

**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.

<b>Property Owner</b>	<b>PIN</b>
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.

Mayor Pro Tem Collis opened the public hearing in accordance with NC General Statutes by notice published in the Times News 6:21 p.m. No one expressed a desire to speak. The public hearing was closed. **Action failed for lack of a motion.**

**9. Consideration of Resolution Affirming Rates Meet the High Unit Cost Threshold and a Capital Project Ordinance for the Academy Road Water System Improvements Project in the Dana Community:** Mr. Lee Smith, Utilities Director, presented a resolution affirming the rates of the City meet the high unit cost threshold and a capital project ordinance. He explained this is a requirement of the grant for the Dana Community water extension project.

**Council Member Caraker moved to approve a resolution that affirms that the City's water and sewer rates meet the high unit cost threshold of 1.5% or greater than the median household income for Henderson County as presented and recommended by staff. He further moved to adopt the capital project ordinance for the Academy Road water system improvement project in the amount of \$953,500 as presented and recommended by staff. A unanimous vote of the Council followed. Motion carried.**

Resolution #13-0946

**RESOLUTION BY GOVERNING BODY OF THE APPLICANT  
AFFIRMING RATES MEET THE HIGH UNIT COST THRESHOLD**

WHEREAS, The City of Hendersonville has need for and intends to construct a distribution system, project described as a waterline to serve residents with contaminated wells and

WHEREAS, The City of Hendersonville intends to request grant assistance from Clean the NC Rural Economic Development Center for the project; and is affirming the rates are at least 1.5%, for water and sewer, or 0.75%, for water or sewer, of the Median Household Income (MHI) to be eligible to receive assistance from this Program.

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

That the City of Hendersonville will maintain their water and sewer rates at a minimum of 1.5%, for water and sewer, or 0.75%, for water or sewer rates, the current MHI before contracting the aforementioned water project with the NC Rural Economic Development Center, if approved for a grant.

Adopted the fifth day of September 2013 at Hendersonville, North Carolina.

/s/Barbara G. Volk, Mayor

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

Ordinance #13-0947

**CLEAN WATER PARTNERS' INFRASTRUCTURE FUND  
Capital Project Ordinance**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is the construction of a water line to provide treated water to the Dana Community in eastern Henderson County from the existing distribution system of the City of Hendersonville, to be financed by a NC Rural Economic Development Grant, NC DENR – Bernard Allen Funds, and local funds provided by the City of Hendersonville.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the bond resolution, grant documents, and the budget contained herein.

Section 3. The following amounts are appropriated for the project:

Construction	\$953,500
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Section 4. The following revenues are anticipated to be available to complete this project:

Rural Center Grant	\$300,000
Bernard Allen	\$190,000
CDBG or City of Hendersonville	\$463,500
	\$953,500

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