

January 3, 2013
Regular Meeting of the City Council
Council Chambers – City Hall
5:45 p.m.

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

Staff Present: City Manager Lee Galloway, City Attorney Samuel H. Fritschner, City Clerk Tammie Drake, Engineering Director Brent Detwiler, Main Street Director Lew Holloway, Utilities Director Lee Smith, Public Works Director Tom Wooten

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

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

3. Public Comment Time: *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.* Mayor Volk requested comments be limited to 3-4 minutes.

Rev. Ken Kinnett, 57 Half Timber Lane, Flat Rock, NC, proposed assault weapons and large gun magazines be banned in Hendersonville and requested the Council adopt an ordinance banning weapons on any city-owned property.

Jack Prather, 828 Sandburg Terrace, Hendersonville, supported the ban on assault weapons, read the names of the victims of the Sandy Hook Elementary School shooting and dedicated his remarks to the victims.

Loyd Kinnett, 57 Half Timber Lane, Flat Rock, NC, voiced support of banning assault weapons. She requested that the City require the names of purchasers of assault weapons to be available to the public and all law enforcement officers so the police are protected with that knowledge.

Eva Ritchey, 1928 Brevard Road, Hendersonville, expressed appreciation for the request for the assault weapon ban. She spoke on the 150th Anniversary of the Emancipation Proclamation and the spirit of Dr. Martin Luther King. She expressed a concern about a divide between the black and white communities and the elementary school system.

Julie Gordon, 9 Tamarac Terrace, Hendersonville, with the Department of Peace and Nonviolence, also requested the Council to adopt a resolution to ban assault weapons.

Mayor Volk responded by saying this is an emotional issue but the City is restricted by the State of North Carolina. She asked the City Attorney to explain the City's options. City Attorney Fritschner reported there is a NC Statute that prohibits municipalities from regulating and restricting firearms. He explained the City may restrict possession on government property which the City currently does as well as regulate the discharge of firearms. He stated the General Assembly does not allow the City to make such restrictions. Council Member Smith voiced a support of a ban on assault weapons and stated citizens should to speak to our local legislators, Senator Tom Apodaca and Representative Chuck McGrady, who can change State laws. Mayor Volk asked those in attendance to contact the City Attorney for further questions.

4. Consideration of Agenda:

Addition to Comments from Mayor and City Council:

- d. Discussion of Babe Ruth Baseball's Request to Install Sod on the Infield at Berkeley Mills Park

Mayor Volk requested an addition of a reminder of a meeting under Mayor and Council Member comments.

Council Member Caraker moved to delete item #12. Consideration of Resolution Opposing Legislation that Provides for the Forced Taking of a Municipal Water System from consideration. In discussion, Council Member Smith commented the Council has worked hard to prevent Hendersonville's system from being taken over by the General Assembly. **A unanimous vote of the Council followed. Motion carried.**

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

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

A. Consideration of Minutes: November 29, 2012 Special Meeting, December 6, 2012 Regular Meeting

B. Consideration of Abatement of Nuisances: Mrs. Frady certified two property owners were notified of a nuisance condition on their property but failed to remedy the nuisance. She requested approval to remedy the nuisances and to assess the actual cost to the property owners.

C. Consideration of Resolution in Support of the Clean Water Management Trust Fund: Mr. John McMillan, Chairman of The Clean Water Management Trust Fund, requested Council's support for funding.

Resolution # 13-0101

Resolution to Support the 2013-2015 Funding for Clean Water Management Trust Fund

Whereas the 1996 General Assembly established the Clean Water Management Trust Fund to provide an innovative and non-regulatory approach to the protection and restoration of the surface waters all across the state; and

Whereas the Clean Water Management Trust Fund is a non-regulatory program established to help meet infrastructure needs of municipalities and counties, restore degraded surface water, protect watersheds, increase recreational opportunities, and enhance quality of life in this state, all critical components for communities to obtain a competitive edge in their economic development; and

Whereas the Clean Water Management Trust Fund has funded 452 infrastructure projects to assist North Carolina communities balance infrastructure needs with environmental protection and to help struggling communities become self-reliant with future infrastructure needs; and

Whereas infrastructure needs across the state addressing drinking water, wastewater, and stormwater are estimated at \$16.6 billion between 2005 and 2030; and

Whereas the Clean Water Management Trust Fund has leveraged more than \$1 billion of private, local and federal funds to support projects; and

Whereas the General Assembly has reduced funding for the Clean Water Management Trust Fund by 78% since 2010; and

Whereas limited funding for the Clean Water Management Trust Fund left 88% of 2012 critical local needs unmet; and

Whereas our economic vitality, health and ability to sustain ourselves and the natural environment all rely on clean water; and

Whereas surface water must be protected to ensure sufficient drinking water supply for the state's growing industrial base and population; and

Whereas, Clean Water Management Trust Fund has provided grant(s) to the City of Hendersonville to do one or more of the following; to protect, restore or enhance surface water quality for the benefit of the state's agriculture, military, recreation and tourism economies and to protect our natural heritage for the benefit of all North Carolinians; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE AT ITS MEETING ON JANUARY 3, 2013 THAT WE SUPPORT CLEAN WATER MANAGEMENT TRUST FUND AND THAT THE FUND RECEIVE AN INCREASE IN RECURRING FUNDING FROM THE GOVERNOR AND THE NORTH CAROLINA GENERAL ASSEMBLY FOR THE 2013-2015 BIENNIAL BUDGET.

/s/Barbara G. Volk, Mayor

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

Mayor Pro Tem Collis moved approval of the items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.

6. Public Hearing – Consideration of a Petition from Glassy Mountain Partners, LLC for the Contiguous Annexation of Property Adjoining 1865 Spartanburg Highway:

Ms. Anderson presented a petition from Glassy Mountain Partners, LLC for the contiguous annexation of approximately 0.185 acres adjoining 1865 Spartanburg Highway. The Council accepted the Clerk's Certificate of Sufficiency on December 6, 2012, and recommended a public hearing be held at this City Council meeting. She reviewed the standards contained in NCGS 160A-31. Council may adopt an ordinance annexing the area described in the petition.

Ms. Anderson explained this property will be added to the Boyd property for a new GM dealership on Spartanburg Highway.

At 6:09 p.m., Mayor Volk opened the public hearing in accordance with the North Carolina General Statutes by notice published in the Times News. No one expressed a desire to speak. The public hearing was closed.

Mayor Pro Tem Collis moved adoption of an ordinance annexing the property included in the Glassy Mountain Partners, LLC petition. The effective date is January 3, 2013. A unanimous vote of the Council followed. Motion carried.

Ordinance #13-0102

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA
Glassy Mountain Partners, LLC

WHEREAS, the City of Hendersonville has been petitioned, pursuant to North Carolina General Statutes (NCGS) 160A-31, 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 6:00 p.m., on the third day of January, 2013, 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;
- c. The petition was prepared in accordance with a form prescribed by NCGS 160A-31, and
- d. 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-31, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the third day of January, 2013.

DESCRIPTION OF PROPERTY: Beginning at a nail in the right of way of Spartan Heights (SR 1780); said nail being located the following three (3) courses and distances from a concrete right of way monument located at the northwest corner of the intersection of Spartan Heights (SR 1780) and Spartanburg Highway (US Highway 176); Thence South 39°50'41" East a distance of 16.17 feet to a nail in the centerline of Spartan Heights; Thence South 47°29'10" West along the centerline of Spartan Heights a distance of 323.05 feet to the point of beginning; Thence North 41°21'37" West a distance of 22.95 feet to an iron pipe, said iron pipe being located in the right of way on the point of beginning of the annexation parcel; Thence South 48°40'13" West a distance of 70.62 feet to an iron pipe; Thence North 41°40'09" West a distance of 125.64 feet to an iron pipe; Thence North 66°48'27" East a distance of 74.45 feet to an iron pipe; Thence South 41°21'37" East a distance of 102.46 feet to the point of beginning; containing 8,060 square feet or 0.185 acres, more or less.

Section 2. Upon and after the third day of January 2013, 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 third day of January 2013.

/s/Barbara G. Volk, Mayor

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

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



7. Public Hearing – Consideration of the Initial Zoning of the Property Adjoining 1865

Spartanburg Highway: Ms. Anderson reported the parcel owner is Glassy Mountain Partners LLC. The portion of this parcel just annexed is part of the Boyd GM Auto Dealership project proposed for Spartanburg Highway. NC General Statutes requires the City to zone this parcel within 60 days following annexation. She also explained according to NCGS 160A-383, zoning amendments must be made in accordance with a comprehensive plan. The 2030 Comprehensive Plan's Future Land Use Map designates this parcel as High Intensity Neighborhood.

Ms. Anderson reported the parcel is currently zoned Henderson County Community Commercial. She reviewed surrounding land uses and zoning. She reported the Planning Board recommended changing the zoning classification from Henderson County Community Commercial to C-3 Highway Business.

Ms. Anderson reviewed the factors contained in Section 11-4 of the Zoning Ordinance that must be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map.

Mayor Volk opened the public hearing at 6:13 p.m. in accordance with North Carolina General Statutes by notice published in the Times News. No one expressed a desire to speak. The public hearing was closed.

Council Member Caraker moved the City Council to adopt an ordinance amending the official zoning map of the City of Hendersonville for a .185 acre portion of parcel number 9577-59-4358, changing the zoning classification from Henderson County Community Commercial to City of Hendersonville Highway Business. A unanimous vote of the Council followed. Motion carried.

Ordinance #13-0103

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF
THE CITY OF HENDERSONVILLE
IN RE: FILE NO. P12-52-Z

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

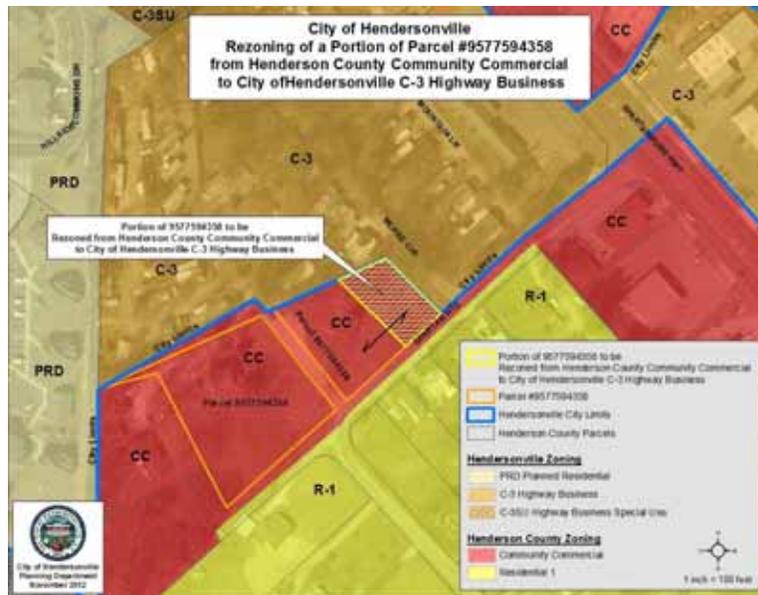
1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of a .185 acre portion of parcel number 9577-59-4358 from Henderson County Community Commercial to City of Hendersonville Highway Business.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of January 2013.

/s/Barbara G. Volk, Mayor

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

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



8. Quasi-Judicial Public Hearing – Consideration of an Application from Site Work Studios for a Special Use Permit for Parcels located at 213 Greenville Highway, the Southgate Shopping Center:

Mayor Volk reviewed the procedures for the quasi-judicial hearing including this is a legislative hearing and interested persons are afforded the following rights: to cross examine witnesses, to present evidence, to inspect documentary evidence presented against them and to be afforded all the procedural steps set out in the pertinent ordinance or statutes. She stated City Council must consider evidence.

Mayor Volk asked the members of the City Council if they have had contacts concerning the application that are not included in the file. There was none. Mayor Volk asked City Council members to state any conflicts of interest. There was none. Mayor Volk asked if any person present is aware of anything of value that has been given or promised in exchange for any vote to be taken on the application. There was none.

Mayor Volk opened the public hearing at 6:16 p.m. in accordance with North Carolina General Statutes by notice published in the Times News.

Four persons were sworn in to provide testimony by City Attorney Fritschner.

Ms. Sue Anderson entered file P12-46-SUR into the record, and requested Council take official notice of the Zoning Ordinance, the Zoning Map, the Comprehensive Plan and the Transportation Plan. She provided the following testimony:

The City has received a Special Use Permit application from Site Work Studios for two parcels located at 213 Greenville Highway. The two parcels are identified as Tracts 2 & 3 of Plat Slides 8711 and 8712. The property contains the Southgate Shopping Center (aka Fresh Market). The property owner is Capital Funds Inc., David Royster III, President.

The applicant is proposing the following:

1. A 10,000 square foot addition to the existing 65,000 square foot building
2. Façade upgrades
3. Redesign of the existing parking lot
4. Addition of landscape islands and landscaping
5. Upgrading stormwater management

6. Rezoning from C-3 Highway Business and C-2 Secondary Business to CMUSU Central Mixed Use Special Use

Ms. Anderson reviewed an aerial map of the property showing the floodway, the 100-year floodway and 500-year floodway. The building is outside the 100-year floodway and the parking lot remains within the 100-year floodway.

The two parcels include the 65,000 square foot Southgate Shopping Center. Parcels to the west across Davis Street include commercial and single-family residential uses. Parcels to the south across White Street include commercial and single-family residential uses. Parcels to the east across South Main Street and Greenville Highway include commercial uses. Parcels to the north include Gateway Park and a mixed use development. She reviewed the zoning stating this parcel is zoned C-2 Secondary Business and C-3 Highway Commercial.

Comprehensive Plan Consistency: These two parcels are classified as Neighborhood Activity Center and Natural Resource/Agricultural on the 2030 Comprehensive Plan's Future Land Use Map. Surrounding parcels are classified as Neighborhood Activity Center, Natural Resource/Agricultural and High Intensity Neighborhood. The building and the majority of the site is located in the Neighborhood Activity Center category. The goal of the Neighborhood Activity Center is to "concentrate retail in dense, walkable mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville's neighborhoods."

Plan review: The site plan shows the addition of 10,000 square feet to the existing 65,000 square feet building. The addition will be to the south adjacent to White Street. A previous building existed in this location and was removed in February 2010. An elevation drawing included shows proposed façade improvements.

Parking: The site plan shows a redesign of the existing parking layout with the addition of landscape islands and landscaping. A total of 321 parking spaces are required and the site plan shows 331 parking spaces provided. The addition of the landscape islands will improve the parking lot circulation and stormwater management.

Sidewalks: A sidewalk connection to the building will be added from Church Street, Greenville Highway and White Street.

Stormwater: The applicant will be improving the site's stormwater management meeting current requirements.

Traffic Impact Analysis (Section 6-19): The Zoning Ordinance requires a traffic impact analysis whenever a development generates 100 peak hour or 1,000 or more trips daily. Based on the Institute of Transportation Engineers Trip Generation manual, the site is estimated to generate an additional 1,696 daily vehicle trips. The site currently generates approximately 5,000 daily vehicle trips. The developer has submitted a Traffic Impact Analysis as required and that analysis has been reviewed by the City's traffic consultant, Kimley Horn and Associates. The analysis identifies the need for a 75-foot full storage right turn lane along Church Street. The requirement for this right turn lane is included in the List of Uses and Conditions. The turn lane must be provided by the owner.

Rezoning: The applicant is requesting a rezoning from City of Hendersonville C-3 Highway Business and C-2 Secondary Business to CMUSU Central Mixed Use Special Use.

Buildings over 50,000 square feet are not permitted in the C-2 Secondary Business District or C-3 Highway Business District. The Central Mixed Use District is intended to strengthen the Central Business District and the perimeter surrounding that District by encouraging and permitting the coordinated development of

dwellings, retail, professional and financial trades, institutional, governmental and other public facilities. Buildings over 50,000 square feet are permitted through the special use permit process.

Analysis: She reviewed the findings contained in Section 7-4-10.1 of the Zoning Ordinance:

(A) The redesign of the parking lot will improve overall vehicular circulation and safety. The addition of sidewalk connections from the street to the building will improve pedestrian safety.

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

(C) The applicant is requesting a variance from Zoning Ordinance Section 5-19-4.2 Minimum Yard Requirements for the rear of the building. She provided the variance form provided by the applicant. Central Mixed Use Section 5-19-4.2 requires a building setback of 12 feet measured from the back of the curb of any street. The existing building and the addition are approximately 7 feet from the back of the curb on Davis Street.

(D) A neighborhood compatibility meeting concerning the application was held on 11/14/12. The public raised concerns about the future use of adjoining parcels, stormwater management and odors from trash facilities located on the site. She provided a copy of the neighborhood compatibility report.

(E) The 2030 Comprehensive Plan's Neighborhood Activity Center category is intended to "concentrate retail in dense, walkable mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville's neighborhoods." The project expands existing retail in close proximity to the downtown core and a major intersection. The parking lot improvements will increase safety for both vehicle users and pedestrians.

The 2030 Comprehensive Plan's Natural Resource/Agricultural category is intended to "create an interconnected network of green infrastructure that preserves environmentally sensitive areas, protects water resources through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and preserves agricultural resources." Bringing the sites stormwater management up to current standards along with providing low-impact stormwater facilities will improve the quality of run off on the site that enters Mud Creek and will help to protect water resources. The stormwater management facilities will also provide temporary floodwater storage. The Comprehensive Transportation Plan does not indicate any improvements to White Street.

The City Council adopted the Southside Transportation Study which shows recommended improvements to the circulation of White Street. Those improvements are to the west of Davis Street and do not impact the Southgate Shopping Center parcel.

Planning board recommendation: The Planning Board considered this matter at its regular meeting of December 10, 2012.

Variance: The Planning Board voted unanimously to recommend City Council approve a variance from Zoning Ordinance Section 5-19-4.2 Dimensional Requirements, reducing the minimum yard requirement for the rear of the building from 12 feet to 5 feet measured from the back of the curb.

Special Use Permit and Rezoning: The Planning Board voted unanimously to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of Tracts 2 & 3 of Plat Slides 8711 and 8712 from City of Hendersonville C-3 Highway Business and C-2 Secondary Business to CMU-SU Central Mixed Use Special Use, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest and is compatible to the area. The Planning Board voted unanimously to recommend City Council to approve the application of Site Work Studios for a Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions.

She reviewed the suggested motions.

The following spoke in favor of the project:

Mr. Matt Sprouse, Principle at Site Work Studios, 352 Depot Street, Asheville, NC, addressed the Council. He stated Ms. Anderson provided a thorough report. He provided a color rendering clarifying the locations of the islands and the 10,000 square feet building addition. He introduced Ken McCoy from Faison and Associates, Charlotte, the leasing manager.

Mr. Sprouse reviewed the elevations of the proposed finished center. He stated they have done this before at the Fresh Market in Asheville, a similar situation. He stated they brought the center into compliance with the City of Asheville standards and have received great comments from it. He asked for questions about the plan.

Council Member Caraker asked about stormwater management and if the stream will be uncapped. Mr. Sprouse stated the stream does not get uncapped. He stated the stormwater management will include the roof runoff from the property which will go into an underground storage facility, a storm tech system which will be in the northeast part of the property at the truck turn-around at the bank. They will retain stormwater which is not happening at this time. It is now going into a storm drain and then into Mud Creek. He stated on the parking lot side, because of the structure that is there, there will be some repair to it but they are maintaining it, adding tree islands. Two of the larger tree islands are stormwater bio-retention ponds which will be shallow landscape islands that will pull in the stormwater, let it sit and then infiltrate into the ground.

Council Member Caraker asked what happens after the stormwater goes underground. Mr. Sprouse stated it functions as a large French drain. He stated there is an overflow for very large storms. He stated the improvements will greatly improve stormwater.

Council Member Stephens asked why the creek is not being uncovered, e.g., cost. Mr. Sprouse stated the cost is a great deal of it but structurally it is in good shape. He stated a lot of the parking is on that structure. He stated it is to maintain that connection, parking and cost.

Council Member Stephens commented this is a great improvement and is glad it is happening. He stated the center is expanding and doing well with their occupants. He voiced disappointment that the creek is not being exposed which would be a big improvement. He stated it was a mistake to start with and they were forced to do this years ago. He stated he understands the costs but regrets it is not being done. He stated it would help with the flood control as well as the aesthetics. Mr. Sprouse stated, speaking for the owner, uncovering the stream, would possibly lower the usability of that center considering the amount of parking needed. He stated it might help the stream but the property would not benefit from it. Council Member Stephens commented there are more parking spaces required than are needed and used.

No one else expressed a desire to speak in favor of the project. Following is those who spoke in opposition or asked questions:

Nancy McDonald, 233 Davis Street, Hendersonville, stated she attended the initial meeting and expressed concerns about the odors that come from the dumpsters at the Fresh Market. She stated she is a neuromuscular therapist and is in private practice. She owns the cottage directly from the back door and the dumpster. She went numerous times and spoke with the manager and asked them to do something about the odor. She stated she was always treated respectfully and with great friendliness but nothing changed. She stated at visit #6, she spoke with the manager and told him she was going to report him and he thanked her for letting him know. She stated she reported it to the Health Department and they conducted a surprise visit, lowered their rating but nothing changed. She stated little things would change but they always blamed it on the dumpster company. She stated there is a crack in the pavement or concrete that runs the length behind the building concrete, where water sits as well as the drippings from the dumpster. She stated she didn't get a call back from the property manager. She stated she has spoken with Ken McCoy since the meeting. He came to her property and she respects his response to her

concerns. She stated there is a lot of trash along the property border that does not get cleaned up. She stated trucks park there and breaks branches from her trees that line her property. She stated she shops at the Fresh Market and is a good neighbor. She stated she also reported this to the City and received a copy of the letter sent to the Fresh Market outlining some choices. She stated they did a few of those things and it is better but it is not gone.

Ms. McDonald also expressed a concern about the stormwater. She stated there is an old storm drain on her property and wonders if this will cause stormwater to back up onto her property.

Mayor Volk expressed appreciation to Ms. McDonald for registering her concerns.

Mr. Ken McCoy, 121 W. Trade Street, Charlotte, Faison and Associates, stated the plan will be a vast improvement. They have done the same thing in Asheville with great success. He voiced concerns about uncapping the stream because of the stream buffers and elevation, and it would take away most of the parking lot. He stated these are national tenants and require a certain amount of parking per 1,000. If that cannot be provided, they will go away. He stated if the stream is uncapped, they wouldn't be able to provide the parking that the Fresh Market or Steinmart would require. He stated leases in process now would be null and void.

Mr. McCoy stated he feels for Nancy. He stated the Fresh Market has installed new sealed containers which are not infallible but they are making some effort. He stated they have agreed to install a hot water hose bed so they can do a better job of cleaning. Regarding the storm drain, he cannot speak to that but he agreed to look at it.

Council Member Smith asked about the crack in the pavement that holds water and asked if that will be fixed. Mr. McCoy stated the back of the building will get new asphalt. He stated when they install the underground system which is huge, it will be dug up and a drain installed so when it is washed it has somewhere to go. He stated he understands it will be repaired with site improvements.

Ms. McDonald stated it would help a lot if they would install a stockade fence between her property and the alley because the trash is bad. She also asked for screening or an enclosure around the dumpster.

Larry Baber, 140 White Street, stated he has been watching the stream for 43 years. He stated the covered stream does not cause any flooding because the water flows freely through it. He stated the covered stream does not affect the water flow.

Mayor Volk asked for any cross examination.

Council Member Smith asked if the applicants will consider installing a fence and an enclosure around the dumpster. Mr. McCoy stated either or both may work. He stated Ms. McDonald doesn't want to see the big blue dumpster and he doesn't blame her. He made a commitment to try to design into the dumpster area, a screen wall to screen the dumpster from her site. He stated it will probably be 6-8 feet tall and made of block or wood to screen it. He stated it may not help with the smell but it will contain the trash in a limited area.

Ms. Anderson commented the Zoning Ordinance requires dumpsters to be screened which will be shown on the final site plan. She stated they have a larger dumpster and a truck has to offload it. She stated because of a large elevation change, there is a big retaining wall at the back of the building. She stated a fence could be conditioned by the Council or an agreement between the property manager representative and the property owner. Council Member Smith asked if screening is required. Ms. Anderson stated dumpsters are required to be screened but it is not screened now because it is down in elevation.

Ms. McDonalds stated the dumpster is on the same level. She stated her issue is not about seeing the dumpster but the trash all along the edge of the property and she would like to have fence installed.

Being no further comments, the public hearing was closed at 6:47 p.m.

Discussion: Council Member Caraker stated he didn't see anything negative about this except the trash in the back. Council Member Smith agreed. Mayor Volk stated this will make a big difference especially in the parking lot. She stated having some structure with the driving will be appreciated. Council Member Smith commented the turn lane is also appreciated.

Council Member Smith asked if it is a gentleman's agreement that a wall will be built because it is not in the special use permit. Mr. McCoy stated they will have to screen the dumpster. Mayor Volk stated yes, the dumpster will be screened because it is required. Council Member Stephens commented Ms. McDonald's biggest concern is keeping the trash down. Mayor Volk commented trash is difficult and is something the Health Department and Zoning Department can keep a watch on so trash generated there is picked up. Council Member Smith commented the trash is continually leaving their property and going onto hers and asked if the screening will prevent that from happening.

Mr. McCoy stated they built a chute that goes into the compactor but trash does come out of the chute and onto the ground. He stated in this case, it will come out of the chute onto the ground inside an enclosure because it will be screened and it likely won't blow across the road but could still be blown by wind. He stated the screening will help. Council Member Caraker encouraged Ms. McDonald to continue to call the Zoning and Health Departments to report problems. Mayor Volk commented the issue of trash related to the dumpster will hopefully be taken care of with the screening around the dumpster. She stated if there is carelessness, it can be addressed by the City but not general trash from the parking lot. She stated if the trash is directly related to their business and their dumpsters should be address. Council Member Caraker stated if he was the manager and repeatedly charged by the City to clean around the dumpsters he would release or retrain employees. Council Member Smith stated there is a mechanism available to Ms. McDonald to take care of a nuisance.

Ms. McDonald commented it is not just about the trash but the trucks that are unloaded and trash is thrown on the ground. Council Member Caraker explained that is a public nuisance and she should ask the Zoning Enforcement Officer to correct it.

Ms. McDonald asked how to pursue the idea of a fence. Mayor Volk stated she is not sure how feasible installing a fence would be and is not sure it can be required at this point. Council Member Caraker commented it is better if the parties can work it out and she should use the City and Health Department to her best advantage. He stated if the City cleans it, they will send a bill to the owner. He stated he doesn't know the scope of a fence and it could be a large requirement. Council Member Smith commented screening is required and encouraged Ms. McDonald to call the City and Mr. McCoy if there is a continuing problem.

***Variance Approval:* Council Member Caraker moved the City Council to approve a variance from Zoning Ordinance Section 5-19-4.2 Dimensional Requirements, reducing the minimum yard requirement for the rear of the building from 12 feet to five feet measured from the back of the curb of any street due to the fact that a literal enforcement of such standards will result in practical difficulty or unnecessary hardship and do not violate the findings of fact contained in Section 7-4-10.1. This variance is needed to continue a very positive project for the City. A unanimous vote of the Council followed. Motion carried.**

***Special Use Permit and Rezoning:* Mayor Pro Tem Collis moved the City Council to adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of Tracts 2 & 3 of Plat Slides 8711 and 8712 from City of Hendersonville C-3 Highway Business and C-2 Secondary Business to CMUSU Central Mixed Use Special Use, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest. He further moved the City Council to approve the application of Site Work Studios for a Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions. A unanimous vote of the Council followed. Motion carried.**

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE

IN RE: Southgate Shopping Center
(File # P12-46-SUR)

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of Tracts 2 & 3 of Plat Slides 8711 and 8712 from City of Hendersonville C-3 Highway Business and C-2 Secondary Business to CMUSU Central Mixed Use Special Use.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of January 2013.

/s/Barbara G. Volk, Mayor

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

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



9. Public Hearing – Consideration of an Application from Henderson County for the Rezoning of a Parcel Located at 708 South Grove Street from Zoning Classification R-15 Medium Density Residential to C-2 Secondary Business: Ms. Sue Anderson presented an application from Henderson County for the rezoning of property that was formerly Faith Christian Day School. Henderson County has the property under contract and intends to use it for a park facility. She reviewed the Comprehensive Plan

designation and provided a comparison between R-15 and C-2 regulations as well as the permitted uses allowed in each zoning classification. She also reviewed the Zoning Ordinance guidelines contained in Section 11-4. She stated Autumn Radcliff is in attendance to answer questions.

Mayor Volk opened the public hearing at 7:03 p.m. in accordance with North Carolina General Statutes by notice published in the Times News. No one expressed a desire to speak. The public hearing was closed.

Council Member Smith moved the City Council to adopt the ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel #9578-05-9489 from R-15 Medium Density Residential to C-2 secondary Business finding that the zoning is consistent with the 2030 Comprehensive Plan, the rezoning is reasonable and in the public interest and for the following reason: It will be a good addition to S. Grove Street. A unanimous vote of the Council followed. Motion carried.

Ordinance #13-0105

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE

IN RE: FILE NO. P12-50-Z
Henderson County

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

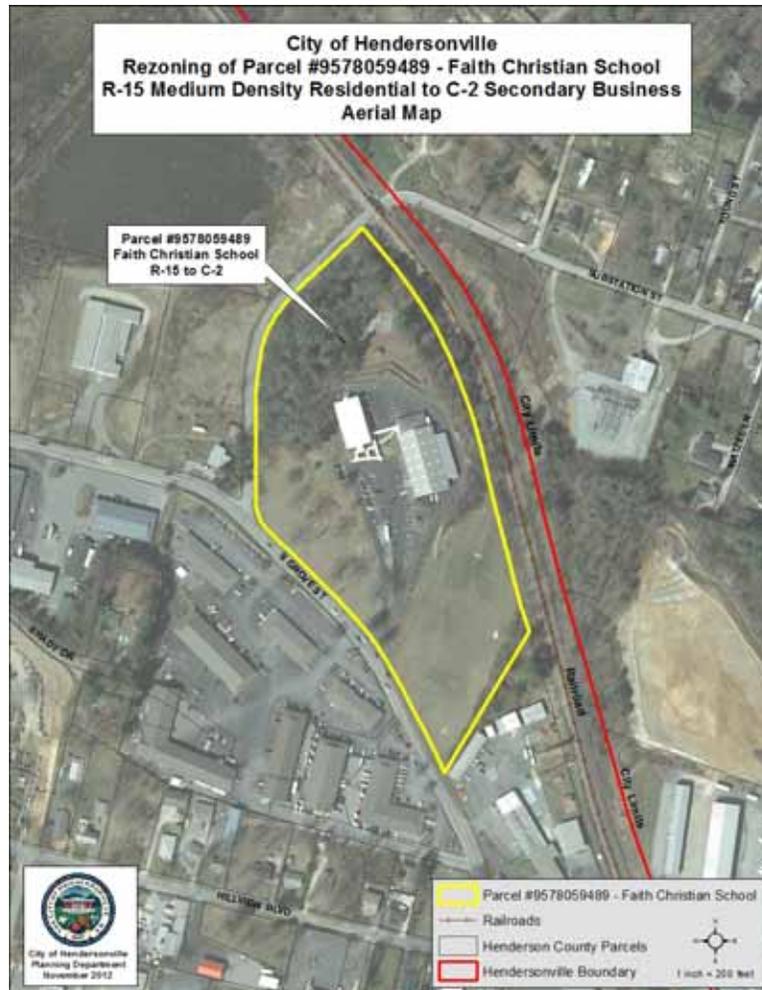
1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel number 9578-05-9489 from City of Hendersonville R-15 Medium Density Residential to C-2 Secondary Business.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of January 2013.

/s/Barbara G. Volk, Mayor

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

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



10. Discussion of Public Art on Main Street: Mr. Lew Holloway, Main Street Director, reviewed options for the art project at Seventh Avenue/Main Street. He reported artist Bruce White declined any alterations to his proposed artwork and withdrew from the process. He asked for direction on the artist identification process and options for moving forward. He reported three additional site plan concepts were developed which integrated features that received various levels of support during the process.

Mr. Holloway explained approaches that may be used for the artist selection process. He reported the Main Street Advisory Committee reviewed the options and recommended revisiting the semifinalist from the original RFQ process. Seven artists previously expressed an interest in the project but have not developed a concept for review.

Mayor Volk added a fourth option of constructing a clock tower or bell tower rather than strictly public art. Council Member Stephens asked for the estimated cost of Mr. White's project. Mr. Holloway responded \$40,000 (all inclusive), was included in the Phase 3 costs.

Council Member Caraker requested to see the concepts and voiced support of Mayor Volk's suggestion stating it will honor the historic element of downtown without having to start the process over. Council Member Smith agreed.

Mr. Dave Hazzard with Luther Smith and Associates presented site options for the intersection to: include art, exclude art leaving it open for art at a later date, and include space for varying levels of art from subtle to bold. He reviewed the concepts which are similar to and based on the original design.

There was discussion of Umi's sign, replacing the art element with a clock or bell tower and possible designs of the clock/bell tower. Mayor Volk stated she envisions a larger square (architectural) tower with the "H" on the clock faces. Council Member Caraker asked if seating could be incorporated. Mr. Hazzard stated yes. In discussion, Council Member Ron Stephens voiced support of a clock tower because there the church plays music. Council Member Caraker suggested a chiming clock and incorporating copper will lend itself to local history. Council Member Ron Stephens agreed with the historic appearance.

The Council agreed by consensus to an architectural element that includes a clock/bell tower with Concept B: a take-off from the original concept with the brick planter removed and replaced with two sign elements using the granite curbing with the "H" logo. This Concept maintains the flowering trees as a back drop but art work could easily be included with the removal of the center tree. Mr. Tom Orr, Chair of the Main Street Advisory Committee, agreed the committee will assist and offer suggestions.

Council Member Smith expressed a concern about blocking Umi's sign and discussion followed on the sign being lowered.

11. Presentation of Findings Associated with the 2002 Mills River Watershed Management

Strategy: Mr. Lee Smith explained the Cities of Asheville and Hendersonville engaged the services of McGill Associates, specifically Forest Westall, to complete a study of the 2002 Watershed Study to identify impacts to the watershed. He stated Mr. Westall completed an extensive review.

The Council received a presentation from Mr. Forrest Westall, Sr., PE, Principal, McGill Associates, P.A. He explained the Land-of-Sky Regional Council was the main coordinator of a grant that the Mills River Partnership received from the Clean Water Management Trust Fund to: purchase land to set aside in conservation and to develop a strategy. He stated he has completed a review of the 2002 strategy. He explained the project scope included evaluating the water quality in the watershed, determine if and how it has changed since 2002, a review of local ordinances, State programs, and regulatory systems in place and a review of the nine priority watershed issues originally identified by the plan.

Mr. Westall explained the focus of the study is the water supply. All of the City of Hendersonville's sources of potable water are taken out of the Mills River Watershed. He stated the City has no jurisdictional control in the watershed. He reviewed development patterns in the watershed, the location of the intakes, land cover in the watershed, what has changed since 2002 (land use change/conversion), potential partners in protecting the watershed (Henderson County and the Town of Mills River). Zoning of the watershed is enforced by the Town of Mills River.

Mr. Westall reviewed the nine priority watershed issues: 1. land conversion – keeping land in natural uses, 2. hazardous material spill control – Hendersonville and Asheville has programs in place, 3. erosion and sediment control, 4. stormwater quality and quantity control, 5. riparian buffer preservation and restoration, 6. agricultural nonpoint source control, 7. wastewater management, 8. groundwater contamination, and 9. landowner education and participation.

In his general conclusions, Mr. Westall stated the activities of the 2002 Mills River Watershed Management Strategy improved the watershed. Property was set aside, best management practices were installed on agricultural areas, public awareness and education increased considerably. He stated this was a beneficial process for the watershed.

Characteristics of the watershed: regulatory programs are in place for new development stormwater, run off, etc. existing management is through best management practices used daily. He stated the Division of Water Quality has been doing the pesticide study for approximately four years and has made presentations to the community to increase their awareness which must be on-going. He stated the non-regulatory initiatives (public interest, best management practices) are the best way to improve water quality in the watershed.

Mr. Westall stated funding should be directed towards projects that benefit the public water supply for the cities.

Mr. Westall's recommendations include:

- Place primary focus on the most immediate and critical risks: agricultural nonpoint sources, stormwater management for existing development and erosion and sediment control for non-regulated activities.
- Work within appropriate non-regulatory framework to establish specific water quality improvement projects directed at the highest priority sites.
- Establish regular training/public information opportunities for interested citizens, business and farm owners and personnel.
- Commit appropriate resources; continue planning efforts and work with established organizations to promote and achieve the long term objectives affecting future water quality: managing land conversion.
- Build strong relationships between non-regulatory activities in the watershed and regulatory programs, particularly with local government jurisdictions.
- Recognize and utilize the Mills River Partnership as the key non-regulatory mechanism in the watershed to coordinate and promote ongoing watershed management actions.
- Achieve agreement within the Mills River Partnership membership on the best approach for establishing leadership and direction.
- Establish a consensus strategy within the Mills River Partnership for the funding and support of the Partnership.
- Identify, seek and establish long term funding mechanisms for the Mills River Partnership.
- Promote continued monitoring efforts sufficient to document water quality changes in the watershed.
- Improve hazardous spill operational programs for the water treatment systems in the watershed. Coordinate activities between both Cities in strengthening the response plans for the facilities.
- Work to establish effective "early warning systems" for rainfall/runoff events that can impact day to day water plant operational activities. Consider the use of automated monitoring sites for stream turbidity at key locations upstream of the lower intakes with real time data availability.

There was discussion of the Upper Neuse River basin organization which is funded by local governments. He explained the grant application submitted by the Mills River Partnership calls for the hiring of a watershed coordinator which may be a point of contention. He stated the Partnership is now all voluntary memberships and the only paid personnel is Shaun Moore which is funded by Henderson County as the County Watershed Coordinator and only spends a portion of his time in the Mills River Watershed. He stated there has to be agreement by the City and it should benefit the City directly. He stated the Mills River Partnership has been very helpful.

There was discussion on a possible small monthly fee to the water customers to fund activities (best management practices) in the watershed which may make sense for Hendersonville to protect the drinking water and water quality.

Mayor Volk expressed appreciation for the work of Mr. Westall. Mr. Kieran Roe of Carolina Mountain Land Conservancy offered the Council a tour of the sites in the watershed. **No action was taken by the Council.** **Pigeon River Fund:** Mr. Galloway reported he has served on the Pigeon River Fund Board for four years and has served as chairman for two years. He stated it has been extremely beneficial for Haywood, Buncombe and Madison Counties. He stated Progress Energy gives \$350,000/year to the Pigeon River Watershed which is used for grants for educational events, work to remove septic systems and discharges into streams, removed several streams from the degraded streams list. He stated they hired the Community Foundation to manage the extensive grant program. He stated there may need to be a coordinator in the Mills River watershed.

~~12. Consideration of Resolution Opposing Legislation that Provides for the Forced Taking of a Municipal Water System:~~

13. Reports from Staff

a. City Manager's Report:

Mr. Galloway expressed appreciation to the Council and the staff for the cordial reception he has received.

Update on Main Street Project: Mr. Galloway stated Mr. Todd Trace has begun the work on Phase 3 of the Main Street project and is taking advantage of the good weather.

Fire Station #2 Site: Mr. Galloway reported the architect, Keith Carlyon, has looked at the shell building and has met with Chief Flowers, Mr. Wooten and Mr. Lee Smith on the use of the warehouse. He stated he relayed that Council wants to secure the building and seal it to prevent weather damage, etc. He stated this will be bid as an alternate with the fire station as it might get a better bid if it is packaged together.

Compressed Natural Gas (CNG) Grants: Mr. Galloway reported grants are available through the Land-of-Sky Regional Council for vehicles. He stated there are vehicles in the Water/Sewer Department and Public Works in the budget and staff will apply for these grants for more energy efficient vehicles.

City Manager's attendance at the NC City Manager's Association Conference in February: Mr. Galloway reported he agreed to be a speaker at the Manager's Conference which will be held February 6-8 and it conflicts with the Council meeting on February 7.

The Council welcomed Mr. Galloway to Hendersonville.

