

Haywood County - Business Regulations

§ 114.10 PERMIT REQUIRED FOR JUNKYARDS

No person, firm or business entity shall establish, operate or maintain a junkyard at any single location without obtaining a permit. The permit shall be issued only upon the person, firm or business entity seeking the permit submitting a statement, under oath, that the existing or proposed junkyard at a single location does not violate any of the provisions of this chapter. Application for the permit shall be made to the Enforcement Officer, on such forms as he shall prescribe. A junkyard plan prepared by the applicant shall be submitted as part of the junkyard permitting process.

The plan shall indicate setbacks, location of road rights-of-way, all proposed structures, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions of junkyard, gross acreage, owner(s) names(s), address(es), preparer of plan name(s) and address(es). Plans may be drawn to scale or freehand with distances marked, on paper large enough to show details. Three (3) copies shall be submitted.

No expansion of a junkyard, whether pre-existing or newly permitted, may be undertaken until a permit as a new establishment is first obtained in accordance with this Section.

§ 114.11 ENFORCEMENT PROVISIONS

This chapter shall be enforced by the Enforcement Officer in association with the health department. The Officer may call upon other agencies as necessary to assist in the enforcement of this chapter.

In addition, whenever the Officer receives a complaint alleging a violation of this chapter, the Officer shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

The owner, tenant or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any junkyard or automobile graveyard that is contrary to the requirements of this chapter, shall be held responsible for the violation of this chapter and shall suffer the penalties and be subject to the remedies herein provided.

The following procedure shall apply upon discovery of a violation:

(1) If the Officer finds that any provision of this chapter is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it, and advising the violator of the number of days or months within which the violation shall be corrected. If applicable, the violator shall be informed of his right to appeal to the Board of Commissioners.

(2) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health, safety or welfare, the Enforcement



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Officer may seek enforcement without prior written notice by invoking the penalties authorized in this section.

§ 114.12 PENALTIES AND REMEDIES FOR VIOLATIONS

Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$25.00 per violation. If the offender fails to pay this penalty within 10 days after being cited for a violation, the penalty may be recovered by the county in a civil action in the nature of a debt.

This chapter may also be enforced by appropriate equitable action. Such remedy may include court order of abatement as part of a judgment in the cause. The abatement order may include removal of junk from illegal junkyards and other actions required to make the property comply with the provisions of this chapter at the owner's expense.

Each day that any violation continues after final notification by the Officer that such violation exists may be considered a separate offense for purposes of the penalties and remedies specified in this section.

Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter. In addition to the foregoing enforcement provisions, this chapter may be enforced by any remedy provided in G.S. § 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. § 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. § 153A-123(e).

Any building permit(s) associated with property that has a junkyard permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit holder fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed by the County Board of Commissioners.

Before such other permit(s) may be revoked, the permit holder shall be given 10 days written notice of intent to revoke a permit. The notice shall inform the holder of the reasons for the revocation and of his right to obtain an informal hearing on the allegations before the County Manager. If any permit is revoked, the Enforcement Officer shall provide to the permittee a written statement of the decision and the reasons why the action has been taken.



§ 114.13 APPEALS AND VARIANCES

(A) Unless otherwise listed, appeals from the specific provisions of this chapter and appeals from any ruling of the Enforcement Officer shall be submitted to the County Board of Commissioners within 10 days of receipt of adverse action or ruling. The Board of Commissioners may authorize relief from these provisions when, in its option, undue hardship may result from strict compliance.

(B) The Board of Commissioners may authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in practical difficulty or unnecessary hardship, and so that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in individual cases of unnecessary hardship upon a finding by the Board of Commissioners that the following conditions exist:

(1) There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography, that are not applicable to other automobile graveyards and junkyards governed by this chapter.

(2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to operators of other automobile graveyards and junkyards governed by this chapter.

(3) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other operators of automobile graveyards or junkyards governed by this chapter.

(4) The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.

(5) The special circumstances are not the result of the action of the applicant.

(6) The variance requested is the minimum variance that will make possible a reasonable legal use of the land in question.

In granting a variance, the Board of Commissioners shall make findings that the requirements of this section have been met. The Board of Commissioners shall make a finding, and written notice of the decision shall be prepared and furnished to the applicant. In granting any variance, the Board of Commissioners may prescribe appropriate conditions and safeguards to insure conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(C) Decision of the Board of Commissioners may be appealed. A petition for a writ of certiorari may be filed with the County Clerk of Court within 30 days after the later of the following occurrences:

(1) A written copy of the Board of Commissioners decision has been filed in the office of the

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Enforcement Officer; and

(2) A written copy of the Board of Commissioners decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the county through the office of the County Manager.



REGULAR MEETING – MARCH 6, 2000

MEMBERS PRESENT: Commissioner Stevens, Forga, Ferguson, and Francis

MEMBERS ABSENT: Commissioner Enloe – Governor's Commission on Smart Growth

Chairman Stevens called the meeting to order at 9:00 a.m. in the Commissioners Board Room of the Haywood County Courthouse Annex.

Commissioner Forga made a motion to approve the minutes of the February 21, 2000 regular meeting and the continued meeting of February 25, 2000 as presented. Commissioner Francis seconded the motion and the Board unanimously passed the motion.

Chairman Stevens called a Public Hearing in session to consider a variance for a special use permit application submitted by BellSouth Mobility DCS/SBA Inc., for a wireless telecommunications facility on Chambers Mountain (Terrell Property) Site SBA 2371. Kris Boyd, County Planner, summarized the variance request. The variance if granted would permit the tower height to be 110 feet, an additional 20 feet above the Wireless Telecommunications Ordinance height limitation. Mr. Boyd introduced Mark Loubier, Project Director for SBA in Greeneville, who in turn introduced Jonathan Yates who is representing SBA, and Howard Petrie, BellSouth Senior RF Engineer. Mr. Yates stated that a tower height of 110' would allow co-location of at least two other carriers. Mr. Petrie presented visuals outlining current areas of in-building commercial and industrial coverage, in-building residential coverage, in-car coverage, and pedestrian coverage. The visual indicates that the I-40 and 19/23 areas are lacking adequate coverage. With a 90' tower, there would still be areas along I-40 and 19/23 without coverage. At the requested 110', the wireless telecommunications needs of these areas could be adequately served. Granting the variance to allow the tower height to increase by approximately 20% would eliminate the need for another tower in this area and allow for co-location for other carriers.

County Attorney Chip Killian questioned if SBA/BellSouth has plans for any other wireless telecommunications facility anywhere else in Haywood County at this time. Currently, there are no other plans for new towers in this area, but an antenna location is under study in the Fines Creek area on an existing tower.

Commissioner Francis asked Mr. Boyd if the Planning Board had discussed the variance request. Mr. Boyd stated that the Planning Board listened to this same presentation, and voted unanimously to recommend granting the variance request.

At this time, Chairman Stevens opened the floor for public comment. An interested citizen inquired if BellSouth had been to the Board before requesting a variance, and stated that he feels the County ordinance was adopted to limit the height of towers and should be upheld. One of the SBA/BellSouth representatives stated that the proposed 110' mono pole tower will not be the tallest tower at the Chambers Mountain tower site, and will not be as noticeable because it will be constructed in an existing "tower farm." If the special use application for a 110' tower is denied, then another tower will need to be constructed on another mountain ridge in order to adequately meet the wireless telecommunications service needs of BellSouth. There being no further comment, Chairman Stevens declared the Public Hearing concluded.



known as Central Haywood High School on 8437 Carolina Blvd. in Clyde. Commissioner Ferguson seconded the motion and the Board unanimously passed the motion. The Board of Education will dispose of the property according to procedures established by State Statute.

County Manager Jack Horton requested the funding request by the Council on Aging for an additional case manager be postponed until the next regular meeting of the Board, Monday, March 20, 2000.

County Planner Kris Boyd presented a request that a road maintenance service district be established for the Tuscola Park area. Mr. Boyd has worked with the Tuscola Park Homeowners Association and with County Attorney Chip Killian in preparing a report on the proposed road service district. There are 35 developed lots and eight undeveloped lots in the proposed district. Of the 36 property owners, 22 have signed a petition in favor of the district; 14 property owners have not voiced an opinion. Bruce Smathers, President of the Tuscola Park Homeowners Association notified all residents of this area informing them of a public meeting to discuss the request for a road maintenance district. The meeting was held November 9, 1999, with the Tuscola Park membership present at the meeting unanimously approving this action. The proposed maintenance district boundaries 28 acres with 5,562 feet of roadway. The proposed tax rate is 11 cents per \$100 valuation. Commissioner Francis made a motion to schedule a Public Hearing for Monday, April 17, 2000 at 9:00 a.m. in the Commissioners Board Room of the Haywood County Courthouse Annex to consider establishing the Tuscola Park Road Maintenance District. Commissioner Forga seconded the motion and the Board unanimously passed the motion. Kris Boyd, County Planner, is designated to mail the notice of public hearing and map by certified mail to all property owners within the proposed district.

Representatives of Mountaineer Little League requested \$20,000 for capital improvement needs at baseball/softball facilities for the Hazelwood School Field, Waynesville Middle School Field, and the Fisher Field. Included in the proposed improvements are bleachers (\$5,000), fence repairs (\$3,000), dugouts (\$1,000), general field maintenance (\$5,000), commercial lawn mower (\$3,000), and lighting expenses (\$3,000). Commissioner Francis made a motion to grant funding to the Mountaineer Little League in the amount of \$7,000 for bleachers and lighting expenses, and to authorize Finance Director Donna Clark to process a budget amendment to allocate the funds from the Contingency Fund. Commissioner Forga seconded the motion and the Board unanimously passed the motion.

County Planner Kris Boyd and County Attorney Chip Killian reviewed a proposed rewrite of Haywood County Code of Ordinances Chapter 114: Automobile Graveyards and Junkyards. The new ordinance will cover all kinds of junk automobile storage areas including service stations, garages, used car lots, wrecker services, and motor vehicle storage areas. The current ordinance doesn't set any parameters for service stations, garages, used car lots or wrecker services, becoming a very obvious loophole in the ordinance. The proposed rewrite would require registration and obtaining a valid permit from the planning office for each of these classifications if there are more than three junk automobiles on the land parcel. There must be a valid business license or state tax number to be considered a legitimate business. Any individual can have up to ten junk automobiles in a motor vehicle storage area provided they meet the fencing and screening requirements for a motor vehicle storage area. Any individual can have up

to three junk automobiles without meeting any requirements of the ordinance. Existing facilities will be grandfathered for the use of the site; however, they must still obtain a permit and meet the requirements for fencing and screening. All new facilities must meet additional requirements such as spacing from a residence or setback from property lines and right of ways. The Board suggested that the definition of "farm" be clarified by incorporating by reference the standards for special use assessment value under Chapter 105. Mr. Boyd will make those changes and present the proposed rewrite of the Automobile Graveyards and Junkyards ordinance to the Board for their review before scheduling a Public Hearing to consider amending the ordinance.

Joel Storrow and Randy Hintz of McGill Associates, who were contracted by the Board to prepare an unsewered grant application to the Rural Center for extending sewer into the Bethel area, presented information on the proposed project. Mr. Storrow explained that the study has been ongoing for the last couple of months exploring the "nuts and bolts" of extending sewer into this area. The County received a \$40,000 grant to prepare all the paperwork involved with completing the application, including engineering reports, environmental assessments, capital improvements plan, and several other components as required by the Rural Center. The program will not allow a unit of local government that serves more than 5,000 residents or a unit of local government that has a sewer system to apply for this money. Therefore, in order to file the application, Haywood County proposes to create the Bethel Water and Sewer District to actually submit the grant application. The District would have as its governing board the Board of County Commissioners. The issue at hand today is whether or not to create the water and sewer district, as the district must hold at least one public hearing to be a bona fide applicant for the grant. Public notice must be given at least 20 days prior to the hearing.

Mr. Hintz presented the technical aspects of the project that have been researched over the last couple of months. One of the primary elements of the application is to demonstrate a need for the project. Mr. Hintz, in cooperation with the county's Environmental Health Department, has conducted a random door-to-door survey in the Bethel area identifying water and wastewater needs and problems they are experiencing with existing systems. Areas that have relatively dense populations and the most potential for problems were identified as the Brookside Development along 110, Osborne Farms, Hidden Valley, and Kelly Farms. Mr. Hintz presented a map using soils information from the US Department of Agriculture, the Haywood County Soil Survey, which indicated areas that are marginally suited for septic systems and areas that are poorly suited or unsuited for septic systems. Also noted on the map was the 100-year floodplain for the Pigeon River as it extends through the valley. Several areas that are already developed appear to be in the 100-year floodplain. Findings of the survey indicate approximately 40 confirmed cases of inadequate repair area. The standard separation area between the existing sewer system and the water supply is 100 feet, and its primary purpose is to minimize the possibility of contaminating the well with the flow from the septic system. To accommodate and maintain the repair area and separation standards requires an area or a lot that is a minimum of approximately three-quarters of an acre. The survey found that some separation areas are as close as 50 feet. Of those 49 property owners who have been surveyed, there are 40 confirmed cases of inadequate repair area; 11 other questionable cases exist. There were 23 confirmed cases of inadequate separation area; 17 cases were questionable. Two property



Instructional Materials Center facility and grounds. Commissioner Francis stated that in 1994, the Board of Education bought the Central Haywood High School facility for \$175,000, and at that time the County spent \$69,500 to help remodel the facility. Commissioner Francis requested Chairman Stevens write a letter to the Board of Education requesting the \$69,500 be deducted from the fair market value of \$325,000 for the Instructional Materials Center. Chairman Stevens stated that County Manager Jack Horton would continue to negotiate purchase of the Instructional Materials Center with the Board of Education.

County Attorney Chip Killian and County Planner Kris Boyd reviewed proposed changes to the Automobile Graveyards and Junkyards Ordinance, in particular the definition of "farm" as it relates to the farmland exemption allowed in the ordinance. At the last meeting, Mr. Killian discussed with the Board the possibility of using the definition that is already being used in the tax deferral statute in Chapter 105. With this amendment, the definition of "farm or bonafide farm" would be, "One or more contiguous land parcels under common or separate ownership on which agricultural operations are conducted as the primary use and which meets the definition of agricultural land or horticultural land under G.S. §105-277.2 (1) and (3)." This would bring into play the minimal income condition of \$1,000. It was the consensus of the Board to schedule a Public Hearing for Monday, May 1, 2000 at 9:00 a.m. in the Commissioners Board Room of the Haywood County Courthouse Annex to consider the rewrite of Haywood County Code of Ordinances Chapter 114: Automobile Graveyards and Junkyards.

Finance Director Donna Clark requested the Board approve paying off the purchase of four sheriff vehicles that were financed this year. Several circumstances have prompted this request. Due to a delay in getting the titles for the vehicles, she was unable to close with the bank within their thirty (30) day requirement. Therefore, the bank would not honor the quoted rate, but increased the rate at which they would finance the vehicles. Because of difficulties in financing sheriff vehicles with other types of equipment, typically they are financed alone at approximately \$80,000 per year. Ms. Clark recommends that this year the County begin purchasing the vehicles instead of financing them. In future years, expenditures would not be any greater because we would no longer be making a prior year and current year payment. The funds are available to go ahead and pay for this year's vehicles without financing them. Commissioner Enloe made a motion to authorize Finance Director Donna Clark to proceed with the purchase of four sheriff vehicles without financing this fiscal year, and in the future purchase the vehicles instead of financing them. Commissioner Francis seconded the motion and the Board unanimously passed the motion.

Rick Honeycutt, Assistant to the County Manager, presented information on the readvertisement for bids on a baler and conveyor system for the new baler facility. Approximately 10 companies with two-ram balers were mailed Request for Proposals. Several companies responded, with only three (3) companies and two (2) balers qualified to bid by our engineers based on submittals presented to the engineers. The Harris baler was bid by Tri-State Equipment and Harris Waste Management. Logemann bid its baler from the manufacturer. The bids for the baler, conveyor, and installations are as follows: Tri-State Equipment, \$876,140; Harris Waste Management, \$888,242; Logemann with Mayfran conveyor, \$689,000; and Logemann with Hustler conveyor, \$685,000. Wayne Sullivan of Municipal Engineering



REGULAR MEETING – MAY 1, 2000 – ALL MEMBERS PRESENT

Chairman Stevens called the meeting to order at 9:00 a.m. in the Commissioners Board Room of the Haywood County Courthouse Annex.

Commissioner Forga made a motion to approve the minutes of the April 17, 2000 meeting as presented. Commissioner Francis seconded the motion and the Board unanimously passed the motion.

Chairman Stevens called a Public Hearing in session to consider proposed amendments to and rewrite of Haywood County Code of Ordinances Chapter 114: Automobile Graveyards and Junkyards. County Planning Director Kris Boyd gave an overview of the amendments. The rewrite and amendments as presented incorporate language changes to comply with suggestions of the Court to make corrections according to General Statutes. Mr. Boyd feels the proposed ordinance will cover any facility that stores junk motor vehicles, whether it be a used car lot, a wrecker service, a garage, or someone storing them on their personal property. At this time, Chairman Stevens opened the floor for public comment. Marion Sparling questioned if the ordinance as amended will be strictly for junk vehicles, and will not include regulations for other junk items like refrigerators, stoves, etc. Mr. Boyd stated that the rewritten ordinance as proposed is only for junk vehicles; a future solid waste ordinance will regulate such items as junk appliances, furniture, etc. Bill McDonald expressed support of the ordinance on behalf of the Crabtree/Iron Duff Community Development Club. Sandy O'Laughlin, resident of Springdale in Cruso, added the support of residents of that community for the ordinance. One resident presented photographs of junk vehicles in the Jonathan Creek Estates area. Toby Craft of Cruso spoke of junk appliances, building materials, etc. along Cruso Road and asked if regulations would require that such junk be fenced or screened from view. Chairman Stevens stated this type of junk would be covered under the solid waste ordinance to be drafted. Another resident of Cruso stated that he feels this is on the road right-of-way and questioned if there were other laws besides county ordinances that could address the issue. Mr. Boyd explained that the right-of-way on Highway 276 is questionable; the State cannot confirm exactly how many feet of right-of-way they have. Gil Schenkel, President of Haywood County Community Development Club Council, voiced the support of all community development clubs for the rewritten ordinance. Olivia Enloe of Cruso questioned enforcement of the ordinance. Mr. Boyd stated that one of the major reasons for the rewrite was to strengthen the enforcement part of the ordinance. One citizen inquired if there would be a window of time for junkyards to become in compliance with the amended ordinance. Mr. Boyd stated that facilities that were added in the amended ordinance such as wrecker services, used car lots, and garages will have a period of time to comply with the ordinance. Existing motor vehicle storage areas and junkyards will not. They still stand in violation of the previous ordinance, and were given 180 days from enactment of the original ordinance to comply. County Attorney Chip Killian stated that those facilities currently in violation of the ordinance would be renotified of the violation. One gentleman voiced concerns of contamination in rivers and streams from grease, oil, and other fluids that can leak out of a wrecked automobile. Bob Phillips, Chairman of Citizens for a Clean County (CCC), voiced the committee's support for the amended ordinance. In a recent telephone campaign in which



citizens could report illegal dump/junk areas, the CCC received approximately 170 calls. There being no further comments, Chairman Stevens declared the Public Hearing concluded.

