

**January 4, 2018**  
**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: Jeff Miller, Jerry Smith, and Steve Caraker

Staff Present: City Manager John F. Connet, City Clerk Tammie Drake, City Attorney Samuel H. Fritschner, Development Assistance Director Susan Frady, Engineering Director Brent Detwiler, Human Resources Director Jennifer Harrell, Planner Daniel Heyman, Stormwater Quality Specialist Michael Huffman, Budget and Management Analyst Adam Murr, Assistant City Manager Brian Pahle, Fire Chief Joseph Vindigni, Fire Department Administrative Aide Pam Ludwig, Public Works Director Tom Wooten

**1. Call to Order:** Mayor Volk called the regular meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with 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.* No one expressed a desire to speak.

**4. Consideration of Agenda:** Items 9 and 10 on the original agenda were switched. **Council Member Caraker moved approval of the agenda with the noted changes. A unanimous vote of the Council followed. Motion carried.**

**5. Consideration of Consent Agenda:** *Consent agenda items are considered routine, non-controversial in nature and are considered and disposed of through a singular motion and vote.*

**A. Consideration of Minutes:** December 7, 2017 Regular Meeting

**B. Consideration of Budget Amendments:** Mr. Brian Pahle, Assistant City Manager, presented the following:

- 1) Fire Community Fund, Fund 170, Increase of \$1,500: To move funds from the Misc. Item Sales line to the Purchase for Resale line. This amendment will cover the cost for the Fire Department's t-shirts.
- 2) Stormwater, Fund 67, Increase of \$85,543, Fund 10, No Increase/Decrease: to provide budget for the sidewalk repair. This project is a result of stormwater damage flowing from 318 N. Main St. below into the Rosden Mall area. Insurance is covering a portion of the project while General Fund contingencies will be transferred to the Stormwater fund to cover the remaining project costs.
- 3) Gravity Filter Water Treatment Plan, Fund 60 - No Increase/Decrease, Fund 445 - Decrease of \$20,000, Fund 425 - Increase of \$20,000: to cover design work for gravity filter replacement at the Water Treatment Plant.

**C. Consideration of Petitions for Annexation - Certificates of Sufficiency:** Mrs. Frady presented the following:

**1) Mountain Bean Growers:** Mrs. Frady reported the City of Hendersonville received a petition from Mountain Bean Growers, Inc. for the satellite annexation of a portion of parcel 9670-42-2817 containing 16.6 acres located on Howard Gap Road. This annexation application is related to a sewer service request.

Mrs. Frady provided the Clerk's Certificate of Sufficiency finding the petition valid. The next step in the annexation process is to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation. The date for the public hearing is February 6, 2018.

**2) Ronald Jones Property:** Mrs. Frady reported the City of Hendersonville received a petition from Ronald Jones for the contiguous annexation of parcel 9679-32-8518 containing 0.31 acres located at 812 Orr's Camp Road. This annexation application is related to a sewer service request.

Mrs. Frady provided the Clerk's Certificate of Sufficiency finding the petition valid. The next step in the annexation process is to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation. The date for the public hearing is February 6, 2018.

**D. Consideration of Amendment 1 of the Etowah Area Water System Improvements Project Engineering Agreement:** City Engineer Brent Detwiler reported an engineering agreement with Black and Veatch was executed in November 2016 to complete the design, permitting, bidding and award work associated with the Etowah Area Water System Improvements Project. He explained several of the original

design parameters have changed with this project during design - mostly regarding the access to the proposed water tank site. He stated after several months of design, negotiation and redesign the City had come to an impasse to gain access to the tank site during and after construction. This has necessitated adjusting the design and aligning several thousand feet of water line outside of its original alignment. The redesign will require construction of an access drive from another location to the tank site. Although there are design costs associated with the realignment, the water line relocation will allow the City to easily loop its system along Eade Road in Etowah thereby improving operation. The realignment will also involve construction within NC DOT right-of-way versus a private street that would have required easements.

Mr. Detwiler reported an amendment to the agreement is needed because all of the work necessary to finish the project is outside of the scope of the original engineering agreement. The additional design and bidding work will amount to a not-to-exceed amount of \$275,000. He noted construction administration services were not included in the original agreement and are now a part of this amendment (\$125,000). The City will also be involved in the construction observation process. He provided the amended agreement.

**E. Consideration of Revisions to the Inclement Weather Policy:** Mr. Pahle proposed a revision to the Inclement Weather Policy to clarify language and match the procedures of holiday pay in the City's Personnel Policy. This would allow employees who worked during the closure to receive comp time or choose to be paid for their hours worked. The current policy requires the employee to take comp time.

### INCLEMENT WEATHER POLICY

**I. Introduction:** The City of Hendersonville is required to provide essential services for its citizens regardless of weather conditions. The City is committed to the safety and security of its employees, and visitors.

As such, the decision whether the City should close or remain open is based on the overall concern for the community. The Inclement Weather Policy is established to be as fair as possible to all employees.

**II. Scope:** This administrative policy, upon approval of the City Council, shall be applicable to all employees. This procedure shall remain in effect until such time that it is altered, modified, or rescinded by the City Council.

#### III. Types of Personnel

**Essential Personnel:** The term "essential personnel" is used in this policy to describe those employees whose job responsibilities are provided 24 hours a day – seven days a week and / or essential to the everyday livelihood of the city and its citizens. Employees essential to the successful and efficient management of a weather emergency situation shall be designated by the City Manager or their Department Head and are expected to return to work as scheduled.

An essential employee, unable to report to work for their scheduled shift due to legitimate environmental conditions, should contact their immediate supervisor to see if alternative transportation can be arranged. Employee who reports in their day off to cover the absent employee's shift will be paid in accordance with the FLSA guidelines. Failure to be available or to report to work when called may be grounds for disciplinary action.

**Non-Essential Personnel:** The term "non-essential employee" is used in this policy to describe those employees whose job responsibilities are primarily administrative in nature and can be delayed without any negative impact to the employees, citizens, or community.

**III. Procedure:** It is the policy of the City of Hendersonville to remain open during most periods of inclement weather; however, where extraordinary circumstances warrant the City reserves the right to close our facilities.

1. Each employee is expected to make necessary advance preparations so they can get to work in periods of adverse weather.
2. The City recognizes weather conditions may prevent some employees from reporting to work on time or not at all. The decision to report to work or not is an employee's option based on their assessment of road conditions. If an employee does not report to work, reports to work late, or leaves early due to weather they must notify their immediate supervisor.
3. The employee may use vacation, compensatory time, or leave without pay as coordinated with their supervisor during adverse weather.
4. Employees are strongly encouraged to have a plan in place for child care in the event that schools are closed due to inclement weather. Department Heads may exercise discretion in allowing employees to stay home for purposes of caring for school age children, as long as full operational capabilities are maintained.

City offices and departments shall remain open for the full scheduled working day unless authorization for closing or other deviation is approved by the City Manager. In these situations the City may be closed or may open late for employees, customers, and the general public in the interest of safety.

The City of Hendersonville will notify local media of this change and update our general information line at 828-697-3000. Department Heads will be contacted and are responsible for contacting their employees.

**VI. Closures and Payroll Procedures:** If the City does close this will be the City Managers decision. In the event of a closure due to weather conditions the City will apply the following standard:

- Non-Essential and essential employees will be paid for the closure. Additionally, Essential employees will receive pay for the hours worked during the closure which would be granted as either compensatory time "comp time" as regular time or paid regular hours. For example, the City closes its operations for a half a day. Non-Essential and essential employees will receive a half day pay for the closure. Additionally, Essential employees that worked would receive pay for hours worked during the closure which would be granted as either comp time as regular time or paid regular hours. would receive 4 hours for the closure which would be added to the employee's "comp time" as regular time. These Hours paid for the closure hours would be considered non-compensable hours under FLSA for overtime calculations.
- If the employee elects not report to work when facilities are open the employee can elect 1) use any accrued vacation leave or compensatory time or 2) the employee will not be paid for the day.

- If an employee can work remotely from home this must be authorized by the employee's department head or City Manager. This time will be counted as regular working hours.
- All employees will be given the same amount of time for the closure. For instance, an employee works a second or third shift they will receive the same amount of "comp time" if they work during a closure. This "comp time" is only good for day of closure till midnight.
- If the employee is preapproved for a scheduled off day – either sick or vacation, or scheduled off due to shift rotation, they are not eligible for pay during the closure.

#### V. Non-Compensable Stand-By Pay

Employees may volunteer or be asked to have their name placed on a "call-in" list as relief personnel. Employees in this status are not eligible for "on-call" pay outlined in the City's Personnel Policy in Article III Section 13 of the City's personnel policy. These employees are not required to be available and no disciplinary action will be taken for failure to respond. However, should these employees report to work during their day off or work hours in addition to their regular schedule, they will be paid in accordance with FLSA guidelines.

#### ~~V. Payment Guidelines~~

~~The general policy of the City of Hendersonville to award time essential workers who worked during a closure as "comp time" for the hours the City offices were closed due to adverse weather. However, this may not be feasible by the department. Department Heads may request a deviation from policy to City Manager for final approval. The City Manager may approve any deviations from policy on a case by case basis for the department.~~

~~Below are general guidelines when the City Manager will consider any deviation and pay employees vs. awarding "comp" time.~~

- ~~• Number of consecutive closings in a 30-day period.~~
- ~~• The amount of "comp time" a department currently has on the books.~~
- ~~• The impact of scheduling multiple employees off and impact to operations.~~
- ~~• The financial impact to department of paying time off.~~

~~This policy is approved by City Council in accordance with City's Personnel Policy.~~

~~/s/John F. Connet, City Manager~~

#### F. Consideration of Request to Convert Part-time Customer Service Representative to

**Full-time:** Mr. Pahle requested a 3/4 time customer service representative position be converted to full-time. This position is available due to a resignation of a tenured employee who was working 3/4 time. He stated the cost to convert this position to full-time is minimal and will benefit the customer service team.

Mr. Pahle estimated future year recurring costs to be \$3,000. He stated City management supports and recommends this change.

**Council Member Caraker moved Council's approval of the items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.**

#### 6. Public Hearing – Consideration of an Order to Permanently Close an Unopened, Unnamed, and Unimproved Alley off Kensington Road:

Mrs. Frady presented a petition from Robert Baumann and Robert Duffey to close an unnamed alley located between Kensington Avenue and Ridgewood Boulevard. She reported there are no City utilities located within this alley.

Mrs. Frady reported the Council adopted a Resolution of Intent to close this unopened alley at their November 2, 2017 meeting. A copy of the Resolution of Intent was mailed to the adjoining property owners. Notification of the proposed closing was posted on the property, and the Resolution of Intent and notice of the public hearing was advertised four times in the legal notice section of the Hendersonville Lightning.

Mrs. Frady reviewed the procedures in North Carolina General Statute 160A-299 for permanently closing streets and alleys.

At 5:49 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes. The following addressed the Council in favor of closing the alley:

Derrick Kote, representing Robert Baumann, lives at 100 Daniel Dr., Laurel Park, stated Mr. Duffy could not attend the meeting. Mr. Baumann, his father-in-law, purchased the property. They conferred with the adjacent property owner, Robert Duffy, to close the alley because of automobile and pedestrian traffic patterns. He stated the condition is such that it poses a danger to those in the area. He stated there is a lot of litter and debris on the lot as well as unauthorized activity. He stated their intent is to close the alley for safety reasons and for beautification purposes.

Speaking opposed to the alley closing:

Sandra Cloer, 532 Glasgow Lane, has owned property at 1616 Haywood Road for ten years and purchased it with full disclosure there is a right-of-way to the back of the home. She wants to keep the alley open to get to the back of their home because it is the only ground level entry to the home and there are utilities there. She relayed because Haywood Road is a major thoroughfare and pulling in and out of the driveway is a safety concern. She asked that the alley remain open.

Jim Murphy, 1616 Haywood Road, rents the property, agreed safety and parking is an issue as well as getting out onto the Haywood Road. He stated he does not see any activity there.

Mary Baumann, 1225 Pinebrook Circle, stated she has been to the property numerous times. She doesn't know if anyone travels on the alley but sees it as her property.

Mr. Kote provided a survey of the property lines showing a discrepancy of where the alley is versus what is shown on the survey. He stated the survey shows the alley is still undeveloped property.

There was discussion from the Council about the location of the alley versus what is shown on the survey. Council Member Smith expressed a desire to speak with the City Attorney. At 6:02 p.m., **Council Member Smith moved Council to enter a closed session to consult with the City Attorney as provided under NCGS §143-318.11(a)(3). A unanimous vote of the Council followed. Motion carried.**

The Council discussed matters of the street closing with the City Attorney. The Council exited the closed session and returned to open session at 6:11 p.m.

Upon return to open session, Mayor Volk announced because of the discrepancy between the photos and surveys, Council needs additional time to gather further information before the alley may be considered for closing. Council Member Smith encouraged the neighbors to work together about the use of the alley, property lines and the closing of the alley.

**Council Member Smith moved to continue the public hearing until the February 6, 2018 meeting. A unanimous vote of the Council followed. Motion carried.**

**7. Public Hearing – Consideration of a Petition for Annexation from Dianne Newman and Patrick Tighe for Property Located at 1926 Haywood Road:** Mrs. Frady presented a petition from Dianne Newman and Patrick Tighe for contiguous annexation of parcel 9569-14-7462 containing approximately 0.76 acres located at 1926 Haywood Road. This annexation application is related to a request for sewer service.

Mrs. Frady stated the Council accepted the Clerk's Certificate of Sufficiency at their December 7 meeting and set a public hearing for this meeting.

Mrs. Frady explained at this public hearing, any person residing in or owning property in the area proposed for annexation and any resident of Hendersonville may appear and speak on the question of the sufficiency of the petition and the desirability of the annexation. If City Council then finds and determines that the area described in the petition meets all of the standards set out in G.S. 160A-31, Council may adopt an ordinance annexing the area described in the petition.

At 6:15 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

**Council Member Caraker moved the City Council adopt an ordinance annexing the property included in the petition from Dianne Newman and Patrick Tighe effective January 4, 2018. A unanimous vote of the Council followed. Motion carried.**

Ordinance #18-0102

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA  
Dianne Newman and Patrick Tighe, 1926 Haywood Road, Hendersonville NC

WHEREAS, the City of Hendersonville has been petitioned, pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein; and,

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the fourth day of January 2018, after due notice by publication as by law provided; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of G.S.

