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# AGENDA

CITY OF HENDERSONVILLE CITY COUNCIL – REGULAR MEETING

OCTOBER 3, 2013 – 5:45 P.M.

Council Chambers – City Hall

1. **Call to Order**
2. **Invocation and Pledge of Allegiance**
3. **Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda*
4. **Consideration of Agenda:**
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: September 5, 2013 Regular Meeting, September 18, 2013 Special Meeting
  - B. Consideration of Abatement of Nuisances
  - C. Consideration of Amendments to the 2012 Municipal Records Retention and Disposition Schedule
  - D. Consideration of Special Event Permits:
    - i. Downtown Hendersonville Turkey Trot
    - ii. Only Hope WNC, Inc. – Sleep Out
6. **Recognition of “Hendersonville Heroes”**  
*Presenter: City Manager John Connet*

- 7. Public Hearing – Consideration of Zoning Ordinance Text Amendment – Repealing Article X, Board of Adjustment and adopting a new Article X Board of Adjustment, and Amending Article VII Section 7-4-9 Special Use Review Public Hearing due to NC General Assembly Sessions Law 2013-126 (House Bill 276)**  
*Presenter: Ms. Sue Anderson, Planning Director*
- 8. Public Hearing - Consideration of Zoning Ordinance Text Amendment – of Article XVIII Mixed Use Zoning, Section 18-5-2 and 18-5-2.2, relating to the Alternative Design Committee**  
*Presenter: Ms. Sue Anderson, Planning Director*
- 9. Consideration of Amendments to System Development Charges Policy**  
*Presenter: Mr. John Connet, City Manager and Mr. Lee Smith, Utilities Director*
- 10. Consideration of Repairs to the Bridge on West Allen Street**  
*Presenter: Mr. Tom Wooten, Public Works Director*
- 11. Presentation of Pavement Condition Survey**  
*Presenter: Mr. Tom Wooten, Public Works Director*
- 12. Reports from Staff**
  - a. Update on Fire Station 2  
*Presenter: Fire Chief Dorian Flowers*
  - b. Update/Results of Downtown Parking Survey  
*Presenter: Mr. Lew Holloway, Downtown Economic Development Director*
  - c. Meeting Announcements/Reminders:  
*Presenter: Mrs. Tammie Drake, City Clerk*
    - October 9, 2013, Land-of-Sky Regional Council Annual Celebration
    - October 13-15, 2013, NCLM Annual Conference, Hickory Metro Convention Center
- 13. Consideration of Appointments to Boards and Commissions**  
*Presenter: Mrs. Tammie Drake, City Clerk*
  - a. Consideration of Appointments to Boards and Commissions (none)
  - b. Announcement of Vacancies and Upcoming Appointments: Historic Preservation Commission, Planning Board, WCCA Board of Directors
- 14. Comments from Mayor and City Council Members**
- 15. New Business**

**16. Closed Session to:**

**1) Discuss matters relating to the location or expansion of industries or other businesses in the area served by this body as provided under NCGS §143-318.11(a)(4) and**

**2) Establish or instruct the staff (or negotiating agent) concerning the position to be taken by or on behalf of the City Council in negotiating the price and other material terms of a contract for the acquisition of real property by purchase, option, exchange, or lease as provided under NCGS §143-318.11(a)(5), for the possible expansion of Wingate University's Hendersonville Campus on Grove Street, or both.**

**17. Adjournment**

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

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

Absent: Mayor Barbara G. Volk

Staff Present: City Manager John F. Connet, City Clerk Tammie Drake, City Attorney Sam Fritschner, Engineering Director Brent Detwiler, Zoning Administrator Susan Frady, Downtown Director Lew Holloway, Finance Director Jim Rudisill, Public Works Director Tom Wooten

**1. Call to Order:** Mayor Pro Tem Collis called the meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with four 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.*

Jerry David, 324 Benjamin Way, Hendersonville, NC, retired engineer specializing in water/wastewater and commented on item 10, system development fees. He explained the importance of these fees stating if costs are not paid for by the persons demanding the service, it will have to be paid by someone else.

Mark Ray, Dad's CATS, 26 Victoria Park Drive, gave update on clock restoration stating he is hoping for a mid to late October unveiling event. They are planning for a plaque and will continue collections, which have done well. He also reported he is restoring the station at Sixth and Main Street as a 1950s station to improve the impact of this intersection.

Guri Anderman, 140 Coral Drive, asked how the cost overrun for the public fountain was funded.

Eva Ritchey, 1928 Brevard Road, Hendersonville, brought up the issue of parking stating a long-range plan is needed. She asked if a decision about a parking deck was made without consulting the public. She complimented the City and City Manager on the parking meeting. She asked the Council to keep this issue moving forward.

Steve Dozier, 62 Beaverdam, Mills River, Chair of the Governmental Affairs Committee, Chamber of Commerce, commented the impact fees that have been in place for last six to nine months have an impact on businesses coming here. He stated the escalation is above what is typical for most communities. He stated the City needs to grow from a business standpoint and jobs are critical. He asked the Council to give serious consideration to make it more rational for businesses to come into the community.

Barbara Hughes, 315 N. Main Street, reported a very successful summer season and Apple Festival and credited the new streetscape. She expressed appreciation for the City's responsiveness. She asked for an update on the brown historical signs on the interstate. Mr. Wooten contacted Scott with NCDOT who is researching the request.

**4. Consideration of Agenda:**

- Addition to Hendersonville Heroes
- 19a. Consideration of Request to Waive all Fees Associated with the Use of the Baseball Field at Berkeley Mills Park for the Fall 2013 Baseball Season and to Reduce the Tournament Fees

**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:** July 25, 2013 Special Meeting and August 1, 2013 Regular Meeting

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

**C. Consideration of Beaver Management Program:** Mr. Connet explained the City has previously partnered with Henderson County to contract with the NC Department of Agriculture to manage the beaver population in Hendersonville. He reported Henderson County is willing to partner with the City again on this program. He requested authorization to pay up to 50% of the cost of the program. He estimated the budgetary impact for this program should not exceed \$2,500.

**D. Consideration of Authorizing Mayor Volk and Alternate John Connect as Voting Delegates for the NCLM meeting:** City Clerk Tammie Drake announced the Annual Business Meeting of the NC League of Municipalities will be held on October 15 at the Hickory Metro Convention Center. The League Constitution provides that each member municipality is entitled to one vote. The Board of Directors has established a policy that each municipality sending delegates to the annual conference may designate one voting delegate and one alternate voting delegate. Mayor Volk and City Manager John Connet are registered for the meeting and she requested that Mayor Volk be designated as the voting delegate for the City and Mr. Connect as the alternate voting delegate.

**E. Consideration of Budget Amendments:**

**1) Police Department: Funds received from the Governor's Highway Safety Program:**

Police Department: To appropriate the budget for the FY 2014 Grant for the Governor's Highway Safety Program in the amount of \$38,000.

**2) Water/Sewer Department: to provide funds for outstanding purchase orders from the last fiscal year that were re-appropriated in FY 2013-14:**

Water/Sewer Department: To provide funds for FY 2012-13 purchase orders that were outstanding at the end of the fiscal year and re-appropriated in FY 2013-14 in the amount of \$101,345.00

**F. Consideration of Disposal of City-Owned Property on Pace Road:** City Attorney Fritschner explained a pump station used by the City has been determined by Mr. Lee Smith to be unneeded for future use. A neighbor has indicated an interest in purchasing the property. Subject to the need to relocate a certain portion of the water line, Mr. Smith and City Manager are recommending disposition of this property in accordance with N.C.G.S. Chapter 160A Article 12, and particularly the private sale method authorized therein. Council action is required to initiate this procedure.

Resolution #13-0943

RESOLUTION AUTHORIZING THE DISPOSITION OF CERTAIN REAL PROPERTY BY NEGOTIATED OFFER, WITH  
UPSET BID PROVISIONS (N.C.G.S. § 160A-269)

WHEREAS, the City Council of the City of Hendersonville, North Carolina desires to dispose of certain property of the City as identified herein, and

WHEREAS, the Council desires to instruct the City Manager to initiate disposition of this real property in accordance with North Carolina General Statutes 160A Article 12,

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

- 1) The following described property is hereby declared to be surplus to the needs of the City:  
That real property consisting of 0.08 acres more or less and commonly referred to as the Sunrise Ridge Hydropneumatic Pump Station. The parcel is situated at 2401 Pace Road and is sometimes referred to as Henderson County PIN 9690-56-0227.
- 2) Subjects to the terms of this resolution the City Manager is authorized to dispose of the described property by negotiated offer, advertisement, and upset bids (N.C.G.S. 160A-269).
- 3) No minimum bid has been established for this property.
- 4) Sale of subject property will be subject to final City Council approval.
- 5) The City Manager shall not permit final disposition of this real property until in consultation with the Water and Sewer Director he is satisfied that a new portion of a water main is installed from Pace Rd. to a point on Sunrise Ridge Rd. where this new water main can be connected to the existing water main located inside the road right-of-way.

Adopted this fifth day of September, 2013.

/s/Barbara G. Volk, Mayor

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

**G. Consideration of Resolution Honoring Ellis Hankins, Executive Director of the NC League of Municipalities upon his Retirement:**

Resolution #13-0942

**RESOLUTION of the City of Hendersonville, North Carolina**

Whereas, S. Ellis Hankins, Executive Director of the North Carolina League of Municipalities, a leader in municipal government for nearly thirty years, has announced his retirement; and

Whereas, S. Ellis Hankins' career began with the North Carolina League of Municipalities in October, 1982 as Assistant General Counsel, he was promoted to Associate General Counsel and was then promoted to General Counsel and chief legislative lobbyist in 1987 and served in that position until departing the League staff in 1994, and then returned to the North Carolina League of Municipalities as its Executive Director in 1997; and

Whereas, the work of S. Ellis Hankins has benefitted the citizens, the cities and the towns in the State of North Carolina and includes: annexation, securing local revenues: additional local option sales taxes, reimbursements for repealed taxes, protecting State-collected local revenues, Water and Sewer funding through bond issues and revolving funds grants and loans through which the City of Hendersonville has benefitted, Land Use: zoning vested rights, manufactured home zoning and billboards; Transportation: specifically the Highway Trust Fund, Watershed Protection, ensuring good government through open meetings/public records, the Police Officers Bills of Rights, Local Government Employees Retirement System issues, Police and Firefighter Retirement and Police Special Separation Allowance; and

Whereas, S. Ellis Hankins also worked to promote good government in North Carolina through the League's non-partisan advocacy, insurance, and other services as directed by the membership; and

Whereas, the City of Hendersonville sincerely appreciates S. Ellis Hankins' efforts in reaching out to the western part of the State and hereby sends warm wishes and congratulations on his retirement.

Now, Therefore, Be It Resolved, by the City Council of the City of Hendersonville, hereby honors S. Ellis Hankins, of the North Carolina League of Municipalities, for his many years of faithful and dedicated service and lasting contributions to municipal government and congratulates him on his retirement.

Be It Further Resolved, that this resolution be made a part of the permanent records of the City of Hendersonville and that it be forwarded to S. Ellis Hankins.

/s/Barbara G. Volk, Mayor

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

## H. Consideration of Special Event Permits:

**i. St. James Episcopal Church Picnic:** Mrs. Susan Frady reported the Special Events Committee reviewed and voted unanimously to recommend the granting of a special event permit for the St. James Episcopal Church picnic. Their request is to close Bearcat Boulevard from N. Main Street to N. Grove Street on Sunday, September 15, 2013 for the church picnic. The picnic will extend from the church property across the street to the Bruce Drysdale School property. The request is to close this section of the street from 12:30 p.m. - 4:30 p.m. to protect foot traffic as they cross between the two properties.

**ii. "Walk a Mile in Her Shoes":** Mrs. Frady reported the Special Events Committee voted unanimously to recommend that Council approve the event permit for the Walk A Mile In Her Shoes Event to be held on Friday, October 11, 2013. Their request is to close Fifth Avenue from Main to Church Street from 3:30 p.m.-5:30 p.m. A parade will begin at 5:30 p.m. and will go from Mainstay to the Historic Courthouse. The change this year is that a beer tent for beer samples will be set up on Tom Fazio's private lot on Fifth Avenue. Beer samples will be available only at the tent from 4:30 p.m.-5:30 p.m. Mainstay has applied for a permit from the ABC Commission. The City of Hendersonville does not regulate the alcohol sales on private lots.

**I. Consideration of a Resolution Authorizing the City Attorney to File Actions Under NC General Statutes Chapter 40A with Respect to Certain Real Properties In Henderson County (Wolfpen Sewer Project):** City Attorney Fritschner reported the legal department is about to file the eminent domain actions required to acquire remaining properties to complete the Wolfpen sewer project. He explained the Council previously passed resolutions to authorize the filing of the eminent domain actions for this project but because of engineering changes since then, an additional resolution is required for certain additional properties.

Resolution #13-0944

### A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE ACTIONS UNDER N.C.G.S. CHAPTER 40A WITH RESPECT TO CERTAIN REAL PROPERTIES IN HENDERSON COUNTY

WHEREAS the City Council finds it necessary in order to complete the construction of a sanitary sewer project near U.S. Highway 64 East in Henderson County sometimes known as the Wolfpen sewer project,

NOW, BE IT THEREFORE RESOLVED that the City Attorney be and he is hereby authorized to file actions under N.C.G.S. Chapter 40A with respect to the following identified real properties.

#### Property Owner

#### PIN

McBride, Creig Robert and Wiggins, Tasha	9670-20-4932
Whaley, Kurt Philip and Graves, Edward Sunday	9670-52-2800
Whaley, Kurt Philip and Graves, Edward Sunday	9670-52-0848
Goforth, Darlene N.	9670-53-7299
Goforth, Darlene N.	9670-53-3586
Easlan Capital of Charlotte	9680-01-0113
Jeter P. Searcy, Jr.	9670-83-0248
Jeter P. Searcy, Jr.	9670-82-9712
Mt. Bean Growers, Inc.	9670-42-2817

Adopted this fifth day of September 2013.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, MMC, City Clerk

**J. Consideration of Waiving the Competitive Bidding Process in Accordance with NC General Statutes 143-129(g) for the Purchase of Recycling Carts and to Authorize the Public Works Director to purchase the Recycling Carts from Schaefer Systems International, Inc.:** Mr. Tom Wooten, Public Works Director, reported the City was awarded the Curbside Recycling Grant from the NC Department of Environment and Natural Resources. This grant will reimburse the City \$75,000 for the purchase of the recycling carts. American Recycling of WNC has also committed \$25,000 toward the purchase of the recycling carts.

Mr. Wooten reported Schaefer Systems International, INC. (SSI) has offered the City the option to piggyback on an existing cart order by the Town of Cary. The Town of Cary has already publicly advertised and approved the purchase of the same carts on March 26, 2013. NC General Statute 143-129(g) allows for this type of purchase but requires the governing board to waive the requirement to competitively bid the equipment before purchasing it. The City advertised this request for City Council to waive the competitive bidding process as required and placed a notice on the City's website.

Mr. Wooten reported the purchase price for the 65-gallon recycling carts is \$46.50 per cart including freight, and includes the City logo on both sides of the cart, UHF-RFID tag, assembly, distribution to the customer, recording of cart serial numbers in electronic format, and distribution of literature with the cart. He plans to order approximately 4,500 carts at a cost of \$209,250.

Mr. Wooten requested City Council's approval of: 1) the waiver of competitive bidding for the 65-gallon recycling carts, and 2) the purchase of the carts, as described.

**Council Member Smith moved approval of the items on the consent agenda as presented. A unanimous vote of the Council followed. Motion carried.**

**6. Recognition of "Hendersonville Heroes":** Mr. Wooten and members of the Martin Luther King Park Committee recognized inductees into the Martin Luther King, Jr. Memorial Park: Rev. Anthony and Kimbela McMinn, Tom Orr, Ronnie and Roxanna Pepper. A brick will be engraved with their names and placed in the park.

Police Chief Herbert Blake, recognized Officer Garrett Gardin as Officer of the Quarter.

**7. Public Hearing - Bond Issue, Consideration of Order Authorizing \$6,000,000 in Parks and Recreation Bonds and a Resolution Calling for the Referendum:** Mr. Jim Rudisill, Finance Director, explained this hearing continues efforts for the bond referendum that will be held on November 5, 2013. He presented the bond order for Council's consideration and a resolution calling for the bond referendum. He explained upon approval, a certified copy of the resolution will be submitted to the Board of Elections as well as the suggested ballot for its approval and submission to the State on September 6, 2013.

Mayor Pro Tem Jeff Collis announced this was the time and day fixed by the City Council for the public hearing on the order entitled "\$6,000,000 PARKS AND RECREATION BONDS" and that the City Council would immediately hear anyone who might wish to be heard on the questions of the validity of said order or the advisability of issuing said bonds.

No one appeared, either in person or by attorney, to be heard on the questions of the validity of said order or the advisability of issuing said bonds. No written statement relating to said questions were received.

Larry Rogers, representing Partners for Economic Progress, expressed displeasure against asking the citizens to borrow \$6 million to pay for the park upgrade. The new debt will add three cents to the current tax rate and commented on the City spending money.

No one else expressed a desire to speak. The public hearing was closed at 6:16 p.m.

Council Member Caraker explained the bond issue will allow the citizens to make their own decision about borrowing funds for the completion of Berkeley Mills Park. He voiced support of the bond issue. Council Member Smith agreed. Council Member Stephens disagreed and stated he supports the park improvements and would like to see it happen but prefers to make the improvements over time without a tax increase. He stated the Main Street improvements were just completed. He stated he trusts the public to make the decision but fears the City cannot get the word out and make it understood that taxes were not raised this year because savings were used to pay current debt. He believes a tax increase is imminent next year. Mayor Pro Tem Collis agreed with Council Member Caraker stating he served on the Parks and Green Space Committee and saw the public's interest. He agreed the safest way is to let the public make the decision.

**Upon motion of Council Member Jerry Smith, the order introduced and passed on first reading on August 1, 2013 entitled "ORDER AUTHORIZING \$6,000,000 PARKS AND RECREATION BONDS" was considered a second time. The vote upon the final passage of said order was: three in favor (Collis, Caraker and Smith) and one opposed (Stephens). Motion carried.**

The City Clerk was directed to publish the order, together with the appended statement as required by The Local Government Bond Act, as amended, once in the Hendersonville Lightning.

**Council Member Jerry Smith introduced the following resolution the title of which was read and copies of which had been previously distributed to each Council Member:**

Resolution #13-0945

**RESOLUTION CALLING FOR A BOND REFERENDUM**

BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina (the "City"):

Section 1. A bond referendum is hereby called to be held on Tuesday, November 5, 2013, at which there shall be submitted to the qualified voters of the City the question stated in the form of ballot set forth in Section 4 of this resolution.

Section 2. For said referendum, (i) the registration records for elections in the City shall be used, and the registration records shall be open for the registration of qualified persons and for public inspection in the manner, under the conditions and at the times and places provided by the Henderson County Board of Elections, (ii) the chief judges, judges and assistants appointed by the Henderson County Board of Elections for the several precincts and voting places in the City shall be the precinct officers for such precincts and voting places and (iii) the precincts and voting places shall be that fixed by the Henderson County Board of Elections, subject to change as provided by law. The Henderson County Board of Elections is hereby requested to conduct said referendum in the City and to take all necessary steps to that end in accordance with the provisions of this section.

Section 3. The City Clerk shall cause a notice to be published in the Hendersonville Lightning once at least fourteen days before October 11, 2013 (being the 25th day prior to said referendum), and once again not less than seven days before said day, such notice to read substantially as follows:

**NOTICE OF BOND REFERENDUM**

in the

**CITY OF HENDERSONVILLE, NORTH CAROLINA**

A bond referendum will be held in the City of Hendersonville, North Carolina on Tuesday, November 5, 2013 regarding approval of not to exceed \$6,000,000 PARKS AND RECREATION BONDS of said City. The proceeds of said Parks and Recreation bonds would be used for improving and expanding the existing parks and recreational facilities of said City and acquiring and constructing new parks and recreational facilities of said City, inside and outside its corporate limits, including, without limitation, the acquisition of any land, rights of way and equipment, all as more particularly detailed in the bond order adopted by the City Council of said City on September 5, 2013. If said Parks and Recreation bonds are

issued, taxes in an amount sufficient to pay the principal and interest thereof may be levied upon all taxable property in the City of Hendersonville, North Carolina.

