

June 4, 2015
Regular Meeting of the City Council
Council Chambers – City Hall
5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Ron Stephens and Council Members: Steve Caraker, Jerry Smith and Jeff Miller

Staff Present: City Manager John F. Connet, City Attorney Sam Fritschner, City Clerk Tammie Drake, Planning Director Sue Anderson, Police Chief Herbert Blake, Engineering Director Brent Detwiler, Zoning Administrator Susan Frady, Public Information Officer Tara Ledbetter, Budget Analyst Brian Pahle, Utilities Director Lee Smith, Finance Director Lisa White, Public Works Director Tom Wooten

1. Call to Order: Mayor Volk called the meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with all five members in attendance.

2. Invocation and Pledge of Allegiance: A moment of silence for prayer was followed by the Pledge of Allegiance to the Flag.

3. Public Comment Time: *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.*

Bob Partridge, 64 Half Moon Trail, Wolfchase, opposed the striping of vehicular parking on Half Moon Trail and asked for Council's reconsideration.

Barbara Chamberlain, 1749 Clairmont Drive, Druid Hills, stated she is anticipating problems with the Ingles request for a gas station and an extra driveway; citing safety concerns.

Phyllis Perry, 809 Sandburg Terrace, stated speed limit signs of 35 miles per hour are posted in their development, New Village Drive in Henderson Village. She asked the Council to reduce the speed to 20 miles per hour for safety reasons.

Scott Street, with the Windsor Aughtry Company, stated he is building homes in the neighborhood of Half Moon Trail. He stated they are glad to have parking there but striping the streets will hinder egress for homeowners because there is not enough room to back out if cars are parked there because the street is not wide. It will also hinder traffic flow.

There was discussion from the Council with Mr. Street and Mr. Partridge about the parking on Half Moon Trail, the width of the street, etc.

Heather Boeke, Hands On! Executive Director, 318 North Main Street, expressed appreciation to the Council and the City for the use of Berkeley Mills Park for their fund-raising event, Mad Mountain Mud Run.

4. Consideration of Agenda: The following additions were made to the agenda:

- 11a. Consideration of pavement marking for parking on Half Moon Trail
- 11b. Consideration of speed limit reduction on New Village Drive in Henderson Village
- Closed Session to Consult with the City Attorney

Council Member Caraker moved approval of the agenda as amended. A unanimous vote of the Council followed. Motion carried.

5. Consideration of Consent Agenda: *These items are considered routine, non-controversial in nature and are considered and approved by a single motion and vote.*

A. Consideration of Minutes: May 7, 2015 Regular Meeting and May 8, 2015 Special Meeting

B. Consideration of Policy for Prequalification of Bidders for Construction Projects: Mr. Detwiler presented a policy in accordance with NCGS 143-135.8; amended by S.L. 2014-42 (H1043), for the prequalification of bidders for construction projects. He explained prequalification may be used only when all of the following conditions in the new G.S. 143-135.8(b) are met:

1. The local government is using one of the construction methods authorized in G.S. 143 128(a1)(1) through G.S. 143 128(a1)(3)(single-prime, separate-prime or dual bidding).
2. The governing body adopts an objective prequalification policy applicable to all construction or repair work; the policy must be adopted prior to advertising the contract for which the governmental entity intends to prequalify bidders.

3. The local government adopts the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project.

Mr. Detwiler requested Council's adoption of the policy.

Policy for Prequalification of Bidders for Construction Projects

A. General

1. The purpose of this prequalification process is to impartially evaluate a contractor, and to properly determine by its responsible business practices, work experience, manpower, and equipment that it is qualified to bid on a construction project. The City of Hendersonville (City) is establishing a Policy for Prequalification of Bidders for Construction Projects as required by SESSION LAW 2014-42, HOUSE BILL 1043. In accordance with this bill the governing body of the governmental entity shall adopt an objective prequalification policy applicable to all construction or repair projects prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders. In addition, the governmental entity must adopt an assessment tool and criteria for that specific project. The assessment tool and criteria must include pre-qualification scoring values and minimum required score for pre-qualification.
2. The Bid Agent shall be responsible for prequalifying individual contractors to bid on construction projects when the City believes prequalification is preferred. Prequalification is limited to construction or repair projects (regardless of cost) that are bid under the single-prime, separate-prime (multi-prime), or dual bidding methods. A bidder shall be deemed nonresponsive if it submits a bid on a construction project subject to prequalification for which it has not been accepted for prequalification in accordance with this policy.
3. Notwithstanding the fact that a contractor was prequalified, the City reserves the right to reject a contractor's bid if it is determined that the contractor has not submitted the lowest responsible and responsive bid. The prequalification of the contractor shall not preclude the City from subsequently concluding that the contractor is not a responsible bidder pursuant to G.S. 143-129. The prequalification of a contract for a project shall only apply to the individual project. All construction and repair contracts shall be awarded to the lowest responsive and responsible bidder, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract.

B. Definitions

1. Bid Agent – Person assigned the responsibility to prepare the request for qualification, bid, and contract documents, advertise bids and proposals, and open bids for contracts under the direction of the Project Manager. The Bid Agent may be a professional services consultant retained by the City under an approved contract, a City engineer or designee, or a department head responsible for the project.
2. Project Manager – Employee of the department responsible for a construction, repair, or purchasing project requiring a contract who shall be assigned the responsibility for managing the project and representing the department in matters relating to the project.
3. Prequalification - A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work.

C. Prequalification Process

1. Each prospective bidder on contracts identified for prequalification by the Bid Agent shall submit an application on the approved prequalification application form in order to become prequalified.
2. The approved prequalification application form will require information to be provided on the ownership of the firm, experience of firm's personnel, any affiliations with other construction firms, bonding capacity, financial resources, the type of work performed by the firm, and other objective criteria rationally related to the particular contract to be awarded.
3. The Bid Agent shall ensure that applications prepared for the projects comply with this policy and State law. The application is to be submitted by the deadline established in the notice of prequalification. The act of submitting the application does not permit the firm to submit a bid. Incomplete applications will be rejected or returned for further detail or correction in the sole discretion of the City.

D. Application

1. The prequalification application form, assessment tool and criteria scoring system shall be developed and adopted by the City Manager or designee for each specific project. The assessment tool will include the prequalification scoring values and minimum required score for prequalification on that project. The application shall, at a minimum, address the following items:
 - a. Organizational Structure – The firm shall provide a list of all owners, officers, partners, or individuals authorized to represent or conduct business for or sign legal documents for the firm. This list must include the full legal name, typed or printed in a clear legible form. Firms experiencing changes in ownership, organizational structure, or material changes in assets must inform the Bid Agent prior to the award of a contract. Failure of the firm to comply with this requirement may result in the termination of any contract awarded by the City.
 - b. Classification – The firm shall indicate the type(s) of work the firm's workforce and equipment normally perform, licensure, and other pertinent information.
 - c. Experience – The firm shall furnish a history documenting experience with projects of similar size, scope, or complexity involving the type(s) of work for which prequalification is requested.
 - d. Litigation/Claims –The firm will be required to submit information regarding its litigation history, including litigation with owners and subcontractors.
 - e. Timeliness - Firms must provide information on its success at completing projects on time, including the payment of liquidated damages.

- f. Capacity – Firms shall demonstrate sufficient bonding capacity, insurance and resources for the project. Firms must provide relevant information on the personnel that will be directly responsible for the work, including the location of the office that will be primarily responsible for work.
 - g. Safety - Firms shall also demonstrate an acceptable safety history. Firms must provide copies of any complaints, safety violations or reports from the North Carolina Qualifications Board, OSHA, or any other regulating agency associated with any construction project.
 - h. Legal Authorization –The Applicant must provide a copy of their North Carolina Contractor's License. If a statement is required, the Applicant shall identify the states in which they are licensed for this type of work.
- E. Review of Application
- 1. Prequalification Committee – The Project Manager shall establish a Prequalification Committee for each project to review and score applications submitted by the firms to determine the prequalification eligibility.
 - 2. Review of Applications – The Prequalification Committee shall use an objective assessment process and criteria for that specific project. The prequalification criteria shall not require the firm to have previously been awarded a construction or repair project by the City. The prequalification criteria used by the Prequalification Committee shall include prequalification scoring values and the minimum required score to be prequalified for the project. The Prequalification Committee shall approve or deny the applications in accordance with the prequalification criteria and scoring system.
 - 3. Notice of Decision – All firms that submitted applications for prequalification shall be promptly notified of the prequalification committee's decision, including the reason for denial, via e-mail. Notice shall be provided prior to the advertisement of bids for the project and with sufficient time for the firm to protest the denial of prequalification.
 - 4. Informal Meeting - Upon denial, the applicant may request an informal meeting with the City to receive feedback and suggestions for improvement.
 - 5. Firms wishing to appeal the decision shall follow the protest process described below.
- F. Protest Procedure
- 1. The firm may protest the denial of Prequalification as noted below.
 - a. The firm may protest the denial of prequalification. A written protest must be received by the Project Manager, or designee, within two business days of notice of denial. The written protest shall clearly identify the project and the Project Manager, clearly articulate the reasons for the protest, and attach any documents or additional information in support of the firm's position. The Project Manager, or designee, will contact the firm and set up a date and time to discuss the protest. If upon review, the Project Manager, or designee, determines that the firm meets the criteria for prequalification, the firm shall be notified that it is prequalified to bid on the project and allowed to participate in the bid process. If the Project Manager, or designee, upholds the denial, the firm shall be notified in writing by e-mail.
 - b. If the firm desires further review after receiving the decision of the Project Manager, the firm may request an administrative review and final decision by the City Manager, or designee. A written request for administrative review must be received by the City Manager, or designee, within two business days of the firm's receipt of the decision from the Project Manager, or designee. The request for administrative review shall clearly identify the project and the Project Manager, clearly articulate the reasons for the review, and attach any documents or additional information in support of the firm's position. The City Manager, or designee, will contact the firm and set up a date and time for the administrative review. If, upon review, the City Manager, or designee, determines that the firm meets the criteria for prequalification, the firm shall be notified that it is prequalified to bid on the project and allowed to participate in the bid process. If the City Manager, or designee, upholds the denial, the firm shall be notified in writing by e-mail. The decision of the City Manager, or designee, on the protest shall be final.
 - 2. General Rules for Protests – Firms submitting prequalification applications shall be provided an e-mail address for the communication with the Project Manager during the protest process. The firm shall provide at least two e-mail addresses for use by the Project Manager in communicating with the firm. The bid opening cannot occur until the protest process is completed. The bid opening must be scheduled in order to allow sufficient time for a bidder that is prequalified as a result of a protest to submit a bid on that project. Bids received from firms who have been ruled disqualified to bid shall not be opened. A firm's failure to comply with any requirements of the protest procedures of this section shall result in the firm's protest being terminated and rendered moot.

Adopted by the City Council on the fourth day of June 2015.

/s/Barbara G. Volk

Attest: /s/Tammie K. Drake

C. Consideration of Authorizing the City Manager to Award the Contract for the Construction of the Jackson Park and Shepherd Creek Sewer Paving Project to Southeastern Asphalt: Mr. Detwiler reported informal bids were received for milling and asphalt paving portions of the Jackson Park Interceptor Sewer and Shepherd Creek/Atkinson Elementary Sanitary Sewer Improvements Projects on May 8, 2015 from three bidders with the following results.

Southeastern Asphalt - \$365,983.94

Trace and Company - \$514,835.84

Tarheel Paving - \$539,551.70

Mr. Detwiler reported City staff reviewed each bid for completeness and accuracy and recommends the city manager be authorized to award of the contract to Southeastern Asphalt of Flat Rock, NC, the lowest responsive and responsible bidder in the amount of \$365,983.94. He noted approximately \$162,000 of the contract will be used for the Jackson Park Sewer paving (within the Park and in various greenway

locations) and \$204,000 of the contract will be used for the Shepherd Creek Sewer paving on N. Lakeside Drive.

D. Consideration of Special Event Permits for:

- i. **Ecusta Trail Fun Fair:** Ms. Frady reported the Special Events Committee recommends approval of a special event permit for this event. The first-time event, Ecusta Trail Fun Fair, will be held June 28, 2015, from 1 – 4 p.m. and will primarily be on the courthouse lawn.
- ii. **Mountain Brew Fest:** Ms. Frady reported the Special Events Committee recommends approval of a special event permit for this event. The first-time event, Mountain Brew Fest, will be held August 22, 2015, 3 - 7 p.m. on Locust Street. This will be a ticketed event with alcohol sales from local breweries. Alcohol pours will be limited to those with tickets. No alcohol will be sold during the event. Locust Street will be closed between Track Street and Ninth Avenue. Bearcat Boulevard will be closed at N. Grove Street. There will be no parking on Locust Street after 11 a.m. Box trucks and trailers will be parked off-site; additional parking will be provided at the fitness center on Eighth Avenue. There will be food trucks and vendors as well as shade tents. There will be back ground music but not a concert. Two off-duty police officers will be present during the event.

E. Consideration of Authorizing the City Manager to Purchase Property on Armstrong Avenue: City Attorney Fritschner reported the City has been offered the real property situated at 424 Armstrong Avenue for \$5,000 (plus attendant closing costs). He stated a large water main crosses this property. He explained a vote by the City Council is necessary to empower the City Manager to effect the purchase.

F. Consideration of Authorizing the City Manager to Purchase Property on Ashe Street: City Attorney Fritschner reported the City Council previously discussed the purchase of property situated on Ashe Street, PIN 9568-99-6699. The legal department bid on the property within the authorized amount and posted the winning bid at \$3,700, plus the amount of the existing County taxes. A vote by the City Council to ratify the bid to purchase the property and authorize the payment of this sum is in order.

G. Consideration of Contract with Carland and Andersen, Inc. for the Annual Audit of Financial Statements for fiscal year ending June 30, 2015: Ms. White presented a contract with Carland and Anderson, Inc. for the annual audit. *[The contact is available in the office of the City Clerk.]*

H. Consideration of Budget Amendments: Mr. Pahle requested approval of budget amendments for the following:

- i. **Downtown Fund:** Fund to cover the cost of a wayfinding study and parking kiosk. Fund balance will be utilized to provide for these purchases and there are no recurring costs associated with them.
Amount \$64,000
- ii. **Personnel Line Items:** To transfer funds from the General Fund contingencies to cover overage in personnel line items.
Amount: \$2,043

I. Consideration of a Resolution Amending Portions of Articles IX and X of the Personnel Policy Respecting Dismissal Procedure: City Attorney Fritschner provided a resolution adopting proposed amendments to the personnel policy that establishes guidelines for giving advance notice and a hearing to employees for whom dismissal is contemplated. The amendments also establish an in-office hearing with the city manager on appeal from the dismissal decision with certain limited rights to present documentary evidence and witness testimony in the city manager's sound discretion. The amendments also clarify that normal grievance procedures would not apply to the dismissal process.

