REGULAR MEETING OF THE TOWN BOARD OF COMMISSIONERS OF JUNE 15, 2011

Town Board Present: Mayor David Wilkes, Vice Mayor John Dotson, Commissioner Larry Rogers, Commissioner Gary Drake and Commissioner Amy Patterson. Commissioner Dennis DeWolf was not in attendance.

Also Present: Town Manager Jim Fatland, Police Chief Bill Harrell, Interim Town Planner Mark Maxwell, Recreation Director Selwyn Chalker, Town Engineer Lamar Nix, Accounting Supervisor Chuck Young and Recording Secretary Jane Capman.

1. **Call to order**

Mayor David Wilkes called the meeting to order at 7:02 p.m.

2. **Public Comments**

Mayor Wilkes advised that the proposed Recycling Center matter would be added as a separate Agenda item and would now be Agenda Item 7.

There we no public comments.

3. **Approve agenda**

The matter of the proposed Recycling Center on Forman Road is added as Agenda Item 7.

The United Methodist Church Alley Configuration matter (Agenda Item 15) has been pulled and will be presented to the Town Board at its regular meeting on July 6, 2011.

Commissioner Amy Patterson inquired as to re-appointments to other Board as Agenda Item 16 (Appointment of Jimmy Tate to Zoning Board) was only dealing with the Zoning Board. Interim Town Planner Mark Maxwell advised that the Deputy Clerk Rebecca Shuler would furnish a list to all Board members that are coming up for re-appointment. Commissioner Patterson stated that she did not want this matter delayed.

Town Manager Jim Fatland advised that the discussion of Ordinance Revision and/or Policy regarding the Appearance Commission will be presented to the Town Board at its regular meeting on July 6, 2011.

As there were no further changes the Agenda, Commissioner Gary Drake moved to approve the Agenda, as amended, which was seconded by Commissioner Larry Rogers and the Agenda was unanimously approved.

4. **Approve Minutes of May 18, 2011 (4 PM), May 25 (1:30 PM) and June 1, 2011 (7 pm)**

Approve Minutes of May 18, 2011 (4 PM)

As there were no changes to the Minutes of May 18, 2011 (4 PM), Commissioner Gary Drake moved to approve the Minutes of May 18, 2011 (4 PM), which was seconded by Commissioner Amy Patterson and the vote was unanimous.

Approve Minutes of May 25, 2011 (1:30 PM)

As there were no changes to the Minutes of May 25, 2011 (1:30 PM), Commissioner Amy Patterson moved to approve the Minutes of May 25, 2011 (1:30 pm), which was seconded by Commissioner Gary Drake and the vote was unanimous.

Approve Minutes of June 1, 2011 (7 PM)

It was noted of a spelling error in the Zoning Board of Adjustment Minutes of May 11, 2011 (misspelling of the last name of new member Jack Peay). The Town Board was advised that those Minutes were corrected, re-submitted and confirmed by Mr. Maxwell.

As there were no changes to the Minutes of June 1, 2011 (7 PM), Commissioner Gary Drake moved to approve the Minutes of June 1, 2011 (7 PM), which was seconded by Commissioner Amy Patterson and the vote was unanimous.

5. **Reports**

A. **Mayor**

There was no Mayoral report.

B. **Commissioners and Committee Reports**

There were no Commissioner or Committee reports.

C. **Town Manager**

Town Manager Jim Fatland advised that the Scholarship Fund Golf Classic would take place on Monday, June 20, 2011 at the Wildcat Cliffs Country Club.

As to the Planning Director position, Town Manager Fatland advised that interviews had been conducted, more applications have come in and he will prepare a report as to recommendations to the Town Board for the July 6, 2011 regular meeting. He reported that the close date on applications would be June 30, 2011.

6. **Consent Agenda**

A. Public Services Department
B. Police Department
C. Parks & Recreation Department
D. Planning & Zoning Department
E. Treasurer's Report for Month Ended May 31, 2011
F. Monthly Calendar

G. Grant Status Report

As there were no changes the Consent Agenda, Vice Mayor John Dotson moved to approve the Consent Agenda, as presented, which was seconded by Commissioner Gary Drake and the Consent Agenda was unanimously approved.

7. **Proposed Recycling Center on Forman Road**

This matter has been added to the Agenda to be discussed during the public hearing.

8. **Public Hearing on Proposed FY12 Budget**

Mayor Wilkes opened the Public Hearing.

Town Manger Fatland reported that the Town Board held two (2) budget work sessions on May 25, 2011 and June 8, 2011 and recommended changes have been incorporated into the proposed FY12 budget.

A petition in opposition to the recycling center was presented to the Town. The proposed recycling center at the Recreation Park has been deleted from the budget with a savings of $93,000.00. The General Fund Contingency has increased by $93,000.00 and the transfer to the Sanitation Fund is decreased $93,000.00. The Sanitation Fund General Fund was reduced by $93,000.00. Members of the public present stated that there should be a more appropriate location for the recycling center. The Town Board was advised that more signatures were been obtained in opposition of the recycling center.

Other expenses were reduced by $20,000.00 and Capital Improvements was reduced by $73,000.00.

The MIS/GIS Department Budget was reduced by $5,500.00 since the decision was made not to accept credit cards for utility payments.

Town Manager Fatland recognized the North Carolina Rural Center Grant for the Sewer Master Plan and advised that the Sewer Fund transfer was reduced by $33,305 to reflect the NC Rural Center Grant. The Capital Projects Fund was reduced by the NC Rural Center Grant as well as the Fund Balance appropriated by $33,305.

Town Manager Fatland advised the following as to the FY12 Budget Summary:

- No General Fund Tax increase – the tax rate remains at $.135 per $100.00 in assessed valuation;
- No Fire Tax increase – the tax rate remains at $.009 per $100.00 in assessed valuation;
- No increase in residential and commercial garbage rates, however, it includes a subsidy from the General Fund;
- There will be an increase in the monthly minimum water charge by $4.00 per month and $3.20 per month for sewer;
- This is the third year of a three year plan to reduce Electric Fund subsidies for Water & Sewer Fund Operations;

- Increases to electric rates over the next three years to address the Duke Energy Wholesale Increased costs. This year the monthly minimum will be increased by $10.00 and rate increase of 4.3%;
- No salary increases for Town Employees;
- Capital Projects included in the budget are as follows:
    - Streetscape improvements, including wayfinding and sidewalks;
    - Police renovation project;
    - Radio read meters for the water system;
    - Design costs for Lake Sequoyah intake, water treatment plant on site generation, water plant filter rehab and Lake Sequoyah Dam repair;
    - Scada System for Ravenel and Satulah;
    - Sludge Removal System at water plant to sewer plant;
        - Monitoring program for Pine Street Stormwater;
- Debit Payments (Principal & Interest)
    - ARRA Grant/Loan for Mirror Lake Sewer and Pine Street Stormwater;
    - First payment on 10 year loan for police renovation;
    - Third and final payment on ladder truck for fire department.

Alan Marsh inquired as to sidewalks on Sixth Street and Chestnut (between Fifth and Sixth Streets). Town Manager Fatland advised that funds were allocated in the Streetscape improvements, but that no decision has been made.

As there was no further discussion, Commissioner Gary Drake moved to close the public hearing, which was seconded by Vice Mayor John Dotson and the vote was unanimous.