Commissioner Francis made a motion to adopt the amended and rewritten Chapter 114 of the Haywood County Code of Ordinances as presented, now being entitled "Junkyards and Other Facilities" and that those portions of the previous Chapter 114 (entitled "Automobile Graveyards and Junkyards") which are in conflict with the current rewritten ordinance be repealed.

Commissioner Forga seconded the motion and the Board unanimously passed the motion.

CHAPTER 114: JUNKYARDS AND OTHER FACILITIES

Section

- 114.01 Definitions
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 - 114.09 Registration and Permitting of Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas
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 - 114.11 Permit Required
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 - 114.13 Penalties and Remedies for Violations
 - 114.14 Appeals and Variances
 - 114.15 Separability
- (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.01 DEFINITIONS.

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

ACTIVITY. The use of a land parcel or facility for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

AUTOMOBILE GRAVEYARD. More than 10 vehicles meeting the definition of junk motor vehicle as defined in this chapter located upon a land parcel that has not been issued a permit as a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

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

ENCLOSED BUILDING. A permanent structure located on a parcel of land configured so as to prevent its contents from being visible from the public road or adjacent land parcel of another.



ENFORCEMENT OFFICER. Duly sworn employees of the Planning Office and Haywood County Sheriff's Office and such other persons as may be authorized by the Haywood County Board of Commissioners. The Enforcement Officer is also referred to as the "Officer" in this chapter.

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

FACILITY. A structure used for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

FARM OR BONAFIDE FARM. One or more contiguous land parcels under common or separate ownership on which agricultural operations are conducted as the primary use and which meets the definition of agricultural land or horticultural land under G.S. § 105-277.2 (1) and (3). For the purposes of this chapter, farm operations include the cultivation of crops, forest products, or the husbandry of livestock, poultry, or fish.

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

GARAGE. An establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles.

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

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

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

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

JUNK. Scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, iron, steel, or other scrap ferrous or non-ferrous materials; or wrecked, dismantled or uninhabitable mobile homes.

JUNK MOTOR VEHICLE. A motor vehicle or other motorized equipment or parts thereof that:

- (1) Is fully or partially dismantled or wrecked; or

- (2) Cannot be self-propelled in its present condition; or
- (3) Does not display a current license plate.

JUNKYARD. Any land parcel which is maintained, operated, or used for storing, keeping, buying or selling junk, or junk motor vehicles. The term "junkyard" shall not include any county-operated landfills, collection, or recycling facilities.

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

LAND PARCEL. A tract of land which is separately described by the Haywood County Land Records/GIS Office.

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

MOTOR VEHICLE STORAGE AREA. One or more contiguous land parcels under common or separate ownership where junk motor vehicles are stored.

OPAQUE. Impervious to light.

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

SERVICE STATION. An establishment which is maintained and operated for the purpose of making mechanical repairs, servicing and/or washing of motor vehicles.

USED CAR LOT. An establishment which is maintained and operated for the purpose of selling used automobiles under a license issued by North Carolina Division of Motor Vehicles.

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

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

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

WRECKER SERVICE. A land parcel which is used for the purpose of storing motor vehicles.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.02 FINDINGS, PURPOSES AND OBJECTIVES.

It is hereby found that automobile graveyards and health nuisance or safety hazard vehicles are inherently dangerous and should be prohibited and that junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas should be regulated.

The purposes and objectives of this chapter include the following:

- (1) To promote the health, safety and welfare of the citizens of Haywood County;
- (2) To protect citizens and residents;



- (3) To promote or enhance the protection of property values throughout the county;
- (4) To attract tourists and promote the prosperity, economic well-being and general welfare of the county;
- (5) To protect surface and groundwater quality; and
- (6) To preserve and protect the natural environment in Haywood County.
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.03 GEOGRAPHIC COVERAGE.

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

§ 114.04 GENERAL STANDARDS.

(A) All junkyards which are established from and after the effective date of this chapter (November 1, 1997) and any service station, garage, used car lot, wrecker service, or motor vehicle storage area shall meet the following standards:

- (1) A minimum setback of 30 feet from any public or private road surface and outside the right of way of any public or private road; and
- (2) Screened as herein provided, or not visible from the main-traveled way and adjacent properties at any season of the year, or fenced, or fenced and screened and maintained as provided for in § 114.07, subsection (B); and
- (3) Not be located closer than 500 feet of a residence, school or business; and
- (4) Have a 50 foot vegetative buffer from all perennial streams or water bodies as shown on the U.S.G.S. topographic map.

(B) The following criteria shall be applicable to pre-existing junkyards which are registered within 180 days of November 1, 1997, the original effective date of this chapter and service stations, garages, used car lots, wrecker services, or motor vehicle storage areas that are registered within 30 days of May 1, 2000 and no portion of any such junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area shall be operated, maintained or expanded, except those meeting at least one of the following conditions:

- (1) Those which are screened by natural land features or vegetation, berms, plantings, fences or other appropriate means which sufficiently preserves the policy and intent of this chapter, or are screened and/or fenced in accordance with § 114.07; or
- (2) Those which are located where the topography and terrain of adjacent lands is such that screening would be ineffective or useless. In these instances, the Enforcement Officer may waive all or part of the fencing or screening requirements, but shall require fencing and screening insofar as is practical and feasible, at all points where such fencing and/or screening shall be necessary to screen or partially screen the view of the property or a health nuisance or safety hazard vehicle as defined by this chapter.

(C) Automobile graveyards are prohibited.
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.05 ADDITIONAL STANDARDS.

All junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas which are established from and after the effective date of this chapter (November 1,

1997), or that have been issued a current valid permit to establish, operate or maintain a junkyard, as provided in § 114.10 hereof shall meet the following additional standards:

- (1) **JUNKYARDS** that store more than ten junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (2) **SERVICE STATIONS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (3) **GARAGES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (4) **USED CAR LOTS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (5) **WRECKER SERVICES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (6) **MOTOR VEHICLE STORAGE AREAS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.06 EXEMPTIONS.

The following are exempted from regulation by this chapter:

- (1) Recycling facilities using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment; or
- (2) Any bona fide farm; or
- (3) Motor vehicles that are not visible from outside an enclosed building and are listed as taxable personal property in the Haywood County Tax Assessors Office; or
- (4) Abandoned vehicles as defined in G.S. § 153A-132.
(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.07 FENCING AND SCREENING REQUIREMENTS.

All new and pre-existing facilities, land parcels, or activities regulated in accordance with this chapter shall be operated subject to the following fencing and screening conditions:

(A) New land parcels created, activities commenced or facilities established after the effective date of this chapter shall comply with the chapter by registering, obtaining a permit, meeting the requirements of § 114.04 (A) and meeting the following fencing and screening requirements of this section:

- (1) The facility, parcel, or activity shall be entirely surrounded by:
 - (a) an opaque fence at least six feet in height; or
 - (b) by either a woven or welded wire (14 gauge minimum) fence at least six feet in height; or



- (c) chain link fence a minimum of six feet in height.

With respect to (b) and (c) above, there shall be vegetation that is at least three feet high and no more than six feet apart when planted. The vegetation shall be planted at the time the facility begins operation, or at the next appropriate planting time. The fence and vegetation shall surround the minimum area necessary for the facility to not be visible from a point at the same elevation as the facility. The vegetation shall be planted on the outbound side of the fence, contiguous to, and not more than eight feet from the fence. The vegetation shall be maintained as a continuous, unbroken hedgerow for the period the property is used as a regulated facility. Each owner, operator, or maintainer of a facility shall utilize good horticultural techniques such as pruning, mulching and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

(2) All operations, equipment, junk and/or junk motor vehicles shall be kept within the confines of the fence or enclosed building at all times.

(B) Pre-existing activities regulated and operating with a proper business license or valid tax number from the North Carolina Department of Revenue on the effective date of this chapter (November 1, 1997) shall comply with this chapter by obtaining a permit as provided in § 114.09 and meeting the requirements for pre-existing service stations, garages, used car lots, wrecker services, junkyard, or motor vehicle storage areas, as set forth in § 114.04, General Standards, subsections B(1) or B(2), or meeting one of the following conditions:

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

(2) Screen and fence the junkyard in accordance with the screening and fencing provisions of § 114.07 (B) for new junkyards; provided, however, if topography renders fencing and screening useless and ineffective, the Enforcement Officer may waive all or part of the fencing and screening requirements as provided in § 114.04 (B)-(3) of this chapter; or

(3) Place in an enclosed building all items regulated by this chapter.
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.08 MAINTENANCE.

All junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas shall be maintained to protect the public from health nuisances and safety hazards. The Enforcement Officer shall inspect each facility once each year to determine that the chapter provisions are being followed. The Enforcement Officer may call upon the health department for advice and consultation as needed regarding vector or rodent problems. Should vectors be identified, the owner/operator/maintainer shall be notified of a violation in writing. Within 30 days of the receipt of the letter, the owner/operator/maintainer shall submit satisfactory evidence to the health department that vectors have been eliminated. Failure to comply with this section may result in revocation of the permit as well as other penalties and remedies for violation as provided for in § 114.13.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.09 REGISTRATION AND PERMITTING OF PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.

All owners, operators or maintainers of junkyards existing on the effective date of this chapter (November 1, 1997) shall register same with the Enforcement Officer within a period of 180 days beginning with the effective date of this chapter. All owners, operators or maintainers of service stations, garages, used car lots, wrecker services, and motor vehicle storage areas shall register same with the Enforcement Officer within 30 days from May 1, 2000. All existing junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage



areas that have not been registered within the stated time shall be in violation of this chapter. Following registration, a permit shall be applied for and obtained as provided for in § 114.11. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.10 NON-CONFORMING PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.

(A) All existing junkyards at the effective date of this chapter, registered in accordance with the preceding section, shall be granted a compliance period of 12 months from the effective date of registration to conform to the chapter. All existing junkyards that have not registered within this period shall be in violation of this chapter. The Enforcement Officer shall monitor such facility at least annually.

(B) All service stations, garages, used car lots, wrecker services, and motor vehicle storage areas existing at the effective date of this chapter, registered in accordance with § 114.09, shall be granted a compliance period of 90 days from the effective date of registration to conform to the chapter. All existing facilities that have not registered within this period shall be in violation of this chapter. The Enforcement Officer shall monitor each facility at least annually. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.11 PERMIT REQUIRED.

No person, firm or business entity shall establish, operate or maintain a junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area at any single location without obtaining a permit for that location. Application for the permit shall be made to the Enforcement Officer, on such forms as he shall prescribe. A plan prepared by the applicant shall be submitted as part of the permitting process.

The plan shall indicate setbacks, location of road rights-of-way, all proposed or existing structures, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions, gross acreage, owner(s) names(s), address(es), preparer of plan name(s) and address(es). Plans may be drawn to scale or freehand with distances marked, on paper large enough to show details. Three (3) copies shall be submitted.

No expansion, whether pre-existing or newly permitted, may be undertaken until a permit as a new facility is first obtained in accordance with this Section. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.12 ENFORCEMENT PROVISIONS.

This chapter shall be enforced by the Enforcement Officer. The Officer may call upon other agencies, departments, or offices as necessary to assist in the enforcement of this chapter.

In addition, whenever the Officer receives a written complaint alleging a violation of this chapter, the Officer shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. The complainant shall provide their name, address, and telephone number upon making a written complaint.

The owner, tenant or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any junkyard, service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area that is contrary to the requirements of this chapter, shall be held responsible for the violation of this chapter and shall suffer the penalties and be subject to the remedies herein provided.

The following procedure shall apply upon discovery of a violation:

(1) If the Officer finds that any provision of this chapter is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the



violation, ordering the action necessary to correct it, and advising the violator of the number of days within which the violation shall be corrected. The violator shall be informed of his right to appeal to the Board of Commissioners.

(2) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health, safety or welfare, the Enforcement Officer may seek enforcement without prior written notice by invoking the penalties authorized in this section.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.13 PENALTIES AND REMEDIES FOR VIOLATIONS.

Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$25.00 per violation. Each day shall constitute a separate violation. If the offender fails to pay this penalty within 10 days after being served with a notice of violation, the penalty may be recovered by the county in a civil action in the nature of a debt.

This chapter may also be enforced by appropriate equitable action. Such remedy may include court order of abatement as part of a judgment in the cause. The abatement order may include actions required to make the facility, land parcel or activity comply with the provisions of this chapter at the owner's expense.

Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter. In addition to the foregoing enforcement provisions, this chapter may be enforced by any remedy provided in G.S. § 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. § 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. §153A-123(e).

Any building permit(s) associated with property that has a permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit holder fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed.

Before such other permit(s) may be revoked, the permit holder shall be given 10 days written notice of intent to revoke a permit. The notice shall inform the holder of the reasons for the revocation and of his right to obtain an informal hearing on the allegations before the County Manager. If any permit is revoked, the Enforcement Officer shall provide to the permittee a written statement of the decision and the reasons why the action has been taken.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.14 APPEALS AND VARIANCES.

(A) Unless otherwise provided, appeals from any action taken by the Enforcement Officer shall be filed with the Board of Commissioners within 10 days of receipt of notice of such action. The Board of Commissioners may authorize relief from these provisions when, in its opinion, undue hardship may result from strict compliance.

(B) The Board of Commissioners may authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship. Such variance may be granted in individual cases upon a finding by the Board of Commissioners that the following conditions exist:

1

2

(1) There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography, that are not applicable to similar facilities governed by this chapter;

(2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to operators of similar facilities governed by this chapter;

(3) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other operators of similar facilities governed by this chapter;

(4) The requested variance will be in harmony with the purpose and intent of this chapter and will not be unduly injurious to the neighborhood or to the general welfare; and

(5) The variance requested is the minimum variance that will make possible a reasonable legal use of the land in question.

A copy of the decision by the Board of Commissioners shall be prepared and furnished to the applicant within 10 days of its rendition. In granting any variance, the Board of Commissioners may prescribe appropriate conditions and safeguards to insure conformity with this chapter. Violation of such condition and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(C) Decision of the Board of Commissioners may be appealed. A petition for a writ of certiorari may be filed with the County Clerk of Court within 30 days after the later of the following occurrences:

(1) A written copy of the Board of Commissioners decision has been filed in the office of the Enforcement Officer; and

(2) A written copy of the Board of Commissioners decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy prior to or at the hearing of the case.

A copy of the petition for writ of certiorari shall be served upon the county through the office of the County Manager.

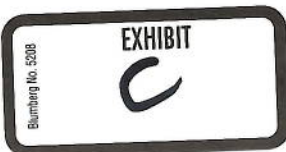
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.15 SEPARABILITY.

Should any section or provision in this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)





Stuart Small

From: July Laban <jlaban@asklawnc.com>
Sent: Monday, November 22, 2021 2:38 PM
To: frank.queen@haywoodcountync.gov
Cc: Jesse Swords
Subject: Sutton v. County of Haywood (20 CVS 828) re: Deficient Discovery Responses
Attachments: Letter to Defendant RE outstanding discovery responses, 3.pdf

Good afternoon Mr. Queen,

Attached please find Mr. Swords' letter regarding outstanding discovery responses in reference to the above captioned matter. A hard copy has also been mailed via certified mail-return receipt requested.

Best,
July



July Laban
Operations Manager
Allen Stahl + Kilbourne
20 Town Mountain Road
Suite 100
Asheville, NC 28801
828.575.0437 Direct
828.254.4778 Main
828.254.6646 Fax
www.asklawnc.com
jlaban@asklawnc.com

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JESSE M. SWORDS
Attorney at Law
jswords@asklawnc.com
828-254-4778

November 22, 2021

VIA CERTIFIED MAIL AND EMAIL

Frank G. Queen
Haywood County Courthouse, 3rd Floor
215 N. Main Street
Waynesville, NC 28786
828-452-6625
frank.queen@haywoodcountync.gov

Re: Deficient Discovery Responses in *Sutton v. County of Haywood*, 20 CVS 828

Dear Mr. Queen:

I hope this letter finds you well.

Please accept this letter as an attempt to confer with you pursuant to Rule 37 regarding Defendant Haywood County's responses to Burnette Doyle Sutton's First Set of written discovery requests in the above-referenced action.

Mr. Sutton served his requests on January 27, 2021, and Haywood County (the "County") served responses on March 30, 2021. However, the County's responses are not complete in several respects.

First, the County responded to Interrogatories 13 and 14 with the statement "The County is in the process of compiling [the requested] information and will respond as soon as the process is completed." The County responded to Requests for Production of Documents 3, 7, 8, 9, and 10 with similar statements. However, to date, none of the above-referenced responses have been supplemented.

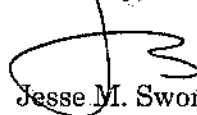
In addition, the County's response to Request for Production of Documents 11 states that "Comprehensive Plan' is a term from N.C. G.S. 160D, which is inapplicable." However, the term "comprehensive plan" was a part of previous Chapter 153A. See, e.g., former N.C. Gen. Stat. § 153A-341(a) (providing that "[z]oning regulations shall be made in accordance with a comprehensive plan."). Please supplement the County's response to clarify whether Haywood County has a comprehensive plan.

Finally, we believe that the County's responses to Requests for Admissions 3, 4, and 5 are inadequate. Rule 36(a) provides that "[a] denial shall fairly meet the substance of the requested admission . . ." Specifically, it is unclear how the first sentence of the County's response to Request for Admission 3 recharacterizing the "500-foot requirement" as a "spacing requirement" is related to the second sentence, which denies the Request "except as explained." Please clarify whether or not the County denies that the 500-foot requirement regulates the location of buildings and use of land.

Therefore, as discussed above, we request that the County furnish its responses to Interrogatories 3 and 4 and Requests for Production of Documents items 3, 7, 8, 9, and 10; supplement its response to Request for Production 11 in light of the fact that the term "comprehensive plan" is not a term specific to Chapter 160D; and supplement its responses to Requests for Admissions 3, 4, and 5, by December 20, 2021.

Thank you. Please do not hesitate to contact me if I can be of any assistance.

Sincerely,



Jesse M. Swords



NORTH CAROLINA
HAYWOOD COUNTY

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

Burnette Doyle Sutton,
Plaintiff

v.

County of Haywood,
Defendant

**DEFENDANT'S SUPPLEMENTAL RESPONSE
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Supplementing the Defendant's response filed 30 March 2021, the County of Haywood provides the following.

Interrogatories

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

Response:

Permittee	Location
Jeremy (Adam) Hatton (Hatton's Towing and Recovery)	287 Main Street, Canton
Henry (Skip) Grasty (Grasty's Servicercenter)	1136 N. Main Street, Waynesville
A.L.E.R.T. Towing and Recovery (Brent Brinson)	143 Main Street, Clyde
Rabbit Skin Recovery	4842 Jonathan Creek Road, Waynesville

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

Response:

Name	Nature of business	Location	Granted/Denied

Jeremy Hatton	Towing service	287 Main St, Canton	Granted
Henry Grasty	Towing service	1136 N. Main St, Waynesville	Granted
A.L.E.R.T. Towing and Recovery	Towing service	143 Mains St, Clyde	Granted

Request for Production

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

Response:

a. See attached copies of applications for Wrecker Rotation applications for Hatton, Grasty, and ALERT.

b. See attached copies of memos to the file for communications with B & H Towing, Doyle Sutton, and RamDog Towing and Greene's Towing.

c. See attached:

Unlabeled document beginning "There are 17 junkyards in Haywood County . . ."
Letter by planning director to Devoe Rathbone, May 11, 2000
Letter by planning director to Kimberly Beattie, May 11, 2000
Letter by planning director to Samuel Ferguson, May 11, 2000
Letter by planning director to Don Chambers, May 11, 2000
Letter by planning director to Charles Brown, May 11, 2000
Letter by planning director to William Phillips, May 11, 2000
Letter by planning director to Kim Lancaster, May 16, 2000
Letter by planning director to ARM Transport, May 16, 2000
Letter by planning director to Mitchell's Automotive, May 16, 2000
Junkyard Ordinance, Monthly Report, July 2001, Deputy Brian Sizemore
Monthly Report, August 2001, Deputy B. Sizemore
Monthly Report, September 2001, Deputy B.E. Sizemore
Monthly Report, November 2001
Junkyard Enforcement for Month of February 2002
Junkyard Enforcement Report for month of June, 2002
Letter by attorney Larry Reida for county to Sam Ferguson, February 18, 2003
Letter by attorney Larry Reida for county to Wilburn Owen, February 18, 2003
Letter by attorney Larry Reida for county to Terry Phillips, February 18, 2003
Letter by attorney Larry Reida for county to Terry Phillips, February 26, 2003
Letter by attorney Larry Reida for county to Sam Ferguson, March 6, 2003
January 2004 Monthly Report
Monthly Report, April 2004



Letter from county attorney to Town of Clyde, April 12, 2004
Letter from county attorney to Town of Canton, April 12, 2004
Letter from county attorney to Town of Maggie Valley, April 12, 2004
Letter from county attorney to Town of Waynesville, April 12, 2004
Letter from county attorney to Sandra O'Loughlin, July 22, 2004
Copy of court order in County v. Denver Blaylock, 3 CVS 664, dated Oct 11, 2005
Letter by Planning Director to Phillip Blaylock, May 16, 2000
Letter by attorney Larry Reida for county to Denver Blaylock

Minutes of Haywood County commissioners regular meeting, August 7, 2006,
quasi-judicial hearing on request from Jerry Gibson for a variance

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

Response:

- a. Letter from Doyle Sutton beginning "Doyle Sutton Property . . ."
- b. Aerial photo from GIS department titled "3039 Crabtree Road" with markings
- c. Letter from county Development Services to Sutton dated August 16, 2019 and certified mail envelope, marked "Return to Sender"
- d. Letter from county Development Services to Sutton dated August 22, 2019 with return receipt showing delivery to Doyle Sutton on September 5, 2019
- e. Letter from Doyle Sutton making appeal of denial, dated August 6, 2019 [sic – Post-it note says "dated wrong – in office 9/6/19"]
- f. Letter from Development Services to Sutton dated September 10, 2019, receipting notice of appeal with return receipt showing delivery to Doyle Sutton on September 13, 2019
- g. Notice of hearing on variance request, dated October 8, 2019, with copies of envelopes sending notice to adjoining owners and copies of Tax Assessor/GIS maps of adjoining owners
- h. Copies of emails received from residents prior to hearing, September, 2019
- i. Memorandum from county attorney to commissioners, dated October 16, 2019 on procedures for hearing
- j. Transcript of hearing on variance request, dated October 21, 2019, previously obtained by both parties.

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

Response: See item h. in #3 above for copies of emails.

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



Response:

- a. See response 2.a.
- b. See attached copies of documents in file on Jerry Gibson application for variance, ruled upon in 2006.
- c. County is continuing its efforts to locate applications.

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

Response: See 2 above, for minutes of Jerry Gibson variance hearing.

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

Response: County will provide whatever documents it can locate by February 4, 2022 by 5:00 p.m.

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

Response: County will provide whatever documents it can locate by February 4, 2022 by 5:00 p.m.

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

Response: The county contends that the ordinance was not a zoning ordinance, but was adopted for the entire county under the general police power. The county does not have comprehensive county zoning plan.

Request for admissions

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

Response: Denied. The 500-foot requirement does not regulate the location of buildings on the site – it prevents locating the wrecker service within 500 feet of a “residence, school or business.”

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

Response: Meeting all of the standards of Chapter 114 affect some uses of land in the county. Except as admitted, denied.

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



Response: Meeting all of the standards of Chapter 114 affect some uses of land in the county. Except as admitted, denied.

This 28th day of January, 2022.

Frank G. Queen, PLLC

By: _____
Frank G. Queen
NC State Bar Number 7275
Haywood County Courthouse, 3rd Floor
215 N. Main Street
Waynesville NC 28786
(828) 452-6625
Fax: (828) 452-6715
frank.queen@haywoodcountync.gov
Attorney for the defendant

CERTIFICATE OF SERVICE

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

Jesse M. Swords
Allen Stahl & Kilburne
20 Town Mountain Road, Ste 100
Asheville NC 28801

January 28, 2022

Frank G. Queen



**HAYWOOD COUNTY SHERIFF'S OFFICE ROTATION
WRECKER APPLICATION**

2018

 New application Annual renewal Additional information



Haywood County Sheriff's Office
**APPLICATION / RE-APPLICATION FOR
 WRECKER ROTATION INCLUSION AND INSPECTION**

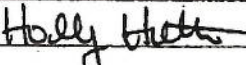
Company:	HATTON'S TOWING & RECOVERY
Contact:	ADAM HATTON
Address:	287 MAEN ST, CANTON NC 28716
Telephone:	828 [REDACTED]

I acknowledge and understand the requirements and regulations as set forth in the Haywood County Sheriff's Office "Rotation Wrecker Service Regulations" pursuant to Chapter 14B of the North Carolina Administrative Code (NCAC) 07A.0116

I certify that I am now in full compliance with these regulations and agree to comply with these regulations at all times while my wrecker is on the Haywood County Sheriff's Office Wrecker Rotation List. I understand that my failure to comply with these regulations will result in removal of my wrecker from the list as specified.

I have a relative employed by the Haywood County Sheriff's Office in the county where I have applied to be on the Haywood County Sheriff's Office Rotation Wrecker System. Yes No If yes, explain:

Printed Name AND Signature (Required)	Date
Jeremy (Adam) Hatton 	3-19-19

Printed Name AND Witness Signature (Required)	Date
Holly Hatton 	3/19/19

The following portion of the form shall be completed by the appropriate Deputy or designee after the documents are submitted to the Deputy or designee by the wrecker service and prior to the inspection by the Deputy.

	Yes	No
Criminal record check of all drivers and owner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of current "Certificate of Liability Insurance" with the ^{Haywood County Sheriff's Office} NC Highway Patrol District First Sergeant and appropriate District Office address listed as "Certificate Holder" ^{nc}	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of vehicle registrations for all wreckers / rollbacks on rotation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Price List for year of periodic inspection (submitted on HP-304C for small wreckers / rollbacks only)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Certified Driver's License Record Checks for all Wrecker Drivers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Photo copy of Driver's License for all wrecker drivers (black and white copies only)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Photo copy of a valid work VISA, or other appropriate INS documentation for all wrecker drivers and owner(s) (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>

Comments

Inspected By	Date	Approved
M. Cagle	3/28/2019	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

1

2

SMALL WRECKER / ROLLBACK ROTATION PRICE LIST

Name of Towing Service	HATTON'S TOWING & Recovery
Address	287 MAIN ST
City	CANTON
State	NC
Office Phone	919-██████████
Mobile Phone	919-██████████
Pager	

Service Provided	
Wrecker Towing Fees (Collision)	Charges
Wrecker Service during business hours (8:00 a.m. to 5:00 p.m. Monday – Friday)	200.00
Wrecker Towing Fees (Non-Collision)	Charges
Wrecker Service during business hours (8:00 a.m. to 5:00 p.m. Monday – Friday)	200.00
Additional Service(s)	Charges
Dolly Service	90.00
Overtured Vehicle	250.00
Winching	180.00
Storage Fee Per Day	Charges
Vehicle Storage (Inside)	75.00
Vehicle Storage (Outside)	40.00
	Hourly Rate/Charges
Extensive Road Clean-Up Fee	125.00
<ul style="list-style-type: none"> Hourly rate for more than sweeping or cleaning of the roadway Billed in quarter hours increments Basic charges apply for the first hour on scene, quarter hour rates charged thereafter 	
Extra truck / manpower	200.00
On-scene waiting time (applicable only after first hour on scene)	90.00
Mileage Fee	Charges Per Mile
Cost per mile if taken outside assigned zone or outside county	4.00

I acknowledge and understand North Carolina State Highway Patrol Rotation Wrecker Service Regulations, pursuant to 14A NCAC 09H.0321, which state in pertinent part: A price list for small wreckers/rollbacks for recovery, towing and storage shall be furnished in writing on a Patrol form to the District First Sergeant upon request. The District First Sergeant shall approve all price lists submitted within their respective District if they are determined to be reasonable, consistent with fees charged by other Highway Patrol rotation wrecker services within the District and do not exceed the wrecker service's charges for non-rotation service calls that provide the same service, labor, and conditions. The price list for each respective wrecker service shall be made available to customers upon request. Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle. Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends may not exceed the towing fees for recovery and transport of vehicles charged during regular "Business Hours" by more than 10 percent. A mileage fee may only be charged if the customer requests the vehicle to be towed to a location outside of the assigned wrecker zone or county. Prices indicated on this form shall be the maximum amount that will be charged for a particular service; however, this does not prevent charges of a lesser amount for said service.

Owner's Name	Owner's Signature	Date
Jeremy Adam Hatton	<i>AH</i>	3-19-19
District First Sergeant's Name	District First Sergeant's Signature	Date



REVISED 01/25/2018

HAYWOOD COUNTY SHERIFF'S OFFICE

WRECKER INSPECTION FORM

___ ANNUAL INSPECTION DATE ___ OFFICER ___

✓ NEW WRECKER SERVICE DATE 3/28/2019 OFFICER Cagle

1. WRECKER SERVICE NAME Dodge & Recovery

A. OWNER'S NAME [Redacted]

B. ADDRESS [Redacted]

C. CITY [Redacted]

D. STATE [Redacted]

2. DRIVER'S LICENSES AND/OR CDL NUMBER

A. NAME TEREMY [Redacted] PHONE NO. 828-401-1111

O.L. LICENSE NUMBER [Redacted]

B. NAME [Redacted] PHONE NO. [Redacted]

O.L. LICENSE NUMBER [Redacted]

C. NAME [Redacted] PHONE NO. 828-401-1111

O.L. LICENSE NUMBER [Redacted]

D. NAME [Redacted]

O.L. LICENSE NUMBER [Redacted]

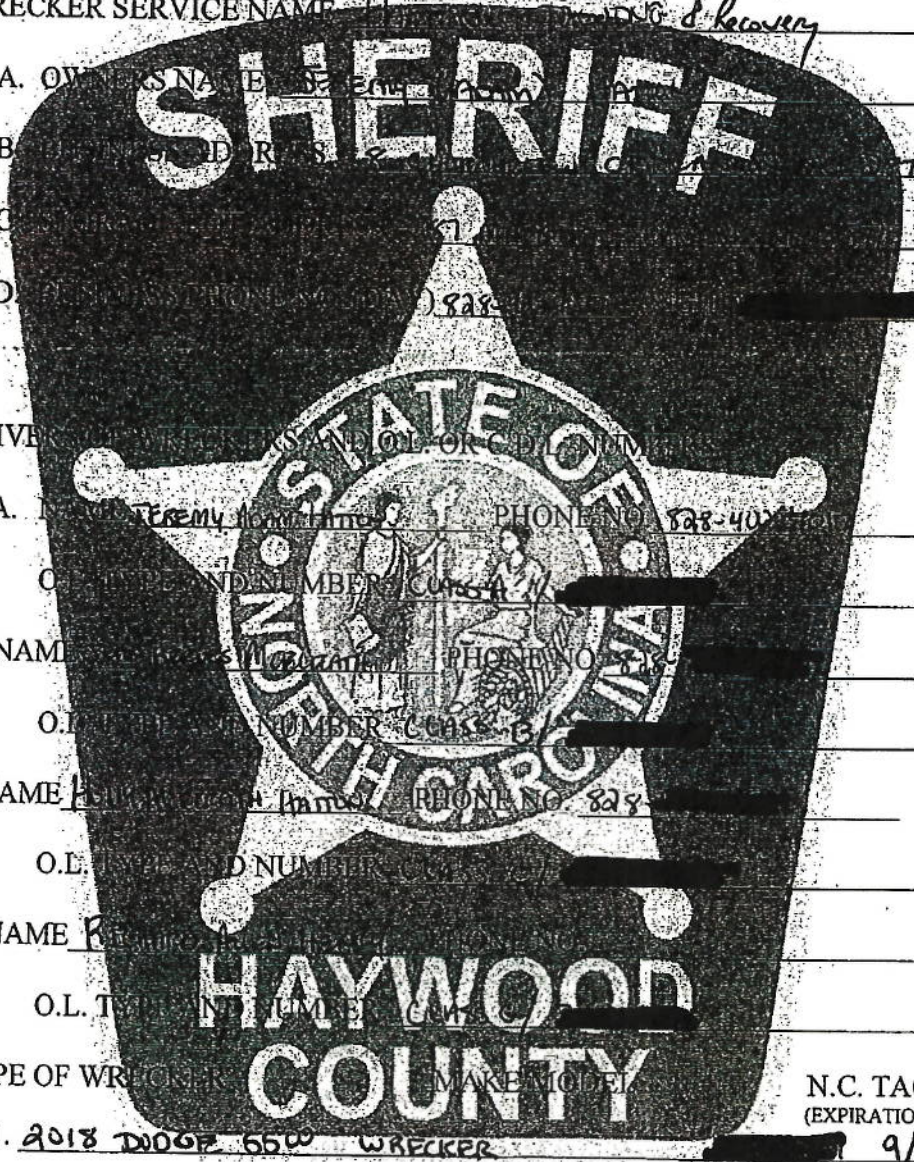
3. TYPE OF WRECKER MAKE MODEL N.C. TAG (EXPIRATION)

1. 2018 DODGE 6500 WRECKER [Redacted] 9/19

2. ROLLBACK 2018 DODGE 5500 [Redacted] 9/19

3. ROLLBACK 2019 F-650 [Redacted] 2/20

4. _____





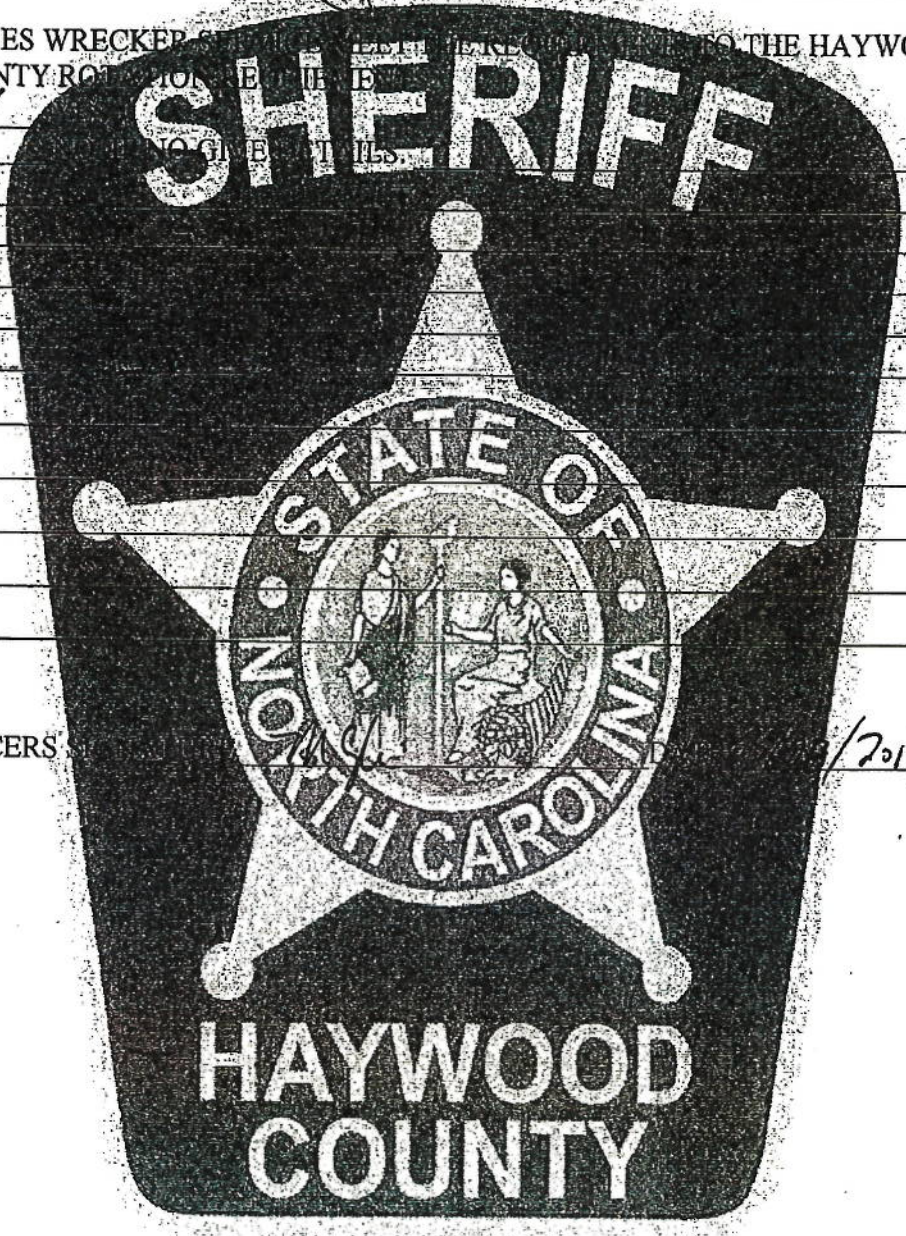
4. INSURANCE COMPANY AND POLICY NO. NATIONAL LIABILITY & FIRE INSURANCE CO [REDACTED]