160A-58.1(b), to wit:

- a. The area is contiguous to the present City boundaries;
- b. The petition presented to the City Council was signed by the owners of the real property located in the area;
- b. The petition was prepared in accordance with a form prescribed by NCGS 160A -31, and
- c. At the public hearing all persons owning property in the area to be annexed who allege an error in the petition were given an opportunity to be heard, as well as residents of the City who question the necessity for annexation.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina:

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the fourth day of January 2018.

DESCRIPTION OF PROPERTY

BEGINNING at a point, said point being the northeastern corner of the property of James Arthur Ballard as described in a certain deed recorded in Deed Book 624, at page 253 of the Record of Deed of the Henderson County Registry, said point lying South 51 deg. 49 min.35 sec. East 295.87 feet from an iron pin, the northernmost corner of Lot 10 of Lynwood Subdivision as shown on a plat thereof recorded in Plat Cabinet B, at slide 158 of the Record of Plats of the Henderson County Registry, and running thence from said beginning point, South 56 deg. 43 min. 00 sec. East 150 feet to a point, thence with the area of a circle to the right having a radius of 19.6 feet an arc distance of 20.95 feet (chord bearing south 26 deg. 05 min. 30 sec. East 19.97) to a point, thence South 56 deg. 43 min. 00 sec. West 163.10 feet to a point, thence with the curve of a circle to the right, having a radius of 5 feet an arc distance of 10.36 feet (chord bearing South 63 deg. 54 min. 30 sec. West 8.61 feet) to a point within the right-of-way of Haywood Road, Highway 191, thence north 56 deg. 47 min. 34 sec. West 242.61 feet to a point, thence North 33 deg. 46 min. 01 sec. East 160.9 feet, crossing an iron pin at 9.44 feet, said point being the point and place of BEGINNING. This property is comprised of .76 acres, more or less, and is that same property shown and described on a certain survey entitled "Plat of Proposed Property of Kenneth Pearce and Julia Clapsaddle", performed by Steven Lloyd Waggoner, R.L.S. 2874, dated January 10, 1994, bearing Job No. 94-001.

This property is comprised of all of Lots 1, 2, 3, and 4 of Lynwood Subdivision as shown on a plat thereof recorded in Plat Cabinet B, at Slide 158 of the Record of Plats of the Henderson County Registry.

This property is conveyed subject to the restrictive covenants, if any, of Lynwood Subdivision and further subject to the right of way Haywood Road, Highway 191, and a gravel access road following the eastern and northern boundaries, to their full length widths.

AND BEING all of the property described in the Deed Book 1061 at the page 379, Henderson County Registry.

Section 2. Upon and after the fourth day of January 2018, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

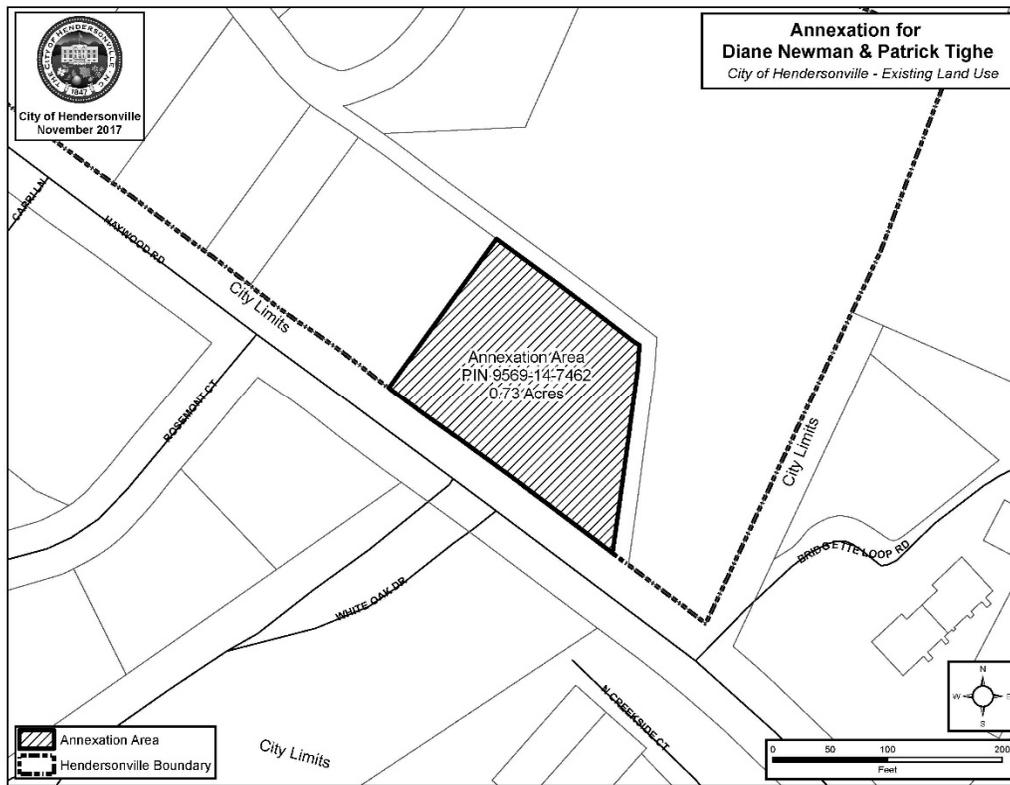
Section 3. The City Clerk of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, hereof, together with a duly certified copy of this ordinance.

ADOPTED this fourth day of January 2018.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney



**8. Public Hearing - Consideration of a Request for a Zoning Map Amendment from Andrew Riddle, and Sam and Linda Riddle, for Property Located at 732 Jonesborough Street, from R-15 Medium Density Residential to C-2 Secondary Business:** Mr. Matt Champion, Senior Planner, presented the application for a zoning map amendment from Andrew Riddle and the property owners are Sam and Linda Riddle. The applicant is requesting to rezone the property located at 732 Jonesborough Street from R-15 Medium-Density Residential to C-2 Secondary Business. The parcel is located off White Street at PIN 9568-73-6975, and consists of 0.71 acres. He reported the subject area is classified as Neighborhood Activity Center on the Comprehensive Plan’s Future Land Use Map. He reviewed the purposes of the classifications.

*Comprehensive Plan Consistency:* Mr. Champion reported the NC General Assembly amended NCGS 160A-383 to allow governing bodies to approve the zoning map amendments that are not in compliance with comprehensive plans, to approve the map amendment and subsequently the comprehensive plan, with an explanation of the change in conditions.

Notable changes in conditions in the vicinity of the subject area include Kanuga Road and White Street NCDOT roadway improvements that call for widening of the existing roadway and the addition of bike/pedestrian infrastructure. The site is also adjacent to the approved, and currently under construction, 49,000 sq. ft. Publix grocery store.

*Proposed Zoning Classification:* Mr. Champion explained the subject area is proposed to be rezoned to C-2 Secondary Business zoning district and reviewed the purpose of that district. He also reviewed the surrounding land uses and zoning classifications. He provided an analysis of the dimensional requirements for C-2, R-15, residential and non-residential, the permitted and conditional uses of each district.

*Zoning Ordinance Guidelines:* Mr. Champion reviewed the factors contained in Section 11-4 of the Zoning Ordinance that must be considered prior to adopting or disapproving amendments to the Official Zoning Map. He reported the Development Assistance Department staff has not found any issues relating to these guidelines.

*Planning Board Recommendation:* Mr. Champion reported the Planning Board voted five to one to recommend City Council amend the 2030 Comprehensive Plan Future Land Use Map and the Official Zoning Map.

Andrew Riddle addressed the Council stating the property was previously occupied by a grading and excavating business owned by D.C. Banks, a cabinet shop, and since 1992 has been Riddle Construction Company. He stated they are a legal non-conforming use. He asked for a zoning change so they can proceed with what they do.

At 6:24 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following comments were made:

Ken Fitch, 1046 Patton Street, stated the change raises the question of the vision and plans for the City for the future of this area. He suggested a simpler motion so other entities do not determine the future of this area instead of the City.

The public hearing was closed at 6:26 p.m.

Council Member Smith commented he is not sure why the property is zoned C-2 and called high intensity neighborhood. Discussion followed on the zoning/Comprehensive Plan map designations. Mrs. Frady stated there are some inconsistencies between the zoning/Comprehensive Plan. She stated those documents, along with changes to the area, will be reviewed by staff and presented to the Planning Board.

**Council Member Caraker moved City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel number 9568-73-6975 from R-15 Medium Density Residential to C-2 Secondary Business. A unanimous vote of the Council followed. Motion carried.**

Ordinance #18-0103

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE  
IN RE: FILE NO. P17-44-Z, Petitioner – Riddle, White Street

Be it ordained by the City Council of the City of Hendersonville:

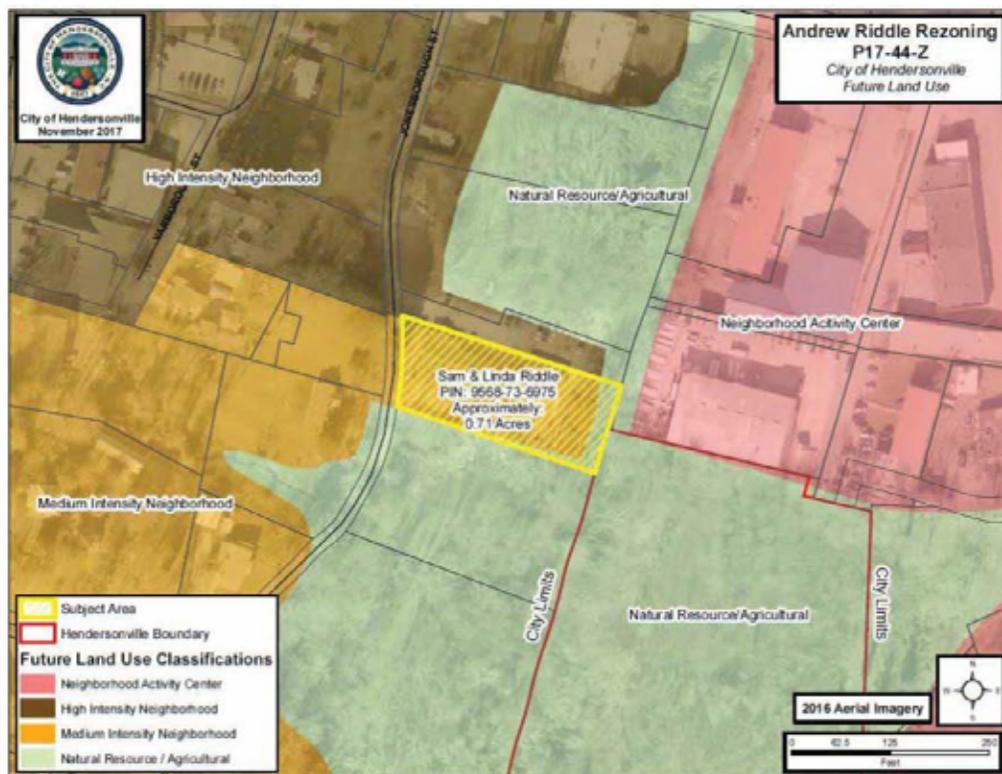
1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel number 9568-73-6975 from City of Hendersonville R-15, Medium Density Residential to City of Hendersonville C-2, Secondary Business.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fourth day of January 2018.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney



**9. Public Hearing - Consideration of Entering into a Master Development Agreement with Grey Mill Ventures, LLC, or Assigns, to Convey Certain Real Property Known as the Grey Hosiery Mill Building:** Mr. Connet reported NC General Statute 160A-400.20-160A-400.32 allows local governments to enter into very specific development agreements to govern large-scale multi-phase development projects that require long-term commitment and careful integration of both public and private resources over several years. He explained a public hearing must be conducted prior to adoption of such development agreement after appropriate advertising public hearing.

Mr. Connet presented a proposal to enter into a Development Agreement with Grey Mill Ventures, LLC to govern the redevelopment of the former Grey Hosiery Mill property over the next 20 years. The Agreement outlines specific standards for redevelopment of the site and the respective obligations of each party over the 20-year period. He explained amendments to the agreement will have to undergo a formal public hearing process. He stated termination provisions are included.

Mr. Connet stated the proposal is for the redevelopment of the Grey Hosiery Mill. Grey Mill Ventures is proposing a 55-room hotel on the site with a construction value of approximately \$8 million. The project will include meeting space and parking. He stated the development is governed by the agreement, utilizing existing Zoning Ordinance requirements, and includes the City's commitment to provide streetscape improvements between Grove and Main Streets. It also includes the Brownfields agreement and stormwater requirements.

At 6:33 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning.

Ken Fitch, 1046 Patton Street, expressed the agreement contains important considerations: mitigation measures in Article V, and focuses on retaining the historic character including photos and text describing historical facts placed in a convenient and accessible place for the public. He asked if the National Register registration form be include as an appendix in the agreement package.

No one else expressed a desire to speak. The public hearing was closed at 6:35 p.m.

**Council Member Caraker moved City Council to approve the Development Agreement between the City of Hendersonville and Grey Mill Ventures, LLC.** Council Member Smith asked if the National Register information may be added as an appendix as requested. Mayor Volk commented the agreement is in place. Mr. Connet stated the City will work with the developer to replace the National Register plaque on the building once it is renovated. **A unanimous vote of the Council followed. Motion carried.**

The Council paused to reflect on the significance of the development agreement in light of the amount of work that has gone into the property. Council Member Miller publicly thanked Congressman Meadows who worked with the Senate so the tax credits were not eliminated and ventures like the Grey Hosiery Mill would not fail.

Council Member Caraker expressed appreciation for the work that has been done to make the development agreement a reality. He stated he has worked on this since first elected and it has been frustrating at times. He stated the end product will be worth it. Council Member Smith expressed appreciation for the work that has gone into the project. Mayor Volk echoed her appreciation to staff and associate staff who have worked hard to get this agreement in place.

**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this fourth day of January 2018. ("Effective Date"), by and between the City of Hendersonville, North Carolina, a public body corporate and politic (hereinafter collectively referred to as "Seller"); and Grey Mill Ventures, LLC, a North Carolina Limited Liability Company (hereinafter referred to as "Buyer").

## WITNESSETH:

1. Agreement to Sell and Purchase. For and in consideration of the Earnest Money, to be paid by Buyer to Seller, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement the following:

(a) All that certain tract of real estate, identified as all of those two tracts more particularly described as: ALL OF THAT REAL PROPERTY identified as that 1.103 acre tract on plat recorded at Plat Slide 9482 of the Henderson County Registry, reference to which plat is hereby made for a more particular description, ALSO BEING a portion of that real property described in deed of record in Deed Book 1318, page 1 01, Henderson County Registry and is also all of that property described as the First Tract in deed of record in Deed Book 757, page 467, Henderson County Registry. (the "Mill Building Property");

(b) All buildings, structures, amenities, and other improvements of any and every nature located on the Land and all fixtures attached or affixed, actually or constructively, to the Land or to any such buildings, structures or other improvements (the "Improvements"); and

(c) All of the right, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing, now or in the future, to the owner of the Property, in and to all certificates, licenses, permits, authorizations, consents and approvals from governmental authorities with respect to (i) the design, development, construction and installation of the Improvements, (ii) vehicular ingress and egress to and from the Land, and (iii) the use, operation and occupancy of the Improvements, including the certificate of occupancy for the Improvements (herein called the "Permits").

The Mill Building Property, Improvements, and Permits shall be referred to collectively as the "Property."

2. Agreement to Sell and Purchase the Mill Building Extra Lot. For and in consideration of the Earnest Money, to be paid by Buyer to Seller, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement the following:

(a) All that certain tract of real estate, identified as that one tract more particularly described as ALL OF THAT REAL PROPERTY identified as that 0.582 acre tract on that plat recorded at Plat Slide 9482, and is also all of that property described as Tract One in deed of record in Deed Book 715, page 64, Henderson County Registry ("Mill Building Extra Lot");

The Seller and Buyer agree that Seller shall convey and Buyer shall purchase the Mill Building Extra Lot upon the resolution of the City Council of Seller after notice and hearing pursuant to N.C. Gen. Stat §158-7.1. The Purchase Price shall constitute consideration, negotiated and agreed upon by Buyer and Seller, for the Mill Building Extra Lot.

3. Purchase Price; Seller Financing. The purchase price for the Property (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be One Million Dollars (\$1,000,000). The Purchase Price shall be payable by Buyer to Seller on the following terms:

a. In ninety-six (96) equal and consecutive monthly payments of principal and interest in the amount of \$11,958.05, with the first such monthly payment being due and payable on January 27, 2020, and subsequent monthly payment being due and payable on the 27th day of each month thereafter to and through December 27, 2027, and a 97th and final payment of all unpaid principal and interest due and payable on January 27, 2028. Such payments shall be memorialized in a promissory note from Buyer to Seller and secured by a deed of trust. Said promissory note shall be payable in the amount of One Million Dollars (the "Purchase Money Note"), with interest at the rate of three and one-half percent (3.5%) per annum, being payable in monthly installments of principal and interest over a term of eight (8) years from the first payment date, with an additional and final payment in full as set out herein above in this subparagraph 2.a. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. The Purchase Money Note will be secured by a purchase money deed of trust

encumbering the Property.

4. Earnest Money. On or before the Effective Date, Buyer shall deliver to Seller One Dollar (\$1.00) (the "Earnest Money").

5. Closing Date. The closing of the purchase and sale of the Property (the "Closing"), shall be held on or before December 29th, 2017.

6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following condition:

(a) Development Agreement. Execution and delivery of a Development Agreement, attached hereto as "Exhibit A" conditioned upon approval by the Seller after public hearing on January 4, 2018; and

(b) Lease. Execution and delivery of a lease agreement in substantially the form attached hereto as "Exhibit B" duly executed by the parties whereby Seller agrees to lease back the Property for a term ending June 30, 2018.

(c) Title. If Buyer, after attempting in good faith using reasonable diligence, is unable to verify title of the Property on or before January 29th, 2018, and provides proper notice to the Seller, Buyer shall promptly and diligently convey to Seller good and marketable fee simple title in and to the Property, with no additional liens, interests, claims, encumbrances, or other impairment of title since the conveyance to the Buyer. Buyer shall convey fee simple title to the Property to Seller no later than five (5) business days after the occurrence of providing notice to the Seller that Buyer is unable to verify title. Seller shall, upon receipt of fee simple title to the Property, repay to Buyer the Purchase Price paid by Buyer to Seller pursuant to the Purchase Agreement all other costs associated with the re-conveyance, including deed stamps and recording fees.

## 7. Title

(a) Seller covenants to convey to Buyer at Closing good and marketable fee simple title in and to the Property. For the purposes of this Agreement, "good and marketable fee simple title" shall mean fee simple ownership which is: (i) free of all claims, liens and encumbrances of any kind or nature whatsoever other than the Permitted Exceptions, herein defined; and (ii) insurable by a title insurance company reasonably acceptable to Buyer, at then current standard rates, without exception other than for the Permitted Exceptions. Buyer's receipt of a title commitment for the Property shall be deemed to satisfy the requirement in the preceding sentence that title to the Property shall be "insurable." For the purposes of this Agreement, the term "Permitted Exceptions" shall mean: (a) zoning ordinances affecting the Property, (b) the easements, public utilities, rights of way and other matters on the Property (c) the Development Agreement; and (d) other matters disclosed to Buyer in writing during PreDevelopment Phase (being collectively "Permitted Exceptions").

(b) After the Closing, Buyer will not record any new easement, restriction or other encumbrance on the Property without Seller's prior written consent, until the expiration of the Lease.

## 8. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:

(a) Seller shall deliver to Buyer the following documents and instruments, duly executed by or on behalf of Seller (unless otherwise indicated):

(i) a special warranty deed conveying title to the Property substantially in the form attached hereto as "Exhibit C" (the "Deed");

(ii) a lien waiver executed by Seller's authorized representative;

(iii) the applicable form of NCLTA Owner Affidavit and Indemnity Agreement; and

(iv) evidence of Seller's authority to enter into the transaction contemplated herein, as reasonably required by Buyer and Buyer's title insurer.

(b) Seller shall surrender possession of the Property to Buyer on the Closing Date.

## 9. Representations and Warranties of Seller. In addition to the other warranties and representations set forth in this Contract, Seller makes the following representations and warranties to Buyer, each of which shall be deemed material:

(a) Seller is a municipal corporation of the State of North Carolina;

(b) Seller currently owns, or will own at the Closing Date, a marketable and insurable fee simple title to the Property, subject only to those exceptions listed in Paragraph 5 above, free and clear from all liens and encumbrances;

(c) Seller has entered into no agreement or lease, oral or written, that will be binding upon Buyer or the Property on or after the Closing Date; and neither Seller nor the Property is subject to any claim, demand, suit, unfiled lien, proceeding or litigation of any kind, pending or outstanding, or threatened or likely to be made or instituted which would in any way be binding upon Buyer or its successors or assigns or affect or limit Buyer or its successors or assigns in the full use and enjoyment of the Property or which would limit or restrict in any way Seller's right or ability to enter into this Contract and consummate the sale and purchase contemplated by this Contract;

(d) To the best of Seller's knowledge, there are no taxes, charges or assessments of any nature or description arising out of the conduct of Seller's business or the operation of the Property which would constitute a lien against the Property and that will be unpaid at the Closing Date or not paid from the Seller's Closing proceeds, except for the lien of ad valorem property taxes for the year in which the Closing occurs;

(e) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;

(f) Seller shall refrain from undertaking any cutting of trees or material or significant changes to the topography of the Land or the Property, without the express written consent of Buyer, including the disposal of waste or debris upon the Property; and

(g) All representations and warranties of Seller contained in this Contract are true and correct as of the date of this Contract and will be true and correct as of the Closing Date.

IT IS UNDERSTOOD AND AGREED THAT, EXCEPT AS SPECIFICALLY OTHERWISE PROVIDED IN THIS CONTRACT, SELLER HAS MADE NO, IS NOT MAKING ANY, AND DISCLAIMS ANY AND ALL, WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES RELATED TO SUITABILITY FOR HABITATION OR INTENDED USE, MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OR REPRESENTATIONS AS TO THE CONDITION OF THE PROPERTY, MATTERS OF TITLE, USE OR INCOME POTENTIAL, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, EXPENSES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, COMPLIANCE WITH GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. BUYER AGREES THAT BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER NOT MADE BY THIS CONTRACT. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS AND THAT BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS

BUYER DEEMS NECESSARY OR APPROPRIATE. WITH THE EXCEPTION OF THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN THIS CONTRACT, BUYER SHALL RELY UPON BUYER'S INSPECTIONS AND, UPON CLOSING, EXCEPT

AS TO THOSE MATTERS EXPRESSLY REPRESENTED AND WARRANTED BY SELLER IN THIS CONTRACT, SHALL ASSUME THE RISK THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL

CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL, EXCEPT AS TO THOSE MATTERS EXPRESSLY REPRESENTED AND WARRANTED BY SELLER IN THIS CONTRACT, ACCEPT THE SUBJECT PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER, SELLER'S AGENTS OR REPRESENTATIVES OR ANY THIRD PARTY, EXCEPT FOR THOSE MATTERS EXPRESSLY REPRESENTED AND WARRANTED BY SELLER IN THIS AGREEMENT. BUYER ACKNOWLEDGES THAT ANY CONDITION

AT THE PROPERTY THAT BUYER DISCOVERS OR DESIRES TO REPAIR, CORRECT OR IMPROVE SHALL BE AT BUYER'S SOLE EXPENSE. THE TERMS AND CONDITIONS OF THIS SECTION SHALL EXPRESSLY SURVIVE THE CLOSING AND NOT MERGE THEREIN.

10. Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the Effective Date and as of the Closing Date for Seller's reliance thereon as follows (which representations and warranties shall survive Closing):

- (a) Buyer is a limited liability company which is duly authorized and validly existing under the laws of the State of North Carolina;
- (b) Buyer has full right, authority and power to enter into this Contract and to consummate (including the execution of all necessary documents and contracts) the transaction contemplated in this Agreement;
- (c) The person or entity executing this Agreement on behalf of Buyer is authorized to do so;
- (d) This Agreement constitutes a valid and legally binding obligation of Buyer, enforceable in accordance with its terms; and Buyer acknowledges that the Property has been classified as a brownfields property under the North Carolina Brownfields Property Reuse Act, N.C. Gen. Stat. § 130A, Article 9 and is subject to a Brownfields Agreement with the North Carolina Department of Environmental Quality ("DEQ") that is attached as Exhibit A to the Notice of Brownfields Property recorded in the Henderson County land records, Book 1596, Page 124 (the "Brownfields Agreement"). The Brownfields Agreement includes certain restrictions on the use of the Property as well as construction-related, recordkeeping, monitoring, reporting and other requirements. Buyer acknowledges its responsibility to comply with all such restrictions and requirements after the Closing and hereby releases Seller from any claims Buyer might have arising out of the Brownfields Agreement or any environmental conditions at the Property existing prior to the Closing, including those conditions described in the Brownfields Agreement; and
- (e) Buyer shall not dump, release, deposit, discharge or otherwise dispose of any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, or in any amendments thereto, or in any regulations promulgated pursuant thereto, or in any applicable state or local law, regulation or ordinance during the Buyer's Inspection Period.

11. Remedies.

- (a) If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Buyer's default hereunder, the Earnest Money shall be delivered to Seller as full liquidated damages for such default. After due consideration, discussion and negotiation, the parties have determined and agreed that the actual amount of damages that would be suffered by Seller as a result of Buyer's failure to close under this Agreement is difficult or impracticable to determine as of the execution date of this Agreement and that in such event Seller may declare this Agreement terminated.
- (b) If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default hereunder, as Buyer's sole and exclusive remedy, Buyer may declare this Agreement terminated and the amount of the Earnest Money shall be refunded to Buyer. Notwithstanding anything to the contrary contained in this Agreement, Buyer agrees that its recourse against Seller under this Agreement or under any other agreement, document, certificate or instrument delivered by Seller to Buyer, or under any law applicable to the Property or this transaction, shall be strictly limited to Seller's interest in the Property (or upon consummation of the transaction contemplated hereunder or a sale to a third party, to the net proceeds of the sale thereof actually received by Seller), and that in no event shall Buyer seek or obtain any recovery or judgment against any of Seller's other assets (if any) or against any of Seller's members, partners, or shareholders, as the case may be (or their constituent members, partners, or shareholders, as the case may be) or any director, officer, employee or shareholder of any of the foregoing.
- (c) If Buyer defaults on any covenants, terms, or obligations under the Purchase Money Note, Deed, or Development Agreement and no liens or encumbrances on the title to the real property encumbered by the Deed of Trust have intervened, Seller and Buyer shall enter into a deed in lieu of foreclosure agreement.

12. Further Assurances. At Closing, and from time to time thereafter, Seller shall do all such additional and further acts, and shall execute and deliver all such additional and further deeds, affidavits, instruments, certificates and documents, as Buyer, Buyer's counsel or Buyer's title insurer may reasonably require fully to vest in and assure to Buyer full right, title and interest in and to the Property to the full extent contemplated by this Agreement and otherwise to effectuate the purchase and sale of the Property as contemplated by and provided for in this Agreement.

13. Closing Conditions. Buyer's obligations to close pursuant to this Agreement are expressly conditioned upon Seller's delivery on or before the Closing Date of all documents and instruments required by this Agreement to be delivered by Seller.

14. General Provisions.

- (a) Assignment; Parties. Except as set forth in Section 14G) below, this Agreement may be not assigned by Buyer without the prior written consent of Seller; provided, Buyer may assign this Agreement to an entity controlled by Buyer with notice of such assignment provided to Seller. Any assignment shall not release Buyer from its obligations herein. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Buyer and Seller and their respective heirs, legal representatives, successors and assigns.
- (b) Headings. The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.
- (c) Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.
- (d) Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.
- (e) Pronouns. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

(f) Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(g) Non-Waiver. Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

(h) Time of Essence; Dates. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement.

(i) Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina.

(j) Entire Agreement; Modification. This Agreement supersedes all prior discussions and agreements among Seller and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement contains the sole and entire understanding among Seller and Buyer with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Seller and Buyer.

(k) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully-executed counterparts. Counterparts of this Agreement also may be exchanged via electronic facsimile machines or other recognized electronic transmission method, and an electronic facsimile of any Parties' signature shall be deemed to be an original signature for all purposes.

(l) Counsel. Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review, and understand the provisions of this Agreement.

(m) No Construction Against Preparer. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute and deliver this Agreement, all as of the day and year first written above.

SELLER: CITY OF HENDERSONVILLE

/s/John F. Connet, City Manager

**10. Public Hearing - Consideration of a Zoning Ordinance Text Amendment of Section 7-4 and Several Others throughout the Ordinance to Remove Special Use Review and Special Use Districts and Add Conditional Zoning Districts:** In response to a directive of the City Council, Mrs. Frady presented an ordinance amending the text of the Zoning Ordinance to remove special use permits and districts and replacing these with conditional zoning districts.

*Planning Board Recommendation:* The amendments were reviewed by Planning Board in its entirety. The members voted five in favor and one opposed to recommend the City Council adopt the ordinance amending the Zoning Ordinance respecting conditional zoning districts.

Mrs. Frady stated most of changes involve the text of "special use" to "conditional zoning districts." She reported some housekeeping amendments such as the terms "Planning Director" or "Zoning Administrator" were changed to "Development Assistance Director" or designee.

City Planner Daniel Heyman presented an overview of the proposed amendments including the housekeeping amendments. He reviewed the requirements of North Carolina General Statutes 160A-382, the differences in the types of hearings required and the process for each classification. He stated proposed projects may be discussed by the Council members outside of the hearing. It will still be necessary that Council adopt findings for rezoning. City Attorney Fritschner explained under special use permit anyone speaking must show direct financial interest but under the proposed process, anyone with an interest may speak.

At 6:50 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following spoke in opposition to the Zoning Ordinance amendments:

Ken Fitch, 1046 Patton Street, commented that statements of compatibility with the neighborhood and other statements have been removed in conditional zoning. He stated special use review was distinguished by certain statements, e.g., the project must be located, designed and proposed to be operated so as to be compatible with adjacent properties and neighborhoods. He noted Section 11-4 of the Zoning Ordinance contains guidelines but stated these are not requirements. He stated the determination is left to the Council as a legislative act. He stated this could become subjective which is not optimal for highly emotional and/or controversial situations and cautioned against uncertain determinations.

Being no further comments, the public hearing was closed at 6:53 p.m.

Council Member Smith asked if a change or modification to an existing special use permit is requested, if it would be made a conditional district. Mrs. Frady explained if the modification consists of 10 percent or less, staff may review and approve the change. Major changes will go to City Council for review and the zoning will change to conditional. She explained if a special use permit has not expired, an extension may be granted.

Council Member Miller asked if there are any applications for special use permits pending. Mrs. Frady stated yes there will be one at the next meeting. She stated a couple of applications are not complete and are waiting for tax credits (apartment projects). She stated extensions are not quasi-judicial.

Council Member Smith commented a lot of legal language is being changed. Other than the fact that Council can discuss projects with each other, people do not have to be sworn in nor have a standing, he asked if is there anything different with regard to Council's decision-making process, including the criteria considered before. City Attorney Fritschner stated the Council has the right to use the same criteria as before. He stated a small difference is when it is voted on, it is done at the time of the vote. He stated a large difference is, if appealed, they will have to prove that was the Council did was arbitrary or otherwise not in compliance with the statute. He stated to say the facts do not support a change is no longer an argument and it provides a lot more leeway and is much more defensible.

Council Member Miller commented in his opinion, Council is not trying to dodge legal action but have the ability to discuss projects. Council Member Smith stated he brought this up because the rules of who can testify does not seem rational in a town of our size. Secondly, Council was not elected to be judges. He stated under the special use permit process, Council is asked to make a decision without being able to discuss it with each other or constituents. He further stated if Council is acting as judges, parties involved may not be on equal footing. Mayor Pro Tem Stephens agreed stating the Council was being asked to do something that is impossible because he was not supposed to consider testimony made at Planning Board meetings, etc. He voiced support of the amendments stating it will allow the Council to do a better job. Council Member Miller also supported the amendments.

**Council Member Smith moved City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance respecting conditional zoning districts. A unanimous vote of the Council followed. Motion carried.** [*Ordinance #18-0104 is available in the office of the City Clerk.*]

**11. Consideration of Request for Dispatch of Laurel Park Police Department:** Police Chief Herbert Blake presented a request from the Laurel Park Police Department for the Hendersonville Police Department to take over the dispatching of all emergency and non-emergency calls to the Laurel Park Police Department. He explained this change will require the purchase of new software and hardware to join the HPD dispatch system. The purchases have been approved by the Laurel Park Town Council pending a decision of the Hendersonville City Council on this request.

Chief Blake reported the Laurel Park Police Department answers around 3,000 calls per year in comparison to the Hendersonville Police Department who answered 45,123 calls in 2016. He stated the number of calls added because of this change to the daily work of the Hendersonville Police 911 center is minimal. He asked Council to formally consider the request.

Chief Blake outlined the benefits of dispatching for the Laurel Park Police department: Hendersonville officers are the closest backup units, Laurel Park will be on the same radio system that allows quicker response times for back up for each agency and will assist in officer safety. He stated the City's extraterritorial jurisdiction on the west side covers approximately half of the Town on Laurel Park. He explained Laurel Park officers assist the City multiple times during each shift. He stated it will be beneficial for both departments.

Council Member Miller asked if Henderson County officers will also hear calls for Laurel Park and/or Hendersonville. Telecommunications Supervisor Monica Howard stated the agencies are on two different systems but expects to be on the same system by the summer months. She stated they have ability to scan and hear the calls as well as monitor the comp-aided dispatch. She discussed the different systems. She stated it can take up to 35 minutes to reach Laurel Park from parts in the county. Council Member Miller commented this will also offer more officer checks and will increase safety for Laurel Park officers.

Mrs. Howard stated the Memorandum of Understanding lays out Laurel Park's responsibilities. Discussion followed on the radio system. Chief Blake stated currently not all agencies are on the same channel and cannot speak to each other.

Council Member Smith asked if there may be a necessity for financial assistance. Chief Blake stated not at this time. Mrs. Howard stated Laurel Park's call volume would have to increase tremendously. She stated this change will lessen the burden for officer safety because they will not have to make a phone call for officer backup.

**Council Member Caraker moved to authorize City Staff to prepare an agreement between the City of Hendersonville and the Town of Laurel Park for Laurel Park police to be dispatched by the Hendersonville Police 911 center pending an approved Memorandum of Understanding. A unanimous vote of the Council followed. Motion carried.**

**12. Review of NCDOT Projects:** Mr. Connet introduced Ms. Wanda Austin and Mr. Craig Scheffler with NCDOT. He explained in an effort to coordinate the review of upcoming NCDOT projects, City staff is asking City Council to provide comments regarding the following projects:

**1. U.S. 64/ I-26 Interchange:** Ms. Austin stated NCDOT is planning a second public hearing for the I-26 project. This project will include the interchange with Four Seasons Boulevard. She explained the technical memo identifies five different alternatives. She stated the Department feels pedestrian and bicycle connectivity between both sides of the interstate is very important and has been their focus along with future growth. Of the five alternatives, she presented three for Council's consideration/input.

1. Par-Clo with free-flow ramps: works best for the future years but is not pedestrian or bicycle-friendly because vehicles do not stop.
- 2: Diverging diamond: this works well but not as well as the other options.
3. Contraflow or Enhanced Lefts: this is a new concept that has not been constructed in NC. A video was provided to show traffic flow.

Discussion from the Council included sidewalks on both sides of the bridge, reducing traffic ques, signage, and the construction of a new bridge at the intersection. Mr. Scheffler stated u-turns will be available at both signals. He stated from an efficiency standpoint the Contraflow is more conventional than the DDI (diverging diamond). Ms. Austin stated the new bridge will include bike lanes and sidewalks and will require only one left turn. She stated the DDI will be done at the Highway 25/I-26 interchange that will help with the traffic volume and the number of left turns.

Mr. Connet stated this project will be built before the Balfour Parkway and should be the most efficient pattern available to move the traffic on Highway 64 and the Contraflow appears to accomplish that. After discussion, **the consensus of the Council is the Contraflow or Enhanced Left is the best alternative for the I-26/Highway 64 intersection.**

**2. White Street/S. Main Street Project:** Mr. Connet reviewed the two alternatives presented by NCDOT for improving White Street.

- Alternate 1 is new construction from Spartanburg Highway to White Street. A roundabout, or signal, is proposed at Hebron/White Street and may eliminate the car wash. A roundabout is also proposed at S. Main Street which allows a U-turn movement which cannot be done now and will enhance safety. There was discussion about access to businesses.
- Alternative 2 leaves existing right-of-way of White Street at Yarborough and includes new construction with a roundabout at Hebron.

Members of the public in attendance provided input to the Council and NCDOT representatives about protecting existing businesses on White Street and gave opinions on the proposed alternates. Ms. Austin stated NCDOT is still taking comments on the project and all comments will be reviewed. She stated the chosen alternative will be published in a newsletter by NCDOT. **No action was taken by the Council.**

There was a short recess.

**13. Presentation on Stormwater Utility Structure and Impervious Surface Area Study:** Mr. Michael Huffman, Stormwater Quality Specialist gave a presentation to the Council on possible options to fund stormwater management capital projects. He stated currently all water and sewer customers within the City and extraterritorial jurisdiction are charged a flat \$2/month fee. This generates approximately \$225,000 annually of revenue. He stated heavy rain this past year has highlighted a need for a more progressive approach to stormwater management. He reported the repairs to the Buncombe Street area are estimated at \$170,000 so current revenue is not able to meet the needs for future stormwater management demand. He stated the goal is to increase revenue to develop a proactive program and fund a Master Plan.

Mr. Huffman stated 73 municipalities in NC have a stormwater utility in place. The fee ranges from .75 to \$10.18/month for residential properties. He explained how other municipalities calculate fees: a "Per ERU" (equivalent residential unit) basis but most are "per unit" structure which is a standard unit that the utility chooses. The most common unit size for commercial properties is one acre or 43,560 square feet. He reviewed the utility fee structures from other cities and reported 83 percent have residential and non-residential fee structures.

Mr. Huffman conducted an impervious surface classification study using Environment Systems Research Institute (ESRI)-established standard operating procedures for classing impervious surfaces from aerial imagery. He explained how impervious surfaces were calculated with aerial imagery which may be used to modify the City's existing stormwater utility structure to better support the increased need for stormwater management.

Mr. Huffman provided some options for the utility fee structure and examples. He stated many communities that implement a stormwater utility also offer a fee credit program whereby non-residential customers can reduce their fee by control guidelines set by the City.

Mr. Huffman reviewed a list of projects (highest priority) that need to be addressed. There was discussion of completing a Stormwater master plan with estimates included. **No action was taken by the Council.**

**14. Consideration of Health Insurance Broker:** Human Resources Director Jennifer Harrell reported the City's health insurance premiums have steadily increased over the last few years. This part year the increase was 25 percent.

In order to ensure the City has the best premium possible Ms. Harrell proposed allowing an insurance brokerage firm to oversee the process. She explained brokers provide expert unbiased advice on insurance needs and are free to make impartial recommendations. Brokers are often able to get better rates on insurance policies for their clients than the client alone because insurance companies know brokers have the experience to guide their clients to the right policies with the proper level of coverage. A broker can offer a range of quotes from different insurers to give clients options that fit their needs and their budgets. This ability to shop for the best prices from a number of carriers typically saves clients' money.

Mrs. Harrell reported staff has considered several firms including One-Digital based in Atlanta with a main office in Charlotte. They are a solid company with a good background mainly in the private sector but they are branching out to local governments and non-profits. She presented their final quote for services of \$44,000 annually.

Ms. Harrell reported staff is recommending Mark III, a second-generation company that does business in Tennessee and has more governmental experience. Their fee is \$25,500 annually with an optional data analytics for \$12,000. She proposed forgoing the data analytics this coming year but if staff determines the City could benefit from the service, that option will be explored in the future.

Mr. Connet thanked Mr. Jim Rasmussen with Morrow Insurance Company, affiliated with OneDigital, for bringing this option to staff's attention. He stated their original proposal was \$52,000 and was later reduced to \$44,000 and includes data analytics. Like services from Mark III would be \$37,500. He stated from a service perspective, Mark III has more governmental experience. He stated it is a Council decision of whether to use Mark III or a local presence.

In discussion, Council Member Miller stated Morrow Insurance presented the idea. He suggested giving them the opportunity to present a proposal with same options. There was discussion of whether there is a benefit of using analytics. Mrs. Harrell stated not at this point because we can get claims data. Mr. Pahle stated the analytics also relate to an accountability program for monitoring BMI, etc. but it is not a necessary cost at this time.

There was discussion of whether the estimates are comparing apples to apples, and giving both providers, the local provider and Mark III, an opportunity to re-submit proposals. **The Council agreed by general consensus to give both providers, OneDigital and Mark III, a chance to re-submit their proposals. No action was taken.**

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

**16. Reports from Staff:** Mr. Connet provided the following reminders/report:

- A. Reminder of Change in February's Council Meeting: February 6 instead of February 1
- B. Reminder of Special Meetings – Council Retreat on February 8 at 6:00 p.m., and February 9, 2018, 8:30 a.m.
- C. Report on Disposition of Surplus Property sold on Gov Deals. Mr. Connet provided this report as required by policy.

**17. Consideration of Board/Commission Appointments:**

**Tree Board:** Council Member Smith nominated Kristy Lapidus to fill the unexpired term of Richard Baxter. This term will expire December 31, 2019. A unanimous vote of the Council followed. Motion carried.

City Clerk Tammie Drake also reported on the vacancies on the various boards.

**18. New Business:** There was none.

**19. Adjournment:** The meeting adjourned at 9:05 p.m. upon unanimous assent of the Council.

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Barbara G. Volk, Mayor

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Tammie K. Drake, City Clerk