9. **Consider Approval of Budget Ordinances**

A. FY11 Budget Ordinance Amendment

Town Manager Jim Fatland presented the proposed budget increases needed to completed the fiscal year. Staff presented a request to increase General Fund Expenditures by $140,000. After discussion it was agreed to reduce the request by $25,000 to $115,000. The increase would be for Administration Department $70,000, Street Department $35,000 and Planning Department $10,000. In addition it was agreed to increase the Sanitation Department Budget by $20,000 with a budgetary transfer from the General Fund. Also, staff noted it was not necessary to increase the budget for appropriating fund balance for Bowery Road. The original budget had already accounted Bowery Road.

Commissioner Gary Drake moved to approve the FY11 Budget Ordinance Amendment, subject to staff furnishing the FY11 Budget Ordinance Amendment in the ordinance format by June 20, 2011 to the Town Board for individual review and approval, which was seconded by Commissioner Amy Patterson and the FY11 Budget Ordinance Amendment was unanimously approved.

B. **FY12 Budget Ordinance**

As there was no discussion amongst the Board, Commissioner Gary Drake moved to approve the FY12 Budget Ordinance, which was seconded by Commissioner May Patterson and the FY12 Budget Ordinance was unanimously approved.

C. **Amend Fee Schedule for Electronic Gaming Operations**

The Town of Highlands amended its Electronic Gaming Ordinance on May 4, 2011. The Finance Committee met and reviewed gaming fees from several different towns across North Carolina and have recommended fees of $3,000.00 per establishment in additional to a $500.00 fee per machine to be adopted in Highlands.

It is recommended that the Town board approve the fee schedule to add fees of $3,000.00 per establishment and $500.00 per machine to the privilege license section.

The Town Board inquired if the fees were a onetime fee or an annual fee and was advised that it would be on an annual basis. All fees collected would be placed in a money market account pending the State's determination as to electronic gaming.

As there was no further discussion, Commissioner Gary Drake moved to approve the amendment to the fee schedule for Electronic Gaming Operations as an annual fee, which was seconded by Commissioner Larry Rogers and was unanimously approved.

10. **Consider Approval of Noise Ordinance**

The following revised draft of the Noise Ordinance was presented to the Town Board for review and approval:

Pursuant to an affirmative vote on the motion of and by Commissioner _____, and a vote of __ to __by the Board of Commissioners of the Town of Highlands, at its regular meeting on the ____ day of _____, 2011, and (applicable where there were less than 4 affirmative votes on said date) the subject matter hereof having been first introduced by being voted on by the Board at its regular meeting on the 15th day of June, 2011, as required by N.C.G.S. 160A-75, now therefore the following ordinances are hereby ADOPTED, AMENDED, OR REPEALED as set forth hereinbelow:

(EXISTING CODE SECTIONS ARE FOLLOWED BY CHANGES IN ITALICS)

I.

Sec. 8-8. Loud, raucous, and disturbing noise prohibited. ***TO BE REPEALED***
It shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue, or cause to be made or continue any loud, raucous, and disturbing noise, which term shall mean any sound which, because of its volume level, duration, and character annoys, disturbs, injures, or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities within the limits of the town. The term loud, raucous, and disturbing noises shall be limited to loud, raucous, and disturbing noises heard upon the public streets, in any public park, in any school or public building, or upon the grounds thereof while in use, in any church or hospital, or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise or upon the grounds thereof.
(Code 1982, § 11.11; Amend. of 7-26-2006, § 1)
State Law References: Authority to regulate noise, G.S. § 160A-184.

Sec. 8-9. Noises specified. ***TO BE REPEALED***

The following acts, among others, are declared to be loud, raucous, and disturbing noises in violation of this section, but such enumeration shall not be deemed to be exclusive, namely:
(1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time;
(2) The use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle;
(3) The use or operation of any piano, manual or automatic, phonograph, radio, loud speaker, or other instrument, or sound amplifying devices so loudly as to disturb persons in the vicinity thereof, or in such a manner as renders the same a public nuisance; provided, however, that upon application to the mayor, permits may be granted to responsible organizations to produce programs in music, speeches or general entertainment;
(4) The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort and repose of any person in the vicinity;
(5) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling, or other noise;
(6) The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger;
(7) The discharge into the open air of the exhaust of any stationary internal combustion engine or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;
(8) The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced;
(9) The erection, including excavating, demolition, alteration or repair of any building, or any road or utility excavation, other than between the hours of 7:30 a.m. and 6:00 p.m. on weekdays, excluding the holidays of Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, and except in the case of urgent necessity in the interest of public safety, and then only with a permit from the town clerk, which permit may be renewed for a period of three (3) days or less while the emergency continues.
(10) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while the same is in session, or within one hundred fifty (150) feet of any hospital, which unreasonably interferes with the working of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, court or hospital street;
(11) The creation of any excessive noise on Sundays on any street adjacent to any church, provided conspicuous signs are displayed in such streets adjacent to churches indicating that the same is a church street;
(12) The creation of loud and excessive noise in connection with loading or unloading any vehicle, of the opening and destruction of bales, boxes, crates and containers;
(13) The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof;
(14) The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of the neighborhood;
(15) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise;

(16) The use of any mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising purposes or other purposes except where specific license is received from the board;
(17) The conducting, operating or maintaining of any garage or filling station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p.m. and 7:00 a.m.; and
(18) The firing or discharging of squibs, crackers, gunpowder or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the board.
(Code 1982, § 11.12; Amend. of 7-26-2006, §§ 2, 3; Amend. of 8-6-2006, § 3)

Sec. 8-10. Dangerous property conditions. ***TO BE RE-CODIFIED AS SEC. 8-8***
For the occupant, owner, or tenant in possession of any lot or parcel of ground to permit or have any well, excavation, or embankment remain thereon, without sufficient enclosure or covering to prevent persons or stock from injury thereby, is declared a nuisance, and all persons so offending shall, upon conviction, be fined.
(Code 1982, § 11.27)

Sec. 8-11. Firearms and pellet guns. ***TO BE RE-CODIFIED AS SEC. 8-9.***
(a) No person may discharge any firearm, pellet gun, or any other mechanism or device designed or used to project a missile by compressed air or mechanical action at any time or place within the town except when used in the following specific circumstances:
(1) In defense of person or property;
(2) To destroy any rabid or marauding animal; or
(3) Pursuant to the lawful directions of any member of the town police department.
(b) This section shall not be construed to preclude the discharge of firearms, pellet rifles, or other similar devices pursuant to a competition or match conducted by any bona fide civic group, organization, or sponsoring entity provided always, however, that such organization shall first secure from the chief of police permission to conduct such competition or match and shall further assume all liability for all personal injury or property damage or both arising out of such meet.
(c) Any person violating this section shall be guilty of a misdemeanor and shall be subject to the punishment provided by section 1-5.
(Code 1982, § 11.28)
State Law References: Authority to regulate discharge of firearms, G.S. § 160A-189; authority to regulate possession and use of pellet guns, G.S. § 160A-190.

Sec. 8-12. Keeping of animal pens. ***TO BE RE-CODIFIED AS 8-10***
For the owner or user to allow any animal pen, or other stock pen, or closet, to remain filthy or in an unsanitary condition so as to emit stench or offensive odor, or to be detrimental to the citizens within the corporate limits, is declared a nuisance, and any person so offending shall, upon conviction, be fined and shall be punished in accordance with the provisions of section 1-5.
(Code 1982, § 9.6)
State Law References: Public health, G.S. § 130A-1 et seq.; abatement of public health nuisances, G.S. § 160A-193.

Sec. 8-13. Hog pens. ***TO BE RE-CODIFIED AS 8-11.***
No person shall be permitted to keep or maintain any hog pen, or keep any hogs, within one hundred fifty (150) feet of any dwelling within the corporate limits.
(Code 1982, § 11.33)

Secs. 8-14--8-30. Reserved.

Article II of the existing Chapter 8 (Abandoned, Nuisance and Junked Motor Vehicles) shall become Article III (sections 8-31 to sections 8-45).

New Article II shall be as follows:

Article II. NOISE ORDINANCE

Sec. 8-12. Scope. *This article shall apply to all sound and noise disturbances (defined herein) originating within the corporate limits of the Town of Highlands. Nothing in this article shall be construed to limit or prevent the Town or any person from pursuing any other legal remedies for damages or the abatement of noises in the Town under other provisions of its Code.*

Sec. 8-13. Definitions. *The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context:*

"Amplified sound" means any sound or noise, including the human voice, which is increased in volume or intensity by means of electrical power.

"Construction" means erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

"Holidays" means Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, New Years Day and Christmas Day.

"Motor vehicle" means any vehicle as defined in G.S. 20-4.01(49) including, but not limited to:

(a)Excursion passenger vehicles as defined in G.S. 20-4.01(27)a.
(b)Common carriers of passengers as defined in G.S. 20-4.01(27)c.
(c)Motorcycles and mopeds as defined in G.S. 20-4.01(27)d. and d.1.
(d)Truck tractors as defined in G.S. 20-4.01(48).
(e) Farm tractors as defined in G.S. 20-4.01(11).

"Noise disturbance" means any sound that annoys, disturbs, injures, or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities due to its volume level, duration, location, and character, provided that such noise is heard upon the public streets, or in any public park, or in or upon the grounds of any school or public building while in use, or in or upon the grounds of any religious, medical, or convalescent facility, while in use, or upon any parking lot open to members of the public as invitees or licensees, or in or upon the grounds of any occupied residential unit which is not the source of the noise.

"Overnight hours" means between 11 p.m. and 7 a.m. Eastern Standard Time (or daylight savings time, whichever is in effect at the time).

"Person" means any individual, association, firm, partnership, corporation, or business entity.

"Residential district" means the R-1, R-2 and R-3 districts as established by the Zoning Ordinance of the Town.

"Sound" means any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by reasonable persons of normal sensibilities.

"Working hours," in relation to construction activity, means between Monday through Friday from 7:30 a.m. 6:00 p.m.

Sec. 8-14. General prohibition and prohibition of noise in excess of 85dB(A). *It shall be unlawful for any person or group of persons, regardless of number, to willfully make, allow, or continue, any activity that is or creates a noise disturbance as defined in this article. Without limiting the foregoing prohibition, no person, corporation or other entity shall create, generate or produce, directly or indirectly, sound in such a manner as to create a sound level which at its peak exceeds the limit of 85dB(A) when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.*

Sec. 8-15. Noise producing activities; frequent sources of complaint; noise sensitive areas. *Without limiting the scope of the preceding section, the following activities are generally recognized as tending to create noise disturbances, and it shall be a violation of this article to engage is these activities <u>if such activities create a noise disturbance as defined in this article</u>:*

- *(a) Creation of amplified sound from any source, including, by way of example, radios, home audio systems, automobile audio systems, televisions, and musical instruments;*
- *(b) Playing of musical instruments not amplified;*
- *(c) Keeping of an animal, such as a bird or dog, which frequently or for long periods of time makes noises that are noise disturbances;*
- *(d) Operation of domestic power tools or mechanical devices, including devices using compressed air, in the overnight hours;*
- *(e) Repair or testing of any motor vehicle, however fueled or powered;*
- *(f) Operation of any motor vehicle with an improper muffler system in violation of G.S. 20-128(a) and (b);*
- *(g) Operation of any motor vehicle in such a state of disrepair, or which is loaded in such a manner as to create grating, grinding, rattling, or other noise.*
- *(h) Operation of any motor vehicle so as to cause the tires to squeal or screech;*
- *(i) Operation of model cars, boats, airplanes, go carts, mini bikes, allterrain vehicles or other unlicensed toy or recreational vehicles, or devices powered by an internal combustion engine;*
- *(j) Shouting or other noise in relation to street vending or peddling;*
- *(k) Sounding of any motor vehicle horn (including electronic horns that play music) except as a warning or danger signal, or as required by law;*
- *(l) Construction in a residential district, or within 200 feet of a residential district, unless during working hours and days that are not holidays as defined herein;*
- *(m) The use of any or siren upon any motor vehicle other than police, fire, ambulance, or other official emergency vehicle;*

(n) The blowing of any steam whistle attached to any stationary boiler, except as a warning of danger;

(o) The operation of machinery in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates, and containers;

(p) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale or display of merchandise;

(q) The firing or discharge of firearms or use of fireworks in the streets or elsewhere, except by permit from the police department, or otherwise as permitted by law.

Sec. 8-16. Exemptions.

The following activities are exemptions from the application of this article:

(a) Emergency work in the preservation of public health or safety at any time.

(b) Construction activities associated with street and highway construction.

(c) Construction activity conducted during working hours as defined herein, provided that all equipment is operated in accordance with manufacture's specifications and is equipped with appropriate noise reducing equipment in proper condition;

(d) Sound or noise of safety signals, warning devices, and emergency pressure relief valves;

(e) Church bells between the hours of 7:00 a.m. and 7:00 p.m.;

(f) Sound or noise emanating from street fairs, festivals, or celebrations conducted under the direct supervision by the Town, or pursuant to a permit issued by the Town;

(g) Sound or noise emanating from film and video production activities for which permits have been issued by the Town; provided all equipment such as generators are properly muffled;

(h) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable Federal rules and regulations;

(i) Sound or noise from lawful fireworks;

(j) Non-commercial lawnmowers and agricultural equipment operated in working hours and only if operated in accordance with manufacture's specifications and with all standard noise reducing equipment in place and in proper condition;

(k) Musical accompaniment to parades or military ceremonies;

(l) Sound emanating from regularly scheduled athletic events at Town or County parks, athletic facilities, and public schools;

(m) Governmental emergency vehicles in the course of performing their official duties;

(n) Unamplified noncommercial speeches made from a fixed location in nonresidentially zoned areas;

(o) Sound or noise emanating from construction or repair work by public utilities; and

(p) Refuse collection vehicles operating during working hours.

(q) Activities conducted in compliance with conditions of a Permit to Exceed.

Sec. 8-17. Permit to Exceed (PTE).

(a) A person, firm, corporation or other entity (herein, "the Applicant") shall be exempt from the provisions of this article upon obtaining and complying with a Permit to Exceed (PTE). All applications for a PTE shall be fully completed, on a form provided by the Town, and must be submitted to the Town Manager (or designee) at least 48 hours prior to the event for which such permit is needed. A non-refundable processing fee for a PTE will be shown on the Town's schedule of fees and must be paid at the time the application is submitted.

(b) No PTE will be issued without payment by the Applicant of a security deposit. The amount of the security deposit shall be determined by the Town Manager on a case-by-case basis, limited to the amount shown on the Town's schedule of fees. The purpose of this deposit is to insure compliance by the Applicant with the conditions included in the PTE. Upon the satisfaction of all the conditions of the PTE, the security deposit shall be promptly refunded to the Applicant. If the Applicant fails to comply with the conditions of the PTE, the security deposit shall be forfeited.

(c) No PTE will be issued to an applicant that is an establishment located in a Business or Governmental/Institutional zoning district within the Town, which as part of its business activities presents live performances of music.

(d) The criteria for a decision to allow or deny an application for a PTE shall include, by way of example, the following:

1. The nature of the requested activity;
2. The previous experience with the applicant as to this article;
3. The time of the event;
4. The location of the event;
5. The number of people expected to attend the event;
6. Other activities in the vicinity of the proposed location; and
7. The effect of the activity on any adjacent residential property.

(e) A PTE shall specify the date, time period and location to which it applies. The permit shall also prescribe the conditions necessary to minimize the adverse effects the event may have upon the community or surrounding neighborhoods. The Town Manager may require, but shall not be limited to, the following conditions:

1. That the sound created by the event not create a noise disturbance;
2. That the sound created by the event not exceed a decibel level determined by the Town;
3. That the Applicant place sound speakers in such a manner as to not create a noise disturbance;
4. That the Applicant change the arrangement of the amplifying equipment or sound instruments upon the request of the Police Department so as to minimize the noise and the potential for noise disturbance related to the position or orientation of the amplifying equipment;
5. That adequate provisions be made to ensure the proper cleanup of any litter resulting from the event; and
6. That adequate security personnel will be at the event for the purpose of crowd and

traffic-control. The adequacy of such security may be determined by the Police Department if so requested by the Town Manager, or his or her designee.

(f) All PTEs shall be subject to the following limitations:

1. Permits will only be granted for temporary purposes not to exceed eight continuous hours at any one time period;
2. No more than two permits shall be allowed per address (person or group of persons) during a six-month period established by the following sentence. January 1 through June 30 shall constitute one six-month period. July 1 through December 31 shall constitute the second six-month period;
3. No permit shall be granted for the time period between 1:00 a.m. and 10:00 a.m.
4. All noise created outside of the time period of the PTE shall be subject to the other (non-PTE) provisions of this article.

(g) Applicants shall cooperate with the Police Department in enforcing this article and shall be personally available at the site of the event during the entire time period for which a permit has been issued.

(h) The PTE shall be revoked and the security deposit shall be forfeited if:

1. The Applicant fails to be personally present during the entire time period for which the permit has been issued;
2. The Applicant fails or refuses to assist the police in enforcing this chapter;
3. Sound is created, generated, or produced, directly or indirectly by the permitted activity, that exceeds the limits set by the Town; or
4. The Applicant fails to comply with any of the conditions of the PTE.

(i) Upon revocation of a PTE, the Applicant shall be subject to the other (non-PTE) provisions of this article, just as if no PTE had been granted.

Sec. 8-18. Enforcement and Penalties.

(a)The first violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of $100.

(b)The second violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of $200.

(c) The third violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of $500, and a criminal citation and prosecution under G.S. 14-4. The maximum fine under that statute will be $500.

(d)The Town Police Department shall issue notices of violation and criminal citations for violations of this article. The notice of violation shall set forth the violated provision(s) of this article, and shall be issued to the owner, or lessee, or other person in charge of the

property where the noise disturbance originates, or the person responsible for creating the noise disturbance.

(e) All civil penalties must be paid within 30 days after the receipt of the notice of violation. If the violator does not pay the penalty within 30 days, the Town may recover such penalty, and all subsequently accruing penalties, in a civil action. In the event that it is necessary for the Town to institute a civil action to collect such penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the Town.

There was considerable discussion as to enforcement of the Ordinance by the Police Department and the designation of residential and commercial districts. Vice Mayor Dotson discussed noise duration and base line distinctions. Mayor Wilkes stated that it was the Board's mission to take the ordinance, presently in place, revise it, making it less cumbersome and inquired if the new ordinance could be enforced, which is the goal. Chief Harrell discussed response time, recurring violators and that the 100 decibel level would be the "bench mark". Additional discussion was had as to mufflers and straight pipes on motorcycles.

Commissioner Larry Rogers stated that the proposed Ordinance was not needed, was not in favor of it and that it could lead to problems down the road.

Mayor Wilkes stated that he would like to see the Ordinance passed and amend it later, if needed.

Vice Mayor Dotson stated that there is only one decibel level mentioned in the ordinance, no distinction between residential and commercial areas and the Ordinance should take in to account all types of properties.

After further discussion, Section 8-14 (correction reflected in draft above) which reads as follows:

Sec. 8-14. General prohibition and prohibition of noise in excess of 100dB(A). *It shall be unlawful for any person or group of persons, regardless of number, to willfully make, allow, or continue, any activity that is or creates a noise disturbance as defined in this article. Without limiting the foregoing prohibition, no person, corporation or other entity shall create, generate or produce, directly or indirectly, sound in such a manner as to create a sound level which at its peak exceeds the limit of 100dB(A) when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.*

Is hereby amended to read as:

Sec. 8-14. General prohibition and prohibition of noise in excess of 85dB(A). *It shall be unlawful for any person or group of persons, regardless of number, to willfully make, allow, or continue, any activity that is or creates a noise disturbance as defined in this article. Without limiting the foregoing prohibition, no person, corporation or other entity shall create, generate or produce, directly or indirectly, sound in such a manner as to create a sound level which at its peak exceeds the limit of 85dB(A) when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of*

driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.

Vice Mayor John Dotson moved to approve the Noise Ordinance, as written, with the exception of reducing the decibel level of 100db(A) to 85db(A) as referenced in Section 8-14 of said Ordinance, which was seconded by Commissioner Gary Drake. The vote was 3 to 1 with Commissioner Larry Rogers voting against.

11. **Chamber of Commerce Summer Music Festival Events**

Robert D. Kielyka of the Highlands Chamber of Commerce discussed the musical entertainment in the downtown business district from 5:00 p.m. to 7:00 p.m. to take place the first Friday of each of the summer months and was concerned with the implementation of the Noise Ordinance and the effect that it would have on the Friday Night Live program. Mr. Kielyka was seeking permission to continue and was advised that the events would be exempt.

12. **Jackson County Contract for Fire Protection**

The contract for Fire Protection between Jackson County and the Town of Highlands was presented to the Town Board for review and approval.

Bobby Houston, Fire Department Administrator, addressed the Town Board and advised that certain language in the contract that refers to a "formula that is determined by the Board of Commissioners to partially offset the Contractor's annual operating costs", is unclear.

The Town Board deferred this matter for further clarification.

13. **Highlands Playhouse Capital Improvements**

The Town Board discussed the estimates furnished and decided that this matter should be referred to the Public Works Committee for further review and return this matter to the Town Board at a later date for further review.

14. **Proposed 2012 Concert Submitted by Rebecca White**

Rebecca White appeared before the Town Board to discuss the proposal advising that there is a need in Highlands for such an event. As the proposed venue would be at Kelsey Hutchinson Park, with ticket sales, and the park being roped off, Mayor Wilkes raised his concerns and stated that the matter needs further review and discussion as the park is the Town's property.

15. **Settlement Agreement Regarding Duke Energy/Progress Energy Merger**

The following Settlement Agreement regarding the Duke Energy/Progress Energy Merger was presented to the Town Board for review and consideration:

SETTLEMENT AGREEMENT REGARDING THE DUKE ENERGY/PROGRESS ENERGY MERGER

This Agreement dated June 3, 2011 (this "Agreement") is among Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or "DEC"), and City of Concord, Lockhart Power Company, City of

Greenwood, acting by and through its Commissioners of Public Works, City of Kings Mountain, Town of Forest City, Town of Highlands, Town of Dallas, Western Carolina University, Town of Due West, and Town of Prosperity (individually a "Customer" and collectively the "Customers"). Duke Energy Carolinas and the Customers may be referred to hereinafter individually as a "Party" and collectively as the "Parties."

RECITALS

A. Duke Energy Carolinas provides requirements power service to each of the Customers under cost-based formula rates under separate power purchase agreements (collectively the "PPAs"). Each of the PPAs has been accepted by the Federal Energy Regulatory Commission ("FERC") as a DEC rate schedule (collectively the "Power Rate Schedules").

B. DEC provides network transmission service to each of the Customers under DEC's Open Access Transmission Tariff (the "OATT"). DEC has filed an application with FERC for acceptance of a revised OATT under which transmission rates will be calculated under a cost-based formula effective June 1, 2011; and such application is pending. The Power Rate Schedules and the OATT, as any may be revised or extended from time to time, are hereinafter referred to as the "Rate Schedules." Rates charged by DEC to each of the Customers under the Rate Schedules are hereinafter referred to as the "Rates."

C. DEC is a subsidiary of Duke Energy Corporation ("Duke Energy"). Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. ("PEC") is a subsidiary of Progress Energy, Inc. ("Progress Energy"). Duke Energy and Progress Energy, along with Diamond Acquisition Corporation, have entered into an Agreement and Plan of Merger, dated January 8, 2011, under which Duke Energy will acquire all of the outstanding common stock of Progress Energy (the "Merger"), subject to required regulatory approvals and other conditions. In connection with the Merger, Duke Energy and Progress Energy have filed, among other things, an application with FERC for approval of the Merger (the "FERC Merger Application"), an application with FERC for approval of a proposed Joint Dispatch Agreement between DEC and PEC (as proposed, and as finally approved by FERC and executed, the "Joint Dispatch Agreement"), an application with FERC for approval of a Joint OATT for DEC and PEC (as proposed, and as finally approved by FERC, the "Joint OATT"), and an application with the North Carolina Utilities Commission (the "NCUC") for approval of the Merger (the "NCUC Merger Application").

D. In the FERC Merger Application, at section IV.B, Duke Energy and Progress Energy committed to hold harmless their power requirements and transmission Customers from Merger-related costs, as specifically set forth therein (the "FERC Hold Harmless Commitment").

E. The Parties have engaged in discussions concerning the Merger and have reached the agreements set forth in the following sections of this Agreement.

AGREEMENTS

1. <u>Merger-Related Costs.</u>

(a) For a period of five years after the close of the Merger (the "Hold Harmless Period"), DEC will not include in the Rates costs incurred by or allocated to DEC to achieve the Merger, including, but

not limited to, legal and banking fees incurred to achieve the Merger, information technology system integration costs, and employee severance costs associated with the Merger ("Merger-Related Costs"), except to the extent that DEC can demonstrate that savings realized by DEC resulting from the Merger including fuel savings and savings resulting from the operation of the Joint Dispatch Agreement ("Merger-Related Savings") are equal to or in excess of Merger-Related Costs included in Rates.

(b) Prior to making any attempt to recover any Merger-Related Costs in Rates during the Hold Harmless Period, DEC shall be required to make a filing at FERC under Section 205 providing for the recovery of Merger-Related Costs. Included in that filing shall be a recitation of the applicable provisions of this section 1.

(c) Subsequent to making its filing pursuant to section 1(b), DEC shall make an annual compliance filing in the docket in which the affected Rate Schedules were accepted by FERC and in the docket in which the application for approval of the Merger will have been accepted by FERC. Such filing shall clearly delineate by FERC Account in accordance with the FERC Uniform System of Accounts any Merger-Related Costs that DEC seeks to recover in the Rates, together with a specific itemization of Merger-Related Savings, by line items within each affected Rate Schedule, expressed in dollar amounts that DEC maintains are being realized by DEC. Such rate filings during the Hold Harmless Period shall be in addition to and separate from any annual "true up" or similar documents provided by DEC to the Customers as required by the Rate Schedules. The Customers shall have the right to review the methodology by which DEC calculates Merger-Related Costs and Merger-Related Savings and to audit the application of the methodology in any such annual compliance filings. In determining any estimated Rates for billing purposes, DEC shall take into account the exclusion of Merger-Related Costs in excess of Merger-Related Savings as set forth herein. DEC does not intend to track Merger-Related Savings that relate to Rates under the OATT. Accordingly, Merger-Related Costs will be excluded from the transmission formula when establishing transmission Rates during the Hold Harmless Period.

(d) The provisions of section 1 (a), (b), and (c) above are intended to be consistent with and to describe with more specificity the FERC Hold Harmless Commitment.

(e) DEC will not include any Merger-Related Costs in the Rates for 2010 and 2011. DEC will provide to the Customers a detailed list of Merger-Related Costs incurred in 2010, if any, within thirty days after the date of execution of this Agreement and, if any Merger-Related Costs were included in Rates in 2010, will refund such amounts to Customers with interest at the FERC interest rate from December 31, 2010 through the date of payment. At the time of the annual true up for the 2011 Rates, DEC will provide to the Customers a detailed list of Merger-Related Costs for 2011 and will remove such costs from the formula when calculating the applicable true up for 2011.

2. Operating Company Merger. For a period of ten years from the closing date of the Merger, in the event that (1) DEC and PEC are merged, or (2) the respective generation and/or transmission assets or Rates of DEC and PEC are combined through merger, contract, contribution to a new entity or by any other means (any of the events described in (1) and (2) are referred to as an "Operating Company Merger"), DEC shall hold each Customer harmless from any net increase in charges to such Customer under the Rate Schedules resulting from the Operating Company Merger as opposed to other causes that exist or would exist independent of the Operating Company Merger. For the avoidance of doubt, joint dispatch of the DEC and PEC generating resources by

itself will not constitute an Operating Company Merger. The hold harmless obligation set forth in this section 2 will expire at the end of ten years after the closing date of the Merger. For example, if an Operating Company Merger occurs at the end of eight years after the closing date of the Merger, the hold harmless commitment will extend for two years. At least thirty (30) days prior to any filing for regulatory approval of an operating Company Merger, DEC will propose to the Customers in writing a methodology by which DEC will comply with its obligations set forth in this Section 2. DEC further will review in good faith any Customer objections to such methodology and will work with the Customers to resolve their
objections. If DEC and the Customers are unable to agree on a methodology, the Customers shall have the right to seek a resolution to such dispute through one of the following two alternatives:

(1) Binding arbitration in accordance with the provisions of Attachment A. Upon completion of the arbitration, DEC shall make any filing at FERC necessary to implement the arbitration decision.

(2) The Customers may request that DEC file at FERC amendments to their Rate Schedules implementing DEC's proposed methodology and the relevant provisions of this section 2. Such filing shall be made at least 60 days prior to the closing of the Operating Company Merger with an effective as of the closing of the Operating Company Merger. The Customers shall have the right to protest DEC's filing on the grounds that it does not properly implement the provisions of this section 2.

3. Savings Parity. For a period of five years from the closing date of the Merger, if DEC is ordered by the NCUC to guarantee DEC's North Carolina retail customers' joint dispatch savings (or DEC otherwise agrees to provide such a guarantee), then DEC agrees to provide
the same level of joint dispatch savings guarantee in the Rate Schedules and shall work in good faith with each of such Customers to develop amendments to their Power Rate Schedules to give effect to that guarantee.

4. Under-Frequency Relays. For a period of ten years after the closing of the Merger, DEC shall not change its transmission operating protocols with respect to under-frequency relays on Customer delivery points such that the change will cause the Customer to be subject to NERC standards, unless DEC is required to do so by law or regulation.

5. Miscellaneous Costs. DEC acknowledges that the Customers, as power requirements and transmission Customers of DEC, may bear miscellaneous operating costs or rate impacts in connection with the Merger for which they may not be held harmless under sections 1, 2, and 3 of this Agreement, although these costs or rate impacts are not quantifiable at this time. Accordingly, within thirty (30) days after the close of the Merger, DEC make shall onetime make lump sum payments to each of the Customers as follows. If the close of the Merger does not occur, then DEC shall have no obligation to make such payments.

City of Concord	$70,000
Lockhart Power Company	$25,000
City of Greenwood	$25,000

City of Kings Mountain	$10,000
Town of Forest City	$10,000
Town of Dallas	$5,000
Town of Highlands	$5,000
Western Carolina University	$5,000
Town of Due West	$5,000
Town of Prosperity	$5,000

6. No Opposition. In consideration of the DEC commitments set forth in this Agreement, the Customers agree that they will not make any filings in opposition to (nor lend support to any party in its efforts to oppose) any of the applications submitted by Duke Energy or Progress Energy for regulatory approvals deemed to be required to close the Merger, including, but not limited to, the following applications: (i) the applications referenced in Recital C of this Agreement, and (ii) any application for state regulatory commission approvals, or (iii) any applications for other federal approvals, filed by Duke Energy or Progress Energy in order to close the Merger. Subject to the provisions of the immediately preceding sentence, the Customers reserve their rights to intervene and fully participate in any FERC and NCUC proceedings for the purpose of protecting and preserving their rights under this Agreement.

7. Miscellaneous.
(a) To the extent permitted by applicable law, no Party shall disclose the provisions of this Agreement or the existence of this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law or regulation or as required in a court or regulatory proceeding; provided, however, each Party shall, to the extent practicable and permitted by law, use reasonable efforts to prevent or limit the disclosure. In this regard, the Parties recognize that those Customers which are municipally-owned utilities are required to comply with all applicable requirements for public disclosure, open meetings and Freedom of Information Act requests, and may present and/or reveal the contents of the provisions of this Agreement in public meetings as necessary to obtain formal approval of this Agreement. The Parties agree that this confidentiality obligation shall not apply in the circumstance of a Customer seeking to enforce the provisions of this Agreement by complaint brought under authority of the Federal Power Act, or otherwise. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) The Parties agree to cooperate and take any further actions necessary to implement the terms and conditions set forth herein, including, but not limited to, amendments to any existing agreements, and making any regulatory filings necessary in order to implement the terms and conditions set forth herein.

(c) This Agreement is the final and complete agreement of the parties and supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter.

(d) This Agreement shall be governed by and construed under the laws of the State of North Carolina without regard to conflicts-of-laws principles that would require the application of any other law.

WHEREFORE, the undersigned have entered into this Settlement Agreement Regarding The Duke Energy / Progress Energy Merger and, by their signature, do hereby represent and warrant that they have full authority to enter into this Agreement on behalf of the Party on whose behalf they have executed this Agreement.

Agreement to be executed by authorized signatories for the following:

DUKE ENERGY CAROLINAS,
CITY OF CONCORD
LOCKHART POWER COMPANY
GREENWOOD COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF GREENWOOD
CITY OF KINGS MOUNTAIN
TOWN OF FOREST CITY
TOWN OF HIGHLANDS
TOWN OF DALLAS
WESTERN CAROLINA UNIVERSITY
TOWN OF DUE WEST
TOWN OF PROSPERITY

ATTACHMENT A

Article 1

Dispute Resolution

1.1 Arbitration. If one or more of the Customers elects to initiate arbitration as set forth in Section 2 of the Agreement, then the dispute shall be submitted to binding arbitration in accordance with the provisions of this Attachment A. Any arbitration shall be conducted in accordance with the Revised North Carolina Arbitration Act, N.C.G.S. Section 1-567 et seq., and the non-administered arbitration rules and procedures of the American Arbitration Association ("AAA") in effect at the time arbitration is commenced, except where specifically modified by this Agreement.

1.2 Negotiation and Notice of Arbitration. Prior to initiating arbitration hereunder, a Party shall provide the other Party with written notice of the dispute, a proposed means for resolving the same, and support for the Party's position ("Original Notice"). Thereafter, representatives of the Parties shall meet in person to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. The Parties agree to provide and exchange supporting facts, records and information regarding the dispute (including calculation and bases) as part of the good faith negotiations. If the Parties have not agreed upon a resolution of the dispute within thirty (30) Days after the provision of the Original Notice or such other time period as the Parties may agree in writing to allow for discussions and negotiation ("Negotiation Period"), then at any time after the end of the Negotiation Period, a Party

may provide written notice to the other declaring an impasse ("Impasse Notice") and initiating binding arbitration in accordance with the further provisions of this Attachment A.

1.3 Selection of Arbitration Process. No later than thirty (30) Days following receipt of the Impasse Notice, or any longer time period as agreed to by the Parties, the Parties shall agree on which arbitration process specified herein to use: either the Standard Arbitration Process or the Streamlined Arbitration Process. Should the Parties fail to agree on the arbitration process within thirty (30) Days following receipt of the Impasse Notice, then the Standard Arbitration Process shall be used; provided however, that the Streamlined Arbitration Process shall be used for any dispute where the nominal damages in dispute or other monetary value at stake is alleged not to exceed two hundred fifty thousand dollars ($250,000). Unless otherwise agreed by the Parties, arbitration shall be deemed to be initiated when the arbitration process is agreed upon or otherwise determined pursuant to this Section 1.3 ("Selection Date").

1.4 Arbitration Processes.

1.4.1 Standard Arbitration Process. The following shall be the process that is used, in accordance with this Attachment A, as the Standard Arbitration Process under this Agreement. By mutual agreement, the Parties may in any given arbitration and for the purposes of that arbitration alone modify or forego any procedural requirement or rule specified hereunder as part of the Standard Arbitration Process:

(1) Selection of Arbitrators. The Party initiating arbitration shall nominate one (1) arbitrator no later than fifteen (15) Days following the Selection Date. The other Party shall nominate one (1) arbitrator no later than thirty (30) Days after the Selection Date. Each of the two Party-nominated arbitrators shall be unaffiliated with either of the Parties or their predecessors or Affiliates; shall not be current or former employees of the nominating Party or its predecessors or Affiliates and shall be without material financial alliance with the nominating Party or its predecessors or Affiliates, unless such prior relationship, pecuniary interest or affiliation is expressly acknowledged, fully and completely disclosed, and waived by the other Party. The two (2) arbitrators shall jointly appoint a third (3ft), neutral arbitrator within thirty (30) Days after the nomination of the second (2) arbitrator. The neutral arbitrator shall be the chairperson of the tribunal. This thirty (30) Day period may be extended to sixty (60) Days by agreement of both Parties. If the two (2) arbitrators are unable to agree on a third (3rd) arbitrator within the specified time period, then a third (3rd) arbitrator shall be selected by the AAA with due regard given to the selection criteria herein and in the subsequent subsections of this Attachment A and input from the Parties and other arbitrators. The Parties shall request AAA to complete selection of the third (3rd) arbitrator no later than thirty (30) Days following their request for selection of the arbitrator. Costs charged by AAA for this service shall be borne one-half (1/2) by each Party. In the event AAA should fail to select the third (3rd) arbitrator within sixty (60) Days following the Parties' request for selection of the arbitrator, then any Party may petition a court of competent jurisdiction in the State of North Carolina to select the third (3rd) arbitrator. Due regard shall be given to the selection criteria and input from the Parties and other arbitrators. Each of the arbitrators shall take an oath of neutrality.

(2) Additional Qualifications of Arbitrators. Unless otherwise agreed to by the Parties, each of the arbitrators shall be competent and experienced in matters involving the electricity business

in the United States. These qualifications shall also be considered by the AAA or any court of competent jurisdiction when making a selection pursuant to this Section 1.4.

(3) Replacement of Arbitrators. If prior to the conclusion of the arbitration any arbitrator becomes incapacitated or otherwise unable to serve, then a replacement arbitrator with the qualifications specified herein shall be appointed in the manner and timeframe (such timeframe starting anew following the unavailability of the arbitrator to be replaced) described in Section 1.4.1(1) above.

(4) Discovery. The parties shall have rights to open discovery and other procedures consistent with the Federal Rules of Civil Procedure or as otherwise agreed on by the Arbitrators.

(5) Hearing. Within fifteen (15) Days after completion of discovery, each Party shall submit a statement of the dispute, a proposed resolution of the dispute, including a monetary amount and the supporting calculations if applicable, and the factual and/or legal support therefore (the "Submission"). The next Business Day, the Parties shall exchange complete Submissions by overnight delivery and electronic mail. Within fifteen (15) Days after receiving the other Party's Submission, each Party may submit by overnight delivery and electronic mail to the other Party and the arbitrators a reply statement to the other Party's Submission. The Parties shall conduct a hearing in Charlotte, North Carolina, no later than the later of (i) sixty (60) Days following selection of the third (3") arbitrator, or (ii) forty-five (45) Days after all pre hearing discovery has been completed, at which the Parties shall present such evidence, argument, and witnesses as they may choose. Prior to the beginning of the hearing, the Parties may submit a joint statement of undisputed facts and/or issues to be resolved, if the Parties so agree to submit such statement or if the arbitrators order submission of the statement. If the Parties agree, or if allowed by a majority of the arbitrators, the Parties each may submit a posthearing brief to the arbitrators within ten (10) Business Days of completion of the hearing. No reply briefs shall be allowed unless otherwise permitted by a majority of the arbitrators.

(6) Decision. The arbitrators by majority vote, shall render their decision in favor of one Party or the other by adopting all or a portion of the resolution and the associated monetary amount requested by the prevailing Party in its Submission. The arbitrators must determine the prevailing Party by interpreting the meaning and intent of the language of this Agreement, applying the applicable Law to the relevant facts and selecting the proposed resolution which most closely correlates to their findings of law and facts. In rendering the decision, the arbitrators shall interpret and apply the terms and conditions of this Agreement, and consider any relevant evidence and testimony, but shall not have the power to add to or modify any provision of this Agreement or to recommend any additions or modifications or to render a decision that does not adopt all or a portion of the resolution and the associated monetary amount requested by the prevailing Party in its Submission. The arbitrators shall render a decision within thirty (30) Days following the later of the conclusion of the hearing or the submission of post-hearing briefs. The decision shall be rendered in writing and the decision of the arbitrators shall be final and binding upon the Parties. The decision will be filed by DEC with FERC as necessary to implement the decision.

1.4.2 Streamlined Arbitration Process. The following shall be the process that is used as the Streamlined Arbitration Process under this Agreement. By mutual agreement, the Parties may in any given arbitration and for the purposes of that arbitration alone modify or forego any procedural

requirement or rule specified hereunder as part of the Streamlined Arbitration Process:

(1) Selection of Arbitrator. No later than thirty (30) Days following the Selection Date, the Parties shall agree upon a single arbitrator to conduct the arbitration. If the Parties are unable to agree on an arbitrator, then the arbitrator shall be selected by the AAA with due regard given to input from the Parties and in conformity with the qualifications specified herein. The Parties shall request AAA to complete selection of the arbitrator no later than thirty (30) Days following their request for selection of an arbitrator. Costs charged by AAA for this service shall be borne one-half (1/2) by each Party. In the event AAA should fail to select the arbitrator within sixty (60) Days after the Selection Date, then any Party may petition a court of competent jurisdiction in the State of North Carolina to select the arbitrator. Due regard shall be given to the selection criteria and input from the Parties. The arbitrator shall take an oath of neutrality.

(2) Qualification of the Arbitrator. The qualifications of the arbitrator shall be those set forth in Section 1.4.1(1) and (2) above, and, should a replacement arbitrator be required, the provisions of Section 1.4.1(3) shall apply.

(3) Procedures. The discovery, hearing, and decision provisions set out in Sections 1.4.1(4), (5), and (6) shall apply to the Streamlined Arbitration Process, with the exception that a decision shall be rendered by the single arbitrator.

1.5 Expenses. The compensation and expenses of the arbitrator(s) shall be chargeable to and borne one-half (1/2) by each Party; provided, however, that each Party shall bear the compensation and expenses of its own counsel and any retained or expert witnesses.

1.6 Effect of Dispute Resolution Procedures. The initiation of the dispute resolution procedures under this Attachment A shall not affect the Parties' respective obligations and rights under the Agreement during the pendency of any such procedures.

Nova Energy Consultants, Inc. prepared a report dated June 14, 2011 and a copy was provided to the Town Board for their review and consideration. The report reads as follows:

On June 3, 2011, Duke Energy (DEC, Duke, or the Company) entered into an agreement with the Town of Highlands, the City of Concord, Lockhart Power Company, the Greenwood Public Works Commission, Western Carolina University, the Town of Forest City, the Town of Dallas, the City of Kings Mountain, the Town of Due West, and the Town of Prosperity that resolves all outstanding issues related to Duke's acquisition (merger) of Progress Energy. For the purpose of this document, "customers" refers to the wholesale customers listed above. Below are the details of the agreement as outlined by Nova Energy Consultants, Inc.

Merger-Related Costs

The merger between Duke Energy and Progress Energy (PEC or Progress) is anticipated to close on-or-about Dec. 31, 2011. To complete the merger, Duke expects to incur numerous costs such as legal and banking fees, employee severance fees, and company integration costs. The Company also expects savings from the merger. To be specific, Duke expects to achieve roughly $700 million in savings from fuel costs in the first five years of the merger. The savings are expected to result

from the joint dispatch agreement (JDA) where the combined generating fleets of Progress Energy Carolinas (PEC) and DEC will operate as if they were one single utility. The costs and savings noted above are specific to the consolidation of Progress Energy becoming a subsidiary of Duke Energy.

For a period of 5-years after the close of the merger Duke Energy Carolinas will not include in rates any merger-related costs that exceed the savings realized by the Company as the result of the merger. This 5-year hold harmless period is somewhat standard in merger guidelines established by the Federal Energy Regulatory Commission (FERC).

To recover merger-related costs, DEC must file a Section 205 case before the FERC. Before Duke can make a Section 205 filing, it must first make a filing in the same docket in which it clearly lists the merger-related costs and to which accounts these costs are being booked. Customers will have audit rights on these costs. Duke will not include any merger-related costs in rates for 2010 and 2011.

Operating Company Merger

DEC and PEC have publicly stated that it is the intent of the two utilities to remain separate for the foreseeable future. In other words, Duke will continue to operate independent of Progress. With all due respect to Duke and Progress, Nova does not believe that the two companies will continue to operate separately past 2015. We believe the rates of Duke will have risen by that time to be comparable to rates of Progress Energy. When that happens, the two companies will be combined so that the end result is a single utility in the Carolinas.

To protect customers from the actual combination of the two operating companies, DEC and PEC, into a single operating company, Duke has agreed to hold customers harmless for a period of 10-years from any net increase in costs that may result from the combination of the two operating companies. Before the two operating companies can actually merge into a single entity (PEC would cease to exist with Duke being the sole survivor), the Company must obtain regulatory approval. 30-days prior to the regulatory filing for the operating company merger, Duke will submit to customers a methodology to calculate the net savings and costs to show that customers are not being harmed by the merger. If the customers disagree with the Company's calculations, the dispute will be subject to binding arbitration.

Savings Parity

For 5-years after the merger closing date, PEC and DEC will provide its wholesale customers the same level of joint dispatch savings that was allowed by the North Carolina Utilities Commission in Duke's application to merge with Progress. This section of our agreement with Duke was inserted so that our own retail customers would not be disadvantaged relative to Duke's retail customers.

Under-Frequency (UF) Relays

At the present time, Duke does not require its wholesale customers to install under-frequency relays on its transmission system. Duke designed its system so that it could take off certain circuits to stabilize its transmission system should the system start to falter. However, wholesale customers of Progress Energy are currently required to install UF relays on their delivery points. As a result of the installation of the UF relays, Progress wholesale customers must adhere to the North American Electric Reliability Council (NERC) standards. The concern is that the combination of DEC and PEC

might result in Duke adopting the UF requirement of Progress, thereby causing the Duke wholesale customers to fall under the NERC standards. Adhering to these standards is very time consuming and carries some liability risk. If a customer can avoid NERC regulation, it should do so.

The agreement with DEC is limited to 10-years and cannot over-ride any law or regulation. Hence, if Duke is required by law or regulation to require its wholesale customers to install UF relays, we must do so.

Miscellaneous Costs

Duke recognized that its customers will absorb some costs through the merger that are difficult to solidly identify. One such cost is the elimination of the transmission wheel between Duke and Progress. The elimination of this wheel is an item that Duke is offering to regulators as part of the merger. The problem is that customers, not the Company, will pay for the elimination of this wheel. In turn, we will get the theoretical benefit of a more wide-open power supply market. It is difficult, if not impossible, to isolate these individual miscellaneous costs. As a result, Duke has agreed to provide customers with a one-time payment to offset these costs. For the Town of Highlands, this one-time payment is $5,000.

No Opposition

In return for the above-stated benefits/protections related to the merger, the Duke wholesale customers have agreed not to oppose the merger in any regulatory setting. We can intervene in these cases to protect our rights, but we cannot intervene to oppose the merger.

Confidentiality

Duke wishes the agreement between customers and itself be kept confidential "to the extent practicable and permitted by law." Duke did, however, recognize the public nature of the municipal customers that are part of the agreement and agreed to allow the contents of the agreement to be presented in public meetings, as needed, to obtain approval of the document.

Nova recommends that the Town of Highlands approve this agreement at its next regularly scheduled board meeting.

Although Vice Mayor John Dotson inquired of the "miscellaneous costs" and questioned where did the figures come from and how they were calculated, there was limited discussion.

Commissioner Amy Patterson moved to approve the Settlement Agreement Regarding Duke Energy/Progress Energy Merger, which was seconded by Commissioner Larry Rogers and was unanimously approved.

16. **United Methodist Church Alley Configuration**

The United Methodist Church Alley Configuration agenda item has been tabled and will be presented to the Town Board at its regular meeting on July 6, 2011.

17. **Consider Reappointment of Jimmy Tate to Zoning Board**

The Town of Highlands has established several Boards and Committees to assist and advise the Town Board of Commissioners on various topics including, but not limited to, the Zoning Board,

Planning Board, Appearance Commission, ABC Board, Scholarship Committee, Advisory Committee for Scholarship Endowment Fund, and the Cemetery Committee. There have been ordinances and policies created in regards to the appointment, reappointment, terms, etc.

James Tate was appointed in March to fill the current term of Mr. Conway. That term will expire on July 1, 2011. Mr. Tate has expressed interest in remaining on the board. Mr. Tate's proposed new term would run from 07/1/11 -07/1/14 and it is recommended that the Town Board consider appointment of James Tate to the Zoning Board.

Vice Mayor John Dotson moved to reappoint James Tate to the Zoning Board, which was seconded by Commissioner Gary Drake and the vote was unanimous.

18. **Discussion of Ordinance Revision and/or Policy Regarding Appearance Commission**

Town Manager Jim Fatland advised that this matter be pulled from consideration at the request of the Town Attorney and will be discussed at its regular meeting on July 6, 2011.

19. **Consider Changing Town Board Meeting Day**

Vice Mayor John Dotson advised that this matter had been discussed over the years. Vice Mayor Dotson stated that based upon today's technology, it would be a good idea that Matt Shuler be available to attend the meetings to display agenda items on a screen so that the public can follow along. Also, with the possibility of having Board meetings on Tuesday evenings, it may encourage more attendance as Wednesday evenings are usually reserved for church events.

Commissioner Gary Drake stated that it would be a good idea but was against having an employee come to a Board meeting and obtaining "comp" time as there are employees of the Town that regularly attend the meeting and could handle the equipment. Commissioner Drake further stated that he had no objection with changing the day but would need at a minimum of thirty days notice.

Vice Mayor Dotson stated that the Town Clerk needs to be at the meetings and Tuesday nights would give the media additional time due to publication deadlines. Commissioner Larry Rogers advised that it would be necessary to check if Tuesdays would interfere with other meetings.

Mayor Wilkes stated that this matter would be placed on the next agenda for further consideration and discussion.

19. **Adjourn in Memory of David Rawlins**

As there were no further matters to come before the Board of Commissioners, Commissioner Gary Drake moved to adjourn, which was seconded by Vice Mayor John Dotson and upon unanimous vote the Town Board adjourned at 9:12 p.m. in Memory of David Rawlins.

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James R. Fatland	Jane J. Capman
Town Manager	Recording Secretary

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Mayor David Wilkes