RESOLUTION #15-0619

**A RESOLUTION AMENDING PORTIONS OF ARTICLES IX AND X OF THE PERSONNEL POLICY
RESPECTING DISMISSAL PROCEDURE**

WHEREAS the City has adopted a personnel policy in order to establish and clarify its relationship with its employees, and

WHEREAS the City Staff has recommended that certain changes be made to the personnel policy respecting dismissal procedure, and

WHEREAS the City Council believes that the recommended changes enhance protection of employees who may be dismissed,

NOW, BE IT THEREFORE RESOLVED that the City Council amend and it does hereby amend Articles IX and X as provided herein.

1. Article IX Section 6 of the Personnel Policy is hereby amended to read in full as follows:

Section 6. ~~Pre-dismissal Conference~~ Possible Dismissal: Notice and Hearing

Before dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the City Manager, Human Resources Officer or Department Head or a designee thereof, along with other persons deemed necessary to the process, usually including the personnel director, will

conduct a pre-dismissal ~~conference~~ hearing. This ~~conference~~ hearing will be held upon at least three business days' notice to the employee that a dismissal is being considered and the hearing will be held, unless the employee waives such notice or the particular circumstance require a different period. At this ~~conference~~ hearing, the employee may present any response to the proposed dismissal to the ~~City Manager or Department Head or designee~~. The ~~City Manager or Department Head or designee~~ will consider the employee's response, if any, to the proposed dismissal, and will, within three ~~working~~ business days following the pre-dismissal ~~conference~~ hearing, notify the employee in writing of the final decision. If the employee is dismissed, the notice shall contain a statement of the reasons for the action and the employee's appeal rights.

If the hearing results in a decision to dismiss the employee, the employee may appeal this decision in writing to the city manager. Notice of appeal shall be delivered to the personnel director and the city manager within five business days of the date of the dismissal decision.

Upon a timely appeal of a dismissal decision the city manager will schedule a hearing. The employee shall appear at the hearing and may bring whatever documentation the employee deems appropriate, although voluminous documentation may be excluded at the city manager's discretion. The employee may request the right to bring one or more witnesses to testify to critical facts upon written application to the city manager, along with a brief statement as to the content of the proposed testimony. The city manager shall have discretion as to whether to permit such testimony.

2. Article X Sections 2 and 4 of the Personnel Policy are hereby amended to read in full as follows:

Section 2. Grievance Defined

A grievance is a claim or complaint by a current or a former employee based upon an event or condition, which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions. Grievance does not include appeal from a dismissal decision, which is covered by Article IX.

Section 4. Procedure

When an employee has a grievance, the following successive steps are to be taken unless otherwise provided. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. A decision to rescind a disciplinary suspension or demotion must be approved by the Department Head or City Manager ~~and recording~~ dismissal must be approved by the City Manager before the decision becomes effective.

3. This amendment shall take effect upon adoption of this resolution.

Adopted this fourth day of June 2015.

/s/Barbara G. Volk

Attest: /s/Tammie K. Drake

- J. Consideration of a Proclamation for "Pollinator Week":** City Clerk Tammie Drake explained in order to meet one of the commitments of a BEE CITY USA, the City must annually celebrate National Pollinator Week (the third full week of June) with a proclamation or other promotions that showcase the City's commitment to enhancing pollinator health and habitat. She submitted a proclamation provided by Kim Bailey, member of the Environmental Sustainability Board.

PROCLAMATION

WHEREAS, pollinator species such as thousands of species of bees are essential partners in producing much of our food supply; and

WHEREAS, pollinator species provide significant environmental benefits that are necessary for maintaining healthy, biodiverse urban and suburban ecosystems; and

WHEREAS, pollination plays a vital role for the trees and plants of our community, enhancing our quality of life, and creating recreational and economic development opportunities; and

WHEREAS, the City of Hendersonville manages urban landscapes and public lands that include many municipal parks and greenways, as well as wildlife habitats; and

WHEREAS, the City of Hendersonville provides conservation assistance to promote wise conservation stewardship, including the protection and maintenance of pollinators and their habitats;

NOW, THEREFORE, I, Barbara G. Volk, Mayor of the City of Hendersonville, do hereby proclaim the week of June 15 - 21, 2015 as

"Pollinator Week"

and, as the City of Hendersonville is a certified Bee City USA® community, urge all citizens to join in recognizing this observance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of City of Hendersonville to be affixed this fourth day of June, 2015.

/s/Barbara G. Volk

Attest: /s/Tammie K. Drake

- K. Considerations of Findings of Fact and Conclusions of Law:** City Attorney Fritschner provided the findings of fact and conclusions of law for the Cedar Terrace (File #P-15-5-SUR) Special Use Permit and the Ingles #77 (File #P-15-8-SUR) Special Use Permit. These are located in the appropriate file in the Planning Department.

L. Consideration of a Resolution to Adopt the City of Hendersonville Unassigned Fund Balance Policy:

Ms. Lisa White, Finance Director, presented a resolution to adopt an Unassigned Fund Balance Policy. The policy outlines the purpose and goals for establishing a Fund Balance range between 25-35% of expenditures in the General Fund and 50-75% in the Water and Sewer Fund as discussed previously by the Council. She also presented a resolution revising the May 1995 resolution to establish and maintain a Capital Reserve Fund replacing certain terms, and amending the range and terms of the fund.

Resolution #15-0620

A RESOLUTION TO ADOPT THE CITY OF HENDERSONVILLE UNASSIGNED FUND BALANCE POLICY

WHEREAS, The Hendersonville City Council hereby establishes an Unassigned Fund Balance Policy for the purpose of improving and maintaining fiscal responsibility as required under the Local Government Budget and Fiscal Control Act, NC General Statue Chapter 150, and

WHEREAS, The Cities management and Council recognize that it is essential to maintain adequate unassigned fund balance to mitigate financial risk that can occur from unforeseen revenue fluctuations, unanticipated expenditures, and similar circumstances, and

WHEREAS, The fund balance also provides cash flow liquidity for the City's operations and increases the potential for investment income, and

WHEREAS, Ample fund balance enhances short term and long term financial credit by helping to achieve the highest credit and bond ratings possible to provide the city the ability to borrow at the lowest possible rate, and

WHEREAS, A fund balance policy promotes long-term financial stability by establishing clear and consistent guidelines, and

WHEREAS, Adequate unassigned fund balance will provide funding flexibility during unanticipated emergencies and natural disasters.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE THAT:

Section 1. The City Council hereby adopts the City of Hendersonville Unassigned Fund Balance Policy.

Section 2. This resolution shall become effective upon its adoption and approval.

Adopted this fourth day of June 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Unassigned Fund Balance Policy

SECTION 1. Purpose: The Hendersonville City Council passed a resolution to adopt an Unassigned Fund Balance Policy for the purpose of improving and maintaining fiscal responsibility as required under the Local Government Budget and Fiscal Control Act, NC General Statue Chapter 150 on June 4, 2015. This policy defines the level of Unassigned Fund Balance and establishes guidelines for preserving an adequate fund balance in each of the City of Hendersonville (City) operating funds in order to sustain financial stability and to provide prudent management of the City's financial reserves.

SECTION 2. Government Accounting Standards Board (GASB) Definitions

2.1 Fund balance is a measurement of available financial resources and is the difference between total assets and total liabilities in each fund.

2.2 An accounting distinction is made between the portions of governmental fund balance that is spendable and nonspendable. GASB Statement 54 distinguishes fund balance classified based on the relative strength of the constraints that control the purposes for which specified amounts can be spent. Beginning with the most restrictive constraints, fund balance amounts will be reported in the following five categories:

- a. Nonspendable fund balance – includes amounts that are not in a spendable form or are required to be maintained intact. Examples include inventory and prepaid items.
- b. Restricted fund balance – includes amounts that can be spent only for the specific purposes stipulated by external resource providers either constitutionally or through enabling legislation. Examples include grants and debt proceeds.
- c. Committed fund balance – includes amounts that can be used only for specific purposes determined by a formal action of the City's highest level of decision making authority which is the City Council. Commitments may be changed or lifted only by the City Council taking the same formal action that imposed the commitment originally.
- d. Assigned fund balance – comprises amounts intended to be used by the City for specific purposes. Intent can be expressed by the City Council by the approval of a budget appropriation. In governmental funds other than the general fund, assigned fund balance represents the amount that is not restricted or committed. This indicates that resources in other governmental funds are, at a minimum, intended to be used for the purpose of that fund. An example includes funds assigned by City Council for specific capital projects.
- e. Unassigned fund balance – is the residual classification of the general fund and includes all amounts not contained in other classifications. The City often uses the term available fund balance when referring to unassigned fund balance. Unassigned fund balance is the amount that is available for appropriation for public purposes.

2.3 Enterprise funds are used to account for utility operations. The city's Water and Sewer Fund is an enterprise fund. Enterprise funds are also known as proprietary funds and business-type funds. Enterprise funds have separate terminology for fund balance or retained earnings which is termed as net position in financial reports,

however the City commonly uses the term fund balance for these funds as well. The fund balance or retained earnings of each enterprise fund is to be used for the operating purpose of the fund.

SECTION 3. Objectives

- 3.1 The Cities management and Council recognize that it is essential to maintain adequate unassigned fund balance to mitigate financial risk that can occur from unforeseen revenue fluctuations, unanticipated expenditures, and similar circumstances.
- 3.2 The fund balance also provides cash flow liquidity for the City's operations and increases the potential for investment income.
- 3.3 Ample fund balance enhances short term and long term financial credit by helping to achieve the highest credit and bond ratings possible to provide the city the ability to borrow at the lowest possible rate.
- 3.4 A fund balance policy promotes long-term financial stability by establishing clear and consistent guidelines.
- 3.5 Adequate unassigned fund balance will provide funding flexibility during unanticipated emergencies and natural disasters.

SECTION 4. Guidelines

- 4.1 The North Carolina Local Government Commission is charged with overseeing the fiscal health of North Carolina cities and counties and recommends that a minimum of at least eight percent (8%) of annual budgeted expenditures be maintained for unassigned fund balance. Higher levels may be set based on the current operating needs of the City and the individual fund and future funding needs.
- 4.2 The City commits to maintaining reserves required by law, ordinance, and/or bond covenants.
- 4.3 The City Council hereby establishes a goal for unassigned fund balance for the General Fund in the range of thirty-three to forty five percent (25%-35%) of budgeted expenditures and establishes a goal for the Water and Sewer Fund of between fifty to seventy-five percent (50%-75%) of budgeted expenditures. This range sets the goal at a minimum of approximately four months of the next fiscal year's annual budgeted expenditures. The City will adjust this goal as appropriate based upon the recommendation from the NC Local Government Commission and any change in the City's financial outlook.
- 4.4 The Finance Director is authorized by City Council to credit all revenue in excess of expenditures realized at the end of any given fiscal year for the General Fund that is not nonspendable, assigned or required to be restricted, or committed to unassigned fund balance until the maximum in the range goal thirty-five percent (35%) is realized.
- 4.5 All expenditures drawn from fund balance will require City Council approval unless previously authorized by the City Council for expenditure within the City's annual budget.
- 4.6 If fund balance falls below the goal levels, the City Manager shall implement a plan to restore fund balance within thirty-six (36) months and include within annual budget the plan to restore fund balance to required levels.
- 4.7 The City Council may, from time to time, appropriate fund balances that will reduce unassigned fund balance below the minimum twenty-five percent (25%) goal in the General Fund or below the minimum of fifty (50%) for the Water and Sewer Fund for the purpose of a declared fiscal emergency or other such global purpose as to protect the long-term fiscal security of the City. In such circumstances, the City Council will adopt a plan to restore the unassigned fund balance to the policy level within thirty-six (36) months from the date of the appropriation. If restoration cannot be accomplished within such time period without severe hardship to the City, then the City Council will establish a different but appropriate time period.

SECTION 5. Capital Reserves

- 5.1 Under North Carolina General Statue 159-18 the City is authorized to establish and maintain a capital reserve for any purpose for which bonds may be issued. The City of Hendersonville created a Capital Reserve Fund by resolution on May 4, 1995 to provide funds for capital improvements. The City Council has hereby amended Section 5 of that resolution on this date, June 4, 2015, replacing the term "undesignated fund balance" with the GASB term of "Unassigned Fund Balance" and amended the stated goal of forty-five percent (45%) to the goal range of twenty-five to thirty-five percent (25-35%) and also amended Section 6 of that resolution, replacing the sentence "The City Manager is directed to recommend that all undesignated fund balance exceeding forth-five percent (45%)" with the sentence "The City Manager may transfer any Unassigned Fund Balance in excess of thirty-five percent (35%) be transferred to the Capital Reserve Fund."
- 5.2 Once the maximum in the goal range of thirty-five percent (35%) of unassigned fund balance is realized in the General Fund, the City Manager, at his discretion, is authorized by City Council to transfer all remaining fund balance that is not restricted, committed or assigned to the General Capital Reserve Fund as originally established by formal resolution of the City Council on May 4, 1995. The City Manager will report to City Council all transfers of fund balance.
- 5.3 Once the maximum in the goal range of seventy-five percent (75%) retained earnings is realized in the Water and Sewer Fund, the Finance Director is authorized by City Council to transfer all revenue in excess of expenses realized at the end of any given fiscal year over seventy five (75%) to the Water and Sewer Capital Reserve fund.
- 5.4 The City Manager is charged to annually monitor and report to City Council during the preparation of the annual operating budget regarding the status of unassigned fund balance and or retained earnings and compliance with the stated range goals.

SECTION 6. Order of Expenditure of Funds

- 6.1 When multiple categories of fund balance are available for expenditure (e.g., a project is being funded partly by a grant, funds set aside by the City Council, and unassigned fund balance), the City will start with the most restricted category and spend those funds first before moving down to the next category with available funds.

Resolution #:15-0621

**A RESOLUTION TO ESTABLISH AND MAINTAIN A CAPITAL RESERVE FUND FOR
THE CITY OF HENDERSONVILLE, N.C.**

WHEREAS, under North Carolina General Statute 159-18 the City is authorized to establish and maintain a capital reserve for any purposes for which bonds may be issued; and

WHEREAS, the City Council deems it is in the best interest of the citizens of Hendersonville to establish a capital reserve to fund future capital improvements; and

WHEREAS, the capital reserve fund will be used in conjunction with a multi-year capital improvement program to be reviewed annually during the budget process;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA THAT:

Section 1: The City Council hereby creates a Capital Reserve Fund as allowed under N.C.G.S. 159-18.

Section 2: The Capital Reserve Fund shall be established to provide funds for future capital improvements as identified in a five-year capital improvement program. ~~This fund shall remain open for a period not to exceed five years, unless renewed by the City Council.~~

Section 3: The City shall develop a five-year capital improvement program to be reviewed annually during the budget process to determine capital needs.

Section 4: No funds shall be expended from the Capital Reserve unless approved by the City Council.

