

**June 6, 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 John F. Connet, Interim City Manager Lee Galloway, City Attorney Samuel H. Fritschner, City Clerk Tammie Drake, Planning Director Sue Anderson, Police Chief Herbert Blake, Engineering Director Brent Detwiler, Main Street Director Lew Holloway, Finance Director Jim Rudisill, Public Works Director Tom Wooten, Utilities Director Lee Smith

**1. Call to Order:** Mayor Volk called the meeting to order at 5:48 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.*

Donald Goldstein, 215 Fallen Timber Road, asked about the problem for funding at Brightwater Heights. Mayor Volk stated some funding has come through to offset some of the expenses. She encouraged him to speak with Mr. Lee Smith or the City Manager. Mr. Goldstein stated Mr. Andres has had meetings with staff and they have come up with a reasonable agreement but it is not what he thought was due but it will help the residents of Brightwater.

James Martin, 232 Fallen Timber Road, commented on the Brightwater water project and asked for a resolution to the issue. He stated they want to report to the homeowners on June 10 that the project is completed.

Donna Hastie, 365 Kenmure Drive, Flat Rock, President of Hendersonville Symphony, on behalf of youth orchestra, requested an increase in special appropriation funding.

Eva Ritchey, 1928 Brevard Road, Hendersonville, stated the construction on Main Street has caused difficulties to the merchants. She requested Council establish a committee whose sole focus is parking to come up with ideas and a plan.

Bennie Santistevan, Chestnut Drive, Hendersonville, requested Council to reconsider the appropriation toward the Symphony.

Mark Ray, 26 Victoria Park Drive, Hendersonville, requested a donation from the City of \$800 for the restoration of the McClintock Clock at Fourth Avenue/Main Street installed in 1928. He also requested a plaque of appropriate designation. Mayor Volk thanked Mr. Ray for his research and work and asked him to get in touch with the City Manager.

Heather Boeke, Hands On, 318 N. Main Street, co-chair Mad Mountain Mud Run, reported a successful Mad Mountain Mud Run event and expressed appreciation to the Council for the use of Berkeley Mills Park and the work of all City departments.

#### 4. Consideration of Agenda:

Council Member Smith requested the addition of 16b. Discussion of Parking in City lots. **Council Member Caraker moved approval of the agenda as amended. A unanimous vote of the Council followed. Motion carried.**

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

**A. Consideration of Minutes:** May 2, 2013 Regular Meeting, May 17, 2013 Special Meeting

**B. Consideration of Special Event Permit for Old Towne Market:** The Special Events Committee unanimously supported approval of this event on June 8, 2013, from 9 a.m. – 4 p.m. Locust Street will be closed from Bearcat Boulevard to 8th Avenue. The sidewalk will also be closed. Eighth Avenue will be open to all traffic to access Maple Street. Ten percent of the proceeds will benefit the 4-H Club.

**C. Consideration of Abatement of Nuisances:** Mrs. Frady certified 20 property owners were notified of a nuisance condition on their property but failed to take corrective action. She requested permission to remedy the nuisances and assess the actual cost to the property owner.

**D. Inclement Weather Policy for Patton Pool:** At the request of City Council, Mr. Wooten presented an Inclement Weather Policy for Patton Pool. The Policy will allow patrons to reenter the pool if the pool is closed due to bad weather and the patrons have not been at the pool longer than 60 minutes. The rain check will be valid for two weeks and is only valid for the specific number of adults and/or children on the original receipt.

PATTON POOL INCLEMENT WEATHER POLICY  
PUBLIC WORKS DEPARTMENT

A. PURPOSE: The purpose of this document is to establish a written Policy to follow when lightning, thunder, and storms in general affect the patrons at Patton Pool located at 114 E. Clairmont Drive, Hendersonville NC.

B. PROCEDURE TO FOLLOW FOR PATRONS IN THE EVENT OF INCLEMENT WEATHER: When the possibility of inclement weather is in the area, pool staff should remain aware of the skies around them, keep a watchful eye on the sky, and listen to a weather radio for the latest storm information.

THUNDER: If thunder should occur, the pool will be evacuated for 30 minutes. Each time thunder occurs, the clock will reset for 30 minutes.

LIGHTNING: When lightning is seen in the area and vicinity of the pool, it will be evacuated immediately for a period of 30 minutes. For each lightning occurrence, the clock will reset for 30 minutes. Pool management may close the pool if the weather does not appear to be clearing up.

C. PROCEDURE FOR ADMISSION OF PATRONS DUE TO INCLEMENT WEATHER WATCH

1. Patrons will not be admitted to the pool during an inclement weather warning. Admission may take place once the weather has cleared and pool management has deemed the threat over. A daily notice of "Pending Inclement Weather" will be posted at the gate house to provide advanced warning of potential storms.

2. Patrons who were already in the pool area at the time of inclement weather evacuation may have their hand stamped in order to return the same day, should weather conditions improve.

3. Patrons that have entered the pool and inclement weather takes place within 60 minutes of their admission may receive a rain check to return to the pool. Rain checks for admission to the pool shall be valid for a period of two weeks.

4. It shall be the responsibility of pool management and gate staff to keep an accurate log for pool rain check re-admissions.

5. Rain checks will be given to the patrons in the form of a ticket. Patrons may use the rain check for up to the exact number of adults and children that were admitted on the day the rain check was issued.

**E. Consideration of Ordinance Amending Chapter 32 of the code of Ordinance Relating to Police Department Authority to Seek Access to SBI/DCI Criminal History Record Information for ABC-Related Background Investigations:** City Attorney Fritschner reported the Police Department routinely performs background investigations on applicants for ABC licenses. As part of its investigation, the department requests criminal records from the State Bureau of Investigations. The department was informed that continue to receive records from the SBI the City must adopt an ordinance authorizing the department to seek and receive these records.

Ordinance #13-0631

**AN ORDINANCE AMENDING CHAPTER 32 PERTAINING TO POLICE DEPARTMENT AUTHORITY TO SEEK STATE ACCESS TO SBI/DCI CRIMINAL HISTORY RECORD INFORMATION**

WHEREAS, North Carolina General Statute §18B-904(f) provides that the governing body of a municipality may designate an official by name or position to make recommendations to North Carolina Alcoholic Beverage Control Commission on behalf of the municipality concerning the suitability of a person or location for an ABC permit when the proposed location is within the municipality; and

WHEREAS, the Chief of Police or his designee is designated by N.C.G.S. § 18B-904(f) as the official authorized to make recommendations on behalf of the governing body concerning the suitability of a person or location for an ABC permit within the municipality's jurisdiction; and

WHEREAS, the City Council has determined that the Hendersonville police department desires access to the SBI/DCI criminal history record information to obtain criminal history information on all persons applying for ABC permits for proposed locations within the City, and

WHEREAS, the Hendersonville Police Department will obtain this criminal history information on each applicant based on identification information regarding the applicant contained in the notice of permit application received from the State ABC Commission; and

WHEREAS, if this criminal history information reveals that an applicant has been convicted of any felony, a misdemeanor involving drugs or alcohol, or any offense in violation of Article 26 of Chapter 14 of the North Carolina General Statutes, the Hendersonville Police Department will file a written objection to the issuance of the permit; and

WHEREAS, the State ABC Commission is the government agency responsible for the issuance of all ABC permits,

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

SECTION 1. CHAPTER 32 of the Hendersonville Code of Ordinances is hereby amended to add a section to Article I to read in its entirety as follows:

Sec. 32-4. Police authority regarding criminal history information for applicants for ABC permits. The police department shall be authorized to seek state access to SBI/DCI criminal history record information to obtain criminal history information on all persons applying for ABC permits for proposed locations within the City of Hendersonville.

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 6th day of June 2013.

/s/Barbara G. Volk, Mayor

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

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

**F. Consideration of Budget Amendments:**

**i. Public Works Department (3):**

General Fund-Downtown Tax District  
To transfer \$5,000 to balance the utility line item.

General Fund - Seventh Avenue Tax District Budget

To transfer funds (\$1,360.00) to balance the line items within this fund.

General Fund - Public Works – Traffic Engineer Budget

To transfer funds (\$25,000) in order to balance the street and traffic light budget for the remainder of the budget year.

**ii. Water/Sewer Department (6):**

Water/Sewer Department – Administration

To transfer funds (\$17,888) to balance the budget for this division. There will be no net change in this budget.

Water/Sewer Department - Facilities Maintenance

To transfer funds (\$42,998) to balance the budget for this division. There will be no net change in this budget.

Water/Sewer Department – Shop Operations

To transfer funds (\$9,245) to balance the budget for this division. There will be no net change in this budget.

Water/Sewer Department - Water Maintenance

To transfer funds (\$33,215) to balance the budget for this division. There will be no net change in this budget.

Water/Sewer Department - Wastewater Treatment

To transfer funds (\$59,779) to balance the budget for this division. There will be no net change in this budget.

Water/Sewer Department – Sewer Collection

To transfer funds (\$11,492) to balance the budget for this division. There will be no net change in this budget.

**iii. Administration (1):**

General Fund – Administration

To reallocate budgeted funds for salary expense and software for Administration in the amount of \$8,050.

**G. Consideration of Electrical Engineering Contract:** Mr. Detwiler explained the City will require professional electrical engineering services to design several infrastructure projects over the coming months including: the Atkinson Elementary Pump Station, a water and sewer pump station standardization project and design of new high service pumps and controls at the water treatment plant. Following the North Carolina General Statutes, the Engineering Department recently advertised a Request for Qualifications for electrical engineering services, received qualification statements, and determined the most qualified firm, McKim & Creed of Asheville, NC to provide these services. He reported they are in the process of entering into an agreement with McKim & Creed to provide the professional electrical engineering services on a time and materials basis over a two-year period. This agreement will be executed by the City Manager. **No action was required by the Council.**

**H. Consideration of Authorizing the City Engineer to Execute a Contract with MESCO, upon City Manager Approval, for Engineering and Grant Administration Services Required for the Academy Road Water System Improvement Project:** Mr. Lee Smith reported the City will require professional engineering services to administer grants funds, survey, design, permit and construct a water distribution system in the Academy Road area of the Dana community. This water system will serve residents in this area that have been determined by the NC Division of Water Quality, Aquifer Protection Section to have dieldren-contaminated drinking water wells. In following the North Carolina General Statute, the Engineering Department recently advertised a Request for Qualifications for professional engineering services, received qualification statements and determined the most qualified firm to provide these services. The selected firm is Mechanical Engineering Services Company (MESCO) of Garner, NC. He reported staff is in the process of negotiating a proposal with MESCO and will thereafter enter into an Agreement with them to proceed with engineering and grant administration services required to complete this project. **No action was required by the Council.**

**I. Consideration of Disposition of Police Motorcycle:** Police Chief Herbert Blake reported the Police Department was contacted by Kawasaki Motors Corp. USA in regards to the on-going electrical issues arising from the Police Upfitters, known as BMS Inc. Kawasaki Authority Sales. After inspection of the 2012 Kawasaki Police Concourse Motorcycle, it was determined that the on-going electrical issues could cause the main fuse to blow, causing the engine to shut off during operation, possibly causing serious injury or death. After negotiations between the City Attorney and Kawasaki Motor Corp attorney, Kawasaki Motor Corp. wishes to purchase the 2012 Kawasaki Motorcycle back from the Police Department for \$23,000. It was originally purchased through the Governor's Highway Safety Grant for \$25,000 and pursuant to the on-going grant, must be replaced with another motorcycle. He recommended authorizing replacement of the Kawasaki motorcycle for the sum of \$23,000 and to authorize a replacement motorcycle from Harley Davidson for \$25,000 with the remainder \$2,000 to be taken from the Drug Seizure Account.

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

**6. Introduction and Welcome City Manager John F. Connet:** Mayor Volk welcomed and introduced City Manager John F. Connet who came to the City of Hendersonville from Clinton, NC.

**7. Presentation of Awards by the Historic Preservation Commission's Community Affairs Committee:** Ms. Sue Anderson, Planning Director, explained in 2010, the Historic Preservation Commission's Community Affairs Committee established an awards program to recognize property owners, organizations, businesses and agencies whose contributions demonstrate an outstanding commitment to excellence in historic preservation, local history or promotion of the City's heritage.

Ms. Anderson and Mayor Volk recognized the restoration of two properties located in the West Side National Register Historic District that were awarded a 2013 Preservation Award by the Historic Preservation Commission:

Anne Hansley for the restoration of 311 Buncombe Street  
Todd & Renita McDougal for the restoration of 731 4th Avenue West.

Mayor Volk expressed appreciation to the property owners for their work to improve their properties and the City. Historic Preservation Commission Vice-Chairman Cheryl Jones also expressed her appreciation.

**8. Presentation of Government Finance Officers Association Award to Finance Director:** Mr. John Connet, City Manager, presented the GFOA award to Mr. Jim Rudisill, Finance Director. This is the twenty-fourth award he has received. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting and its attainment represents a significant accomplishment by a government and its management. He recognized Mr. Rudisill and his team for their hard work and dedication to the citizens of Hendersonville. Mr. Rudisill also recognized Ron Carland, CPA, stating the audit is a significant part of the Comprehensive Annual Financial Report.

**9. Consideration of Resolution Adopting the Capital Improvement Plan (CIP) for FY 2013-14:** Mr. Rudisill stated Council discussed the CIP during a meeting held on February 15 and during the budget review. He reported some projects were revised and he presented the final version of the CIP.

**Council Member Smith moved approval of the resolution to adopt the CIP for the City of Hendersonville. A unanimous vote of the Council followed. Motion carried.**

Resolution #13-0632

**A Resolution Adopting a Capital Improvement Plan for the City of Hendersonville**

WHEREAS: the City of Hendersonville, like other North Carolina municipalities, face demand for public services that are sometimes difficult to foresee; and

WHEREAS: the City Council foresees the need for certain public infrastructure improvements that have built up over time and that these should be addressed in future planning efforts; and

WHEREAS: likewise there is a need for a fiscal plan to undertake the orderly replacement of major capital items, such as equipment, in order to promote sound fiscal practices within the City; and

WHEREAS: the City Council initially adopted a five-year Capital Improvement Plan on June 20th, 1996 and this Plan has, over the course of the preceding fiscal years, has served to guide the City in questions of policy and planning to meet future capital needs; and

WHEREAS: an internal survey of City Departments has been made and requests have forwarded through management to the City Council identifying certain projects and equipment needed to maintain the current level of City services and identifying certain program expansions for the upcoming fiscal year of 2013-2014; and

WHEREAS: the City Council reviewed these requests during a special meeting held May 17, 2013 and Council consented to their inclusion in the proposed FY 2013-2014 operating and capital budget.

NOW, BE IT THEREFORE RESOLVED by the City Council of Hendersonville that the capital items identified on the following Form 3s and forecasted for acquisition over the upcoming five-year period be known as the official Capital Improvement Plan of the City of Hendersonville.

Adopted this sixth day of June 2013.

/s/Barbara G. Volk, Mayor

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

**10. Public Hearing - Consideration of Budget Ordinance Making Appropriations for Certain Expenses, Capital Improvements and Indebtedness of the City of Hendersonville for the Fiscal Year Beginning July 1, 2013 and Ending June 30, 2014:** Mr. Lee Galloway, Interim City Manager addressed the Council stating budgets get increasingly more difficult every year. He stated actions of the General Assembly may affect the budget.

He stated this budget is approximately \$30 million: General Fund is \$13 million, the Water and Sewer fund is approximately \$15 million, the Environmental Services is \$1.2 million and others. He stated it is a big undertaking that provides funding for a new fire truck, the new fire station, and Phase III of Main Street which is why Hendersonville is considered one of the top retirement destinations. He stated the budget also provides funding for the conversion to rollout recycling bins, which should increase recycling. He stated the budget also funds some large projects such as the water line to the Dana community to correct a serious contamination problem and the new water tank project in Etowah. He stated the budget allows a cost-of-living increase for employees and funds for performance merit increases.

Mr. Rudisill reviewed the budget process and stated each request was discussed with the department heads. Council reviewed the budget in detail on May 17 and the budget contains the adjustments made at that meeting. He summarized by stating revenue was decreased \$480,000 by eliminating the proposed three-cent tax increase. The fund balance was increased \$413,010 and appropriations decreased \$66,980 which balances the budget.

Mayor Volk opened the public hearing at 6:29 p.m. The following spoke:

Jim Barrett, Director of Pisgah Legal Services, 440 S. Church Street, that provides free legal services to low income persons to meet their basic needs. He communicated an urgent need for funds and requested an appropriation. He stated they are attempting to raise funds from individuals and has made a request to Henderson County and the other municipalities. They have also applied to the Community Foundation. Buncombe County has committed to some funding.

No one else expressed a desire to speak. Mayor Volk closed the public hearing.

**Mayor Pro Tem Collis moved Council's approval of the budget ordinance making appropriations for certain expenses, capital improvements and indebtedness of the City of Hendersonville for the fiscal year beginning July 1, 2013 and ending June 30, 2014.** In discussion, Mayor Volk commented the City has received multiple requests and have tried to help where possible but it is not a year to increase charitable contributions to non-profits. Council Member Caraker agreed it is a difficult year and the Council did the best they could with special appropriations but cannot always support as much as requested. **The vote was unanimous. Motion carried.** Mayor Volk expressed many thanks to Mr. Galloway and Mr. Rudisill for their work on the budget.

Ordinance #13-0633

**BUDGET ORDINANCE  
AN ORDINANCE MAKING APPROPRIATIONS FOR CERTAIN EXPENSES,  
CAPITAL IMPROVEMENTS AND INDEBTEDNESS OF  
THE CITY OF HENDERSONVILLE, NORTH CAROLINA  
FOR THE YEAR BEGINNING JULY 1, 2013 AND ENDING JUNE 30, 2014**

WHEREAS, the City of Hendersonville is coming to the conclusion of its fiscal year and will enter into a new fiscal year on July 1, 2013; and

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

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

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

SECTION 1: The following amounts are hereby appropriated for the operating budget for the City of Hendersonville and its activities for the fiscal year beginning July 1, 2013, and ending June 30, 2014, in accordance with the chart of accounts heretofore established for this City:

General Fund	\$12,761,510
Downtown Tax District	410,940
Seventh Avenue District	51,720
Capital Reserve Fund	2,000
Water/Sewer Fund	15,035,880
Environmental Services Fund	1,493,300
TOTAL APPROPRIATIONS	\$29,755,350
Less: Interfund Transfers	2,675,660
TOTAL NET APPROPRIATIONS	\$27,079,690

SECTION 2: That the attached detailed budget document be, and the same reflects the estimated revenues, revenue contributions, and budget appropriations of the City of Hendersonville, North Carolina, for the period beginning July 1, 2013, and ending June 30, 2014. A copy of said document will be available for inspection in the Office of the City Clerk.

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

SECTION 4: That no appropriations for salaries shall be changed, nor appropriations transferred between departments or divisions, unless authorized by the Council. Appropriations within a department, other than salaries, may be transferred therein by the City Manager or his designee for the purpose of equalizations when necessary. Amounts up to \$1,000 between departments, including contingency appropriations, may be transferred within the same fund. An official report of all intra-fund transfers shall be made at the next regular meeting of the Governing Board.

SECTION 5: There is hereby levied a tax at the rate of forty-one cents (\$.41) per one hundred dollars valuation of property as listed for taxes as of January 1, 2013. This rate is based on an estimated total valuation of property for the purpose of taxation of \$1,640,725,190 and estimated collection rate of 97.41%.

Also levied is a tax rate of twenty-eight cents (\$.28) per one hundred dollars (\$100) valuation of property as listed for taxes as of January 1, 2013, for a special service district established for the purpose of a Downtown Revitalization Project. This rate is based on an estimated total valuation of property for the purpose of taxation of \$83,628,317 and an estimated collection rate of 95.78%.

A tax rate is also levied of twelve (\$.12) per one hundred dollars (\$100) valuation of property as listed for taxes as of January 1, 2013, for the Seventh Avenue Municipal Service District formed upon a petition of some of the property owners, established for the purpose of landscaping improvements as well as some activities of the Historic Seventh Avenue District (HSAD). The rate is based on an estimated total valuation of property for the purpose of taxation of \$10,050,833 and an estimated collection rate of 92.40%.

There is hereby adopted a capital project ordinance budget for construction of the Academy Road Water Line in the Dana community:

Grant Revenue	\$600,000
Professional Services	\$ 70,000
Capital Outlay	\$530,000

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

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

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

SECTION 6: That copies of this Budget Ordinance shall be furnished to the City Clerk, City Manager and Finance Officer to be kept on file by them for their direction in the disbursement of funds.

SECTION 7: This ordinance shall become effective on and after July 1, 2013.

SECTION 8: That all ordinances and parts of ordinances in conflict herewith be and the same hereby repealed.

Passed and adopted at the regular meeting of the City Council of the City of Hendersonville, North Carolina, held this 6th day of June, 2013.

/s/Barbara G. Volk, Mayor

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

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

**11. Public Hearing - Announcement of Plans and Receipt of Public Input on Applying for a NC Department of Commerce Department of Community Assistance Infrastructure Community Development Block Grant to Partially Fund Improvements Planned for the Academy Road Area of Henderson County in the Dana Community:** Mr. Lee Smith reported the Division of Water Quality has completed the water sampling. Twenty-three lots/homes were identified as above permissible level for dieldrin and possibly other chemicals.

Mr. Lee Smith reported staff has been working to identify funding sources for the extension of water into that community. He stated this is the second required public hearing for the CDBG funding. He reported Henderson County has applied for the Rural Center grant but funding is unsure. He stated the City pre-applied to the Appalachian Regional Commission for \$100,000 and was found eligible to apply. He reported the contractor will complete the application. He stated he is unsure of the amount of the CDBG funds we are applying for. The Bernard Allen Fund may pay up to one-third of the total project cost. He stated funds may be available through CDBG to install the service lines.

Mr. Landon Davidson, Division of Water Quality, addressed the Council and stated the Bernard Allen Fund, a Division of Waste Management, will pay \$10,000 for each resident. He stated currently 13 applicants have been accepted so it is \$130,000. He stated the fund will pay the lower of \$130,000 or one-third of the cost. He stated

there are other impacted residents but some did not meet the eligibility requirements of the fund. He reported the groundwater assessment for pesticides is complete. They sampled 75 wells in the area and they will continue with soil sampling and re-sampling. He expressed appreciation to Mr. Lee Smith and the City for their assistance in this project.

Mr. Lee Smith commented on the length of time it usually takes to get funding. He also thanked Paula James and the action committee who have worked hard to secure funding for the project.

At 6:43 p.m., Mayor Volk opened public hearing in accordance with North Carolina General Statutes by published notice.

Paula James, 5 Easthill Drive, stated she serves on the steering committee to help get the problem solved and is one of 23 residents with contaminated well water. She stated it is disturbing and frustrating because they cannot use the water for anything. She stated her well water tested 55 times above the standard. She stated this has changed her way of life. She expressed appreciation to the City, State, and Henderson County for their efforts.

No one else expressed a desire to speak. The public hearing was closed at 6:45 p.m.

Mr. Lee Smith expressed appreciation to Mr. Davidson at DWQ for their proactive approach in sampling the water. He stated this was not found as a result of a complaint.

There was discussion of when the residents will have City water. Mr. Lee Smith stated they have a source of fresh water at the Dana church. He is hopeful work will begin by the end of the year. Construction time depends on the size of the project and may be up to three-four months. He estimated the residents should have water by next spring but staff will do everything possible to get it done as soon as possible.

**Mayor Pro Tem Collis moved to authorize the utilities director and city engineer to submit, on behalf of the City, an application for a Community Development Block Grant to aid in the design, permitting and construction of a water system in and around the Academy Road area located in the Dana community, as presented and recommended by staff. A unanimous vote of the Council followed. Motion carried.**

**12. Quasi-Judicial Public Hearing - Consideration of an Application by Ingles Markets, Inc. to Amend a Special Use Permit to Add a Gas Station with Canopy and an Attendant Kiosk to the Ingles Store Property Located at 1980 Asheville Highway:** Mayor Volk reviewed procedures for the quasi-judicial hearing including witnesses must be sworn in and are subject to cross examination. She explained the City Council may only consider the facts of the matter. She asked the City Council members if anyone has contacted them regarding the project outside of the Council meeting. There was none. She asked if anyone has offered anything of value for consideration of a vote. There was none.

Four persons were sworn in to provide testimony.

Ms. Sue Anderson, Planning Director, entered into the record: File #P-13-4-SUR and requested official notice be taken of the Zoning Ordinance, the official Zoning Map, the 2030 Comprehensive Plan and the Transportation Plan. She provided the following testimony:

The City is in receipt of an amended Special Use Permit application from Ingles Markets to add a Gas Express station to the Ingles grocery store located at 1980 Asheville Highway. The Gas Express will have four pumps and eight vehicle fueling stations. The applicant is also requesting a variance from Zoning Ordinance Section 5-18-4.3 increasing the number of driveways a development parcel may have on any given road from two to three. The parcel number for this property is 9569-45-9576.

On February 5, 1998, City Council approved a Special Use Permit and rezoning application for this parcel. The Special Use Permit was for a 60,000 square foot retail store with a variance approval for a reduction in parking from 300 to 280 parking spaces. The property was rezoned from C-3 Highway Business and I-1 Industrial to PCD Planned Commercial Development.

The property currently has a 64,449 square foot grocery store with 250 parking spaces. According to a revised site plan dated May 25, 2000, the parking area shows 248 parking spaces and a building size of 60,000 square foot. Based on Planning Department records, it is not clear when the parking requirement was permitted to be reduced from the City Council approved variance of 280 spaces to the 248 spaces shown on the May 2000 site plan.

The Entry Corridor Overlay District adopted August of 1998, six months after City Council approval of the project, does allow a 20% reduction in parking at the developer's discretion. Since this property is in the Entry Corridor District, this standard may have been applied to the site plan dated May 2000. Regarding the change in square footage of the building, Zoning Ordinance Section 7-6 allows a 10% increase in square footage from what is approved by City Council with staff review and approval. Planning Department staff has not identified any documentation that this increase in square footage was officially approved. The increase in square footage from 60,000 square foot to 64,449 square foot is below the allowed maximum of ten percent. As-builts are now required once a building is completed prior to receiving a Certificate of Occupancy.

An unopened right-of-way exists along the northwest property line. Parcels on the other side of this unopened right-of-way consist of single family residences and a vacant commercial building. The residential parcels are zoned R-10 Medium Density Residential and the commercial parcel is zoned C-3 Highway Business. The parcel to the northeast consists of the Norfolk Southern Rail line and is zoned I-1 Industrial. The two parcels located to the southeast consist of vacant land and commercial buildings. The vacant parcel is zoned I-1 Industrial and the parcel with the commercial buildings is zoned C-3 Highway Business.

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

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."

The goal of the Medium Intensity Neighborhood is to "provide a transition between High and Low-Intensity Neighborhood and Regional Activity Centers and downtown and provide a transition between commercial and single-family development."

The goal of the Natural Resource/Agricultural category is 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." The Natural Resource/Agricultural category is generally applied to environmentally sensitive land such as streams, floodways and floodplains. A floodway map shows the portion of this parcel that includes a stream and is located in the 100 year floodplain. She reviewed a map showing the floodplain.

*Site Plan Review:* Gas Express Addition: The site plan shows the addition of a 4-pump Gas Express to the southwest portion of the parking lot. The Gas Express will have a 3,298 square foot of canopy that also includes a kiosk for the attendant.

*Parking:* According to the existing site condition plan, there are 250 parking spaces located on the site. Table 6-5-2 of the Zoning Ordinance requires one space for each 200 square feet of gross floor area for grocery stores. Based on 64,450 square feet, 323 parking spaces are required. When it can be demonstrated through a professional parking analysis that the demand for parking is less than required in Table 6-5-2, Section 6-5-4 of the Zoning Ordinance allows up to a 40% reduction in parking without requesting a variance. Ramey Kemp & Associates, Transportation Engineers, completed a parking analysis for this store using actual parking demand at the Ingles Store #43 in Arden and the Ingles Store #130 in Fletcher. Both of these stores include a Gas Express. At peak times during the study, that is when the parking lot is fullest, the parking rate was one space for each 523 square feet of gross floor area for the Arden site and one space for each 425 square feet of gross floor area for the Fletcher site.

The site plan shows a total of 251 parking spaces are to be provided. This translates to a parking ratio of one space for each 259 square feet of gross floor area which appears to be sufficient to meet the parking needs based on the analysis of the other two sites. Parking spaces removed for the Gas Express will be added to the northeast of the addition. She pointed out the area on the site plan.

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

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

*Traffic Impact Analysis (TIA):* Zoning Ordinance Section 6-19 requires a traffic impact analysis whenever a development generates 100 peak hour or 1,000 or more trips daily. A "trip" is a one-direction vehicle movement entering or exiting a site. Based on the Institute of Transportation Engineers Trip Generation manual, the site is estimated to generate an additional 1,348 daily vehicle trips. According to the manual, the site currently generates approximately 6,574 daily vehicle trips during a weekday and 11,584 daily trips during a Saturday. A traffic impact analysis has been completed by Mattern & Craig and has been reviewed by the City's traffic consultants, Kimley-Horn & Associates. There are three issues to be considered regarding the TIA.

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

#2 Zoning Ordinance Section 5-18-4.3 has a provision for the number of driveways allowed on a given parcel in the Entry Corridor Overlay District. The development of regulations for this district evolved from a concern about the appearance and safety of Hendersonville's commercial and entry corridors. During the public hearing for this text amendment to the Zoning Ordinance, Mayor Niehoff

stated that “the City Council has an objective to improve the appearance of the city’s corridors, to have more vegetative planting, less sign clutter and fewer driveways from a safety standpoint.” The Entry Corridor Overlay District was adopted by City Council in August 1998 and applies to parcels fronting on Asheville Highway, Greenville Highway, Spartanburg Highway, Haywood Road and US 64.

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

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

Mattern & Craig further states that there is only 150 feet of distance available between the center driveway and the property line.

The applicant has requested a variance from Zoning Ordinance Section 5-18-4.3 allowing the addition of a third driveway. The applicant has completed a finding of fact form on page nine for the variance request. Should the variance not be approved, staff recommends adding a condition that the proposed turn lane is extended to the southern property line.

#3 Kimley-Horn & Associates has raised concerns that “a median is not currently in place, nor proposed, along Asheville Highway to prohibit left turning movements into and out of the third driveway, therefore consideration should be given to limiting the site access on US 25 to the two full movement drives that exist currently.” In response to this comment, Mattern & Craig has stated the following: “Mattern & Craig takes no exception to the comment provided by Kimley-Horn. The TIS has demonstrated that the development will function adequately with the addition of a right-in, right-out driveway. If the City of Hendersonville and/or NCDOT determines the addition of Entrance #3 is in violation of the access management guidelines, then the length of the northbound right turn lane at Entrance #2 would be based on 139 vehicles making a right turn during the PM peak hour resulting in 100 feet of storage required.” City staff has received an e-mail from NCDOT stating that they will support the third driveway provided that it is right in only. The site plan shows a right in only driveway at this location.

Ms. Anderson reviewed photographs of the driveways.

*Analysis:* Section 7-4-10.1 of the Zoning Ordinance states, “no special use permit shall be approved by City Council unless each of the following findings is made.”

*(A) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.* The applicant is requesting a variance from Zoning Ordinance Section 5-18-4.3 increasing the number of driveways a development parcel may have on any given road from two to three. The purpose of these Entry Corridor regulations, including limiting the number of driveways, is “... to protect and preserve both the aesthetics of these important roadways and their traffic-handling capabilities, thereby contributing to the general welfare of the City of Hendersonville.” Based on the TIA and subsequent comments with the two driveway access points, the center driveway will require a right turn lane with 100 feet of full storage and 100 feet of

taper. There is approximately 150 linear feet from the center driveway edge to the southern parcel line available for the required right turn lane. The right turn lane will allow turning vehicles to reduce their speed and impact to the traffic flow along Asheville Highway. The addition of the third driveway entrance will further reduce the overall length of the required right turn lane and taper by approximately 25 linear feet. Without any type of turn lane for the third driveway, vehicles turning into this driveway will impact traffic flow northbound along Asheville Highway.

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

*(B) There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.* The property is currently served by water and sewer.

*(C) The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations.* The applicant is requesting a variance from Zoning Ordinance Section 5-18-4.3 increasing the number of driveways a development parcel may have on any given road from two to three.

*(D) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.* A neighborhood compatibility meeting concerning the application was held on March 15, 2013. No members of the general public attended the meeting.

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

*Planning Board Recommendation:* The Planning Board voted five in favor and two opposed to recommend City Council approve a variance from Zoning Ordinance Section 5-18-4.3. The Planning Board voted unanimously to recommend City Council approve the application of Ingles Markets Inc., for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions.

Ms. Anderson reviewed the suggested motions for the variance, amended special use permit. She explained if the variance request is not approved, there is additional language to have driveway #2 turn lane extended to the southern property line to maximize the turn lane and taper length.

Council Member Smith asked if safety has to be Council's reason for making the decision. Ms. Anderson reviewed Zoning Ordinance section 5-18-4.3, states "development parcels shall be limited to no more than two driveways on any road and no more than three driveways total." It also states: "additional driveways may be permitted when they are necessary to improve traffic movement, increase site distances or for other safety reasons".

Mr. Preston Kendall, 15 West Vista Drive, thanked the City Council for hearing the request. He provided the following testimony:

Ingles has been in the community for a long time. They have been here long enough, constructed enough stores and gas stations now that they have learned every time they have built a store. The third driveway is something they feel is needed for a safety standpoint for their store, for the gas station, for our customers, and employees. According to Mattern & Craig, and from Kimley Horn, a minimum of 75 feet of storage with additional taper is plenty. Both said that; the site plan shows that. They will have 75 feet of storage, 50 feet of taper and the right-turn in lane is what they are proposing to do on the site.

Flow of the store, congestion inside the parking lot, and not just the safety on 25, is huge for them; also the safety inside the parking lot when people are coming in for flow around the gas station. The right-turn in is huge and is why they went to NCDOT to ask if they would support it or if it is a good idea. They have NCDOT's support for the right-turn lane because they see it is.

Regarding putting a median in the middle from Kimley-Horn, they do not think it is a good idea and NCDOT did not offer that because there are businesses and customers across the street from them and it would prohibit them from using their drive the way they can now. Right now they can come in and out, left or right out of their driveway when they leave. If you put the median in, the landowners across the street, whether business or residential, couldn't get out the way they have since the road has been there. They think taking the 75 feet of storage with the additional turn lane is the safest approach for Ingles for this site.

Regarding parking, the gray area on the map is the parking they are adding. They are building a substantial retaining wall on the property for parking. Their employees will use that area to park. At Ingles stores, there is white and yellow striping in the parking lot. Their employees park in the white striping. Their customers will always be focused in the center of the store and their employees park to the right.

They have 74 gas stations now. They have added them to a lot of their existing locations. He gave an example of one in George where they didn't put a right turn lane in and it happened it was a good location. There were accidents in front of their station. They added a right-turn lane and it helped the situation. They have learned from their mistakes or they didn't know.

He asked for questions. Mr. John Cox, Civil Engineer, that worked with Mattern & Craig, is present and can answer questions.

Council Member Smith stated the storage is almost like adding another lane. Council Member Caraker stated it widens the road so the traffic making a right-hand turn can get out of the flow of traffic before they make the turn. Mr. Kendall agreed. Council Member Smith stated the taper is 50 feet but the storage is wide enough to hold a car. Mr. Kendall replied yes, and as you go down the taper, it widens to actually store a vehicle. Council Member Smith asked when a vehicle makes a right-hand turn, they are off Asheville Highway and onto the storage making the turn. Mr. Kendall stated yes. Council Member Caraker commented on NCDOT doing a similar project at Rugby Junior High School.

Mayor Volk asked if tapering and stacking is available for the third driveway. Mr. Kendall stated no; it will be for the middle driveway only. Mr. Cox stated the #1 driveway (left side) has a decel lane. It is probably 150 feet of storage, and 75 feet of taper. Council Member Caraker commented most people use the center driveway (#2) unless coming from the north. Mayor Volk agreed, stating there is almost no reason to have it because why would you drive past one driveway to go into another just because there is a taper. Council Member Smith commented he didn't realize there was a taper. Mayor Volk stated she does not see why it would be safer having the third driveway with no taper, no storage, because cars will back up on Asheville highway to turn in just like they do now to get into the center driveway. She does not see it as a safety feature and may block more traffic on Asheville Highway in the right-hand lane. She stated traffic coming from the south that wants to get gas will go into the first lane and there will be cars backing up there.

Mr. Kendall stated it is not just safety for Highway 25 but also for safety inside of their parking lot. He stated if cars are coming in, and they will come in from the decel lane, there will be cars coming from the north, and people from the north will want to go to the gas station, people from the south will want to go to the gas station and inside the parking lot will be congested. From someone who needs gas, going south to north, will use the smaller entrance whereas someone going into the store may use the other entrance.

Council Member Smith asked if the new taper is between the third and center driveways. Mr. Kendall stated yes. He stated they put a hook into the curb to prohibit left turns into the third driveway so drivers from north to south will not use that driveway.

Council Member Caraker stated the third driveway may take pressure off the center driveway and the stacking lane may help. He agreed with Mayor Volk that stacking on driveway #3 would be more advantageous. He mostly uses the gas station at Ingles instead of the market.

Council Member Smith stated the reason there is not a taper for the third driveway is because Ingles does not own the property. Mr. Kendall agreed. Council Member Smith stated there is a sidewalk there owned by the City.

Council Member Stephens commented people turning right will go in and there is room to get in. Mr. Kendall stated he is not sure how far it is from the proposed entrance to the gas pump. Mr. Cox stated probably three cars will fit in there. Mr. Kendall stated it will not be an entrance for transfer trucks, mainly cars.

Mayor Volk asked if the sidewalk will be relocated. Mr. Kendall stated yes. Council Member Caraker asked if they will move it closer to the store to accommodate the taper and stacking lane. Mr. Kendall stated yes.

Council Member Caraker asked where heavy trucks will enter. Mr. Kendall stated the trucks will continue to come into the center entrance and leave through the first entrance. Council Member Smith asked if the trucks current use the entrance without stacking. Mr. Kendall stated yes. Mr. Cox stated most of the trucks come in from the north. Council Member Ron Stephens stated they are in the center lane waiting for a left turn. Mr. Kendall stated occasionally a partial load may come from the other direction. Council Member Ron Stephens asked where the truck enters for the storage tanks. Mr. Kendall stated the fuel tanks are behind the gas station and they unload on the driver's side. Mr. Cox stated they will back into the tanks and out entrance #2. Council Member Caraker asked if the trucks make a three-point turn and unload. Mr. Cox stated yes, it is easier for a smaller fuel truck to make the turn. He stated Ingles trucks are larger. He stated the fuel trucks are much smaller.

There was discussion of entering Ingles with a possible third driveway. Council Member Caraker commented he has never had problem getting in and out of store except maybe holidays and won't create a problem. Council Member Ron Stephens agreed stating it is a few-second wait to go out. Council Member Caraker stated it is more of a problem getting out of the parking lot and onto the highway because of speeders coming down the hill from the north.

Mayor Volk stated currently there is no sidewalk at the center entrance and asked if they are putting one in there as well as the southern entrance. Mr. Cox stated there is a full sidewalk on the northern side of the property. He stated they are adding a second one to that third entrance will which go up the right side of the site and hook to the right side of the store. They will have a sidewalk from both the north and the south.

Mayor Volk opened public hearing at 7:29 p.m.

Tammi Neill, 1528 Danwnview Drive, Druid Hills, provided a handout, and provided the following testimony:

Her mother owns the property to the south of the proposed driveway. They have a small parcel that is not deep and five lots long. They had a study done by Luther Smith as to what they can put on the property. She and her sister have plans to develop the property. She has talked to a lot of people about it. NCDOT,

Hendersonville zoning and the entry corridor zoning overlay makes it quite restrictive for what you can build. She stated doesn't mind the gas pumps coming but the driveway bothers her. According to their own plans, it does not pass the NCDOT standard for being in the correct setback. Regarding the taper and driveway, in her opinion it will back up traffic on the Asheville Highway that will impact their traffic when they finally get to do what they want to do. They are hoping to go in one drive and out another. It will impact them.

In the first option for the traffic analysis, it appears the City's own consultants, never found a reason for the third driveway. They [Kimley Horn] recommended limiting the site access on Asheville to the two full driveways that already exist.

The Entry Corridor Overlay is to improve the appearance of the City's corridors to have more vegetative planting, less sign clutter and fewer driveways from a safety standpoint. The Zoning Ordinance states a developmental parcel should be limited to no more than two driveways on any road and no more than three driveways total. Everyone on Asheville Highway, Spartanburg Highway and Greenville Highway has to follow the entry corridor overlay so the City looks better and it is safer.

Regarding the neighborhood compatibility and increasing retail options in corridor, this third driveway does not increase the retail options. It is her opinion that the third driveway increases Ingles options for retail sales but not for the rest of the people on Asheville Highway. The third driveway is not compatible with the rest of the neighborhood's traffic pattern. She believes it will add to more traffic problems and asked where the City's consultants say it is safer to have three driveways.

On the issue of the taper between the second and third driveways, in the first option the City's consultant said they need 75 feet of storage with an area of additional taper. She does not believe they agree with the exact amount of the TIA study.

When they, as small property owners, design their projects ... they have to go along with zoning. They will have to conform with entry corridor overlay, to the City and NCDOT. She does not know for certain if the third driveway placement will affect their building, parking or driveway plans in the future but doesn't think her family should have to gamble on it. Ingles is a good neighbor as well as a positive business partner for Hendersonville and surrounding communities. This particular Ingles is what she calls "her Ingles store" but Ingles just does not need a third driveway entering their property.

As the adjoining property owner with a smaller parcel and limited development options for the future, located beside a potential traffic nightmare, she requested Council not grant the variance for the third driveway.

Mayor Pro Tem Collis asked how close the driveway is to her property. Ms. Neill stated their property butts against Ingles and Ingles own up to the trees. There is a 50-foot parcel and Ingles has another lot but they have to have their driveway 20 feet from the property line whereas their current plan is only 15 feet. She stated it is very close to the property line and she does not think it is needed and will impact their traffic which will not help them develop what they have.

Council Member Smith asked if traffic enters entrance #2, is it possible to immediately turn right and to get gas. Mr. Kendall stated no, because there has to be a stem. Council Member Smith stated, after 100 feet, can they turn and get gas. Mr. Cox stated 100 feet take the traffic to the back of the gas pumps. Council Member Caraker stated traffic would have to enter the pumps from the rear only. Mr. Kendall stated that is right, traffic should have to drive a complete circle. There was discussion of that entrance and NCDOT requirements, relief points. Mr. Cox stated it helps the flow around the gas express to have two points of entry. Council Member Smith stated traffic will be able to enter the second driveway to get gas. Mr. Kendall agreed and stated it will not be as safe ... because there are more cars in the same general vicinity trying to come in and out. Council Member Caraker stated another entrance would split the load. Mr. Kendall agreed. Council Member Smith commented if someone gets grocery, and then gas, that is exactly how they will come in. Mr. Kendall agreed stating also the people

coming in that entrance. He stated if that can be eliminated ... everyone wouldn't be coming from the same location. Council Member Stephens commented most people get the gas first.

With regard to entering the front or back of gas, Council Member Smith asked for an explanation of that. Council Member Caraker stated traffic can pull up to a pump two ways. Mr. Cox stated if everyone is pulled to the back side, then they are coming to four fueling positions whereas if you can bring them to both sides, it is easier to get all eight positions full. He stated most American cars' tanks are on the left, most foreign are on the right. He stated it is easier to fill the pumps up with two points of access. Mayor Volk stated it is easier but this is done at Sam's, you have to circle around and it works. She stated it is not ideal. They have two entrances but at the same end. Council Member Caraker stated it is a much bigger site to navigate on. He stated instead of four stations, they have six. Council Member Ron Stephens stated it does get jammed.

Council Member Smith asked Ms. Anderson if two driveways are allowed to be that close. Ms. Anderson stated she could not answer because NCDOT reviews the plans and issues the driveway permits. She does not know NCDOT's standards for separation of driveways. She stated they would have to submit plans to NCDOT for their review and give them a response. Mayor Pro Tem Collis stated probably not. Council Member Smith stated it would be a potential safety hazard to have some traffic turning left while other are trying to turn right. Mayor Pro Tem Collis commented there is no buffer between the two drives. Council Member Smith agreed stating the drives would only be 25 feet apart or less.

Mayor Volk asked for further questions. Council Member Smith commented there is a way to get to the gas without the third entrance. He stated he does not see it as absolutely necessary to have another entrance to be able to sell gas there. He stated if the storage was on their property, it would make a lot more sense. He stated where it is now, he doesn't see how it adds anything because additional storage will not be needed once you get by the traffic turning in to get gas. He didn't realize the parking storage was farther up because he has ever turned in right there. He stated no one turns in right there. He stated it is not just Ms. Neill's plan because it does not exist and may never exist but he questions the need for another entrance into Ingles when you can get gas. He stated he understands the idea of a circular flow trying to get traffic through but it is more stopping and going on the most traveled road in Hendersonville other than downtown.

Council Member Caraker commented if the third driveway is not put in, the traffic movements with the gas station will be miserable and may not be worth doing. He stated he appreciates Ms. Neill's comments but cannot consider what will occur in the future. Council Member Smith agreed.

Council Member Ron Stephens asked if Ms. Neill made her statements to the Planning Board. Ms. Neill responded that she didn't know about the Planning Board meeting. Mayor Volk commented she should have gotten notice for the neighborhood compatibility meeting. Ms. Anderson explained they are required to mail out notice to property owners within 400 feet of a project of the neighborhood compatibility meeting and for the City Council meeting but not for the Planning Board meeting. She stated there was not a notice mailed for the Planning Board meeting for this project.

Council Member Stephens commented if the neighbors' property was developed now and this would impact it, he could see a real issue but not knowing what will be there or if there will be an impact if developed. He stated they could develop south of there and there is some options there. He stated he sees the need for this for the gas operation. He stated it will be jammed if people have been to the grocery store and others want to leave, it may be a problem.

Council Member Smith commented if the pumps were in the middle of the store, like the other Ingles store, it would be easier to deal with. He stated having it on the corner is part of the challenge. Mayor Volk expressed concerns about turning in with no back up, if it will be that busy, it will block Asheville Highway to turn into that entrance. Council Member Ron Stephens stated there is no back-up now. Mayor Volk commented now there are only customers going into the grocery store. She stated if this is as popular as they say and she thinks it will be,

there will be a lot more people trying to get in to get gas and several cars may be backed up on Asheville Highway. Council Member Smith agreed stating more people will turn right instead of left plus the price of gasoline. Council Member Ron Stephens commented it is price instead of which side of the road. Council Member Smith commented many people would rather turn right. Council Member Ron Stephens stated he understands but if the price is less, they will make a left turn. Council Member Smith stated the convenience is turning right, rather than turning left, is a selling point, and agreed with Mayor Volk that more cars will be attracted to that corner.

Ms. Neill commented the setup on the Asheville Highway is the same as the Howard Gap Road Ingles. Mr. Kendall stated they have two roads there and they are on the corner of Howard Gap and High 64. He stated they have entrances off two different roads, two off of Howard Gap and one off Highway 64. Ms. Neill asked if they have three on one road. Mr. Kendall stated no, the two that were put in are similar to this to allow flow around the gas. He stated when they put gas in, they typically install three entrances at all of their stores. He stated if it is just a store, there may be only two. He stated in rare cases there may only be one in mountainous areas and it is the only possibility.

Mayor Pro Tem Collis commented the third entrance delineates the use for storage for the second entrance. Mayor Volk commented she stops at the Ingles on U.S. 74, and the gas is in the corner. She stated you go in and must circle around to get back out but it probably does not get as much traffic as this location would.

No one else expressed a desire to speak. Mayor Volk closed the public hearing at 8:00 p.m.

*Variance Request:* Council Member Caraker moved the City Council to grant a variance from Zoning Ordinance Section 5-18-4.3 Driveways, increasing the number of driveways a development parcel may have on any given road from two to three because it will make the gas pump addition on this project possible and safer. The vote was two in favor (Caraker, Stephens), three no. Motion failed.

*Amended Special Use Permit:* **Council Member Smith moved City Council to approve the application of Ingles Markets Inc., for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions: Driveway #2 turn lane is extended to the southern property line to maximize the turn lane and taper length. There was a unanimous vote of the Council followed. Motion carried.**

Mayor Volk commented she hopes they can work it out because she would like to see a gas station.

**13. Consideration of Adoption of Special Events Policy:** Mr. Lew Holloway, Main Street Director, gave a history of the establishment of the special events committee and presented a special events policy. He explained the definition of public assembly was removed in its entirety.

Mr. Holloway reported the Main Street Advisory Committee advocated for improved communication as it relates to all aspects of special events within the Municipal Service District. He reported the committee identified the need for a comprehensive policy, drafted a policy and sent it to the Special Events Committee for review. The draft policy has received endorsement from those two committees.

Mr. Holloway stated there is a special events ordinance in place which lays out the basic function of the Special Events Committee but there is no policy that defines the process. He stated the draft policy is designed to facilitate the special event planning process and to serve as a guide for event planners. He stated the draft policy defines the role of the Special Events Committee in special events planning, defines the role of the Main Street Advisory Committee, establishes the time line and specific requirements for the application process, establishes the necessary documentation and information required of each applicant and it establishes fees, deposits and special conditions would be applied to each event.

Mr. Holloway noted the ordinance will be amended that will reflect the structure of the Special Events Committee as shown in the policy. [This amendment will be placed on Council's July consent agenda.] **Council Member Smith moved City Council to approve the resolution adopting the Special Event Policy. A unanimous vote of the Council followed. Motion carried.**

Resolution #13-0634

A RESOLUTION TO ADOPT THE CITY OF HENDERSONVILLE SPECIAL EVENTS POLICY

WHEREAS, In 1971 the City Council of the City of Hendersonville formed a Special Events Committee whose purpose is to coordinate the variety of special events which take place in the City of Hendersonville and to protect the public health, safety and general welfare during these events, and

WHEREAS, On June 2, 2011 the City Council of the City of Hendersonville formed the seven member Main Street Advisory Committee and created the Downtown/Economic Development Director position for the City of Hendersonville to enact the Main Street Four Point approach and to provide City Council feedback on policy and procedures that impact the Municipal Service District, and

WHEREAS, The Special Event and Main Street Advisory Committees of the City of Hendersonville reviewed and endorsed the City of Hendersonville Special Event Policy, and

WHEREAS, The City Council of the City of Hendersonville values well planned and coordinated special events taking place in the City of Hendersonville, and

WHEREAS, The City Council of the City of Hendersonville values the need to weigh and consider the specific impacts of special events prior to their taking place.

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

Section 1. The City Council hereby adopts the City of Hendersonville Special Events Policy.

Section 2. The City Council recognizes that value of this document as a guide and informational resource for event planners working with the City of Hendersonville.

Section 3. This resolution shall become effective upon its adoption and approval.

Adopted the sixth day of June 2013.

/s/Barbara G. Volk, Mayor

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

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

### Special Events Policy

Executive Summary: The City of Hendersonville, NC is a vibrant community with a variety of municipal resources which lend themselves to use for special events. Special events require the coordination of a variety of city and event organizers resources to come together successfully. Whether held downtown, in one of our many attractive public parks or elsewhere in the city, they have very specific impacts which are best considered and weighed prior to the event itself. The following policy has been established to facilitate this planning process with the city. If you are planning a special event in the City of Hendersonville, it is essential that you review the policy well ahead of your planned event date to determine what you'll need to have in place for a successful event!

The City of Hendersonville's Special Event Policy:

1. Defines the role of the Special Events Committee in special events planning for the City of Hendersonville.
2. Defines the role of the Main Street Advisory Committee in special events planning for the City of Hendersonville.
3. Establishes the timeline and specific requirements for the City of Hendersonville's special event application process.
4. Establishes the necessary documentation and information required of each applicant for a special event permit.
5. Establishes what fees, deposits and special conditions will be applied to each event.

Special Events:

Application Timelines: The Special Events Committee hears all event applications no matter their location in the city. The timeline below outlines minimum requirements for Special Event Permit Applications.

Special Event Application - Submission & Approval Timeline

Minimum 90 Days Prior to Special Event Date – Application Submission

- Submission of Special Event Application Package
- Special Event Site Plan
- Street and/or Parking Closure Request(s)

Special Events Application Package must be submitted to Susan Frady – Special Event Committee Chairperson. Phone # 828.697.3010, Fax # 828.698.6185, E-mail: sfrady@cityofhendersonville.org, Address: 100 N. King St., Hendersonville, NC 28792.

Minimum 60 Days Prior to Special Event Date – Committee Review  
(Applicant Attendance Required)

- Main Street Advisory Committee Review & Recommendation (where applicable)
- Special Events Committee Review & Recommendation – includes review by Police, Fire and Public Works

Minimum 30 Days Prior to Special Event Date – City Council Meeting

- Final Site Plan, Event Timeline & On-Site Contacts
- Proof of Insurance
- Vendor Permits
- City Council Review & Approval (Required)

Post-Event

Maximum 30 Days After Last Day of Event

- Final Payment as needed
- Reserve Future Dates

Special Events - Definitions

A special event is defined as a pre-planned event, whether publicly and/or privately sponsored, which is proposed to be held on public property, including but not limited to parks, streets and/or sidewalks. All special events require a Special Event Permit issued by the City of Hendersonville. Special Events include, but are not limited to:

*Road Festival* means an organized neighborhood or public gathering on a public right-of-way (street, sidewalk or alley) on a specified date at a specific time, and confined to a designated area that may or may not require an admission fee to enter and participate.

*Procession/Parade* means a public or private march, run, cortege, walk, cavalcade, autocade, parade of any kind, other gathering of persons that occurs upon public right-of-way, park or both in an area used for vehicular traffic.

*Organized Competitive Event* means any planned race, walk, derby, or event, whether human powered or otherwise, that involves a contest of skill(s) and/or strength and takes place upon public right-of-way or park.

Special Events Application Package – Major Requirements

1. Event Application – See Appendix I: This is a basic collection of information including:
  - a. Name of Event
  - b. Event Organizer
  - c. Date(s) of Event
  - d. Contact Information
  - e. Public Benefit
  - f. Public Services required
2. Event Site Plan: The site map is a visual representation of all the operational event elements that you describe throughout the permit application. To properly assess the event, the site map should be submitted along with the Special Event Application and include the following elements:
  - a. Direction North, indicated by directional arrow symbol.
  - b. The overall event area including: any requested street closures and/or the location and number of any parking closures
  - c. The location and dimensions of all physical equipment being placed, including, but not limited to, any stage(s), vendors, booths, sponsors, tents, signs, barricades, portable toilets, vehicles, shelters and shelter numbers, etc.
  - d. Location of temporary alcohol sales where both sales and consumption occur.
  - e. Indicate 20' wide fire lane clearances in all areas and the location of all fire hydrants.
  - f. Include electrical plans for vendors and stages, specifying how much each site requires, in terms of amps & volts.
  - g. Any other details you think are helpful in the physical description of your event.

3. Vendor Applications: It is often the case that event organizers wish to have vendors selling food and crafts or other merchandise during an event. This is permitted via the City of Hendersonville's Code of Ordinances. Event organizers are required to submit a vendor permit application detailing the total number of vendors, categorized by type that will be a part of the event. Contact the City of Hendersonville Business Office for more information, 828.697.3052.

4. Insurance: The event organizer must furnish a current general liability insurance policy which names the City of Hendersonville as a co-insured on the policy. Insurance requirements are as follows:

- |      |                               |             |
|------|-------------------------------|-------------|
| a.   | Commercial General Liability: |             |
| i.   | Per occurrence                | \$1,000,000 |
| ii.  | Personal & Advertising Injury | \$1,000,000 |
| iii. | Products/Completed Ops.       | \$1,000,000 |
| iv.  | General Aggregate             | \$1,000,000 |

In addition to these minimum requirements certain events may require additional coverage, based upon the type of event. Examples of additional coverage could include Automobile Liability, Workers Compensation and Liquor Liability. Additional requirements will be conveyed to the event organizers.

#### Special Events Committee – Role & Responsibilities

This Committee is established to assure that all special event applicants follow the procedures outlined in this document and to provide assistance in event logistics as it relates to the health and safety of organizers and attendees at special events conducted within the City of Hendersonville.

Special Event applicants will submit their applications to the Committee Chair; Zoning Administrator Susan Frady, who will distribute copies to the committee according to the timeline outlined on page 3. They will then meet with the Special Events Committee at least 60 days prior to their event; event coordinators are encouraged to schedule this even earlier if possible. For events within the Downtown Municipal Service District, the Main Street Director will distribute copies to the Main Street Advisory Committee.

The Special Events Committee is made up of the following individuals:

1. Zoning Administrator – Committee Chairperson
2. Police Chief (or representative)
3. Fire Chief (or representative)
4. Public Works Director (or representative)
5. Main Street Director (Ex-Officio Member)

The Special Event Committee's primary role is to coordinate the variety of special events which take place in the City of Hendersonville and to protect the health and safety of the community. To do so the Committee:

1. Maintains a running list of events that includes those that have:
  - a. Received City Council approval.
  - b. Received Special Events and Main Street Advisory Committee (as applicable) Review and Recommendation.
  - c. Requested an annually recurring date and which have established historic precedent for this request. An example, The Apple Festival occurs over Labor Day weekend each year.
2. Provides a comprehensive review of the event site plan, identifying and providing event organizers with cost estimates for any city services and personnel that their event will require.
3. Reviews the event site plan and application to identify any life safety issues that the proposed event presents the community.
4. May approve recurring events which have no material changes to the event proposal.
5. May approve events which have no impact on the streets or sidewalks of the City of Hendersonville and do not require more than \$1,000 in city resources.

#### Main Street Advisory Committee – Roles & Responsibilities

The Main Street Advisory Committee is a City Council appointed volunteer group tasked with helping implement the Main Street Four Point model of downtown economic development. The committee has two primary roles in regards to Special Events as they are defined in this document.

1. The primary role of the Main Street Advisory Committee is to organize and oversee special events of their choosing which support the Committee's vision for Historic Downtown Hendersonville. The criteria used to guide the Committee in this role include, but are not limited to, the following:
  - a. Events should celebrate the community's culture, heritage and diversity.
  - b. Events should appeal to our diverse community.
  - c. Events should support the entrepreneurial and creative communities that call downtown home on a daily basis.

d. Events should support our efforts to highlight downtown as a cultural and market destination for the community & visitors.

2. The secondary role of the Committee is to guide the Downtown Special Events grant program which provides financial assistance to event organizers who apply. The total grant fund is determined on a yearly basis as funds allow and individual grants are for a maximum of \$500. Grant applications and timelines for the Downtown Special Events grant program can be obtained by contacting the Main Street Director.

3. The tertiary role of the Main Street Advisory Committee is to provide the Special Event Committee and City Council with recommendations and feedback in regards to any special event proposed for the downtown Municipal Service District that requires City Council approval. These recommendations and associated feedback will be presented to event organizers during the Special Events Committee meeting by the Main Street Director. Event organizers are encouraged to attend the Main Street Advisory Committee meeting at which their event will be reviewed to answer questions and hear feedback first hand.

#### Denial or Rejection of Special Event Permit Application

The Special Event Committee may recommend that City Council deny a permit application on one or more of the following grounds:

- Failure to submit an application within the time periods outlined herein.
- The application is incomplete.
- The applicant owes the City of Hendersonville money from another event, services provided or as a result of damages to city property.
- The Special Events Committee has already received a completed application for the same date and/or space.
- The use or the event would conflict with previously planned programs organized and conducted by the city or non-governmental agencies previously scheduled for the same time and/or place.
- The applicant does not comply with all applicable city ordinances, traffic rules, park rules and regulations, state health laws, fire codes and/or liquor licensing regulations.
- The use or event proposed by the applicant would present an unreasonable danger to the health or safety of the public.
- The applicant cannot comply with applicable local, state and federal license requirements for all or part of the planned event.
- The use or event is prohibited by law.
- The application contains material misrepresentation or fraudulent information.

The Special Event Committee will use the following priority list if there are conflicting requests for a particular time and date which arrive before the committee concurrently.

Priority will be given in the following order:

1. Events that have established historic precedence and are in good standing.
2. Events organized by the City of Hendersonville.
3. Events organized by Henderson County Schools.
4. Events organized by Hendersonville based non-profit organizations with proceeds providing assistance to the organizer or another Hendersonville based non-profit organization (requires proof of 501c(3) status).
5. Events organized by private businesses, non-profit organizations not based in Hendersonville, and/or individuals for the purpose of profit, personal gain, and/or proceeds that will be used to benefit other than those Hendersonville based non-profit organizations.

Council Member Caraker commented a client was very complimentary of the work on Main Street, bringing this program into the Planning Department and stated other cities should use Hendersonville as a model.

#### **14. Reports from Staff:**

**a. Meeting Announcements/Reminders:** City Clerk Tammie Drake reminded the Council of a Special Council Meeting on Monday, June 17, 2013, City Hall, 10:00 a.m. for Presentations on Mill Building Proposals.

#### **15. Consideration of Appointments to Boards/Commissions and Announcement of Vacancies:**

**a. Appointments for Consideration:** None.

**b. Announcement of Vacancies:** Mrs. Drake informed the Council of upcoming appointments on the Board of Adjustment and Main Street Advisory Committee and a vacancy on the Environmental Sustainability Board. **No action was taken.**

## **16. Comments from Mayor and City Council Members:**

**a. Scheduling of Special Meeting to Discuss Mill Building Proposals:** A special meeting was scheduled for Thursday, June 20, 2013, at 12:30 p.m., to discuss and possible make a decision if possible on the Mill Building Proposals. There was discussion of whether the meeting will be a closed session.

**b. Parking:** Council Member Smith reported he has received several contacts about the number of leased spaces in the Dogwood Parking Lot. He stated the Council discussed opening more leased spaces. Mr. Wooten stated per past direction from the Council, the free spaces will be metered spaces. Mr. Connet explained there are 20 spaces in the Dogwood Lot that have not yet been metered and could be available for lease. He stated there are 16 people on the waiting list for leased parking. He stated there are plenty of metered spaces available in the Dogwood Lot. There was discussion of leased parking rates. Mr. Connet explained the free spaces were being used by downtown employees who are now asking for leased spaces. Mayor Volk commented she would like to offer more leased spaces since most of the people who use it are at the north end of Main Street. Council Member Smith commented if the metered spaces are not filled, it doesn't make sense to make more metered spaces. Mayor Pro Tem Collis also commented there are spaces available for lease in privately-owned lots. There was some discussion of making the entire lot leased spaces and the rates for the leased spaces. Mayor Volk commented because installing meters moved some into the leased spaces, it results in more spaces for visitors and customers to park. She stated improved signage will direct people to parking.

**Council Member Smith moved Council to convert 20 spaces in the Dogwood Lot that are scheduled to get meters but do not have them, to leased spaces. A unanimous vote of the Council followed. Motion carried.**

**The Council further directed staff to compare the City's lease rates with other cities for future consideration.**

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

## **18. Closed Session:**

**At 8:27 p.m., Council Member Caraker moved Council to enter a closed session to establish, or to instruct the Council's staff or negotiating agent concerning the position to be taken by, or on behalf of the Council, in negotiating the price or other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease. A unanimous vote of the Council followed. Motion carried.**

The Council conferred with City Attorney Fritschner on the acquisition of property.

**At 8:33:13 p.m., Council Member Smith moved Council to exit the closed session. A unanimous vote of the Council followed. Motion carried.**

**Council Member Smith moved the City Council to authorize the City Attorney to finalize an agreement with Henderson County concerning the terms for the acquisition of the Jackson Park easement and the Mayor to execute the completed agreement consistent with the terms of the draft agreement. A unanimous vote of the Council followed. Motion carried.**

- **Fountain Discussion:** Council Member Ron Stephens asked about the problems with the fountain and why it has not yet been completed. Council Member Caraker explained the water pump specified for the fountain was

undersized and did not work. He stated work stopped because the electricity was not installed but now has been. He stated there is a dispute between the Engineering Department and the person who specified the pump. Council Member Caraker stated there was additional cost for the vault in the street to prevent stagnant water. He stated there is a filter, water source, backflow preventer, etc. in the vault to prevent maintenance problems in the future. He stated those additional costs were not included when the project was first discussed.

Council Member Caraker commented the secondary drains on the Skyland façade were eliminated because they couldn't make them work. He stated there have been some complaints on the work.

**No action was taken.**

**19. Adjournment: Being no further business, the meeting adjourned at 8:37 p.m. upon unanimous consent of the Council.**

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Barbara G. Volk, Mayor, City of Hendersonville

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Tammie K. Drake, MMC, City Clerk