

**APPROVAL OF SPECIAL USE PERMIT 19-01  
(3940 Kivett Drive and 6420 Old Kivett Loop, High Point, NC)**

**CITY OF HIGH POINT CITY COUNCIL  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This application for a Special Use Permit (“SUP”), for a Major Landfill facility in a Heavy Industrial (“HI”) District, came before the High Point City Council (“Council”) on June 17, 2019 for a quasi-judicial hearing (“Hearing”). Based on the testimony of the witnesses, the documentary evidence, the application and related materials, the exhibits, the Staff Report and other evidence presented at the Hearing, the Council finds that the SUP should be approved, and in support thereof, makes the following Findings of Fact and Conclusions of Law as required by N.C. Gen. Stat § 160A-388(e2)(1):

**FINDINGS OF FACT**

1. Section 2.4.12(C) of the City of High Point Development Ordinance provides as follows:

**Special Use Review Standards** A special use shall be approved upon a finding that the applicant demonstrates the proposed special use:

- (a) Will not materially endanger the public health or safety if located where proposed;
- (b) Complies with all required standards, conditions, and specifications of this Ordinance, including Chapter 4: Uses;
- (c) Will not substantially injure the value of the abutting land, or the special use is a public necessity;
- (d) Will be in harmony with the area in which it is to be located; and
- (e) Is in general conformity with the City's adopted policy guidance.

2. The subject property (Guilford County Tax Parcels 161052, 161053, 161078, 161079, 161100, 161102, 161103, 161105, 161498, 161505, 161526, 161527, 202910, and 202911) addressed as 3940 Kivett Drive and 6420 Old Kivett Loop, lies south of Kivett Drive, along both sides of Kersey Valley Road, east of Jackson Lake Road and approximately 360 feet west of Danlee Road, in the City of High Point, and consists of approximately 176 acres of land. The City of High Point is the property owner and the City of High Point Public Service Department is the applicant (“Applicant”).

3. The site has a moderate to severely sloping terrain and is mostly used as a solid waste landfill (City of High Point Kersey Valley Landfill). Development is subject to the

Randleman Lake General Watershed Area (GWA) requirements. Engineered stormwater measures are required for non-residential development with an impervious surface area that exceeds 12% or more of the site. The proposed development is able to meet applicable watershed requirements.

4. The property has a Heavy Industrial (HI) District zoning designation based upon City Council approval of Zoning Map Amendment 19-08 (ZA-19-08); which was also approved by the City Council on June 17, 2019. The HI district is established to accommodate heavy manufacturing, assembly, fabrication, processing, distribution, storage, research and development, and other industrial uses that may be large-scale or otherwise have extensive exterior movement of vehicles, materials, and goods, and greater potential for adverse environmental and visual impacts.

5. Pursuant to the City of High Point Development Ordinances (“HPDO”), Table 4.1.9 “Principal Use Table”, Waste Related Services is under the Industrial Use Classification. Use types under Waste Related Services include Major Landfill. A Major Landfill is defined by the HPDO as a solid waste or sanitary landfill designed to collect and store nonhazardous household waste.

6. Pursuant to the HPDO, a SUP is required before a Major Landfill use may be placed or expanded in a HI District. The applicant is requesting a SUP to expand an existing Major Landfill. The Kersey Valley Landfill was first issued a Solid Waste Management Permit on October 28, 1980 and was annexed into the City’s corporate limits on December 29, 1980. Additional approvals were granted in 1996 (SU-96-08) to expand the landfill to the east side of Kersey Valley Road. In 2006 and 2015, amendments to SU-96-08 were granted to expand the landfill to its current configuration.

7. This application, Special Use 19-01 (“SU-19-01”), proposes to expand the existing Major Landfill facility by adding a 0.48-acre parcel and by designating an additional 19.2 acres to the active waste storage area. Details of this request are as follows:

- (a) Expansion Area #1 (0.48-acres): This expansion consists of a 0.48-acre parcel (Guilford County Tax Parcel 161079) that fronts along Kivett Drive and is surrounded on three sides by the existing Kersey Valley landfill facility. Based on its location at the perimeter of the overall facility, active waste storage cannot be conducted on this parcel. It will be incorporated into the facilities perimeter buffer area and may also be used for the construction of related accessory structures (See Exhibit #1).
- (b) Expansion Area #2 (19.2 acre waste storage expansion): The landfill currently has two active waste storage areas, one lying east of Kersey Valley

Road and the other lying west of Kersey Valley Road. The Public Service Department is proposing that the North Carolina Department of Transportation (NCDOT) abandon that portion of Kersey Valley Road abutting the landfill and allow rerouting of the road westward to intersect with Jackson Lake Road. With the road abandonment, the two separate waste storage cells can be combined to create an additional 19.2 acres of waste storage and add approximately 20 years to the lifespan of the Kersey Valley Landfill (See Exhibits #1 and 2).

8. The zoning and uses of land adjacent to the Property are outlined below:

<b>Adjacent Property Zoning and Current Land Use</b>		
North	Light Industrial (LI) District General Business (GB) District Conditional Use General Business (CU-GB) District Residential Single Family-40 (RS-40) District ( <i>Guilford County</i> ) Agricultural (AG) District ( <i>Guilford County</i> )	Vacant industrial building, automotive repair facility, single family dwellings and undeveloped parcels
South	Agricultural/Rural (AGR) District Residential Single Family – 5 (R-5) District Conditional Use Light Industrial (CU-LI) District Conditional Use Agricultural/Rural (CU AGR) District Residential Single Family-40 (RS-40) District ( <i>Guilford County</i> )	Single family detached dwellings and undeveloped parcels
East	Residential Single Family-40 (RS-40) District ( <i>Guilford County</i> ) Conditional Use Agricultural/Rural (CU-AGR) District	Single family detached dwelling, undeveloped parcel and a construction and demolition debris landfill
West	Light Industrial (LI) District	Single family detached dwellings and undeveloped parcels

9. The SU application is carrying forward applicable conditions from SU-96-08 into SU-19-01 and includes a special use site plan (“SU Site Plan”) depicting activity associated with the expansion of the Major Landfill facility. The special use application also included the following additional supporting documents:

- (a) Applicant response to special use findings
- (b) Impact Study of Kersey Valley Landfill Expansion prepared by Hylton, Crower & Associates (Certified North Carolina General Appraiser)
- (c) Site Study – City of High Point Kersey Valley MSW Landfill – Area 3. Prepared by Smith-Gardner Inc. Engineering Firm

(d) Appendix A to Site Study. Report of Site Investigation and Remedial Engineering (Hazen and Sawyer, PC 1992)

These documents can be viewed in the official case file in Accela Citizen Access, under Record ID SU-19-01 using the following weblink:

<https://acceladmz.highpointnc.gov/chpaca/Account/RegisterDisclaimer.aspx>

10. The Applicant conducted a Citizen Information Meeting, per standards of Section 2.3.3 of the HPDO and submitted a Citizen Information Meeting Report to the City of High Point Planning and Development Department. The Citizen Information Meeting Report is part of the staff report for SU-19-01 submitted to the High Point City Council.

11. During the Hearing, testifying in support of the request, on behalf of the Applicant, was Mr. Pieter K. Scheer, P.E. Vice President and Senior Engineer for Smith & Gardner Inc., 14 N. Boylan Avenue, Raleigh, NC 27603. His firm is the lead consultant for the City of High Point in the design and construction of the proposed expansion of the landfill. This firm prepared the “Proposed Facility Plan Information Report” and engineering drawings that make up the SUP Site Plan. Mr. Scheer provided an overview of the project, manner in which the City must address State of North Carolina waste management laws, including water and air protection measures, and he addressed technical questions from the City Council.

12. Also testifying in support of the SUP was Mr. Brian R. Crower, MAI, SRA. Mr. Crower is a Staff Appraiser for Hylton-Crower & Associates (North Carolina Certified General Appraiser – Lic #A7529), 132 E. Parris Avenue, High Point, NC. He provided a summary of his educational background and course work to become a certified appraiser, summary of his professional affiliations and a summary of his 10 years of experience as an appraiser with Hylton-Crowder & Associated. Mr. Crowder presented an overview of the Impact Study he conducted of the Kersey Valley Landfill expansion, including summary of sales comparison analysis. Finally, he outlined the conclusions of the study which stated:

- (a) The expansion of the Kersey Valley Landfill in accordance with the proposed conditions will not substantially injure the value of adjoining or abutting properties. In addition, this data and our experience not only demonstrate that there will be no “substantial” injury or depreciation to adjoining, abutting, or nearby properties, it indicates that there will be no injury or depreciation; and
- (b) The proposed Kersey Valley Landfill expansion will be in harmony with the area. The development of the area includes the already existing Kersey Valley Landfill, the Waste Industries High Point Construction and Demolition Landfill, the Martin Marietta Rock Quarry, uses that are similar to the proposed expansion. Expanding the Kersey Valley Landfill would not change the dynamic of the area. In fact, with the current Kersey Valley Landfill

already in operation, the use of the land will not change providing further proof that the expansion will be in harmony with the area.