Section 5: The objective of the City shall be to maintain a General Fund ~~undesignated fund balance of forty-five percent (45%)~~ unassigned fund balance range between twenty-five and thirty-five percent (25%-35%) of total General Fund expenditures for any given fiscal year as established by the resolution to adopt an Undesignated Fund Balance Policy adopted by City Council on June 4, 2015.

Section 6: The City Manager may recommend that any ~~is directed to recommend that all~~ undesignated unassigned fund balance exceeding ~~forty-five percent (45%)~~ thirty-five percent (35%) of total General Fund expenditures as determined by using audited June 30 financial statements be transferred to the Capital Reserve Fund. The City Manager will report to City Council any funds transferred from the General Fund to the Capital Reserve Fund. Other funds may be appropriated to the Reserve from time to time as specified by the City Council.

Section 7: This resolution shall become effective immediately upon its adoption.

Adopted this fourth day of May, 1995. Amended this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

M. Consideration of an Agreement with Kimley-Horn for a Circulation Study of the Ninth Avenue West Neighborhood: Mr. Connet presented an agreement with Kimley-Horn for a circulation study of the Ninth Avenue West area. He explained residents in that area have expressed concerns regarding traffic flow over the last several months. These concerns are associated with the fact that Hendersonville Elementary, Hendersonville Middle and the new Joint Health Education Facility are located in this area. He reminded the City Council of their commitment to complete a traffic circulation study for this area. City staff recommends hiring Kimley-Horn to complete this study. He presented the Kimley-Horn proposal and funds are included in the FY 2015-16 Budget to complete this study.

Kimley Horn will perform the Scope of Services for a lump sum fee of \$35,000 according to the following breakdown: Phase 1: \$15,000, Phase 2: \$20,000.

Council Member Caraker moved approval of the items listed consent agenda as amended. A unanimous vote of the Council followed. Motion carried.

6. Public Hearing –Consideration of an Ordinance Adopting the Budget, Capital Improvement Plan and Fee Schedule for Fiscal Year 2015-16: City Manager John Connet gave a presentation on the proposed budget. He stated the budget is balanced in accordance with the Local Government Budget and Fiscal Control Act (NCGS 159-11).

Mr. Connet reported the budget appropriations total for all funds and capital projects is \$40,461,641. 2015 is a reevaluation year. He proposed a tax rate for the General Fund at .46/\$100, revenue neutral with the reevaluation year is .4333/\$100. Growth in the General Fund tax base has only been 1.68 percent; below the countywide average.

Mr. Connet proposed the Downtown Fund tax rate at .28/\$100. The revenue neutral rate is .277/\$100. There was a small increase in property value in the Downtown Fund.

Mr. Connet proposed the Seventh Avenue Fund tax rate at .12/\$100; the revenue neutral rate is .1207. Property values in this district decreased in the past four years.

Mr. Connet reported as far as total expenditures, the City is financially sustainable. The General Fund fund balance appropriation currently is \$621,391. The Downtown Fund fund balance appropriation is \$7,500. The Water and Sewer Fund retained earnings is \$10,393,026 and is being reallocated from retained earnings into capital projects for improvements to the system.

Regarding achieving the Council goals with this budget, for sound infrastructure and numerous amenities, Mr. Connet reported this budget includes a continuing contract with VC3 for improved IT services including an upgraded webpage, and large Water/Sewer capital projects in Etowah, Fletcher and on the east side area of the system. Funds are included to upgrade the parking meter infrastructure, resurface streets and construct sidewalks. As it relates to goals related to great public services and strong partnerships, the proposed budget includes a one-stop shop for development in the county by merging Planning and Zoning Departments and locating them in the Henderson County building at 100 N. King Street. The budget also includes the continuation of the Customer Service Excellence program.

Regarding economic vitality and financial sustainability, the Seventh Avenue Fund includes new grants to encourage property owners to improve their properties. The Council will also consider new financial policies to earn better bond rating and allow more financial sustainability.

Mr. Connet reported the Environmental Services Fund contains funds for stormwater improvements.

Mr. Connet reviewed the specific funds. The General Fund totals \$13,570,033; approximately 16 percent goes to general government, 49 percent funds public safety, 16 percent funds transportation (including streets), 5.5 percent funds grounds and recreation, and debt service is 8.2 percent of the fund, special appropriations is .73 percent and miscellaneous expenditures is 3.5 percent of the fund.

Mr. Connet proposed a two-cent tax increase. Other revenue enhancements are related to the fee schedule: a new \$1,000 Traffic Impact Analysis fee (one-third of the total cost) for large developments (when required), a \$50 business registration fee which allows public safety to track contacts and know who is doing business in the City limits, and increased parking penalty fees from \$10 to \$25, and increase the annexation application fee from \$17 to \$26 to cover cost of advertising.

Mr. Connet reviewed the Downtown Fund which totals \$593,145. Approximately 21 percent of the fund pays for capital and debt service, including parking kiosks, 60 percent is for personnel and maintaining landscaping, 16 percent funds special events in the downtown area.

Mr. Connet reviewed the Seventh Avenue Fund which totals \$23,839, 21 percent is for streets and traffic lights in the district, 41 percent is for operating expenses with no personnel expenditures but funds supplies and materials, advertising costs to promote the district and 38 percent is for grants/incentives.

Mr. Connet reported the largest fund, Water and Sewer Fund, totals \$24,763,376, 39 percent will be used for large capital projects to improve the system and the City's ability to serve our citizens and industries, 46 percent is for operating and personnel, 15 percent will be used for debt service. No rate increase is proposed.

Mr. Connet reported the Environmental Services Fund totals \$1,511,246; 17 percent is used for capital (a new garbage truck), 81 percent is for operating and personnel and 2 percent is for debt service. He proposed increasing the base fee to \$2 to establish a capital reserve fund for future stormwater projects.

Mr. Connet stated the budget is balanced in accordance with North Carolina General Statutes. The public hearing has been advertised and the budget document has been available on the website and in the office of the City Clerk. He expressed appreciation to the Budget Analyst Brian Pahle, department heads and staff for their work and support.

Mayor Volk opened the public hearing at 6:24 p.m. in accordance with North Carolina General Statutes by noticed published in the Hendersonville Lightning. The following addressed the Council during the hearing:

Ernie Dermid, 382 Armstrong Avenue, expressed concerns that his mother who lives at 239 Woodbyne Avenue, cannot get water out of the spigot and was told by the Water/Sewer Department that they cannot do anything about it. He stated she has a pump but cannot get water out of her line.

No one else expressed a desire to speak. The public hearing was closed at 6:25 p.m.

Discussion followed on the business registration fee. Mr. Connet explained one of the purposes of privilege licenses was to know who is doing business in the event of a problem, who to contact in event of an emergency, etc. The NC General Assembly allows cities to continue a business registration fee. If privilege licenses are reinstated, this business registration fee will be removed. This fee can also be eliminated mid-year if need be. He recommended a fee of \$50 because it is reasonable and minimal.

The Council also discussed the percentage of personnel and whether there is a target. Mr. Connet explained typically personnel accounts for approximately 60 percent of the General Fund expenditures. He explained there is no specific target but may use School of Government benchmarking to see how we compare to our peers. His experience has shown that 55 to 60 percent is typical; the City is currently at 59 percent. The percentage of full time equivalents (FTE) per capita are tracked as part of the budget.

Council Member Miller asked if staff is comfortable and will be able to manage seven large water/sewer projects at one time. Mr. Connet stated yes, an open position was filled and a utility engineer was hired to help the utility

and engineering departments track projects. He stated the City will be using outside engineers for some of the projects. He stated some of the other projects will be managed by plant operations personnel and others will be in different phases at different times. There was also discussion on whether contingency funds are included for the projects. Mr. Connet stated contingency funds are typically budgeted at 10 percent of the cost of the project. Discussion followed on the project of removing landfill materials. Mr. Detwiler explained if there is a detailed estimate, complete soil borings in advance, etc. the contingency could be reduced.

There was discussion of the incident of the broken waterline on Church Street.

Council Member Smith moved Council to adopt the Budget Ordinance for Fiscal Year 2015-2016. A unanimous vote of the Council followed. Motion carried.

Ordinance #15-0622

**BUDGET ORDINANCE
AN ORDINANCE MAKING APPROPRIATIONS FOR CERTAIN EXPENSES,
CAPITAL IMPROVEMENTS AND INDEBTEDNESS OF
THE CITY OF HENDERSONVILLE, NORTH CAROLINA
FOR THE YEAR BEGINNING JULY 1, 2015 AND ENDING JUNE 30, 2016**

WHEREAS, the City of Hendersonville is coming to the conclusion of its fiscal year and will enter into a new fiscal year on July 1, 2015; and

WHEREAS, it is necessary and required that prior to entering into a new fiscal year a budget must be passed and adopted for the operation of the city government; and

WHEREAS, a public hearing and a work session have been held wherein the public has been notified and invited to be present.

THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA:

SECTION 1: The following amounts are hereby appropriated for the operating budget for the City of Hendersonville and its activities for the fiscal year beginning July 1, 2015, and ending June 30, 2016, in accordance with the chart of accounts heretofore established for this City:

General Fund	\$13,570,033
Downtown Tax District	\$593,145
Seventh Avenue District	\$23,839
Water/Sewer Fund	\$24,763,376
Environmental Services Fund	\$1,511,248
TOTAL APPROPRIATIONS	\$40,461,641
Less: Interfund Transfers	\$8,005,600
TOTAL NET APPROPRIATIONS	<u>\$32,456,041</u>

SECTION 2: That the attached detailed budget document be, and the same reflects the estimated revenues, revenue contributions, and budget appropriations of the City of Hendersonville, North Carolina, for the period beginning July 1, 2015, and ending June 30, 2016. A copy of said document will be available for inspection in the Office of the City Clerk.

SECTION 3: That the City Clerk has published notice of this public hearing and a summary of the proposed budget in a newspaper of local circulation.

SECTION 4: That no appropriations for salaries shall be changed unless authorized by the Council. Appropriations between departments or divisions within one fund, other than salaries, including contingency appropriations, may be transferred therein by the City Manager for the purpose of equalizations when necessary as long as the original total appropriated balance for the fund is not changed. Appropriations within a departments, other than salaries, may be transferred by the department head to make equalizations when necessary.

SECTION 5: There is hereby levied a tax at the rate of forty-six cents (\$0.46) per one hundred dollars valuation of property as listed for taxes as of March 1, 2015. This rate is based on an estimated total valuation of property for the purpose of taxation of \$1,720,595,753 and estimated collection rate of 97%.

Also levied is a tax rate of twenty-eight cents (\$0.28) per one hundred dollars (\$100) valuation of property as listed for taxes as of March 1, 2015, for a special service district established for the purpose of a Downtown Revitalization Project. This rate is based on an estimated total valuation of property for the purpose of taxation of \$81,700,000 and an estimated collection rate of 95.78%.

A tax rate is also levied of twelve (\$0.12) per one hundred dollars (\$100) valuation of property as listed for taxes as of March 1, 2015, for the Seventh Avenue Municipal Service District formed upon a petition of some of the property owners, established for the purpose of landscaping improvements and special events in the district. The rate is based on an estimated total valuation of property for the purpose of taxation of \$9,200,000 and an estimated collection rate of 92.40%.

There is hereby adopted an official Fee Schedule listing specific fees, business licenses, and utility rates charged by the City of Hendersonville for:

- a) the use of City facilities and equipment for the purposes of making them available to public
- b) specific utility rates the proceeds of which are for the maintenance and expansion of its water and sewer system
- c) the administration of a system of business licenses taxation to generate revenue for the General Fund under the authority of North Carolina General Statutes (NCGS) §160A-211,
- d) the reproduction of public records and other miscellaneous services to cover the actual cost of producing these documents and information under the provision of NCGS §132-6.2.

The Fee Schedule is incorporated by reference and placed on file in the Office of the City Clerk.

SECTION 6: That the capital items identified on the following schedule and forecasted for acquisition over the upcoming five-year period be adopted as the official Capital Improvement Plan of the City of Hendersonville.

The Capital Improvement Plan is incorporated by reference and placed on file in the office of the City Clerk.

SECTION 7: The following amounts are hereby appropriated for the special budgets for the City of Hendersonville and its activities for the fiscal year beginning July 1, 2015, and ending June 30, 2016, in accordance with the chart of accounts heretofore established for this City:

Health & Welfare Fund	\$356,765
Historic Preservation Commission	\$15,094
Fire Dept. Community Fund	\$1,500
Capital Reserve Fund – GF	\$264,960
Capital Reserve Fund – WS	\$0
Police – DARE	\$4,271
Police – KENNEL	\$3,133
Police – MOTOR UNIT	\$2,188
Police – NEEDY PERSONS	\$23,868
Police – RAD	\$2,459
Police – YOUTH EXPLORERS	\$5,414
Police – DRUG FORFEITURES	\$36,357

SECTION 8: That copies of this Budget Ordinance shall be furnished to the City Clerk, City Manager and Finance Officer to be kept on file by them for their direction in the disbursement of funds.

SECTION 9: This ordinance shall become effective on and after July 1, 2015.

SECTION 10: That all ordinances and parts of ordinances in conflict herewith be and the same hereby repealed.

Passed and adopted at the regular meeting of the City Council of the City of Hendersonville, North Carolina, held this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Mayor Pro Tem Stephens commented there is a lot of money involved in the budget. He commented on the amount of planning for the budget including the meetings where Council discussed it in-depth and there was a lot of material to review. He commented the budget was discussed thoroughly with the City Manager and Mr. Pahle. He stated Council took this budget seriously and spent a lot of time reviewing it.

A. Consideration of Capital Project Ordinance and Associated Budget Amendment for the Acquisition, Construction and Installation of the Etowah Area Water System Improvements Project (FY 2014-15): Council Member Smith moved Council to adopt the Capital Project Ordinance for the acquisition, construction and installation of the Etowah Area Water System Improvements Project and the associated budget amendment. A unanimous vote of the Council followed. Motion carried.

Ordinance #15-0623

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE ETOWAH AREA WATER SYSTEM IMPROVEMENTS PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the Etowah Area Water System Improvements Project.

Section 2: The following amounts are appropriated for the project:

Account Number	Account Name	Total Budget
4300000 519000	Professional Services	\$ 30,000
4300000 519425	Professional Services-Const. Admin.	\$ 353,000
4300000 549750	Permits, License, and Fees	\$ 200
4300000 557000	Land, ROW, and Land Improvement	\$ 50,000
4300000 559850	Construction	\$ 2,944,000
4300000 599100	Contingencies	\$ 442,000
Total Project Appropriation		\$ 3,819,200

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999430	Transfer to Etowah	\$ 3,819,200
4300000	998060	Transfer from Water and Sewer Fund	\$ 3,819,200
Total Project Revenue			\$ 3,819,200

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Budget Amendment: In creation of a Capital Project Ordinance for the Etowah Water System Improvements project, the Water and Sewer Fund will need to appropriate enough funding to cover the cost of the project to the new special project fund. This is suggested to be done through a fund balance appropriation and then a transfer to the Etowah Fund (430). The Fund's fund balance has a substantial reserve and remains healthy after such a large transfer.
Amount: \$3,819,200.

B. Consideration of Capital Project Ordinances for Eight Water and Sewer Fund Projects and One General Fund Project: Tracey Grove Road Bridge Replacement (FY 2015-16): Council Member Caraker moved Council to adopt the Capital Project Ordinances for the Eastside Transmission Main Phase II Project, Fletcher Area System Improvements, Mud Creek Dump Cleanup, Rugby Drive System Improvements, Rutledge Road System Improvements, SCADA System Upgrade, WTP High Service Pump Station, WWTP Gravity Filter Replacement and the Tracey Grove Road bridge replacement project. A unanimous vote of the Council followed. Motion carried.

Ordinance #15-0624

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE EASTSIDE TRANSMISSION MAIN, PHASE II PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the Eastside Transmission Main, Phase II project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4020000	519425	Professional Services-Const. Admin.	\$ 330,000
4020000	557000	Land, ROW, and Land Improvement	\$ 70,000
Total Project Appropriation			\$ 400,000

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999402	Transfer to Eastside	\$ 400,000
4020000	998060	Transfer from Water and Sewer Fund	\$ 400,000
Total Project Revenue			\$ 400,000

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance #15-0625

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE NORTHSIDE (FLETCHER AREA) WATER SYSTEM IMPROVEMENTS PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the Northside (Fletcher Area) Water System Improvements Project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4010000	519000	Professional Services	\$ 124,500
4010000	519400	Professional Services-Engineering	\$ 207,500
4010000	519425	Professional Services-Const. Admin.	\$ 249,000
4010000	549750	Permits, License, and Fees	\$ 200
4010000	557000	Land,ROW, and Land Improvement	\$ 150,000
4010000	559850	Construction	\$ 2,075,000
4010000	599100	Contingencies	\$ 315,000
Total Project Appropriation			\$ 3,121,200

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999401	Transfer to Fletcher	\$ 3,121,200
4010000	998060	Transfer from Water and Sewer Fund	\$ 3,121,200
Total Project Revenue			\$ 3,121,200

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance #15-0626

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE MUD CREEK DUMP CLEANUP PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the Mud Creek Dump Cleanup Project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
3600000	329202	Appropriations	\$ 35,000
Total Project Appropriation			\$ 35,000

Section 3: The following revenues are anticipated to be available to the aforementioned special project fund from reimbursements from the State for project expenses:

Funding Source	Total Appropriation
NCDENR	\$ 35,000
Total Revenue	\$ 35,000

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance #15-0627

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE RUGBY DRIVE 12-INCH INTERCONNECTION PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the Rugby Drive 12-Inch Interconnection project.

Section 2: The following amounts are appropriated for the project:

Account Number	Account Name	Total Budget
4150000 519000	Professional Services	\$ 29,000
4150000 519425	Professional Services-Const. Admin.	\$ 5,000
4150000 549750	Permits, License, and Fees	\$ 200
4150000 557000	Land, ROW, and Land Improvement	\$ 63,000
Total Project Appropriation		\$ 97,200

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number	Account Name	Total Budget
609900 999415	Transfer to Rugby Dr.	\$ 97,200
4150000 998060	Transfer from Water and Sewer Fund	\$ 97,200
Total Project Revenue		\$ 97,200

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance #15-0628

**CAPITAL PROJECT ORDINANCE FOR
THE ACQUISITION, CONSTRUCTION AND INSTALLATION
OF THE RUTLEDGE ROAD WATER SYSTEM IMPROVEMENTS PROJECT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the Rutledge Road Water System Improvements project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4200000	519000	Professional Services	\$ 15,000
4200000	519425	Professional Services-Const. Admin.	\$ 5,000
4200000	549750	Permits, License, and Fees	\$ 200
4200000	557000	Land, ROW, and Land Improvement	\$ 10,000
Total Project Appropriation			\$ 30,200

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999420	Transfer to Rutledge Rd.	\$ 30,200
4200000	998060	Transfer from Water and Sewer Fund	\$ 30,200
Total Project Revenue			\$ 30,200

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance #15-0629

**CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION
OF THE OLD TRACEY GROVE ROAD BRIDGE REPLACEMENT PROJECT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a City infrastructure project described as the Tracey Grove Road Bridge Replacement project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4040000	519400	Professional Services-Engineering	\$ 150,000
Total Project Appropriation			\$ 150,000

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the General Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999404	Transfer to Tracey Grove	\$ 150,000
4040000	998060	Transfer from Water and Sewer Fund	\$ 150,000
Total Project Revenue			\$ 150,000

Section 3(a): The transfers from the General Fund are provided by an 80% refund through the NCDOT and 20% from General Fund revenues, as follows:

Funding Source	Total Appropriation
NCDOT	\$ 120,000
General Fund	\$ 30,000
Total Revenue	\$ 150,000

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the General Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance #15-0630

**CAPITAL PROJECT ORDINANCE FOR
THE ACQUISITION, CONSTRUCTION AND INSTALLATION
OF THE SCADA SYSTEM UPGRADE PROJECT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the SCADA System Upgrade project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4100000	559850	Construction	\$ 718,000
4100000	599100	Contingencies	\$ 75,000
Total Project Appropriation			\$ 793,000

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999410	Transfer to SCADA	\$ 793,000
4100000	998060	Transfer from Water and Sewer Fund	\$ 793,000
Total Project Revenue			\$ 793,000

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance #15-0631

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE WATER TREATMENT PLANT (WTP) HIGH SERVICE PUMP STATION UPGRADE PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a water system improvements project described as the WTP High Service Pump Station project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4030000	519425	Professional Services-Const. Admin.	\$ 14,000
4030000	559850	Construction	\$ 1,700,000
4030000	599100	Contingencies	\$ 450,000
Total Project Appropriation			\$ 2,164,000

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999403	Transfer to WTP High Service	\$ 2,164,000
4030000	998060	Transfer from Water and Sewer Fund	\$ 2,164,000
Total Project Revenue			\$ 2,164,000

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fourth day of June, 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

Ordinance 15-0632

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE WASTEWATER SYSTEM GRAVITY FILTER REPLACEMENT PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a wastewater system improvements project described as the Wastewater System Gravity Filter Replacement project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4250000	519000	Professional Services	\$ 150,000
4250000	559850	Construction	\$ 1,000,000
4250000	599100	Contingencies	\$ 100,000
Total Project Appropriation			\$ 1,250,000

Section 3: The following revenues are anticipated to be available via transfers to the aforementioned special project fund from the Water & Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
609900	999425	Transfer to WWTP Gravity Filter	\$ 1,250,000
4250000	998060	Transfer from Water and Sewer Fund	\$ 1,250,000
Total Project Revenue			\$ 1,250,000

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

7. Quasi-Judicial Public Hearing – Consideration of an Application from Ingles Markets to Modify a Previously Approved Amended Special Use Permit for the Property Located at 1980 Asheville Highway to Add a four-pump Gas Express and to Reconfigure the Parking and Add a Right-in Driveway Located at the Southwestern Corner of the Property: Mayor Volk explained the procedures for quasi-judicial public hearing stating they are required by the State of North Carolina in certain situations. Quasi-judicial hearings differ from regular public hearings in that interested persons have the following rights: to cross examine witnesses, to present evidence, to inspect documentary evidence presented against them, and to be afforded all the procedural steps set out in the pertinent ordinance and statute.

Mayor Volk explained the City Council may only consider factual information and/or expert testimony and not feelings or opinions. She asked those who anticipate speaking to be sworn in. Four persons were sworn in to provide testimony.

Mayor Volk asked the members of City Council to announce any contacts concerning the application that are not included in the file. There was none.

Mayor Volk asked the members of City Council to announce any conflicts of interest they may have pertaining to this matter. There was none.

Mayor Volk asked if any person present is aware of anything of value that has been given or promised in exchange for a vote on the application. There was none.

At 6:49 p.m., Mayor Volk opened the public hearing in accordance in North Carolina General Statutes by notice published in the Hendersonville Lightning.

Ms. Susan Anderson, Planning Director, requested the Council enter into the record file #P-15-7-SUR and requested the Council to take official notice of the Zoning Ordinance, the official zoning map, the 2030 Comprehensive Plan and the Comprehensive Transportation Plan. She provided the following testimony:

The City is in receipt of an amended Special Use Permit application from Preston Kendall of Ingles Markets to modify a previously approved amended Special Use Permit. The property is located at 1980 Asheville Highway and the parcel number for this property is 9569-45-9576.

History: She provided some history of the project. On June 6, 2013, City Council voted unanimously to approve an amended Special Use Permit to allow the addition of a Gas Express with four pumps and eight fueling stations and a 3,298 square foot canopy and kiosk for the attendant. A condition was added that

required the driveway #2 (center driveway) turn lane to be extended to the southern property line to maximize the turn lane and taper length.

A variance request was also part of this application for an amended Special Use Permit. The variance request was to increase the number of driveways a development parcel may have on any given road from two to three. The City Council voted two in favor and three opposed to granting the variance and therefore, the motion failed.

She provided a floodway map which shows the portion of this parcel that includes a stream and is located in the 100-year floodplain.

Existing Land Uses & Zoning: An unopened right-of-way exists along the northwest property line. Parcels on the other side of this unopened right-of-way consist of single-family residences and a vacant commercial building. The residential parcels are zoned R-10 Medium Density Residential and the commercial parcel is zoned C-3 Highway Business. The parcel to the northeast consists of the Watco Company rail line and is zoned I-1 Industrial. The two parcels located to the southeast consist of vacant land and commercial buildings. The vacant parcel is zoned I-1 Industrial and the parcel with the commercial buildings includes a retail use and is zoned C-3 Highway Business.

Comprehensive Plan Consistency: This parcel is classified as a Neighborhood Activity Center and Natural Resource/Agricultural on the 2030 Comprehensive Plan's Future Land Use Map. Surrounding parcels are classified as Neighborhood Activity Center, Natural Resource/Agricultural and Medium Intensity Neighborhood.

She reviewed the goals of the Neighborhood Activity Center, the Medium Intensity Neighborhood and the Natural Resource/Agricultural categories.

Plan Review: Gas Express Addition: The current amended site plan shows the addition of a four-pump Gas Express to the southwest portion of the parking lot. The Gas Express will have a 3,036 square foot canopy and a 400 square foot kiosk for the attendant.

Parking: According to the site plan, there are 250 existing parking spaces located on the site. Section 6-5 of the Zoning Ordinance requires one space for each 200 square foot of gross floor area. Based on the building size of 64,449 square feet, 323 parking spaces are required. A variance was approved by City Council in 1998 to reduce the required parking to 280 spaces.

The applicant has filed a variance request to reduce the required parking from 323 to 227 parking spaces. This reduction results in a parking ratio of one space for each 284 square foot of gross floor area. She provided the variance request application.

Sidewalks: There is an existing sidewalk connection from the street to the grocery store at the northwestern boundary of the parcel. A new sidewalk connection to the existing grocery store will be added at the southeastern boundary of the parcel. There is also an existing Apple County Transit bus stop on Asheville Highway in front of the parcel.

Traffic Impact Analysis (TIA): Zoning Ordinance Section 6-19 requires a traffic impact analysis whenever a development generates 100 peak hour or 1,000 or more trips daily. A "trip" is a one-direction vehicle movement entering or exiting a site. Based on the Institute of Transportation Engineers Trip Generation manual, the site is estimated to generate an additional 1,348 daily vehicle trips. According to the manual, the site currently generates approximately 6,574 daily vehicle trips during the week and 11,584 daily trips during a Saturday. A traffic impact analysis was completed by Mattern & Craig for the previous amended Special Use Permit in 2012 and was reviewed by Kimley-Horn & Associates, the traffic consultant for the city.

There are three issues to be considered regarding the TIA.

1: The TIA identified that the site currently warrants the need for a northbound right-turn lane for the center driveway (driveway #2). The driveway on the northern boundary of the parcel has an existing right turn lane. Although the TIA completed by Mattern & Craig identified the need for a minimum of 50 feet of vehicle storage for that turn lane, Kimley-Horn & Associates calculated that the turn lane needs a minimum of 75 feet of storage with additional area needed for a taper. This distance is based on having three driveway access points. Mattern & Craig is in agreement with 75 feet of storage but states that "the presence of the third driveway and the existing property line may limit how much storage could actually be achieved."

Correspondence from Steve Cannon of NCDOT states that they will require the northbound right turn lane. The site plan currently shows a right turn lane with 75 feet of storage and a 50-foot taper for the center driveway.

2: Zoning Ordinance Section 5-18-4.3 has a provision for the number of driveways allowed on a given parcel in the Entry Corridor Overlay District. This parcel is subject to the Entry Corridor Overlay District

requirements. Section 5-18-4.3 states that "...a development parcel shall be limited to no more than two driveways on any road and no more than three driveways total." This provision further states that "additional driveways may be permitted when they are necessary to improve traffic movement, increase sight distances or for other safety reasons."

The site plan shows the two existing full movement driveways along with a new third restricted movement driveway located at the southern boundary of the parcel. This third driveway is restricted to right-in only. Kimley-Horn & Associates requested that Mattern & Craig provide information on why a third driveway is necessary. Mattern & Craig states that limiting the site to two driveways would require a need for a right turn lane consisting of 100 feet of full storage and 100 feet of taper for the center driveway. Mattern & Craig further states that there is only 150 feet of distance available between the center driveway and the property line.

The applicant has requested a variance from Zoning Ordinance Section 5-18-4.3 allowing the addition of a third driveway.

Should the variance not be approved, staff recommends adding a condition that the proposed turn lane is extended to the southern property line. This condition was added by City Council with the previous amended Special Use Permit approved in 2013.

3: Kimley-Horn & Associates raised concerns that "a median is not currently in place, nor proposed, along Asheville Highway to prohibit left turning movements into and out of the third driveway, therefore consideration should be given to limiting the site access on US 25 to the two full movement drives that exist currently." In response to this comment, Mattern & Craig has stated the following:

"Mattern & Craig takes no exception to the comment provided by Kimley-Horn. The TIS has demonstrated that the development will function adequately with the addition of a right-in, right-out driveway. If the City of Hendersonville and/or NCDOT determines the addition of entrance #3 is in violation of the access management guidelines, then the length of the northbound right turn lane at entrance #2 would be based on 139 vehicles making a right turn during the PM peak hour resulting in 100 feet of storage required."

Previously, City staff received an e-mail from NCDOT stating that they will support the third driveway provided it is right-in only.