14. Consideration of Appointments to Boards/Commissions and Announcement of Vacancies Presenter:

a. Appointments for Consideration: Mrs. Tammie Drake, City Clerk presented the applications of citizens desiring to serve on the following boards:

Tree Board: Council Member Smith nominated Karen Jackson. This term will expire 02-01-15. A unanimous vote of the Council followed. Motion carried.

Board of Adjustment: Mayor Pro Tem Collis moved to appoint James Phelps to the alternate position on the Board of Adjustment. This term will expire 09-01-13. A unanimous vote of the Council followed. Motion carried.

Planning Board: Council Member Stephens nominated Ray Mundy. He cited Mr. Mundy's experience with the Town of Fletcher Planning Board and the good recommendations he has received. This term will expire 12-01-14. A unanimous vote of the Council followed. Motion carried.

Henderson Tourism Development Authority: Mayor Pro Tem Collis nominated Lew Holloway for the vacant at-large position. This term will expire 06-30-16. A unanimous vote of the Council followed. Motion carried.

b. Announcement of Vacancies: City Clerk Tammie Drake announced a vacancy on the Environmental Sustainability Board. There are no applications on file from citizens willing to serve. No action was taken.

15. Comments from Mayor and City Council Members

a. Discussion of RFP Process for Mill Building: Mayor Pro Tem Collis commented there have been some discussions on ideas for the Mill Building. He proposed the Council undertake a scaled-back RFP process seeking written letters of interest and suggestions to see what is presented. He stated staff has resources to post it on the web to ascertain interest in the project. Mayor Volk stated she has heard several suggestions and it will be helpful to have the proposals laid out in a similar fashion for ease of comparison. Mayor Pro Tem Collis stated he would like to have the proposals in writing. Council Member Smith agreed, stating it should be a simple RFP to keep expenses down. There was discussion of the RFP and the time frame for submittal.

Mr. Galloway stated the RFP will be distributed widely to ascertain interest. He stated staff will also touch base with staff at the State to put us in touch with people who have redeveloped mill buildings or who may be interested in redeveloping the building. He requested the Council respond to him with their thoughts and ideas for the RFP process.

The Council agreed by consensus to proceed with a scaled-down of the former RFP, consider the RFP at their February meeting and allow 45 days for responses. The Council also agreed to discuss this further at their retreat in February.

b. Scheduling a Date for Council's Annual Planning Retreat: A special meeting was scheduled for Friday, February 15, 2013, beginning at 8:00 a.m. Location: to be announced. The Council agreed to hold the retreat without a facilitator this year.

c. Discussion of School Resource Officer (SRO) at Elementary and Middle Schools: Council Member Jerry Smith explained this request relates to the school shooting in New Town, CT. He explained currently, there is a SRO assigned to HHS and he shares his time with Hendersonville Middle School. He stated practically the officer cannot cover both schools. He suggested the officer share some of his time with Bruce Drysdale Elementary School. He stated the three middle schools in the county have a deputy assigned by the Sheriff's office. He requested Council consider funding a SRO for the Middle School. He stated the SRO at the Middle School could also share his time with Hendersonville Elementary School. He stated there are instances at the Middle School that need attention by a law enforcement officer.

Council Member Smith relayed the importance of a SRO at schools including police reports for incidents, getting to know students who become informants, etc. He stated currently state money partly funds the SRO but the State does not fund a SRO for middle schools.

Council Member Smith reported the costs for start-up are greater and will be somewhere in the range of \$96,500 including salary, vehicle and equipment, uniforms, etc. There was discussion of the funding for the position and security for the schools, e.g., who is able to enter the school, etc. Council Member Smith stated having a police vehicle parked between the middle and elementary schools will have a tremendous benefit. Council Member Smith agreed to make a formal request of Henderson County through the County Manager to fund the SRO position. **Mayor Volk suggested the Council discuss and prioritize this request in-depth at the February planning retreat. The Council agreed by consensus.**

Mr. Galloway stated this topic may be discussed and addressed in the General Assembly.

d. Discussion of Babe Ruth Baseball's Request to Install Sod on the Infield at Berkeley Mills Park: Council Member Jerry Smith presented a request from the Babe Ruth Baseball Association to provide and install sod on the infield at Berkeley Mills Park and to install a batting cage. He stated a retaining wall for the batting cage will be necessary because of the slope.

Council Member Smith stated there is money available in the budget (\$32,175) for improvements to Berkeley Mills Park for this year and an additional \$8,000 that was going to be used for a dog park. He suggested the City install an irrigation system in the infield at same time for times of drought. He stated these improvements will provide a lot more use of the field and is moving toward the direction the City wants to take. He suggested this work be done in the Spring.

Mayor Pro Tem Collis voiced support of the request. There was discussion of the installation of the sod. Council Member Smith stated there should be an agreement with the Babe Ruth Association that they do not have control of the field and other groups may schedule and use the field.

Regarding maintenance issues, Council Member Smith stated the grass has to be cut differently and more often, the irrigation system will have to be manipulated, and fertilizer and weed control must be applied. Discussion followed on whether new equipment, personnel and possibly a maintenance facility for equipment will be needed at the park in the future.

Council Member Smith moved Council to approve option 2 baseball field improvements for Berkeley Mills Park and the batting cage retaining wall construction with the funding to come from the allocation for Berkeley Mills Park and the additional funding from the Babe Ruth Association. In discussion, Council Member Stephens asked if a written agreement is required with Babe Ruth or others using the field. Council Member Smith stated those using the field must present a certificate of insurance to the City and pay a fee to use the field. **A unanimous vote of the Council followed. Motion carried.**

e. Reminder: Mayor Volk reminded the Council of the Special Meeting on Tuesday, January 8, 2013 with Dr. Stephen Strauss of Developmental Associates to begin the process for hiring a City Manager. She reminded them to bring their calendars to set dates for meetings.

16. New Business: There was none.

17. Closed Session: There was none.

18. Adjournment: Being no further business, the meeting adjourned at 8:56 p.m. upon unanimous consent of the Council.