The referendum will be conducted by the Henderson County Board of Elections. The last day for new registration of those not now registered to vote is Friday, October 11, 2013. For further information and questions regarding said referendum, voter registration, procedures for those residents who have changed residences from the date of the last election, voting by absentee ballot, one stop voting and polling places, please contact the Henderson County Board of Elections, 75 East Central Street, Hendersonville, North Carolina 28792, (828) 697-4970.

The Henderson County Board of Elections' website is <http://www.hendersoncountync.org/elections/>.

Robert Heltman  
Chair, Henderson County Board of Elections  
Tammie Drake  
City Clerk, City of Hendersonville, North Carolina

Section 4. The form of the ballot to be used at said referendum shall be substantially as follows:

OFFICIAL BALLOT

BOND REFERENDUM

CITY OF HENDERSONVILLE, NORTH CAROLINA

November 5, 2013

Instructions

- a. To vote IN FAVOR OF THE ORDER, complete the arrow at the right of the word "YES."
- b. To vote AGAINST THE ORDER, complete the arrow at the right of the word "NO."
- c. If you tear or deface or wrongly mark this ballot, return it and get another.
- d. Use only the pen or pencil provided.

Shall the order adopted on September 5, 2013, authorizing not exceeding \$6,000,000 PARKS AND RECREATION BONDS of the City of Hendersonville, North Carolina, for the purpose of providing funds, together with any other available funds, for improving and expanding the existing parks and recreational facilities of said City and acquiring and constructing new parks and recreational facilities of said City, inside and outside its corporate limits, including, without limitation, the acquisition of any land, rights of way and equipment, and authorizing the levy of taxes in an amount sufficient to pay the principal of and the interest on said bonds, be approved?

YES [ ]

NO [ ]

[Facsimile of signature]

Chairman of the Henderson County Board of Elections

Note: Language on the ballot should reflect the method of voting used by the Henderson County Board of Elections.

Section 5. The City Clerk is hereby directed to mail or deliver a certified copy of this resolution to the Henderson County Board of Elections within three days after the adoption hereof.

Section 6. This resolution shall take effect upon its passage.

**Thereupon, upon motion of Council Member Jerry Smith, the foregoing resolution entitled "RESOLUTION CALLING A BOND REFERENDUM" was passed by the following vote: three in favor (Collis, Caraker, Smith) and one opposed: (Stephens).**

**8. Public Hearing - Consideration of Zoning Ordinance Text Amendment, Article V Zoning District Classifications, Section 5-2-1 Permitted Uses and 5-3-1 Permitted Uses, adding "Farm Stands" as a permitted use to the R-20 Low Density Residential Zoning District and to the R-15 Medium Density Residential Zoning District and Amending Article XII to define "Farm Stands":**

This public hearing was continued from the August 5 Council meeting. Mr. Sam Fritschner, City Attorney, addressed the Council explaining he was not aware of a NC General Statute regarding the City's inability to zone agriculture property in the extraterritorial jurisdiction at the time he proposed this amendment. He stated neither would this affect any existing property in the City. There was discussion on why the City would adopt this amendment and whether it would show support of agriculture. Mr. Connet explained because agricultural uses are now treated as bona fide farms not regulated by the City, adopting the amendment would not show support of agriculture nor does the amendment apply to any property in the City.



Section 5. The Finance Officer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the requirements of the grantor agency, the grant agreements, and federal regulations. The terms of the bond resolution also shall be met.

Section 6. Funds may be advanced from the Water and Sewer Fund for the purpose of making payments as due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.

Section 7. The Finance Officer is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and on the total grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this capital project in every budget submission made to this Board.

Section 9. Copies of this capital project ordinance shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and the Finance Officer for direction in carrying out this project.

Adopted the fifth of September 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 Possible Changes to System Development Charges:** Mr. John Connet, City Manager, commented staff has worked hard throughout the past two months to show Council some alternatives for system development charges. He introduced Dennie Martin with Martin McGill Management Consultants. He asked the Council to receive the information and provide guidance and then direct staff to meet with stakeholders to receive public input.

Mr. Dennie Martin addressed the Council stating the City Manager asked them to provide information to the Council to be able to identify and evaluate options for dealing with system development charges. He introduced Mr. Steve Miller to provide the information to help narrow down alternatives.

Mr. Miller presented a report to the Council and gave an overview of system development charges. He explained system development charges are applied to new connections, residential and/or commercial users, and do not affect existing users. These charges may be based a number of techniques: meter size, number of bedrooms, flows, etc. and there are no laws about how the fees should be charged but laws do allow the creation of the fees.

Mr. Miller explained how the fees are used in North Carolina, most fees are based on meter sizes or fixed charges. He stated the average water system development fee in North Carolina is \$1,000 for a residential connection and \$1,300 for a residential sewer connection.

Mr. Miller reported they studied several types of ways to develop these fees and reviewed the two recommended methodologies: 1) the Equity methodology: the American Water Works Association methodology which utilizes values of the water and sewer systems and the number of residential and commercial users. 2) Using the same technique but with a partial value of the water and sewer system instead of the entire value. He explained the equity methodology requires developing an estimated value of the water system and sewer system, after debt, and dividing it by the residential equivalent units (REU).

Mr. Miller stated they developed an estimated net value of the water system of approximately \$83 million, including debt, using appreciation information and GIS information and almost \$29 million for the sewer system, including debt. He stated the number of REUs are divided into the values to get a value of the system per REU. He stated a REU is comprised of all the residential connections in the city and non-residential connections by converting them into residential connections.

Based on the full value of the system, he stated there are approximately 44,534 water REUs (an equivalent of (rounded) \$1,900 ) and 17,270 sewer REUs (an equivalent of (rounded) \$1,700) which gives the baseline fee for a ¾-inch connection for the system. He explained meter sizes may be compared to each other based on the ratio of flow to base the larger fees. For lower fees, a partial value (75 percent) of the system may be used to determine fees.

Mr. Miller stated in the past, the system development charges have produced, on average, approximately \$300,000 per year which is equivalent to a 2 percent increase in current water and sewer rates so it is important.

Mr. Miller stated the methodology is a starting point, easy to understand, defensible and will generate money for the system.

Mr. Miller reviewed a sample of the charges for various types of users and the fees charged by other providers stating most use meter size to determine the system development charge. There were questions/comments from the public regarding fees sufficient to pay for future plant capacity, existing customers should not be responsible for paying debt service on a plant expansion, and fees should go toward future expansion. Mr. Lee Smith, Utilities director, explained the connection rate is difficult to predict each year. He stated staff aims for a threshold of 50 percent in capital reserve and 50 percent through rates or financing. He stated the cost of a future expansion is an unknown. Discussion followed on fees covering the cost of plant expansion.

In discussion, Council Member Caraker voiced support of alternative #2, basing system development charges on a 75% value of the system because it generates revenue for system improvements and is reasonable for residential users and favorable for high water users. He stated this method also makes residential users as responsible as high water users for expanding the system. He asked that language be contained in the policy that the Council may negotiate with high water users, perhaps tied to a number of jobs, for economic development reasons. He stated the current charges weigh heavily in favor of residential users and the City should encourage businesses to locate here and this method would accomplish that. Discussion followed on potential users. Council Member Smith commented most businesses saved money under the previous system and the City may not have generated the capital needed to expand the system. He agreed the suggested method is geared toward the residential user who should be paying for their portion of the system. Mayor Pro Tem Collis agreed with Council Member Smith. There was discussion of car washes that recycle water, and Council Member Caraker suggested implementing policy measures to attract businesses.

Mr. Connet commented staff will also be working on the policy and will continue to work with Mr. Martin to address the questions as they meet with the stakeholders. **No action was taken.**

**11. Consideration of Proposed Permitting Procedure Associated with the Small Water Meter Box Access Program:** Mr. Lee Smith, Utilities Director, presented a permitting process developed by staff, per Council's direction, that allows authorized individuals access to meter boxes in order to install shut-off valves for customers in a more timely manner. On July 11, 2013 City Council approved an amendment to the City Code (Chapter 52, Article I, Section 52.13) that authorizes City staff to allow other individuals, other than City staff, to access these meter boxes.

Mr. Lee Smith explained part of this permitting process will involve a brief training course that will provide those accessing these meter boxes the knowledge required to work safely around the equipment inside these boxes. Under the draft policy, the training will be required for every individual accessing these small, metered services. Because this training and permitting will require staff time, he proposed a \$50 annual fee be assessed to each company or corporation desiring to participate in this program. One key will be provided with the permit and additional keys are \$10 each. He stated insurance coverage will be required in the event of damage on the customer's property. He suggested the policy require a monthly report from these individuals so staff knows who has cut-off valves and have an inventory of meter box type.

There was discussion of the annual permit fee and the monthly report. Council Member Stephens voiced an issue with the fee because the City put this system in and if others are not allowed in the meter boxes, the City will have to have more staff, trucks, and employees available after hours. He stated they are helping the City and asked why we would charge them. Mr. Lee Smith explained there are costs to administer the program and the policy mimics the septic program. Discussion followed on other fees that have to be paid to do business in the City. After discussion of the fee and required reports, **Council Member Caraker moved Council's approval of the proposed permitting procedure and associated one-time administrative fee of \$50, associated with the small meter box access program, along with a free tool for the first \$50; and \$10 for each additional person that is licensed and supervised by a licensee to open meter boxes. A unanimous vote of the Council followed. Motion carried.**

**12. Consideration of the Donation of Real Property, Under Special Conditions, to the Boys and Girls Club:** Mr. Sam Fritschner, City Attorney, explained the building of the Boys and Girls Club is situated on three adjoining lots owned by different entities. The center lot is owned by the Boy's and Girls Club and the other lots are owned by the City of Hendersonville.

City Attorney Fritschner presented a deed, at the suggestion of the City Manager, that will deed those lots to the Boys and Girls Club. He stated the deed contains no warranties and contains a reversionary clause whereby if the Boys and Girls Club, or successor organization, stops performing the function for which they were originated, the property will revert back to City ownership.

Council Member Smith explained he asked to ensure the property always functions as a Boys and Girls Club by the deed, and if not, the property will revert back to the City. City Attorney Fritschner stated he removed references to a successor organization and included language that it must carry on the purposes for which the Boys and Girls Club of America was organized, including specifically as its core function, the operation of after-school programs designed to enhance and enrich the formal educational experience of boys and girls of Henderson County.

**Council Member Smith moved the City Council authorize the Mayor to execute the deed transferring to the Boys and Girls Club of Henderson County/Hendersonville, Incorporated, the property on which the club's building is situated including it must carry on the purposes for which the Boys and Girls Club of America was organized, including specifically as its core function, the operation of after-school programs designed to enhance and enrich the formal educational experience of boys and girls of Henderson County. A unanimous vote of the Council followed. Motion carried.**

**13. Consideration of Proposed Amendments to Chapter 26, Article II, of the City Code of Ordinances, to Reflect Changes to the NC General Statutes, Enhancing the City's Ability to Deal with Nuisances and Transferring the Appeal Process to the Board of Adjustment:** Mr. Sam Fritschner, City Attorney, presented amendments to Chapter 26 of the City Code to reflect changes of the NC General Statutes at the request of Mrs. Susan Frady, Zoning Administrator. He explained there were previous changes to the nuisance ordinance regarding extended notice provisions. If the nuisance recurred within six months of the original notification, the City considered it as the owner already receiving noticed. He explained NCGS has extended that period to one year and one notice will continue throughout an entire year.

City Attorney Fritschner explained another amendment to the ordinance that the City Council no longer has to authorize the remedy of the nuisance, it may be done by the City Manager or Zoning Officer. He stated there is an appeal process in place and an amendment to make noticing easier. He stated these amendments are designed to make the nuisance abatement process easier for the Zoning Department.

Mrs. Frady explained these amendments stemmed from a complaint about how long it took to remedy a particular nuisance. She stated it is possible that it could take up to 45 days to remedy a nuisance, depending on when the complaint is received. She stated these amendments will help streamline the process. She stated although the

appeal process has not been used, a person may make an appeal to a body other than City Council with this amendment.

**Council Member Caraker moved Council to adopt the proposed amendment to the Code of Ordinances, Chapter 26, Article II, respecting the remedy of nuisances. A unanimous vote of the Council followed. Motion carried.**

Ordinance #13-0948

**AN ORDINANCE AMENDING CHAPTER 26 ARTICLE II OF THE CODE OF ORDINANCES  
PERTAINING TO NUISANCES**

WHEREAS, the Code of Ordinances Chapter 26 Article II provides for the abatement and control of nuisances, and

WHEREAS, the General Assembly has amended the North Carolina General Statutes with regard to control of nuisances, and

WHEREAS, the changes to the North Carolina General Statutes require a change to the City Code of Ordinances, and

WHEREAS, the City Council has determined that the City's process to control nuisances should be changed to speed up the hearing and appeal process;

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

SECTION 1. Chapter 26, Article II of the Hendersonville Code of Ordinances is hereby amended as follows:

Sec. 26-36. Authority of article.

This article is enacted pursuant to G.S. 160A-193.

Sec. 26-37. Deemed unlawful.

It shall be unlawful for the owner or occupant of any lot, residence, parcel of land or other building within the city limits to permit to exist on any such lot, residence, building or parcel of land, any condition which is dangerous or prejudicial to the public health and which may be declared to be noxious or constitute a nuisance.

Sec. 26-38. Enumeration.

The existence of any of the following conditions, among others, on any lot, parcel of land, residence or building is, among any other conditions, hereby declared to be noxious, dangerous and prejudicial to the public health and to constitute a nuisance and to be violative of the provisions of this article:

1. Any growth of weeds or grass to a greater height than 24 inches.
2. Any accumulations of animal or vegetable matter, or any other material, which is offensive by virtue of strong odors, vapors, deterioration or decay, or has become infested with rats, mice, snakes or vermin of any kind.
3. Any other condition which to a person of reasonable intelligence and discretion would constitute a condition dangerous or prejudicial to the public health.
4. Any accumulation of trash, refuse, junk or other discarded material not either placed in an authorized receptacle with a reasonable expectation that it would be collected for disposal or recycling or stored in an authorized solid waste or recycling facility.

Sec. 26-39. Notice to abate.

- a. Whenever it shall come to the attention of the code enforcement officer that there exists on any lot, parcel of land, residence or other building in the city and of the conditions enumerated in this article, he shall forthwith give the owner or occupant thereof notice, served upon such owner or occupant in person, by certified mail and with return receipt requested. or if such service by mail cannot be had after a reasonable attempt is made, then by publishing the notice in a newspaper regularly published in the county once a week for two consecutive weeks, that such condition exists and that such owner or tenant shall have 15 days from the date of such service of notice in person, by mail, or from the final date of publication of such notice, during which to remedy the nuisance condition, or the city shall cause the nuisance condition to be remedied. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

b. If any person has, within any six-month period, one year period, been notified more than once of the existence of any condition constituting a violation of any subsection of section 26-38, such repeated notification of a violation of any such subsection shall constitute continuing notice of a violating condition for a period of six months period of one year following any such repeated notice. In such event no notification or waiting period by the city shall be prerequisite to the remedies provided in this article or elsewhere in this Code. The city shall, without further notice remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes.

c. If any condition is determined by the code enforcement officer is constitute a condition seriously dangerous or seriously prejudicial to the public health or safety and if such condition is such as to demand urgent or immediate corrective action, no notice need be given pursuant to this section or otherwise, except as required by applicable law, the United States Constitution or the state constitution. The city shall in such case have all remedies available in relation to such condition as are provided in this article or otherwise by ordinance and applicable law, which remedies shall be cumulative to the greatest extent permitted by law. Any action commenced by or on behalf of the city may be brought in any division of the state general court of justice permitted by state law.

Sec. 26-40. Abatement by city.

If the person upon whom such notice is served fails, neglects, or refuses to remedy the condition constituting a nuisance within the time permitted, the code enforcement officer shall certify such fact to the city council, who shall forthwith cause such condition to be remedied. under the direction of the code enforcement officer. In the event of a condition described in subsection 26-38(3), either the city manager or the city council code enforcement officer may cause the condition to be remedied. under the direction of the code enforcement officer.

At any time before the expiration of the 15 days abatement period specified in 26-39 (a), the respondent may request a hearing before the Board of Adjustment to appeal the finding of the inspector that a public nuisance as defined in section 26-38 exists on the premises. Upon completion of the hearing, the Board of Adjustment shall consider the evidence before them and shall, either revoke the initial order, issue a final order which differs from the initial order, or reinstate the initial order as a final abatement order.

Any request for a hearing pursuant to this section must be in writing and must be filed in the office of the code enforcement officer. The code enforcement officer shall fix a time for a hearing with the Board of Adjustment, and the initial abatement order shall be temporarily suspended pending such hearing. The hearing must be held by the Board of Adjustment within 31 calendar days following receipt of the request for hearing by the office of the code enforcement officer. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings which supported the abatement order or the removal of the nuisance condition.

Sec. 26-41. Assessment and collection of city's cost.

The actual costs incurred by the city in remedying any condition under this article shall be the actual cost of such proceedings and shall be paid by the owner or occupant of such lot, parcel of land, residence or other building, and, if not paid, shall be a lien upon the lands or premises where the nuisance was declared to be and shall be collected as unpaid taxes.

Secs. 26-42—26-75. Reserved.

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 fifth day of September 2013.

/s/Barbara G. Volk, Mayor

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

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

**14. Consideration of Changes to Alleyways in Downtown:** Mr. John Connet, City Manager, gave a history of changes to alleyways in downtown to slow traffic. He stated a concern was again raised about pedestrian safety at intersections of alleyways and streets. He presented options of installing speed bumps to slow the traffic down prior to the sidewalk. He recommended the installation of ten rubber speed bumps. There was discussion of where the speed bumps will be placed. Mr. Wooten responded they will be placed close to the white thermoplastic strips at the exits of the alleyways which may be an issue with the snow plows.

**Council Member Smith moved City Council direct the Public Works Director to install speed bumps at the exits of the Wall Street and Edward Street Alleys at a not to exceed cost of \$3,400. A unanimous vote of the Council followed. Motion carried.**

**15. Consideration of Request of Main Street Advisory Committee to Rename the Committee to the “Downtown Advisory Committee”:** Mr. Lew Holloway, Main Street/Economic Development Director, submitted a request by the Main Street Advisory Committee for renaming of the committee for clarification purposes. He explained it also reflects the desire on the part of the committee to accurately convey their interest in the downtown municipal service district as a whole including properties along the avenues, Church and King Streets. **Council Member Smith moved City Council to rename the Main Street Advisory Committee and Main Street/Economic Development Director to the Downtown Advisory Committee and Downtown Economic Development Director respectively. A unanimous vote of the Council followed. Motion carried.**

## **16. Reports from Staff**

**a. Update on Downtown Hendersonville:** Mr. Lew Holloway, Downtown Economic Development Director, provided a report on the history, new initiatives and goals of the Downtown Advisory Committee, special events and statistics for downtown. Council Member Smith complimented the design and lighting of the new sign on Main Street and Luther Smith and Associates. **No action was required.**

Council Member Smith requested the description of the fountain be placed on the fountain as soon as possible. Mr. Holloway responded they are working on the refinement of a plaque for the fountain.

**b. Meeting Announcements/Reminders:** October 13-15, 2013, NCLM Annual Conference, Hickory Metro Convention Center: Mrs. Tammie Drake, City Clerk, reminded the Council of this training event. **No action was required or taken.**

## **17. Consideration of Appointments to Boards and Commissions**

**a. Consideration of Appointments to:**

**Board of Adjustment:** Mrs. Tammie Drake, City Clerk, announced the expiration of terms of two members on the Board of Adjustment. **Council Member Smith moved to reappoint Mr. James Phelps as alternate and Mr. Roger Woolsey for a three-year term on the Board of Adjustment. These terms will expire 09-01-16. A unanimous vote of the Council followed. Motion carried.**

**Environmental Sustainability Board:** Mrs. Tammie Drake, City Clerk, announced the expiration of terms of three members on the Environmental Sustainability Board. **Council Member Stephens moved to reappoint Mr. Jim Kane, Mr. David Allen and Mr. Steven Orr to the Environmental Sustainability Board. These terms will expire 09-01-15. A unanimous vote of the Council followed. Motion carried.**

**b. Announcement of Vacancies and Upcoming Appointments:** There was none.

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

Council Member Smith answered Ms. Guri Andermann’s question of how the overage for the fountain was paid for. He stated the City used contingency funds to cover the fountain and sidewalk bond funds were used to pay for the sidewalks in the construction. **No action was required or taken.**

## **19. New Business**

**a. Consideration of Request to Waive all Fees Associated with the Use of the Baseball Field at Berkeley Mills Park for the Fall 2013 Baseball Season and to Reduce the Tournament Fees:** Mr. Connet presented requests to waive the fees associated with the use of the baseball field at Berkeley Mills Park and to reduce the tournament fees. He explained he discussed the reduction of fees instead of waiving all fees with those making the requests. He noted the tournaments have a profit-making component for individuals and groups.

Council Member Smith suggested reducing the player fee for the fall league and leave the tournament fee as is. He explained these are separate entities. He also expressed appreciation for the funds the Council has spent on the baseball field and remarked on the great condition of the field now.

**Council Member Smith moved the Council to reduce the per player fee from \$20 to \$10 for the fall 2013 baseball season for the Babe Ruth Baseball League. A unanimous vote of the Council followed. Motion carried.**

**20. Closed Session to Consult with the City Attorney:** Council Member Caraker moved the City Council enter a closed session to consult with an attorney employed by the Council in order to preserve the attorney client privilege between the attorney and the Council [as provided under NCGS §143-318.11(a)(3)]. **The Council entered closed session upon unanimous consent.**

The Council consulted with the City Attorney to consider and give instructions concerning a potential claim, administrative procedure, or judicial action.

Upon exit of closed session, **Council Member Caraker moved the City Council appropriate \$249,082 from the utility fund reserves to reduce the Brightwater Community's monthly payment from \$25.38 to \$16.77 and the lump sum payment from \$4,995 to \$3,574 for existing residents and \$4,071 for new customers. A unanimous vote of the Council followed. Motion carried.**

**21. Adjournment:** The meeting adjourned at 8:21 p.m. upon unanimous consent of the Council.

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Barbara G. Volk, Mayor

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Tammie K. Drake, City Clerk

**Return to  
Agenda**

**September 18, 2013  
Special Meeting of the City Council  
Second Floor Conference Room – City Hall**

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

The purpose of the special meeting was to: hold a closed session for the purpose of considering the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee as provided under NCGS §143-318.11(a)(6).

**1. Call to Order:** Mayor Volk called the meeting to order at 6:30 p.m. A quorum was established with all five members in attendance.

**Council Member Caraker moved Council to enter a closed session for the purpose of considering the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee as provided under NCGS §143-318.11(a)(6). A unanimous vote of the Council followed. Motion carried.**

The Council conducted the annual performance review of the City Attorney.

At 7:45 p.m., **Council Member Caraker moved Council to exit the closed session. A unanimous vote of the Council followed. Motion carried.**

**The City Council approved a cost-of-living increase for this fiscal year for the City Attorney.**

**Adjournment:** Being no further business, the meeting adjourned at 7:45 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



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Susan G. Frady

**Department:** Zoning

**Date Submitted:** 09/25/13

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05b

The following nuisances were sent prior to the amendment to the City Code last month and therefore, need city council approval.

Pursuant to Section 26-40 of the City Code of Ordinances, I request approval for the City to cause certain nuisances to be remedied and to assess the actual cost to the property owner. By this memorandum, I certify that the following property owners have been notified of a nuisance condition by certified mail and have failed to take corrective action:

- 1) Stewardship Fund LP – 616 Ashe Street
- 2) Annie Pearl Brown – 96 Kay Thomas Drive
- 3) Eastside Associates LLC – 1828 N. Main St. & vacant lot Signal Hill Rd.
- 4) Stephen & John Rhode – 802 N. Whitted Street
- 5) Hope Development Management – 110 Gravel Street
- 6) Nationstar Mortgage – 207 Ewbank Drive

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move that the City Council approve abatement by the City of the nuisances as listed and that the cost be assessed to the property owner.

Attachments:



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Tammie Drake

**Department:** Administration

**Date Submitted:** 09/25/13

**Presenter:** Tammie Drake

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05c

Consideration of Amendments to the 2012 Records Retention and Disposition Schedule: The State Archives of North Carolina, Division of Cultural Resources, has recently published amendments to the 2012 Municipal Schedule. They tend to publish amendments when the law changes, when they learn of records that weren't created before or were not on the schedule, or they realize the language in the previous schedule needs clarification.

The amendments include:

- o Adds Accreditation Records to the schedule
- o Clarifies language for retention period of employee eligibility records to match the U.S. Code
- o Consolidates three different types of leave records

The City Council adopted the latest Records Retention and Disposition Schedule in December 2012. When adopted, this schedule sets forth the standards for retaining and destroying public records. Without it, the City would be obligated to obtain DCR's permission to destroy any record.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move Council's approval of the Resolution adopting amendments to the 2012 Records Retention and Disposition Schedule issued by the NC Department of Cultural Resources.

**Attachments:**

Resolution, Amended pages

Resolution 13-\_\_\_\_\_

**RESOLUTION ADOPTING AMENDMENTS TO THE 2012 RECORDS RETENTION AND  
DISPOSITION SCHEDULE ISSUED BY THE NC DEPARTMENT OF CULTURAL RESOURCES**

WHEREAS, The City Council of the City of Hendersonville adopted, by Resolution 12-1238, the 2012 Municipal Records Retention and Disposition Schedule issued by the North Carolina Department of Cultural Resources, Division of Archives and History, Archives and Records Section, Records Services Branch dated September 10, 2012 along with the staff-recommended agency policy, and

WHEREAS, the North Carolina Department of Cultural Resources, Division of Archives and History, Archives and Records Section, Records Services Branch has issued the following amendments:

1. STANDARD 4. BUDGET, FISCAL AND PAYROLL RECORDS - Amending item 32 Escheat and Unclaimed Property File (as shown on substitute page 29).
2. STANDARD 12. PERSONNEL RECORDS:
  - a. Adding item 1-A Accreditation Records as shown on substitute page 101.
  - b. Amending item 19 Employee Eligibility Records as shown on substitute page 105.
  - c. Amending items 36 Family Medical Leave Act (FMLA) Records, 42 leave File, and 43 leave Without Pay File as shown on substitute pages 110-111.

WHEREAS, In accordance with the provision of Chapters 121 and 132 of the North Carolina General Statutes, the City Council hereby agrees that the records do not and will not have further use or value for official business, research, or reference purposes after the respective retention periods specified in the Record Retention and Disposition Scheduled and are authorized to be destroyed or otherwise disposed of by the agency or official having custody of them without further reference to or approval. However, records subject to audit or those legally required for ongoing official proceedings must be retained until released from such audits or official proceedings, notwithstanding the instructions of the schedule. Public records including electronic records not listed in this schedule are not authorized to be destroyed.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Hendersonville City Council hereby adopts the amendments as shown above.

Adopted this third day of October 2013.

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Barbara G. Volk, Mayor

Attest:

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Tammie K. Drake, MMC, City Clerk

**Municipal  
Records Retention Schedule Amendment**

Amending the Municipal Records Retention and Disposition Schedule published September 10, 2012.

**STANDARD 4. BUDGET, FISCAL AND PAYROLL RECORDS**

Amending item 32 Escheat and Unclaimed Property File as shown on substitute page 29.

**STANDARD 12. PERSONNEL RECORDS**

Adding item 1-A Accreditation Records as shown on substitute page 101.

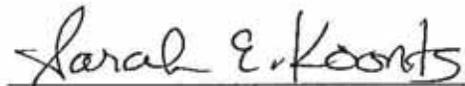
Amending item 19 Employee Eligibility Records as shown on substitute page 105.

Amending items 36 Family Medical Leave Act (FMLA) Records, 42 Leave File, and 43 Leave Without Pay File as shown on substitute pages 110-111.

**APPROVAL RECOMMENDED**

\_\_\_\_\_  
City/Town Clerk

\_\_\_\_\_  
Chief Administrative Officer/  
City Manager



Sarah E. Koonts, Director  
Division of Archives and Records

**APPROVED**

\_\_\_\_\_  
Mayor



Susan W. Kluttz, Secretary  
Department of Cultural Resources

August 29, 2013

\_\_\_\_\_  
Municipality

ITEM #	STANDARD-4: BUDGET, FISCAL AND PAYROLL RECORDS		
	RECORD SERIES TITLE	DISPOSITION INSTRUCTIONS	CITATION
27.	DAILY DETAIL REPORTS	Destroy in office after 1 year.*	
28.	DEPOSITS	a) Destroy in office official/audit copies after 3 years.* b) Destroy in office remaining records after 1 year.	G.S. § 159-32
29.	DETAIL REPORT FILE (FINANCIAL RECORDS FOR GENERAL FUND OR GENERAL LEDGER)	a) Destroy in office annual reports after 3 years.* b) Destroy in office all other reports after 1 year.	
30.	DIRECT DEPOSIT APPLICATIONS/AUTHORIZATIONS Includes related records such as bank account numbers and routing numbers.	Destroy in office when superseded or obsolete.	Comply with applicable confidentiality provisions of G.S. §132-1.10(b)(5) regarding personal identifying information.
31.	DISTRICT INVESTMENT RECORDS	Destroy in office after 3 years.*	
32.	ESCHEAT AND UNCLAIMED PROPERTY FILE	a) Destroy in office after 10 years if report was filed prior to July 16, 2012.* b) Destroy in office after 5 years if report was filed after July 16, 2012.*	Comply with applicable provisions of G.S. §116B-60 and §116B-73.
33.	EXPENDITURE REPORTS	Destroy in office after 3 years.*	
34.	FACILITY SERVICE AND MAINTENANCE AGREEMENTS  See also GRANTS: FINANCIAL item 36, page 30.	a) Destroy in office depreciation schedules 3 years after asset is fully depreciated or disposed. b) Destroy in office remaining records after 3 years.*	

\*See **AUDITS, LITIGATION, AND OTHER OFFICIAL ACTIONS**, page vi.

† See signature page. The agency hereby agrees that it will establish and enforce internal policies setting minimum retention periods for the records that Cultural Resources has scheduled with the disposition instruction "destroy when administrative value ends." Please use the space provided.

ITEM #	STANDARD-12. PERSONNEL RECORDS		
	RECORD SERIES TITLE	DISPOSITION INSTRUCTIONS	CITATION
1.	ABOLISHED POSITION FILE	Destroy in office when administrative value ends. † Agency Policy: Destroy in office after _____	
1-A.	ACCREDITATION RECORDS Records concerning compliance with those standards outlined by professional accreditation programs.	Destroy in office 1 year after accreditation is obtained, renewed, or no longer valid.*	
2.	ADDRESS FILE	Destroy in office when superseded or obsolete.	
3.	ADS AND NOTICES OF OVERTIME, PROMOTION, AND TRAINING OPPORTUNITIES	Destroy in office 1 year from date record was made.	29 CFR 1627.3
4.	AFFIRMATIVE ACTION FILE	a) Destroy in office all reports, analyses, and statistical data after 5 years.  b) Destroy in office affirmative action plans 5 years from date superseded.	29 CFR 30.8(b)(e) 29 CFR 1608.4
5.	APPRENTICESHIP PROGRAM RECORDS	Destroy in office 5 years from the date of enrollment.	29 CFR 30.8(e)
6.	APTITUDE AND SKILLS TESTING RECORDS Records concerning aptitude and skills tests required of job applicants or of current employees to qualify for promotion or transfer. May include civil service examinations.  See also <a href="#">EMPLOYMENT SELECTION RECORDS</a> item 32, page 109.	a) Destroy in office applicant and employee test papers 2 years from date record was created.  b) Destroy in office validation studies and copies of tests 2 years after no longer in use.  c) Destroy in office records relating to the planning and administration of tests in office after 2 years.	29 CFR 1602.31 29 CFR 1602.40 29 CFR 1602.49

\*See *AUDITS, LITIGATION, AND OTHER OFFICIAL ACTIONS*, page vi.

† See signature page. The agency hereby agrees that it will establish and enforce internal policies setting minimum retention periods for the records that Cultural Resources has scheduled with the disposition instruction "destroy when administrative value ends." Please use the space provided.

ITEM #	STANDARD-12. PERSONNEL RECORDS		
	RECORD SERIES TITLE	DISPOSITION INSTRUCTIONS	CITATION
18.	<p><b>EMPLOYEE EDUCATIONAL ASSISTANCE PROGRAM RECORDS</b> Includes records requesting tuition assistance, repayments, and other related records.</p> <p>See also <b>PERSONNEL RECORDS (OFFICIAL COPY)</b> item 47, page 112.</p>	Destroy in office 3 years after completion, denial, repayment, or removal from program.*	
19.	<p><b>EMPLOYEE ELIGIBILITY RECORDS</b> Includes the United States Immigration and Naturalization Services, Employment Eligibility Verification (I-9) forms.</p>	<p>a) Destroy in office certificates, I-9 forms, and statements, 3 years after individual was hired or 1 year from date of separation, whichever occurs later.</p> <p>b) Destroy in office registers after 2 years.</p>	8 USC 274a.2
20.	<p><b>EMPLOYEE EXIT INTERVIEW RECORDS</b></p> <p>See also <b>PERSONNEL RECORDS (OFFICIAL COPY)</b> item 47, page 112.</p>	Destroy in office after 1 year.	
21.	<p><b>EMPLOYEE HEALTH CERTIFICATES</b> Includes health or physical examination reports, or certificates created in accordance with Title VII and the Americans with Disabilities Act (ADA).</p>	<p>a) Transfer records as applicable to <b>PERSONNEL RECORDS (OFFICIAL COPY)</b> item 47, page 112.</p> <p>b) Destroy in office all other records 2 years after resolution of all actions.</p>	

\*See **AUDITS, LITIGATION, AND OTHER OFFICIAL ACTIONS**, page vi.

† See signature page. The agency hereby agrees that it will establish and enforce internal policies setting minimum retention periods for the records that Cultural Resources has scheduled with the disposition instruction "destroy when administrative value ends." Please use the space provided.

ITEM #	STANDARD-12. PERSONNEL RECORDS		
	RECORD SERIES TITLE	DISPOSITION INSTRUCTIONS	CITATION
35.	<b>EQUAL PAY RECORDS</b> Includes reports, studies, aggregated or summarized data, and similar documentation compiled to comply with the Equal Pay Act.	Destroy in office after 2 years.	29 CFR 1620.32
36.	<b>FAMILY MEDICAL LEAVE ACT (FMLA) RECORDS</b> Records concerning leave taken, premium payments, employer notice, medical examinations considered in connection with personnel action, disputes with employees over FMLA and other related records.	Item discontinued. See <b>LEAVE FILE</b> , item 42, page 111.	
37.	<b>FRINGE BENEFITS FILE</b>	Destroy in office when administrative value ends. † Agency Policy: Destroy in office after _____	
38.	<b>GRIEVANCE FILE</b> Includes initial complaint, investigations, actions, summary, and disposition. May include disciplinary correspondence, including email.  See also <b>DISCIPLINARY FILE</b> item 11, page 102 and <b>PERSONNEL RECORDS (OFFICIAL COPY)</b> item 47, page 112.	Destroy in office after 2 years.	
39.	<b>HEALTH INSURANCE FILE</b> Completed claim forms and other records concerning employees covered by health plans.	Destroy in office after 2 years.*	
40.	<b>INCREMENTS FILE</b>	Destroy in office when released from all audits.	
41.	<b>INTERNSHIP PROGRAM FILE</b> Records concerning interns and students.	Destroy in office after 3 years.	

\*See **AUDITS, LITIGATION, AND OTHER OFFICIAL ACTIONS**, page vi.

† See signature page. The agency hereby agrees that it will establish and enforce internal policies setting minimum retention periods for the records that Cultural Resources has scheduled with the disposition instruction "destroy when administrative value ends." Please use the space provided.

ITEM #	STANDARD-12. PERSONNEL RECORDS		
	RECORD SERIES TITLE	DISPOSITION INSTRUCTIONS	CITATION
42.	<b>LEAVE FILE</b> Records concerning employee leave, including requests for and approval of sick, vacation, overtime, buy-back, shared, donated, military, etc. Includes premium payments, employer notice, medical examinations considered in connection with personnel action, disputes with employees over the Family Medical Leave Act (FMLA), and other related records.	Destroy in office 3 years after return of employee or termination of employment. *	29 CFR 825.110(b)(2)(i) 29 CFR 825.500(b)
43.	<b>LEAVE WITHOUT PAY FILE</b>	Item discontinued. See <b>LEAVE FILE</b> , item 42, page 111.	
44.	<b>LONGEVITY PAY REQUESTS</b>	Destroy in office when released from all audits.	
45.	<b>MERIT AND SENIORITY SYSTEM RECORDS</b>	a) Destroy in office employee-specific records after 3 years. b) Destroy in office system and plan records 1 year after no longer in effect.	29 CFR 1627.3
46.	<b>PERSONNEL ACTION NOTICES</b> Records used to create or change information in the personnel records of individual employees concerning such issues as hiring, termination, transfer, pay grade, position or job title, name change and leave.	a) Transfer records as applicable to <b>PERSONNEL RECORDS (OFFICIAL COPY)</b> item 47, page 112. b) Destroy in office all remaining records 2 years from date record was created, received, or the personnel action involved.	

\*See **AUDITS, LITIGATION, AND OTHER OFFICIAL ACTIONS**, page vi.

† See signature page. The agency hereby agrees that it will establish and enforce internal policies setting minimum retention periods for the records that Cultural Resources has scheduled with the disposition instruction "destroy when administrative value ends." Please use the space provided.



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Susan G. Frady

**Department:** Zoning

**Date Submitted:** 09/20/13

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

Item # 05di

Special Event: Downtown Hendersonville Turkey Trot

The special events committee met on September 19, 2013, and reviewed a request by the City of Hendersonville Wellness Committee to close 5th Avenue between Main and King and the Maple Parking lot (across from City Hall) on Thursday, November 28, 2013 from 7:00 a.m. - 10:00 a.m. The event will be a family fun 5k walk/run through Hendersonville. The Police Department will escort the runners/walkers.

The Special Events Committee voted unanimously to recommend that Council approve the event permit for the Downtown Hendersonville Turkey Trot.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council approve the agenda item for the Downtown Hendersonville Turkey Trot.

Attachments:



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Susan G. Frady

**Department:** Zoning

**Date Submitted:** 09/23/13

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

Item # 05dii

Special Event: Sleep Out

The special events committee met on September 19, 2013, and reviewed a request by the Only Hope WNC, Inc. to close the parking spaces in front of the Historic Courthouse from 5:00 p.m. on Friday, November 15th until 8:00 a.m. on Saturday, November 16th. The attendees will sleep on the Historic Courthouse steps to raise money for their charity to help homeless youth in Western North Carolina.

The Special Events Committee voted unanimously to recommend that Council approve the event permit for the Sleep Out event.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council approve the agenda item for the Sleep Out.

Attachments:



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** John Connet

**Department:** Administration

**Date Submitted:** 09/26/01

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Presentation Only

## Summary of Information/Request:

**Item # 06**

I would like to recognize members of our Public Works Department for the excellent job they did during the 2013 Apple Festival. This group was led by John Rhinehart.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

None required

**Attachments:**

None



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Planning

**Department:** Planning

**Date Submitted:** 09/10/13

**Presenter:** Susan Frady/Sue Anderson

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item # 07**

The statute creating boards of adjustment and setting their authority was adopted in 1923. The original language of the statute was largely intact, supplemented by nearly twenty individual amendments over the years.

Sessions Law 2013-126 (House Bill 276), effective October 1, 2013, is an act passed by the North Carolina General Assembly to clarify and modernize statutes regarding zoning boards of adjustment. The new law does not drastically alter the fundamental aspects of the prior law, but it does make a number of important changes.

The majority of changes can be categorized into three groups:

The first is a set of numerous stylistic and organizational changes. The bill modernizes the language in the statute. Outdated, awkward, and confusing language is removed.

The second group of changes is largely technical in nature, but should simplify operations for boards of adjustment. The process for requesting and objecting to subpoenas is clarified, the provisions on judicial review updated to incorporate recent legislation on judicial appeals, and case law regarding the necessity to follow quasi-judicial procedures is codified.

The third group of changes incorporates a variety of consensus modernizations and uniformity provisions. A uniform notice requirement for hearings on quasi-judicial matters is added.

The public noticing changes proposed by this act also affect quasi-judicial requirements for special use permits which are approved by City Council.

### PLANNING BOARD RECOMMENDATION

The Planning Board took this matter up at its regular meeting of September 9, 2013. The Planning Board voted unanimously to recommend the City Council adopt an ordinance repealing City of Hendersonville Zoning Ordinance Article X Board of Adjustment, adopting a new Article X Board of Adjustment, and amending Article VII Section 7-4-9 Special Use Review Public Hearing.

### Suggested Motion: *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council to adopt an ordinance repealing City of Hendersonville Zoning Ordinance Article X Board of Adjustment, adopting a new Article X Board of Adjustment, and amending Article VII Section 7-4-9 Special Use Review Public Hearing.

### Attachments:

Memo

## MEMORANDUM

**Return to  
Agenda**

**TO:** Honorable Mayor and City Council

**FROM:** Planning Department

**RE:** Text Amendment of Zoning Ordinance Article X Board of Adjustment and Article VII Development Review Section 7-4-9 Public Hearing

**FILE #:** P13-26-T

**DATE:** September 10, 2013

### PROJECT HISTORY

The statute creating boards of adjustment and setting their authority was adopted in 1923. The original language of the statute was largely intact, supplemented by nearly twenty individual amendments over the years.

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The majority of changes can be categorized into three groups:

- The first is a set of numerous stylistic and organizational changes. The bill modernizes the language in the statute. Outdated, awkward, and confusing language is removed.
- The second group of changes is largely technical in nature, but should simplify operations for boards of adjustment. The process for requesting and objecting to subpoenas is clarified, the provisions on judicial review updated to incorporate recent legislation on judicial appeals, and case law regarding the necessity to follow quasi-judicial procedures is codified.
- The third group of changes incorporates a variety of consensus modernizations and uniformity provisions. A uniform notice requirement for hearings on quasi-judicial matters is added.

Following is Article X which governs the board of adjustment. Because of the number of changes, staff recommends the appeal of Article X and the adoption of a new Article X. Additions to the original text are underlined and deletions are struck through.

The public noticing changes proposed by this act also affect quasi-judicial requirements for special use permits which are approved by City Council. Those changes are listed below

under Section 7-4 Special Use Review.

## ARTICLE X

### BOARD OF ADJUSTMENT

**Section 10-1. Establishment of Board of Adjustment and Qualifications of members.** A Board of Adjustment is hereby established. Said Board of Adjustment shall consist of ten members; seven members of the Board of Adjustment shall be citizens of the City of Hendersonville and shall be appointed by City Council and three members who reside in the City's area of extraterritorial jurisdiction ~~and~~ shall be appointed by the Board of Commissioners of Henderson County.

Terms shall be three years; however, City Council and the Henderson County Board of Commissioners may appoint members for a lesser term in order to achieve a balanced system of overlapping terms. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment. Notwithstanding the foregoing, the City Council may remove any member of the Board of Adjustment for the exhibition of a pattern of conduct that materially impairs or seriously threatens the ability of the Board of Adjustment to carry out its designation functions.

The three members appointed to the Board of Adjustment by the Board of County Commissioners as representatives of the City of Hendersonville's Extraterritorial Jurisdiction shall have equal rights, privileges and duties with other members of the Board in all matters pertaining to the regulation of the Zoning Ordinance in the City and its extraterritorial jurisdiction.

City Council or the County Board of Commissioners, as appropriate, may appoint alternate members to serve on the Board of Adjustment in the absence of any regular members. Alternate members shall be appointed for the same term and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

**Section 10-2 Powers of the Board of Adjustment.** The Board of Adjustment shall have the following powers:

- a) To hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the Zoning Ordinance or the Subdivision Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. As used in this

section, the term “decision” includes any final or binding order, requirement or determination.

- b) To hear and decide requests for variances from the dimensional requirements of the Zoning Ordinance, in accordance with Section 10-8, below;
- c) To review applications for conditional use permits and to issue conditional use permits in accordance with the provisions of Section 10-7, below;
- d) To make interpretations of the Official Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions as arise in the administration of the Zoning Ordinance;
- e) To enter, at reasonable times, upon private lands and make examinations or surveys as necessary for the performance of its official duties;
- f) To request City Council to hold public hearings on matters within the purview of the Board of Adjustment;
- g) To hear and decide any other matter as required by the provisions of the Zoning Ordinance and the Code of the City of Hendersonville;
- h) To adopt rules not inconsistent with the Zoning Ordinance or NCGS governing the organization of the Board of Adjustment and proceedings before the Board of Adjustment.

**Section 10-3 Officers.** The Board of Adjustment shall elect one member to serve as Chair and preside over its meetings and shall create and fill such offices and committees as it may deem necessary. The term of the Chair and other offices shall be one year with eligibility for re-election. The Chair, or any member temporarily acting as chair, is authorized to administer oaths to any witnesses in any matter coming before the Board of Adjustment.

**Section 10-4 Meetings.** The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it may take action as expeditiously as reasonably possible. All meetings of the Board of Adjustment shall be open to the public. ~~and reasonable notice of the time and place thereof shall be given to the public in accordance with the NCGS.~~

Notice of date, time and place of the public hearing conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive

notice as provided by the Zoning Ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice shall be deposited in the mail not less than 10 nor more than 25 days prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the public hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The Board of Adjustment shall keep a record of its meetings, including attendance of its members, the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it, and all official actions.

If any member of the Board of Adjustment who misses more than three consecutive regular meetings or more than half of the regular meetings in a calendar year, their status as a member of the Board of Adjustment shall be replaced or reappointed by City Council or the County Board of Commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board of Adjustment, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

The chair of the Board of Adjustment or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393 (d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment.

If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

**Section 10-5 Quorum and Voting.** ~~A quorum of the Board, necessary to take official action, shall consist of seven members.~~

The concurring vote of seven members shall be necessary in order to: The concurring vote of seven (7) members of the Board of Adjustment shall be necessary to grant a variance.

A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for the calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

A member of any Board of Adjustment exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

- a) ~~Approve an application for a variance;~~
- b) ~~Reverse or modify any order, requirement, decision, or determination made by an administrative official;~~
- c) ~~Decide in favor of the applicant in any other matter on which the Board is required to act by this Ordinance.~~

~~The concurring vote of a majority of those members present shall be necessary to conduct other business of the Board.~~

**Section 10-6 Appeals of Administrative Decisions.** The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the Ordinance. ~~An appeal may be taken by any person aggrieved by such decision or by an officer, department or board of the City. Such appeal shall be taken within ten days of the rendition of such decision by filing with the Board of Adjustment and the administrative official a written notice of appeal specifying the grounds thereof. The administrative official shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:~~

- a) Any person who has standing under G.S. 160A-393 (d) or the city may appeal a decision of the Board of Adjustment. An appeal is taken by filing notice of appeal with the City Clerk. The notice of appeal shall state the grounds of the appeal.
- b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the

decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

- c) The owner or other party shall have 30 days from receipt of written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision provided the sign remains on the property for at least 10 days. Posting of the signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of the signs is not required.
- e) The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- f) An appeal of a notice of violation or other enforcement order stays all legal proceedings in furtherance of the action appealed from, unless the Administrative Officer certifies to the Board of Adjustment, after the notice of appeal has been filed with the Administrative Officer city clerk, that because of facts stated in the certificate an affidavit, a stay would, in the Administrative Officer's opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In such case proceedings shall not be stayed except by a restraining order, which may be granted by the Board or by a court. of record on application, as provided for in the NCGS.

If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of the property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- g) Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- h) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any part of the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make an order, requirement, decision, or determination that ought to be made. The Board of Adjustment shall have all powers of the official who made the decision.
- i) When hearing an appeal pursuant to G.S. 160A-400.9 (e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).
- j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

**Section 10-7 Conditional Use Permits.** A conditional use permit from the Board of Adjustment is required for all conditional uses.

**10-7-1 Application.** When a conditional use permit is required by the terms of this Ordinance, application for such permit, along with a fee established by resolution of City Council, shall accompany the application for a building permit.

**10-7-2 Preliminary Site Plan.** The application for a conditional use permit shall be accompanied by seven copies of a preliminary site plan showing the following:

- a) The proposed title of the project and the name of the engineer, architect, designer, landscape architect, planner and/or licensed surveyor, developer and owner of record;
- b) The north arrow point, scale at not greater than one inch equals 40 feet, and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;
- c) Location of site by an insert vicinity map at a scale no less than one inch equals 2,000 feet;
- d) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way;

- e) City limits line;
- f) Names of adjacent property owners;
- g) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;
- h) Existing topography and proposed finished contours at not more than five feet intervals, with project bench mark clearly identified. Location of the 100 year floodplain, if applicable. Other significant natural features affecting the site including but not limited to marshes, major rock outcrops and lakes or streams;
- i) All proposed streets with proposed names, pavement widths and rights-of-ways. All alleys, drive- ways, curb cuts for public streets and handicap ramps, loading areas, and provisions for off-street parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross- section of the public or private street shall be included;
- j) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines; proposed location of electrical transmission lines, gas pipelines, street lights, fire hydrants and the location of garbage disposal facilities or a note indicating arrangements for these facilities;
- k) Location and size of all entrances and exits to the site showing sight distances and their relation- ship to all street and driveway intersections within 25 feet for driveways and 200 feet for street intersections;
- l) A landscape plan showing wood line before site preparation with species and average diameter of trees indicated and areas to be screened, fenced, walled and/or landscaped; also location of buffer strips, if required;
- m) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;
- n) Notations to include the total project area, the amount and percentage of the site to be covered by buildings, open space, streets and parking;
- o) General location, size, height, orientation, and appearance of proposed signs.

As a matter of discretion, the Administrative Officer may require additional items for preliminary site plans, which would be necessitated by conditions such as topography, location and anticipated traffic volumes on or near the site. The requirements may include but not be limited to traffic, noise, visual or fiscal impact studies, architect's models, renderings and other studies or data. In addition, if the Administrative Officer determines that one or more of the above submittal requirements is not applicable to the proposed project, it may be waived.

Upon receipt of an application and site plan, the Administrative Officer shall review same to determine if all required information has been provided or if additional information is needed. If the site plan is insufficient, the Administrative Officer shall notify the applicant in writing of such deficiencies. An application for a conditional use permit will not be scheduled for public hearing until such time as the Board of Adjustment is in receipt of a complete application and site plan, that is, an application and site plan containing all the information required under this Ordinance.

**10-7-3 Public Hearings on Applications for Conditional Use Permits.** Once the Administrative Officer is in receipt of a complete application and seven copies of a complete site plan, the Administrative Officer will schedule the application for a public hearing before the Board of Adjustment. The Administrative Officer shall mail or deliver written notice of the public hearing to ~~the applicant and the owners of any property adjoining the property on which the conditional use is planned at least 15 days prior to the date of the public hearing.~~ the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by agent or attorney.

**10-7-4 Board of Adjustment Action on Applications for Conditional Use Permits.** After the public hearing, and on consideration of the record, the Board of Adjustment shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more reasonable and appropriate conditions. The Board of Adjustment shall not approve an application for a conditional use permit, with or without conditions, unless it makes each of the following findings of fact:

- a) The proposed use complies with the standards for such use contained in Article

XVI;

- b) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and
- c) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

**Section 10-8 Variances.** A variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the ordinance.

~~A variance from the dimensional requirements of this ordinance may be granted by the Board of Adjustment if it finds the following: When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of the following:~~

- a) ~~Strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance; Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.~~
- b) ~~The variance is in harmony with the general purpose and intent of the ordinance, and preserves its spirit, public safety is secured, and substantial justice is achieved.~~
- c) ~~In the granting of the variance, the public safety and welfare have been secured and substantial justice has been done. Such findings shall be based on the following considerations:
  - 1) ~~The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.~~
  - 2) ~~The hardship relates to the applicant's property rather than to personal circumstances.~~
  - 3) ~~The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.~~
  - 4) ~~The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.~~~~

- c) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- d) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The Board of Adjustment shall not have authority to grant a variance when to do so would: 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification.

**Section 10-9 Processing of Applications Before the Board of Adjustment.** An application to the Board of Adjustment pursuant to the terms of this Article, whether it be in the nature of a request for a variance or a conditional use permit or an appeal from an administrative determination, must be received by the Zoning Administrator at least 20 days prior to the date of a Board of Adjustment meeting in order to be scheduled for such meeting.

**Section 10-10 Quasi-Judicial Decisions and Judicial Review.**

- a) The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board of Adjustment's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the Board of Adjustment. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board of Adjustment. The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- b) ~~Every decision of the Board of Adjustment~~ quasi-judicial decision ~~may be appealed to the~~ shall be subject to review by the Superior Court ~~by any aggrieved party~~ proceedings in the nature of certiorari pursuant to G.S. 160A-393. Such appeal shall be in the nature of certiorari and must be filed within 30 days after the filing of the decision in the office of the Zoning Administrator or after a written copy thereof

~~is delivered to every aggrieved party who has filed a written request for such copy with the chairperson of the Board at the time of its hearing of the case, whichever is later. The copy of the decision of the Board may be delivered to aggrieved parties either by personal service or by registered mail or certified mail return receipt requested. A petition for review shall be filed with the clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first class mail is used to deliver notice, three days shall be added to the time to file the petition.~~

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**Section 7-4 Special Use Review.** Special use review provides an alternative to traditional zoning by coupling an application for rezoning with an application for a special use permit specifying the intended use(s) along with a conceptual site plan and any proposed conditions to be placed upon the property.

**7-4-9 Public Hearing.** Within 45 days of receiving the recommendation of the Planning Board or receipt of the mediator's report, whichever last occurs, City Council shall conduct a public hearing on the application. Notice of the date, time and place of the public hearing shall be published in a newspaper of general circulation once a week for two successive weeks with the first notice to be published not less than ten nor more than 25 days prior to the date of the hearing.

~~Similar~~ Notice of the date, time and place of the public hearing shall also be mailed to the owner of the property which is the subject of the application, the person or entity whose application or request is the subject of the hearing, and the owners of all parcels of land situated within 400 feet of any of the boundaries of the subject parcel. Ownership shall be determined by reference to the Henderson County tax listing. The notice shall be deposited in the mail not less than ten nor more than 25 days prior to the date of the hearing. Within that same time period, the City shall prominently post a notice of the public hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

## **TEXT & POLICY COMMITTEE**

The Text & Policy Committee did not review the proposed text amendments.

## **PLANNING BOARD RECOMMENDATION**

The Planning Board took this matter up at its regular meeting of September 9, 2013. The Planning Board voted unanimously to recommend the City Council adopt an ordinance repealing City of Hendersonville Zoning Ordinance Article X Board of Adjustment, adopting a new Article X Board of Adjustment, and amending Article VII Section 7-4-9 Special Use Review Public Hearing.

## **ZONING ORDINANCE GUIDELINES**

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered by City Council prior to adopting or disapproving an amendment to the text of the City's Zoning Ordinance:

1. Comprehensive Plan Consistency. Consistency with the Comprehensive Plan and amendments thereto.
2. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. Public Interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. Public facilities. Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

## **SUGGESTED MOTIONS**

### **Approval:**

I move City Council to adopt an ordinance repealing City of Hendersonville Zoning Ordinance Article X Board of Adjustment, adopting a new Article X Board of Adjustment, and amending Article VII Section 7-4-9 Special Use Review Public Hearing.

### **Denial:**

Allow to fail for lack of a motion

**[PLEASE STATE YOUR REASONS]**

**AN ORDINANCE REPEALING CITY OF HENDERSONVILLE ZONING ORDINANCE ARTICLE X BOARD OF ADJUSTMENT, ADOPTING A NEW ARTICLE X BOARD OF ADJUSTMENT AND AMENDING ARTICLE VII DEVELOPMENT REVIEW SECTION 7-4-9 PUBLIC HEARING AS IT PERTAINS TO SESSIONS LAW 2013-126 HOUSE BILL 276**

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

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

**WHEREAS**, the General Assembly enacted Sessions Law 2013-126 - House Bill 276, effective October 1, 2013, which modernizes the board of adjustment statute; and

**WHEREAS**, the City of Hendersonville desires to amend those regulations with regards to the Board of Adjustment and Special Use Review to be consistent with acts of the General Assembly.

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

1. City of Hendersonville Zoning Ordinance Article X Board of Adjustment is hereby repealed.
2. A new City of Hendersonville Zoning Ordinance Article X Board of Adjustment is hereby adopted to read as follows:

**ARTICLE X**

**BOARD OF ADJUSTMENT**

**Section 10-1. Establishment of Board of Adjustment and Qualifications of members.**

A Board of Adjustment is hereby established. Said Board of Adjustment shall consist of ten members; seven members of the Board of Adjustment shall be citizens of the City of Hendersonville and shall be appointed by City Council and three members who reside in the City's area of extraterritorial jurisdiction shall be appointed by the Board of Commissioners of Henderson County.

Terms shall be three years; however, City Council and the Henderson County Board of Commissioners may appoint members for a lesser term in order to achieve a balanced system of overlapping terms. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve

without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment. Notwithstanding the foregoing, the City Council may remove any member of the Board of Adjustment for the exhibition of a pattern of conduct that materially impairs or seriously threatens the ability of the Board of Adjustment to carry out its designation functions.

The three members appointed to the Board of Adjustment by the Board of County Commissioners as representatives of the City of Hendersonville's Extraterritorial Jurisdiction shall have equal rights, privileges and duties with other members of the Board in all matters pertaining to the regulation of the Zoning Ordinance in the City and its extraterritorial jurisdiction.

City Council or the County Board of Commissioners, as appropriate, may appoint alternate members to serve on the Board of Adjustment in the absence of any regular members. Alternate members shall be appointed for the same term and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

**Section 10-2 Powers of the Board of Adjustment.** The Board of Adjustment shall have the following powers:

- a) To hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the Zoning Ordinance or the Subdivision Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. As used in this section, the term "decision" includes any final or binding order, requirement or determination.
- b) To hear and decide requests for variances from the dimensional requirements of the Zoning Ordinance, in accordance with Section 10-8, below;
- c) To review applications for conditional use permits and to issue conditional use permits in accordance with the provisions of Section 10-7, below;
- d) To make interpretations of the Official Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions as arise in the administration of the Zoning Ordinance;
- e) To enter, at reasonable times, upon private lands and make examinations or surveys as necessary for the performance of its official duties;
- f) To request City Council to hold public hearings on matters within the purview of the Board of Adjustment;

- g) To hear and decide any other matter as required by the provisions of the Zoning Ordinance and the Code of the City of Hendersonville;
- h) To adopt rules not inconsistent with the Zoning Ordinance or NCGS governing the organization of the Board of Adjustment and proceedings before the Board of Adjustment.

**Section 10-3 Officers.** The Board of Adjustment shall elect one member to serve as Chair and preside over its meetings and shall create and fill such offices and committees as it may deem necessary. The term of the Chair and other offices shall be one year with eligibility for re-election. The Chair, or any member temporarily acting as chair, is authorized to administer oaths to any witnesses in any matter coming before the Board of Adjustment.

**Section 10-4 Meetings.** The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it may take action as expeditiously as reasonably possible. All meetings of the Board of Adjustment shall be open to the public.