5. WRECKER SERVICE OWNER HAS A COPY OF THE WRECKER SERVICE REQUIRMENTS, HAS READ AND UNDERSTANDS THEM AND AGREES TO COMPLY. (OWNERS SIGNATURE) [Signature]

6. ALL THE INFORMATION PROVIDED HEREIN IS TRUE AND ACCURATE. (OWNERS SIGNATURE) [Signature]

7. DOES WRECKER SERVICE OPERATE UNDER LICENSE NO. _____ TO THE HAYWOOD COUNTY ROADSIDE SERVICE UNIT? NO

OFFICERS

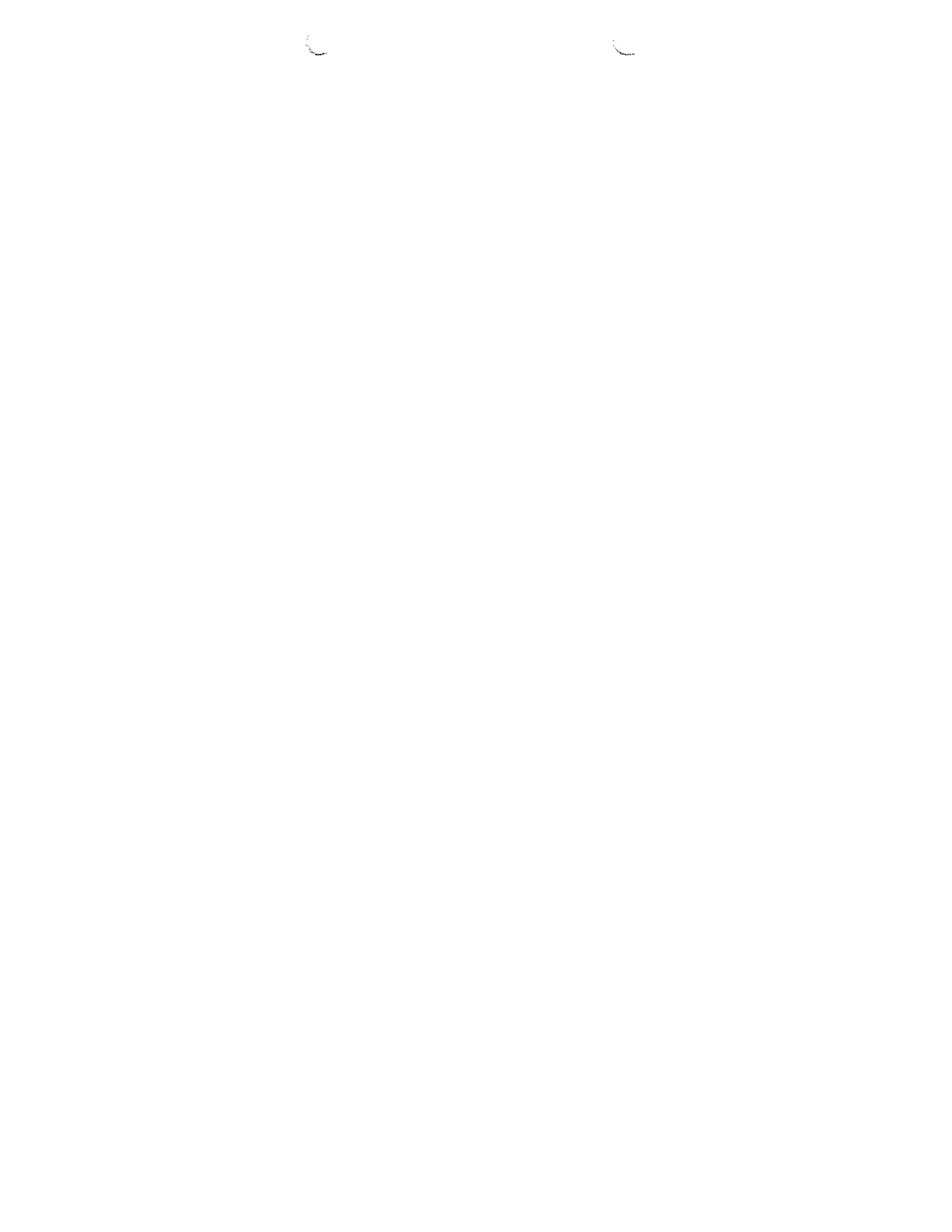


3/2019

Haywood County Sheriff's Office

Wrecker Rotation Requirement Checklist

- ☑ Vehicle is at least a one-ton chassis with dual rear wheels
- ☑ Wreckers registered as wrecks with DMV
- ☑ Has a North Carolina Safety Inspection Certificate
- ☑ Equipped with amber lights
- ☑ Axe
- ☑ Broom
- ☑ Fire Extinguisher
- ☑ Shovel
- ☑ Flares
- ☑ Dollies
- ☑ Snatch Blocks
- ☑ Two Scotch Blocks
- ☑ Wrecker bar or auto power machine
- ☑ Recovery lights or spot lights on rear of wrecker
- ☑ Possess a valid Class "C" Licenses on ALL drivers
- ☑ Has an acceptable driving and criminal history
- ☑ Fenced storage area
- ☑ Certificate of Insurance for each wrecker
- ☑ Copy of current Privilege License and Town or County Business License
- ☑ Business or Person name is printed a height of 3 inches on side of wrecker
- ☑ Does not share an address, location, or impound lot with another wrecker service



**Haywood County Sheriff's Office
APPLICATION / RE-APPLICATION FOR
WRECKER ROTATION INCLUSION AND INSPECTION**

Company:	Grasty's Serviceter
Contact:	Henry Grasty "Skip" / Debbie Shook
Address:	1136 N. Main Street, Waynesville, NC 28786
Telephone:	828-452-5166, 828- [REDACTED]

I acknowledge and understand the requirements and regulations as set forth in the Haywood County Sheriff's Office "Rotation Wrecker Service Regulations" pursuant to Chapter 14B of the North Carolina Administrative Code (NCAC) 07A.0116

I certify that I am now in full compliance with these regulations and agree to comply with these regulations at all times while my wrecker is on the Haywood County Sheriff's Office Wrecker Rotation List. I understand that my failure to comply with these regulations will result in removal of my wrecker from the list as specified.

I have a relative employed by the Haywood County Sheriff's Office in the county where I have applied to be on the Haywood County Sheriff's Office Rotation Wrecker System. Yes No If yes, explain:

Printed Name AND Signature *(Required)	Date
<i>Skip Grasty</i> <i>Skip Grasty</i>	1-25-18

Printed Name AND Witness Signature *(Required)	Date
<i>P.A. Williams</i> P.A. Williams	1-25-18

The following portion of the form shall be completed by the appropriate Deputy or designee after the documents are submitted to the Deputy or designee by the wrecker service and prior to the inspection by the Deputy.