13. During the hearing, no one testified in opposition to the SUP and no competent, material, or substantial evidence was presented to rebut the *prima facie* case presented by the Applicant.

### **CONCLUSIONS OF LAW**

Pursuant to the foregoing FINDINGS OF FACT, Section 2.4.12 of the City of High Point Development Ordinance and other applicable law, the Council, by a unanimous 7-0 vote, makes the following Conclusions of Law:

1. Based on the evidence in the record, the Council finds as a matter of law that the request to expand the Kersey Valley Landfill and establishment of a new Special Use Permit (SU-19-01), as submitted by the Applicant, will meet all required standards of the Development Ordinance.

2. The Applicant bears the burden of proving to the Council, by competent, material and substantial evidence, that the proposed Major Landfill facility meets the standards in Section 2.4.12(C) of the City of High Point Development Ordinance. If the Applicant fails to meet its burden of producing competent, material and substantial evidence as to any one of the standards, the SUP must be denied.

3. In this case, the Council finds that the SUP should be approved, for the following reasons, pursuant to Section 2.4.12(C):

- (a) Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report SU-19-01, the request will not materially endanger the public health or safety if located where proposed. The City is required to maintain compliance with environmental permits for the site including both solid waste and air quality permits. Furthermore, based upon the expert testimony of the applicant engineer, Mr. Pieter K. Scheer, P.E. Vice President and Senior Engineer for Smith & Gardner Inc., the following aspects further address public health and safety.
  - i) The existing landfill and future Area 3 expansion is and will be designed with a liner and leachate collection system and water quality and landfill gas (LFG) monitoring systems meeting the requirements of State solid waste rules. The City is required to

maintain compliance with environmental permits for the site including both solid waste and air quality permits. Additionally, the facility is routinely inspected by representatives of the NC Department of Environmental Quality.

- ii) Once the landfill reaches its capacity, a final cover system is required. This final cover system prevents contact with the waste mass and, in conjunction with LFG collection components also aids the control of LFG and odors.
  - iii) The facility will have a singular main entrance for waste hauling vehicles and the public. This entrance has a right turn lane in place which eases traffic congestion and facilitates turning movements. As part of the development of Area 3, the portion of Kersey Valley Road through the facility will be closed to public access. Thus, the safety of the intersection of Kivett Drive and Kersey Valley Road will be improved.
- (b). Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report for SU-19-01; the requested Major Landfill facility complies with all required standards, conditions, and specifications of the Development Ordinance, including Chapter 4: “Uses” of the City of High Point Development Ordinance.
- (c). Based upon the expert testimony and property impact study of licensed real estate appraiser, Mr. Brian Crowder, and the findings in the Planning & Development Department Staff Report for SU-19-01; the requested Major Landfill facility will not substantially injure the value of the abutting land. A Major Landfill use has been established in this area since 1980, this request is not introducing a new land use to the area. Furthermore, except for the road right-of-way proposed for abandonment, the 19.2 acre expansion of waste storage area is already part of the Kersey Valley Landfill facility;
- (d). Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report for SU-19-01; the requested Major Landfill facility will be in harmony with the area. The existing landfill has an established perimeter buffer area that provides approximately 300 to 400 feet of separation between active waste storage areas and adjacent parcels. The merger of the two waste storage areas will maintain this

current buffer standard. Furthermore, the proposed expansion is consistent with other heavy industrial type uses that have developed in this area. Directly to the east of this facility is a 155-acre construction and demolition debris landfill. A Martin Marietta Quarry, on approximately 277 acres, lies one-quarter mile to the east. Also, to the southwest of the site, over 80 acres of land is currently used as a trucking distribution facility and as an asphalt plant.

- (e). Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report for SU-19-01; the requested Major Landfill facility is in general conformity with the City's adopted policy guidance. Goals #4 and #5 of the City's Land Use Plan speaks to ensuring that all required public services and facilities are sequenced to meet demands of development; and promoting an urban growth pattern that occurs in an orderly fashion. The ability to provide for effective solid waste disposal, and when possible to expand the lifespan of such facilities, is a public necessity. This proposed expansion will add approximately 20 years to the life span of the Kersey Valley landfill. Finally, the adopted Land Use map classifies lands south of Kivett Drive as Heavy Industrial and Light Industrial, which includes large waste related services. The proposed expansion is consistent with adjacent industrial related uses and established land use policies in this area.

ACCORDINGLY, based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Applicant's request for a special use permit for a Major Landfill facility is unanimously APPROVED by a vote of 7-0 subject to the following conditions which were offered and agreed to by the Applicant:

Part I. USE: Major Landfill

Part II. Conditions:

1. The special use shall be subject to the provisions and requirements of:
  - (a) The "Design Report for the Kersey Valley Landfill – Phase 2, High Point, North Carolina" (also prepared by G.N. Richardson & Associates, Inc. (now Smith Gardner, Inc.), as revised through September 1996);

- (b) Permit to Construct Application – City of High Point - Kersey Valley MSW Landfill – Phase 3, High Point, North Carolina (Prepared by G.N. Richardson & Associates, Inc. as revised through November 1999);
- (c) Permit to Construct Application – City of High Point - Kersey Valley MSW Landfill - Phases 3A & 4, High Point, North Carolina (Prepared by Richardson Smith Gardner & Associates, Inc. (now Smith Gardner, Inc.) as revised through January 2009);
- (d) Permit to Construct Application – City of High Point - Kersey Valley MSW Landfill - Phases 5A & 5B, High Point, North Carolina (Prepared by Smith Gardner, Inc. as revised through January 2015);
- (e) Site Study – City of High Point Kersey Valley MSW Landfill – Area 3. Prepared by Smith Gardner Inc.; and
- (f) Future permit application(s) for development of Area 3 as approved by the North Carolina Department of Environmental Quality (“NCDEQ”).

These documents constitute the operational plan for the facility and are intended to comply with the North Carolina Solid Management Rules (15A NCAC 13B as periodically amended), which are enforced by the NCDEQ.

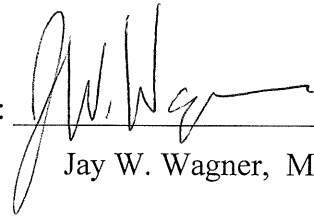
- 2. That the landscape plan be amended to depict the western portion of the special use site, and that the plan notes a requirement that existing vegetation be preserved and maintained within 50 feet of Jackson Lake Road.
- 3. Right of way dedication: The property owner shall dedicate a minimum of fifty (50) feet of right-of-way along the Kivett Drive frontage of the zoning site as measured from the existing centerline.
- 4. The City of High Point Director of Transportation and the North Carolina Department of Transportation (“NCDOT”) shall approve all vehicular access construction and improvements.
- 5. Solid waste disposal shall not be permitted in Area 3 (approximately 19.2 acres between and adjoining existing Area 1 to the west and existing Area 2 to the east) until that portion of Kersey Valley Road abutting the facility is abandoned and the rerouting of Kersey Valley Road to Jackson Lake Road is open to the public. An exception being that incremental construction and use of Area 3 is allowed prior to completion of the rerouting project so long as Kersey Valley Road remains open to the public.

Part III. Special Use Permit Plan: Development shall be in accordance with the attached Special Use Permit site plan. This Special Use Permit and approved site plan are

perpetually binding on this property, unless subsequently amended as provided in the Development Ordinance or until a use otherwise permitted in the zoning district is established.

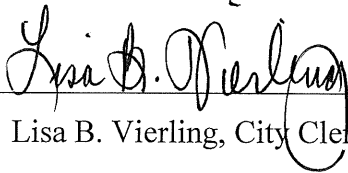
Adopted by the City Council  
City of High Point, North Carolina  
The 15<sup>th</sup> day of July, 2019

By: \_\_\_\_\_



Jay W. Wagner, Mayor

ATTEST:



Lisa B. Vierling, City Clerk

