



# TOWN OF CORNELIUS

Cornelius Town Hall

## BOARD OF COMMISSIONERS

September 16, 2019

Agenda

### PRE-MEETING - 5:45 PM

- Cain Center for the Arts-Schematic Design Review
- Closed Session - Contractual Matter

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### TOWN BOARD - 7:00 PM

1. CALL TO ORDER
2. DETERMINATION OF QUORUM
3. APPROVAL OF AGENDA
4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE
5. MAYOR/COMMISSIONERS/MANAGER REPORTS
6. CITIZEN CONCERNS/COMMENTS
7. PRESENTATIONS
  - A. Cornelius Educational Options Study Commission(CEOSC) Presentation
8. CONSIDERATION OF APPROVAL
  - A. Cain Center for the Arts-Schematic Design
  - B. Bailey Road Park Master Plan Update
  - C. Hyde Park Storage Suites - Offer to Purchase Contract
  - D. Pine Street (portion) Right-of-Way Abandonment
9. CONSENT AGENDA
  - A. Approve Minutes - Closed Session
  - B. Approve Minutes - Regular Meeting
  - C. Tax Refunds
10. COMMISSIONER CONCERNS
11. ADJOURNMENT

Please note that to speak during **CITIZENS CONCERNS/COMMENTS** or **PUBLIC COMMENT**, please use the signup sheet provided before the Board meeting and list your name, address and topic. Each speaker will be allowed 3 minutes to speak. A "hard stop" will occur after 3 minutes for each speaker. Any information displayed must be submitted to the Town Clerk within 48 hours prior meeting.

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: September 16, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

**Action Requested:**

The Town staff and Cain Center for the Arts construction committee members have been working with the design team that C-Design assembled to complete the Schematic Design. The Schematic Design includes the basic floor plan and site plan.


The basic design includes a 400 seat theater, 3 classrooms (2 visual arts, 1 dance), art gallery, boardroom, dressing rooms, greenroom, office space, and outdoor activity areas. The square footage is approximately 32,800 sq.ft.

The Cain Center Board approved the 100% Schematic Design and approved moving forward with Design Development at their September 9th meeting. If these designs are approved by the Town Board, the design team will start Design Development.

**Manager's Recommendation:**

Hear presentation from staff.

**ATTACHMENTS:**

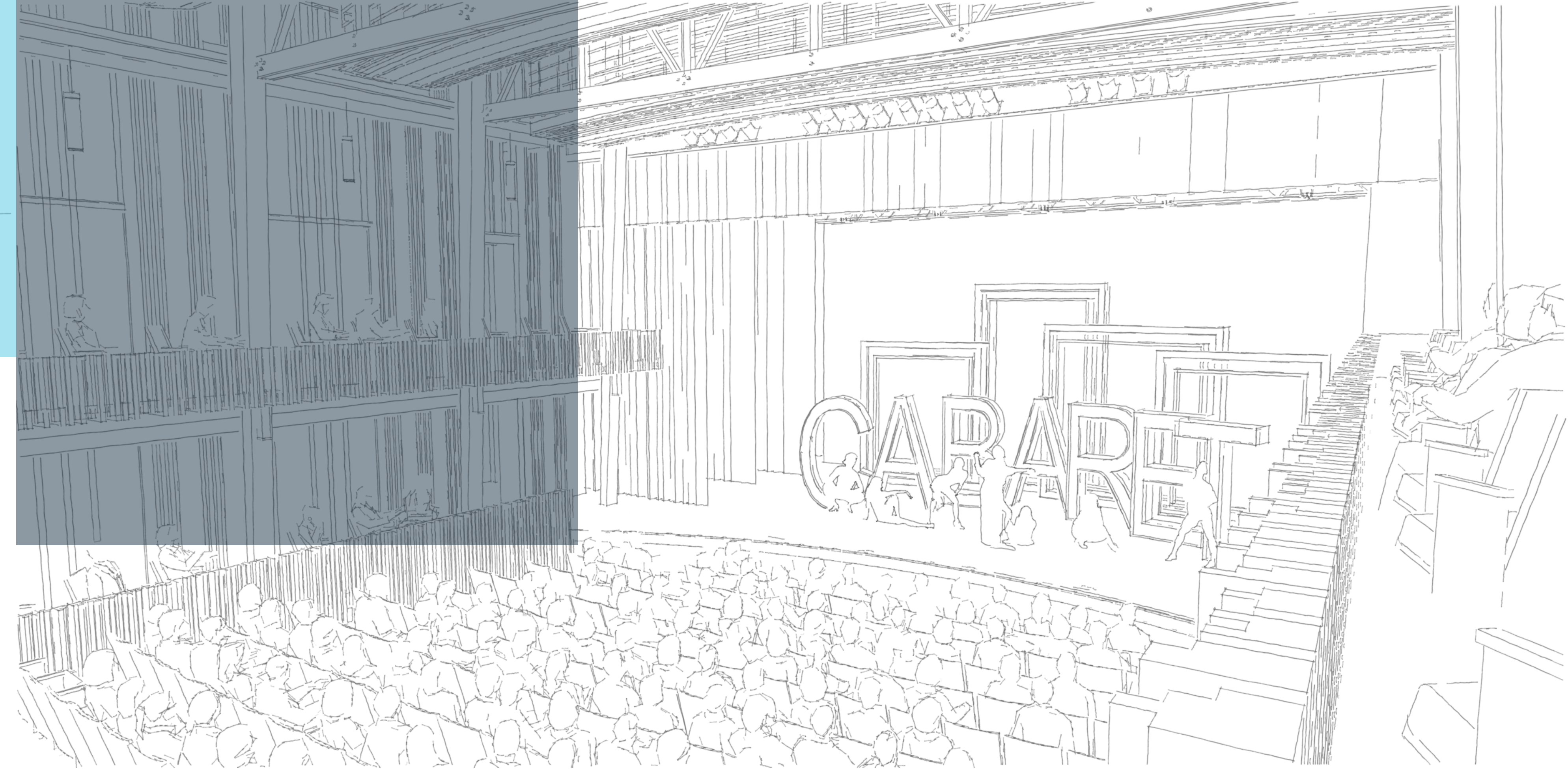
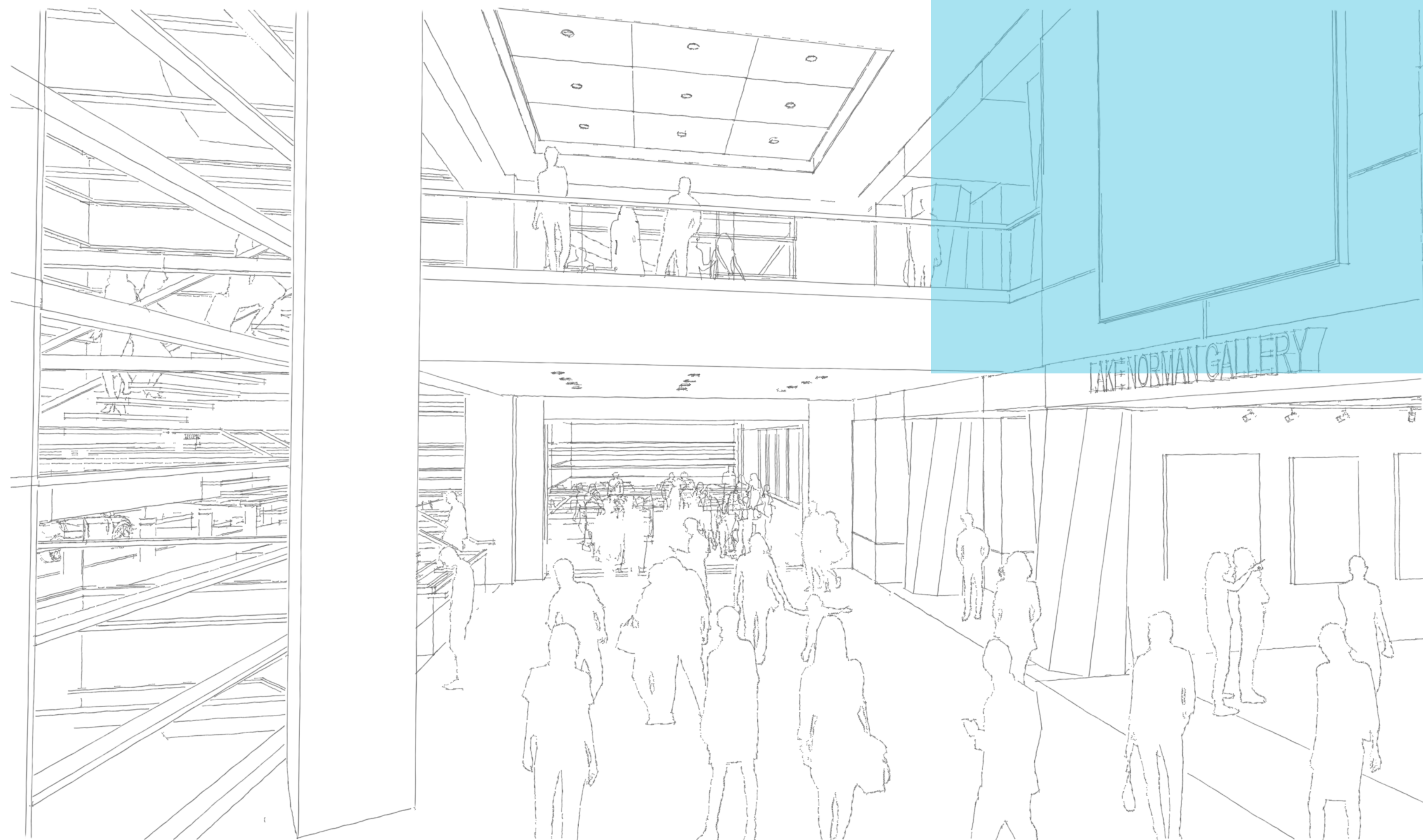
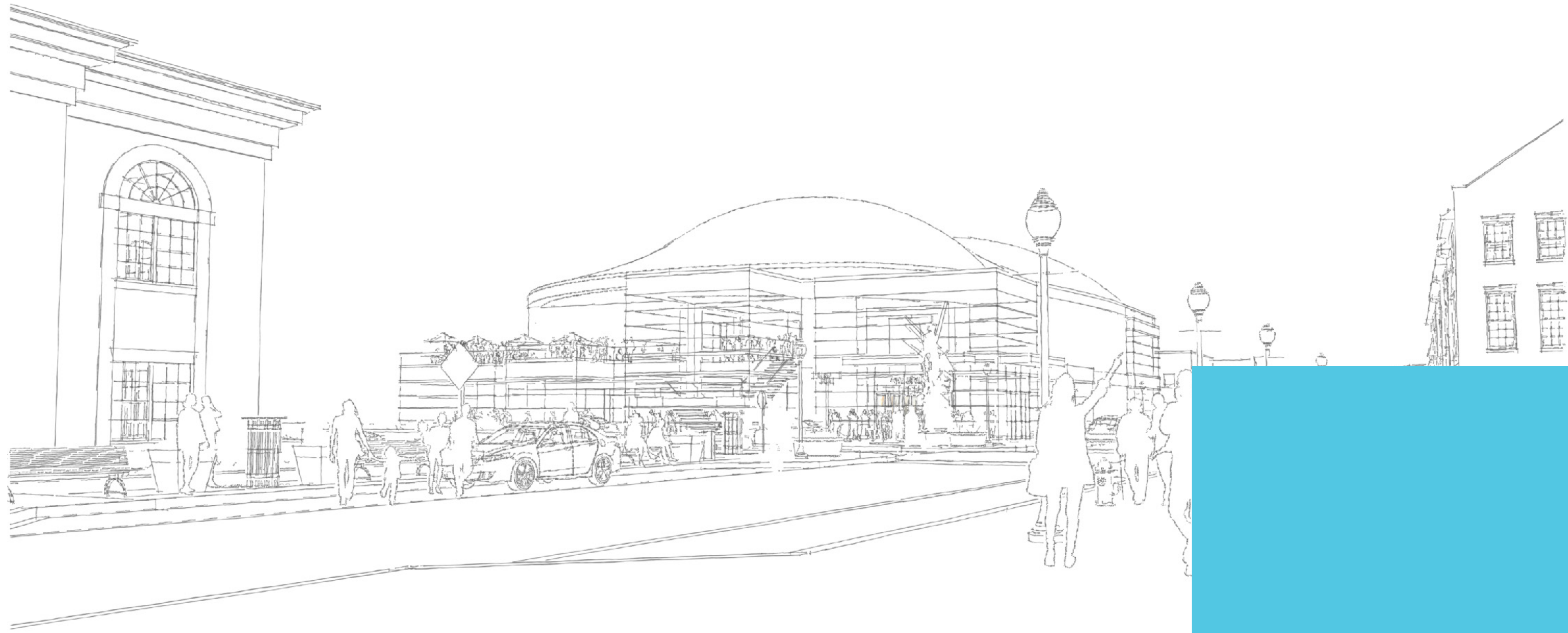
Name:	Description:	Type:
 <a href="#">Cain_Center_Schematic_Design.pdf</a>	Schematic Design	Presentation

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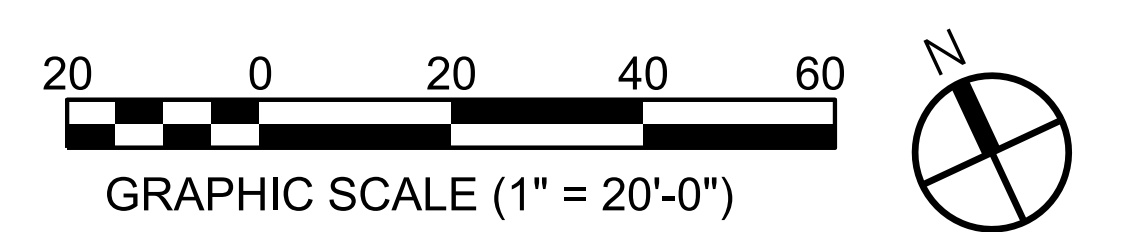
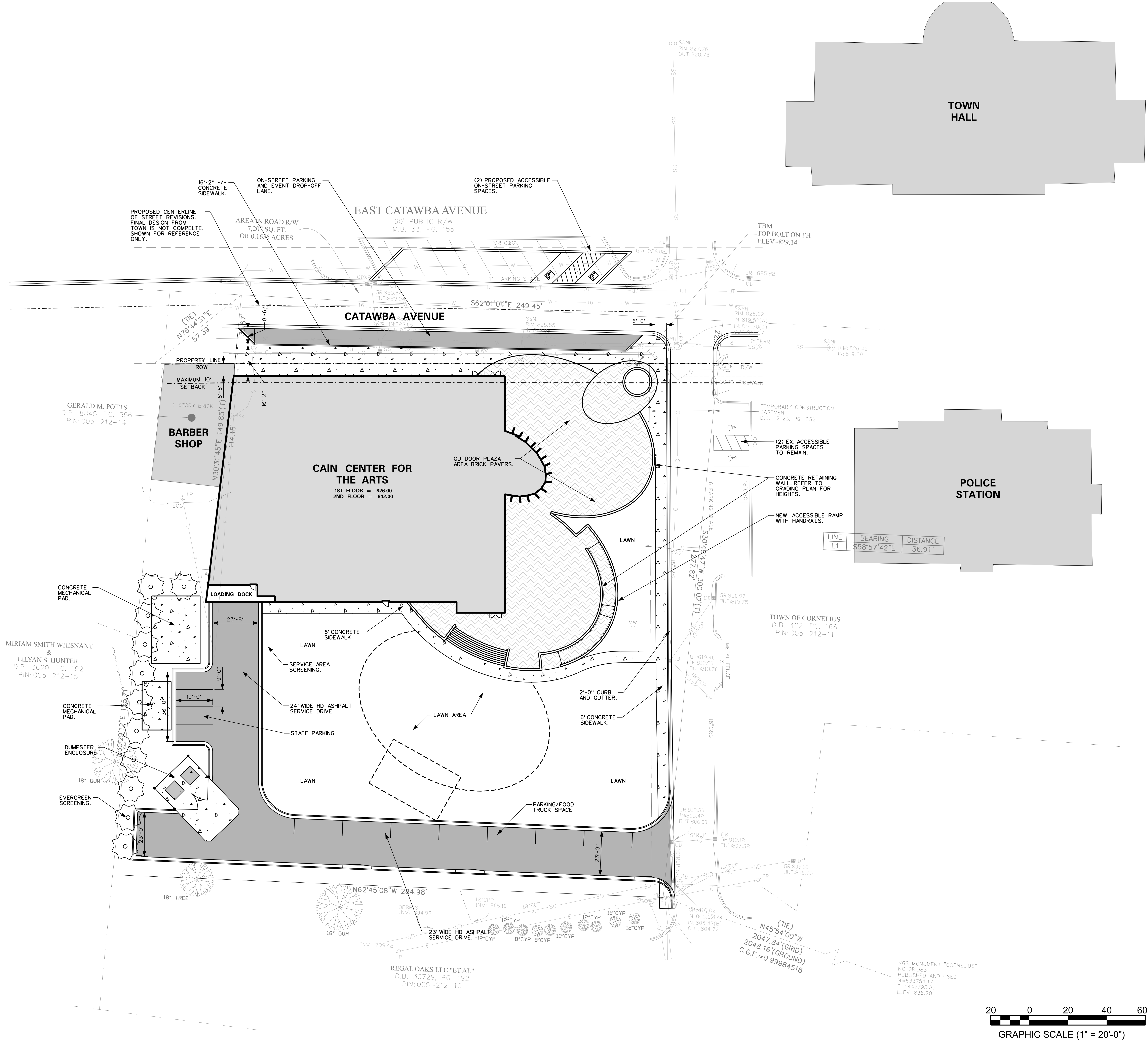


CAIN CENTER FOR THE ARTS 100% SCHEMATIC DESIGN

# CAIN CENTER FOR THE ARTS







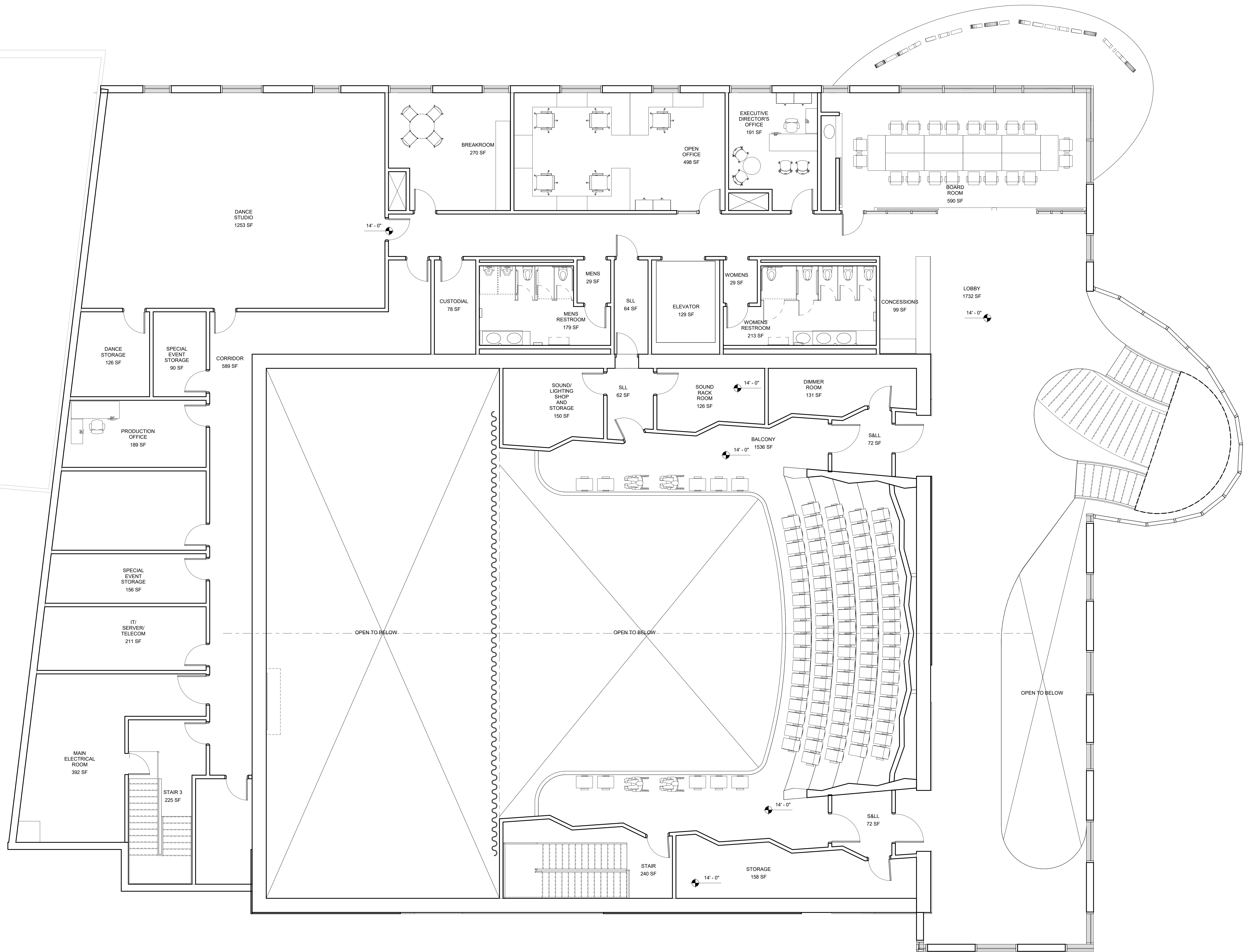












01 2/A-1 BALCONY LEVEL  
3/16" = 1'-0"



<b>Task</b>	<b>Start</b>	<b>Finish</b>
Schematic Design	March 2019	September 2019
Design Development	September 2019	Jan-Feb 2020
Construction Drawings	Jan-Feb 2020	June-July 2020
Bidding/Permitting	June-Aug 2020	Nov 2020-Jan 2021
Construction	Dec 2020-Feb 2021	Spring 2022 (14 Months)



## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: September 16, 2019

**To:** Mayor and Board of Commissioners

**From:** Andrew Grant, Town Manager

**Action Requested:**

Hold a Closed Session to discuss a contractual matter under attorney-client privilege.

**Manager's Recommendation:**

Hold a Closed Session.

**ATTACHMENTS:**

Name:	Description:	Type:
No Attachments Available		

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## REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** September 16, 2019

**To:** Mayor and Board of Commissioners

**From:** Wayne Herron, AICP

Deputy Manager

**Action Requested:**

In June of 2018, the North Carolina General Assembly passed House Bill 514, which allowed the Town of Cornelius, along with other local jurisdictions, to consider the establishment of municipal charter schools.

In October of 2018, Mayor Washam appointed the Cornelius Educational Options Study Commission (CEOSC) to evaluate what HB 514 could mean for the Town with regard to providing adequate facilities for the children in Cornelius.


The CEOSC has studied and evaluated five options for the Town to consider:

1. Do Nothing
2. Partner with CMS
3. Open and Operate Municipal Charter School(s)
4. Partner with an Existing Charter School
5. Create a New LEA

**Manager's Recommendation:**

Hear CEOSC presentation.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">CEOSC_Options_Report_Final_9.16.19.pdf</a>	Education Options	Presentation

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# CEOSC Final Presentation

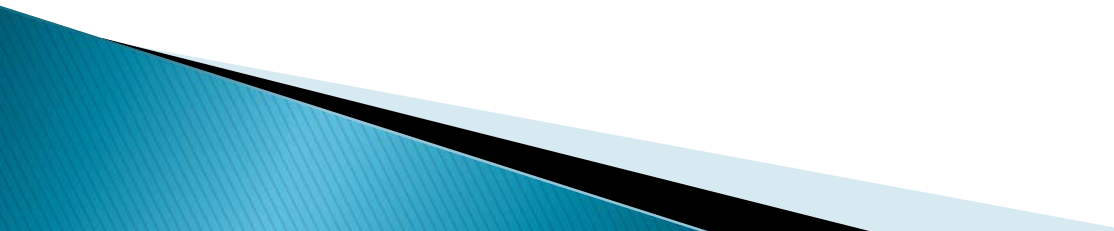
Cornelius Education Options Study Commission  
September 16, 2019



# Background

- ▶ Nov 2017: \$922M CMS bond issue passes. No funds for new LKN schools.
- ▶ May 2018: Cornelius opts in to HB514, a bill to allow municipal charter schools
- ▶ June 2018: NCGA passes HB 514
- ▶ August 2018: CMS Board passes Municipal Concerns Act
  - Prioritizes capital funding for municipalities that did not opt in to HB 514
  - Other municipalities can be reconsidered upon enacting a 15year moratorium on HB 514
- ▶ October 2018: Cornelius Town Board Creates Cornelius Educational Options Commission (CEOSC)

# Purpose of the CEOSC

- ▶ Project the current and future facilities needs of the Cornelius and North Mecklenburg student population
  - ▶ Evaluate the following 5 Options:
    1. Do Nothing
    2. Partner with CMS
    3. Open and Operate Municipal Charter School(s)
    4. Partner with an Existing Charter School
    5. Create a New LEA
- 



# CEOSC Members

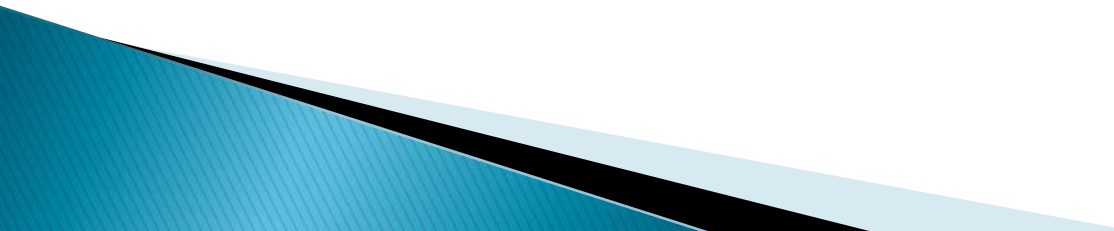
- ▶ Jack Higgins, Chair
  - ▶ Joanie Baker
  - ▶ Cynthia Bush
  - ▶ Dave Mancuso
  - ▶ Richard Pappas
  - ▶ Ivonne Reed
  - ▶ Tricia Sisson
  - ▶ Kurt Naas, Town Commissioner
  - ▶ Andrew Grant, Town Manager
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# Methodology

- ▶ Met with
  - Superintendent Wilcox
  - Director of Charter Schools, Dave Machado
  - Charter Schools USA
  - Local Charter Schools
  - Local Principals
- ▶ Attempted to meet with
  - CMS Board
  - Teachers
- ▶ Utilized
  - Town planning departments
  - Senator Marcus' Legislative Assistant
  - Mooresville Superintendent
- ▶ Held Town Hall Meeting
- ▶ Liaison with HEOSC



# Huntersville Educational Options Study Commission

- ▶ With the approval of the CEOSC, the HEOSC utilized projected growth data from the work the CEOSC completed. With the help of that analysis, the HEOSC developed a SWOT analysis of the 5 options, and each member ranked the options, resulting in an overall ranking.
  - ▶ On April 29, 2019, in their presentation to the Huntersville Town Board, the HEOSC recommended creating a new LEA as the solution for the Town of Huntersville, to address their long-term educational needs.
  - ▶ HEOSC further recommended as a more near-term solution that Huntersville begin the work of opening and operating municipal charter school(s)
- 

# Projected Enrollment/Classroom Needs

	2020	+ kids	# classrooms	2025	+ kids	# classrooms	2030	+ kids	# classrooms	2035	+ kids	# classrooms
<b>Cornelius Population</b>	34,248			37,124			40,000			40,000		
Elementary School	1,554	95	5	1,684	225	11	1,815	356	18	1,815	356	18
Middle School	907	55	3	984	132	7	1,060	208	10	1,060	208	10
High School	1,312	80	4	1,422	190	10	1,533	301	15	1,533	301	15
<b>Cornelius School Pop Total</b>	3,773	230	12	4,090	547	27	4,407	864	43	4,407	864	43
<b>Davidson Population</b>	14,491			17,066			19,641			25,000		
Elementary School	743	44	2	875	176	9	1,007	308	15	1,282	583	29
Middle School	375	22	1	442	89	4	508	155	8	647	294	15
High School	495	29	1	583	117	6	671	205	10	854	388	19
<b>Davidson School Pop Total</b>	1,613	95	5	1,900	382	19	2,186	668	33	2,783	1,265	63
<b>Huntersville Population</b>	65,780			78,860			91,939			110,000		
Elementary School	3,689	239	12	4,422	972	49	5,156	1,706	85	6,169	2,719	136
Middle School	1,487	96	5	1,783	392	20	2,079	688	34	2,487	1,096	55
High School	2,018	131	7	2,419	532	27	2,820	933	47	3,374	1,487	74
<b>Huntersville School Pop Total</b>	7,194	466	23	8,624	1,896	95	10,055	3,327	166	12,030	5,302	265
<b>Total LKN Towns</b>	114,519			133,050			151,580			175,000		
Elementary School	5,986	378	19	6,982	1,374	69	7,978	2,370	118	9,265	3,657	183
Middle School	2,770	174	9	3,208	612	31	3,647	1,051	53	4,194	1,598	80
High School	3,825	240	12	4,424	839	42	5,024	1,439	72	5,761	2,176	109
<b>LKN Towns Pop Total</b>	12,581	792	40	14,615	2,826	141	16,648	4,859	243	19,220	7,431	372
<b>CLT School Pop (N. Meck)</b>												
Elementary School	1,487	68	3	1,671	252	13	1,877	458	23	2,127	708	35
Middle School	1,153	53	3	1,295	195	10	1,455	355	18	1,649	549	27
High School	3,222	147	7	3,620	545	27	4,068	993	50	4,609	1,534	77
<b>Charlotte Student Pop</b>	5,861	267	13	6,586	992	50	7,401	1,807	90	8,385	2,791	140
<b>Total North Meck Students</b>												
Elementary School	7,472	445	22	8,652	1,625	81	9,855	2,828	141	11,392	4,365	218
Middle School	3,922	226	11	4,504	808	40	5,102	1,406	70	5,843	2,147	107
High School	7,047	387	19	8,045	1,385	69	9,092	2,432	122	10,370	3,710	185
<b>Total North Meck Students</b>	18,442	1,059	53	21,201	3,818	191	24,049	6,666	333	27,605	10,222	511

**10,222 new students will be added to the capacity needs of the N. Meck schools by 2035**

- ▶ (1) North Charlotte population within Hopewell & North Meck districts.
- ▶ North Charlotte population buildout based on 2045 Charlotte population of 1,322,813
- ▶ (Estimated an average population of North Charlotte to Charlotte population to be 6.25%. Applied 6.25% to 2045 Charlotte population ( $1,322,813 * 6.25\% = 82,676$ .)

