

MINUTES
January 3, 2019
REGULAR MEETING OF THE CITY COUNCIL
CITY HALL – COUNCIL CHAMBERS
5:45 p.m.

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

Staff Present: City Manager John F. Connet, City Attorney Samuel Fritschner, City Clerk Tammie Drake, Assistant Manager Brian Pahle, Development Assistance Director Susan Frady, Engineering Director Brent Detwiler, Human Resources Director Jennifer Harrell, Environmental Services Coordinator Amy Huffman, Budget and Management Analyst Adam Murr, Fire Chief Joseph Vindigni, Fire Marshall Justin Ward

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.*

Glen Enggram, 230 Millard J Drive, expressed appreciation to Council Member Caraker for his responsiveness and communicating concerns of property owners. He spoke regarding the letter Council will consider on the 64 West widening project effecting Towne Forest. He hopes for the same collaboration between the community and property owners affected by the project.

4. Consideration of Agenda: Council Member Caraker moved approval of the agenda as submitted. 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 6, 2018 Regular Meeting and December 20, 2018 Special Meeting

B. Consideration of Resolution Authorizing the City to Engage in Electronic Payments as Defined by NCGS 159-28: Mr. John Buchanan, Finance Director, explained the NC Local Government Commission adopted rules to address the execution of the pre-audit and disbursement process related to electronic transactions for local government units. He explained a unit of government can be exempt from the pre-audit certificate and disbursement certificate requirements on electronic transactions if requirements of the new administrative code (20 NCAC 03.0409) are followed. The requirements include: approval of use of electronic payments and the adoption and implementation of a policy outlining procedures for electronic disbursements and pre-audit of electronic disbursements. He explained none of the changes exempts a unit of government from going through the pre-audit process but only affixing the certificate of preaudit on electronic transactions. Electronic transactions covered by this change are charge cards, credit cards, gas cards, and electronic funds transfers.

Resolution 19-0101

RESOLUTION AUTHORIZING THE CITY OF HENDERSONVILLE TO ENGAGE IN ELECTRONIC PAYMENTS AS DEFINED BY G.S. 159-28

WHEREAS, it is the desire of the City Council that the City of Hendersonville is authorized to engage in electronic payments as defined by G.S. 159-28, and

WHEREAS, it is the responsibility of the Finance Officer, who is appointed by and serves at the pleasure of the City Council, to create a written policy outlining procedures for pre-auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03 .0409, and

WHEREAS, it is the responsibility of the Finance Officer, who is appointed by and serves at the pleasure of the City Council, to create a written policy outlining procedures for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03 .0410.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville that City Council hereby:

Section 1. Authorizes the City of Hendersonville to engage in electronic payments as defined by G.S. 159-28;

Section 2. Authorizes the Director of Finance to create a written policy outlining procedures for pre-auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03 .0409; and authorizes the City Manager to approve a written policy outlining procedures for pre-auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03 .0409.

Section 3. Authorizes the Director of Finance to create a written policy outlining procedures for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03 .0410; and authorizes the City Manager to approve a written policy outlining procedures for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03 .0410.

Section 4. This resolution shall take effect immediately upon its passage.

/s/Barbara G. Volk, Mayor

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

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. Presentation:

A. Towne Forest Homeowners Association to Address the Council on the Impact of the U.S. Highway 64 West Widening project on Blythe Street and Towne Forest Subdivision and Request to NCDOT:

City Manager John Connet reported Councilman Smith requested an opportunity for the Town Forest Homeowners' Association President to address the City Council regarding the impact of the NCDOT U.S. 64 widening project on Blythe Street and the Town Forest Subdivision.

Joshua Friesen, 1218 Everette Place, president of the Towne Forest Property Owners Association, and representing its members, addressed the Council. He explained the impacts of the NCDOT U5783 project has on their neighborhood. He requested the City work with NCDOT to minimize the impact. He stated the project has changed and impacts both sides of Blythe Street. Impacts include clear cutting into the Towne Forest properties which opens the neighborhood up to Blythe Street and impacts one of only two entrances into the neighborhood. He stated NCDOT has indicated it is early enough to reduce the impacts. He asked City Council to request the following from NCDOT:

1. Installation of a retaining wall on Blythe Street versus a sloped ditch bank to minimize disturbance of property along the border of the project,
2. If sidewalks are installed, they should be installed directly on Blythe Street without additional landscaping to minimize impact, and
3. Install an evergreen planting buffer above the retaining wall between Blythe Street and private property to preserve a visual and sound barrier.

Council Member Caraker stated NCDOT has been receptive to changes to the plan. He stated neighbors should keep in mind the design of the retaining wall: rock versus concrete. Council Member Miller asked about the safety of a sidewalk with no gap next to the road. Council Member Caraker commented NCDOT may require a greenway strip. Mayor Pro Tem Stephens commended the neighbors for approaching amendments to the plan in this manner. Council Member Smith commended Matt Champion for adding the project to a satellite image of the effected properties. Council Member Caraker commented he will present the amendments at the next MPO meeting.

Mr. Connet stated to keep this discussion moving forward, the Council should formally approve the request be made to NCDOT. **Council Member Caraker moved the City Council ask NCDOT to: 1. Install retaining wall on the east side of Blythe Street instead of sloped bank, 2. Install all sidewalks directly adjacent to the curb, and 3. Install an evergreen vegetative buffer between Blythe Street and Town Forest Subdivision as part of the US Highway 64 widening project. A unanimous vote of the Council followed. Motion carried.**

7. Public Hearing - Consideration of a Zoning Ordinance Text Amendment of Section 4-5 Classification of Uses, Section 5-19-1 CMU Permitted Uses and Section 5-19-2 CMU Conditional Uses (Continued from December 6, 2018 Meeting):

Council Member Smith reported a meeting with the Development Assistance Department. Based on the Planning Boards recommendation to not approve these amendments, Councilman Smith requested the proposed changes be withdrawn from consideration by the City Council.

At 5:59 p.m. Mayor Volk opened the public hearing and asked if anyone wanted to speak to this issue. There was none. The public hearing was closed. **Council Member Smith moved this Zoning Ordinance text amendment be withdrawn from consideration by the City Council. A unanimous vote of the Council followed. Motion carried.**

8. Consideration of an Amendment to the Future Land Use Map: Senior Planner Matt Champion presented a request from Ms. Marilyn Gordon to amend the City's Future Land Use Map as shown in the 2030 Hendersonville Comprehensive Plan by changing the classification of an area fronting on Kanuga Road at State Street, from medium intensity neighborhood to high intensity neighborhood classification. He reported staff reviewed the application and is suggesting City Council consider expanding the request to adjacent properties in order to reduce the likelihood of spot zoning.

Mr. Champion reviewed the surrounding land uses stating southeast of the subject area, across the Kanuga Road/State Road/Erkwood Road intersection, there is an agricultural produce stand. North Carolina G.S. 160A-360 was amended in 2011 to exclude land that is classified as "bona fide farm purposes" from municipal

extraterritorial jurisdiction. “Bona fide farm purposes” include activities incidental to the farm. Land classified as a “bona fide farm purposes” within the ETJ is not subject to city zoning, subdivision, or other municipal development regulations.

Mr. Champion explained in order to amend the Comprehensive Plan, City Council must first determine if they are willing to consider the proposed amendment. If so, the matter is referred to the Planning Board for a recommendation. If the Planning Board recommends adoption of the amendment, the Council will then hold a public hearing. He also sought direction from the Council on whether additional property should be considered in the amendment.

Ms. Marilyn Gordon addressed the Council. She stated the area is changing but she has no immediate plans for the property but is thinking of her family’s future. She asked for a review of the Planning Board. She stated the property is adjacent to residential uses, but it could easily be significantly buffered. Council Member Miller asked if the applicant has spoken to any adjacent property owners. Ms. Gordon stated no, but she is planning to. She purchased a house adjacent to the corner to reduce impacts to the residential units.

Council Member Smith asked City Attorney Fritschner for a refresher on spot zoning. City Attorney Fritschner explained spot zoning is not illegal but the presumption in court is that it is but City Council would have to show why any property is not rezoned the same as adjacent properties. There was discussion of who could bring action against the City to challenge the rezoning. City Attorney Fritschner explained adjacent property owners will be notified and will have standing to challenge the decision. He stated they would have to show an economic impact. There was discussion of the properties impacted. City Attorney Fritschner stated the Statute of Limitation may be 60 days or two months and any lawsuit would have to be filed within that time frame.

Discussion by the Council included notifying adjacent property owners and asking the Planning Board to study the request and make a recommendation on whether the area should be expanded as suggested by staff.

Council Member Caraker moved that City Council refer the proposed Future Land Use Map amendment submitted by Marilyn Gordon to the Planning Board for a recommendation. In discussion, Council Member Smith commented the motion is limiting the request to the Planning Board to only include Ms. Gordon’s property. Council Member Miller voiced support of limiting the study to the Gordon property. City Attorney Fritschner submitted the larger the area being considered, the weaker the spot zoning argument. Council Member Smith suggested beginning with Ms. Gordon’s property. Council Member Caraker agreed he would like to hear from the Planning Board on the Gordon property first. Mr. Connet explained the Council will hear the Planning Board’s recommendation and then will have to articulate why this is reasonable to move forward. He stated once notified other property owners may want to be included. Council Member Smith asked if the Planning Board may include the larger area in their recommendation. City Attorney Fritschner stated yes. Mayor Volk commented there is a potential for a long process. She asked staff to relay Council’s discussion to the Planning Board. **A unanimous vote of the Council followed. Motion carried.**

9. Consideration of a NC-319 Grant Agreement: Mr. Mike Huffman, Stormwater Quality Specialist, reported staff applied for a NC-319 Grant to implement several innovative stormwater projects in Patton Park. The funding is administered by the NC Department of Environmental Quality's (DEQ). He informed the City Council the grant application for \$100,000.00 was approved and presented a contract for Council’s consideration. He noted there is a matching component for \$77,000, \$10,000 of which will be in-kind work by City staff and \$67,000 for materials and construction of a bioretention cell (rain garden).

Mr. Huffman reviewed the proposed projects at Patton Park which includes stormwater management at the Public Works Maintenance Facility and green infrastructure retrofits including rainwater harvesting for use in washing equipment and bioretention or engineered raingarden. He stated the rainwater cisterns and bioretention will be sited near the Oklawaha greenway to increase opportunities for education and visibility to the public and provide a demonstration project for developers. This area will be landscaped with native plants to establish pollinator habitat.

Mr. Huffman stated the bioretention retrofits in Patton Park were approved. Some greenspace will be converted into stormwater treatment for parking for the basketball courts which will also create an educational opportunity for the public and developers. He stated the City is constructing a large stormwater wetland where the duck pond exists and will restore 2,000 linear feet of streambank. He proposed a bioswale to collect rainwater. He plans to propose an amendment to the grant to install permeable pavement in 12 parking spaces next to the basketball court.

As an educational opportunity, Mr. Huffman proposed a Patton Park “Stormwater Stroll” which includes the bioswale, stream restoration, a stormwater wetland, bioretention (rain garden) and rainwater harvesting. In discussion, Council Member Miller asked how this will affect mosquitoes. Mr. Huffman explained this is designed to infiltrate water quickly. He stated a healthy wetland eco system will control mosquito population. Council Member Miller commended Mr. Huffman for writing the grant.

Council Member Caraker moved to accept the \$100,000 grant offer from NCDEQ and to name the City Manager as the City's Authorized Official when executing or providing any funding application or other documents associated with the project. A unanimous vote of the Council followed. Motion carried.

10. Consideration of an Amendment to the Code of Ordinances, Chapter 22, to allow a Third-Party Inspection Reporting System and Require the Reporting Parties to Pay Associated Fees to the Service Provider: Fire Marshal Justin Ward proposed an amendment to Chapter 22 of the Code of Ordinances to allow a third-party inspection reporting system. Commercial premises are legally required to maintain fire alarm systems, fire sprinkler systems, sprinkler obstruction tests, backflow prevention, etc., many of which may go untested every year.

Fire Marshal Ward explained The Compliance Engine is a web-based service that collects, organizes and categorizes third-party inspection reports. This system tracks and follows up thereby driving Code compliance and reducing false alarms. He explained the system allows all required monthly, quarterly, and annual system inspections, tests, and maintenance as required by the NC Fire Code and the National Fire Protection Association standards to be provided to the City.

Mr. Connet explained The Compliance Engine is a data collection system. A data platform is built for entities with sprinklers, back-flow prevention, etc. The system generates a letter to the business or property owner notifying them that an inspection of those systems is due. It is up to the business or property owner to have the inspection done. Once an inspection is completed, a report is uploaded to the system, any deficiencies are noted, and a second notice is sent if deficiencies are not addressed.

Fire Marshal Ward explained this service is provided at no cost to the City. The (third party) vendor completing the inspection and reporting will pay any fees associated with the service. There was discussion of how the reporting system functions and what happens to those not in compliance. Ms. Huffman stated vendors are supportive of the system. This would apply to approximately 300 systems.

Mr. Connet recommended waiting on adoption of the ordinance until members of the Business Advisory Committee are made aware. He asked the Council to continue the discussion. **The Council agreed by consensus. No action was taken.**

Council Member Miller commended Fire Marshal Ward for being named the western representative for the North Carolina Fire Marshals Association Board of Directors.

11. Consideration of Request to Change Parking Spaces on Fifth Avenue: City Manager John Connet reported receipt of a request to change the parking configuration along Fifth Avenue between Main and King Streets. The request includes placing at least one parking space between Edwards Alley and the City Hall Alley, remove one parking space in the area closest to Main Street and to enlarge the loading area close to Main Street.

Mr. Connet noted Section 50-254 of the Code of Ordinances that prohibits parking vehicles with a width of 80 inches or greater on City streets for a continuous 30-minute period or longer. Council Member Miller stated this request was brought to him by a property owner. He stated the most reasonable way to address it is to make two parking spaces between the alleys, eliminate one parking space closer to Main Street so a marked loading zone can be created and utilized by trucks that reduce visibility to a business. The loading zone will be available 24 hours/day.

Council Member Miller moved the City Council to approve the reconfiguration of the parking spaces along Fifth Avenue East in the following manner: add two spaces between the alleys, create a marked loading zone, and eliminate one parking space in the area closest to Main Street. A unanimous vote of the Council followed. Motion carried.

12. Reports/Comments from Mayor and City Council Members: Council Member Smith commented he read the long list of projects for the coming year. He stated the wonderful infrastructure in this country is a testament of how government is done. Council Member Caraker agreed, stating so much has been accomplished in the City in the last ten years.

13. Reports from Staff:

a. Report on Contingencies: Mr. Connet reported the following contingency appropriations in accordance with NCGS 15-13(b)(3):

- 1) Fund 10, \$14,000- Pedestrian Signs- Public Works
- 2) Fund 10, \$10,300 - November Budget Amendments
- 3) Fund 10, \$5,230 - Worker's Comp. Insurance
- 4) Fund 10, \$524 - Interlocal Insurance
- 5) Fund 60, \$647 - Interlocal Insurance
- 6) Fund 60, \$335 - Worker's Comp. Insurance

b. Report on Board Vacancies: A report of the vacancies of the boards/commissions was provided by City Clerk Tammie Drake. She noted applications received for the Tree Board and Environmental Sustainability Board. Mayor Pro Tem Stephens anticipates an applicant for the Business Advisory Committee in the next few days and asked whether the applicant could be considered at the next meeting. Council Member Miller asked the Council to be consistent in the policy; Council Member Caraker agreed. **No action was taken.**

14. New Business: There was no new business.

15. Adjournment: The meeting adjourned at 7:23 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk