

**LENOIR CITY COUNCIL
TUESDAY, FEBRUARY 15, 2022
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Ralph Prestwood, David Stevens and Kent Greer. City Attorney Timothy J. Rohr, City Manager Scott Hildebran, City Attorney T. J. Rohr, Police Chief Brent Phelps, Planning Director Jenny Wheelock and Planning Administrative Assistant Lauren Hartley were also present.

ZOOM: Mayor Joe Gibbons, Councilmember Todd Perdue, Fire Chief Ken Hair, Recreation Director Kenny Story, Economic Development Director Kaylynn Horn, Finance Director Donna Bean, Public Works Director Jared Wright, Public Utilities Director Radford Thomas, and Communications Director Joshua Harris also participated via Zoom.

Others in attendance were Cady Davis, News-Topic and Candace Simmons, Caldwell Free Press.

ABSENT: Councilmembers Ike Perkins, Crissy Thomas and City Clerk Shirley Cannon.

I. CALL TO ORDER

A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance as led by Mayor Gibbons.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

**CONDITIONAL ZONING ORDINANCE
AMENDMENT; ROCKY TOP COURT, SE:**

A. A public hearing was held to consider approval for a Conditional Zoning Ordinance Amendment for property located on Rocky Top Court, SE, Caldwell County Registry, Plat Book 16, Page 16, to amend the existing Rocky Top Planned Unit Development (PUD) to reduce the minimum front yard setback from 40' to 30' to better accommodate the existing topography.

Staff recommends approval of the ordinance and consistency statement supporting this request as follows: The proposed Conditional Zoning Ordinance is consistent with the adopted Comprehensive Plan because it entitles the lots in the Rocky Top subdivision to efficiently use the existing lot layout for house construction. It does not change the character of the neighborhood as built, and enables the existing homes to be legally conforming to the zoning standards. This area is identified as Existing Medium Density Residential on the Future Land Use Map, and this proposal meets that designation. The proposed Conditional Zoning Ordinance is reasonable and in the public interest because it relaxes regulation for residential construction and makes more efficient use of the City's existing infrastructure investments.

A copy of the ordinance, Exhibit A, and Exhibit B are hereby incorporated into these minutes by reference. (Refer to pages 46-51.)

Mayor Gibbons opened the public hearing to receive public comments regarding the proposed conditional zoning ordinance amendment for Rocky Top Court SE.

Planning Director Jenny Wheelock explained that you can't change the standards of zoning properties. She stated that a 40' setback is common, but a 30' setback is sufficient. In addition, Director Wheelock mentioned this property was originally designed as town homes and single family lots.

There being no further public participation, Mayor Gibbons closed the public hearing and asked Council for action.

Upon a motion by Councilmember Stevens, Council voted 5 to 0 to approve the Conditional Zoning Ordinance Amendment for Rocky Top Court, SE, to amend the existing Rocky Top Planned Unit Development (PUD) to reduce the minimum front yard setback from 40' to 30' to better accommodate the existing topography and further approved the consistency statement supporting this request as submitted and as recommended by City Staff.

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, February 1, 2022 as submitted.
- B. Minutes: Approval of the minutes of the Committee of the Whole minutes of Tuesday, January 25, 2022 as submitted.

Upon a motion by Councilmember Prestwood, Council voted 5 to 0 to approve the above listed items on the Consent Agenda as recommended and as presented by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

- A. Items of Information

PARKS & RECREATION ADVISORY

- BOARD:**
- 1. The Parks and Recreation Advisory Board will meet on Monday, February 21 at 6:00 p.m. at the Mulberry Recreation Center.

COMMITTEE OF THE WHOLE:

- 2. The Committee of the Whole will meet on Tuesday, February 22 at 8:30 a.m.

FOOTHILLS REGIONAL AIRPORT

- AUTHORITY:**
- 3. The Foothills Regional Airport Authority will meet on Wednesday, February 23 at noon.

- PLANNING BOARD:**
- 4. The Planning Board will meet on Monday, February 28 at 5:30 p.m.

B. ITEMS FOR COUNCIL ACTION

ACCEPTANCE OF AN OFFER TO PURCHASE REAL PROPERTY AND NOTICE OF OFFER TO PURCHASE REAL PROPERTY; PARKVIEW SUBDIVISION:

1. Acceptance of an Offer to Purchase Real Property and Notice of Offer to Purchase Real Property; Parkview Subdivision: Parkview Subdivision Lots: If Council is interested in accepting the offer of \$19,000 from Wild Winds Farm's Inc., to purchase the nine (9) lots owned by the City of Lenoir and located in Parkview Subdivision, Council should direct the City Clerk to publish notice of the offer in accordance with N.C.G.S. §160A-269. Parcel numbers are: 091558-2-2, 09148-2-21, 09148-2-23, 09148-2-25, 09148-2-29, 09148-2-69, 09148-2-10, 09148-2-34 and 09148-2-47. Notice of the Offer to Purchase Real Property will be published in the News-Topic, starting a 10-day upset bid process.

A copy of the Acceptance Offer to Purchase Real Property and Notice of Offer to Purchase Real Property in Parkview Subdivision is hereby incorporated into these minutes by reference. (Refer to pages 52-57.)

City Manager Hildebran stated these lots were purchased by the City through tax foreclosure and Wild Winds Farms, LLC, presented an offer to purchase of \$19,000. He reported this amount is sufficient to pay the City and County taxes owed plus the property will be added back onto the tax rolls.

Upon a motion by Councilmember Stevens, Council voted 5 to 0 to accept the Offer to Purchase Real Property in the amount of \$19,000 to begin the upset bid process, as submitted by Wild Winds Farms, Inc. for nine lots in the Parkview Subdivision as described above and as presented by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

BOARD APPOINTMENT; LENOIR BUSINESS ADVISORY BOARD:

- A. Mayor Gibbons recommends that Tyler Reese, District Manager, Blue Ridge Energies, be appointed to serve a four-year term on the Lenoir Business Advisory Board (LBAB). This appointment was announced at the February 1st City Council meeting.

Upon a motion by Councilmember Prestwood, Council voted 5 to 0 to appoint Tyler Reese to serve a four-year term on the Lenoir Business Advisory Board (LBAB) as recommended by Mayor Gibbons.

BOARD VACANCY; PLANNING BOARD:

- B. Mayor Gibbons announced a vacancy exists on the Lenoir Planning Board due to the resignation of Board Member Kent Greer who resigned due to being appointed to serve on the City Council.

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

CLOSED

SESSION: A. Pursuant to N.C.G.S. §143-318.11(a), (3), and upon a motion by Councilmember Stevens, which unanimously carried, City Council entered into closed session to discuss attorney/client privilege.

OPEN

SESSION: B. Upon a motion by Councilmember Prestwood, City Council voted 5 to 0 to re-enter into open session.

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 7:03 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

AN ORDINANCE OF THE CITY COUNCIL OF LENOIR, NORTH CAROLINA, DESIGNATING THE ENTIRE ROCKY TOP COURT SUBDIVISION (PB 16; PG 16), GENERALLY LOCATED SOUTHWEST OF WILKESBORO BLVD, NORTH OF MCLEAN DRIVE, AND EAST OF HIBRITEN DRIVE, AND COMPRISED OF 6.5 ACRES, MORE OR LESS, AS CONDITIONAL ZONING DISTRICT #7 (CZ-7) ON THE CITY'S OFFICIAL ZONING MAPS; DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP; PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

Whereas, at its regularly scheduled meetings of January 24, 2022, the Lenoir Planning Board considered zoning application case number CZ-7, requesting the Conditional Zoning district designation, for approximately 6.5 acres of land, described by the legal description attached to this ordinance as **Exhibit "A"** (hereinafter the "Property"); and

Whereas, many of the lots have existing steep topography in the rear, and applying the current 40' front setback limits the feasibility of construction – resulting in lots still vacant after 30 years or houses that were accidentally built encroaching into the front setback area, which the proposed CZ ordinance would legalize; and

Whereas, the property was approved as a Special Use District in 1994 (SUD-6/7-93), and under S.L.2019-111(2)(b), any SUD that was valid and in effect on January 1, 2021 was automatically deemed to now be a Conditional Zoning district, which technically makes this request an amendment to a Conditional Zoning district; and

Whereas, this ordinance is intended to repeal and replace all former approvals for the Rocky Top development, and as such all former conditions of approval and the previously approved concept plan have been incorporated into this ordinance; and

Whereas, based upon the evidence presented to the Lenoir Planning Board, including the information and analysis contained in the staff report for application case number CZ-7, and subject to certain conditions, the Lenoir Planning Board recommended that the Lenoir City Council approve said conditional zoning application and adopt an ordinance in accordance therewith; and

Whereas, the Lenoir Planning Board has found that approval of the application is consistent with the City's adopted Comprehensive Plan because it entitles the lots in the Rocky Top subdivision to

efficiently use the existing lot layout for house construction. It does not change the character of the neighborhood as built, and enables the existing homes to be legally conforming to the zoning standards; and

Whereas, the Lenoir City Council hereby finds that this ordinance is consistent with the intent and purpose of the Conditional Zoning designation as established by Appendix A, Article V, Section 502, Lenoir City Code; and

Whereas, the Lenoir City Council hereby finds and declares that this ordinance and these amendments are in the best interest of the public health, safety, and welfare because it relaxes regulation for residential construction and makes more efficient use of the City's existing infrastructure investments.; and

NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA, AS FOLLOWS:

SECTION 1. ZONING. After due notice and public hearing, and pursuant to part Appendix A, Article XIV of the Lenoir City Code, and other relevant portions of the Lenoir City Code, the zoning designation for the Property is hereby changed from the R-15/S-1 district to Conditional Zoning district on the City's Official Zoning Map (to be denoted as "CZ-7"), as depicted in Exhibit "B" to this ordinance.

SECTION 2. OTHER DEVELOPMENT LAWS. Except as expressly provided otherwise by this ordinance, the CZ-7 zoning district remains subject to all applicable federal, state, and local laws, and nothing in this ordinance shall be construed to exempt the Property from the lawful authority or jurisdiction of any federal, state, or local agency.

SECTION 3. DEFAULT ZONING DISTRICT. Except as expressly provided otherwise by this ordinance, the Property shall be governed by the land development regulations of the R-15 Single Family zoning district.

SECTION 4. SPECIAL CONDITIONS. The Conditional Zoning district for the Property is subject to the following special conditions:

1. **Concept Plan.** Subject to any modifications expressly contained in the text of this ordinance, development and maintenance of the Property must be consistent with the concept plan attached to this ordinance as Exhibit "B" (hereinafter the "Concept Plan"). In the event of a conflict between the text of this ordinance and the Concept Plan, the text of this ordinance shall control. References in this ordinance to lots, parcels, buildings, phases, and other development features refer to such features as identified on the Concept Plan.
2. **Variances.** Zoning variances to the standards of the default zoning district not modified by this ordinance may be approved pursuant to the procedures set forth in Appendix A, Article XIII, Section 1312.1 of the Lenoir City Code.
3. **Modification.** The special conditions specific to the CZ-7 zoning district may only be modified by application for a zoning map amendment following the procedures outlined in Appendix A, Article VIII, Section 820 of the Lenoir City Code.

4. **Permitted/Special Uses.** All uses permitted within the R-15 zoning district, and single-family attached dwellings, when no more than two units are attached except when separated by garages (see Concept Plan).
5. **Minimum Setbacks.**
 - a. The front setback shall be 30 ft. from the edge of the right-of-way
 - b. The side setbacks shall be 15 ft for detached structures. The side setback for attached dwellings is 0 ft., except where the adjacent lot is not an attached dwelling lot, in which case the setback is 15 ft.
 - c. The rear setback is 30% of total lot depth.
6. **Special Conditions Originally established under SUD-6/7-93:**
 - a. Not more than 14 dwellings units be permitted.
 - b. That attached dwelling units not exceed 2 as presented on said plan.
 - c. No unit, exclusive of decks, porches, garages containing less than 1,500 square feet.
 - d. A home owner association be established, approved by the City Attorney and recorded in relation to said development.
 - e. Lots not developed as single-family attached shall meet all requirements under the R-15 (Single Family Residential). Whereas this may require redesign by property owner(s) and approval of City Council, no lot may be resubmitted for single-family attached.

SECTION 5. PREVIOUS APPROVALS NULL AND VOID. All previous approvals for the Rocky Top PUD are hereby repealed and replaced by this ordinance.

SECTION 6. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 7. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this 4th day of February and this 11th day of February, 2022.

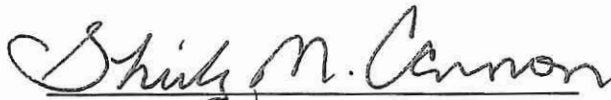
DONE, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of the a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this 15th day of February, 2022.

BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH CAROLINA:



Mayor/Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA:


City Clerk

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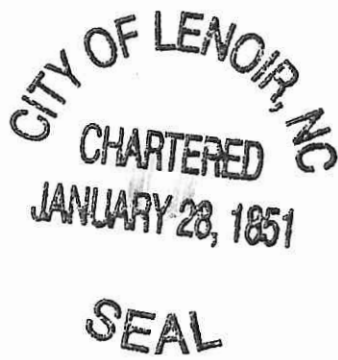


EXHIBIT "A"

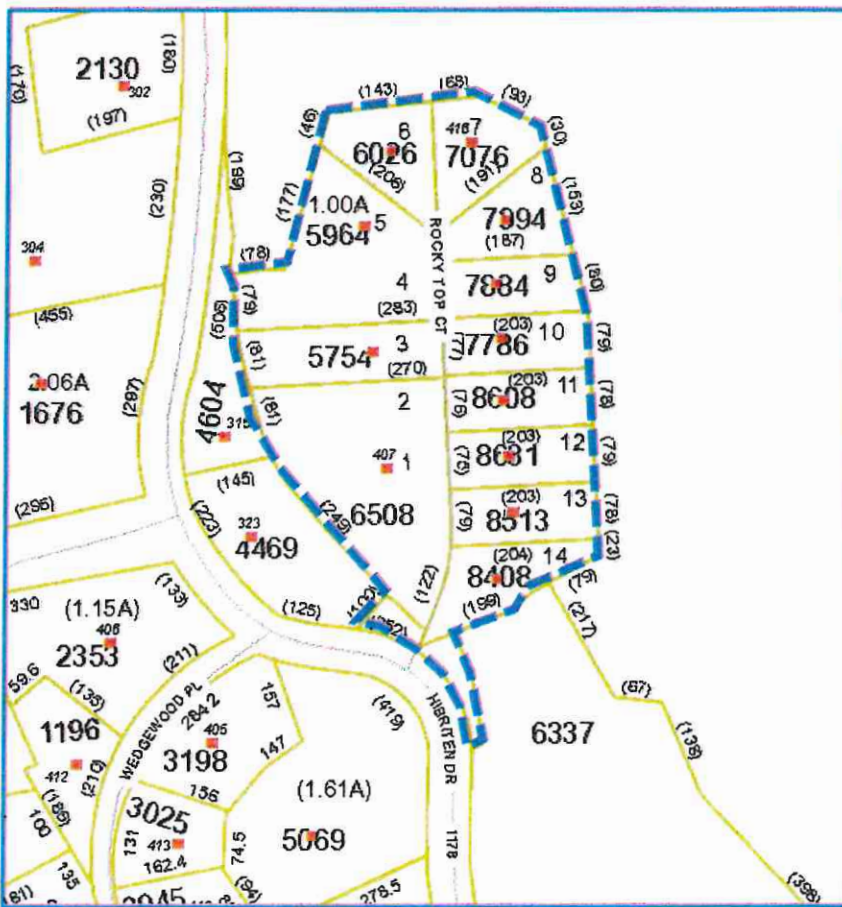
The subject properties included in this rezoning are as follows:

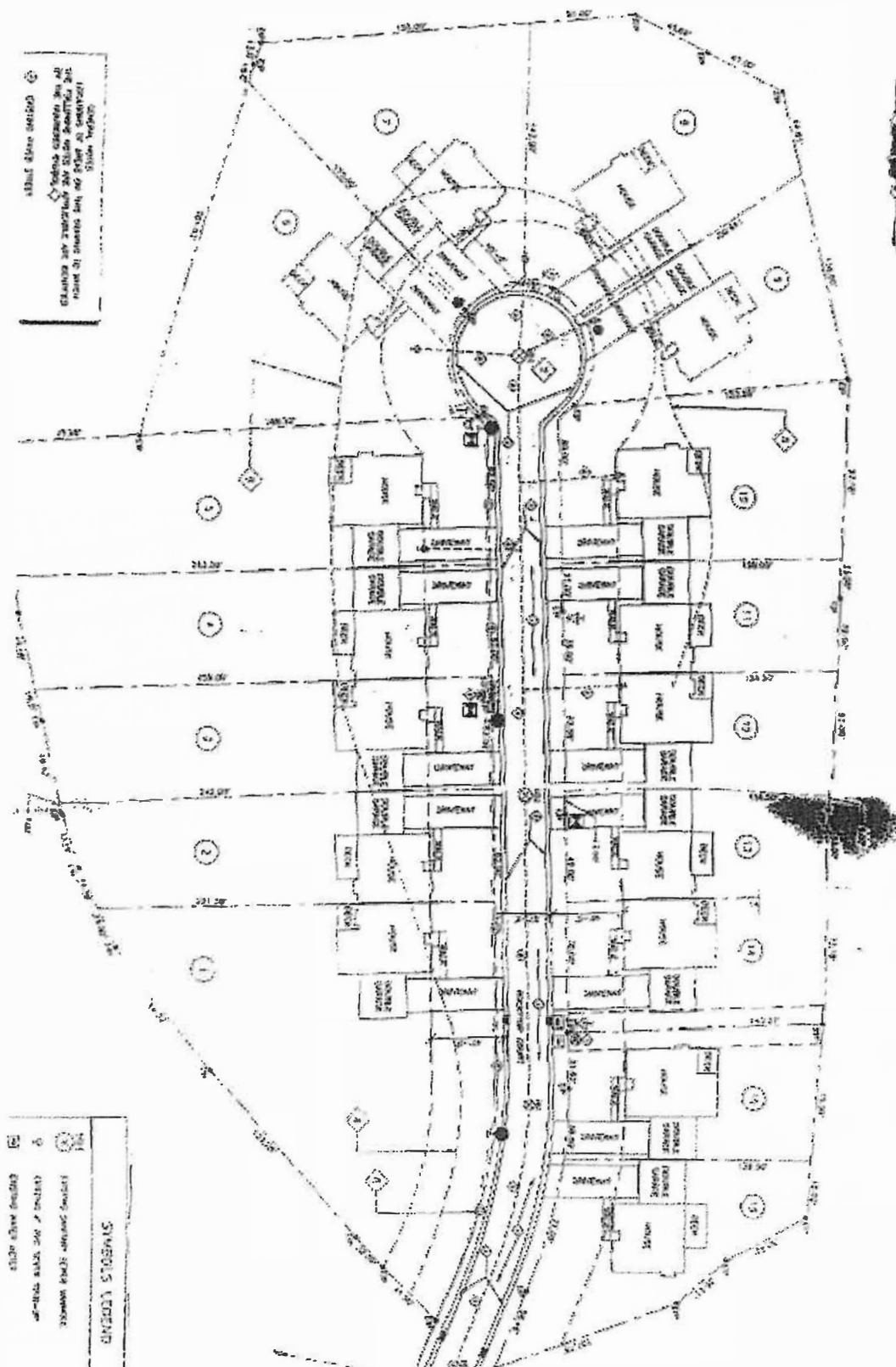
All lots (1-14) platted in the Rocky Top Subdivision (see Plat Book 16, Page 16, Caldwell County Register of Deeds); plus the 0.18 acre tract located on either side the street apron for Rocky Top Ct. and described in Book 1854; Page 885.

NOTES:

Lots 1 and 2 were recombined by the deed recorded at Plat Book 1966; Page 1939.

Lots 4 and 5 were recombined by the deed recorded at Plat Book 2021; Page 1159.







CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

CITY COUNCIL
J. T. BEAL
T. H. PERDUE
J. I. PERKINS
R. S. PRESTWOOD
D. F. STEVENS
C. D. THOMAS
B. K. WILLIS

RESOLUTION

WHEREAS, the City of Lenoir owns (9) nine vacant parcels located in the Parkview Subdivision acquired via tax foreclosure, (Parcel numbers are: 09148 2 2, 09148 2 21, 09148 2 23, 09148 2 25, 09148 2 29, 09148 2 69, 09148 2 10, 09148 2 34, 09148 2 47, and more particularly described on the following pages); and

WHEREAS, North Carolina General Statute §160A-269 permits the City to sell property by upset bid, after receipt of an offer for the property; and

WHEREAS, the City has received an offer to purchase the (9) nine vacant parcels described above, in the amount of \$19,000, submitted by Wild Winds Farm's, LLC; and

WHEREAS, Wild Winds Farm's LLC has paid the required five percent (5%) deposit on his offer;

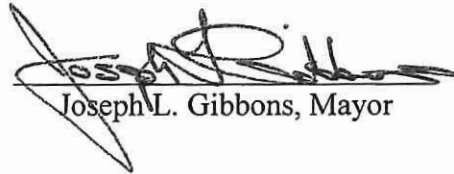
NOW, THEREFORE, BE IT RESOLVED, the LENOIR CITY COUNCIL of the City of Lenoir resolves that:

1. The City Council authorizes sale of the property described above through the upset bid procedure of North Carolina General Statute § 160A-269.
2. The City Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms under which the offer may be upset.
3. Any person may submit an upset bid to the office of the City Clerk within ten (10) days after the notice of sale is published. Once a qualifying higher bid has been received, that bid will become the new offer.
4. If a qualifying higher bid is received, the City Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the City Council.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check, or certified check. The City will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The City will return the deposit of the final high bidder at closing.

7. The terms of the final sale are that the City Council must approve the final high offer before the sale is closed, which it will do within 30 days after the final upset bid period has passed, and the buyer must pay with cash, cashier's check or certified check at the time of closing.
8. The City reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject at any time all bids.
9. If no qualifying upset bid is received after the initial public notice, the offer set forth above is hereby accepted. The appropriate City Officials are authorized to execute the instruments necessary to convey the property to Wild Winds Farm's, LLC.

This the 15th day of February, 2022.

SEAL



Joseph L. Gibbons, Mayor

ATTEST:



Shirley M. Cannon, City Clerk

CITY OF LENOIR, NC
CHARTERED
JANUARY 28, 1851

SEAL

Property Descriptions:

09148 2 2:

BEING ALL of Lot 2 of Parkview Subdivision as recorded in Plat Book 20, at Page 1, Caldwell County Registry, reference to which plat is made for more certain description. Also being identified as Parcel ID# 09 148 2 2, Caldwell County Tax Office.

Address: 619 White Oak Circle

09148 2 21:

Being all of Lot 21 of Parkview Subdivision as recorded in Plat Book 20, at Page 1, Caldwell County Registry, reference to which plat is made for more certain description. Also being identified as Parcel ID# 09 148 2 21, Caldwell County Tax Office.

Address: 510 Park Way

09148 2 23:

Being all of Lot 23 of Parkview Subdivision as recorded in Plat Book 20, Page 1 and Page 2, and amended in Plat Book 21, Page 53, Caldwell County Registry, reference to which plat is made for more certain description. Also being identified as Parcel ID# 09 148 2 23, Caldwell County Tax Office.

Address: 514 Park Way

09148 2 25:

Being all of Lot 25 of Parkview Subdivision as recorded in Plat Book 20, Page 2 and as amended in Plat Book 21, Page 53, Caldwell county Registry, reference to which plats are made for more certain description. Also being identified as Parcel ID# 09 148 2 25, Caldwell County Tax Office.

Address: 518 Park Way

09148 2 29:

BEING ALL of Lot 29 of Parkview Subdivision as recorded in Plat Book 20, at Page 2 and as amended in Plat Book 21, at Page 53, Caldwell County Registry, reference to which plats are made for more certain description. Also being identified as Parcel ID# 09 148 2 29, Caldwell County Tax Office.

Address: 526 Park Way

09148 2 69:

BEING ALL of Lot 69 of Parkview Subdivision as recorded in Plat Book 20, at Page 2 and as amended in Plat Book 21, at Page 53, Caldwell County Registry, reference to which plats are made for more certain description. Also being identified as Parcel ID# 09 148 2 69, Caldwell County Tax Office.

Address: 521 Park Way

09148 2 10:

Being all of Lot 10 of Parkview Subdivision as recorded in Plat Book 20, Page 1,

Caldwell County Registry, reference to which is hereby made for a more perfect description. Also being identified as Parcel ID# 09 148 2 10, Caldwell County Tax Office.

Address: 603 White Oak Circle

09148 2 34:

Being all of Lot 34 of Parkview Subdivision as recorded in Plat Book 20, Page 2, as amended in Plat Book 21, Page 53, Caldwell County Registry, reference to which is hereby made for a more perfect description. Also being identified as Parcel ID# 09 148 2 34, Caldwell County Tax Office.

Address: 417 Scarlett Oak Court

09148 2 47:

Being all of Lot 4 7 of Parkview Subdivision as recorded in Plat Book 20, Page 2, as amended in Plat Book 21, Page 53, Caldwell County Registry, reference to which is hereby made for a more perfect description. Also being identified as Parcel ID# 09 148 2 47, Caldwell County Tax Office.

Address: 402 Scarlett Oak Court

NOTICE OF OFFER TO PURCHASE REAL PROPERTY - CITY OF LENOIR

Notice is hereby given pursuant to NCGS §160A-269 that the City of Lenoir has received an Offer to Purchase nine (9) vacant lots owned by the City of Lenoir located in the Parkview Subdivision obtained via tax foreclosure. The parcel numbers are: 09148 2 2, 09148 2 21, 09148 2 23, 09148 2 25, 09148 2 29, 09148 2 69, 09148 2 10, 09148 2 34, 09148 2 47. The offered purchase price is \$19,000.00 for conveyance by non-warranty deed. The properties shall be conveyed "as is, where is," and the purchase and sale shall be subject to all superior liens, unpaid taxes and special assessments, if any. The City Council proposes to accept said offer.

Within ten (10) days of this notice any person may raise the bid by not less than ten (10%) of the first \$1,000.00 and five (5%) percent of the remainder and by making a deposit of five (5%) percent of such increased bid with the City Clerk. Any such bid shall be subject to further advertisement as provided in NCGS. §160A-269. The City Council may at any time reject any and all bids.

City of Lenoir
Shirley M. Cannon, MMC, NCCMC
City Clerk
801 West Avenue, NW
Lenoir, NC 28645

February 18, 2022