# N. Meck Capital Needs Assessment

	Avg School Capacity	2020	2025	2030	2035
<b>Cornelius Population</b>					
Elementary School	776	0.1	0.3	0.5	0.5
Middle School	1093	0.1	0.1	0.2	0.2
High School	2053	0.0	0.1	0.1	0.1
<b>Davidson Population</b>					
Elementary School	776	0.1	0.2	0.4	0.8
Middle School	1093	0.0	0.1	0.1	0.3
High School	2053	0.0	0.1	0.1	0.2
<b>Huntersville Population</b>					
Elementary School	776	0.3	1.3	2.2	3.5
Middle School	1093	0.1	0.4	0.6	1.0
High School	2053	0.1	0.3	0.5	0.7
<b>Total LKN Towns</b>					
Elementary School	776	0.5	1.8	3.1	4.7
Middle School	1093	0.2	0.6	1.0	1.5
High School	2053	0.1	0.4	0.7	1.1
<b>Charlotte School Pop In N. Meck Schools</b>					
Elementary School	776	0.1	0.3	0.6	0.9
Middle School	1093	0.0	0.2	0.3	0.5
High School	2053	0.1	0.3	0.5	0.7

	Avg School Capacity	2020	2025	2030	2035
<b>Total North Meck School Pop</b>					
Elementary School	776	0.3	1.8	3.4	5.4
Middle School	1093	0.6	1.1	1.7	2.3
High School	2053	0.4	0.9	1.4	2.1
<b>Estimated Construction Cost</b>	in millions	\$35	\$155	\$215	\$335

	Optimal School Size	2020	2025	2030	2035
<b>Cornelius Population</b>					
Elementary School	700	0.1	0.3	0.5	0.5
Middle School	1100	0.1	0.1	0.2	0.2
High School	1500	0.1	0.1	0.2	0.2
<b>Davidson Population</b>					
Elementary School	700	0.1	0.3	0.4	0.8
Middle School	1100	0.0	0.1	0.1	0.3
High School	1500	0.0	0.1	0.1	0.3
<b>Huntersville Population</b>					
Elementary School	700	0.3	1.4	2.4	3.9
Middle School	1100	0.1	0.4	0.6	1.0
High School	1500	0.1	0.4	0.6	1.0
<b>Total LKN Towns</b>					
Elementary School	700	0.5	2.0	3.4	5.2
Middle School	1100	0.2	0.6	1.0	1.5
High School	1500	0.2	0.6	1.0	1.5
<b>Charlotte School Pop In N. Meck Schools</b>					
Elementary School	700	0.1	0.4	0.7	1.0
Middle School	1100	0.0	0.2	0.3	0.5
High School	1500	0.1	0.4	0.7	1.0

	Optimal School Size	2020	2025	2030	2035
<b>Total North Meck School Pop</b>					
Elementary School	700	0.4	2.0	3.8	6.0
Middle School	1100	0.6	1.1	1.7	2.3
High School	1500	0.6	1.3	2.0	2.8
<b>Estimated Construction Cost</b>	in millions	\$105	\$155	\$410	\$430

\*Optimal School size based on NC Public Schools report "School Size and its Relationship to Achievement and Behavior" April 2000  
 \* Estimated Construction Cost per building source: MGSD Dec 2018 – rounded to whole building

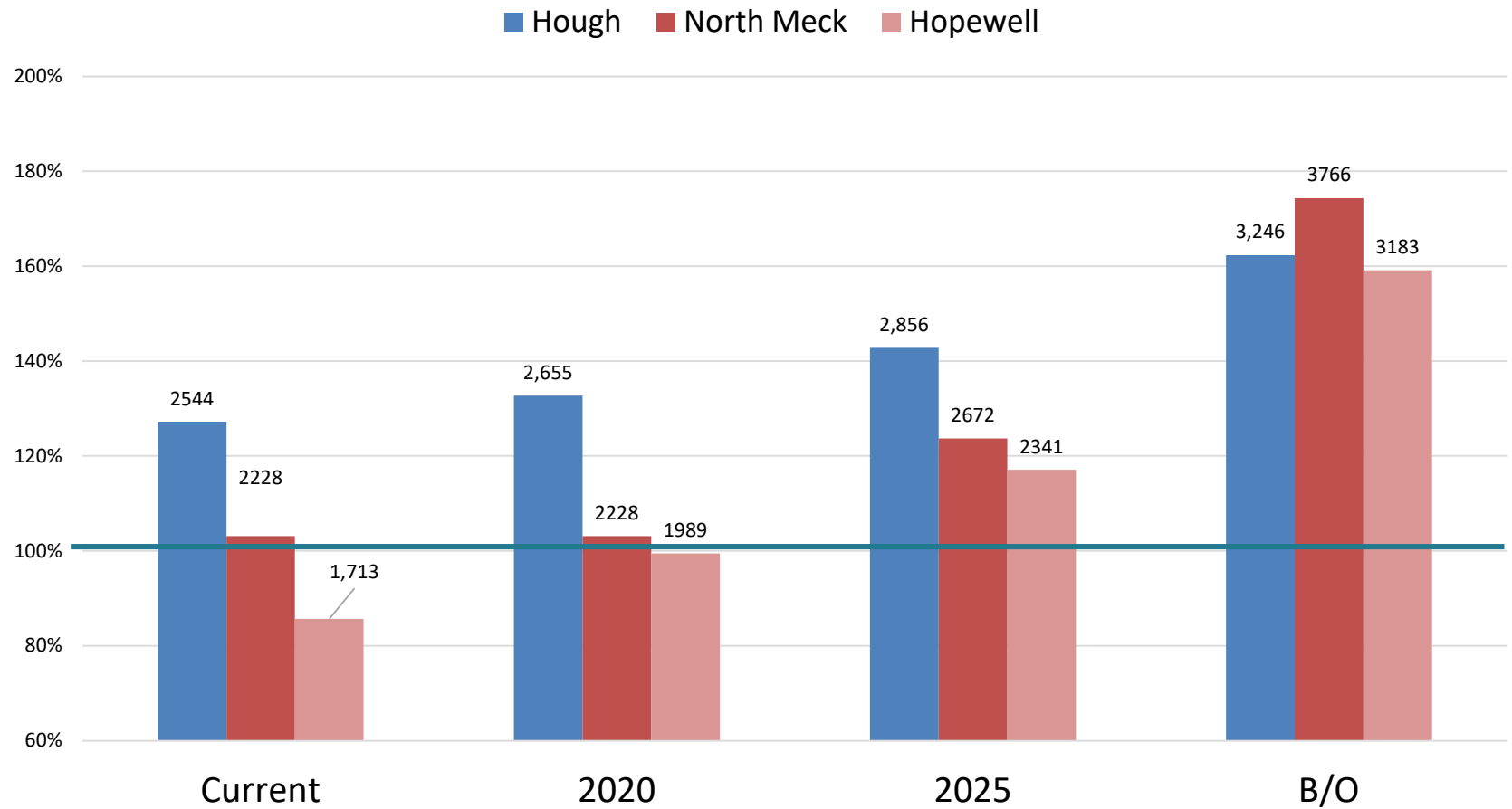
Analysis assumes correction of current over utilization vs. planned enrollment in existing N. Meck Schools

Current Over/Under Utilization	+ kids	# classrooms
N. Meck Elementary Schools	-193	-10
N. Meck Middle Schools	416	21
N. Meck High Schools	500	25





# Capacity- High School

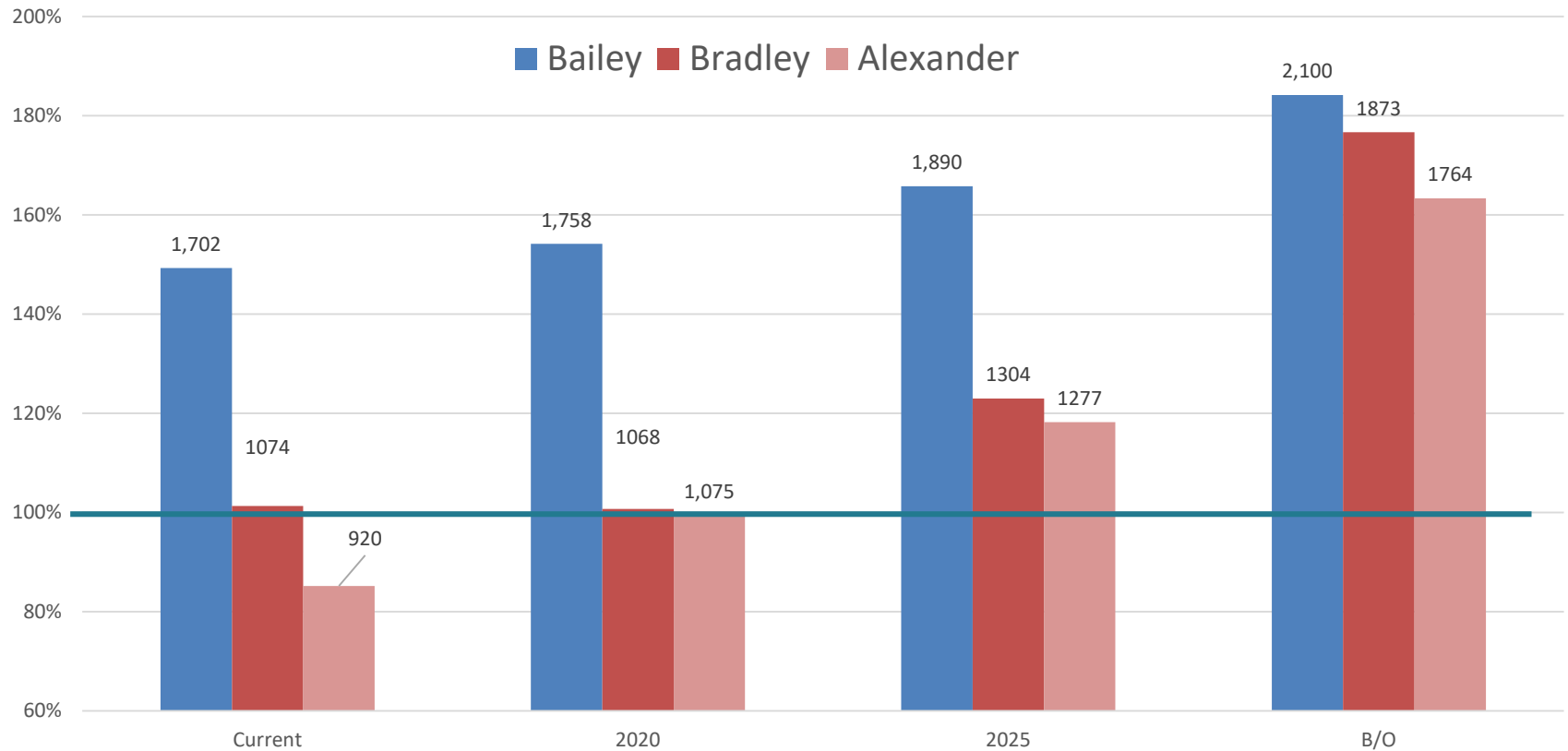


*Capacity percentage based on "as-built" capacity*



# Capacity- Middle School

Middle School- Planned Capacity

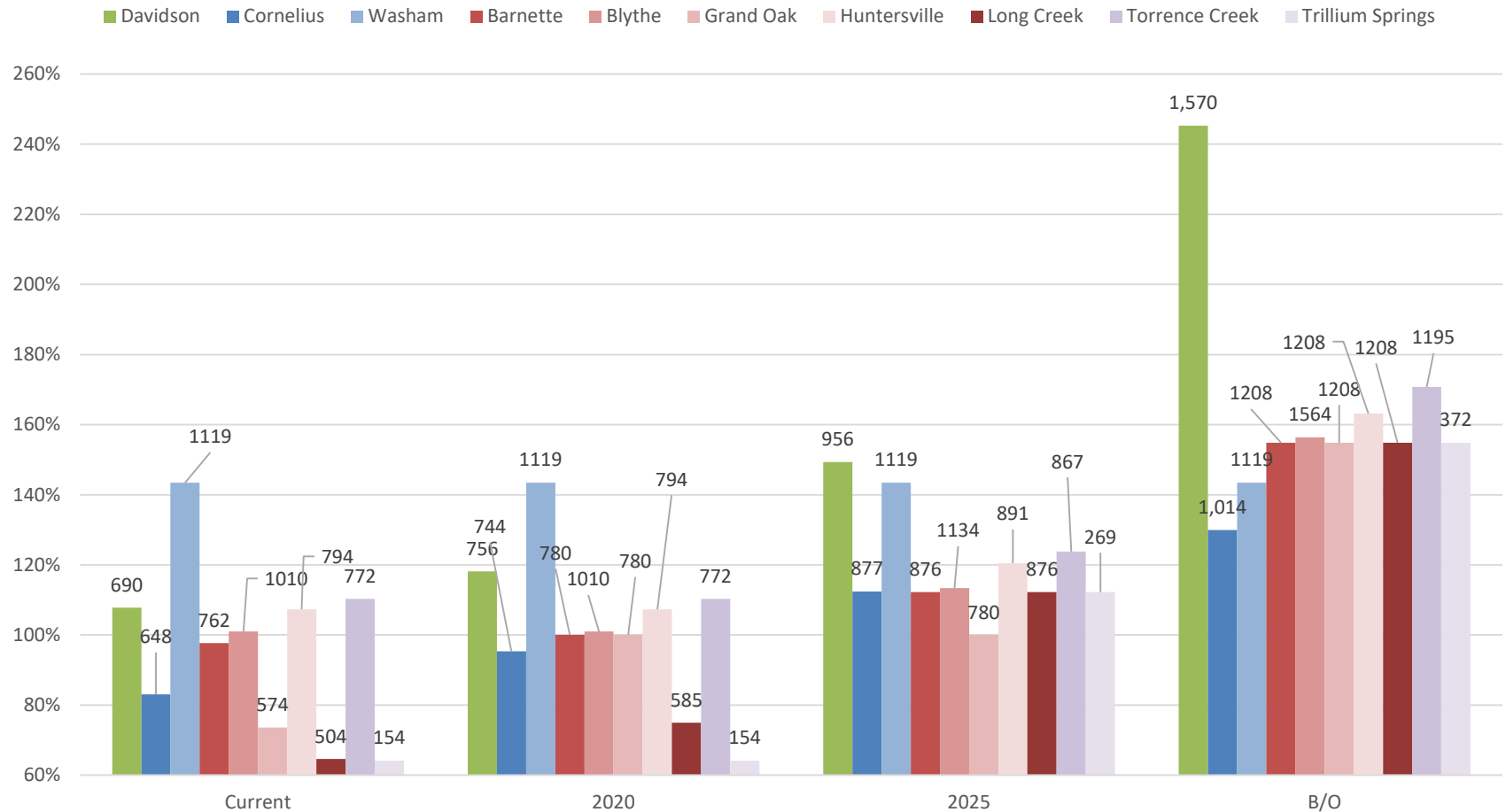


*Capacity percentage based on "as-built" capacity*





# Capacity- Elementary School



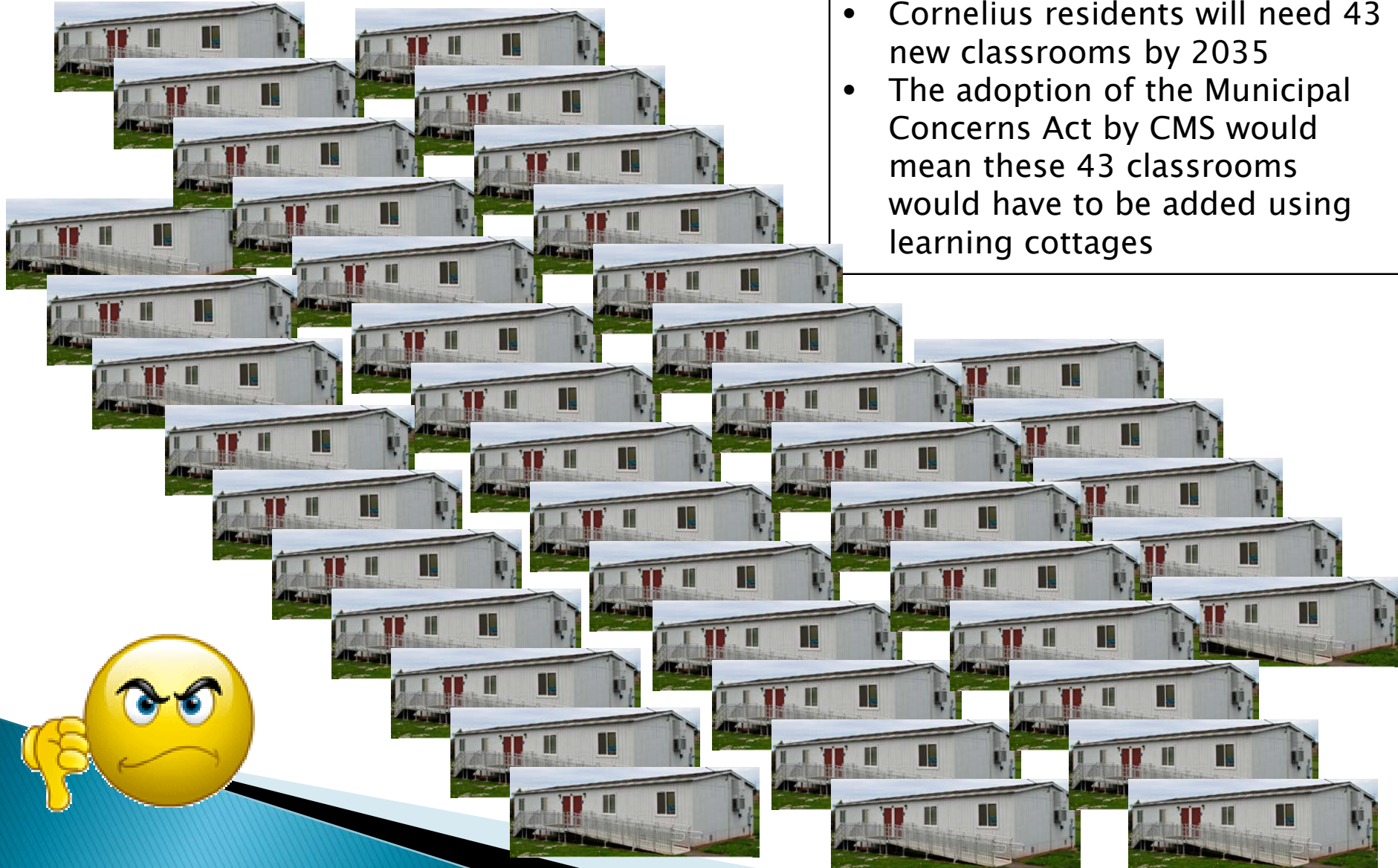
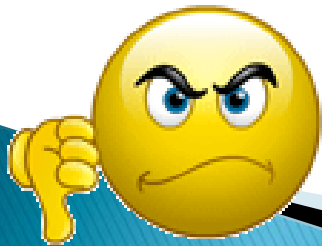
*Capacity percentage based on "as-built" capacity  
Davidson Elem includes Davidson MS students starting in 2020*