Notice of date, time and place of the public hearing conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the Zoning Ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice shall be deposited in the mail not less than 10 nor more than 25 days prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the public hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The Board of Adjustment shall keep a record of its meetings, including attendance of its members, the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it, and all official actions.

If any member of the Board of Adjustment misses more than three consecutive regular meetings or more than half of the regular meetings in a calendar year, their status as a member of the Board of Adjustment shall be replaced or reappointed by City Council or the County Board of Commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board of Adjustment, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

The chair of the Board of Adjustment or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393 (d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment.

If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

#### **Section 10-5 Quorum and Voting.**

The concurring vote of seven (7) members of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for the calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

A member of any Board of Adjustment exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

**Section 10-6 Appeals of Administrative Decisions.** The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- a) Any person who has standing under G.S. 160A-393 (d) or the city may appeal a decision of the Board of Adjustment. An appeal is taken by filing notice of appeal with the City Clerk. The notice of appeal shall state the grounds of the appeal.
- b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- c) The owner or other party shall have 30 days from receipt of written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision provided the sign remains on the property for at least 10 days. Posting of the signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of the signs is not required.
- e) The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- f) An appeal of a notice of violation or other enforcement order stays all legal proceedings in furtherance of the action appealed from, unless the Administrative Officer certifies to the Board of Adjustment, after the notice of appeal has been filed with the city clerk, that because of facts stated in an affidavit, a stay would, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In such case proceedings shall not be stayed except by a restraining order, which may be granted by a court.
- g) If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise

affirming that a proposed use of the property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- h) Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- i) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any part of the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make an order, requirement, decision, or determination that ought to be made. The Board of Adjustment shall have all powers of the official who made the decision.
- j) When hearing an appeal pursuant to G.S. 160A-400.9 (e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).
- k) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

**Section 10-7 Conditional Use Permits.** A conditional use permit from the Board of Adjustment is required for all conditional uses.

**10-7-1 Application.** When a conditional use permit is required by the terms of this Ordinance, application for such permit, along with a fee established by resolution of City Council, shall accompany the application for a building permit.

**10-7-2 Preliminary Site Plan.** The application for a conditional use permit shall be accompanied by seven copies of a preliminary site plan showing the following:

- a) The proposed title of the project and the name of the engineer, architect, designer, landscape architect, planner and/or licensed surveyor, developer and owner of record;
- b) The north arrow point, scale at not greater than one inch equals 40 feet, and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;

- c) Location of site by an insert vicinity map at a scale no less than one inch equals 2,000 feet;
- d) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way;
- e) City limits line;
- f) Names of adjacent property owners;
- g) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;
- h) Existing topography and proposed finished contours at not more than five feet intervals, with project bench mark clearly identified. Location of the 100 year floodplain, if applicable. Other significant natural features affecting the site including but not limited to marshes, major rock outcrops and lakes or streams;
- i) All proposed streets with proposed names, pavement widths and rights-of-ways. All alleys, drive- ways, curb cuts for public streets and handicap ramps, loading areas, and provisions for off-street parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross- section of the public or private street shall be included;
- j) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines; proposed location of electrical transmission lines, gas pipelines, street lights, fire hydrants and the location of garbage disposal facilities or a note indicating arrangements for these facilities;
- k) Location and size of all entrances and exits to the site showing sight distances and their relation- ship to all street and driveway intersections within 25 feet for driveways and 200 feet for street intersections;
- l) A landscape plan showing wood line before site preparation with species and average diameter of trees indicated and areas to be screened, fenced, walled and/or landscaped; also location of buffer strips, if required;
- m) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;

- n) Notations to include the total project area, the amount and percentage of the site to be covered by buildings, open space, streets and parking;
- o) General location, size, height, orientation, and appearance of proposed signs.

As a matter of discretion, the Administrative Officer may require additional items for preliminary site plans, which would be necessitated by conditions such as topography, location and anticipated traffic volumes on or near the site. The requirements may include but not be limited to traffic, noise, visual or fiscal impact studies, architect's models, renderings and other studies or data. In addition, if the Administrative Officer determines that one or more of the above submittal requirements is not applicable to the proposed project, it may be waived.

Upon receipt of an application and site plan, the Administrative Officer shall review same to determine if all required information has been provided or if additional information is needed. If the site plan is insufficient, the Administrative Officer shall notify the applicant in writing of such deficiencies. An application for a conditional use permit will not be scheduled for public hearing until such time as the Board of Adjustment is in receipt of a complete application and site plan, that is, an application and site plan containing all the information required under this Ordinance.

**10-7-3 Public Hearings on Applications for Conditional Use Permits.** Once the Administrative Officer is in receipt of a complete application and seven copies of a complete site plan, the Administrative Officer will schedule the application for a public hearing before the Board of Adjustment. The Administrative Officer shall mail or deliver written notice of the public hearing to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance.

In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by agent or attorney.

**10-7-4 Board of Adjustment Action on Applications for Conditional Use Permits.** After the public hearing, and on consideration of the record, the Board of Adjustment shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more reasonable and appropriate conditions. The Board of

Adjustment shall not approve an application for a conditional use permit, with or without conditions, unless it makes each of the following findings of fact:

- a) The proposed use complies with the standards for such use contained in Article XVI;
- b) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and
- c) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

**Section 10-8 Variances.** A variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the ordinance.

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of the following:

- a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b) The variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit, public safety is secured, and substantial justice is achieved.
- c) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- d) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The Board of Adjustment shall not have authority to grant a variance when to do so would: 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification.

**Section 10-9 Processing of Applications Before the Board of Adjustment.** An application to the Board of Adjustment pursuant to the terms of this Article, whether it be in the nature of a request for a variance or a conditional use permit or an appeal from an administrative determination, must be received by the Zoning Administrator at least 20 days prior to the date of a Board of Adjustment meeting in order to be scheduled for such meeting.

**Section 10-10 Quasi-Judicial Decisions and Judicial Review.**

- a) The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board of Adjustment's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the Board of Adjustment. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board of Adjustment. The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- b) Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first class mail is used to deliver notice, three days shall be added to the time to file the petition.

3. City of Hendersonville Zoning Ordinance Article VII Development Review, Section 7-4-9 Public Hearing is hereby amended to read as follows:

**7-4-9 Public Hearing.** Within 45 days of receiving the recommendation of the Planning Board or receipt of the mediator's report, whichever last occurs, City Council shall conduct a public hearing on the application. Notice of the date, time and place of the public hearing shall be published in a newspaper of general circulation once a week for two successive weeks with the first notice to be published not less than ten nor more than 25 days prior to the date of the hearing.

~~Similar~~ Notice of the date, time and place of the public hearing shall also be mailed to the owner of the property which is the subject of the application, the person or entity whose application or request is the subject of the hearing, and the owners of all parcels of land situated within 400 feet of any of the boundaries of the subject parcel. Ownership shall be determined by reference to the Henderson County tax listing. The notice shall be deposited

in the mail not less than ten nor more than 25 days prior to the date of the hearing. Within that same time period, the City shall prominently post a notice of the public hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Barbara Volk, Mayor

Attest:

\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

# City of Hendersonville

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## PLANNING BOARD REPORT

**Project Name:** Text Amendment of Zoning Ordinance Article X Board of Adjustment and Article VII Development Review Section 7-4-9 Public Hearing

**File Number:** P-13-26-T

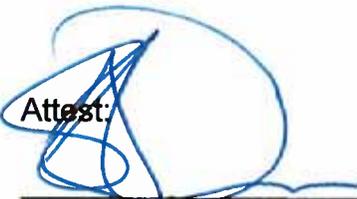
Approval – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan.

Approval With Amendment – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan. The Planning Board recommends the following amendment(s).

Denial – The text amendment is not consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and the 2030 Comprehensive Plan.

This report reflects the recommendation of the Planning Board, this the 9th day of September, 2013.

Attest:

  
\_\_\_\_\_  
Planning Board Chair

  
\_\_\_\_\_  
Planning Director



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

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Agenda**

**Submitted By:** Planning

**Department:** Planning

**Date Submitted:** 09/10/13

**Presenter:** Sue Anderson, Planning Director

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item # 08**

Zoning Ordinance Section 5-22-5 Greenville Highway Mixed Use Zoning District Design Standards, Section 5-23-5 Highway Mixed Use Zoning District Design Standards and Section 5-27-5 Commercial Highway Mixed Use Zoning District Design Standards has provisions for specific design standards for developments in these districts. Examples of design standards include the requirement for certain architectural details, building materials and building scale.

These provisions also provide for flexibility by allowing the review of a project by an Alternative Design Committee. This Committee is intended to serve as a resource to the Planning Director and to the Planning Board. An applicant who chooses not to comply with the design standards for these mixed use zoning districts may develop their projects in an alternative manner and submit that design to the Alternative Design Committee.

Currently, the Alternative Design Committee is appointed by City Council for a term of three years. Given that this committee has reviewed only two alternative designs in the past eight years, staff suggests that the Committee should be an ad hoc committee. Therefore, the Committee would only need to be assembled on an as needed basis.

### PLANNING BOARD RECOMMENDATION

The Planning Board took this matter up at its regular meeting of September 9, 2013. The Planning Board voted unanimously to recommend City Council adopt an ordinance amending City of Hendersonville Zoning Ordinance Article XVIII Mixed Use Zoning, Section 18-5-2 and 18-5-2.2 with the following addition:

In Section 18-5-2.2, the Planning Board recommended that in addition to members of the committee be chosen from the Planning Board and the Historic Preservation Commission, the members may also be chosen from the general public residing within the city limits or the extraterritorial jurisdiction. The reason for this addition is to assure that an architect, landscape architect; builder or developer is represented on the Advisory Design Committee as stated in the language in 18-5-2.2. This language has been added to the ordinance.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article XVIII Mixed Use Zoning, Section 18-5-2 and 18-5-2.2 as it pertains to Alternative Design Committee appointments.

Attachments:

Memo

## MEMORANDUM

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Agenda**

**TO:** Honorable Mayor and City Council

**FROM:** Planning Department

**RE:** Text Amendment of Article XVIII Mixed Use Zoning, Section 18-5-2 and 18-5-2.2

**FILE #:** P13-27-T

**DATE:** September 10, 2013

### PROJECT HISTORY

Zoning Ordinance Section 5-22-5 Greenville Highway Mixed Use Zoning District Design Standards, Section 5-23-5 Highway Mixed Use Zoning District Design Standards and Section 5-27-5 Commercial Highway Mixed Use Zoning District Design Standards has provisions for specific design standards for developments in these districts. Examples of design standards include the requirement for certain architectural details, building materials and building scale.

These provisions also provide for flexibility by allowing the review of a project by an Alternative Design Committee. This Committee is intended to serve as a resource to the Planning Director and to the Planning Board. An applicant who chooses not to comply with the design standards for these mixed use zoning districts may develop their projects in an alternative manner and submit that design to the Alternative Design Committee. The Committee has general design consideration guidelines in Section 18-6 to guide their review of alternative proposals. The end result of this review is that the Committee makes recommendations as to whether a proposed alternative design meets those guidelines.

Currently, the Alternative Design Committee is appointed by City Council for a term of three years. Given that this committee has reviewed only two alternative designs in the past eight years, staff suggests that the Committee should be an ad hoc committee. Therefore, the Committee would only need to be assembled on an as needed basis. In order to expedite the assembly of the Committee when needed, staff suggests that, instead of the City Council, the Planning Board Chairperson be given the authority to appoint committee members and that those members be selected from both the Planning Board and the Historic Preservation Commission.

Listed below are the text amendments necessary to change the procedure for appointing members to the Alternative Design Committee. Additions are underlined and deletions are struck-through.

## **Article XVIII Mixed Use Zoning**

18-5-1 Design Choices. Applicants who choose not to comply with the design standards for any mixed use zoning district classification are free to develop their projects in an alternative fashion so long as the proposed design of the project meets the general design consideration contained in Section 18-6, below, and will result in a project design which is as good as, or better than, that resulting from the design standards.

18-5-2 Alternative Design Committee. There shall be an ad hoc alternative design committee, composed of not less than three nor more than five persons.

18-5-2.1 Function of the Committee. The Committee shall serve as a resource to the Planning Director and to the Planning Board. The Committee shall meet as necessary to review alternative design proposals and to make a recommendation as to whether a proposed alternative design meets the standard stated in Section 18-5-1, above. The Committee shall also assist the Planning Director, as needed, in administering the provisions of this Article.

18-5-2.2 Membership of the Committee. ~~The membership of the Alternative Design Committee shall contain at least one each of the following professions: (1) architect, (2) landscape architect, (3) builder or developer. Members need not be residents of the City or its area of extraterritorial jurisdiction. Members of the Committee shall be appointed by City Council the Planning Board Chairperson, or his/her designee, to serve terms of three years on an as-needed basis. The members shall be chosen from the membership of the Planning Board and the Historic Preservation Commission, and if possible, shall contain one or more of the following professions: 1) architect, 2) landscape architect, 3) builder or developer.~~

### **TEXT & POLICY COMMITTEE**

The Text & Policy Committee did not review the proposed text amendment.

### **PLANNING BOARD RECOMMENDATION**

The Planning Board took this matter up at its regular meeting of September 9, 2013. The Planning Board voted unanimously to recommend City Council adopt an ordinance amending City of Hendersonville Zoning Ordinance Article XVIII Mixed Use Zoning, Section 18-5-2 and 18-5-2.2 with the following addition:

In Section 18-5-2.2, the Planning Board recommended that in addition to the members of the committee be chosen from the Planning Board and the Historic Preservation Commission, the members may also be chosen from the general public residing within the city limits or the extraterritorial jurisdiction. The reason for this addition is to assure that an architect, landscape architect; builder or developer is represented on the Advisory Design Committee as stated in the language in 18-5-2.2. This language has been added to the

ordinance.

### **ZONING ORDINANCE GUIDELINES**

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered by City Council prior to adopting or disapproving an amendment to the text of the City's Zoning Ordinance:

1. Comprehensive Plan Consistency. Consistency with the Comprehensive Plan and amendments thereto.
2. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. Public Interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. Public facilities. Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

### **SUGGESTED MOTIONS**

#### **Approval:**

I move City Council to adopt an ordinance amending City of Hendersonville Zoning Ordinance Article XVIII Mixed Use Zoning, Section 18-5-2 and 18-5-2.2 as it pertains to Alternative Design Committee appointments.

#### **Denial:**

Allow to fail for lack of a motion.

**AN ORDINANCE AMENDING ARTICLE XVIII MIXED USE ZONING, SECTION 18-5-2 AND 18-5-2.2 OF THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE AS IT PERTAINS TO THE ALTERNATIVE DESIGN COMMITTEE**

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

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

**WHEREAS**, the City of Hendersonville desires to amend those regulations with regards to the Alternative Design Committee.

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

1. Article XVIII Mixed Use Zoning, Section 18-5-2 Alternative Design Committee is hereby amended to read as follows:

There shall be an ad hoc alternative design committee, composed of not less than three nor more than five persons.

2. Article XVIII Mixed Use Zoning, Section 18-5-2.2 Membership of the Committee is hereby amended to read as follows:

~~The membership of the Alternative Design Committee shall contain at least one each of the following professions: (1) architect, (2) landscape architect, (3) builder or developer. Members need not be residents of the City or its area of extraterritorial jurisdiction. Members of the Committee shall be appointed by City Council the Planning Board Chairperson, or his/her designee, to serve terms of three years on an as-needed basis. The members shall be chosen from the membership of the Planning Board, the Historic Preservation Commission and/or the general public residing within the city limits or the extraterritorial jurisdiction, and if possible, shall contain one or more of the following professions: 1) architect, 2) landscape architect, 3) builder or developer.~~

3. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.
4. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
5. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent

jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

6. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.
7. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Barbara Volk, Mayor

Attest:

\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

# City of Hendersonville

## PLANNING BOARD REPORT

**Project Name:** Text Amendment of City of Hendersonville Zoning Ordinance Article XVIII Mixed Use Zoning, Section 18-5-2 and 18-5-2.2 pertaining to the Alternative Design Committee

**File Number:** P-13-27-T

Approval – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan.

Approval With Amendment – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan. The Planning Board recommends the following amendment(s).

*Adding to 18-5-2.2*

*MEMBERS CHOSEN FROM THE PLANNING BOARD, HISTORIC PRESERVATION COMMISSION AND/OR THE GENERAL PUBLIC RESIDING WITHIN THE CITY LIMITS OR ETC.*

Denial – The text amendment is not consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and the 2030 Comprehensive Plan.

This report reflects the recommendation of the Planning Board, this the 9th day of September, 2013.

Attest:

  
\_\_\_\_\_  
Planning Board Chair

  
\_\_\_\_\_  
Planning Director



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** John Connet

**Department:** Administration

**Date Submitted:** 09/26/13

**Presenter:** John Connet/Lee Smith

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item # 09**

Over the last several months, we have been working with Martin-McGill to provide the City Council with options regarding System Development Charges (SDCs). We formally presented two options to the City Council at your September 5, 2013 meeting. Over the last thirty days, I have provided this information to the Chamber of Commerce, Rotary Club and Henderson County Home Builders Association for their feedback. We have also been working on a System Development Fee Ordinance, that incorporates the policy and procedures for the SDCs. We have tried to incorporate the comments we have received from our stakeholders in the proposed policy and procedures. We request that you formally adopt the new System Development Charges and Policies at your October 3, 2013 City Council meeting.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

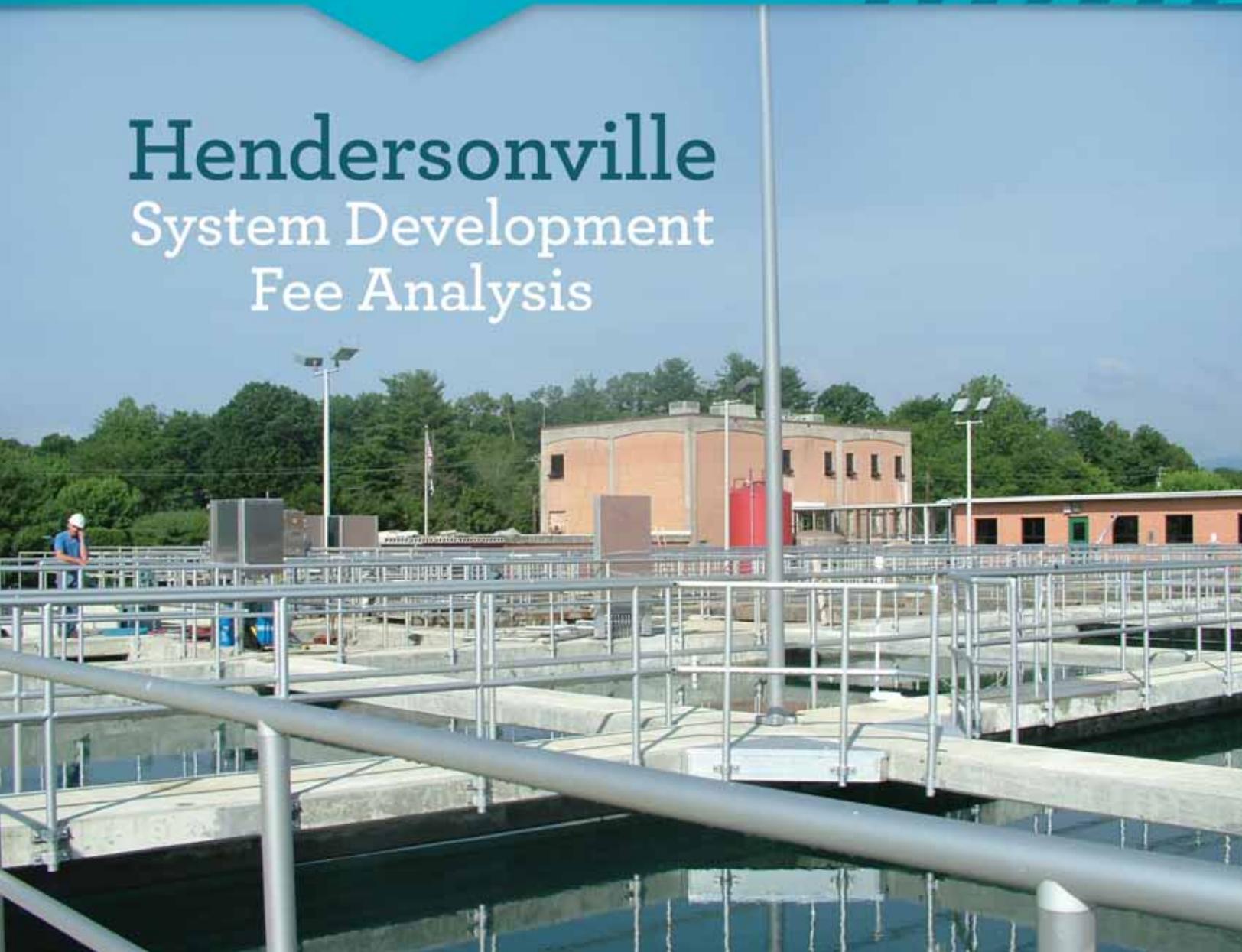
I hereby move City Council to adopt the Ordinance approving and adopting water and sewer system development charges and related policy.

