisions of this chapter:

- (1) Service stations or garages as defined by this section.
- (2) Used car lots with 10 or fewer junk vehicles as defined by this section. Used car lots with more than 10 junk vehicles shall screen the additional junk vehicles as prescribed for motor vehicle storage areas in § 114.06, subsection (C).
- (3) Recycling facilities using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment.
- (4) This section shall in no way regulate, restrict, prohibit or otherwise deter any bona fide farm and its related uses.

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§ 114.06 FENCING AND SCREENING REQUIREMENTS

All new and pre-existing junkyards established in accordance with this chapter may be operated subject to the following fencing and screening conditions:

(A) **New Junkyards.** Junkyards established after the effective date of this chapter shall comply with the chapter by registering, obtaining a permit, meeting the requirements of § 114.04 (A) and meeting the following fencing and screening requirements of this section:

(1) The junkyard shall be entirely surrounded by an opaque fence at least six feet in height or by either a woven or welded wire (14 gauge minimum) or chain link fence a minimum of six feet in height and with vegetation that is three feet high and six feet apart when planted. The vegetation shall be planted at the time the junkyard begins operation, or at the next appropriate planting time. The fence and vegetation shall surround the minimum area necessary for the junkyard to not be visible from a point at the same elevation as the junkyard. The vegetation shall be planted on the outbound side of the fence, contiguous to, and not more than eight feet from the fence. The vegetation shall be maintained as a continuous, unbroken hedgerow for the period the property is used as a junkyard. Each owner, operator, or maintainer of a junkyard shall utilize good horticultural techniques such as pruning, mulching and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

(2) All operations, equipment, junk and/or inoperable motor vehicles shall be kept within the confines of the fence at all times unless in process of being transported to or from the site.

(B) **Pre-Existing Junkyards.** Junkyards in existence on the effective date of this chapter shall comply with the chapter by obtaining a permit as provided in § 114.08 and meeting the requirements for pre-existing junkyards as set forth in § 114.04, General Standards, subsections B(1) or B(2), or meeting one of the following conditions:

(1) Remove all junk, vehicles or equipment that may be located within 15 feet of a public or private road surface to an area further than 15 feet from the road surface; and install an all-season vegetation screening between junk materials and property lines; or

(2) Screen and fence the junkyard in accordance with the screening and fencing provisions of § 114.06 (B) for new junkyards; provided, however, if topography renders fencing and screening useless and ineffective, the Enforcement Officer may waive all or part of the fencing and screening requirements as provided in § 114.04 (B)-(3) of this chapter.

(C) **Motor Vehicle Storage Areas.** All motor vehicle storage areas, whether in existence before the adoption of this chapter or after, shall be screened on all sides with a row of vegetation that is three feet high and six feet apart when planted. If the topography and terrain of adjacent lands is such that screening would be ineffective or useless, the Enforcement Officer may waive all or part of the screening requirements, but shall require screening, insofar as is practical and feasible, at all points where such screening shall be necessary to screen or partially screen the view of property adjacent to or near the storage area.



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§ 114.07 MAINTENANCE

All junkyards shall be maintained to protect the public from health nuisances and safety hazards. The Enforcement Officer shall inspect each junkyard once each year to determine that the chapter provisions are being followed. The Enforcement Officer may call upon the health department for advice and consultation as needed regarding vector or rodent problems. Should vectors be identified, the owner/operator/maintainer shall be notified of a violation in writing. Within 30 days of the receipt of the letter, the owner/operator/maintainer shall submit satisfactory evidence to the health department that vectors have been eliminated. Failure to comply with this section may result in revocation of the permit as well as other penalties and remedies for violation as provided for in § 114.12.

§ 114.08 REGISTRATION AND PERMITTING OF PRE-EXISTING JUNKYARDS

(A) All owners, operators or maintainers of automobile graveyards or junkyards existing at the effective date of this chapter shall register same with the Enforcement Officer within a period of 180 days beginning with the effective date of this chapter. All existing automobile graveyards or junkyards that have not been registered within 180 days shall be in violation of the provisions of this chapter.

(B) Following registration, a permit shall be applied for and obtained. The Enforcement Office shall provide the permit form. A junkyard plan prepared by the owner or operator shall be submitted as part of the junkyard registration. The plan shall indicate setbacks, location of road rights-of-way, all proposed structures, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions of junkyard, gross acreage, owner(s) name(s), address(es), preparer of plan name(s) and address(es). Submission of information shall establish pre-existing conditions. All permit requirements of § 114.10 shall be met. The plan may be drawn to scale or freehand with distances marked. Corners shall be identified by the owner on the junkyard site and referenced on the plan. Three copies shall be furnished.

§ 114.09 NON-CONFORMING PRE-EXISTING JUNKYARDS

All existing junkyards at the effective date of this chapter, registered in accordance with the preceding section, shall be granted a compliance period of 12 months from the effective date of registration to conform to the chapter. All existing junkyards that have not registered within this period shall be in violation of the provisions of this chapter. The Enforcement Officer shall monitor such facility at least annually to determine whether any diseased or dead trees must be replaced/replanted by the owner.