	Yes	No
Criminal record check of all drivers and owner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of current "Certificate of Liability Insurance" with the NC Highway Patrol District First Sergeant and appropriate District office address listed as "Certificate Holder"	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of vehicle registrations for all wreckers / rollbacks on rotation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Price List for year of periodic inspection (submitted on HP-304C for small wreckers / rollbacks only)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Certified Driver's License Record Checks for all Wrecker Drivers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Photo copy of Driver's License for all wrecker drivers (black and white copies only)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Photo copy of a valid work VISA, or other appropriate INS documentation for all wrecker drivers and owner(s) (if applicable) <i>N/A</i>	<input type="checkbox"/>	<input type="checkbox"/>

Comments

Inspected By	Date	Approved
<i>Deputy P.A. Williams</i>	<i>1/25/18</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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HAYWOOD COUNTY SHERIFF'S OFFICE

REVISED 01/25/2018

WRECKER INSPECTION FORM

ANNUAL INSPECTION DATE 1/25/18 OFFICER P.A. Williams

NEW WRECKER SERVICE DATE _____ OFFICER _____

1. WRECKER SERVICE NAME Car Wash Servicer

A. OWNER'S NAME Henry Shop

B. BUSINESS ADDRESS 136 _____ 28786

C. STORAGE UNIT ADDRESS 36 _____ 28786

D. BUSINESS PHONE NO (AREA) 928 _____

2. DRIVERS OF WRECKERS AND O.L. OR C.D.L. NUMBER

A. NAME Henry Carlton Gusty PHONE NO 928-177-5166

O.L. TYPE AND NUMBER _____

B. NAME Debra _____ PHONE NO _____

O.L. TYPE AND NUMBER _____ "C"

C. NAME _____ PHONE NO _____

O.L. TYPE AND NUMBER _____

D. NAME _____ PHONE NO _____

O.L. TYPE AND NUMBER _____

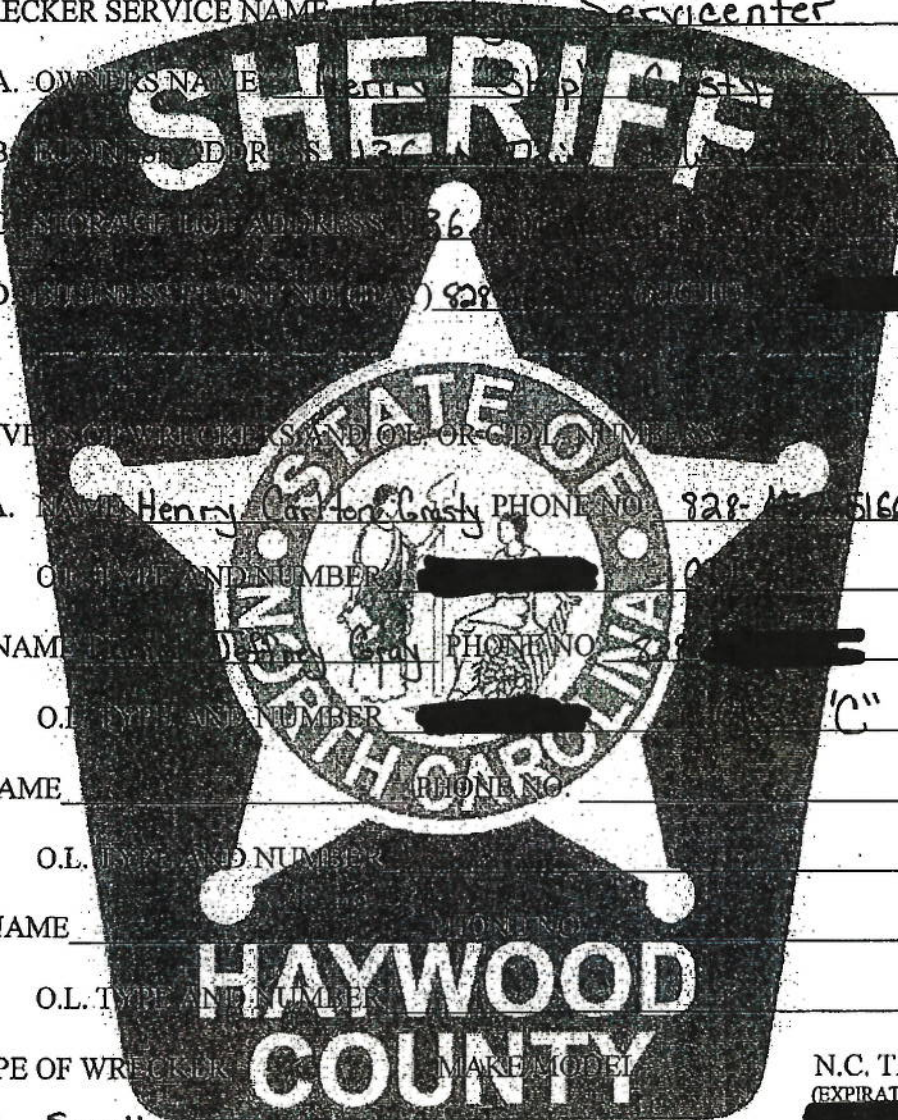
3. TYPE OF WRECKER _____ MAKE MODEL _____

1. Small Ford N.C. TAG (EXPIRATION) _____

2. Rollback Ford _____

3. _____

4. _____





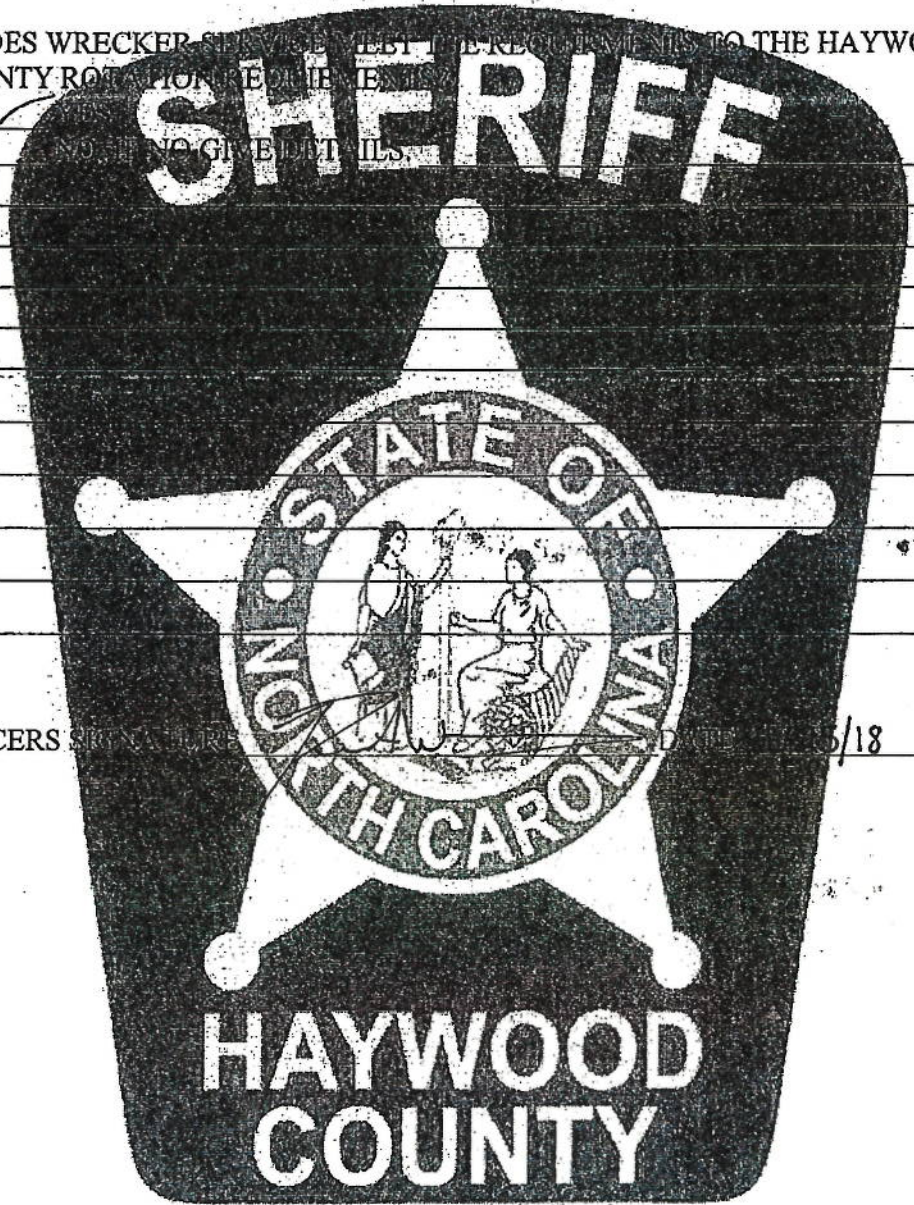
4. INSURANCE COMPANY AND POLICY NO. (Roll back) Stonington
Insurance Comp. [REDACTED] (Small) National Indemnity [REDACTED]

5. WRECKER SERVICE OWNER HAS A COPY OF THE WRECKER SERVICE
REQUIREMENTS, HAS READ AND UNDERSTANDS THEM AND AGREES TO
COMPLY. (OWNERS SIGNATURE) _____

6. ALL THE INFORMATION PROVIDED HEREIN IS TRUE AND ACCURATE.
(OWNERS SIGNATURE) _____

7. DOES WRECKER SERVICE MEET THE REQUIREMENTS TO THE HAYWOOD
COUNTY ROTATION REQUIREMENTS?
 YES NO IF NO GIVE DETAILS _____

OFFICERS SIGNATURE



6/18



Haywood County Sheriff's Office

Wrecker Rotation Requirement Checklist

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- Broom
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- Two Scotch Blocks
- Wrecker bar or auto power machine
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- Possess a valid Class "C" Licenses on ALL drivers
- Has an acceptable driving and criminal history
- Fenced storage area
- Certificate of Insurance for each wrecker
- Copy of current Privilege License and Town or County Business License
- Business or Person name is printed a height of 3 inches on side of wrecker
- Does not share an address, location, or impound lot with another wrecker service

X Spig Camp

Owner

X [Signature]

Inspecting Deputy

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