**Attachments:**

System Development Fee Alternatives and Policy



# Hendersonville System Development Fee Analysis



## *Memorandum*

**TO:** *John Connet*

**FROM:** *Dennie Martin*

**DATE:** *August 29, 2013*

**SUBJECT:** *Hendersonville System Development Fee Analysis*

---

We have reviewed the City of Hendersonville's Water and Sewer asset depreciation schedule, available GIS data and user data to identify alternative approaches to System Development Fee (SDF) structures. These fees are one-time charges imposed at the time of connection to the system, or when development permits are issued. They are designed to recover all or a portion of the capital investment made by the City to provide sufficient capacity in its system to serve new users. It should be emphasized that SDFs are charged to only new customers and actually save existing users substantial capital costs over time. There are no laws or requirements about fee design. The various methods are aids to differentiate the magnitude of usage between customers.

The following are notable SDF attributes according to the University of North Carolina Environmental Finance Center's latest survey:

- 39% of water and 48% of sewer rate structures in North Carolina charge SDFs.
- Nearly 77% of SDFs either vary by meter size or are fixed. Fees based upon usage, acreage, square footage, number of bedrooms, or line size are uncommon in North Carolina.
- Statewide average residential water and sewer SDFs are approximately \$1,000 and \$1,300 respectively.
- Nearly 88% of SDFs do not differentiate inside users from outside users.

A survey of fees charged by other providers is shown in the Appendix.

Five alternative fee schedules were initially reviewed and presented to the City. After reviewing the alternatives, the consensus was to pursue an American Water Works Association (AWWA) methodology because it was defensible, relatively easy to explain to customers, and easy to implement. Below are two variations to the AWWA approach for your consideration:

- Alternative 1 - AWWA fees that are based on full values of water and sewer systems.
- Alternative 2 - AWWA fees that are based on partial values of water and sewer systems.

Our approach and conclusions are as follows:

## **ALTERNATIVE 1 - AWWA EQUITY**

SDFs using the AWWA Equity methodology are derived from estimated values for the water and sewer system's assets instead of future capital needs. The methodology begins with assigning values to the water and sewer systems. The calculation of the values uses a tabulation of water and sewer assets derived from the City's depreciation report and other sources. The values are separated and assigned to either water or sewer. When no information is available to allocate an asset to water or sewer, it is assigned equally between each.

Because the City's depreciation report lacks records of the water pumps, sewer lift stations, and some water and sewer lines, we have analyzed the latest available GIS data for those assets. This GIS data, showing the ages, materials, diameters, and linear feet, was used to determine a value of the components using today's hard and soft costs for line installation. Any line, water pump, and lift station data from the depreciation report was replaced with the data derived from the GIS reports. It is estimated that the water system's replacement value is approximately \$94.2 million and the sewer system value is approximately \$40.8 million, as shown in Table 1. However, to account for outstanding debt on the system, the principal balances of the fund's five loans totaling \$22,727,423 are deducted from the water and sewer systems' values to determine the net system value. After debt is considered, the net value of the water system is approximately \$83.2 million and the net value of the sewer system is approximately \$29 million. These values have been reviewed by the City's finance director and auditor.

<b>TABLE 1</b>		
<b>HENDERSONVILLE WATER AND SEWER FUND</b>		
<b>WATER &amp; SEWER SYSTEMS ESTIMATED VALUES</b>		
	<i>DEPRECIATED VALUE</i>	<i>DEBT BALANCE</i>
<b>WATER</b>		
LAND	\$1,308,846	
PLANT & BUILDINGS	\$21,330,957	
EQUIPMENT & METERS	\$4,038,657	
PUMPS *	\$2,792,000	
TANKS & RESERVOIR	\$3,359,509	
VEHICLES	\$407,174	
2013 CAPITAL OUTLAY	\$171,870	
LINES *	\$60,773,250	
DEBT		\$10,927,792
<b>SUBTOTAL WATER SYSTEM VALUE</b>	<b>\$94,182,262</b>	<b>\$83,254,470</b>
	<b>69.73%</b>	<b>74.12%</b>
<b>SEWER</b>		
LAND	\$183,120	
PLANT & BUILDINGS	\$13,807,489	
EQUIPMENT	\$55,655	
LIFT STATIONS *	\$3,219,750	
VEHICLES	\$331,112	
2013 CAPITAL OUTLAY	\$738,914	
LINES *	\$30,177,108	
DEBT		\$11,799,631
<b>SUBTOTAL SEWER SYSTEM VALUE</b>	<b>\$40,876,603</b>	<b>\$29,076,972</b>
	<b>30.27%</b>	<b>25.88%</b>
<b>TOTAL WATER AND SEWER SYSTEMS VALUE</b>	<b>\$135,058,865</b>	<b>\$112,331,442</b>
	<b>100.00%</b>	<b>100.00%</b>
<b>NOTES AND ASSUMPTIONS:</b>		
* ESTIMATED DEPRECIATED REPLACEMENT VALUE DERIVED FROM GIS DATA.		
LINE VALUES INCLUDE VALVES, MANHOLES, AND OTHER EQUIPMENT PLUS ALL RELATED SOFT COSTS.		

In order to allocate the two system values to users, an analysis of existing system usage is necessary to determine the equivalent units of current customers. First, residential users are separated from non-residential users. Then, the average monthly flow per residential user is calculated using historical flow data. As seen in Table 2, there are 5,074 residential inside water users, 17,858 residential outside water users, 4,821 residential inside sewer users and 1,986 residential outside sewer users with average monthly flows ranging from 2,794 to 3,462 gallons.

**TABLE 2**

**HENDERSONVILLE WATER AND SEWER FUND**

**USER EQUIVALENTS**

		Number of users	Monthly Consumption in gallons	Annual Consumption in gallons	Average Monthly Consumption per User in gallons	User Equivalents
<b>Water</b>	Residential Inside	5,074	14,182,875	170,194,500	2,795	4,279
	Residential Outside	17,858	61,832,350	741,988,200	3,462	18,653
	Non-residential Inside	1,507	25,116,692	301,400,300		7,577
	Non-residential Outside	1,073	40,010,867	480,130,400		12,070
	Wholesale	2	6,477,592	77,731,100		1,954
	<b>TOTAL</b>	<b>25,514</b>	<b>147,620,375</b>	<b>1,771,444,500</b>	<b>3,315</b>	<b>44,534</b>
<b>Sewer</b>	Residential Inside	4,821	13,471,158	161,653,900	2,794	4,683
	Residential Outside	1,986	6,108,825	73,305,900	3,076	2,124
	Non-residential Inside	1,445	22,552,483	270,629,800		7,840
	Non-residential Outside	251	7,545,125	90,541,500		2,623
	<b>TOTAL</b>	<b>8,503</b>	<b>49,677,592</b>	<b>596,131,100</b>	<b>2,876</b>	<b>17,270</b>

To account for the non-residential usage, which is usually higher per customer than residential usage, one must convert the number of non-residential users into residential user equivalents. This is performed by taking the total flow of all non-residential users and dividing it by the average flow of one residential user. Table 2 shows that the 1,507, 1,073, and two (2) inside, outside and wholesale customers' monthly usage of 25.1 million, 40 million, and 6.5 million gallons respectively are equivalent to 7,577 inside, 12,070 outside residential water customers, when using a weighted average residential monthly flow of 3,315 gallons. Using the same methodology for sewer, the 1,445 and 251 inside and outside non-residential sewer users are equivalent to 7,840 and 2,623 residential inside and outside sewer users. Lastly, the number of sewer residential users are added to the user equivalents derived from non-residential users, to total 44,534 water and 17,270 sewer residential user equivalents.

When the water and sewer system net values are divided by their respective number of user equivalents, a System Development Fee for a ¾ inch meter is calculated to be \$1,869 for water and \$1,684 for sewer, as shown in Table 3.

<b>TABLE 3</b>		
<b>HENDERSONVILLE WATER AND SEWER FUND</b>		
<b>SYSTEM DEVELOPMENT FEES</b>		
<b>TOTAL VALUE OF WATER SYSTEM</b>	\$94,182,262	
<b>LESS OUTSTANDING DEBT PRINCIPAL</b>	\$10,927,792	
<b>NET</b>	\$83,254,470	
<b>DIVIDED BY RESIDENTIAL USER EQUIVALENTS</b>	44,534	
<b>SYSTEM DEVELOPMENT FEE FOR 3/4 INCH METERS</b>	\$1,869	<b>WATER</b>
<b>TOTAL VALUE OF SEWER SYSTEM</b>	\$40,876,603	
<b>LESS OUTSTANDING DEBT PRINCIPAL</b>	\$11,799,631	
<b>NET</b>	\$29,076,972	
<b>DIVIDED BY RESIDENTIAL USER EQUIVALENTS</b>	17,270	
<b>SYSTEM DEVELOPMENT FEE FOR 3/4 INCH METERS</b>	\$1,684	<b>SEWER</b>

The fees for meter sizes larger than ¾ inch are calculated by prorating the ¾ inch meter size by the maximum flow factor of each meter, as shown in Table 4.

<b>TABLE 4</b>			
<b>HENDERSONVILLE WATER AND SEWER FUND</b>			
<b>SYSTEM DEVELOPMENT FEES FOR VARIOUS METER SIZES</b>			
<b>ALTERNATIVE 1 - AWWA EQUITY / FULL VALUE</b>			
<i>Connection size</i>	<i>Max flow</i>	<i>Water</i>	<i>Sewer</i>
<i>(inches)</i>	<i>gpm</i>		
3/4	30	\$1,900	\$1,700
1	50	\$3,100	\$2,800
1.5	100	\$6,200	\$5,600
2	160	\$10,000	\$9,000
3	320	\$19,900	\$18,000
4	500	\$31,200	\$28,100
6	1000	\$62,300	\$56,100
8	1600	\$99,700	\$89,800
10+	2300	\$143,300	\$129,100

As an alternative to applying flow rate factors to all meter sizes and charging higher fees to users with larger meters, the City may limit its fees to a specific meter size. For example, any connection using a meter larger than eight inches could be charged the eight inch fee.

**ALTERNATIVE 2 - AWWA EQUITY USING PARTIAL VALUE**

Another alternative that helps manage the magnitude of fees is one that utilizes 75% of the system values. When valuation assumptions are made where historic information is not available, it is common for system values to be high considering the modified approach. An alternative to address this potential for over-valuing assets would be to discount the total valuation by a factor that the City deems appropriate to compensate for a potential difference in value. SDFs for 3/4-inch meters compute to \$1,430 and \$1,280 for water and sewer users. The fees for meter sizes larger than 3/4 inch are also calculated by prorating the 3/4 inch meter size by the maximum flow factor of each meter, as shown in Table 5.

<b>TABLE 5</b>			
<b>HENDERSONVILLE WATER AND SEWER FUND</b>			
<b>SYSTEM DEVELOPMENT FEES FOR VARIOUS METER SIZES</b>			
<b>ALTERNATIVE 2 - AWWA EQUITY / 75% VALUE</b>			
<i>Connection size</i>	<i>Max flow</i>	<i>Water</i>	<i>Sewer</i>
<i>(inches)</i>	<i>gpm</i>		
3/4	30	\$1,430	\$1,280
1	50	\$2,330	\$2,100
1.5	100	\$4,650	\$4,200
2	160	\$7,500	\$6,750
3	320	\$14,930	\$13,500
4	500	\$23,400	\$21,080
6	1000	\$46,730	\$42,080
8	1600	\$74,780	\$67,350
10+	2300	\$107,480	\$96,830

## CONCLUSIONS

Sample user charges for the two AWWA methodology based fee alternatives are compared to the FY 2012 and current fees in Table 6. It shows the lowest fees for each sample user in green and the highest fees in red. Alternative 2 includes the majority of the lowest sewer fees but at a consequence of generating less sewer revenue for the City based upon actual connections in FY 2013. In contrast, Alternative 1 and the FY 2013 rates charge some of the highest fees and revenues.

The City's past SDFs have provided a diversification of the City's water and sewer fund revenue stream and a revenue source that lessens future water and sewer rate increases. They have produced an average of \$299,000 annually during the past five years and even greater amounts prior to current economic conditions. This average savings is equivalent to an approximate 2% increase in water and sewer rates. Regardless of the selected alternative, these fees should be viewed as important to ensure the equitable distribution of cost responsibilities between existing and future rate payers. Consequently, they should be reviewed every three to five years to account for changes in system usage and valuation.

Finally, the methodology utilized to develop SDFs should be viewed as a beginning point to be modified and managed to meet the unique circumstances and needs of the community. The structure adopted should be accompanied by a statement of policy that provides the governing board with some degree of flexibility to address unique situations such as public health and economic development. The policy should also serve to assist managers to understand and implement the full extent of the Board's objectives.

**TABLE 6**  
**HENDERSONVILLE WATER AND SEWER FUND**  
**COMPARISON OF SYSTEM DEVELOPMENT FEE ALTERNATIVES**

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Connection size (inches)	Monthly usage	Hendersonville 2013		Hendersonville 2012		Alternative 1 (AWWA - Full Value)		Alternative 2 (AWWA - 75% Value)	
		Water	Sewer	Water	Sewer	Water	Sewer	Water	Sewer
3/4-inch	5,000	\$ 333	\$ 648	\$ 800	\$ 1,375	\$ 1,900	\$ 1,700	\$ 1,430	\$ 1,280
3/4-inch	10,000	\$ 667	\$ 1,296	\$ 800	\$ 1,375	\$ 1,900	\$ 1,700	\$ 1,430	\$ 1,280
1-inch	25,000	\$ 1,667	\$ 3,241	\$ 2,400	\$ 4,125	\$ 3,100	\$ 2,800	\$ 2,330	\$ 2,100
1-inch (Restaurant)	120,000	\$ 8,000	\$ 15,556	\$ 2,400	\$ 4,125	\$ 3,100	\$ 2,800	\$ 2,330	\$ 2,100
2-inch	100,000	\$ 6,667	\$ 12,963	\$ 5,600	\$ 9,625	\$ 10,000	\$ 9,000	\$ 7,500	\$ 6,750
2-inch (Car Wash)	420,000	\$ 28,000	\$ 54,444	\$ 5,600	\$ 9,625	\$ 10,000	\$ 9,000	\$ 7,500	\$ 6,750
4-inch	500,000	\$ 33,333	\$ 64,815	\$ 12,800	\$ 22,000	\$ 31,200	\$ 28,100	\$ 23,400	\$ 21,080
6-inch	1,000,000	\$ 66,667	\$ 129,630	\$ 32,000	\$ 55,000	\$ 62,300	\$ 56,100	\$ 46,730	\$ 42,080
Revenue produced based on new connections for past 12		\$ 130,000	\$ 96,000	\$ 213,000	\$ 122,000	\$ 464,000	\$ 137,000	\$ 349,000	\$ 103,000

Revenues based on the following connections:

Water Residential 3/4	176
Water Non-residential 3/4	20
Water Non-residential 1	7
Water Non-residential 2	7
Sewer Residential 3/4	53
Sewer Non-residential 3/4	5
Sewer Non-residential 1	1
Sewer Non-residential 2	4

Green and red colors indicate lowest and highest charges respectively per sample user and service. Annual revenue varies between alternatives.

**APPENDIX**

**HENDERSONVILLE WATER AND SEWER FUND  
SYSTEM DEVELOPMENT FEES OF OTHER PROVIDERS**

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PROVIDER	TYPE	RESIDENTIAL		COMMERCIAL		NOTES
		WATER	SEWER	WATER	SEWER	
Asheville	Meter Size	\$ 1,125	N/A	\$2,775 - \$128,350	N/A	Does not include sewer
MSD	Meter Size	N/A	\$ 2,500	N/A	\$2,500 - \$237,500	Does not include water
Concord	Meter Size	\$ 1,089	\$ 800	\$1,851 - \$156,054	\$1,360 - \$114,640	
Fayetteville	Meter Size	\$ 540	\$ 720	Engineer estimates		
Hickory	Meter Size	\$ 484	\$ 522	\$902 - \$24,799	\$1,005 - \$20,115	Double for Outside
Marion	Meter Size	\$ 540	\$ 360	\$540 - \$112,500	\$360 - \$69,840	2.5x for Outside
Mooresville	Meter Size	\$ 2,600	\$ 1,880	\$2,600 - \$65,000	\$1,880 - \$84,500	
Shelby	Meter Size	\$ 200	\$ 500	\$200 - \$4,000	\$500 - \$4,000	
Statesville	Meter Size	\$ 652	\$ 2,705	\$1,087 - \$67,400	\$4,508 - \$279,502	
Waynesville	Meter & Flow	\$ 400	\$2.50 / gpd	\$400 - \$20,000	\$2.50 / gpd	Double for Outside

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA  
APPROVING AND ADOPTING WATER AND SEWER SYSTEM  
DEVELOPMENT CHARGES AND RELATED POLICY**

**WHEREAS**, the North Carolina General Statutes, Chapter 160A-314, provides for municipalities to enact public enterprise fees, including system development charges; and

**WHEREAS**, on September 5, 2013 the City Council discussed during a regularly scheduled meeting, after compliance with all legal prerequisites, to consider new water and sewer system development charges to be imposed; and,

**WHEREAS**, the City Council hereby desires to adopt the water and sewer system development charges and related policy for the purpose of recovering all or a portion of the capital investment made by the City to provide sufficient capacity in its system to serve new users, which was considered at the September 5, 2013 meeting; and,

**WHEREAS**, the City Council hereby finds and determines that all legal prerequisites have been complied with.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF HENDERSONVILLE, NORTH CAROLINA:**

**Section 1: Inclusions**

That all of the above premises are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.

**Section 2: Recovery of Future Capital Investments**

It shall be the City's policy to recover, to the extent possible, the value or some portion of the value of those future capital projects named in its Water and Sewer Capital Improvements Plan, which are intended to enhance or expand overall system capacities and performance.

**Section 3: Updating of System Development Charges**

It is the intent of City Council that the structure of System Development Charges and the related policies contained herein will be reviewed, at least every third year after adoption, to insure that the asset value estimates and related calculations that form the basis of said System Development Charges remain relevant to Hendersonville and best serve the needs of the Customers and the Utility Systems.

**Section 4: System Development Charge Schedule**

A charge shall be applied against each lot or tract of land and the owner or tenant thereof whose water and/or sewer service shall be connected with any water line and/or sewer line owned by the City, and the charge shall be applied in accordance with the following rate schedule:

<i>Connection size (inches)</i>	<i>Max flow gpm</i>	<i>Water</i>	<i>Sewer</i>
3/4	30	\$1,430	\$1,280
1	50	\$2,330	\$2,100
1.5	100	\$4,650	\$4,200
2	160	\$7,500	\$6,750
3	320	\$14,930	\$13,500
4	500	\$23,400	\$21,080
6	1000	\$46,730	\$42,080
8	1600	\$74,780	\$67,350
10+	2300	\$107,480	\$96,830

**Section 5: Schedule Amendments**

The City shall from time to time amend the schedule of System Development Charges at its sole discretion when it determines that such amendments are in the best interest of the City and consistent with the intent of this ordinance.

**Section 6: Master Metering**

- (a) If a master meter, defined as a meter serving multiple residential units or multifamily units all located on one or many parcels, is utilized by the owner, each unit shall be assessed a system development charge, for those utilities available to the affected property or properties. The charges shall be calculated using the total number of units to be served by water and/or sewer multiplied by the applicable residential water and/or sewer system development charge, in accordance with *A Resolution Amending the Schedule of Fees/Charges for the City Water System; Implementing Fees/Charges for Master Water Meters*, so adopted by City Council on December 10, 1998.
- (b) The owner shall be required to execute a *Master Meter Agreement* and shall adhere to all requirements set forth in said *Agreement* prior to initiation of services, as so adopted in form by City Council on March 3, 2011.

**Section 7: Increasing Size of Meter**

If a customer requests an increase in meter size to an existing service, the customer shall pay the charge difference between the new level of service and the existing level of service as set out in the schedule of rates and fees currently in force at the time the larger meter is connected. The additional charge shall be paid prior to installation of the enlarged meter service.

#### Section 8: Water Service Relocations

When a customer applies to the City to move an existing **non-residential** water meter, along with system development charges previously paid in association with said service(s), to a new and different address for the same non-residential account, no system development charge will be assessed by the City, unless the requested meter size is increased over the size of the metered service at the previous location, in which case the cost difference shall be determined in accordance with the schedule of rates and fees currently in force. This service relocation process shall only be allowed to occur one time per non-residential account.

#### Section 9: Application Procedure

All future applicants or new connections to the City's water and/or sewer systems shall adhere to the City's procedures, as follows:

- a. The new customer shall make application for services as provided for in the City Code of Ordinances in Chapter 52, Section 10 *Application for service*.
- b. The applicant shall remit to the City payment for the prescribed system development charge(s) in accordance with the Schedule of Fees and Charges currently in force.
- c. The Applicant must demonstrate compliance with related policies and procedures inherent to the City's Utilities Extension and Capacity Allocation policies.
- d. In the event that the City finds that the applicant does not make the applied for connection to the City's water and/or sewer system or the City determines that said connection is not feasible due to insufficient system capacity to meet anticipated service demands, the City shall reimburse said system development charges to the applicant, upon request from the applicant.

#### Section 10: Payment of and Accounting for System Development Charge

The system development charge shall be fully paid in cash prior to the issuance of any building permit for the development and/or when application for water and/or sewer service is submitted to the City. New residential users may opt to pay system development charges owed to the City, upon connecting to the City's water and/or sewer systems, on a monthly basis for a period not to exceed three years.

#### Section 11: Use of System Development Charge Receipts

It shall be the policy of the City to deposit System Development Charges into reserve accounts created for the purpose of offsetting future capital costs related to maintaining and enhancing the overall capacity and performance of the City's water and sewer system infrastructures.

#### Section 12: Waiver

The City, at its sole discretion, may waive the System Development Charge(s) in circumstances when the connection by a prospective customer to the water and/or sewer systems provides demonstrated economic development benefits to the City, addresses a definitive health hazard, provides low-income housing in the City, or provides some other

tangible benefit to the City, which in the City Council's sole opinion outweighs the value of the system capacity to be consumed by said prospective customer's connection or in accordance with the **City's System Development Charge Waiver Policy**, as so amended.

**Section 13: Authority of Political Subdivisions to Pay Charge**

Political subdivisions and other government entities are subject to the system development charges imposed under this ordinance.

**Section 14: Effect of this Ordinance**

(1) This ordinance is subject to amendment by the City Council pursuant to its governmental and legislative power.

(2) This payment and collection of the system development charges shall not obligate the City to provide any specific capital improvement unless approved by the City Council and shall not guarantee any specific level or quality of capital improvement or facility expansion.

**Section 15: Severability**

If any section, article, paragraph, sentence, clause, phrase or word in this ordinance or application thereto any person or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of the ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 16: Repeal**

All ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect provided that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this ordinance.

**Section 17: Effective Date**

This ordinance shall be effective immediately from the date of passage and approval, and the full System Development Charges shall be collected as shown on the system development charge schedule currently in force.

The motion to adopt this ordinance was made by Councilman \_\_\_\_\_, seconded by Councilman \_\_\_\_\_, and passed by the City Council of Hendersonville, North Carolina on the **xx day of October, 2013.**

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Mayor

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(Attest)

This agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: \_\_\_\_\_

Jim Rudisill, Finance Director  
City of Hendersonville, North Carolina

DRAFT



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Tom Wooten

**Department:** Public Works

**Date Submitted:** 09/23/13

**Presenter:** Tom Wooten

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item # 10**

Our bridge located on West Allen Street next to Four Seasons Rotary Park was damaged during our recent heavy rains. The rapid flow of water along with debris in the creek has caused significant erosion under the right wing wall causing the wing wall to settle and crack next to the bridge structure. This wall will have to be removed and rebuilt. We have the project designed, bid and await your approval in order to make the necessary repairs. We have some Powell Bill Funds available for this project but would like to use those funds to continue making repairs to our roads. Therefore, we are requesting a budget amendment from fund balance to pay for the repairs to the bridge. We also request that Brushy Mountain Builders be awarded the repair contract since they were the low bidder at \$77,754.00.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to award the West Allen Street Bridge Repair Contract to Brushy Mountain Builders for \$77,754.00 and to approve the attached budget amendment for \$77,754.00.

## Attachments:

West Allen Street Bridge Repair Bid Tabulation Sheet  
Budget Amendment



## Vaughn & Melton

Consulting Engineers  
1318-F Patton Avenue  
Asheville, North Carolina 28806  
828-253-2796 \* 828-253-4864 Fax  
www.vaughnmelton.com

**Return to  
Agenda**

September 17, 2013

Mr. Tom Wooten  
Public Works Director  
City of Hendersonville  
305 Williams Street  
Hendersonville, North Carolina 28792

**RE: City of Hendersonville  
West Allen Street Wingwall Repair  
BID TABULATION AND RECOMMENDATION OF AWARD**

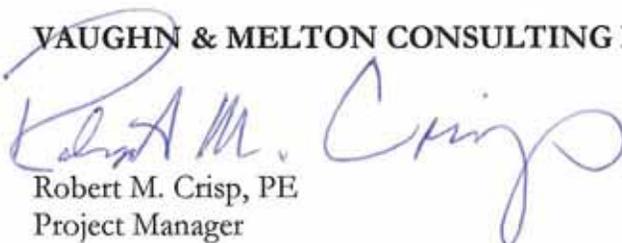
Dear Mr. Wooten:

The bids for this project were received on September 17, 2013 at 10:00AM. The bid tabulation was as follows: Bid #1=Brushy Mountain Builders, Inc. at \$77,754.00 and Bid #2 = NHM Constructors, LLC at \$85,727.00. The apparent low bidder, at \$77,754.00 was Brushy Mountain Builders, Inc. I hereby certify that this is a true tabulation of bids received on September 17, 2013 at 10:00AM.

Being that Brushy Mountain Builders, Inc. is a responsible and qualified bidder, it is our recommendation that they be awarded the referenced contract. Their address is 3390 Gaither Walker Circle, Lenoir, North Carolina 28645. Their phone number is 828-758-5577 and the president of this company and our contact is Mr. John H. Moore II.

Sincerely,

**VAUGHN & MELTON CONSULTING ENGINEERS**



Robert M. Crisp, PE  
Project Manager

31340-11





# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Tom Wooten

**Department:** Public Works

**Date Submitted:** 09/25/13

**Presenter:** Tom Wooten

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Presentation Only

## Summary of Information/Request:

**Item # 11**

Early this year, we completed a study on our streets to assess how our pavement management system is working. I plan to present the findings of the study and discuss how we are adapting our pavement management system to work toward the study's recommendations.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

Attachments:



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Agenda**

# City of Hendersonville

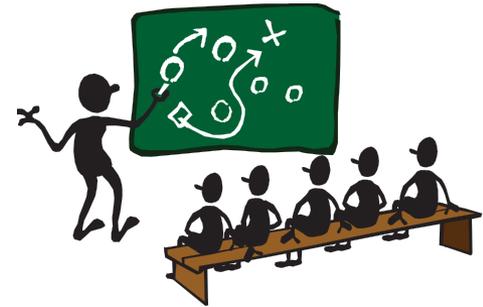
## 2013 Pavement Condition Survey



# Report Introduction

[Return to  
Agenda](#)

1. Hendersonville maintains 67.9 miles of roads
2. USI finished the survey in April 2013
3. Data Collection
  - Eight common pavement surface distresses observed
  - Additional attributes
4. Post data collection:
  - PCR
  - Maintenance activities



# Findings

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Agenda](#)

1. PCR = 69.3
2. NC Municipality Average = 80.0
3. Street System is in “Fair” condition
4. PCR is below average
5. 17.9 miles of streets or 26.4% of the rated system are recommended for resurfacing

# Findings

[Return to  
Agenda](#)

- 
6. 69.4% of street system needs maintenance or resurfacing
  7. Full Depth Patching Required
    - 41,587 square yards
    - Cost: \$1,002,931

# Recommendations

**Return to  
Agenda**

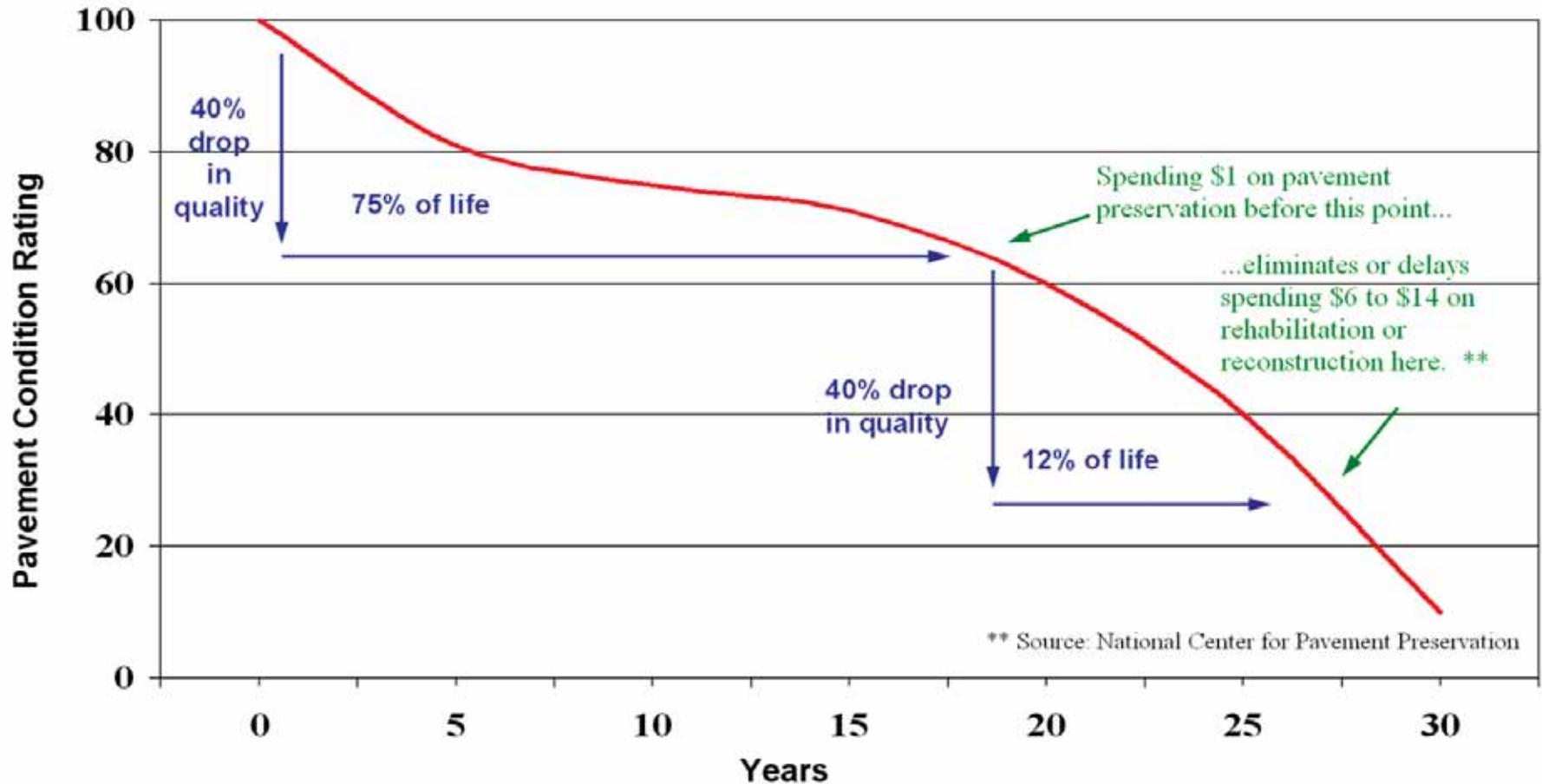
- Hendersonville has a current need of \$3,886,478
  - \$1,131,549 – Routine Maintenance
  - \$2,754,929 – Resurfacing
- Additional Costs – 25% to 40%
  - Raising structures, milling, admin., etc.
- 15 year paving cycle
  - 4.5 miles per year
  - \$ 692,200 per year

# Recommendations

**Return to  
Agenda**

- Crack Sealing
  - 2.0 miles – Primary Maintenance Activity
  - 5.1 miles – Secondary Maintenance Activity
- USI recommends that Hendersonville should continue to dedicate its maintenance funding towards preventative maintenance practices and structural repair
  - This practice will reduce the maintenance cost per mile in future years

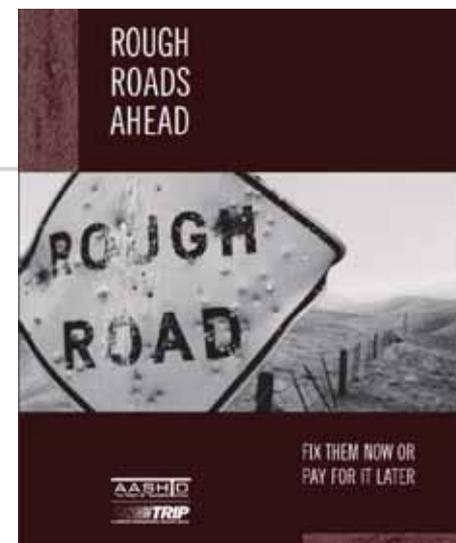
# Typical Pavement Deterioration Curve



Proactive vs. Reactive Pavement  
Maintenance Program

# Roadway Assets

- AASHTO's Rough Roads Ahead
  - USA Roadways - \$1.75 Trillion
  - 4,000,000 miles of roadways
  - \$437,500/mile
  - Assuming an average pavement width of 24'
    - Roadway Value ~ \$31/SY
  - Hendersonville streets – 882,992 SY
  - Roadway assets – \$27 million



2009 AASHTO Publication

# Data Collection – Pavement Distresses



**Alligator Cracking**



**Block Cracking**



**Reflective Cracking**



**Raveling**

# Data Collection – Pavement Distresses



**Rutting**



**Patching**



**Bleeding**



**Ride Quality**

# Data Collection – Additional Attributes

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## Additional Attributes

- Number of lanes
- Block number
- Segment length
- Segment width
- Sidewalk
- Curb and gutter
- Asphalt height above gutter

# Priorities

**Return to  
Agenda**

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## High Priority

- Crack sealing
- Joint Repair
- Full-depth patching
- Short overlay
- Resurfacing of alligator cracking and rutting

# Priorities

**Return to  
Agenda**

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## Medium Priority

- Resurfacing of severe:
  - Block/transverse cracking
  - Reflective cracking
  - Raveling
  - Bleeding

# Priorities

**Return to  
Agenda**

## Low Priority

- Resurfacing of moderate:
  - Block/transverse cracking
  - Reflective cracking
  - Raveling
- Resurfacing of rough ride quality
- Resurfacing of moderate to severe:
  - Patching
  - Ride quality

# Priorities

[Return to Agenda](#)

**Table 1**  
**Priority by Type of Maintenance for the City of Hendersonville**

<b>PRIORITIES</b>	<b>Total Miles</b>	<b>Total Cost</b>	<b>Cost Per Mile</b>	<b>Percentage of Cost</b>
<u>HIGH PRIORITY</u> : Routine Maintenance, Resurfacing of Alligator Cracking and Rutting	42.53	\$3,227,859	\$75,896	83.0
<u>MEDIUM PRIORITY</u> : Resurfacing of Severe Block/Transverse Cracking, Severe Reflective Cracking, Severe Raveling, and Severe Bleeding	2.60	\$460,744	\$177,209	11.9
<u>LOW PRIORITY</u> : Resurfacing of Moderate Block or Reflective Cracking and Raveling, Resurfacing of Severe Ride Quality and Patching	2.03	\$197,875	\$97,475	5.1
<b>Total Repairs</b>	<b>47.16</b>	<b>\$3,886,478</b>	<b>\$82,410</b>	<b>100.0</b>