## ► **Option 1: DO NOTHING**



# Solving for Growth in Cornelius: Possible “Learning Cottage” Growth

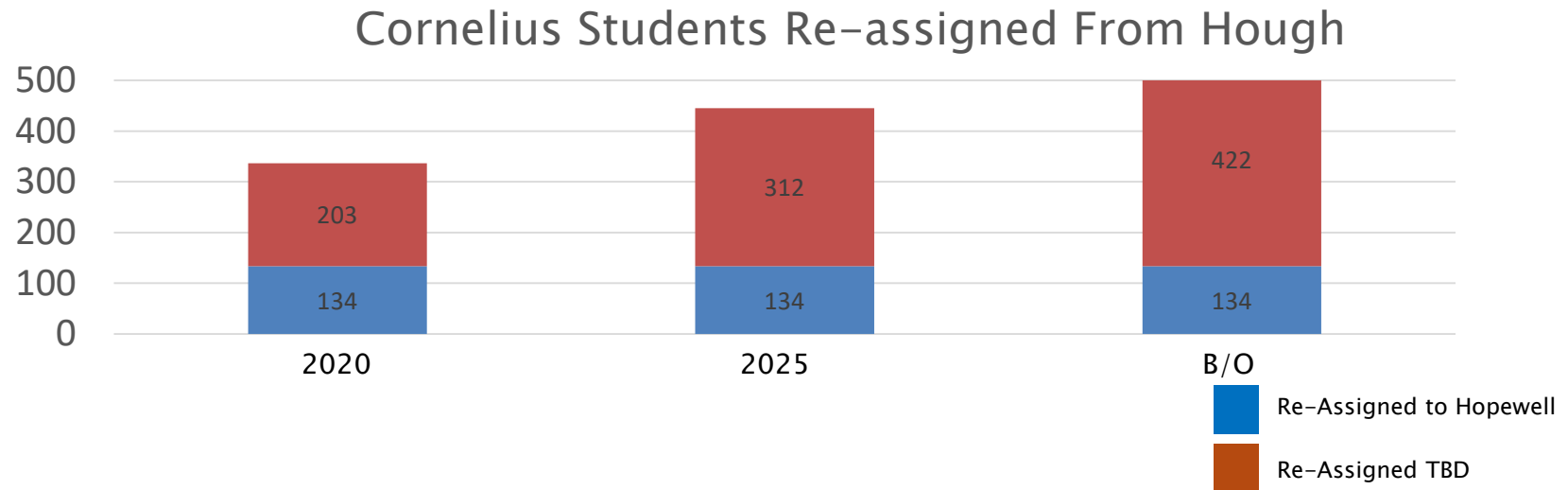
- Cornelius residents will need 43 new classrooms by 2035
- The adoption of the Municipal Concerns Act by CMS would mean these 43 classrooms would have to be added using learning cottages





# Solving for Growth in Cornelius: Reassignment Example

- ▶ Re-assign 500+ Hough HS Students to allow for Cornelius/Davidson Growth at Hough



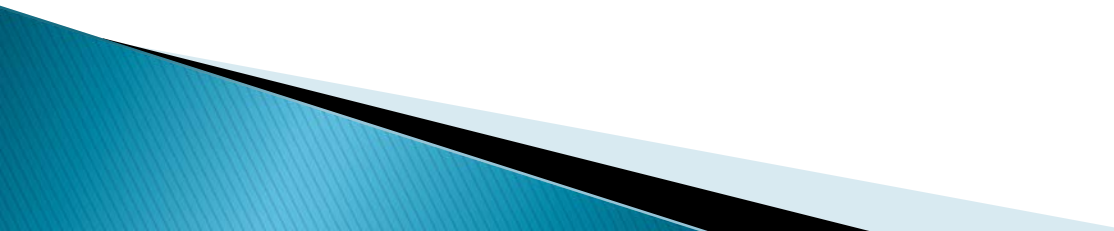
*Hundreds of Hough HS Students Reassigned to Alleviate Overcrowding*



# Municipal Concerns Act – Article III Report

*November 7, 2018*

## Section 1 – Identification of areas of overcrowding and overcrowding relief:

- ▶ Assess ability to assign approx. 750 Huntersville students from Hough to Huntersville high schools.
  - ▶ Given current utilization at Hopewell and N Meck., assigning additional students to either would require reassigning a portion of current students to other CMS high schools.
  - ▶ Approx. 45% of N Meck. enrollment are students taking advantage of the International Baccalaureate, World Language, and Career & Technical Educational Magnet Programs. Eliminating the programs could provide relief, but significantly reduce access to choice programs in the north.
- 

## ▶ **Option 2: PARTNER WITH CMS**

# Option 2: Partner with CMS

- ▶ CMS school board members advised CEOSC against meeting with superintendent
- ▶ Multiple attempts to set up meetings between CEOSC members and CMS school board members have been unsuccessful
- ▶ Lack of continuity in leadership at CMS



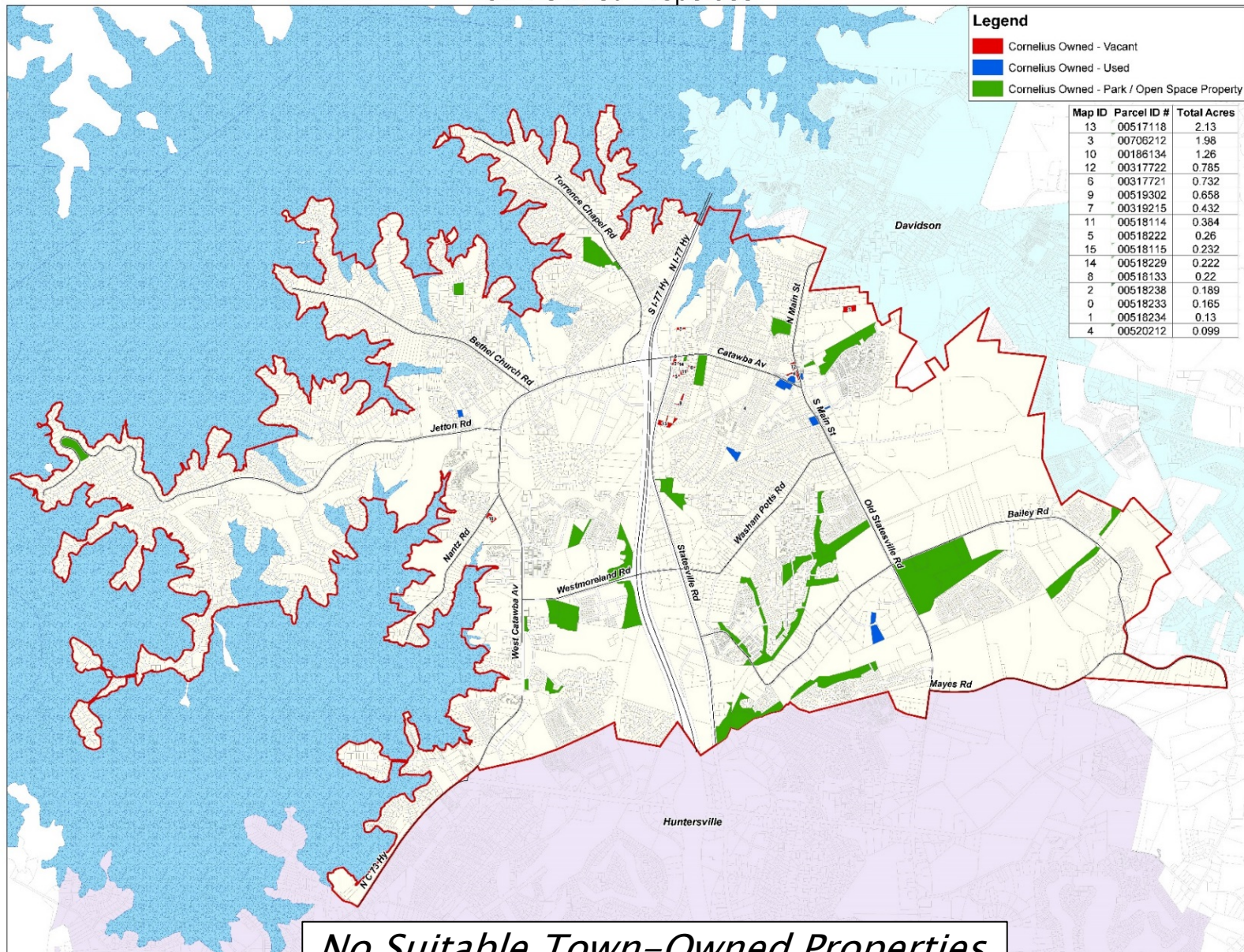
*CMS has not shown an interest in partnering*



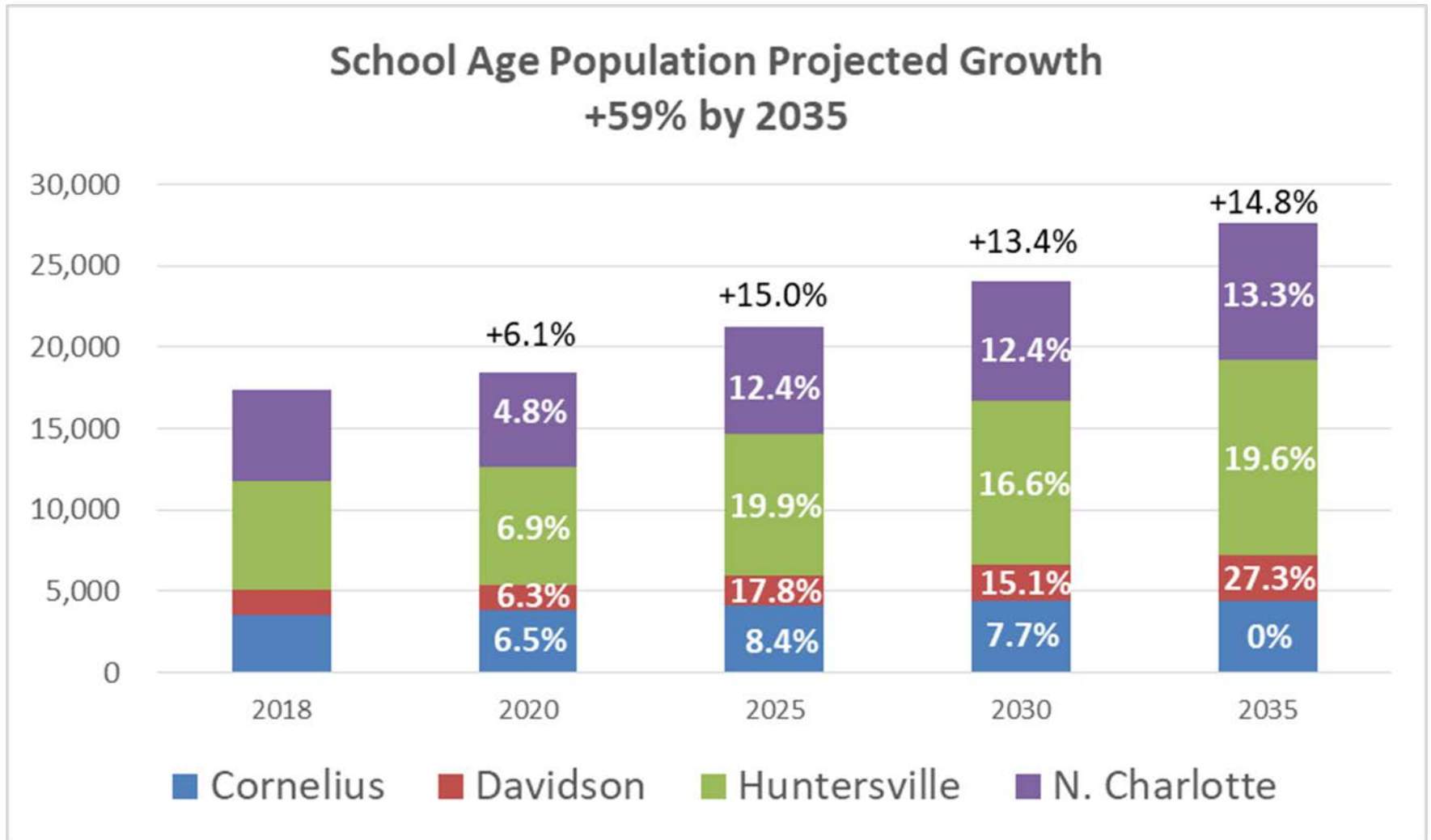
- ▶ **Option 3: OPEN AND OPERATE  
MUNICIPAL CHARTER SCHOOL(S)**

# Cornelius Town Owned Properties

Town Owned Properties



# Projected Enrollment Growth by Municipality

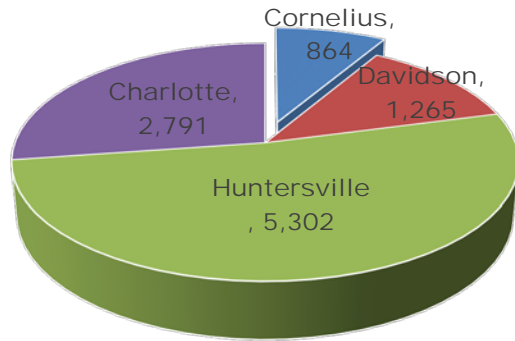


*% growth takeaway*



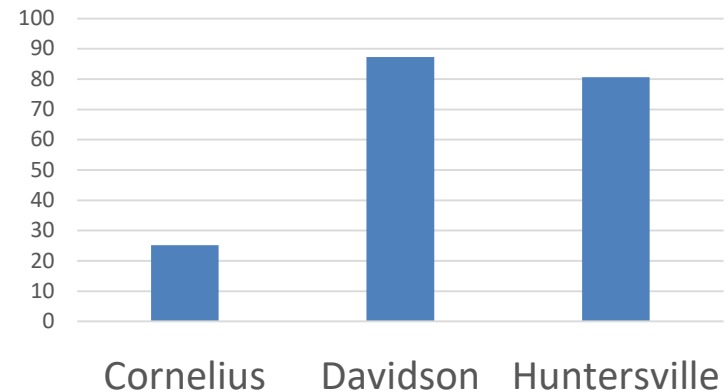
# Enrollment Growth by Municipality

Additional LKN Students at Buildout



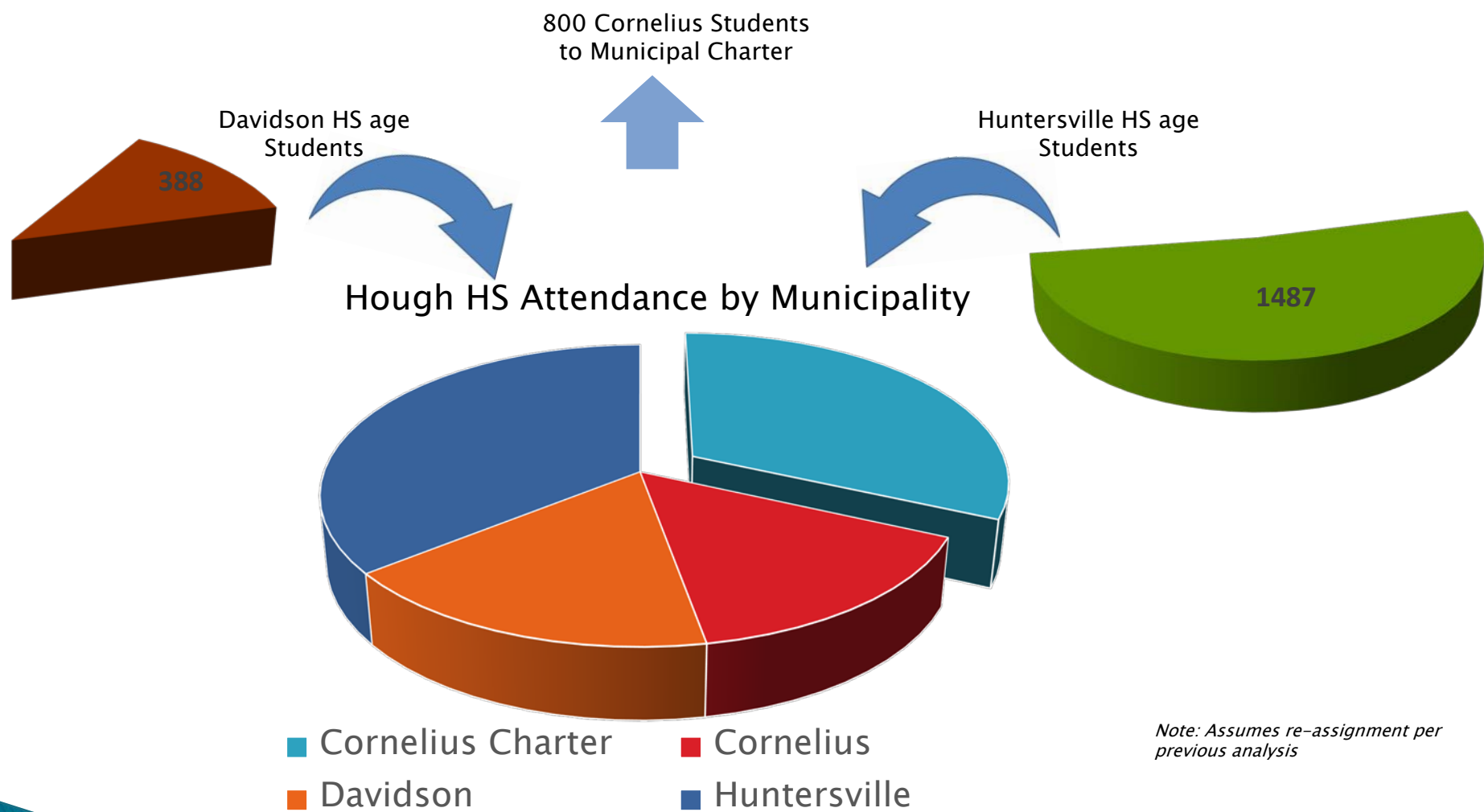
■ Cornelius ■ Davidson ■ Huntersville ■ Charlotte

Additional Students/1000 Residents at Buildout



- ▶ Cornelius school age population growth represents only 9% of the total growth in North Mecklenburg
- ▶ Huntersville growth represents 52% of the additional school age children in N. Mecklenburg by 2035
- ▶ Charlotte and Davidson represent 27% and 12% of the growth respectively

# Municipal Charter Impact on Hough High at B/O



*Additional Capacity Backfilled by Davidson & Huntersville*

# Option 3: Municipal Charter School

## MUNICIPAL CHARTER SCHOOL

Base

FYE 6/30

ADM (student population)	750	1,125	1,500	1,500	1,500	1,500	1,500
<b>INCOME STATEMENT (000s)</b>	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>YEAR 4</b>	<b>YEAR 5</b>	<b>YEAR 10</b>	<b>YEAR 15</b>
Total Revenues	6,660	9,172	12,289	12,468	12,650	13,600	14,625
% chg	0.0%	37.7%	34.0%	1.5%	1.5%	1.5%	1.5%
Salaries/Benefits	5,418	6,461	7,665	7,789	7,916	8,583	9,308
% of Revenues	81.4%	70.4%	62.4%	62.5%	62.6%	63.1%	63.6%
Rent	1,080	1,102	1,124	1,146	1,169	1,291	1,425
Other Operational Expenses	<u>1,381</u>	<u>1,580</u>	<u>1,824</u>	<u>1,848</u>	<u>1,872</u>	<u>1,999</u>	<u>2,135</u>
Total Expenses	7,879	9,142	10,612	10,783	10,957	11,876	12,877
% chg	0.0%	16.0%	16.1%	1.6%	1.6%	1.6%	1.6%
Operating Income	<b>(1,220)</b>	29	1,677	1,685	1,692	1,724	1,748
Operating Income Margin	-18.3%	0.3%	13.6%	13.5%	13.4%	12.7%	12.0%

- ▶ Once fully operational, school can operate at better than breakeven
- ▶ Outside of salaries/benefits, rent biggest single projected expense

*Need > \$1 million to open & fund municipal charter*



# Option 3: Municipal Charter School

## Considerations:

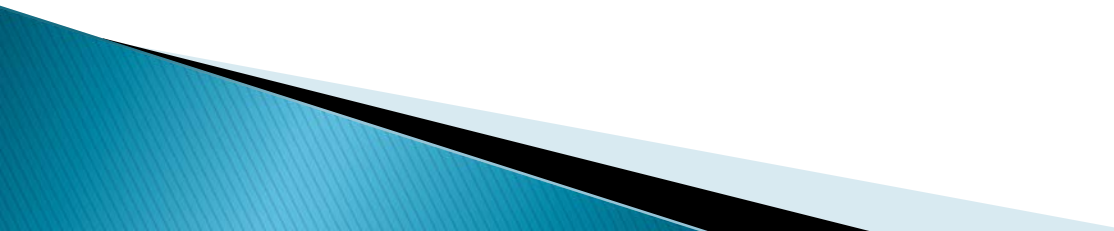
Promotes local control, increases parental choice and prioritizes enrollment for town children

Provides potential for higher standard/more flexible curriculum and enhanced instructional practices

Alleviates overcrowding issue and reinforces the neighborhood school concept

Law may be changed/repealed – *legal challenges possible*

How does Town fund initial school start up and avoid **Double Taxation**



- ▶ **Option 4: PARTNER WITH AN  
EXISTING CHARTER SCHOOL**

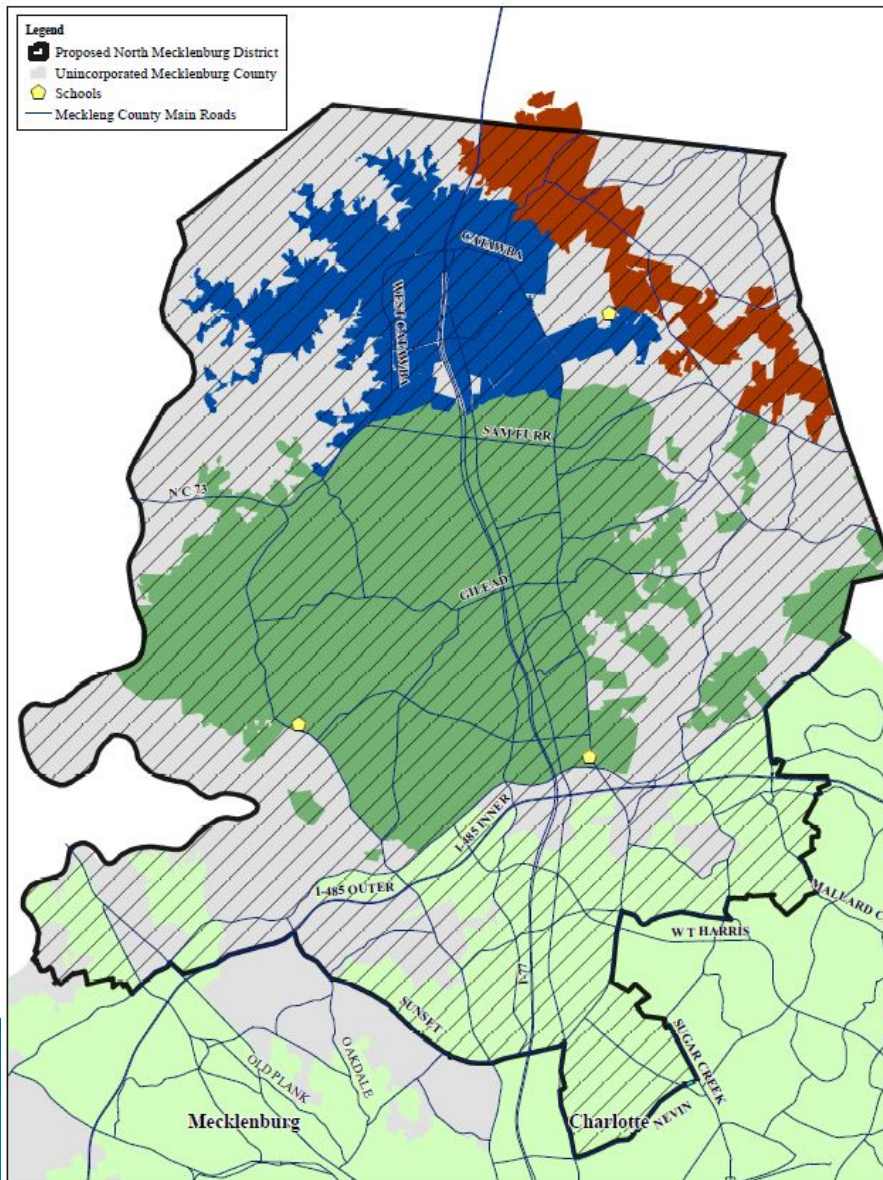
# Option 4: Partner with an Existing Charter School

- ▶ Met with NC Office of Charter schools
- ▶ Approached local charter schools believed to meet or exceed predetermined criteria of a partner charter school.
  - Existing charter schools cannot expand their charters to accommodate geographic restrictions.
  - Existing charter schools have limited appetite to consult on establishing a municipal charter school.



## ► **Option 5: CREATE A NEW LEA**

# Option 5: Create a New LEA



## North Mecklenburg Public Schools

- ▶ New school district separate from CMS
- ▶ Current CMS school assignment borders unchanged, comprising:
  - Charlotte
  - Huntersville
  - Cornelius
  - Davidson

*Note: the "North Mecklenburg" logo is conceptual in nature only*

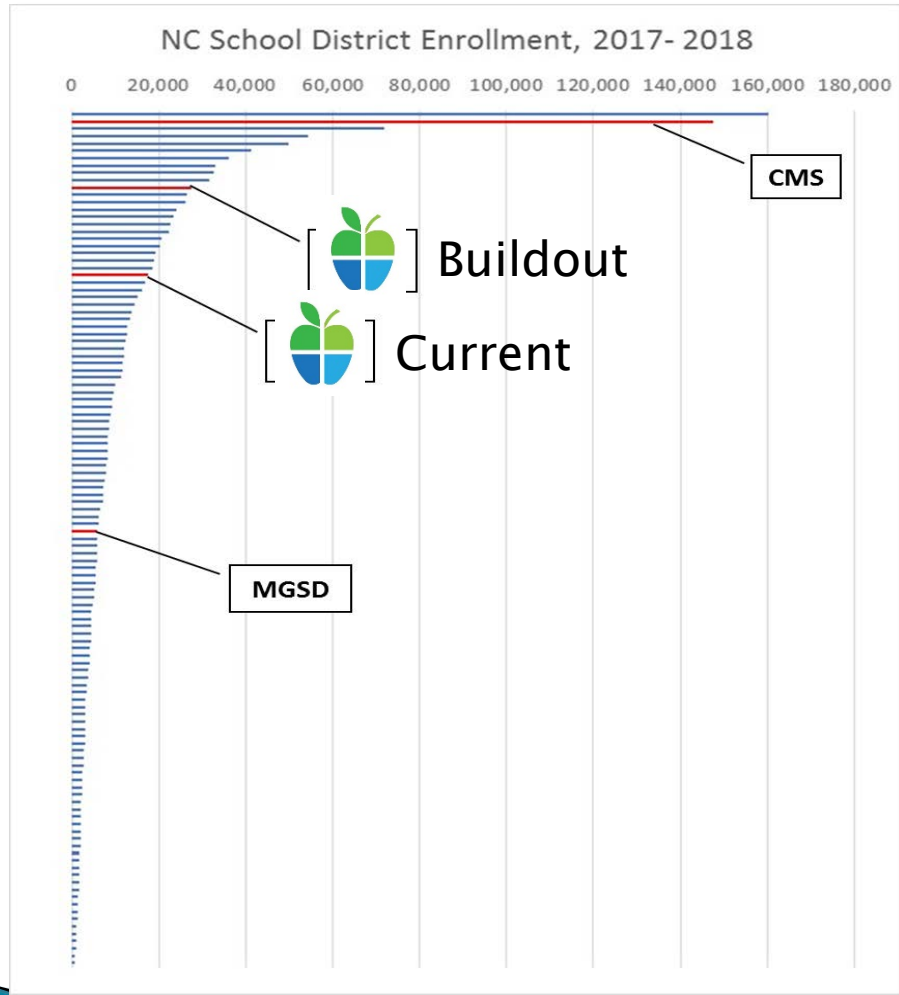


# Some Questions

- ▶ Does this require new legislation?
- ▶ Would this legislation be a local or statewide bill?
- ▶ Would CMS have to be dissolved and reconstituted?
- ▶ Would forming a new LEA require a referendum?
- ▶ Who would ultimately decide?

*Process is driven by the NC Legislature*

# Option 5: District Size



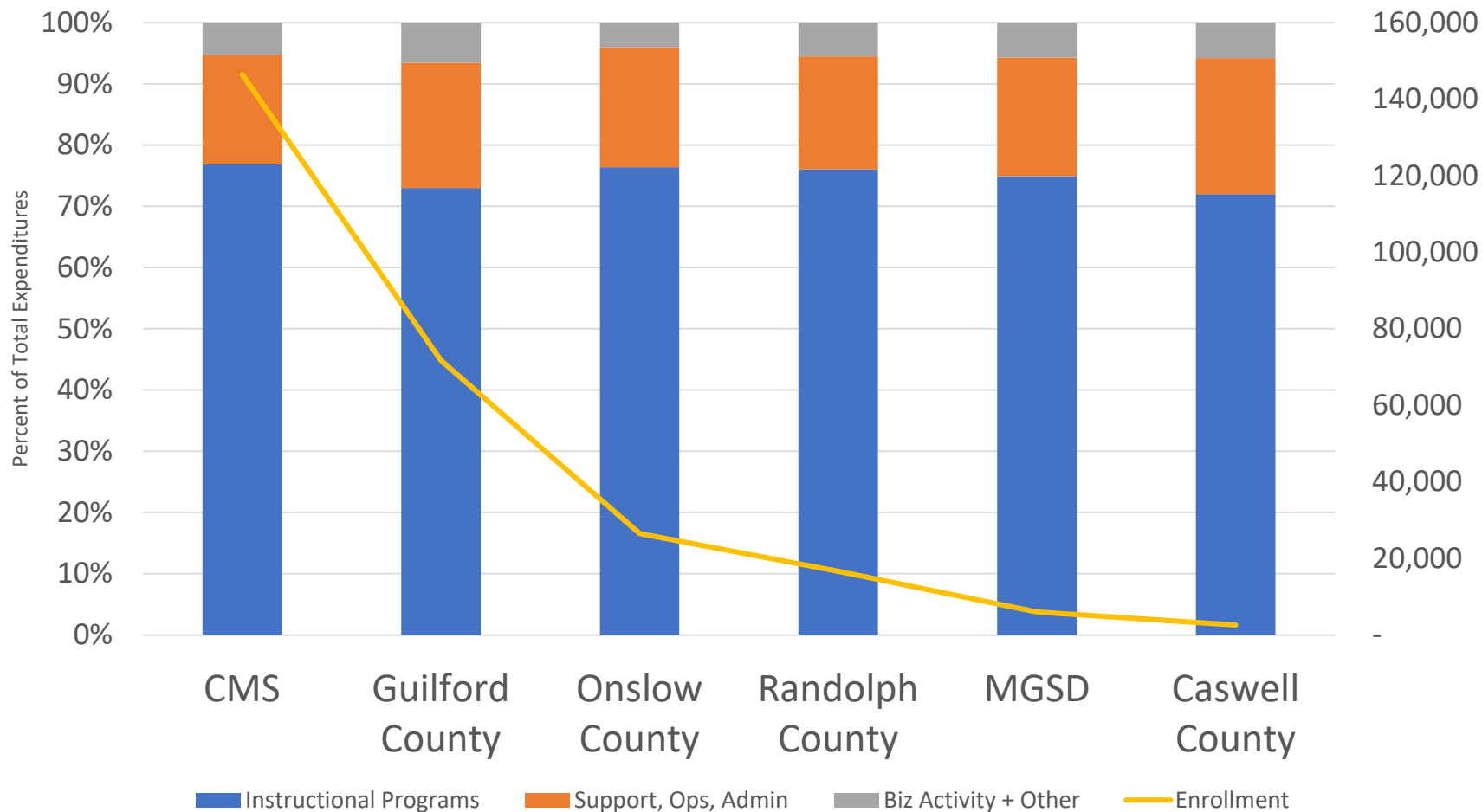
- ▶ At current enrollment NMPS would be the 23rd largest school district in NC
- ▶ At buildout NMPS would be the 11th largest school district in NC

Source: "Size of Local School Districts", Joint Legislative Study





# Cost Structure & Enrollment



*Little Evidence of Economies of Scale*

Sources: Annual Audit Reports



# Basic Legislation

- ▶ Should a referendum be required? If so, who would get to vote on the question?
- ▶ How should the new district be governed?
- ▶ Who would create and approve the transition plan?
- ▶ Should there be an interim board?
- ▶ Who should be on the interim board?
- ▶ What happens to the interim board on the official date of the new system?
- ▶ What authority should the interim board be given?
- ▶ How should the permanent board be constituted?
- ▶ How much time is needed to transition?



# Additional Considerations

- ▶ Should all functions be separated, or should some functions be shared (i.e., administrative offices, building/vehicle maintenance shops, and motor fleet parking)?
- ▶ Which LEA gets which facility?
- ▶ Centralized or decentralized transportation services?
- ▶ How to handle existing lawsuits?
- ▶ How should specialty schools such as magnet schools and cooperative innovative high schools be handled?
- ▶ Multiple insurance contracts within each school district to cover property and liability exposures could lead to higher insurance costs
- ▶ There may be potential inefficiencies in school nutrition program
- ▶ Ensuring cyber security during and after the transition
- ▶ Employee contracts that extend beyond the transition

*Several Weighty Issues to Consider...*

# Conclusions

- ▶ LKN region expected to add 10,000+ students
- ▶ Huntersville, Charlotte & Davidson driving growth
- ▶ CMS not planning to add schools in the LKN region
- ▶ CMS' capex plans ➡ overcrowding and/or re-assignment
- ▶ Municipal charter frees up space for non-Cornelius students & requires substantial initial investment
- ▶ LKN-area charter schools uninterested in partnering
- ▶ CMS has not shown an interest in partnering
- ▶ New LEA provides regional control, but politically difficult

*No Easy Answers...*



## REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** September 16, 2019

**To:** Mayor and Board of Commissioners

**From:** Andrew Grant, Town Manager

**Action Requested:**

The Town staff and Cain Center for the Arts construction committee members have been working with the design team that C-Design assembled to complete the Schematic Design. The Schematic Design includes the basic floor plan and site plan.

The basic design includes a 400 seat theater, 3 classrooms (2 visual arts, 1 dance), art gallery, boardroom, dressing rooms, greenroom, office space, and outdoor activity areas. The square footage is approximately 32,800 sq.ft.

The Cain Center Board approved the 100% Schematic Design and approved moving forward with Design Development at their September 9th meeting. If these designs are approved by the Town Board, the design team will start Design Development.

**Manager's Recommendation:**

Approve the 100% Schematic Design and approve moving forward with Design Development.

**ATTACHMENTS:**

Name:	Description:	Type:
No Attachments Available		

---

## REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** September 16, 2019

**To:** Mayor and Board of Commissioners

**From:** Troy Fitzsimmons, PARC Director


**Action Requested:**

Consider approving an update to the Bailey Road Park master plan to incorporate a tennis facility, restroom, parking, pickleball facility and potential restaurant. The original park master plan was adopted in 2000 and is being updated to reflect growing demand for additional court space in Cornelius. The updated plan was developed by staff and consultant, ColeJenest & Stone, upon gathering input from citizens via a public workshop and an online survey.

**Manager's Recommendation:**

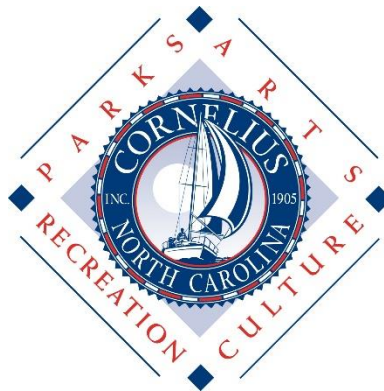
Approve the Bailey Road Park Master Plan update as presented.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">2019-09-16_Bailey_Road_Park_Master_Plan_Update.pptx</a>	Bailey Road Park master plan update presentation	Cover Memo

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# Consideration of Approval: Bailey Road Park Master Plan Update



Town Board  
September 16, 2019

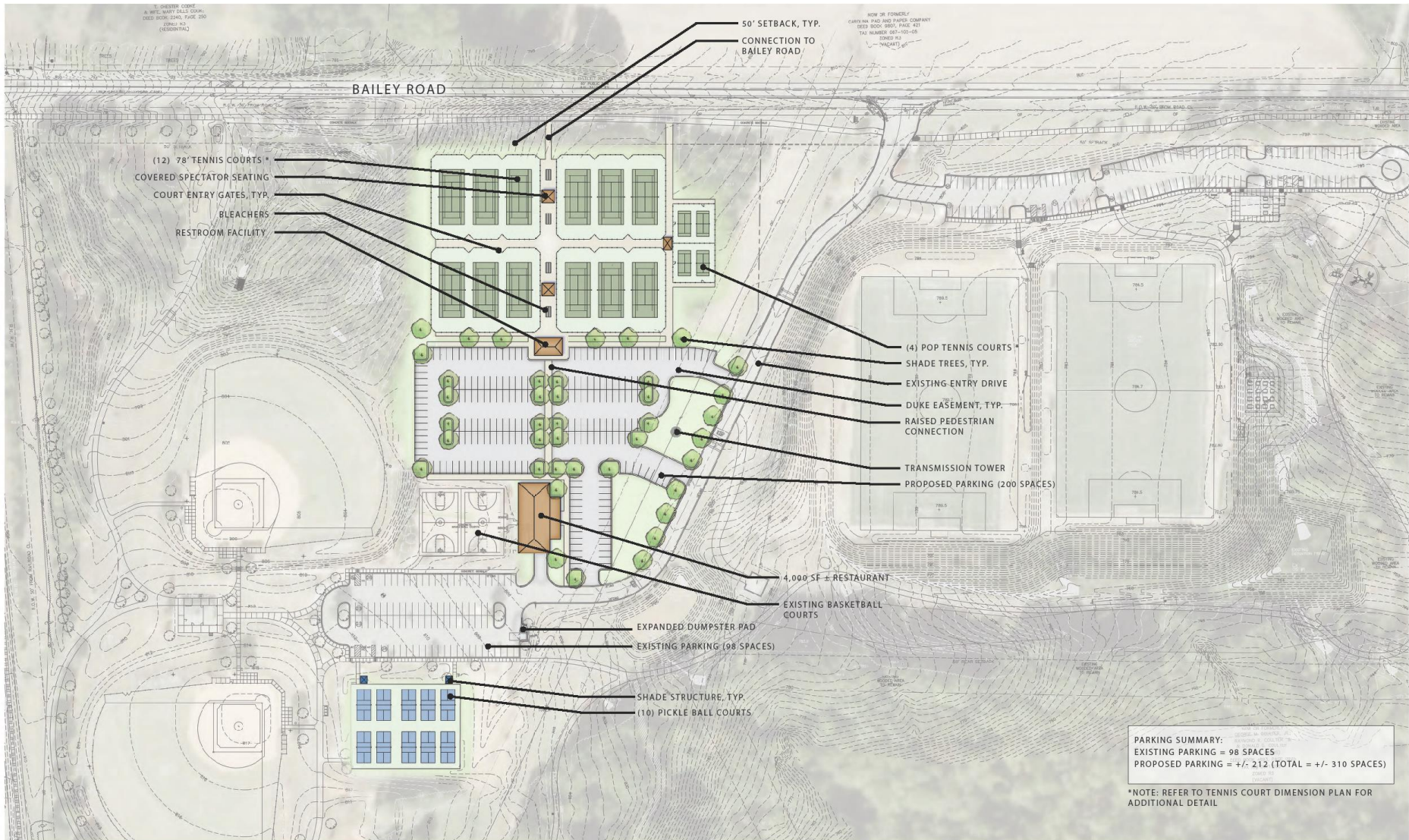


# Bailey Road Park: Existing Layout

## Master Plan Update Area







# Public Workshop & Online Survey

## Public Workshop at Town Hall

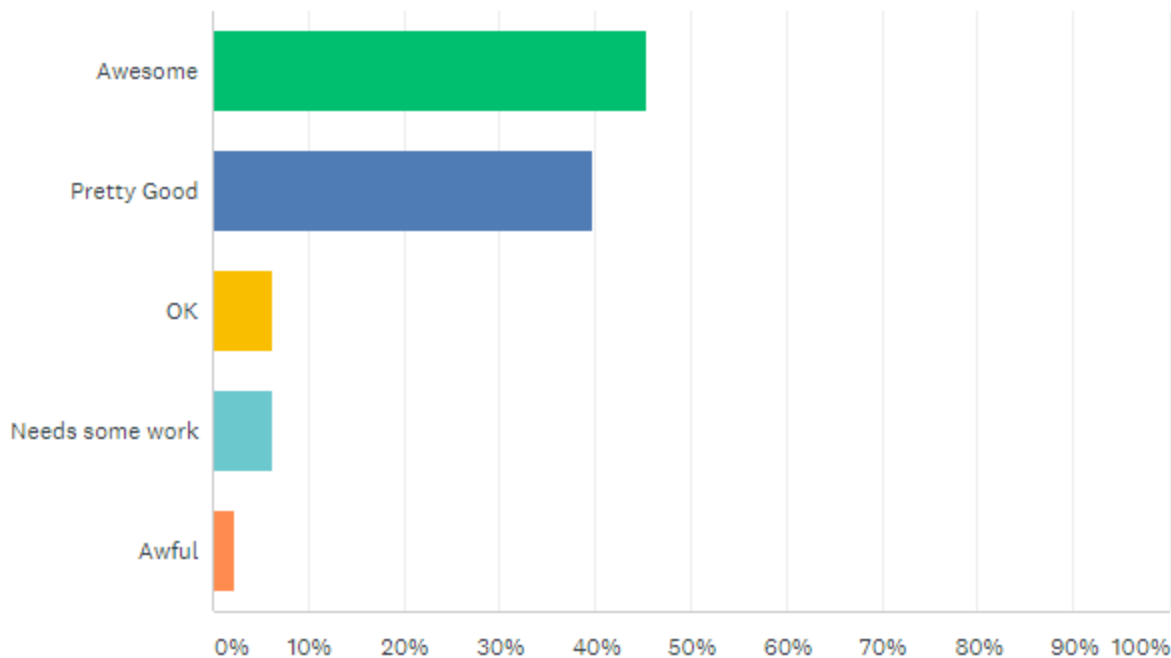
- Wednesday, August 21
- Approx. 25 participants

## Public survey

- Open online July 19 – August 22
- 128 participants

# Overall, the proposed Bailey Road Park master plan looks:

Answered: 128    Skipped: 0

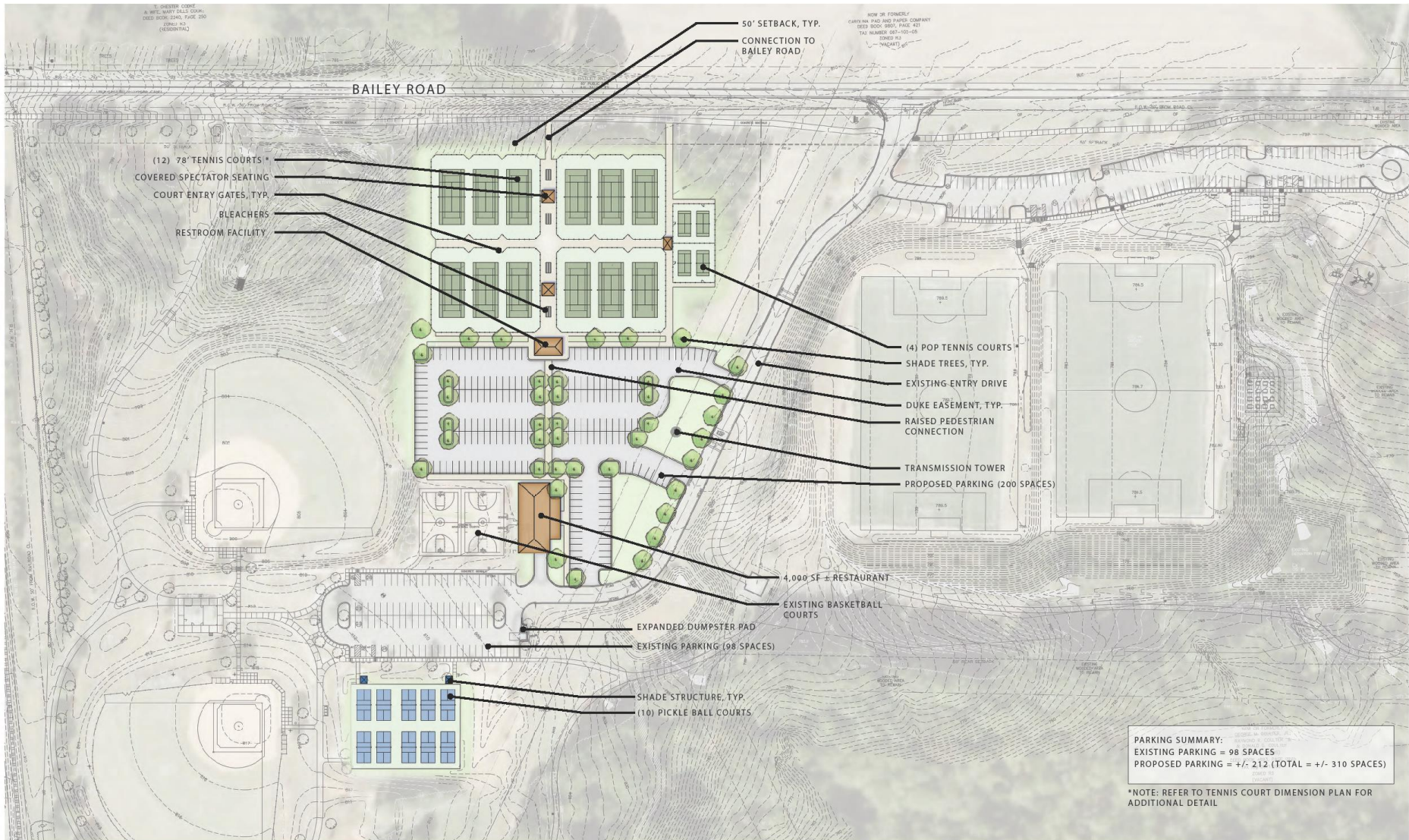


ANSWER CHOICES	RESPONSES	
Awesome	45.31%	58
Pretty Good	39.84%	51
OK	6.25%	8
Needs some work	6.25%	8
Awful	2.34%	3
TOTAL		128

# PARC Commission: September 5

- Voted 7-0 to recommend approval by the Town Board for the Bailey Road Park Master Plan Update, contingent upon identification of an alternate funding source outside of the budgeted \$1M in land banking money.





## REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** September 16, 2019

**To:** Mayor and Board of Commissioners  
**From:** Tyler Beardsley, Assistant Town Manager

**Action Requested:**

September of 2018, the Town Board declared the Town-owned Hyde Park Storage Suites units B-7, B-8, & B-9 as surplus.

The Town Board approved an offer of \$216,000 at the July 15, 2019 board meeting which started the upset bid process. The Town received the following bids during the upset bid process:

<b>Date of Offer</b>	<b>Offer Amount</b>	<b>Buyer</b>
7/15/2019	\$216,000	JAS Property Holdings, LLC
7/24/2019	\$234,000	Whiteboard Capital, LLC
7/29/2019	\$245,750	JAS Property Holdings, LLC
8/05/2019	\$260,000	Whiteboard Capital, LLC
8/11/2019	\$273,000	JAS Property Holdings, LLC
8/21/2019	\$287,000	Whiteboard Capital, LLC

To complete the transaction, the Town Board must approve the contract with Whiteboard Capital, LLC for \$287,000. The buyer and Town will likely close mid to late October.

**Manager's Recommendation:**

Approve Offer to Purchase Contract with Whiteboard Capital, LLC for the Hyde Park Storage units and authorize the Town Manager and Attorney to finalize and execute it.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">Whiteboard Capital LLC Offer-final.pdf</a>	Offer to Purchase Contract	Cover Memo

## OFFER TO PURCHASE AND CONTRACT

[Consult "Guidelines" (form 12G) for guidance in completing this form]

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum or modification made in accordance with its terms (together the "Contract").

1. **TERMS AND DEFINITIONS:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Seller":** Town of Cornelius

(b) **"Buyer":** Whiteboard Capital, LLC.

(c) **"Property":** The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon:

BEING all of Unit Nos. B-7, B-8 and B-9 in BUILDING B in HYDE PARK STORAGE SUITES CONDOMINIUMS, as described and designated in the Declaration of Condominiums under the North Carolina Unit Ownership Act covering HYDE PARK STORAGE SUITES CONDOMINIUMS, as described and recorded in Book 12247, Page 372, as amended, and in Unit Ownership File No. 570, of the Mecklenburg County, North Carolina, Public Registry, reference to such Declaration and the Exhibits attached thereto as amended being hereby made for a more specific description of said Unit, together with an undivided percentage interest in and to the Common Areas and Facilities as described and set forth in said Declaration and the Exhibits attached thereto as amended, reference to which Declaration and Exhibits thereto as amended is specifically made for a more detailed description of said Common Areas and Facilities.

(d) **"Purchase Price":**

\$ 287,000.00

\$ N/A

\$ 14,350

\$ N/A

\$ N/A

\$N/A

\$ 272,650

paid in U.S. Dollars upon the following terms:

BY DUE DILIGENCE FEE made payable to Seller by the Effective Date

BY INITIAL EARNEST MONEY DEPOSIT made payable to Escrow Agent named in Paragraph 1(f) ☐ with this offer OR ☐ delivered within five (5) days of the Effective Date of this Contract by ☐ cash ☐ personal check ☐ official bank check ☐ wire transfer

BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable to Escrow Agent named in Paragraph 1(f) by cash or immediately available funds such as official bank check or wire transfer to be delivered to Escrow Agent no later than \_\_\_\_\_, **TIME**

**BEING OF THE ESSENCE** with regard to said date.

BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum (Standard Form 2A6-T).

BY SELLER FINANCING in accordance with the attached Seller Financing Addendum (Standard Form 2A5-T).

BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)

Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver cash or immediately available funds to the payee. In the event Buyer does not timely deliver cash or immediately available funds, Seller shall have the right to terminate this Contract upon written notice to Buyer.

(e) **"Earnest Money Deposit":** The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid in connection with this transaction, hereinafter collectively referred to as "Earnest Money Deposit", shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, the Earnest Money Deposit shall be paid to Seller upon Seller's request as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Paragraphs 2(c) and



2(d) for damage to the Property or Seller's right to retain the Due Diligence Fee. It is acknowledged by the parties that payment of the Earnest Money Deposit to Seller in the event of a breach of this Contract by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money Deposit to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

(f) **"Escrow Agent"** (insert name): Clerk to Town or Designee.

**NOTE:** In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, a licensed real estate broker ("Broker") is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Earnest Money Deposit in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina ("Attorney") is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(g) **"Effective Date"**: September 16, 2019 [Date of Final Town of Cornelius Board of Commissioners Approval]

(h) **"Due Diligence"**: Buyer's opportunity during the Due Diligence Period to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 2 below, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction.

(i) **"Due Diligence Fee"**: A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to conduct Due Diligence during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 6(l) or Paragraph 9, or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.

(j) **"Due Diligence Period"**: The period beginning on the Effective Date and extending through 5:00 p.m. on **[90 days from Effective Date]**. *TIME BEING OF THE ESSENCE* with regard to said date.

(k) **"Settlement"**: The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney's receipt of all funds necessary to complete such transaction.

(l) **"Settlement Date"**: The parties agree that Settlement will take place on **[100 days from Effective Date]** (the "Settlement Date"), unless otherwise agreed in writing, at a time and place designated by Buyer.

(m) **"Closing"**: The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 13 (Delay in Settlement/Closing).

(n) **"Special Assessments"**: A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.



**"Proposed Special Assessment":** A Special Assessment that is under formal consideration but which has not been approved prior to Settlement.

**"Confirmed Special Assessment":** A Special Assessment that has been approved prior to Settlement whether or not it is fully payable at time of Settlement.

2. **BUYER'S DUE DILIGENCE PROCESS:**

(a) **Loan:** During the Due Diligence Period, Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

(b) **Property Investigation:** During the Due Diligence Period, Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

- (i) **Soil and Environmental:** Reports to determine whether the soil is suitable for Buyer's intended use and whether there is any environmental contamination, law, rule or regulation that may prohibit, restrict or limit Buyer's intended use.
- (ii) **Septic/Sewer System:** Any applicable investigation(s) to determine: (1) the condition of an existing sewage system, (2) the costs and expenses to install a sewage system approved by an existing Improvement Permit, (3) the availability and expense to connect to a public or community sewer system, and/or (4) whether an Improvement Permit or written evaluation may be obtained from the County Health Department for a suitable ground absorption sewage system.
- (iii) **Water:** Any applicable investigation(s) to determine: (1) the condition of an existing private drinking water well, (2) the costs and expenses to install a private drinking water well approved by an existing Construction Permit, (3) the availability, costs and expenses to connect to a public or community water system, or a shared private well, and/or (4) whether a Construction Permit may be obtained from the County Health Department for a private drinking water well.
- (iv) **Review of Documents:** Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Owners' Association And Addendum (Standard Form 2A12-T) provided by Seller prior to signing this offer.
- (v) **Appraisals:** An appraisal of the Property.
- (vi) **Survey:** A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects.
- (vii) **Zoning and Governmental Regulation:** Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.
- (viii) **Flood Hazard:** Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance in order to obtain the Loan.
- (ix) **Utilities and Access:** Availability, quality, and obligations for maintenance of roads and utilities including electric, gas, communication services, stormwater management, and means of access to the Property and amenities.

(c) **Buyer's Obligation to Repair Damage:** Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices applicable to any N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

(d) **Indemnity:** Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.

(e) **Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), **TIME BEING OF THE ESSENCE**. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

**WARNING:** If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, *prior to the expiration of the Due Diligence Period*, unless Buyer can obtain a written extension from Seller. **SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION.** Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period shall constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under paragraph 6 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

(f) **CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.**

AT OR BEFORE THE EXPIRATION OF THE DUE DILIGENCE PERIOD, BUYER WILL HAVE APPROVED THE PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS AND CONDITION OF THE PROPERTY, AS WELL AS THE ECONOMIC CHARACTERISTICS OF THE PROPERTY. EXCEPT AS OTHERWISE SET FORTH IN THIS CONTRACT, IF BUYER DOES NOT TERMINATE THIS CONTRACT PURSUANT TO THE TERMS OF THIS CONTRACT ON OR PRIOR TO THE EXPIRATION OF THE FEASIBILITY STUDY PERIOD, BUYER SHALL BE DEEMED TO HAVE WAIVED ANY AND ALL DEFECTS IN THE PHYSICAL, ENVIRONMENTAL AND ECONOMIC CHARACTERISTICS AND CONDITION OF THE PROPERTY WHICH WOULD BE DISCLOSED BY ANY INSPECTION OF THE PROPERTY. BUYER FURTHER ACKNOWLEDGES THAT NEITHER SELLER NOR ANY OF SELLER'S BOARD MEMBERS, EMPLOYEES, AGENTS, ATTORNEYS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS OR ANY OTHER PERSON OR ENTITY ACTING ON BEHALF OF SELLER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, HAVE MADE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS (EXPRESS OR IMPLIED) BY OR ON BEHALF OF SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY, THE ECONOMIC RESULTS TO BE OBTAINED OR PREDICTED, OR THE PRESENT USE THEREOF OR THE SUITABILITY FOR BUYER'S INTENDED USE OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: SUITABILITY OF THE TOPOGRAPHY; THE AVAILABILITY OF WATER RIGHTS OR UTILITIES; THE PRESENT AND FUTURE ZONING, BUILDING CODE, SUBDIVISION AND ANY AND ALL OTHER LAND USE MATTERS; THE CONDITION OF THE SOIL, SUBSOIL, OR GROUNDWATER; ENVIRONMENTAL MATTERS INCLUDING WITHOUT LIMITATION THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES OR ANY VIOLATION OF ENVIRONMENTAL LAWS; THE PURPOSE(S) TO WHICH THE PROPERTY IS SUITED; DRAINAGE; FLOODING; ACCESS TO PUBLIC ROADS; OR PROPOSED ROUTES OF ROADS OR EXTENSIONS THEREOF. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS TO BE PURCHASED, CONVEYED AND ACCEPTED BY BUYER IN ITS PRESENT CONDITION, "AS IS", "WHERE IS," AND "WITH ALL FAULTS".

EXCEPT AS OTHERWISE SET FORTH IN THIS CONTRACT, ANY DOCUMENTS FURNISHED TO BUYER BY SELLER RELATING TO THE PROPERTY, SHALL BE DEEMED FURNISHED AS A COURTESY TO BUYER BUT WITHOUT WARRANTY FROM SELLER UNLESS OTHERWISE SPECIFICALLY STATED IN THIS CONTRACT. BUYER IS A SOPHISTICATED BUYER THAT IS FAMILIAR WITH THE OWNERSHIP AND OPERATION OF REAL ESTATE PROJECTS SIMILAR TO THE PROPERTY AND THAT BUYER HAS OR WILL HAVE ADEQUATE OPPORTUNITY TO COMPLETE ALL PHYSICAL AND FINANCIAL EXAMINATIONS (INCLUDING ALL OF THE EXAMINATIONS, REVIEWS AND INVESTIGATIONS REFERRED TO IN SECTION 2) RELATING TO THE ACQUISITION OF THE PROPERTY HEREUNDER THAT BUYER DEEMS NECESSARY, AND WILL ACQUIRE THE SAME SOLELY ON THE BASIS OF AND IN RELIANCE UPON SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER (OTHER THAN AS EXPRESSLY PROVIDED HEREIN). ALL WORK DONE IN CONNECTION WITH PREPARING THE PROPERTY FOR THE USES INTENDED BY BUYER INCLUDING ANY AND ALL FEES, STUDIES, REPORTS, APPROVALS, PLANS, SURVEYS, PERMITS, AND ANY EXPENSES WHATSOEVER NECESSARY OR DESIRABLE IN CONNECTION WITH BUYER'S ACQUIRING, DEVELOPING, USING AND/OR OPERATING THE PROPERTY SHALL BE OBTAINED AND PAID FOR BY, AND SHALL BE THE SOLE RESPONSIBILITY OF BUYER. BUYER HAS INVESTIGATED AND HAS KNOWLEDGE OF OPERATIVE OR PROPOSED GOVERNMENTAL LAWS AND REGULATIONS INCLUDING LAND USE LAWS AND REGULATIONS TO WHICH THE PROPERTY MAY BE SUBJECT AND SHALL ACQUIRE THE PROPERTY UPON THE BASIS OF ITS REVIEW AND DETERMINATION OF THE APPLICABILITY AND EFFECT OF SUCH LAWS AND REGULATIONS. BUYER HAS NEITHER RECEIVED NOR RELIED UPON ANY REPRESENTATIONS CONCERNING SUCH LAWS AND REGULATIONS FROM SELLER.

**3. BUYER REPRESENTATIONS:**

(a) **Loan:** Buyer ☐ does ☒ does not have to obtain a new loan in order to purchase the Property. If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows: ☐ Conventional ☐ Other: \_\_\_\_\_ loan at a ☐ Fixed Rate ☐ Adjustable Rate in the principal amount of \_\_\_\_\_ for a term of \_\_\_\_\_ year(s), at an initial interest rate not to exceed \_\_\_\_\_ % per annum (the "Loan").

(NOTE: Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan. If Buyer represents that Buyer does not have to obtain a new loan in order to purchase the Property, Seller is advised, prior to signing this offer, to obtain documentation from Buyer which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.)

(b) **Other Property:** Buyer ☐ does ☐ does not have to sell or lease other real property in order to qualify for a new loan or to complete purchase. (NOTE: If Buyer does have to sell, Buyer and Seller should consider including a Contingent Sale Addendum (Standard Form 2A2-T) with this offer.)

(c) **Performance of Buyer's Financial Obligations:** To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.

**4. BUYER OBLIGATIONS:**

(a) **Owners' Association Fees/Charges:** Buyer shall pay any fees required for confirming account payment information on owners' association dues or assessments for payment or proration and any charge made by the owners' association in connection with the disposition of the Property to Buyer, including any transfer and/or document fee imposed by the owners' association. Buyer shall not be responsible for fees incurred by Seller in completing the Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement (Standard Form 2A12-T).

(b) **Responsibility for Proposed Special Assessments:** Buyer shall take title subject to all Proposed Special Assessments.

(c) **Responsibility for Certain Costs:** Buyer shall be responsible for all costs with respect to any loan obtained by Buyer, appraisal, title search, title insurance, recording the deed and for preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.

**5. SELLER REPRESENTATIONS:**

[intentionally deleted]

**6. SELLER OBLIGATIONS:**

(a) **Evidence of Title:** Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property. Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys.

(b) **Access to Property/Walk-Through Inspection:** Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing the Buyer an opportunity to conduct a final walk-through inspection of the Property. To the extent applicable, Seller shall also be responsible for timely clearing that portion of the Property required by the County to perform tests, inspections and/or evaluations to determine the suitability of the Property for a sewage system and/or private drinking water well.

(c) **Removal of Seller's Property:** N/A

(d) **Affidavit And Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(e) **Designation of Lien Agent, Payment and Satisfaction of Liens:** N/A

(f) **Good Title; Form of Deed:** Seller shall execute and deliver a North Carolina Bar Form SPECIAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year (prorated through the date of Settlement) and all matters of record.

(NOTE: Buyer's failure to terminate this Contract prior to the expiration of the Due Diligence Period as a result of any encumbrance or defect that is or would have been revealed by a title examination of the Property or a current and accurate survey shall not relieve Seller of any obligation under this subparagraph)

(g) **Deed, Excise Taxes:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes required by law. The deed is to be made **as directed by Buyer.**

(h) **Agreement to Pay Buyer Expenses:** [intentionally deleted]

(i) **Payment of Confirmed Special Assessments:** [intentionally deleted]

(j) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

(k) **Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement** (Standard Form 2A12-T): If applicable, Seller shall provide the completed Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement to Buyer on or before the Effective Date.

(l) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph 6 or Seller materially breaches this Contract, the Buyer's sole remedy is to terminate this Contract.

**7. PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated through the date of Settlement and either adjusted between the parties or paid at Settlement:

(a) **Taxes on Real Property:** Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;

(b) **Rents:** N/A;

(c) **Dues:** N/A.

**8. CONDITION OF PROPERTY AT CLOSING:** Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.

**9. RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this Contract by written notice delivered to Seller or Seller's agent and the Earnest Money Deposit and any Due Diligence Fee shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, any of Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

**10. DELAY IN SETTLEMENT/CLOSING:** Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

**11. POSSESSION:** Unless otherwise provided herein, possession shall be delivered at Closing as defined in Paragraph 1(m). No alterations, excavations, tree or vegetation removal or other such activities may be done before possession is delivered.

**12. OTHER PROVISIONS AND CONDITIONS:** CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO.

(NOTE: UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT CONDITIONS OR CONTINGENCIES TO THIS CONTRACT.)

- ☐ Additional Provisions Addendum (Form 2A11-T)
- ☐ Back-Up Contract Addendum (Form 2A1-T)
- ☐ Contingent Sale Addendum (Form 2A2-T)

- ☐ Loan Assumption Addendum (Form 2A6-T)
- ☐ Owners' Association Disclosure And Addendum For Properties Exempt from Residential Property Disclosure Statement (Form 2A12-T)
- ☐ Seller Financing Addendum (Form 2A5-T)
- ☐ Short Sale Addendum (Form 2A14-T)

☐ OTHER:



13. **ASSIGNMENTS:** This Contract may not be assigned without the written consent of all parties except in connection with a tax-deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.

14. **TAX-DEFERRED EXCHANGE:** [intentionally deleted]

15. **PARTIES:** This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

16. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

17. **ENTIRE AGREEMENT:** This Contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

18. **NOTICE:** Any notice or communication to be given to a party herein may be given to the party or to such party's agent. Any written notice or communication in connection with the transaction contemplated by this Contract may be given to a party or a party's agent by sending or transmitting it to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Seller and Buyer agree that the "Notice Information" and "Escrow Acknowledgment" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

19. **EXECUTION:** This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument, and the parties adopt as their seals the word "SEAL" beside their signatures below.

20. **COMPUTATION OF DAYS:** Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

This offer shall become a binding contract on the Effective Date.

Date: 8/23/19 \_\_\_\_\_

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

Buyer: \_\_\_\_\_ [SEAL]

Seller: **Town of Cornelius** [SEAL]

By: Tom Sweetland

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

Town Manager

Approved as to form

\_\_\_\_\_  
Kevin M. Bringewatt, Attorney

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: September 16, 2019

To: Mayor and Board of Commissioners

From: Becky Partin, Senior Planner

**Action Requested:**


Adopt Resolution calling for a public hearing on the proposed abandonment of a portion of dedicated and established street right-of-way named Pine Street. Approximately 304 square feet of dedicated and established Pine Street right-of-way is located within parcel 00317725, owned by the McAdams Company of the Carolinas LLC, and is part of conditional rezoning REZ 02-18 Mulberry Townhomes which was approved by the Town Board on April 1, 2019.

The abandonment public hearing of this portion of dedicated and established Pine Street right-of-way is proposed for Monday, October 21, 2019.

**Manager's Recommendation:**

Approve Resolution of intent calling for a public hearing to abandon a portion of dedicated & established street Right-of-Way on Pine Street.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">Resolution of Intent- Pine Street ROW Abandonment.docx</a>	RES - Call for Public Hearing to Abandon a Portion of Dedicated & Established Street Right-of-Way	Resolution Letter

**A RESOLUTION OF INTENT TO ABANDON A PORTION OF A DEDICATED AND  
ESTABLISHED STREET RIGHT-OF-WAY NAMED PINE STREET**

**WHEREAS**, the Town of Cornelius has a portion of a dedicated and established street right-of-way named Pine Street that is within the Mulberry Townhomes conditional rezoning development approved by the Town of Cornelius Board of Commissioners on April 1, 2019; and

**WHEREAS**, a portion of the dedicated and established Pine Street right-of-way will no longer be used; and

**WHEREAS**, the authority of a municipality to permanently close a street or alley is granted under Section 160A-299 of the North Carolina General Statutes; and

**WHEREAS**, the McAdams Company of the Carolinas, LLC, as property owner along this right-of-way has requested that a portion of the dedicated and established Pine Street right-of-way as illustrated in Exhibit A, Town of Cornelius Abandonment of a Portion of Dedicated and established Pine Street Right-of-Way, be abandoned and all right, title, and interest in the right-of-way be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the streets and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of the Town of Cornelius that the Board hereby declares its intent to abandon a portion of the dedicated and established Pine Street right-of-way and calls a public hearing on the question to be held at its regularly scheduled meeting on October 21, 2019; and

**BE IT FURTHER RESOLVED** that a copy of this resolution shall be sent by certified mail to all owners of property adjoining the affected portion of the dedicated Pine Street right-of-way as shown on the county tax records, a notice of the abandonment and public hearing be prominently posted in at least two places along the affected portion and this Resolution be published once a week for four successive weeks prior to the hearing.

Adopted this 16<sup>th</sup> day of September, 2019.

**SEAL**

\_\_\_\_\_  
Woody T. Washam, Mayor

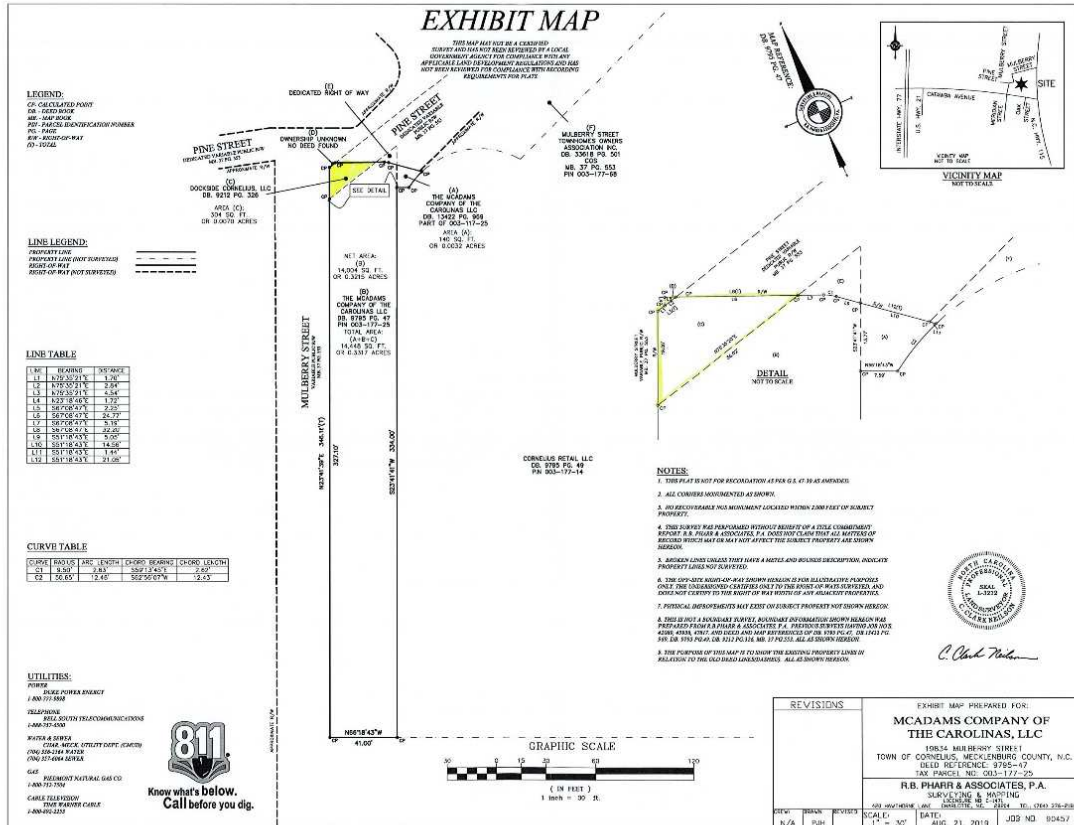
**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Town Attorney

## EXHIBIT A





## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: September 16, 2019

To: Mayor and Board of Commissioners

From: Lori Harrell, Town Clerk

**Action Requested:**

Review the minutes from the Sept. 3rd Closed Session meeting.

**Manager's Recommendation:**

Approve minutes.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">09-03-19_Closed_Session.docx</a>	Closed Session Minutes	Backup Material

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## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: September 16, 2019

**To:** Mayor and Board of Commissioners

**From:** Lori Harrell, Town Clerk


**Action Requested:**

Review the minutes from the Sept. 3rd Regular Meeting.

**Manager's Recommendation:**

Approve minutes.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">09-03-19_Regular_Meeting_draft.docx</a>	Regular Minutes	Backup Material

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## BOARD OF COMMISSIONERS

September 3, 2019  
MINUTES

### PRE-MEETING – 5:45PM

#### ❖ Closed Session

Mayor Washam called for a motion to go into Closed Session to discuss a contractual matter under attorney-client privilege.

*Commissioner Miltich made a motion to go into Closed Session at 5:55PM.  
Commissioner Gilroy seconded the motion and it passed unanimously, 5-0.*

Upon return to the Pre-meeting at 7:05PM, Mayor Washam dismissed everyone to go downstairs for the Regular meeting.

### REGULAR MEETING – 7:00PM

#### 1. CALL TO ORDER

Mayor Washam called the meeting to order at 7:08PM.

#### 2. DETERMINATION OF QUORUM

All commissioners were present for the meeting.

#### 3. APPROVAL OF AGENDA

*Commissioner Miltich made a motion to approve the agenda as presented.  
Commissioner Ross seconded the motion and it passed unanimously, 5-0.*

#### 4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Mecklenburg County Commissioner Elaine Powell led the pledge after a moment of silence was observed.

#### 5. MAYOR/COMMISSIONERS/MANAGER REPORTS

Commissioner Bilodeau reported on the following:

- The 9/11 Remembrance vigil will be held at Fire Station 1 beginning at 8:30AM
- The Antiquity Greenway opening is tentatively scheduled for Sept. 28<sup>th</sup> @ 9AM
- T'awba Walk will be held on Sept. 28<sup>th</sup>

Commissioner Ross reported on the following:

- Chamber – is still accepting applications for the Business Expo to be held in Huntersville on Oct. 19<sup>th</sup>; the Diversity Luncheon will be held on Sept. 19<sup>th</sup> at River Run Country Club; and the Public Safety Luncheon will be held on Oct. 17<sup>th</sup> at Northstone Country Club

Commissioner Gilroy reported on the following:

- Attended the LDCAB meeting held on Aug. 26<sup>th</sup>
- Attended the CPSM fire consolidation meeting held on Aug. 27<sup>th</sup>
- Attended Commissioner Miltich's Cornelius Conversation meeting on Aug. 29<sup>th</sup>

Commissioner Miltich reported on the following:

- Attended a How Safe is your Classroom session on Aug. 20<sup>th</sup>
- Attended the CRTPO meeting held on Aug. 21<sup>st</sup>
- Attended the LDCAB meeting held on Aug. 26<sup>th</sup>
- Attended a portion of the Smithville Community Coalition meeting on Aug. 26<sup>th</sup>
- Attended the CPSM fire consolidation meeting held on Aug. 27<sup>th</sup>
- Held the Cornelius Conversation event on Aug. 29<sup>th</sup>
- Attended the Back to School Bash and Spiderman movie held on Aug. 31<sup>st</sup>

Commissioner Naas reported on the following:

- CEOSC held a town hall meeting on Aug. 21<sup>st</sup> to discuss education options with the public
- CEOSC will give their final presentation to the Town Board on Sept. 16<sup>th</sup>

Manager Grant reported on the following:

- The construction of Nannie Potts Lane has begun
- Introduced the IT Technician Matt Taylor and new IT Manager Justin Ashe

Deputy Manager Herron reported on the following:

- LDCAB's review of the Code's Noise Ordinance came with no new recommendations for adjusting the sound levels

Mayor Washam reported on the following:

- EDC – the Michael Waltrip building is back on the market and there are several parties interested in purchasing the property

## 6. CITIZEN CONCERNS/COMMENTS

No concerns or comments were made.

## 7. MAYORAL PROCLAMATIONS

### A. Constitution Week 2019

Mayor Washam asked the representatives from the Alexandriana DAR (Daughters of the American Revolution) to join him at the podium as he presented them with a Proclamation recognizing the 232<sup>nd</sup> anniversary of the framing of U.S. Constitution that will be observed Sept. 17-23, 2019.

## 8. PRESENTATIONS

### A. Robbins Park Master Plan Update

PARC Director Troy Fitzsimmons gave an update on the Robbins Park Master Plan that was adopted in 2008. He outlined the developed elements of the plan since 2008 and then identified new elements for consideration. He explained that after holding a public workshop and an online survey in February/March to gain feedback from the



public the plan was revised by converting the existing tennis courts to pickleball courts, creating butterfly garden areas within the conservation area to build upon the environmental education program, the addition of 2 lighted soccer fields, 6 lighted tennis courts, 2 lighted basketball courts, a new playground and splash pad, a new corporate shelter, a new disc golf course and a 5K cross country loop. A second survey was conducted on the revised updated master plan and the results showed that 85% were in support of the revised update. Mr. Fitzsimmons stated that he anticipates the plan being ready for final approval by the end of 2019.

9. CONSIDER OF APPROVAL

A. LDCAB Chairperson Appointment

Deputy Manager Herron explained that the LDCAB members wish to have Cheryl Crawford reappointed as the chairperson for another year. Cheryl has served as the LDCAB chair since 2012.

*Commissioner Ross made a motion to reappoint Cheryl Crawford to serve as the LDCAB chairperson. Commissioner Miltich seconded the motion and it passed unanimously, 5-0.*

10. CONSENT AGENDA

- A. Approve Minutes – Closed Session (August 19<sup>th</sup>) (Approved 5-0)  
B. Approve Minutes – Regular Meeting (August 19<sup>th</sup>) (Approved 5-0)

*Commissioner Miltich made a motion to approve the Consent Agenda as presented. Commissioner Ross seconded the motion and it passed unanimously, 5-0.*

11. COMMISSIONER CONCERNS

A. Coyote Issues in the Area

Commissioner Ross asked if there are any traps that can be set to address the coyotes in the area. Chief Black explained that the NC Wildlife Commission is the only agency that can regulate/relocate wildlife in the state. The Town's animal control unit only deals with domesticated animals and are not trained in dealing with wildlife. The rule of thumb for not attracting wildlife is to not leave food for your animals outside and do not leave small animals outside. Generally, coyotes are afraid of humans so making noise most often scares them away.

B. Alexander Farm Zoning

Commissioner Gilroy asked Deputy Manager Herron to clarify the zoning "by right" for the Alexander Farm property. The *Code's* "by right" zoning allows for the lowest density and intensity of any approval. The CZ process has to adhere to the same items as "by right" but the benefit of the CZ process is that it allows for negotiation between a developer and the Town. If the applicant for the Alexander Farm property could get a better benefit by developing "by right" they would have already done so.

C. Rockridge Shores Issues

Commissioner Naas asked Deputy Herron for an update on the issue regarding parking of commercial vehicles. Deputy Manager Herron stated that staff

investigated the particular complaint and found no violation of parking; however, there was a violation of high grass and staff is addressing that issue.

D. Stanley Morgan Property

Mayor Washam asked what the status was on the Morgan property. Deputy Manager Herron explained that Mr. Morgan (Stanley's brother) had to wait on two different probate sessions for his brother and his mother and in the process of the probate ending he was trying to get the property in the name of the assisted living that was caring for his father; however, the father passed away before it was completed so they are now back in probate. Mr. Morgan intends to sell as soon as it is out of probate.

12. ADJOURNMENT

*There being no further business to discuss, Commissioner Miltich made a motion to adjourn at 8:05PM. Commissioner Ross seconded the motion and it passed unanimously, 5-0.*

## REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** September 16, 2019

**To:** Mayor and Board of Commissioners

**From:** Julie Niswonger, Finance Director

**Action Requested:**

Please find the attached list of proposed refunds based upon the information received from the County Assessor.

The list is necessary as a result of value adjustments as performed by the Mecklenburg County Assessor and/or Board of Equalization and Review and corrections as determined by the Mecklenburg County Assessor. Those refunds total = \$75.48 (tax) + \$0.00 (interest) = \$75.48. As required by Statute, please approve refunds. There are no Board member refunds in this group.

**Manager's Recommendation:**

Approve tax refunds.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">91719T1_Cornelius_Refunds_with_no_interest_2019_07_22.pdf</a>	County List #1	Cover Memo

**CORNELIUS Refunds**

Tax Year	Bill Number	Source Type	Parcel #	Adj #	Adj Reason	Refund Recipient Name	Refund Amount (\$)
2018	0008089336-2018-2018-0000-00	IND	1989 Catalina Sloop	575057	Sold/Traded	HARRIS, JAMES WESLEY	75.48
							<b>\$ 75.48</b>