Analysis: She reviewed Section 7-4-10.1 of the Zoning Ordinance and provided the following findings:

(A) Based on the TIA and subsequent comments with the two driveway access points, the center driveway will require a right turn lane with 100 feet of full storage and 100 feet of taper. There is approximately 150 linear feet from the center driveway edge to the southern parcel line available for the required right turn lane. The right turn lane will allow turning vehicles to reduce their speed and impact to the traffic flow along Asheville Highway. The addition of the third driveway entrance will further reduce the overall length of the required right turn lane and taper by approximately 25 linear feet. Without any type of turn lane for the third driveway, vehicles turning into this driveway will impact traffic flow along Asheville Highway.

Kimley-Horn & Associates has raised concerns that a median is not currently in place, nor proposed, along Asheville Highway to prohibit left turning movements into and out of the proposed third driveway. Kimley-Horn & Associates recommended limiting the site access on Asheville Highway to the two full movement drives that currently exist.

(B) The property is currently served by water and sewer.

(C) The applicant is requesting a variance from Zoning Ordinance Section 5-18-4.3 increasing the number of driveways a development parcel may have on any given road from two to three.

The applicant is requesting a variance from Zoning Ordinance Section 6-5 Off Street Parking to reduce the required parking from 323 parking spaces to 227 parking spaces. This reduction results in a parking ration of one space for each 284 square feet of gross floor area.

(D) A neighborhood compatibility meeting concerning the application was held on March 16, 2015. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property. Forty property owners were notified; three members of the general public attended the meeting. She provided a copy of the neighborhood compatibility report.

(E) The 2030 Comprehensive Plan's Neighborhood Activity Center category is intended to "concentrate retail in dense, walkable mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville's neighborhoods." This project increases retail options along a major corridor. The Comprehensive Transportation Plan does not indicate any improvements to Asheville Highway.

Planning Board Recommendation: The Planning Board made the following recommendations:

Variance Request #1: The Planning Board voted three in favor and three opposed to recommend City Council approve a variance from Zoning Ordinance Section 5-18-4.3 Driveways, increasing the number of driveways a development parcel may have on any given road from two to three. The motion failed.

Variance Request #2: The Planning Board voted unanimously to recommend City Council approve a variance from Zoning Ordinance Section 6-5, Off Street Parking, to reduce the required parking from 323 parking spaces to 227 parking spaces.

Amended Special Use Permit: The Planning Board voted unanimously to recommend that City Council approve the application of Ingles Markets Inc., for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions with the condition that should City Council turn down the variance request, driveway #2 turn lane is extended to the southern property line to maximize the turn lane and taper length.

Council Member Smith clarified it is a right-in only lane. Ms. Anderson stated that is correct. Council Member Smith asked if Kimley Horn recommends no third entrance. Ms. Anderson stated that is correct.

Preston Kendall, representing Ingles Markets, provided the following testimony:

He stated they were here with this request for a new gas station at this Ingles about two years ago. He provided an architectural rendering of the proposed Gas Express with rock and brick, metal top with red iron, nice-looking gas station. There are other gas stations in Hendersonville. The location of the Gas Express is where the seasonal gardening center was placed every year for a couple of months. When they had the garden center, they did not seem to have issues with the parking. They will be adding sidewalks. When they add the third entrance, there will be a sidewalk all the way around to their store. There will also be a sidewalk that goes in front of the decel lane and across and connects to existing sidewalk. Customers using the Apple Transit bus will not have to walk through the middle of the parking lot to get to the front door of the store. They will have a sidewalk beside the gas station, behind the gas station by the parking lot into the front of the store. They will be able to walk from the bus stop to the Ingles and get into their parking field.

Regarding the Transportation Engineer's Trip Manual, the estimated number of trips into this parking lot for the gas station is 1,348 trips per day just because they are adding the gas station. He does not know if that is correct but he could pull figures from other stores to get that information. If they are going to have 1,300+ trips into the parking per day, just because of the gas station, they feel it should have its own driveway. Mattern & Craig, their traffic engineer, did not find that the right-in only was warranted with the traffic counts. They performed traffic counts and studies here. They do traffic studies and counts for every store where they add a gas station. DOT approved the right-in only. In the other meetings, people have been concerned about turning south on Asheville Highway or someone wanting to turn left into the right-in. John Cox with Land Planning Associates, their civil engineer, has designed the right-in so you cannot do that. You would have to drive over the curb and gutter twice to be able to turn left into that area. Both Mattern & Craig and Kimley-Horn agree that the main entrance needs to have a decel lane. Ingles agree they need to have a decel lane. Both Mattern & Craig and Kimley Horn agree, with input from the NCDOT, that there needs to be 75 feet of storage and 50 feet of taper and they can do both of those with the right turn lane. Mr. Steve Cannon with NCDOT, in a letter, agrees 75 feet of storage and 50 feet of taper would be required and they can do that. NCDOT approved a curb cut and a right turn lane for them.

Everything he has spoken about, sidewalks, decel lane, etc. has been about customer safety and flow through their parking lot. This is big project for them and have been working on it for four or five years. They think their customers deserve to have a gas station here. Customers get points for extra money off gas and they are driving across town to get to it.

The City's traffic engineer looked at this a point of the plan plus the City ordinance and gave their evaluation. Their traffic engineer, Mattern & Craig looked at this as a project without an ordinance: what is the safest, most practical way to get people in and out of the store with a gas station.

John Cox, Land Planning Associates, provided the following testimony:

Regarding the parking variance and the request for a reduction, they currently have 250 spaces in the existing site. Based on the size of the store and the gas station, they would be required under the ordinance to build 323 parking spaces. They have proposed 227 parking spaces with addition of the gas station.

They have studied six stores in Lincolnton, NC, Dallas, NC, Powell, TN, another store in TN, Fletcher, NC and Arden, NC. They studied the stores on Thursday in the a.m. and p.m. and on a Saturday in the same to try to determine the worst case scenario for each store. Out of the six stores studied, the Fletcher store, on Saturday from 4 to 6 was the worst of the six stores. In Fletcher it was 158 cars in the lot at the busiest time.

As part of the parking studies they also look at how many employees they have on the site, where they will park and designate spaces for them. They will designate spaces by color. At Fletcher, at that time, they had 51

employees, which is similar to this store but slightly less at this store. That would have meant 107 customers only, 51 employees. At this site, they have 157 available customer spaces available. He identified the employee-designated areas and the remaining parking lot would be accessible to customers. Excluding the area for employees, they have 157 available customer parking spaces which is 50 spaces more than the study shows is required. With 227 total spaces available and the need for 157 customer spaces, they feel they have more than adequate parking.

In 2013, they had added some parking to the right of the store. At that time, they had only done two of the six studies and have since studied four more stores. They are beginning to understand their need for less parking which is why they are requesting it.

As Mr. Kendall said, the garden center has been there numerous times and they have not seen any parking problems with it in place. The gas station should not take up more space than the garden center would. He asked for questions.

There was a very brief recess.

Mayor Volk asked if anyone wanted to speak in favor of the request. There was none.

Mayor Volk asked if anyone wanted to speak in opposition to the request. The following spoke:

Barbara Chamberlain, 1749 Clairmont Drive, expressed concerns about the amount of traffic the store generates, accidents, it is not possible to install another traffic light, exiting the store, the speed limit of 40 miles per hour on Highway 25, and the safety of children at the park. Council Member Caraker explained the speed limit is set by NCDOT and he will make a request to lower the speed limit to the NCDOT Board.

Ken Fitch, 1046 Patton Street, stated he and his family are long-term loyal customers of Ingles. He stated the Gas Express would be welcomed but expressed concerns: safety concern for entering/exiting from site because of the volume and acceleration of southbound traffic. He asked if there has been a request for a study for a traffic signal at this location stating that should be made a condition if the project moves forward. He commended staff for recommending a turn lane. He also expressed concerns about the potential build-up/blockage of vehicles with less capacity at this site, possible obstructed visibility and the potential for blockage and maneuverability.

Mayor Volk asked if anyone wanted to speak in rebuttal or have questions.

Council Member Smith asked why the gas station cannot be put in front in the middle like every other gas station. Mr. Kendall stated that would take the customer's prime parking for the store away. Council Member Smith commented they are already taking parking spaces away. Mr. Kendall stated he doesn't believe anyone parks in the area of the gas station. Most people like to park between the corners and walk in so that is prime customer parking, pushing carts, etc. they do not have many gas locations that are right in front of the store but if so they are 20-30 parking spaces out. That is the most logical place to put it on the site. They cannot go behind because of the flood zone. The garden center done well but didn't interrupt the flow of traffic for customers in the main parking lot.

Council Member Smith asked if they are asking for a right-in and a right-out. Mr. Kendall stated they are asking for a right-in only, with a hook so you cannot make a left going south, they are adding a 50-foot taper with 75 feet of stacking to the existing turn lane.

Council Member Smith asked if this is the same plan as presented two years ago. Mr. Kendall stated yes, with the exception of the earlier proposal to build a retaining wall for 15-20 parking spaces.

Council Member Smith asked if the TIA information is the same as two years ago. Mr. Kendall stated no, the parking analysis with the number of customers going to the gas station was done right before they applied (with traffic flows from the other stores). The 1,300 is an average.

Council Member Caraker asked if this would be a deal-killer if they do not get the third driveway. Mr. Kendall stated he cannot answer that but they didn't last time.

Council Member Miller asked if the section for the proposed gas station was someone else's property could they get a driveway permit. Council Member Caraker stated they probably could if it is a separate piece of property. Council Member Miller commented there is somewhat of a penalty for already having a business there and wanting to change it which is problematic to him on the use of the property, if they are willing to put in a recommended deceleration lane. Council Member Caraker agreed. Mayor Volk commented the deceleration lane doesn't start until after the right-in. She stated the right-in has no deceleration lane because it abuts the property next to it. Council Member Miller commented the City is requiring the deceleration lane for the length requested. Mr. Kendall agreed. Council Member Miller asked if the right turn only is at the edge of their property. Mr. Kendall stated yes. Council Member Miller commented there is no deceleration lane now for the big entrance so that will be gained, but are potentially adding a right-turn in. He commented the deceleration lane would begin close to the right-turn in. Mr. Kendall stated yes, the taper will start at the foot to prevent left turn. He stated they have asked NCDOT for a signal at that entrance for the last three years.

Mayor Pro Tem Stephens commented he shops there and agreed it takes patience. You have to wait until the signal light at the park changes. He stated it is frustrating when people do not use their turn signals. He stated this may help because you will know earlier if they are turning into the gas station. He also agreed with Council Member Miller that a driveway permit would be allowed if the parcel was owned by someone else. Mayor Pro Tem Stephens stated there is a traffic problem there but does not think this will make it worse.

Council Member Miller commented the deceleration lane will help. He noted Mr. Fitch's concerns but the Council has to base their decision on facts. He stated the turn lane will take the vehicles off the highway quicker and slow them down. He commented he hates to penalize someone because they already own property and not allow them to put a business in there that someone else could. Mayor Pro Tem Stephens agreed. Council Member Miller commented they cannot account for impatience, people have to be reasonable. He stated this corridor was widened so it can be built on. He stated it is the right thing to do to approve this.

Council Member Caraker stated he also understands the concerns expressed but agreed they may be worse case scenario. Council Member Miller voiced support of a lower speed limit in that area. There was discussion of the speed limit in that area. Mr. Connet suggested presenting a resolution to NCDOT requesting them to lower the speed limit. Council Member Caraker stated the City may also ask Henderson County MPO to support the request.

Mayor Volk stated she still has the same concerns because she shops there and sometimes walks. She supports the deceleration lane and the sidewalks into the site to the store. She expressed concerns about the right-in only with no decelerations lane. She stated the traffic consultant says it is operable with the two driveways. She stated she would like to see the Gas Express there but doesn't support the third driveway.

Mayor Volk asked for other questions or discussion. There was none. Mayor Volk asked if anyone else wishes to speak. There was none. The public hearing was closed at 7:56 p.m.

Council Member Smith commented with regard to moving of traffic, the front of the store is better. He realizes they will be losing traffic islands and parking spaces but would alleviate a lot of the problems because the gas entrance would be the second entrance. He stated they may get 1,300 or more trips per day and this allows the increased traffic this creates to be on their property instead of on Highway 25. He recalled that an engineer agreed with him about that two years ago. He stated it is not the right spot. He stated on the facts given, and the opportunity they have to put in another location, he cannot support it. He stated there have been no material changes to the plan from what they presented two years ago. Council Member Miller commented if the parcel was separately owned this would not be discussed, but permitted. Council Member Smith stated people who are getting groceries would get off the road first, then customers that are specifically getting gas would be the second entrance from either direction. He stated this would get rid of the main flow of traffic first, then the gas customers, then they can go in and out and it makes more sense. He stated he appreciates the concern about loss of parking spaces but they are not afraid to give up the spaces. Council Member Miller commented the demands for parking may be too high. He stated they will have enough spaces for their customers. Council Member Smith stated the parking is only full is snow is predicted. Council Member Miller commented this would be punishing them for having all of the property. Council Member Smith stated they are not being punished because Council has already approved a Gas Express. Council Member Miller stated this would be taking away a cut. Council Member Caraker stated it would be taking away a piece of their property. Council Member Miller stated a gas station or pumps could be built there with an entrance in the middle if it was a separate owner. Council Member Smith stated it may be a business strategy.

Variance Request #1: Council Member Caraker moved City Council to approve a variance from Zoning Ordinance Section 5-18-4.3 Driveways, increasing the number of driveways a development parcel may have on any given road from two to three because this will alleviate increased traffic problems at this site. The vote was three in favor; two opposed (Smith, Volk). Motion carried.

Variance Request #2: Council Member Caraker moved City Council to approve a variance from Zoning Ordinance Section 6-5, Off Street Parking, to reduce the required parking from 323 parking spaces to 227 parking spaces because it is based on actual need. A unanimous vote of the Council followed. Motion carried.

Amended Special Use Permit: Council Member Caraker moved City Council to approve the application of Ingles Markets Inc., for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions and add the following additional condition: driveway #2 turn lane is extended to the southern property line to maximize the turn lane and taper length. Council Member Smith asked if would interrupt with the new driveway if it goes to the property line. Council Member Caraker amended the motion to read: driveway #2 turn lane is extended as designated on the site plan to maximize turn lane and taper lane. A unanimous vote of the Council followed. Motion carried.

City Attorney Fritschner consulted with the Council on whether the first variance is approved because of the NCGS that requires an ordinance, or if it has the effect of an ordinance, be passed 4-1 vote for the first reading. He stated it will only require a simple majority next time but requires a second vote. There was discussion of when the second

vote could occur. Mr. Connet suggested putting this on the agenda for the July meeting. Mr. Kendall did not object to the second reading at the July meeting. City Attorney Fritschner advised a public hearing is not required.

8. Quasi-Judicial Public Hearing – Consideration of an Application to Amend and Special Use Permit to Replace an Existing 100-foot Lattice-type Telecommunication Tower with a 150-foot Monopole Telecommunication Tower at 427 Armstrong Avenue: Mayor Volk explained the procedures for quasi-judicial public hearing stating they are required by the State of North Carolina in certain situations. Quasi-judicial hearings differ from regular public hearings in that interested persons have the following rights: to cross examine witnesses, to present evidence, to inspect documentary evidence presented against them, and to be afforded all the procedural steps set out in the pertinent ordinance and statute.

Mayor Volk explained the City Council may only consider factual information and/or expert testimony and not feelings or opinions. She asked those who anticipate speaking to be sworn in. Four persons were sworn in to provide testimony.

Mayor Volk asked the members of City Council to announce any contacts concerning the application that are not included in the file. There was none.

Mayor Volk asked the members of City Council to announce any conflicts of interest they may have pertaining to this matter. There was none.

Mayor Volk asked if any person present is aware of anything of value that has been given or promised in exchange for a vote on the application. There was none.

At 6:49 p.m., Mayor Volk opened the public hearing in accordance in North Carolina General Statutes by notice published in the Hendersonville Lightning.

Ms. Susan Anderson, Planning Director, requested the Council enter into the record file #P-15-9-SUR and requested the Council to take official notice of the Zoning Ordinance, the official zoning map, the 2030 Comprehensive Plan and the Comprehensive Transportation Plan. She provided the following testimony:

Project Description: On September 6, 2012, City Council approved a Special Use Permit for a 100-foot lattice type telecommunication tower with a 10-foot lightning rod for a total height of 110 feet. The site is located on City-owned property at 427 Armstrong Avenue and is listed as PIN 9568-25-6736. She provided an aerial view of the site. The Special Use Permit process is a requirement for telecommunication towers located in residentially-zoned neighborhoods.

The purpose of this tower is for the Hendersonville Water & Sewer Department Advanced Metering Infrastructure (AMI) system. This site also includes the location of one of two City-owned reservoirs. The other reservoir is located on a separate adjacent parcel. The approved tower is intended to accommodate five antennas for transmitting emergency services communications and water meter communications.

After preliminary conversations with the City Manager and Planning staff regarding replacement of the existing tower for a commercial use, the Planning Department received a Special Use Permit amendment application from Skyway Towers, LLC. The application proposes to replace the existing 100-foot lattice-type telecommunication tower with a 150-foot monopole telecommunication tower. She reviewed drawings of the existing tower and the proposed tower.

City Manager John Connet directed staff to process this application and to go through the Special Use Permit public hearing process prior to discussions with City Council on a potential lease agreement for the proposed new telecommunication tower and subsequent commercial use.

Existing Land Use & Zoning: The reservoir property is surrounded by single-family homes. Adjacent properties are classified as R15 Medium Density Residential.

Comprehensive Plan Consistency: The reservoir property is classified as Natural Resource/Agricultural on the 2030 Comprehensive Plan's Future Land Use Map. Adjacent properties are classified as Medium Intensity Neighborhood. She reviewed the goal of the Natural Resource/Agricultural category.

Plan Review: Zoning Ordinance Section 16-4-24 has specific requirements for telecommunication towers and antennas. The requirements include submitting an application, site development plan, engineered tower design, proof of regulatory compliance, general standards including complying with the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) and standards for siting. The submitted plan meets the requirements of Section 16-4-24. Additional requirements for towers permitted under special use permits are:

Setbacks: Telecommunication towers shall be set back from property lines abutting any residential district or use a distance equal to the tower height or 200 feet, whichever is greater. Towers erected on property owned by the US, state, county or municipality can have a reduced setback equivalent to the fall radius of the tower being erected or 100 feet, whichever is greater.

An engineer representing the applicant, Michael F. Plahovinsak, P. E., in a letter dated April 15, 2015, has stated that this monopole telecommunication tower, in the event of a failure due to extreme wind and comparable appurtenance antenna loads, will be designed so that the it would yield/buckle at the 70-foot elevation resulting in a maximum 80-foot fall radius.

According to the site layout on Sheet C-1 provided by the applicant, the proposed new tower is set back 129 feet from the nearest property line, which is along Armstrong Avenue. Should City Council approve a lease, the new tower will also accommodate antennas for the purpose of transmitting emergency services communications and water meter communications. She reviewed drawings showing the tower, the 100-foot line and the property line.

Screening (16-4-24.4b): A vegetative screen consisting of two staggered rows of evergreen shrubs on five foot centers, six feet tall at time of planting shall be planted in a 10-foot wide planting strip surrounding the required security fencing. The applicant is showing the required planting on a landscaping detail on Sheet C-2.

Feasibility (16-4-24.4c): The applicant shall prove that there are no feasible collocation alternatives to meet the minimum service level necessary. A letter from Justin Hones, Project Manager of Skyway Towers, states that T-Mobile requested that Skyway find a location within a certain search area. During this search, Skyway identified the existing City-owned tower. T-Mobile is proposing to construct a new tower with sufficient height to meet T-Mobile's needs on a site where a tower currently exists.

Concealment (16-4-24.4d): Under the Special Use Permit process, concealed towers are required unless existing topography, vegetation or other site conditions make the tower not readily visible from adjoining properties. The existing vegetation on site and the physical location make the existing tower not readily visible from adjoining properties with the exception of the adjoining reservoir property, which does not include a residential use.

For the proposed monopole telecommunication tower, the applicant has submitted a variance application and supplemental information. A variance from the concealed tower standard is not required if City Council determines that existing topography, vegetation or other site conditions make the tower not readily visible from adjoining properties.

Noise (16-4-24.4e): The tower shall be designed so that it is not reasonably likely to generate wind noise that is audible on adjoining properties.

Height (16-4-24.4f): Maximum height for a telecommunications tower is 240 feet and maximum height for a tower requiring a special use permit is 100 feet with the exception of towers erected on property owned by the U.S., state, county or municipality. Towers owned by these entities can have a maximum height of 240 feet provided such towers are used in part for the purpose of accommodating emergency services communications antennas.

Analysis: She reviewed Section 7-4-10.1 of the Zoning Ordinance and provided the following findings:

(A) The communication tower at the closest point is located 129 feet from the property line and is designed so that it would yield/buckle at the 70 foot elevation resulting in a maximum 80 foot fall radius should a catastrophic failure occur. Staff has not identified any other issues concerning public health, safety and general welfare.

(B) The necessary electric service is available on the property.

(C) A variance from the requirement for a concealed tower has been requested by the applicant. Zoning Ordinance Section 16-4-24.4 (d) Concealment requires telecommunication towers going through the Special Use Permit process to be concealed unless it is determined that existing topography, vegetation or other site conditions sufficiently screen the tower from adjoining properties. If that is Council's determination, it should be added to the motion.

(D) A neighborhood compatibility meeting concerning the application was held on April 13, 2015. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by Section 7-4-4.1 of the Zoning Ordinance. Staff included both reservoir parcels when creating the mailing list. Ninety-six notification letters were sent. No members of the general public were present for the meeting. She provided the Planning Director's report for that meeting.

(E) The 2030 Comprehensive Plan's Natural Resource/Agricultural category lists "utilities other than stormwater management" as a secondary recommended land use. The Plan recommends secondary uses be allowed on a case-by-case basis through special use procedures.

The Comprehensive Transportation Plan does not indicate any improvements to Armstrong Avenue and the proposed tower location is 129 feet from the right-of-way.

Planning Board Recommendation: The Planning Board voted unanimously to recommend City Council City approve a variance from the requirement for a concealed tower.

The Planning Board also voted unanimously to recommend that City Council approve the application for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions. She provided the Planning Board Report.

Council Member Smith commented photos were included in the agenda package and many showed that the proposed tower is not visible. Ms. Anderson replied that package was submitted by the applicant.

Tom Johnson, Nexsen Pruet Law Firm, Raleigh, NC, on behalf of Skyway Towers, provided the following testimony:

The photos were done at the request of the State Historic Preservation Office to ensure the tower would not be visible from any historic properties in the area. They do not always do the photo simulation for every site but an examination has to be done for every tower site. When it says not visible, the tower would be too low to be visible over the trees of those locations. Even if an arrow was put on the photo, it would be below the trees and you could not see the tower. The other times they put the arrow where it was minimally visible so you can see where the height of the tower would be. It was submitted so Council will be aware of what it will look like from various directions because of the visibility part of the ordinance that deals with the variance explained by Ms. Anderson.

They are working cooperatively, looking for a location in this area and it happened there is an existing tower the City was using. In light of that, they need a tower that is a bit stronger and have more height to meet the T Mobile requirements. T Mobile will be the tenant on this tower other than the City. The proposal is to do a replacement tower but this will be a single pole, mono pole tower, not a lattice tower like the existing tower is. As part of the proposal they still have to work out terms with the Council and have submitted information to the City Manager to review and City Attorney regarding those terms. Part of that will be the relocation of the City's antennas to the new tower at Skyway's cost. He asked for questions.

Council Member Smith asked if T Mobile can put an antenna on the existing tower. Mr. Johnson stated no because they need more height to get above some of the trees to avoid obstructions. The existing tower is not strong enough for the equipment. It is a combination of the two. They try to find locations where they can locate on existing towers or replace an existing tower.

Mayor Pro Tem Stephens asked if a tower of this height requires guide wires. Mr. Johnson answered typically the largest tower put up without guide wires is 250 feet but 200 is usually the limit because it is very expensive and difficult to do a 250-foot mono pole tower. The pole is a lot bigger at the base and it has a lot more steel, concrete, anchor to the rock, etc. because the base has to be a lot stronger. The proposed tower is well under that. They chose to do what they needed which is 150 feet plus it provides some opportunity for additional carriers to locate on it. Council Member Miller asked how many carriers could be added to the tower. Mr. Johnson stated it is up to three additional co-locations. Council Member Miller asked how many carriers will be on it now. Mr. Johnson stated at this point it will be T Mobile, meter-reading equipment for the water utility and emergency services. Those are not as big and do not require as much room and will probably be at the same level they are now on the 100-foot tower. The other space will be reserved for additional carriers. Council Member Miller asked if another carrier can be accommodated so this is not done for just one carrier. Mr. Johnson stated that is correct. He stated his client is in the business of building the tower to be able to lease it to other carriers. They would like for more people to use the towers but there is some efficiency to provide service to the neighborhood without having to build a new tower.

Council Member Smith asked why this tower is needed. Mr. Johnson stated it is to provide service in the area for T Mobile. What is driving the need for service now and new towers and antennas going up is: 1) people are dropping their landline and depending on their mobile phone for their communications. When you do that, you have to have a stronger, reliable signal to penetrate the walls of dwellings and commercial buildings so you can call 911 inside, and 2) Many people want a device to use for data. In order to have good data service, you have to have a strong signal. The more data that is used on a given tower site, the signal strength gets less and less. It requires more towers to maintain the signal strength. Those are the two main reasons and motivating factors for the tower. In this area, T Mobile does not have good coverage and this is a basic coverage site in addition to the two main factors.

Mayor Pro Tem Stephens stated it will also eliminate some dead spots. Mr. Johnson agreed, stating because of the terrain, it is a challenge here. He stated mountains block the signal. It will cover some locations but not higher elevations. They try to choose locations where they can get the maximum signal yet make it so the tower is less visible to the neighbors (which they showed with the pictures).

Council Member Smith asked if currently this only makes T Mobile's signal better. Mr. Johnson said at this point, it only makes T Mobile's signal better because they are the ones who initially requested the tower. He stated he

does this across the state and his experience is that when one of these towers goes up, someone else will come on it fairly quickly.

Council Member Smith asked what happens if they go out of business and what protection the City has that our signal is always up regardless of who owns the pole. Mr. Johnson stated that information may be contained in the lease agreement with the City and they have no problem with that. He stated it is a binding agreement. He stated the main concern most jurisdictions have is that it is a blank pole with nothing on it. He stated there are abandonment provisions within the ordinance. He stated in this instance, if there is City equipment on there and it is needed for City equipment, it will stay there. That is part of the consideration for Skyway Towers building the tower. Council Member Smith asked if the City could require that it not be taken down. Mr. Johnson stated that is correct. He stated they have no problem with that and would consent to that.

Mayor Volk asked if anyone wanted to speak in favor of the project. There was none.

Mayor Volk asked if anyone wanted to speak in opposition of the project. The following spoke:

Ernie Dermid, 382 Armstrong Avenue, stated he came to a meeting last year. He stated the (neighborhood compatibility) meeting was held during the day and working people could not come to the meeting. He was told he could voice his complaints at this meeting. He stated a lot of people could not come to this meeting. He said the pictures they have are with leaves on the trees. He stated when the leaves are off you can see the tower like an eye sore. He asked how anyone would like to have it within 150 feet of their house. He stated he built a new house two years ago. The lady across the street from him could not come to this meeting and asked him to voice her complaints as well. It is not just him; other neighbors are not happy with it. The leaves are not on the trees year round and the pictures show a lot of leaves. They have to look at a tower. He is getting ready to put his house on the market and asked what it will do to that. At the meeting, probably in September, this was discussed and they were told the City wanted a 100-foot tower for the water department, transmitting for meters. When he asked a direct question, are you just going to use it for the Water Department or something else, he was told it was just going to be for the water department. Here we are back the next year, and they are asking to add 50 feet on the tower and as many carriers as they want. He stated that is a direct lie to the citizens and taxpayers. There were a lot of people there last year. It is his opinion this is not right.

Council Member Caraker asked Mr. Dermid if he uses a cell phone. Mr. Dermid stated yes. Council Member Caraker asked what if someone wants to eliminate the tower that is providing his service. Mr. Dermid stated he is not asking to eliminate it but it is supposed to be for the Hendersonville water department. They were not told it would be for cell phones. He asked if Council Member Caraker would like a tower next to his house. Council Member Caraker commented if he did not own the land and could not control it, he wouldn't have a say in it; and he may be upset. Mr. Dermid stated that is why they attended the meeting last year and he directly asked the question if they were going to use it for anything else and he was told no. He stated he just wanted to voice his opinion.

Mayor Volk commented the ordinance requires evergreen screening that should address the concern when leaves are off the trees. Ms. Anderson explained that screening is for the ground-mounted equipment and the base of the tower. She stated that differs from the other screening for a 150-foot tower. Council Member Caraker commented Evergreen Leyland Cypress that get 30 feet high could take care of screening the base.

Council Member Miller stated the City has two reservoirs and asked about the placement of the tower in another location on the site with the same elevation as the reservoir. Mr. Johnson stated it is their desire to build the tower as close to the current tower as possible. He stated part of the reason for the additional height is to give the City the height it needs need for its equipment and for the ability to accommodate T Mobile and other carriers on this tower. He stated the impact is already there. He stated there is no landscaping for the ground equipment for the tower now; it is not required. He stated they are proposing it for the new tower. He stated it will improve the site in that way. He stated he has not spoken to the utility director about moving lines, etc. He stated this will be easy as it is not a far location to move the lines already in place for the antennas for the City's equipment. He stated because they chose to go this route near the other tower, there are limitations on how far they can move it because they have to go through the application process with the FCC and the FAA. They have certain tolerances through the FAA within which they get approval or they have to go through the process again. He stated that would be the same for the State Historic Preservation Office. They may require them to go through the process again because another location may change the way it is visible to the properties they were concerned about.