Figure 1 - Breakdown of Streets into PCR Categories for 2013

**Return to  
Agenda**

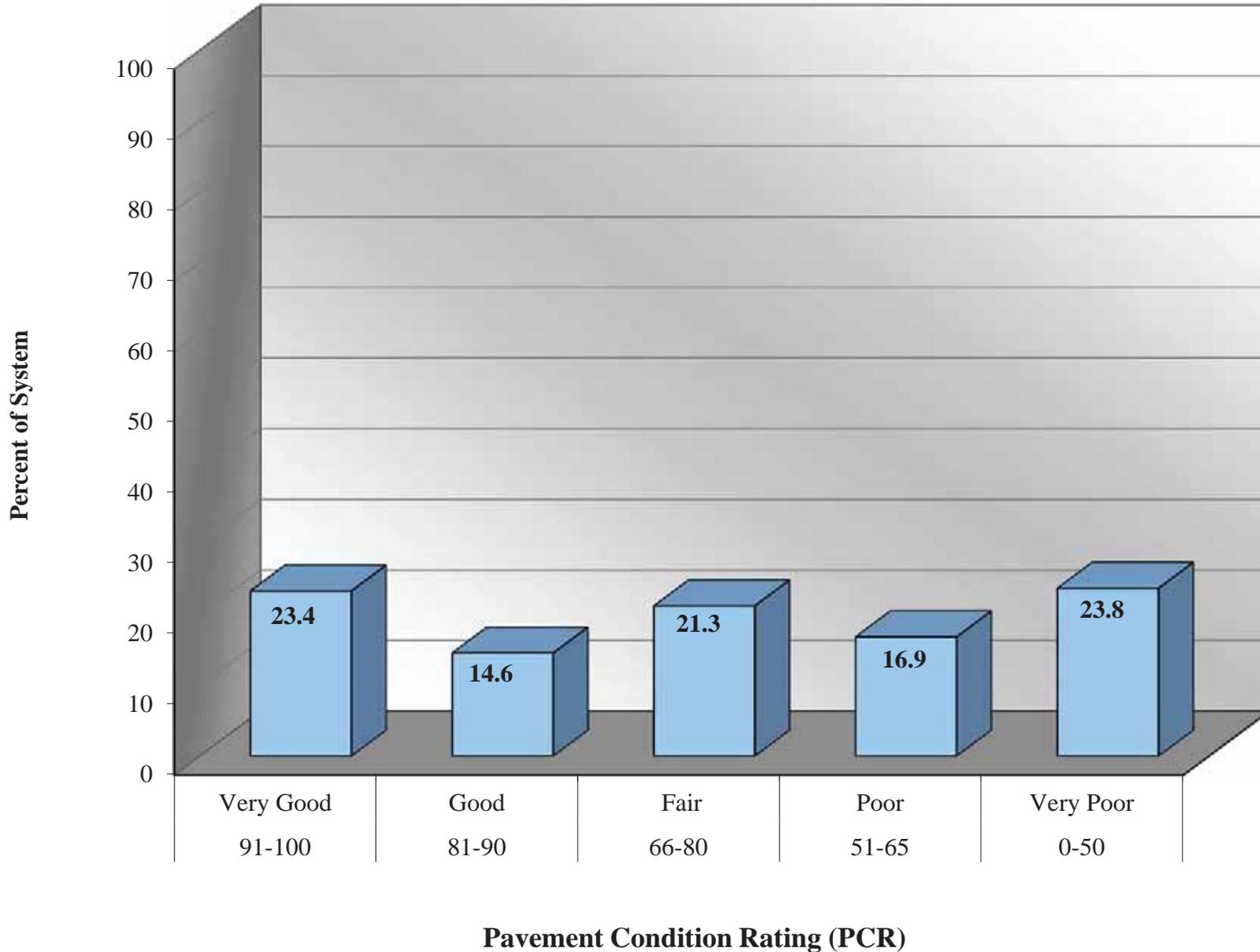
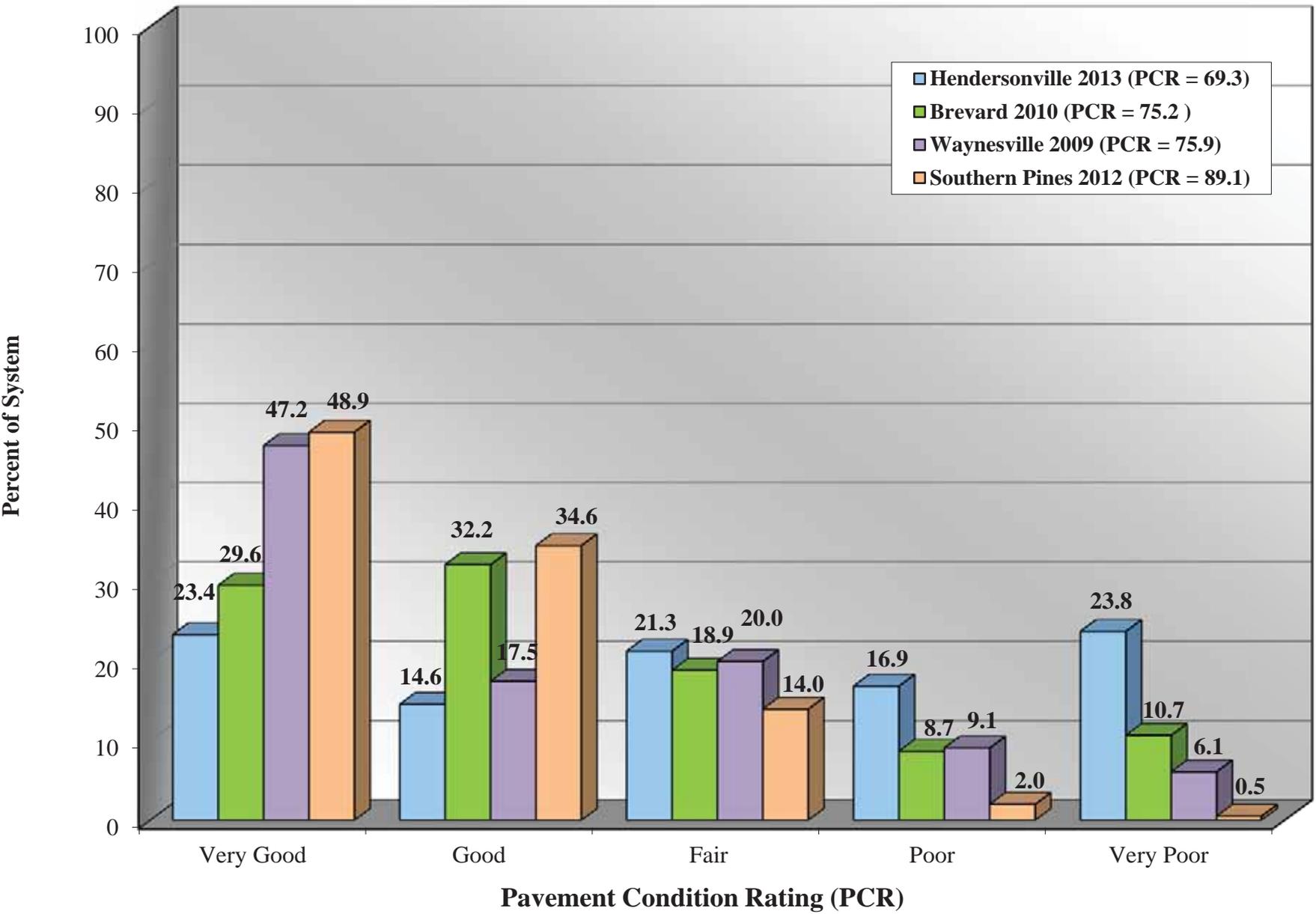


Figure 1A - Breakdown of Streets into PCR Categories - A Street System Comparison



# Unit Costs

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Agenda](#)

**Table 10**  
**Unit Costs for Maintenance Activities**

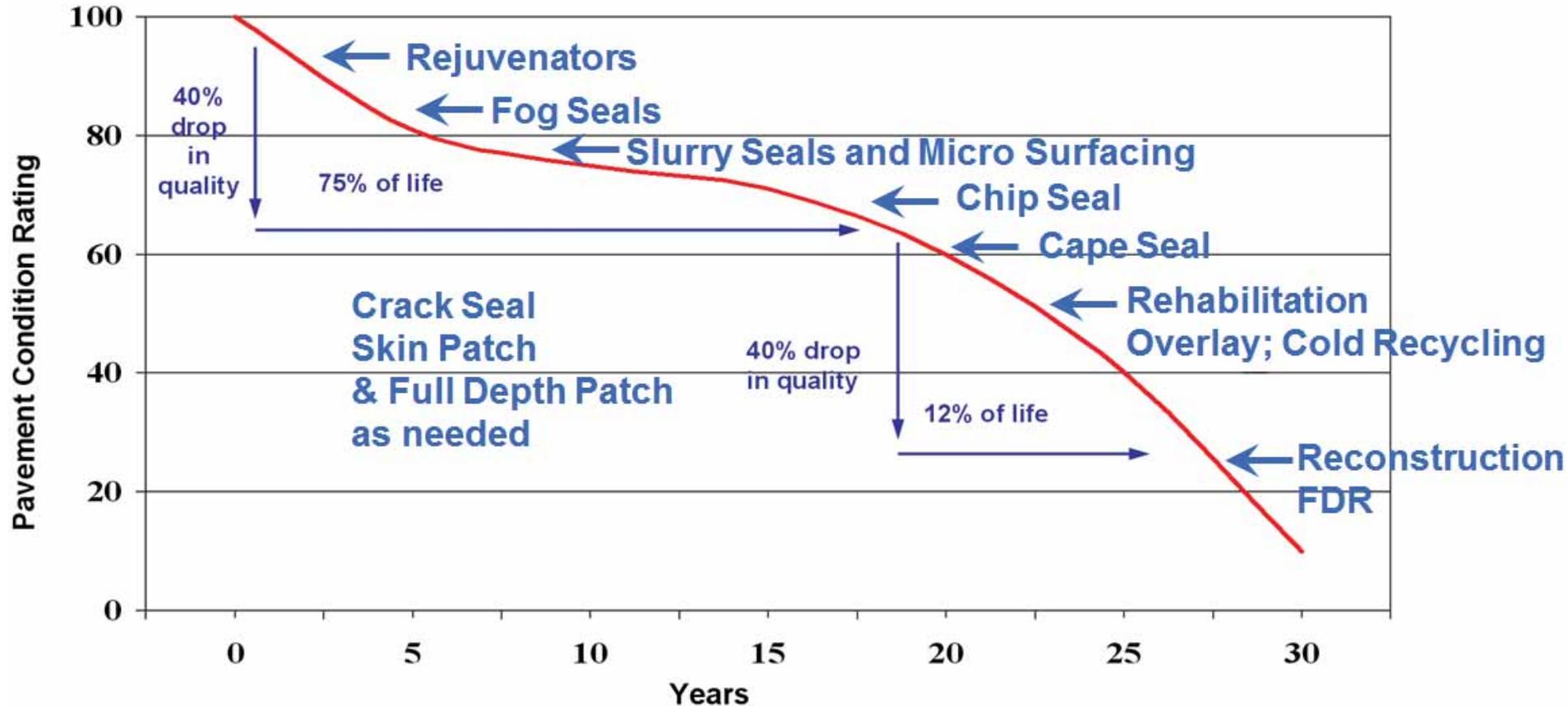
ACTIVITY	COST (PER SQUARE YARD)
Crack Sealing	\$0.65
Joint Repair	\$0.85
Full-Depth Patch	\$43.20
Short Overlay	\$6.00
1" Asphalt Leveling Course	\$4.95
1.5" Plant Mix Resurfacing	\$7.30
2" Plant Mix Resurfacing	\$10.15
Split Seal (Two Layers of BST)	\$2.60

## Table 11

### Summary Table of Suggested Primary Maintenance Activities for Rated Streets

PRIMARY ACTIVITY	MILES LO VOL	COST LO VOL	MILES HI VOL	COST HI VOL	TOTAL MILES	% MILES	TOTAL COST	COST/ MILE	% COST
Crack Sealing	1.37	\$13,569	0.57	\$8,493	1.95	2.9	\$22,062	\$11,314	0.6
Joint Repair	0.00	\$0	0.00	\$0	0.00	0.0	\$0	\$0	0.0
Full-Depth Patching	23.69	\$890,471	2.34	\$129,798	26.02	38.3	\$1,020,269	\$39,211	26.3
Short Overlay	1.18	\$82,560	0.11	\$6,658	1.29	1.9	\$89,218	\$69,161	2.3
<b>RM* Total</b>	<b>26.24</b>	<b>\$986,600</b>	<b>3.02</b>	<b>\$144,949</b>	<b>29.26</b>	<b>43.1</b>	<b>\$1,131,549</b>	<b>\$38,672</b>	<b>29.1</b>
1.5" PM	11.63	\$1,583,511	2.23	\$433,475	13.86	20.4	\$2,016,986	\$145,526	51.9
1.5" PM and Split Seal	2.48	\$424,192	0.95	\$197,670	3.43	5.0	\$621,862	\$181,301	16.0
2" PM	0.17	\$35,144	0.00	\$0	0.17	0.3	\$35,144	\$206,729	0.9
1.5" PM and 1" Asphalt Leveling Course	0.34	\$55,934	0.10	\$25,003	0.45	0.7	\$80,937	\$179,860	2.1
<b>Resurface Total</b>	<b>14.62</b>	<b>\$2,098,781</b>	<b>3.28</b>	<b>\$656,148</b>	<b>17.91</b>	<b>26.4</b>	<b>\$2,754,929</b>	<b>\$153,821</b>	<b>70.9</b>
<b>Total Repair</b>	<b>40.86</b>	<b>\$3,085,381</b>	<b>6.30</b>	<b>\$801,097</b>	<b>47.16</b>	<b>69.4</b>	<b>\$3,886,478</b>	<b>\$82,410</b>	<b>100.0</b>
No Repair	17.98	\$0	2.79	\$0	20.77	30.6	\$0	\$0	0.0
<b>Total System</b>	<b>58.84</b>	<b>\$3,085,381</b>	<b>9.09</b>	<b>\$801,097</b>	<b>67.93</b>	<b>100.0</b>	<b>\$3,886,478</b>	<b>\$57,213</b>	<b>100.0</b>

# Typical Pavement Deterioration Curve with Maintenance Activities



# Problems

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- Since 2003 the price of plant mix asphalt has gone from \$36 per ton to \$90 per ton (installed).
- The old practice of paving is almost over. Most streets have to be milled to re-establish the curb line.
- Powell Bill Funds are not increasing enough to keep up with the cost of maintaining the streets.

# Changes Moving Forward

[Return to  
Agenda](#)

- Stop spending all of our funds on the worst streets.
- Begin Crack Sealing on streets in good condition (completed 3.6 miles this year).
- Complete Full Depth Patching using city staff (completed 16,000 sq. ft. this year).
- Resurfaced 2.4 miles this year.



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Tammie Drake

**Department:** Administration

**Date Submitted:** 09/26/13

**Presenter:** Flowers, Holloway, Drake

**Date of Council Meeting to consider this item:**

**Nature of Item:** Presentation Only

## Summary of Information/Request:

**Item # 12**

Reports from Staff

a. Update on Fire Station 2: Fire Chief Dorian Flowers

b. Update/Results of Downtown Parking Survey: Mr. Lew Holloway, Downtown Economic Development Director. Lew is gathering the data and will be making a presentation at the meeting.

c. Meeting Announcements/Reminders: Mrs. Tammie Drake, City Clerk

- October 9, 2013, Land-of-Sky Regional Council Annual Celebration
- October 13-15, 2013, NCLM Annual Conference, Hickory Metro Convention Center

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

N/A

Attachments:



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Tammie Drake

**Department:** Administration

**Date Submitted:** 09/25/13

**Presenter:** Tammie Drake

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item # 13**

Appointments for Consideration: None

Announcement of Up-Coming Reappointments/Vacancies:

Historic Preservation Commission: The terms of three members will expire in November: Charles Kuester, Marty Payton and John Ogletree. These appointments will be considered at your November meeting.

Planning Board: The terms of Steve Johnson, Ralph Freeman and Fred Dutcher will expire in December. These appointments may be considered at your November meeting.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

N/A

**Attachments:**

Lists of HPC membership, Planning Board membership

**CITY OF HENDERSONVILLE  
HISTORIC PRESERVATION COMMISSION**

**Return to  
Agenda**

The Historic Preservation Commission meets at the Operations Center, Assembly Room, 305 Williams Street, Hendersonville, NC on the third Wednesday of each month at 5:00 p.m. The members are appointed by the City Council and serve a three-year term. The Design and Review Committee meets the first Wednesday of each month at 4:00 p.m. if needed.

NAME	ADDRESS	PHONE	TERM EXPIRES:	APPOINTED:
<b>Ralph Bastedo</b>	89-2 Ladies Mantle Ct. Hendersonville, NC 28792	H: 693-7173	11-14	10-06-11
<b>Jo Tyler</b>	37 Tisha Lane Hendersonville NC 28739-5583 e-mail: joctyler@att.net	H: 697-9112	11-14	11-10-05 10-09-08 10-06-11
<b>Phillip Allen</b>	1024 Highland Avenue Hendersonville NC 28792-3735 e-mail: phillip@brencase.com	W: 696-4990 H: 698-2604	11-14	08-05-10 10-06-11
<b>Charles Reed</b>	541 Blythe St. Hendersonville NC 2873991 e-mail: cscjreed@aol.com	H: 697-0167	11-15	08-02-12
<b>Cheryl Jones</b>	1230 Woodmont Dr. Hendersonville NC 28791 e-mail: cjones@bazzleandcarrlaw.com	H: 595-0993	11-15	10-08-09 10-04-12
<b>Brooke Tate</b>	525 Buena Vista Lane Hendersonville, NC 28791 e-mail: brooke_tate@hotmail.com	C: 808-9997	11-15	07-05-07 10-08-09 10-04-12
<b>John Ogletree</b>	1642 Kensington Road Hendersonville NC 28791 e-mail: johnogletree@bellsouth.net	H: 692-1441	11-13	05-08-08 10-04-10
<b>Martha Payton</b>	513 N. Main Street Hendersonville NC 28792-5075 e-mail: martypayton1@gmail.com	H: 606-9799	11-13	01-07-10 10-04-10
<b>Charles Kuester</b>	538 N. Main Street, Apt. 508 Hendersonville NC 28792 e-mail: chuckkuester@gmail.com	H: 606-8600	11-13	05-03-12

Staff contact person:

City of Hendersonville Planning Department  
145 Fifth Avenue East  
Hendersonville, NC 28792  
Phone: 828/697-3088  
Fax: 828/697-3014

# CITY OF HENDERSONVILLE PLANNING BOARD

**Return to  
Agenda**

The Planning Board meets the second Monday of every month at the Operations Center, Assembly Room, 305 Williams Street, Hendersonville, NC at 4:00 p.m. Meetings are open to the public and are subject to cancellation. The Policy & Text Committee meets the fourth Monday of every month at 4:00 p.m. at the Planning Department Conference Room.

Sec. 40-32. - Composition. The planning board consists of ten members, seven of whom shall be citizens and residents of the City and the other three shall be citizens and residents of the City's extraterritorial jurisdiction. The members who reside in the extraterritorial jurisdiction shall be entitled to equal rights, privileges and duties with other members of the board regardless of whether the matters at issue arise within the city or within the extraterritorial area.

CITY REPRESENTATIVES	TERM EXPIRES	APPOINTED	HENDERSON COUNTY REPRESENTATIVES	TERM EXPIRES
<b>Ralph Freeman</b> 1015 Highland Ave. Hendersonville NC 28792 Phone: 697-1704 (office) e-mail: rgfreema@bellsouth.net	12-01-13	12-01-11	<b>James Thorndike</b> 207 Ginseng Lane Hendersonville NC 28791-1322 Phone: 697-9899 (home) e-mail: jat1945@bellsouth.net	12/13
<b>Steve Johnson</b> PO Box 428 Hendersonville NC 28793-0428 Phone: 693-7136 (office) 693-1520 (home) e-mail: steve@southernalarm.com	12-01-13	11-04-04 11-08-07 11-04-10	<b>Bill Farrell</b> 1512 Carleton Terrace Hendersonville NC 28791 Phone: 697-5640 (home)	12/15
<b>Fred Dutcher</b> 71 Lake Pointe Circle Hendersonville 28792 Phone: 692-8880 (home) e-mail: dutcherf@bellsouth.net	12-01-13	11-08-07 11-04-10	<b>Steven Orr, Chairman</b> 108 Lyndale Road Hendersonville NC 28739-6119 Phone: 674-2420 (cell) e-mail: stevenaorr@bellsouth.net	12/14
<b>Jon Blatt</b> 519 Ehringhaus St. Hendersonville NC 28739 Phone: 692-5000 (office) 388-1210 (cell) e-mail: gosouthern@morrisbb.net	12-01-14	09-06-12		
<b>Julia Sellers</b> 827 Knollwood Drive Hendersonville NC 28791-3431 Phone: 692-3982 (home) e-mail: sell3982@bellsouth.net	12-01-14	12-10-96 12-09-99 12-05-02 11-10-05 11-06-08 11-03-11		
<b>Raymond Mundy</b> 3001 Middleton Way Ct. Hendersonville, NC 28791 Phone: 215-2700 e-mail: raysandymundy@yahoo.com	12-01-14	01-03-13		
<b>Ben Pace</b> 520 Adams St. Hendersonville NC 28739 Phone: 692-5246 (home) e-mail: didleydadburn@yahoo.com	12-01-15	12-06-12		

Contact person: Sue Anderson, Planning Director  
145 Fifth Avenue East  
Hendersonville NC 28792-4328  
e-mail: [sanderson@cityofhendersonville.org](mailto:sanderson@cityofhendersonville.org)  
Phone: 828/697-3088



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Return to  
Agenda**

**Submitted By:** Tammie Drake

**Department:** Administration

**Date Submitted:** 09/26/13

**Presenter:** Connet, Fritschner

**Date of Council Meeting to consider this item:** 10/03/13

**Nature of Item:** Discussion/Staff Direction

## Summary of Information/Request:

**Item # 16**

Request for Closed Session to:

- 1) Discuss matters relating to the location or expansion of industries or other businesses in the area served by this body as provided under NCGS §143-318.11(a)(4) and
- 2) Establish or instruct the staff (or negotiating agent) concerning the position to be taken by or on behalf of the City Council in negotiating the price and other material terms of a contract for the acquisition of real property by purchase, option, exchange, or lease as provided under NCGS §143-318.11(a)(5), for the possible expansion of Wingate University's Hendersonville Campus on Grove Street, or both.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move the City Council to enter a closed session to: 1) Discuss matters relating to the location or expansion of industries or other businesses in the area served by this body as provided under NCGS §143-318.11(a)(4) and  
2) Establish or instruct the staff (or negotiating agent) concerning the position to be taken by or on behalf of the City Council in negotiating the price and other material terms of a contract for the acquisition of real property by purchase, option, exchange, or lease as provided under NCGS §143-318.11(a)(5), for the possible expansion of Wingate University's Hendersonville Campus on Grove Street, or both.

Attachments: