



CITY OF SPARTANBURG

SOUTH CAROLINA

CITY COUNCIL AGENDA

City Council Meeting
CC Woodson Recreation Center Gym
210 Bomar Avenue
Spartanburg, SC
Monday, August 10, 2020
5:30 p.m.

- I. **Moment of Silence**
- II. **Pledge of Allegiance**
- III. **Approval of the Minutes from the July 27, 2020 City Council Meeting**
- IV. **Approval of the Agenda for the August 10, 2020 City Council Meeting**
- V. **Public Comment**
*Citizen Appearance forms are available at the door and should be submitted to the City Clerk
- VI. **Recognition of Fire Chief Marion Blackwell for Receiving the Southeastern Association of Fire Chiefs Career Fire Chief of the Year**
Presenter: Chris Story, City Manager
- VII. **Presentation by Blue Duck Scooters**
Presenter: Martin Livingston, Neighborhood Services Director
Megan McNamara, Blue Duck Scooters
- VIII. **Public Hearing**
 - A. **Accepting the Property Owned by Pacolet Milliken, LLC, and Being Located at 225 Milliken Street & "0" Cleveland Court, and that Portion of Milliken Street and Cleveland Court Abutting Said Properties, and is Further Identified on Spartanburg County Tax Map as 7-08-16-043.00 & 7-08-16-061.00 as a Part and Parcel of the City of Spartanburg and Declaring Said Property Annexed to and a Part and Parcel of the City of Spartanburg (First Reading)**
Presenter: Rachel Grothe, Planning
- IX. **Ordinance**
 - A. **To Enter into a Franchise Agreement with Verizon Wireless to Construct, Install, Maintain, Repair, Operate, Relocate, Replace and Remove Certain Small Wireless Facilities Using the Rights of Way in the City of Spartanburg, South Carolina (First Reading)**
Presenter: Bob Coler, City Attorney

X. Resolution

- A. Approving the Purchase of 457 Bethlehem Drive (Block Map Sheet 7-16-01-388.00) and 321 Caulder Avenue (Block Map Sheet 7-16-07-113)**
Presenter: Bob Coler, City Attorney

XI. Boards and Commissions

- A. Council Interview Committee Recommendations**
Presenter: Councilmember Meghan Smith

XII. Staff Covid19 Update

Presenter: Chris Story, City Manager

XIII. City Council Updates

XIV. Executive Session Pursuant to Section 30-4-70 (a) (5) of the South Carolina Code to Discuss Matters Relating to an Economic Development Project

XV. Adjournment

** Non-Agenda Items*

City Code Sec. 2-57. Citizen Appearance. Any citizen of the City of Spartanburg may speak at a regular meeting on any matter pertaining to City Services and operations germane to items within the purview and authority of City Council, except personnel matters, by signing a Citizen's Appearance form prior to the meeting stating the subject and purpose for speaking. No item considered by Council within the past twelve (12) months may be added as an agenda item other than by decision of City Council. The forms may be obtained from the Clerk and maintained by the same. Each person who gives notice may speak at the designated time and will be limited to a two (2) minute presentation.

**Agenda Items*

City Code Sec. 2-56. Addressing Council, Comments or Remarks to Council on Agenda Items Not Requiring Public Hearing. On agenda items not requiring a Public Hearing, please provide to the City Clerk prior to the opening of the meeting, your desire to speak on an agenda item. Remarks shall be limited to five (5) minutes and total remarks on any agenda item shall not exceed twenty (20) minutes.



**City Council Meeting
Spartanburg Marriott – Wadsworth and Croft Room
299 N. Church Street
Spartanburg, SC
Monday, July 27, 2020
5:30 p.m.**

City Council met this date with the following Councilmembers participating: Mayor White, Mayor pro tem Ruth Littlejohn, Councilmembers Jerome Rice, Jamie Fulmer, Meghan Smith and Rob Rain. City Manager Chris Story and City Attorney Robert Coler were also in attendance. Councilmember Erica Brown was absent from the meeting. Notice of the meeting was posted with the Media 24 hours in advance according to the Freedom of Information Act. All City Council meetings are recorded for a complete transcript.

I. Moment of Silence - observed

II. Pledge of Allegiance - recited

III. Approval of the Minutes from the July 13, 2020 City Council Meeting –
Councilmember Rice made a motion to approve the minutes as received. Mayor pro tem Littlejohn seconded the motion, which carried unanimously 6 to 0.

IV. Approval of the Agenda for the July 27, 2020 City Council Meeting –
Councilmember Smith made a motion to approve the agenda as received. Mayor pro tem Littlejohn seconded the motion, which carried unanimously 6 to 0.

V. Public Comment

- *Citizen Appearance forms are available at the door and should be submitted to the City Clerk
1. Toni Sutton, 102 Cemetery St., Spartanburg, SC, spoke against the proposed Mary H. Wright redevelopment.
 2. Chance LeBron, 100 Imperial Drive, Apt. 244B, Spartanburg, SC, spoke against the proposed Mary H. Wright redevelopment.
 3. Jason Spencer, 179 Grady Avenue, Tryon, NC, spoke against the proposed Mary H. Wright redevelopment.

VI. Recognition of Retiring Special Events Manager Mandy Merck

Presentation: Mayor White

Mayor White recognized Ms. Merck and presented her with her city retirement plaque. He thanked her for her 31 years of dedicated service to the city.

VII. Presentation on Bring Back the Burg (Pandemic Economic Recovery Effort)
Presenter: Allen Smith, President and CEO of the Spartanburg Area Chamber of Commerce

Mr. Smith updated Council regarding the progress of the Bring Back the Burg recovery effort.

Council received the report as information.

IX. Boards and Commissions -

Ms. Kellner asked that Mayor White appoint two councilmembers to the Hospitality Tax Committee as required by the resolution for that committee.

Mayor White re-appointed Councilmember Meghan Smith and Councilmember Jerome Rice to the Hospitality Tax Committee for another one-year term.

A. Zoning Board Recommendation

Presenter: Connie M. Kellner, City Clerk

Ms. Kellner presented Ms. Janie Salley's application for Council's consideration for appointment to the Zoning Board.

Mayor White made a motion to approve appointment of Janie Salley to the Zoning Board. Councilmember Rice seconded the motion, which carried unanimously 6 to 0.

B. Council Interview Committee Recommendations

Presenter: Councilmember Meghan Smith

Councilmember Smith brought forward recommendations as follows:

1. Lekesia Whitner and Warick Spencer for appointment to the Planning Commission.
2. Lauren Rogers for appointment to the Design Review Board.

Councilmember Rice made a motion to approve the recommendations from the Interview Committee. Councilmember Fulmer seconded the motion, which carried unanimously 6 to 0.

X. Staff Covid19 Update

Presenter: Chris Story, City Manager

Mr. Story updated Council on procedures currently used and others that have been implemented during the pandemic.

Council received the report as information.

XI. City Council Updates - Each Councilmember gave updates on their activities since the previous council meeting.

XII. Executive Session Pursuant to Section 30-4-70 (a) (5) of the South Carolina Code to Discuss Matters Relating to an Economic Development Project

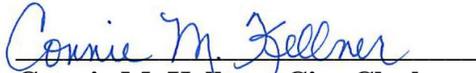
Councilmember Rice made a motion to adjourn to Executive Session for the stated reason. Councilmember Fulmer seconded the motion, which carried unanimously 6 to 0. Council adjourned to Executive Session at 6:29 p.m.

Council reconvened to regular session at 6:42 p.m.

Mayor White stated that discussion was held with no decisions made.

XIII. Adjournment – *Councilmember Smith made a motion to adjourn the meeting.*

Councilmember Rice seconded the motion, which carried unanimously 6 to 0. The meeting adjourned at 6:44 p.m.



Connie M. Kellner, City Clerk



MEMORANDUM

TO: Chris Story, City Manager

FROM: Martin Livingston, Neighborhood Services Director
Natalia Rosario, Senior Planner
Megan McNamara, Blue Duck Scooters

SUBJECT: Blue Duck Scooters

DATE: August 10, 2020

BACKGROUND:

The City of Spartanburg and Spartanburg Chamber received a request to work with the City to initiate a scooter system / micro mobility system in city limits. Staff has been in discussions with Blue Duck Scooters to present information on the potential for allowing scooters in the City. Megan McNamara, a Blue Duck Scooter representative will present information on the company, its operations, and cities where Blue Duck Scooters currently operates. This will be an information only presentation.

ACTION REQUESTED: No action required at this time. Information only.

BUDGET AND FINANCIAL DATA: No action at this time.



REQUEST FOR COUNCIL ACTION

TO: Chris Story, City Manager

FROM: Rachel Grothe, Planning Staff

SUBJECT: The Planning Department has received a request to consider annexation and zoning of tax map parcel #s 7-08-16-043 and 7-08-16-061, to be annexed into the City of Spartanburg as an R-6 General Residential zone district. Seamon Whiteside, Agent, representing Orange Capital Advisors, Applicant. (Pacolet Milliken, LLC, Owner)

DATE: August 6, 2020

SUMMARY: The applicant has requested an R-6, General Residential zone designation with the intention of developing the site with multi-family units. Table 402- Standards for Group Housing Projects, indicates that 2,500 square feet of lot area is required per dwelling unit. The project site is located across the street from the Drayton Mills complex, a successful mixed use development. Therefore, the proposed annexation and multi-family development makes sense in this location.

A full traffic study would need to be requested and undertaken in order to identify any potential traffic impacts of the proposed development. Impacts are primarily congestion or safety related.

Staff concludes that the proposed annexation and zoning, along with the subsequent multi-family development, are appropriate for the project site. A preliminary site plan was submitted and is attached for informational purposes. Should this project reach the construction phase, a full Site Plan review process will be required. This helps to ensure that the development meets or exceeds the standards laid out in the Zoning Ordinance. Furthermore, the project will be subject to review by all other applicable City departments to make certain a quality and safe development.

PLANNING COMMISSION RECOMMENDATION: The request was endorsed by the Planning Commission on July 16, 2020 by a vote of 4 to 0.

ADDITIONAL INFORMATION: Minutes from the July 16, 2020 Planning Commission Meeting and Staff Report with attachments are included.

BUDGET AND FINANCE DATA: N/A

AN ORDINANCE

ACCEPTING THE PROPERTY OWNED BY PACOLET MILLIKEN, LLC, AND BEING LOCATED AT 225 MILLIKEN STREET & '0' CLEVELAND COURT, AND THAT PORTION OF MILLIKEN STREET AND CLEVELAND COURT ABUTTING SAID PROPERTIES, AND IS FURTHER IDENTIFIED ON SPARTANBURG COUNTY TAX MAP AS 7-08-16-043.00 & 7-08-16-061.00 AS A PART AND PARCEL OF THE CITY OF SPARTANBURG AND DECLARING SAID PROPERTY ANNEXED TO AND A PART AND PARCEL OF THE CITY OF SPARTANBURG.

WHEREAS, heretofore, the City of Spartanburg, on June 24, 2020 received a request for Annexation and Zoning Classification, filed by W. McFaddin Blanding, on behalf of Orange Capital Advisors, LLC, Applicant and Developer; on behalf of Pacolet Milliken, LLC, Owner, requesting that the properties as above referenced be annexed to the City of Spartanburg; and

WHEREAS, the City Council of Spartanburg has caused an investigation to be made of said property and has found that said properties are contiguous to the City of Spartanburg and that it would be in the best interest of the City of Spartanburg if said property be annexed hereto in accordance with Section 5-3-150 of the Code of Laws of South Carolina, 1976; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Members of Council of the City of Spartanburg, South Carolina, in Council assembled:

Section 1: That the request of W. McFaddin Blanding, on behalf of Orange Capital Advisors, LLC, dated June 24, 2020, for the annexation of the properties hereinafter described to the City of Spartanburg be accepted.

Section 2: That the property hereinafter described is hereby declared annexed to the City of Spartanburg and a part and parcel of said City with full privileges accorded to and responsibilities required of said area.

Section 3: That upon annexation, the property shall be zoned as Zone R-6 (General Residential District).

Section 4: This Ordinance shall be effective upon its adoption by the City Council of the City of Spartanburg, South Carolina.

DONE AND RATIFIED THIS ____ DAY OF _____, 2020.

Junie L. White, Mayor

(continued on page 2)

ATTEST:

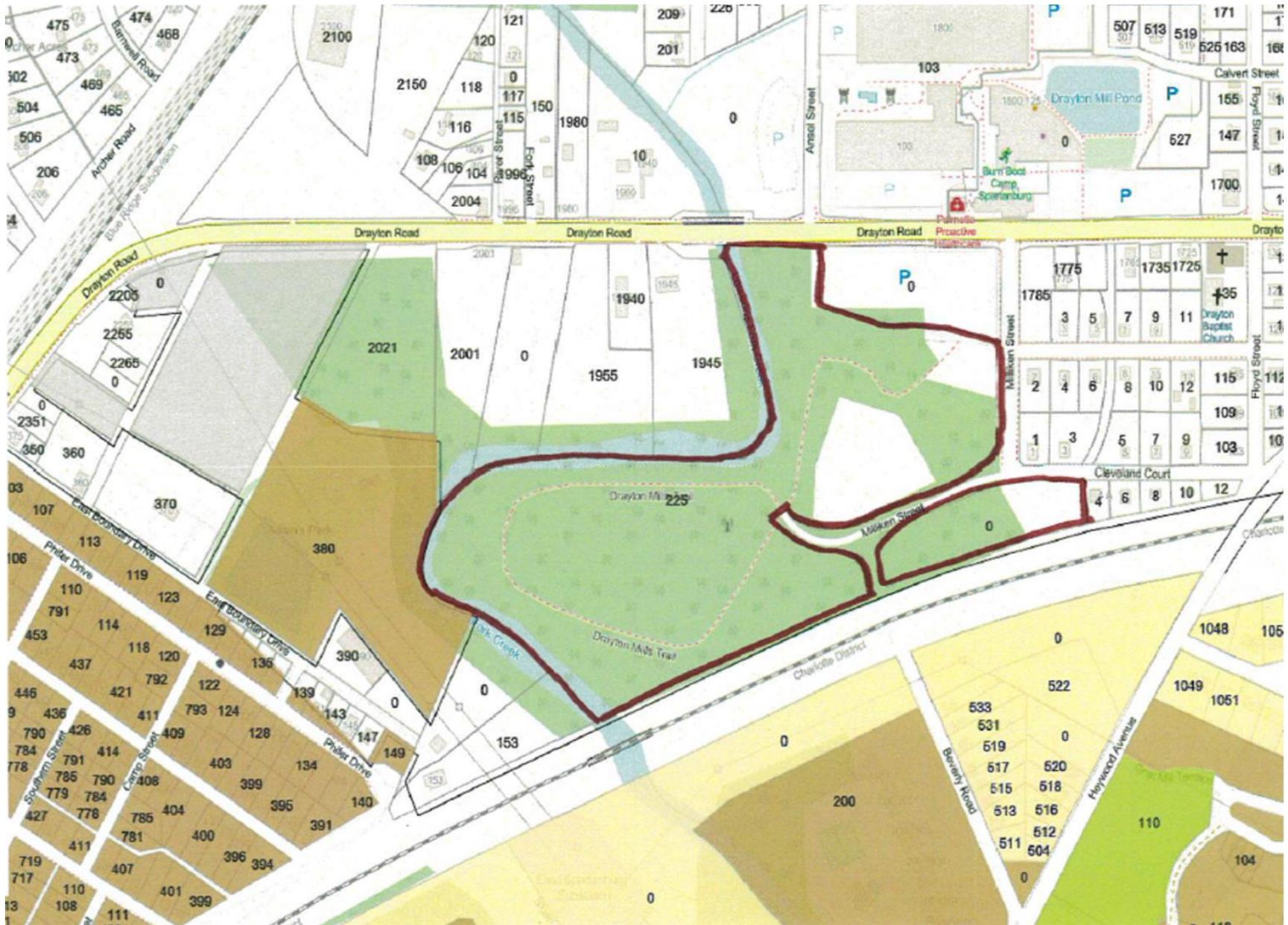
Connie M. Kellner, City Clerk

APPROVED AS TO FORM:

Robert P. Coler, City Attorney

___/___/___ (First Reading)

___/___/___ (Second Reading)



Project Location



Preliminary
Site Plan

Spartanburg City Planning Commission Meeting Minutes
Thursday, July 16, 2020
ZOOM Meeting Minutes

The City Planning Commission met via ZOOM on Thursday, July 16, 2020, at 5:30 P.M. The following City Planning Commissioners attended this meeting: Jared Wilson, Howard Kinard, Dr. Phillip Stone, and Reed Cunningham were present. Mike Epps was absent. Representing the Planning Department were Natalia Rosario, AICP, Planner III; Rachel Grothe, MCRP, Planner II; and Julie Roland, Administrative Assistant. Martin Livingston, Neighborhood Services Director was also present.

Roll Call

Mr. Wilson, the Chair, stated that notice of this meeting was posted and provided to the media 24 hours in advance as required by the Freedom of Information Act.

Mr. Wilson noted that four Planning Commissioners of the current five member Board were present, constituting a quorum; and he went over the rules and procedures for conducting a public hearing; and he had all of the Planning Commissioners introduce themselves.

Dr. Stone moved approval of the Agenda for tonight's meeting; and he was seconded by Mr. Cunningham. The motion was unanimously approved by a vote of 4 to 0.

Disposition of Minutes from the April 23, 2020 Meeting:

Dr. Stone moved approval as submitted of the April 23, 2020 Meeting Minutes; and he was seconded by Mr. Cunningham. The motion was unanimously approved by a vote of 4 to 0.

Old Business: None.

Zoning Classification/Annexation Request TMS#7-08-16-043.00 and 7-08-16-061.00; located at 225 Milliken Street & "0" Cleveland Court, currently un-zoned, and the requested zone is R-6, General Residential District upon annexation. Orange Capital Advisors, LLC, Applicant on behalf of Pacolet Milliken, LLC, Owner.

Ms. Grothe was sworn; and she submitted the meeting packets the Board Members had previously received via email, tonight's presentation and slides into evidence as Exhibit A. Ms. Grothe said tonight they would review the Zoning Classification/Annexation Request; and she showed a slide of the location map and said the project site is an approximately 27.3 acre site and is comprised of two parcels. The applicant has petitioned the city for annexation, and would like to designate the property as R6, which is general residential with the intent of developing the site with multifamily units. She showed an aerial slide of the properties and surrounding area. Ms. Grothe said historically, the site has been vacant save for a couple of cell towers and the Lower Drayton Trail. The trail is part of the Greater Dan Trail System that once completed will be a 32 mile trail system that will traverse neighborhoods throughout the community. The trail on this site will eventually extend under the Norfolk Southern Trestle toward the old Spartanburg High School and the Cottonwood Trail. More slides were then shown of the site's current condition that included a view from Milliken Street, facing south which was undeveloped. She showed a slide from another view, a little bit closer up. And another slide was shown from standing out in the middle of the street, closer to Drayton Road. And then here, the site can be seen on the left with Drayton Mills shown in the background. Ms. Grothe showed the proposed site plan the applicant had provided, which showed a potential multi-family development that was being considered for the site. In

order to develop the site with multifamily units, the applicant is seeking a zone designation of R6. Ms. Grothe said there were two sets of laws that were applicable to this project, the first being local laws and the second being state laws. She said the zoning ordinance stipulates that "all property to be annexed shall be zoned at the highest and most restrictive residential classification." The R15, which is single family residential, is the most restrictive classification, and because the property owner is requesting a less restrictive or a higher density classification, the matter has been referred to the Planning Commission to provide a recommendation to City Council on the requested zoning. Ms. Grothe said the Planning Commission was tasked with determining if the proposed R6 zone designation would be an appropriate land use for the site. The R6 designation is the densest residential designation in the ordinance, and allows for one dwelling unit for each 2,500 square feet of lot area.

Ms. Grothe said there were a number of factors to consider when contemplating a new zone designation to ensure that potential development was compatible with the surrounding area. In analyzing this proposal, a multifamily designation made sense for this location given the surrounding developments. It is located across the street from the Drayton Mills complex, a successful mixed use project. The site and surrounding area contained buffers, which would help to ensure any potential developments would be separated from nearby uses. Ms. Grothe explained in addition to location, traffic was another important consideration; and with growth, of course came an increase in vehicle trips. According to SCDOT, the section of Drayton Road nearest the project site sees an average of 23,100 trips per day. Preliminary traffic modeling indicated that higher density housing would create around four trips per day. With the increase in density, use of the existing Lower Drayton Trail would also increase. This trail would allow residents to walk, bike, or jog to other parts of the city, which would create connections between neighborhoods. The trail would not be exclusive to residents of the site and would be open for public use. Ms. Grothe said the final consideration was the number of housing units this potential designation would add. She said additional units would help alleviate some of the housing issues that the city was currently facing. Ms. Grothe concluded by saying the proposed zoning and subsequent multifamily developments were appropriate for the site. Should the Planning Commission choose to recommend this annexation and accompanying zone favorably to City Council, all plans for development would be subject to the site plan review process by City Staff. I am available to answer any questions that y'all may have, and I believe Danny Balon, the applicant with SeamonWhiteside is here as well.

Planning Commission Questions for Staff:

Mr. Cunningham asked would this development essentially eliminate the parking area that's across the street from Drayton Mills, or is it set back further.

Ms. Grothe said her understanding of it was those were two separate lots. The parking was located on another lot that she believed was also owned by Milliken as well. She said Mr. Balon could probably speak to that a little better, but she thought they would stay. She thought maybe in the future there might be some plans for development of that lot, but not at the present time.

Mr. Balon said that was correct, and the parking lots would not be part of this project. It actually will not end up being part of this annexation. Pacolet Milliken as of right now was going to retain that property for the time being.

Mr. Cunningham asked was that tract behind that property.

Mr. Balon said that was correct.

Dr. Stone asked the Chairman if he was looking at the map, it looked like the property was adjacent to City Property. There was a kind of a tan property that he guessed was at the back of the Beaumont Neighborhood, and then across the railroad tracks. He asked was that how they could do this, because they were adjacency to other City property.

Ms. Grothe said yes and she explained and showed the location map slide that referenced City Limits/and zoning of the surrounding properties and unzoned properties that were in the County; She pointed to 380, that was currently within city limits. And she showed another portion on the map on the other side of the railroad tracks, and said that was also within city limits...

Mr. Danny Balon, Seamon Whiteside, Spartanburg Office was sworn, and said he was representing the applicant, who was Orange Capital. He said Ms. Grothe did a very thorough job of explaining the request, and she had gone over most of the high points as it pertained to the actual planning piece of this. We've done a great regular coordination with the City so far in terms of trying to put this in a way that would work for everybody's best interests. But as of right now, I don't really have any more to say.

Planning Commission Questions for Applicant:

Mr. Wilson asked Mr. Balon was the intended design or plan to have this as a gated community at all.

Mr. Balon said as of right now, the plan was for it not to be gated.

Mr. Kinard asked was there any opposition from neighbors or other parties who had expressed or written in regarding any objections or concerns with the project.

Ms. Grothe said none that she was aware of. She said it looked like there were 11 attendees, one being with their hand up. She said she talked to three or four different people who just sort of wanted to know a little bit about it and what it was, or folks who wanted to know if this was going to affect their property, or if the City were annexing their property, that sort of thing. She had not heard any opposition.

Mr. Cunningham asked about the size of the units and approximate market value or sales price.

Ms. Grothe said she could not speak to that; and she did not know that the applicant was there yet in terms of their plans.

Mr. Wilson, the Chair referenced the engineered site plan rendering that was part of their meeting packet; and he explained it showed a total of 320 units. Of those, 128 were proposed single bedrooms; 158 were two bedrooms; and 34 were three bedrooms. He said since it would be a rental apartment complex, there would be no proposed sale price; and he asked Mr. Balon if he could speak to that figure.

Mr. Cunningham said that had answered his question.

Mr. Wilson opened the public hearing portion of the meeting for public questions or comments; and he explained anyone could address the Planning Commission by either using the raise hand function and the host would recognize them, or they could request a chat via the host.

Mr. Wilson asked whomever had their hand raised to state their name and address for the record.

[Editor's note: there was some trouble with the audio regarding the person trying to speak was not coming through].

A lady who identified herself as Sharon; asked what part of Milliken was going to be closed.

Mr. Wilson referenced a slide of the area; and he said based on what had been requested and submitted here this evening, this was the parcel and property, while it was owned by Pacolet Milliken, It's across the street from the Milliken building and Drayton development. There's nothing on the property, currently, that existed and was being closed.

Mr. Balon said she may be referring to Milliken Street. He explained right now, there was a gate down near the intersection of Milliken and Cleveland Court, which continued on into the property, which was technically still Milliken Street and past the gate. The applicant had petitioned to take that from the county, and that would become part of the property. But the rest of Milliken Street would stay open. There was nothing that would be closed.

The lady said o.k.

Dr. Stone asked the lady if she had a statement or any other comments she would like to make.

The lady said she did not.

Mr. Wilson asked were there any other hands raised or people who wished to chat or make any comments.

Dr. Stone said he did not see any more hands raised; and he said there were eleven property owners signed on to the Zoom Meeting.

Mr. Wilson said they would wait a few more seconds. Since no-one else indicated they wished to speak, Mr. Wilson closed the public portion of this evening's proceedings; and he said they would now move on to Board Deliberation.

Planning Commission Deliberation:

Mr. Wilson said he would hit the high points they typically considered; and he felt like what's being requested would annex in additional property to the City, it would add to the tax revenue income for the City, it would provide additional housing, which was certainly in need in the City. From the density standpoint, as staff and the traffic study pointed out, while this was the densest use, when you compared it to the R6, this would only create four additional trips per day versus 10 if it were to be annexed and zoned as single family dwellings. Mr. Wilson said from a traffic impact standpoint, this was the least impactful. He knew Mr. Cunningham always liked to know about the trees; and from the report they had it looked like every effort would be made to preserve the trees on site. Mr. Wilson thought it was a great thing they were committed to maintaining the public access to the trail system. And that it would be an amenity for not only the residents, but also the general public.

Dr. Stone agreed with the Chair; and he felt it would be a very good project since it would add to the taxable wealth of the City; added housing; and would extend the boundaries of the city, actually closer to the Drayton project that's already been developed, and that It looked like it would be of benefit to the City. He saw no reason why they should oppose this annexation or this particular zoning classification; and felt like the right zoning classification in his opinion.

Mr. Cunningham was in agreement; and thought it would be a nice addition.

Mr. Kinard felt everything had been addressed and had nothing else to add to the prior comments.

Dr. Stone moved to approve the request and recommend R6 as the zoning classification to City Council as presented by Staff; and he was seconded by Mr. Cunningham. The motion was unanimously approved by a vote of 4 to 0.

Mr. Wilson said for the record, the Planning Commission approved the requested zoning classification for the annexation as submitted, for Tax Map Parcel numbers 7-08-16-043.00 and 7-08-16-061.00 for the two properties located at 225 Milliken Street and 0 Cleveland Court that were currently un-zoned and they were recommending approval for the requested zone as R6. He said this favorable recommendation would be sent for approval to City Council; and he asked Staff what dates that would be heard.

Mrs. Roland, Administrative Assistant said it would go for a First Reading and another Public Hearing before City Council on August 10th; and if it received First Reading approval, it would then have a Second/Final Reading by City Council on August 24, 2020.

Mr. Wilson said once approved by City Council, all the plans for the development would be subject to the site plan review process by City Staff.

Ms. Grothe said that was correct.

Site and Landscape Plans approved since the April 23, 2020 Meeting. (For Information)

There were none.

City Council Updates (FYI) since the last Planning Commission Meeting on April 23, 2020.

Mrs. Roland went over the updates that were listed on the Agenda.

Staff Announcements:

- Mrs. Roland said the Mayor and City Council had recently re-appointed Board Member Stone to serve a second term on the Planning Commission; and there were two vacant Planning Commission positions on the Board; and she thought the Mayor and Council would look at those either the end of July or early August.
- Ms. Roland also included in the meeting packets an email to all the Commissioners regarding the on-line Continued Education Training available by the ACOG; and it was very inexpensive; which the City would pay for.

Dr. Stone asked if Ms. Rosario or anyone else had any updates on comprehensive planning process.

Mr. Livingston informed the Planning Commissioners they met with the consultants recently within the last two weeks to discuss a brief process and he said they had a think tank. They're working on putting

together a think tank of local residents and business owners that would guide and help the consultants make some decisions or test any ideas that were presented by the consultant before it's actually presented to the general public. And so they're working through that process. They were also trying to figure out how to have online engagement, as well as in-person engagement, for the planning process with COVID-19, that has made actual in person engagement difficult or challenging. So right now they were having conversations about how to do engagement.

- There being no other business, the meeting was adjourned at 6:09 P.M.

Jared Wilson, Chair



REQUEST FOR CITY COUNCIL ACTION

TO: Chris Story, Manager

FROM: Robert Coler, Attorney

SUBJECT: Ordinance to Enter into a Franchise Agreement for Small Cell Wireless facilities with Verizon Wireless

DATE: August 3, 2020

BACKGROUND: To date, city staff has been contacted by two providers of broadband wireless services, Verizon and AT&T, expressing an interest in installing SWFs in the City. As a result of those conversations, the City Attorney's Office prepared a proposed ordinance to regulate the implementation of SWFs in the City. First reading occurred on June 24, 2019. At second reading on July 8, 2019, Council, in response to public comment, tabled the matter and recommended city staff meet with concerned citizens. On January 27, 2020, second reading occurred and passed 5 to 2.

A public meeting occurred on Tuesday, October 22, 2019. At that meeting citizens, residents and non-residents of the City, expressed concerns about 1) the long-term health effects of radio frequency on the human body and the environment, 2) the threat to personal privacy, and 3) the potential negative visual impacts of SWFs, particularly with regard to historic trees. As a result of that meeting, the City's proposed process for the implementation of SWFs will allow city staff to factor into the permit decision the proposed locations for SWFs, will regulate radio frequency, will provide notice to owners and residents within a certain distance of proposed SWFs, will protect historic trees, and will minimize negative visual impacts of SWFs through concealment requirements.

ACTION REQUESTED: City Council to approve the Franchise Agreement between the City of Spartanburg and Verizon Wireless for small cell wireless facilities within the City limits.

BUDGET AND FINANCIAL DATA: City anticipates being reimbursed by the applicant for a SWF permit for any "make ready work" conducted by city staff to implement particular SWF's. City anticipates collecting nominal fees to process applications and nominal rates for the use of public rights of way.

AN ORDINANCE

TO ENTER INTO A FRANCHISE AGREEMENT WITH VERIZON
WIRELESS TO CONSTRUCT, INSTALL, MAINTAIN, REPAIR, OPERATE,
RELOCATE, REPLACE AND REMOVE CERTAIN SMALL WIRELESS
FACILITIES USING THE RIGHTS OF WAY IN THE CITY OF
SPARTANBURG, SOUTH CAROLINA

WHEREAS, Verizon Wireless, has requested consent of the City of Spartanburg to use the public rights of way (“ROW”) of the municipality to construct, maintain, and operate small wireless facilities for use in providing wireless telecommunications services within the municipality for its own business purposes; and

WHEREAS, it is the policy of the City to permit such entry into the corporate limits and such use of the public ROW for the provision of telecommunication services, subject to the duty and authority of the City to manage its ROW and to require fair and reasonable compensation for use thereof in accordance with applicable law; and

WHEREAS, the City Council desires to grant a non-exclusive franchise to Verizon Wireless for use of the ROW, as more fully set forth below; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA:

Section 1. A franchise or rights is hereby granted to Verizon Wireless (the “Franchisee”) to construct, install, modify, maintain, repair, operate, relocate, replace and remove certain small wireless facilities in, on over and across certain ROW, within the City of Spartanburg, subject at all times to the terms and conditions of this Ordinance and an agreement in substantially the same form as the franchise agreement attached hereto and made a part of this Ordinance as Attachment A (the “Agreement”).

Section 2. The City Manager is authorized to execute the Agreement on behalf of the City. The City Manager, in consultation with the City Attorney, may make or accept minor modifications to the wording and designations of the Agreement as may be necessary or appropriate, provided there is no compromise of the substantive purposes of this Council action. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by City Council, then the matter shall be presented to Council for further review before the final execution.

Section 3. That for the franchise or right granted by the Ordinance (the “Franchise”) to become effective, the Franchisee must submit an unconditional acceptance of the Franchise to the City Manager by executing the Agreement. If the Franchisee fails to so accept within 30 days of the effective date of this Ordinance, the City may revoke the Franchise.

Section 4. That the Mayor and City Council of the City of Spartanburg expressly reserve the right at all times to exercise, in the interest of the public, full municipal superintendence, regulation, and control over and in respect to all matters connected with the Franchise and not inconsistent with the terms of this Ordinance and applicable law.

Section 5. That this Ordinance takes effect upon second and final reading, and the Franchise will become effective on the date last signed.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

1st Reading ____ / ____ / ____

2nd Reading ____ / ____ / ____

**FRANCHISE AGREEMENT
FOR SMALL WIRELESS COMMUNICATIONS FACILITIES**

THIS FRANCHISE AGREEMENT FOR SMALL WIRELESS COMMUNICATIONS FACILITIES (this “**Agreement**”) is entered into by and between the **City of Spartanburg**, an incorporated city in the State of South Carolina (the “**City**” or “**Licensor**”) and Cellco Partnership d/b/a Verizon Wireless, a general partnership, One Verizon Way, Mail Stop 4AW100 Basking Ridge, NJ 07920 (the “**Licensee**”) and shall be effective as of the last date on which this Agreement is executed by both Parties (the “**Effective Date**”). Licensor and the Licensee shall be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

RECITALS

WHEREAS, Licensor is a body politic and has ownership and/or control over certain Public Rights-of-Ways (collectively, the “**PROW**” as more fully defined in 1.8 below) situated within the City of Spartanburg, State of South Carolina; and

WHEREAS, the Licensee owns and/or controls and/or maintains and/or operates a wireless communications network, (collectively, the “**Network**”) or is an infrastructure provider for an entity that is authorized to provide wireless services to the public (“**Carrier**”); and

WHEREAS, the Licensee wishes to locate, place, attach, install, operate, control, and maintain Small Wireless Facilities and related Wireless Facilities and Wireless Support Structures in the PROW for the purposes of operating the Network, as such terms are defined by the Small Cell Ordinance, as defined herein; and whereas, Licensor has consented to such use of the PROW by Licensee; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to enter this Agreement and to the following terms:

ARTICLE 1. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined herein shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely discretionary. Unless otherwise defined herein, the defined terms contained in this Agreement shall have the meaning as defined in the City of Spartanburg Ordinance No. , approved and adopted on (“Small Cell Ordinance”).

1.1. “**Applicable Laws**” means any statutes, constitutions, charters, ordinances,

resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative, certificates, orders, or other requirements of City, State or Federal governmental authority having the force and effect of law that determines the legal standing of a matter relating to the parties and/or this Agreement.

1.2. “**Day**”, except as otherwise provided herein, means calendar day unless the last day for either Party to take action under this Agreement or the applicable SSL (as defined in Section 1.9 below) ends on a weekend, holiday, or time when all but City emergency services are closed due to weather or some unforeseen situation.

1.3. “**FCC**” means the Federal Communications Commission.

1.4. “**Ground Equipment**” means that part of the WCF (as defined in Section 1.10 below) that is located on the surface of the Property.

1.5. “**Owner**” means a person with a legal or equitable interest in ownership of real or personal property.

1.6. “**Person**” means any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.

1.7. “**Public Property**” means any real property owned by Licensor other than Public Rights-of-Way.

1.8. “**Public Rights-of-Way**” or “**PROW**” means the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, public way, alley, court, sidewalk, boulevard, drive, bridge, tunnel, parkway, or easement now or hereafter held by the City, or dedicated for use by the City, or for use by the general public.

1.9. “**Wireless Site**” means a location within the PROW selected for Licensee’s deployment of a SWF.

ARTICLE 2. GRANT OF AUTHORITY

2.1 Grant of License. Subject to the terms and conditions set forth in this Agreement and all Applicable Laws, Licensor hereby grants to Licensee the non-exclusive right (the “**License**”) to use and occupy the PROW in those locations specifically identified and more particularly described in **Exhibit A Wireless Sites** (collectively, “Wireless Sites”) for the purpose of installing, operating, upgrading, removing, maintaining, repairing and replacing Small Wireless Facilities and related Wireless Facilities and Wireless Support Structures (collectively, “SWF”) in accordance with this Agreement and Applicable Laws. Notwithstanding the above, Licensee shall not perform any work within the PROW related to the Wireless Sites prior to obtaining all necessary permits and authorizations, pursuant to applicable state, federal and local laws.

2.2 Permitted Use. Licensee may use the PROW seven (7) days a week, twenty-four (24) hours a day, for the attachment, installation, maintenance, upgrade, removal, reattachment, reinstallation, relocation, replacement, use and operation of the SWF specifically identified and as more particularly described in Exhibit “A” and in compliance with all terms and obligations of this Agreement and the Applicable Laws, and for no other purpose.

2.3 Term.

2.3.1 Term. This Agreement shall have an “**Initial Term**” of one (1) year from the Effective Date. Thereafter, this Agreement shall automatically renew under the terms and conditions contained herein for one (1) additional period of one (1) year (each an “**Extension Term**”) unless either Party provides prior written notice to the other Party of an intent not to renew the Agreement at least thirty (30) days prior to the end of the Initial Term. The Initial Term and any Extension Term shall hereinafter be collectively referred to as the “**Term**”. Notwithstanding the above and upon thirty (30) days’ prior written notice from Licensor or Licensee after the effective date of any state-wide small cell legislation (“Small Cell Statute”), the Term of this Agreement shall terminate and all then-existing permitted Wireless Sites installed within the PROW shall thereafter be deemed approved and permitted subject to all terms, conditions, fees and rates of the Small Cell Statute and Applicable Laws.

2.3.2 No Hold-Over. Unless otherwise expressly agreed upon by the Parties, Licensee shall have no right to remain on an approved Wireless Site beyond the Term of this Agreement. In addition to any other remedies available to Licensor hereunder, Licensor shall be entitled to charge a monthly penalty in the amount of Five Hundred and No/100 Dollars (\$500.00) (which amount shall escalate by three percent (3%) annually from the Effective Date of this Agreement) for each month or partial month that Licensee remains on the approved Wireless Site beyond the applicable Term and Removal Period (as defined in Section 6.1 below).

2.4 Annual License Fees; Other Fees. During the Term of this Agreement, Licensee shall pay Licensor an annual fee (the “**License Fee**”) in the amount of Zero Dollars (\$0.00) for any SWF located within the PROW; and in the event this Agreement is terminated due to the passage of a Small Cell Statute, as provided in Section 2.3.1, Licensee shall pay any applicable annual fees to Licensee due commencing the year after such termination in accordance with then Applicable State Laws. Licensee shall pay Licensor all other applicable permit and PROW use fees and charges as a condition of its use of the PROW under this Agreement, including without limitation PROW use consent fees, pursuant to and in accordance with the exclusions set forth in S.C. Code Sec. 58-9-2230.

2.1 Taxes. Licensee shall be responsible for (i) the payment of all personal property taxes associated with each SWF and (ii) any increase in real property taxes for any approved Wireless Site caused by Licensee’s use of the Approved Wireless Site.

ARTICLE 3. SITE IDENTIFICATION PROCESS, PERMITS, CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 Site Review Requirements/Processing Fees. Prior to Licensee’s installation of a SWF in, on, or under any PROW, and prior to any Modification of any SWF that are not excluded under Section 3.5 below, Licensee shall complete and submit a SWF application in the form prescribed by Licensor, which application shall be submitted, reviewed and approved in accordance with the City of Spartanburg’s Code of Ordinances, Ordinance No. _____ (“Small Cell Ordinance”), approved and adopted on _____, 2020.

3.2 Permits. Upon approval of each SWF Application, Licensee shall be issued a “**Permit**” for each approved Wireless Site. Licensee shall not install any SWF without paying for (as may be applicable) and obtaining the requisite Permits, (which would be required for projects of similar size and scope, including construction, operation, maintenance, and/or removal each SWF) according to the City’s Small Cell Ordinance and other Applicable Laws.

3.3 Modifications. Notwithstanding anything in this Agreement to the contrary, Modifications shall be subject to required permitting restrictions under Applicable Laws, but shall not be subject to additional Licensor approval so long as: such modification to the SWF involves substitution of like-kind Wireless Facilities that provide the same functionality, and (i) it does not result in any material change to the approved external appearance or dimension, or increase the weight or loading of the vertical structure that would require modification to the vertical structure to accommodate the same; or (ii) it does not impact traffic flow; or (iii) it involves replacement of equipment that is the same or smaller in weight and dimensions as the approved SWF. All other Modifications shall require Licensor approval, following the process set forth in Section 3.1 above. As used herein, the term “**Modification**” shall mean any addition, removal, or alteration of any kind, to the SWF, including altering their camouflaging or appearance, except for routine maintenance or

replacement with like-kind equipment that has materially the same dimensions and appearance as the original SWF.

3.1 **Installations; Maintenance.** All work done in connection with the installation, operation, maintenance, repair, Modification, and/or replacement of the WCF shall be performed at Licensee's own cost and expense, in a good and workmanlike manner, and in accordance with all documentary submittals approved with the SWF Application, the requirements promulgated by the City Engineer as such may be amended from time to time, and in compliance with all Applicable Laws, ordinances, codes, rules and regulations. Licensee's work shall be subject to the regulation, control and direction of the City Engineer at all times.

3.2 **Inspections.** The City Engineer may perform visual inspections of any SWF as the City Engineer deems appropriate without notice. If the inspection requires physical contact with the SWF, the City Engineer shall provide written notice to the Licensee within five (5) business days of the planned inspection. Licensee shall have a representative present during such inspection. In the event of an emergency, in the sole discretion of the City Engineer, Licensor may take such action it deems necessary to remedy the emergency situation and the City Engineer shall notify Licensee as soon as practical. Licensee shall be required to reimburse Licensor for any expenses incurred in prosecuting Licensor's rights under this Section 3.7.

3.3 **Ownership.** Licensor agrees that no part of any SWF constructed, Modified, or erected or placed in or on the PROW by Licensee will become, or be considered by Licensor as being affixed to or a part of, the PROW. All portions of the WCF constructed, modified, erected, or placed by Licensee on the PROW will be and remain the personal property of Licensee and may be removed by Licensee at any time during the Term of this Agreement.

3.4 **Duty to Repair.** Whenever the installation, placement, attachment, repair, Modification, removal, operation, use, or relocation of a SWF, or any portion thereof is required or permitted under this Agreement, and such installation, placement, attachment, repair, Modification, removal, operation, use, or relocation causes any PROW and/or any contiguous real property to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Applicable Laws, Licensee, at its sole cost and expense, shall promptly repair and return such PROW and/or contiguous real property to a usable and safe condition within ten (10) days of such damaging/altering event. Licensee's obligations under this Section 3.9 shall include the restoration or replacement of any damaged trees, shrubs or other vegetation and such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Engineer. In addition, the City Engineer may require the Licensee to complete additional remedial measures necessary for public safety and the integrity of the PROW, in the City Engineer's sole discretion. If Licensee does not repair such PROW and/or real property or perform such work as described in this Section 3.9 within ten (10) days of the removal event, then Licensor shall have the option, upon fifteen (15) days' prior written notice to Licensee, or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and

to charge Licensee for the reasonable and actual costs incurred by Licensor, including attorney and/or consultant fees. Licensee shall remit payment for such amounts within thirty (30) days of its receipt of an invoice therefor.

ARTICLE 4. WIRELESS COMMUNICATION FACILITIES REQUIREMENTS

4.1 **Electrical Supply.** Licensee shall be solely responsible for obtaining any required electrical power service used or consumed by Licensee in connection with its SWF. In no event will Licensee secure its utilities by sub-metering from Licensor. Licensor shall not be liable to the Licensee for any stoppages or shortages of electrical power furnished to the SWF, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Licensee of the structure, or for any other cause beyond the control of Licensor. Licensee shall not be entitled to any abatement of the License Fee for any such stoppage or shortage of electrical power.

4.2 **Fiber Connection.** Licensee shall be solely responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its SWF.

4.3 **Generators.** Licensee shall not allow or allow to be installed, back-up generators or other electrical backup methods (including batteries), in a PROW. Exceptions to this requirement, including provision for additional ground space for back-up power will be made on a case by case basis in writing from the City Engineer, in its sole discretion.

4.4 **Tree Maintenance.** Licensee, its contractors, and agents shall obtain written permission from the City Engineer before trimming trees or other foliage interfering with Licensee’s use of a particular approved WCF however, Licensee shall trim any trees hanging over Licensee Poles when directed by the City Engineer. Licensor shall not be liable for any damages, injuries, or claims arising from Licensee’s actions under this Section 4.8.

4.5 **Signage.** Licensee shall post its name, location identifying information, and emergency telephone number in an area on the WCF that is visible to the public. Signage required under this Section 4.9 shall not exceed 4” x 6”, unless otherwise required by law (e.g. by the FCC or other entity with jurisdiction of such notifications) or the City Engineer. Except as required by Applicable Laws or by the Utility Pole owner, Licensee shall not post any additional signage or advertising on the WCF, Licensee Pole, or Utility Pole.

4.6 **Graffiti Abatement.** As soon as practical, but not later than fourteen (14) days from the date Licensee receives notice thereof, Licensee shall remove all graffiti on any of its WCF located in the PROM. The foregoing shall not relieve the Licensee from complying with any City graffiti or visual blight ordinance or regulation.

4.7 **Ownership.** As between Licensor and Licensee, Licensee shall at all times retain ownership of the SWF.

4.8 **No Macro Sites; City-Owned Public Property Excluded.** Nothing in this Agreement shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or similar high-powered cellular facilities in the PROW, nor

the installation of macro wireless towers or poles intended for macro facilities. In addition, nothing herein shall be interpreted or construed to allow Licensee to place a SWF on City-owned public property, which shall, instead, require the entry into a separate agreement between the Parties. As used herein, the term “**Macro Wireless Communications Service Facilities**” shall mean a Wireless Facility broadcasting and/or receiving at any authorized frequency that is greater in height and dimensions than Small Wireless Facilities and related Wireless Facilities defined by the Act.

ARTICLE 5. INTERFERENCE WITH OPERATIONS AND COLOCATIONS

5.1 **Duty to Minimize Physical Interference.** All Licensee activities in the PROW shall be prosecuted so as to minimize physical interference with the use of the PROW, in accordance with all Applicable Laws to provide for and protect public health, safety and convenience. In conjunction herewith, Licensee shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility in the PROW, including but not limited to sanitary sewers, water mains, storm water drains, gas mains, traffic signals and/or utility poles, City-owned street lights, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility, or Public Property.

5.2 **Signal Interference Prohibited.**

5.2.1 *Notice; Licensee Response.* In the event any SWF interferes with the City’s traffic signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, upon notice of the same from Licensor, Licensee will immediately power down the interfering equipment, except for intermittent testing to determine the cause of such interference, until the interference has been resolved.

5.2.2 *Removal; Relocation.* In the event interference with City facilities cannot be eliminated, Licensee shall remove or relocate any SWF that is the source of the interference to a suitable alternative location as set forth in Section 6.5.2 below.

5.3 **Emergencies.** In case of an emergency due to physical or signal interference, or any unforeseen events, Licensor will immediately act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. In any such event, Licensor will use the “**Emergency Contacts**” set forth on contact list attached hereto and incorporated herein by this reference as **Exhibit B – Emergency Contact List** and will take every reasonable effort to coordinate its emergency response with Licensee. Either Party may update and/or amend this contact list by providing written notice to the other in compliance with Section 10.2 - Notice hereunder; provided, however, Licensee shall maintain the emergency contact information current at all times with the Licensor’s City Engineer.

ARTICLE 6. REMOVAL, ABANDONMENT, AND RELOCATION

6.1 **Removal at the Expiration or Early Termination.** Upon the expiration or non-renewal of the Agreement, Licensee shall be required to remove the applicable SWF installed within the applicable PROW within ninety (90) days of the expiration of the then-current term (the “**Removal Period**”), except in the event of the adoption of a Small Cell Statute described in Section

2.3.1, approved SWFs shall remain in the PROW as permitted SWFs. In no event may Licensee abandon in place any of its SWF installed in or on the PROW, without the prior written consent of Licensor, in Licensor's sole discretion.

6.2 **Removal after Abandonment of Obsolete Wireless Communication Facilities.** In the event Licensee Abandons its use of any SWF, Licensor may terminate the applicable Wireless Site by providing written notice of an intent to terminate the Wireless Site. Unless Licensor sends notice that removal must be completed immediately to ensure public health, safety, and welfare, Licensee shall, at its sole cost and expense, remove the Abandoned WCF within ninety (90) days of receipt of written notice from Licensor. As used herein, the term "***Abandon***" and its derivatives shall mean the SWF, or any portion thereof, has been left by Licensee in an unused or non-functioning condition for more than 120 consecutive days.

6.3 **Removal or Relocation by Licensee.** If the Licensee removes or relocates a SWF at its own discretion from an approved Wireless Site, it shall notify the City Engineer, in writing, not less than ten (10) business days prior to removal or relocation. Licensee shall obtain all Permits required for relocation or removal of its SWF prior to said relocation or removal. Licensor shall not issue any refunds for any amounts paid by Licensee for SWF that have been removed.

6.4 **Removal or Relocation Required by City Project.**

6.4.1 *Removal/Relocation.* Licensee shall, at its sole cost and expense and at the City Engineer's direction, remove or relocate its WCF whenever the City Engineer reasonably determines that such relocation or removal is required for the construction, completion, repair, widening, relocation, maintenance of, or use in connection with, any City construction or maintenance project related to a PROW.

6.4.2 *Protocol.* Except during an emergency, Licensor shall provide reasonable notice to Licensee, of not less than ninety (90) days, and allow Licensee the opportunity to perform any relocation, removal, replacement, modification or disconnection of the SWF located in the PROW. Following notice by the Licensor, Licensee shall relocate, remove, replace, modify or disconnect any of its SWF within any PROW. If Licensor requires Licensee to relocate its SWF located within the PROW, Licensor shall make a reasonable effort to provide Licensee with an alternate location within the PROW. If Licensee fails to remove or relocate the SWF, or portion thereof as requested by the City Engineer, within sixty (60) days of Licensee's receipt of the request, then Licensor shall be entitled to remove the SWF, or portion thereof, at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall reimburse Licensor for all reasonable expenses incurred, including consultant and attorney's fees, in said removal within thirty (30) days following issuance of invoice for the same. In such event, Licensor shall not be liable for any damage to any portion of the SWF or Network other than damage caused by Licensor's negligence or willful misconduct.

6.5 **Restoration.** In all the aforementioned cases, Licensee's restoration obligations under Section 4.11, above, shall apply.

ARTICLE 7. INDEMNITY, INSURANCE, WAIVER OF CLAIMS, LIABILITY

7.1 Indemnity.

7.1.1 Licensee shall indemnify, defend and hold Licensor, its employees, officers, elected officials, agents and contractors (the “**Indemnified Parties**”) harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the SWF, or Licensee’s breach of any provision of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of Licensor or an Indemnified Party.

7.1.2 Licensor shall give Licensee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with any SWF. In the event such claim arises, Licensor or any other Indemnified Party shall tender the defense thereof to Licensee and Licensee shall consult and cooperate with Licensor Attorney’s Office while conducting its defense. Licensor shall cooperate fully therein with Licensee’s legal representative and shall be consulted on any settlements of claims prior the execution of any settlement agreements.

7.2 Insurance.

7.2.1 Licensee shall, and shall require its subcontractors to obtain and maintain substantially the same coverage as required of Licensee, carry during the term of any SSL, at their own cost and expense, the following insurance for each approved Wireless Site: (i) commercial general liability insurance with a limit of liability of \$5,000,000 per occurrence for bodily injury (including death) and property damage including loss of use thereof and \$5,000,000 general aggregate including products and completed operations; (ii) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of \$1,000,000; (iii) Workers’ Compensation Insurance as required by law and employers’ liability insurance with limits of \$500,000 bodily injury each accident, \$500,000 bodily injury disease-each employee, and \$500,000 bodily injury disease policy limit. Notwithstanding the foregoing, upon prior written notice to, review and acceptance by Licensee, Licensor may increase the aforementioned limits of insurance. Licensee’s compliance with the insurance requirements set forth in this Section 7.2.1 shall in no way limit Licensee’s liability under this Agreement or any applicable SSL.

7.2.2 All insurance coverages identified in Section 7.2.1, except the workers’ compensation and employer’s liability insurance, shall include Licensor as an additional insured as their interest may appear under this Agreement, and shall indemnify and defend

Licensor against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement, except as limited by Section 7.1.1 above. The workers compensation insurance coverage shall contain a waiver of subrogation for Licensor's benefit. Further, the insurance coverages identified in Section 7.2.1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by Licensor.

7.2.3 Upon execution of this Agreement and upon any subsequent request of Licensor, Licensee shall provide Licensor with a Certificate of Insurance and blanket additional insured endorsements to provide evidence of the coverage required by Section 7.2. Upon receipt of notice from its insurer(s) Licensee shall use commercially reasonable efforts to provide thirty (30) days advance notice to Licensor in the event of cancellation of any coverage.

7.2.4 All of the insurance policies Licensee and its subcontractors are required to maintain in this Section 7.2 shall be obtained from insurance carriers having an A.M Best rating of at least A-:VII.

7.3 **Waiver of Claims.** In consideration for the rights granted under this Agreement, Licensee waives all claims, demands, causes of action, and rights it may assert against Licensor and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Wireless Communications Facilities, or any loss or degradation of service resulting from the installation, operation, maintenance or malfunction of Wireless Communications Facilities regardless of cause, except with respect to claims, demands, causes of action and rights Licensee may assert against Licensor and its officials, personnel, agents, and representatives in connection with their negligence and willful misconduct.

7.4 **No Liability.** Licensor shall not be liable to Licensee for any damage caused by other Licensees with SWF sharing the same Wireless Support Structure. Licensor shall not be liable to Licensee by reason of inconvenience, annoyance or injury to the SWF, or activities conducted by Licensee therefrom, arising from the necessity of repairing any portion of the PROW, or from the making of any necessary alteration or improvements, in, or to, any portion of the PROW, or in, or to, Licensor's fixtures, appurtenances or equipment. Licensor will use reasonable efforts not to cause material interference to Licensee's operation of its SWF.

7.5 **Licensee Responsible.** Licensee shall be responsible and liable for the acts and omissions of Licensee's employees, temporary employees, contractors, sub-contractors, officers, directors, consultants, agents, affiliates, subsidiaries, sub-Licensees, and Carriers in connection with the performance of this Agreement.

ARTICLE 8. DEFAULT AND REMEDIES

8.1 **Default.** The failure of Licensor or Licensee to perform or observe any of the terms, covenants, conditions or obligations set forth in this Agreement or any SSL shall constitute a “**Default**”. Unless otherwise provided herein, in the event of a default, the non-defaulting Party shall provide written notice to the defaulting Party of such Default and the defaulting Party shall cure such default, in the case of a non-monetary Default, within thirty (30) consecutive days after receipt of such notice and in the case of a monetary default, within ten (10) consecutive days. Notwithstanding the foregoing, in the event the Defaulting Party commences to cure such Default within thirty (30) consecutive days of the defaulting Party’s actual receipt of notice thereof and the nature of the Default reasonably requires additional time beyond the thirty (30) day cure period described herein to effect such cure, then the defaulting Party shall have such additional time as is reasonably necessary (beyond the 30 consecutive day cure period) to effect the cure. Provided, however, the defaulting Party must diligently pursue the cure to completion, and such additional time shall not exceed sixty (60) consecutive days without the non-defaulting Party’s prior consent, in its sole discretion. In the event the defaulting Party fails to cure such Default within the cure period, then the non-defaulting Party shall be entitled to exercise any rights permitted herein and/or by applicable law.

8.2 **Remedies.** In the event that either Party is in default beyond the applicable period set forth above, the non-defaulting Party may, at its option (i) terminate this Agreement and be relieved from all further obligations under this Agreement, except for those items that, by their nature or specific reference, survive the termination; (ii) perform the obligation(s) of the defaulting Party, in which case any expenditures actually and reasonably incurred by the non-defaulting Party in so doing shall be deemed paid for the account of the defaulting Party and the defaulting Party agrees to reimburse the non-defaulting Party for said expenditures, including attorney’s and consultant fees, upon written demand; and/or (iii) pursue all available remedies in law or equity. In the event that any sums expended by Licensor pursuant to this Agreement are not reimbursed by Licensee within thirty (30) calendar days of written demand as provided hereunder, Licensor shall have the right to collect such amounts from Licensee together with interest on such amounts at the lesser of the (i) the rate provided by statute in the State of South Carolina or (ii) 2% per annum, compounded monthly (calculated from the date such amounts are expended until the defaulting Party pays such sums due to the non-defaulting Party). Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive but are cumulative of all rights and remedies which exist now or in the future.

8.3 **No Waiver.** The failure of either Party on one or more occasions to exercise a right or to require compliance or performance under this Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such Party, unless such right or such compliance or performance has been specifically waived in writing.

ARTICLE 9. ASSIGNMENT, SUBLEASING, PLEDGE OF ASSETS

9.1 **Assignment.** This Agreement may be sold, assigned or transferred by Licensee without any approval or consent of Licensor to Licensee's parent, wholly-owned subsidiary, or to any entity which acquires all or substantially all of Licensee's assets by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the Licensor's prior written consent. No change of stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder. The consent or approval of Licensor to transfer by Licensee does not constitute a waiver or release of the rights of Licensor in or to its PROW and any transfer shall, by its own terms, be expressly subject to the terms and conditions of this Agreement. Any sale, transfer or assignment of this Agreement will bind the successor in interest to the terms of this Agreement.

9.2 **Subleasing.** Licensee shall have no right to sublet any approved Wireless Site or WCF hereunder without Licensor's prior written consent. Licensee shall require, in its agreements with any sub-licensees or Carriers that its sub-licensees and/or Carriers agree to be subject to all terms, conditions and obligations of this Agreement.

9.3 **Pledge of Assets.** Notwithstanding anything contained in this Agreement, Licensee may pledge the assets of the Network and SWF to obtain financing provided that such pledge of assets shall not impair Licensee or mitigate Licensee's responsibility and capability to meet all its obligations under the provisions of this Agreement.

ARTICLE 10. MISCELLANEOUS

10.1 **Infrastructure Providers.** The Parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain SWF deployed by Licensee in the PROW pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("*Carriers*") and installed and maintained by Licensee pursuant to agreements between such Carriers and Licensee. Unless otherwise agreed, (i) such SWF shall be treated as Licensee's SWF for all purposes under this Agreement, (ii) Licensee shall be responsible and liable for all performance obligations under the Agreement with respect to such SWF, and (iii) Licensor's sole point of contact regarding such SWF shall be Licensee. In addition, Licensee shall indemnify Licensor and hold it harmless from any claims from Carriers related to any action taken by Licensor with respect to the facilities in accordance with Applicable Law.

10.2 **Notice.** All notices to either Party must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS, or any other nationally recognized delivery service. The notice must be addressed to the Party to whom the notice is given at its addresses set forth below or other address the receiving Party has previously designated by proper notice to the sending Party at least thirty (30) days prior to the effective date of the new notice address.

<p>If to Licensor:</p> <p>City of Spartanburg</p>	<p>If to Licensee:</p> <p>180 Washington Valley Road Bedminster, NJ 07921 Attn: Network Real Estate LL Hotline: 866-862-4404. Fax Number: 908-306-6920</p>
<p>With a Copy to:</p>	<p>With a Copy to:</p>

Notice shall be deemed effective upon receipt in the case of hand-delivery, three (3) days after delivery to the U.S. Postal Service, the next business day if delivery is effectuated by overnight delivery service, or on the date of attempted delivery in the case of failure to accept delivery of the same.

10.3 **Representations and Warranties.** Each party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations hereunder and that such obligations shall be binding upon it without the requirement of the approval or consent of any other person or entity in connection herewith.

10.4 **Entire Agreement.** This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

10.5 **Ambiguities.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

10.6 **Amendment.** This Agreement may not be amended except pursuant to a written instrument signed by both Parties.

10.7 **Laws Governing/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in Spartanburg County, South Carolina.

10.8 **Severability.** If any Applicable Law renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and effect.

10.9 **Force Majeure.** Licensee shall not be deemed to be in default, non-compliance, or in violation of any provision of this Agreement where performance was hindered or rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond Licensee's control, provided Licensee took steps to mitigate damages and accepts responsibility to cure the default, non-compliance or violation in a manner and within a time period reasonably acceptable to Licensor.

10.10 **Enforcement.** The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Licensee shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Licensee's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

10.11 **No Interest in Public Property or PROW.** Nothing under this Agreement or any SSL shall be interpreted to create or vest in Licensee any easement or other ownership or property interest to any public Property or PROW or constitute an assignment of any Licensor rights to public Property or PROW. Licensee shall, at all times, be and remain a licensee only.

10.12 **Other PROW Users.** The Parties understand and agree that Licensor permits other persons and entities to install and maintain utility and telecommunications facilities in the PROW. In permitting such work to be done by others, Licensor shall not be liable to Licensee for any damage caused by those persons or entities.

10.13 **No Third-Party Beneficiaries.** Except as provided in Section 10.1 above, this Agreement benefits only the parties hereto and their successors and permitted assigns; there are no third-party beneficiaries.

10.14 **Survival.** The Parties shall remain obligated to each other under all provisions of this Agreement that expressly or by their nature extend beyond the expiration or other termination of this Agreement, including, but not limited to, the provisions regarding remedies, removal, restoration, the License Fee, and indemnification. All representations and warranties contained in this Agreement shall survive the term of the Agreement.

10.15 **Counterparts; Electronic Disposition.** This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. In the event that this Agreement is not executed by each Party within fourteen (14) business days of delivery of the first signature by one Party to the other, (i) the negotiated terms of this Agreement shall automatically become null and void and (ii) neither Party shall be obligated to the other to honor the same.

10.16 **Exhibits:**

Exhibit A – Wireless Sites

Exhibit B – Emergency Contacts (to be provided by Verizon)

IN WITNESS WHEREOF, Licensor has caused the execution of this Master License Agreement for Wireless Communications Facilities to be executed as of the date listed below.

LICENSOR:

CITY OF SPARTANBURG

By: _____

Print Name: _____

It's: _____

Date: _____

[Signatures Continue on Following Page.]

IN WITNESS WHEREOF, Licensee has caused the execution of this Master License Agreement for Wireless Communications Facilities to be executed as of the date listed below.

LICENSEE:

Cellco Partnership d/b/a Verizon Wireless, a
general partnership

By: _____

Print Name: _____

It's: _____

Date: _____

[Exhibits on Following Pages.]

Exhibit A
Wireless Sites

[See Attached.]

EXHIBIT A

Locations of Small Wireless Facilities

1. 208 Northview Street-Wooden Pole
2. 100 Liberty Street-Light Pole
3. 177 W. Broad Street-Light Pole
4. 215 South 250-Light Pole
5. 122 Chestnut Street-Power Pole
6. 775 Spartan Blvd-New Pole

Exhibit B

Emergency Contacts

[To be provided by Verizon]



REQUEST FOR CITY COUNCIL ACTION

TO: Chris Story, City Manager
FROM: Robert Coler, City Attorney
SUBJECT: Purchase of Property at 457 Bethlehem Drive and 321 Caulder Avenue
DATE: August 4, 2020

BACKGROUND:

Property located at 457 Bethlehem Drive (Block Map Sheet 7-16-01-388.00) and 321 Caulder Avenue (Block Map Sheet 7-16-07-113.00) is owned by Redrock Capital, LLC. Homes that were located on the property were condemned and demolished. The owner would like to sell the property to the City of Spartanburg. Both properties are located within the City limits.

ACTION REQUESTED:

Council to approve the purchase of both properties.

BUDGET & FINANCIAL DATA:

\$5606.01 for both properties. Per the Spartanburg County assessors page, the market value for 457 Bethlehem Drive is \$20,000.00 and the market value for 321 Caulder Avenue is \$45,500.00

A RESOLUTION

APPROVING THE PURCHASE OF 457 BETHLEHEM DRIVE
(BLOCK MAP SHEET 7-16-01-388.00) AND 321 CAULDER AVENUE (BLOCK
MAP 7-16-07-113.00)

WHEREAS, the City of Spartanburg (the "City") in an effort to stabilize its neighborhoods has from time-to-time purchased or accepted donation of real property; and

WHEREAS, the City has determined that it is in the public interest to purchase of 457 Bethlehem Drive, Block Map Sheet 7-16-01-388.00 and 321 Caulder Avenue, Block Map Sheet 7-16-07-113.00.

NOW, THEREFORE,

BE IT RESOLVED By the Mayor and Members of City Council of the City of Spartanburg, South Carolina, in Council assembled:

SECTION 1: Purchase of the property located at 457 Bethlehem Drive from Redrock Capital, LLC is hereby authorized;

SECTION 2: Purchase of the property located at 321 Caulder Avenue from Redrock Capital, LLC is hereby authorized;

SECTION 3: This Resolution shall become effective immediately upon its enactment.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____,
2020.

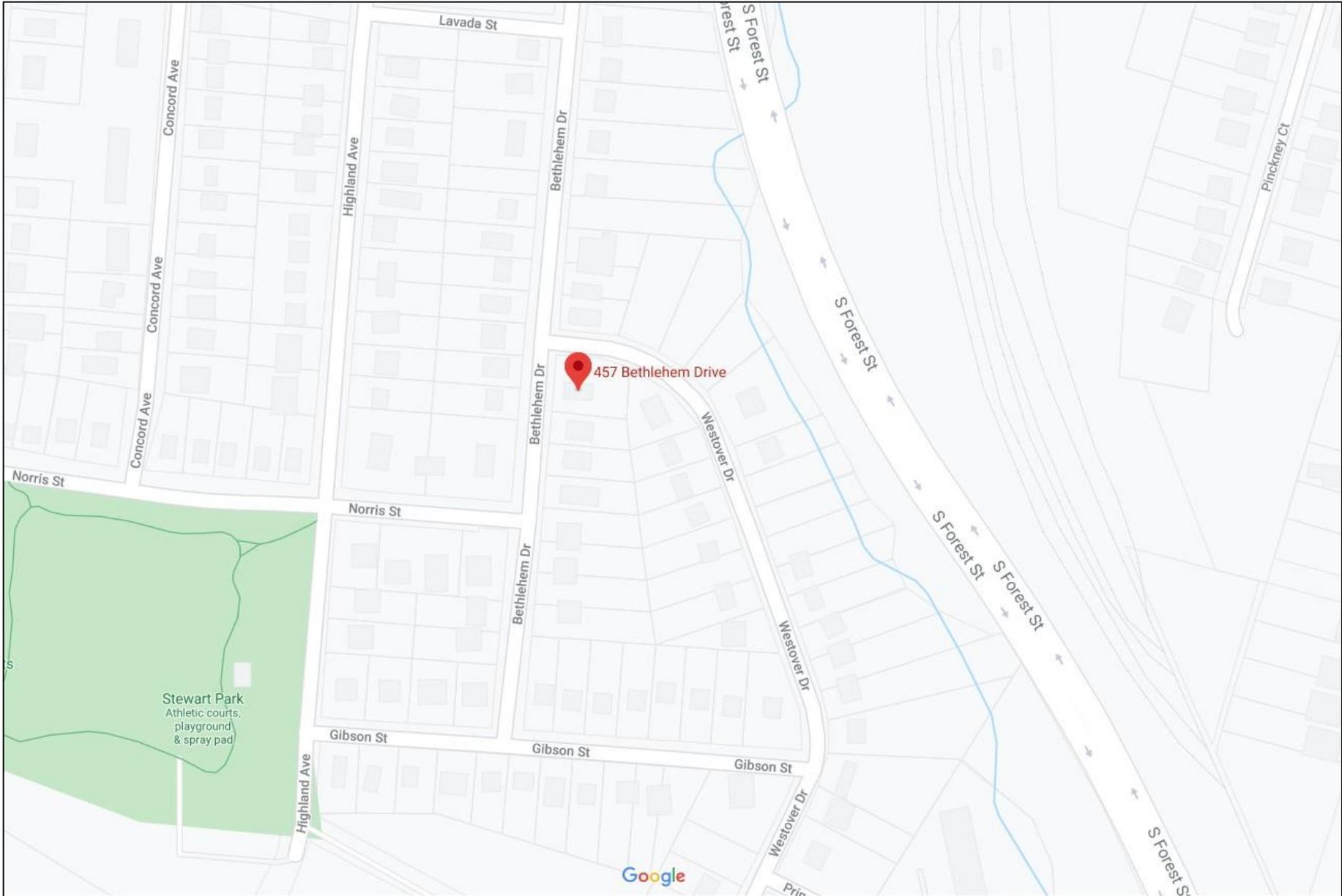
MAYOR

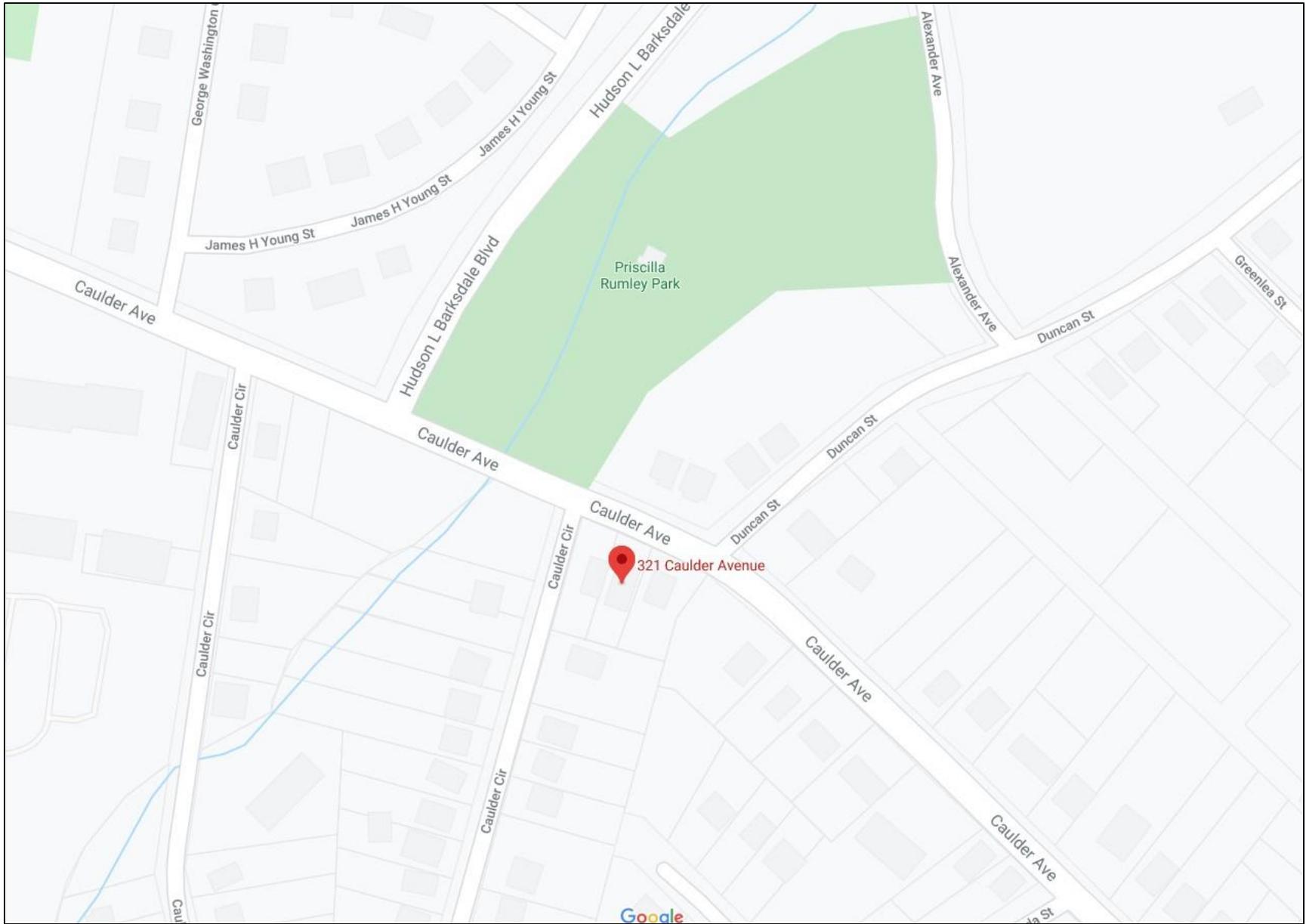
ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY





Priscilla Rumley Park

321 Caulder Avenue

Google