Council Member Miller asked if this has to be done for emergency services or if they are functioning properly now and if emergency services has a need for this higher elevation. Council Member Smith stated he asked the City Manager who said the City's work fine as they are. Mr. Connet stated the City's equipment is functioning adequately to the best of his knowledge. Mr. Johnson explained the height they are requesting is to allow for separation between the City's equipment from T Mobile and to allow space for co-locators.

Council Member Smith asked other than the fact of the existing tower now, why is this site attractive. Mr. Johnson explained they conducted an exhaustive search within a ring. T Mobile needs a tower to match up with their existing towers to provide the service they need. Within that search ring, they could not locate any other property that would work. He stated this is the best property they could identify because either the landowner was not interested, it would not meet setback, etc. He stated there are many residential properties there which would

not meet the required setback. They looked at the City's site because there is more space to meet setback and because there is already impact of an existing tower on the site. He stated the City made the representation that it was for water metering and emergency equipment and that is what it is functioning as. They are coming back with an amendment to that request so everything is upfront and aboveboard on the last request. They are asking for a change based upon his client's application. That is why they looked at this site. In this area there is not an effective location. They tend to go on large tracts, e.g., school or church. When they are trying to get into residential areas, they try to find those large tracts with institutional uses to locate towers. That is also because a lot of ordinances allow for that as opposed to putting them in a residential area. They are trying to get the service to the residential customers without being in the midst of the houses and it is a challenge. He stated people want their devices to work but a tower is needed to have the devices to work. They are trying to find a location where they can do that with the least impact and this is what they came up with in their analysis. Council Member Smith stated there are many towers now and asked if they looked at any other of the City's tower sites. Mr. Johnson responded there were no tower sites within the search range they were given for the objectives for this site and search ring. He stated there may be for another search ring with other objectives. He stated they are putting towers throughout the area. He stated he will be in Buncombe County next week because they are doing one there. He stated this area is getting attention; across the state is getting attention for new towers for better service. He stated it helps the citizens and public safety with devices. He stated police officers have wireless phones, fire rescue have their wireless devices and they all work off the same system and is why this is so important. And, is why it changed from being a luxury when it first started to a necessity. He stated it is no different than water, sewer, electric, and what used to be landline telephone. He stated his understanding is that they intend to put fiber optic cable to this location which makes it more effective. It will have the ability to handle more data traffic.

Mayor Volk asked if anyone else wanted to speak. There was none. Mayor Volk asked for questions from Council. There was none. The public hearing was closed at 8:50 p.m.

Council Member Miller stated he does not feel good about it because there is no need on the City's part. He stated it would primarily be for the advantage of private business and it does impose hardship on the surrounding area. He stated it was proved that it was said the tower was for water and sewer and not for future use, cell business, etc. He did not support the permit stating the City may not be doing what was represented in the first meetings and there is not an emergency pushing the City to do this. Council Member Smith added that if 50 people came to the first meeting, there needs to be an opportunity for everyone to understand what this is about and have a chance to speak to someone. He appreciates Mr. Dermid coming and some people may not know exactly what is happening or do not think they can come to a City Council meeting. He agreed with Council Member Miller. He stated Mr. Johnson did a great job but he kept hearing about T Mobile repeatedly. He stated the City does not have other carriers requesting a tower there. Council Member Miller commented it is based on elevating water/sewer and emergency services and it is not needed. Council Member Smith stated there is already a 100-foot tower there. He stated he uses his phone as much as anyone but perhaps T Mobile could co-locate with other groups that have existing towers. He stated he would like to see more sharing so there are not as many towers. He stated he likes the camouflage that some are using. He stated this is going from 110 feet to 150 feet.

Mr. Johnson asked to make a point. The public hearing was reopened at 8:53 p.m. Mr. Johnson explained they are not pretending to say it is for emergency services or metering but they would replace it and it is an amendment; a change. They had the required community meeting and the Planning Board meeting which was held in the evening. No one showed up at either one. He stated the community meeting was earlier in the afternoon and he understands why that may have been a challenge. They didn't have anyone at the Planning Board meeting either. He stated if it helps, they could do it as a mono pine (appears to be a pine tree) if the City wants it and if that would make a difference. He stated he would amend it to allow for that if it makes a difference. Council Member Miller stated it would have to be put before the public so they can see it. Mr. Johnson stated there are many of those towers out there and is happy to do that if it makes a difference. He stated that had not been mentioned before now because no one showed up to comment. He stated while he appreciates the gentleman speaking, this is quasi-judicial and they had their evidence and presented it, including an impact study that says it won't adversely impact adjoining property. He stated the gentleman who prepared it, Mr. Herring, is present if he needed to call on him. He stated the expert evidence is in the record. He stated his lay opinion has no evidence to back it up. Council Member Miller commented that his opinion is not influencing him. Mr. Johnson stated he is just making the point that they have requirements they have to meet that cannot be opinion. He stated there is no doubt they are extending the height to accommodate commercial carriers. He stated it is similar to a mall with an anchor tenant; the anchor tenant in this case is T Mobile. When the tower is there, it is more likely that other carriers will come. He stated it is not often that two carriers come at the same time wanting a tower in a given location. He stated the issue here is the need for this tower; there are no other towers here to meet this need. He stated even if they look at other towers in this area, it is not going to meet the needs of this area of Hendersonville. He stated it cannot do that. He stated they exhausted their search for a site within this area of Hendersonville to provide this service. He stated this is the only game in town. He stated if it does not pass, these citizens in Hendersonville will not have the improved service because there are not any other options given the requirements of the ordinance. He stated that is Council's choice because they vote on it, and vote on the evidence before them, but for this location in the City of Hendersonville, the service would be lacking because it is not there now for T Mobile. He stated he cannot speak for the other carriers. He stated there is some sharing among carriers but the major carriers would have to put their antennas on there too.

Council Member Smith asked if they can make it work at 100 feet like the existing tower. Mr. Johnson explained the City needs 100 feet so he may be able to make it work at 120 feet but it would likely be T Mobile and only

one other carrier. He stated if they go to 150 feet, they will have more space for other carriers. He stated if they received 120 feet approval, they would work with it. Council Member Miller stated that is only ten more feet because there is a 10-foot lightning rod on the present tower. Mr. Johnson stated he would agree to reducing the height to 120 feet. Council Member Miller asked if the mono pine could be done on a 120-foot tower. Mr. Johnson stated they can do the mono pine for 120 feet but would prefer not to have to go back through the hearing process. He stated if it is reduced to 120 feet it would be less than what was advertised, but couldn't go more. He stated there are less carriers that can use it at 120 feet. Council Member Miller stated it is not the Council's job to supply platforms. Mr. Johnson stated he understands that but was basing his comments on it is nice to share. Council Member Miller stated he cannot base it just on that. He stated if it is going to be there, and only ten feet more than what is there, but is also a more contemporary version of a tower, it may look better. Mr. Johnson agreed to amend the request to 120 feet if it makes the Council more comfortable with it.

Mayor Pro Tem Stephens commented from a real estate standpoint, the tanks have more impact than the tower does. Mr. Johnson agreed. Mayor Pro Tem Stephens stated the tower, if it has some impact, the difference between 100 and 150 for people living in that area, will not affect them any differently because it becomes part of the landscape and they don't notice it. He stated he does not see how it will be more irritating to residents if it is higher. Mr. Dermid commented it will affect the people with houses for sell. Mayor Pro Tem Stephens commented he does not think so. Mr. Johnson stated that is the purpose of the analysis with the commercial real estate broker, Mr. Herring, who has stated it will not adversely affect the value of adjoining properties including sales, in his expert opinion. He stated he agrees, he has seen them and does not think it makes a substantial difference at 120 or 150 feet, that is his opinion. He stated the gentleman has a different opinion. He stated the tanks are really big and more visible than a thin mono pole tower. He stated if there is a concern about height, they could accomplish their objective by adding enough to get T Mobile on there, which 120 feet would do. He stated their preference would be to do more because it allows more opportunities to take full advantage of this site for other carriers. He stated he considers the comments and knows that T Mobile needs the service and knows this site provides the opportunity that is not available in this area. He stated they can get by with a minimal increase and could go to 150 feet. He stated from his experience of going to the hearings, and he has been to a lot of them in almost all 100 counties, a tower gets more attention at the meeting than it does years later when people drive by because it becomes part of the landscape. He stated there are a lot of very nice country clubs and communities that have high-voltage power lines going through the middle of them without people giving them a second thought. He stated it is part of the infrastructure, there are power lines and power poles everywhere. He stated back in the 30s when these were being put up, people did not want those lines crossing their property but they are accepted now. He stated the towers are becoming more and more accepted as part of the landscape. He stated if it is the difference of getting it or not getting it, they would drop it to 120 feet if that is the wishes of the Council.

Council Member Miller asked if going to 125 feet with the new style would help. Mr. Johnson stated it will give more opportunities. He stated the mono pine is more expensive can become more of a maintenance issue because artificial limbs may have to be replaced, etc. Council Member Miller stated he has seen the mono pines from a distance. Mr. Johnson stated from a distance they can help when they are right above the tree line. He stated it doesn't look like a tree and they can't make it look like a tree. It tends to have more mass and more visibility because it looks like a fake tree. Mayor Pro Tem Stephens commented it attracts more attention than a regular pole. Mr. Johnson stated in his experience it does but in limited circumstances, and they have done them in a grove of trees where it helps, it makes sense but not necessarily in this location. He agreed to a 125-foot tower.

Council Member Smith asked if there were no tower there now, would they have made the request to the City. Mr. Johnson stated he probably would have because it is about the only location they could find. He stated the fortunate thing is there is already a tower that has an impact and they are adding to an impact that already exists. He stated yes, he would have because in that area, there are not many large tracts of land where they can meet the setbacks of the ordinance to be able to provide the service.

Mayor Volk requested to ask a question of the city manager. City Attorney Fritschner advised he has to be sworn in. Mr. Connet was sworn in to provide testimony.

Ms. Anderson noted when discussing the look of the tower, normally it is required to be concealed, designed in such a manner that it looks like a tree, etc. She stated if Council moves forward, the variance request should not be granted if they want the tower to be concealed. Council Member Miller commented concealing the tower may look worse than a single pole.

Mayor Volk asked about the financial arrangements. Mr. Connet stated there are not financial arrangements at this time because he felt it was more appropriate for the Council to hear from the public because there were comments before. He stated the City has received a draft agreement but it is on hold until Council determines if it is appropriate. He reported no negotiations are occurring.

Council Member Miller asked if there will be down time. Mr. Johnson stated no, they will build the new one and then take the other tower down at their expense. He stated they have put forth a draft lease and wanted this to be aboveboard in terms of the zoning decision not having anything to do with the financial arrangements. Mayor Volk asked if they would lease from the City. Mr. Connet stated yes, a lease rate will be negotiated for a number of years and will be the next step in the process. Mayor Volk asked if that could vary based on the number of carriers. Mr. Connet stated yes, that could be part of the consideration.

Mayor Pro Tem Stephens commented if there was a tower here at all, he would suggest building by the large tanks because it would have less impact. He stated this tower is smaller around but the difference in height is not going to make too much difference visually after people get accustomed to it.

Mr. Dermid, 382 Armstrong Avenue, commented the water tanks are a necessity for water. He stated we do not have to have a tower for T Mobile or anyone else. He stated they were told a tower was needed for the water department. He stated they know they have to have water so they have to have tanks so they look at them. They were told a new tower was needed for the water department for the new metering. He stated now the tower is going to 150 feet and the City will sell it to T Mobile and other companies but were told the City was not going to do that.

Mr. Johnson commented if a T Mobile customer in that area has a wireless device and the service is not reliable and they have an emergency and dial 911, it is a necessity at that point. He stated a T Mobile customer may not live there but they may have a guest who is a T mobile customer who needs access and would not have it. He stated that is why there is a wireless telecommunications act and that is why the carries have a duty to provide the service to the community. He stated that is a legal duty as a result of the license from the FCC. He stated it is not solely a commercial enterprise anymore but it has become infrastructure. He stated in the room, a vast majority of those present, if not everyone, has a wireless device.

There were no further questions. The public hearing was closed at 9:11 p.m.

There was discussion of the motions. Council Member Miller withdrew his suggestion of concealing the tower having received more information.

Variance: Council Member Caraker moved City Council to approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment. A unanimous vote of the Council followed. Motion carried.

Amended Special Use Permit: Mayor Pro Tem Stephens moved City Council to approve the application for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions. The vote was one in favor (Stephens); four opposed (Smith, Caraker, Volk, Miller). Motion failed.

City Attorney Fritschner advised for a special use permit there should only be a motion in favor.

9. Public Hearing – Consideration of the Adoption of a Resolution to Expand the Seventh Avenue Municipal Service District: City Manager John Connet reported the June 2014 UNC School of Government report on the Historic Seventh Avenue District recommended the expansion of the current Municipal Service District. He reported the Seventh Avenue Advisory Committee agrees with the recommendation and has requested the City move forward with the proposed expansion. He reviewed a map showing the boundaries of the expansion.

Mr. Connet explained prior to expanding the service district, the City Council must conduct a public hearing and receive a report from staff regarding the expansion and the provision of services. The report was submitted to the Council last month and detailed how the City will provide the same services currently existing in that district. He stated the public hearing notice and a copy of the report were mailed to all of the effected property owners.

Mr. Connet explained the tax rate will remain the same at 12 cents per \$100 valuation on real and personal property within the proposed district.

Mayor Volk opened the public hearing at 9:21 p.m. in accordance with North Carolina General Statutes by noticed published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

Council Member Caraker commented this expansion has been discussed and a small majority of property owners support it because of additional services. Council Member Miller commented on the advantages of the expansion for property owners: façade grants, but stated many property owners have already made improvements and will not qualify for the grant. He also commented on the tax increase. He stated there needs to be a plan in place to provide additional services for those property owners that are being added by this expansion so they receive a benefit, e.g., lights, sidewalks, etc., for their tax dollars, and so that the services are not just focused on Seventh Avenue. Council Member Caraker agreed stated some services should be expanded on Locust Street to encourage redevelopment there also. Council Member Miller encouraged staff to look at the services being provided to the property owners on the outskirts of the MSD who pay the additional tax.

Council Member Caraker requested the Council challenge the Seventh Avenue Advisory Committee to develop a plan for expanding services. **The Council agreed by consensus.** Mayor Pro Tem Stephens voiced support stating the more services the City provides, the more development will spread up Locust Street area.

Council Member Caraker moved Council to adopt the resolution to expand the Seventh Avenue Municipal Service District. A unanimous vote of the Council followed. Motion carried.

Resolution #15-0633

A RESOLUTION ESTABLISHING/EXPANDING THE SEVENTH AVENUE MUNICIPAL SERVICES DISTRICT

WHEREAS, The "Municipal Service District Act of 1973", codified as North Carolina General Statutes 160A-535 through 160A-549, authorizes municipalities to define service districts in order to finance, provide, or maintain for the districts certain services, facilities or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city; and

WHEREAS, there exist a strong desire on the part of the Seventh Avenue Advisory Committee to expand the Seventh Avenue Service District to include like businesses and property owners in the area; and

WHEREAS, the University of North Carolina School of Government Development Finance Initiative completed a study of the Seventh Avenue District in June 2014 and recommended expansion; and

WHEREAS, a document entitled 'A Report Supporting the Expansion of the Seventh Avenue Municipal Service District' has been prepared by the City of Hendersonville, which document shows that the proposed district meets the standards set out in subsection (a) of General Statutes 160-537: and

WHEREAS, the aforementioned report has been available for public inspection for a period of not less than four weeks prior to the public hearing to consider adoption of this resolution; and

WHEREAS, notice of this public hearing has been made in accordance with General Statutes 160A-537(c); and

WHEREAS, Hendersonville City Council finds the proposed district is in need of one or more services, facilities or functions, listed in General Statutes 160A-536 to a demonstrably greater extent than the remainder of the city.

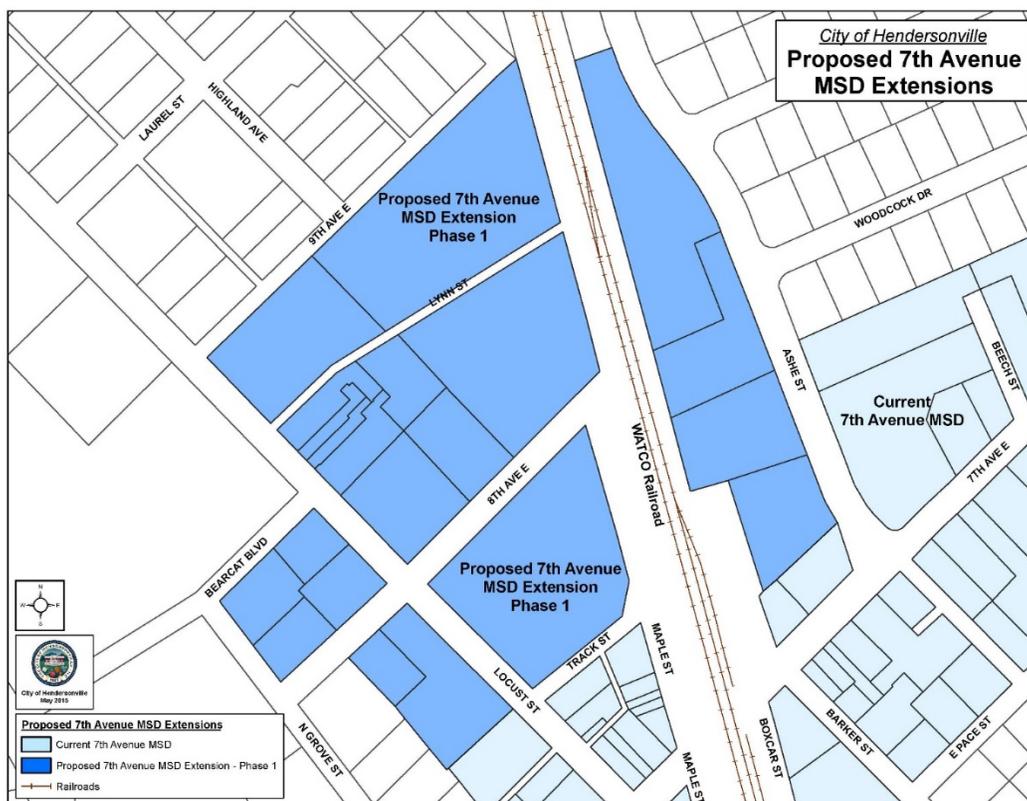
NOW, THEREFORE, it is RESOLVED as follows:

1. The Seventh Avenue Municipal Service District is hereby expanded.
2. The boundaries of the Seventh Avenue Municipal Service District Expansion shall be as shown on the map attached to this Resolution.
3. The Seventh Avenue Municipal Services District shall be financed, for Fiscal Year 2015-16, through a tax levy of \$0.12 per 100 valuation on all real and personal property within the proposed municipal services district boundaries.
4. The effective date of this resolution shall be July 1, 2015.

Adopted this fourth day of June 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk



10. Public Hearing – Consideration of an Application from the City of Hendersonville for an Amendment of Zoning Ordinance Article VII Development Review (continued from the May 7, 2015 Council Meeting): Ms. Anderson addressed the Council and explained at last month's meeting, the Council discussed changes to the Zoning Ordinance that will expedite the development process by increasing the square footage for staff review only. The increase for staff review was proposed for projects at 10,000 square feet currently to 20,000 square feet. Projects with 20,000 square feet and above will continue to be reviewed by the Planning Board. During the meeting, the Council discussed how the public is notified and gave staff direction on amendments to the proposed ordinance.

Ms. Anderson reviewed the amended ordinance including notification requirements.

Discussion followed on how much time this amendment may save and the amount of time needed for site plan approval, and subsequent site plan alterations. Ms. Anderson explained generally, the amendment will cut approximately 30 days from the process. Council Member Smith expressed his reluctance of approving the amendments for saving only 30 days because that may not be enough time for certain projects.

Mayor Volk opened the public hearing at 9:41 in accordance with North Carolina General Statutes by noticed published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

There was discussion of the approval process by staff and the Planning Board. Mayor Pro Tem Stephens commented if approved, it may help streamline the process which sends the message that we want development here. He asked if contentious projects could be referred to the Council. Council Member Caraker explained if the project meets the zoning requirements the project would have to be approved. Ms. Anderson explained she can ask an applicant to voluntarily go above the minimum requirements. Mayor Volk asked if the Planning Board can deny the application. Ms. Anderson stated the Planning Board could deny it, have a basis for the denial and the decision may be appealed to the City Council. Mayor Pro Tem Stephens asked if there is an appeal process if staff denies the application. Ms. Anderson explained the applicant may make an appeal to the Board of Adjustment.

After discussion, **Council Member Caraker moved Council to adopt an ordinance amending City of Hendersonville Zoning Ordinance Article VII to be reviewed in one year. The vote was four in favor; one opposed (Smith). Motion carried.** The Council agreed to review the process in one year to see if the process has been streamlined without compromising public input.

Ordinance 15-0634

AN ORDINANCE AMENDING ARTICLE VII DEVELOPMENT REVIEW OF THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE PERTAINING TO THE PLANNING BOARD

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to adopt, administer and enforce zoning and subdivision regulation ordinances, building codes, and minimum housing standards and other related measures; and

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to amend, supplement, change, modify or repeal zoning regulation ordinances; and

WHEREAS, the City of Hendersonville desires to amend those regulations in order to streamline the permit approval process.

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

1. Article VII Development Review, Subsection 7-3-1 Applications is hereby amended to include the following addition:

7-3-1 Applications. There are two types of site plan review, preliminary and final, as described below. All applications for site plan approval shall be made to the Planning Director on forms prescribed by the Planning Director. Applications shall include, without limitation, the name and address of the applicant, the name and address of the owner of all the property involved, the relationship of the applicant and property owner(s) in connection with the application, and a site plan conforming to the specifications of Subsection 7-3-3 for a preliminary site plan and Subsection 7-3-4 for a final site plan. If the applicant is other than the record owner of the property, the consent of the record owner to the application shall be noted on the application or in some other fashion acceptable to the Planning Director. The application shall also designate an agent for the project to whom notice may be given by the City. The Planning Director shall prescribe any other material that may reasonably be required to determine compliance with this article and shall require sufficient copies for necessary referrals and records.

2. Article VII Development Review, Subsection 7-3-3 Review of Preliminary Site Plans is hereby amended to include the following additions and deletions:

7-3-3 Review of Preliminary Site Plans. Review of preliminary site plans applies to larger projects where the costs of developing detailed final plans can be substantial. It is designed to provide the applicant an opportunity to obtain at a reasonable cost binding authorization to develop property in a certain fashion. Review of preliminary plans is a function of the Planning Board. Preliminary plan review is required of all development undergoing site plan review except for the following:

- a) Any commercial, industrial or institutional development consisting of less than ~~40,000~~ 20,000 ft² of floor area;
- b) Addition of not more than 30 parking spaces;
- c) Any development which has already received preliminary site plan approval;
- d) Any development for which a special use permit has been issued; and
- e) Any minor planned residential development consisting of less than nine dwelling units.

For development projects under a) above, notice of receipt of a development application for commercial or industrial development between 10,000 ft² to less than 20,000 ft² of floor area shall be provided in the following manner. The City shall prominently post a notice of receipt of a development application on the site or on an adjacent public street or highway right-of-way. The notice shall be a minimum of 18 inches by 24 inches in size and shall identify the means to contact an official for information about the development application. The notice shall be posted within 10 days of receipt of a development application and remain on the site or on an adjacent public street or highway right-of-way for a minimum of 30 days.

Approval of a preliminary site plan by the Planning Board does not entitle the applicant to develop property, but it does entitle the applicant to final site plan approval pursuant to Subsection 7-3-4, below, upon submittal

of an application for final site plan approval, payment of the applicable fee and submittal of a final site plan conforming to the preliminary site plan approval, including any conditions attached thereto.

3. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.
4. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
5. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
6. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.
7. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fourth day of June 2015.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner

11. Presentation and Discussion of Stormwater Issues and Repairs on Private Property: Ms. Margaret Thomas, 832 Fourth Ave. W., addressed the Council and stated the storm drain does not control all of the water coming from Oak Street, Whitted Street and Fifth Avenue during heavy rain. She stated the storm drain gave way because of the amount of water and caused a sinkhole to develop. She requested compensation to replace her storm drain and close the sinkhole. She stated City staff has visited her property and are familiar with her situation. She stated she gave the City verbal permission to put a sewer manhole near her back fence. The storm drain parallels or is very close to the sewer manhole.

Mr. Connet reported City staff is familiar with this situation, and there are numerous similar situations in the City relating to stormwater. He explained the City's current policy is that the City's responsibility stops at the right-of-way. In many cases the City's infrastructure is connected to private infrastructure. He stated most stormwater infrastructure is: unmapped/undocumented, nearing the end of its useful lives, connected to other parties infrastructure (public or private), and the private infrastructure has been installed without easements or maintenance agreements. He stated it is very expensive to replace or repair this infrastructure. Much of the infrastructure is undersized to meet stormwater demands.

Mr. Connet reported the City receives numerous complaints regarding inadequate stormwater infrastructure on private property that may be causing flooding, sinkholes or erosion. He stated the City has no easements nor has provided any maintenance.

Mr. Connet explained that North Carolina is a riparian right state, which means the City does not own or control the natural flow of water. Each property owner with land that touches the natural flow, e.g., streams, rivers, ditches, etc., has a reasonable right to the use of that water. Restrictions are added to that: blue line streams, Army Corp of Engineers requirements, DENR restrictions, etc.

Mr. Connet explained NCDOT has the same policy as the City: private property owners are responsible for the infrastructure on their property.

Mr. Connet provided some suggestions to replacing or repairing the aging stormwater infrastructure: easements to work on private property, resources to fund stormwater mapping, flood studies/modeling, permitting, grant/loan application for design, repair and replacement, and a long-term maintenance plan, conservation easements. The options he discussed are:

- maintaining the current policy of not addressing any stormwater infrastructure outside of the right-of-way,
- developing a comprehensive stormwater utility and charging a fee for the amount of impervious surface on property to fund the utility,
- maintaining the current policy but allow Public Works staff the leeway, with the adequate resources, to develop projects that may replace private infrastructure with City funds, grant/loan funds, or partnership agreements when it is in the best interest of the City, and when funds are available to undertake the projects.

Mayor Volk commented this needs a lot of thought and consideration and would like more background information before accepting the recommendations. There was discussion of Ms. Thomas' property. Mr. Connet stated there are no records available on the installation of the infrastructure on her property. Council Member Caraker suggested allowing the camera crew to investigate the state of the infrastructure and determine where it failed. Mr. Connet stated some repairs will be made related to resurfacing of Fourth Avenue in the near future.

There was no action taken by the Council.

11a. Consideration of Pavement Marking for Parking on Half Moon Trail: The Council discussed whether the pavement has to be marked on Half Moon Trail for parking. Mr. Wooten commented not marking the pavement allows drivers to park anywhere they want along the road which is no different than other City streets. Mayor Pro Tem Stephens asked if drivers may legally park on the other side of street. Mr. Wooten stated yes. **Council Member Caraker moved the Council to decline striping the approved parking spaces on Half Moon Trail. A unanimous vote of the Council followed. Motion carried.**

11b. Consideration of Speed Limit Reduction on New Village Drive: The Council discussed the request for a speed reduction on New Village Drive. Mr. Connet recommended reducing the speed to 25 mph instead of 20 mph. Mr. Wooten stated they are now collecting data. Staff will bring the data back to the Council with a recommended speed limit on that street as well as a speed limit on Highway 25 North. **No action was taken.**

12. Comments from Mayor and City Council Members: There was none.

13. Reports from Staff: Mr. Connet introduced Adam Murr, an intern from Appalachian State for the summer.

14. Boards and Commissions

a. Consideration of Appointments:

ABC Board: Council Member Caraker nominated Marcie Kane to serve another three-year term on the ABC Board. A unanimous vote of the Council followed. **Motion carried.**

East Flat Rock Community Plan Advisory Committee: Mayor Volk commented she would like the Council to receive feedback/report on the plan from the appointee that represents the City. **The Council agreed unanimously to delay the appointment to the Committee.**

b. Announcement of Vacancies/Upcoming (Re)appointments: City Clerk Tammie Drake reminded the Council of the vacancies on the Seventh Avenue Advisory Committee and the Environmental Sustainability Board and upcoming vacancies on the Tourism Development Authority and the Downtown Advisory Committee. **No action was taken.**

15. New Business: There was none.

15a. Closed Session: At 10:14 p.m., Council Member Caraker moved Council to enter a closed session to consult with the City Attorney to preserve the attorney-client privilege between the attorney and the City Council as provided under NCGS §143-318.11(a)(3). A unanimous vote of the Council followed. **Motion carried.**

The Council consulted with City Attorney Fritschner.

Council Member Caraker moved the Council to exit the closed session at 10:25 p.m. A unanimous vote of the Council followed. Motion carried.

22. Adjournment: The meeting adjourned at 10:25 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk