MINUTES
BREVARD CITY COUNCIL
Regular Meeting
January 24, 2011 – 7:00 PM

The City Council of the City of Brevard met in regular session on Monday, January 24, 2011 at 7:00 PM in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

Present: Mayor Jimmy Harris, Council Members Larry Canady, Rodney Locks, Mack McKeller, Mac Morrow and Dee Dee Perkins; City Manager Joe Moore, City Attorney Mike Pratt, and City Clerk Desiree Perry.

Staff: Officer Bruce Blackwell, Planner Daniel Cobb, Fireman Bradley Elmore, Planning Dir. Josh Freeman, Former Fire Chief Mike Galloway, Bldg & Grounds Dir. Lynn Goldsmith, Police Chief Phil Harris, PS Director David Lutz, Planner Sarah Lutz-Pietersen, HR Dir LeAnn McCraw, Fireman Mark Norton, Executive Assistant Jeanette Owen, and Finance Dir. Terry Scruggs.

Press: Derek McKissock, Transylvania Times; Leigh Kelly, Hendersonville Times News

Welcome - Mayor Harris called the meeting to order, welcomed those present and introduced council members and staff.

Invocation and Pledge – Pastor Judy Jennings, Joy Outreach Fellowship Church, offered the Invocation. Mayor Harris led in the Pledge of Allegiance.

Certification of Quorum – The City Clerk certified a quorum present.

Agenda - Mr. Morrow moved, seconded by Mr. Canady, the Agenda be approved as presented. Motion carried unanimously.

Approval of Minutes – Mr. McKeller moved, seconded by Mr. Locks, the December 6, 2010 meeting Minutes be approved as presented. Motion carried unanimously.

Certificates and Awards – None

Special Presentations - None

Public Hearing(s) – Mayor Harris read aloud the guidelines the public is asked to follow if they desire to speak at a public hearing.

<u>Public Hearing #1 (Continuation)</u> **-** <u>Closing of an Alleyway located between Railroad Avenue and Whitmire Street</u>.

At 7:07 PM the properly advertised and noticed public hearing continued from the December 6, 2010 meeting was opened to receive comments. No one signed up or asked to speak at the hearing. Staff recommended denial of the request because to abandon the right-of-way would be in conflict with two City adopted Plans, the Comprehensive Pedestrian Plan and the Transportation Plan for the City of Brevard. (Staff report is on file.)

With no further questions or comments from Council or public (applicant was not present) the hearing was closed at 7:15 PM.

<u>Public Hearing #2 – Habitat for Humanity – Proposed Planned Development and Planned Development District Amendment to the City of Brevard Official Zoning Map</u>

At 7:16 PM the properly advertised and noticed public hearing was opened. J. Freeman presented the staff report and explained the subject property is zoned NMX which allows for the retail but does not allow for the storage component structure the applicant desires to develop; therefore, they are applying for a Planned development District to allow

more development flexibility. Staff and Planning Board recommend approval as presented. (Staff report is on file.)

Mr. Doug Harris, AIA, presented details of the proposed Habitat ReStore on Ecusta Road. Proposed development to include a retail store, storage facility and office area. The City owns the adjoining property and has agreed to grant Habitat a five year shared access easement with a renewal option.

Mr. Don Campbell, Transylvania Habitat for Humanity President, explained they have constructed 54 houses to meet housing needs, and they request Council's favorable consideration for the proposal as the ReStore is greatly needed.

With no further questions or comments from Council, public or applicant, the hearing was closed at 7:40 PM.

Public Hearing #3 – Davidson River Village, LLC (DRV) – Proposed Development Agreement and Planned Development District Amendment to the City of Brevard Official Zoning Map

At 7:40 PM the properly advertised and noticed public hearing was opened. J. Freeman presented the staff report and explained the existing DRV's Development Agreement consists of land that was within the City's jurisdiction at the time of adoption. Proposed is to adopt an updated Development Agreement and master plan that will include property that has since been included with the City's ETJ extension. The existing Agreement's fiscal impacts were calculated to include the land within the extended ETJ south and east of the Davidson River; therefore, no significant changes from the conditions the City imposed within the original Agreement are proposed. (Staff report is on file.)

Mr. Locks asked J. Freemen if he is correct in understanding that all infrastructure (water, sewer, fire, etc.) was included in the first Agreement calculations for the DRV development including the additional 300 acres described tonight?

J. Freeman replied, "Yes".

J. Freeman explained following Planning staffs drafting of the Agreement it was provided to Attorneys Michael Egan and Craig Justus. Following their review a few corrections and/or changes have been requested. Staff recommends Council's favorable consideration to include these changes as specified within Attorney Michael Egan's Memorandum dated January 24, 2011, consisting of three (3) pages. (Memorandum was provided to Council members prior to start of tonight's meeting.)

Davidson River Village representatives, Mr. John Hanselman and Mr. Mike Singer, were present to answer questions and provided an overview of the development status that included: (1) Mr. Hanselman affirmed the infrastructures calculations and figures established within the first Agreement included the property within the expanded ETJ area as it was always their intention to include this property as part of their development within the City; (2) Started cleanup process two years ago, working under the EPA and DENER; (3) Have removed and recycled 1 million cubic yards of materials from the site; (4) Have demolished and/or removed most of the buildings; (4) Initially set a goal of recycling and reusing 90% of the materials – at this point they have recycled 94% of the materials; (5) At present one site remains unclean. Final piece is the mercury cleanup which they are in the design process and working on the "how and when" with EPA officials; (6) Target for demolition and removal of hazardous waste in June, by summer end to be complete and ready for redevelopment; and, (7) As described with the initial development approvals, it is their desire for DRV to be a vibrant development that will encompass residential, commercial and industrial development.

Mr. Hanselman and Mr. Singer will be hosting a public review of how the mercury removal will be done on February 10, 2011, and invited Council, staff and all citizens who have an interest to attend. Location will likely be in the County Library's Rogow Room.

8:03 PM, Mayor Harris called for a ten minute recess. 8:14 PM, Recess adjourned and Mayor called for the public hearing to continue.

Mr. Martin Galloway, 579 Cemetery Road, Pisgah Forest, NC. Asked if with the inclusion of the basin and island now being included within the DRV development will the floodplain be changed? Is development being proposed within the floodplain?

J. Freeman responded no floodway development is proposed according to the Master Plan. Anytime one develops land within a floodplain they are required to comply with flood development standards.

With no further comments or questions from Council, public or applicant, the hearing was closed at 8:19 PM.

Public Hearing #4 – Kennels – Proposed Text Amendment to Unified Development Ordinance to allow Kennels in NMX Districts by Special Use Permit

At 8:19 PM the properly advertised and noticed public hearing was opened. J. Freeman presented the staff report and explained the proposed text amendment would allow for the use of kennels within the NMX District by way of a Special Use Permit. Reminded Council and the citizens present in the audience proposed is an amendment to allow the use upon any property within an NMX District, this is not a hearing to consider for a site specific kennel. With the proposed standards, the burden of proof that zoning and SUP standards are met would rest upon an applicant. A goal within the proposed text is to keep all of the kennel activity indoors with the exception of a limited sized outdoor exercise area.

Mr. Locks questioned why the applicant, Mrs. Crowe, chose to pursue a text amendment rather than seek a Planned Development District.

J. Freemen responded it was the choice of the applicant, and, perhaps the costs involved and time required for the PDD process may have been a factor.

Mr. McKeller asked Attorney Egan if he has had the opportunity to review the proposed SUP standards and if, in his opinion, are they specific enough standards that the Board of Adjustment has the ability to rule on a kennel SUP request?

Mr. Egan replied he just reviewed and they appear to be pretty straight forward and adequate.

Mayor Harris called upon Mrs. Pam Crowe, applicant, asking if she would like to make a presentation. She replied she does not have a presentation and is willing to answer questions Council or others may have for her.

Mr. Jerry Siemann, 163 Skyview Terrace, Brevard. Stated he is opposed to kennels being allowed within the City's UDO due to noise and odor, and feels the outdoor exercise area as described is too loose. Also, since Mrs. Crowe's property is in the ETJ and not the City Limits, the City's noise and animal control provisions would not apply.

Mr. Greg Carter, 168 Skyview Terrace, Brevard. Stated he is concerned over noise and smell of a kennel close to his home and, described tonight seems to be a pretty high burden of proof for an applicant to open a kennel.

Ms. Lory Whitehead, 109 Rocky Hill Overlook, Brevard. She is in favor of a kennel if concerns over noise can be addressed and limited to reasonable hours when dogs could be outdoors for exercise. However, the smell issues have not been adequately answered.

Council discussed, (1) The overlap between City and County jurisdiction of animal control and noise standards, not specific to the proposed text amendment, but specific to any NMX District property within the ETJ that could be considered for a kennel; (2) Questioned if the noise reduction units would be cost-prohibitive; (3) Benefit of looking at the County's language that applies to noise as they are currently working on standards for the proposed new Animal Shelter; (4) If the text amendment should include requirement for an annual inspection by the City; and, (5) If hours of operation and/or hours allowed to utilize outdoor exercise areas should be included in the SUP standards for approval.

Mrs. Pam Crowe, applicant, explained she owns and operates "Paws and Claws" pet store and grooming salon business and is inspected every couple of months by the NC State

Veterinary Board. She has spoke with Health Department officials and is aware of the septic tank requirements for her business should she be allowed to also have a kennel, and, has checked into the ultra-sonic noise equipment and understands the units are very effective in noise reduction and are not cost prohibitive.

With no further comments or questions from Council, public or applicant, the hearing was closed at 9:08 PM.

Public Participation – None

Consent Agenda – Mayor Harris explained Consent Agenda items are considered routine and are enacted by one motion. He read aloud the six (6) items listed upon the printed Agenda and asked if Council desired to remove any listed items for discussion, or, recommend adding any items to the Consent Agenda.

Mayor Harris recommended adding New Business Item #4 Habitat for Humanity Planned Development District Ordinance No. 8-2011; add New Business Item #5 Bella's Italian Ice's Vending Cart Approval, and, add New Business Item #7 Resolution No. 02-2011 Endorsing Application of SAFE for Home Funds.

Mr. McKeller recommended to also add New Business Item #1 Ordinance No. 01-2011 Davidson River Village Development Agreement as presented and including Attorney Michael Egan's Memorandum dated 1/24/2011, and, add New Business Item #2 Ordinance No. 02-2011 Establishing Davidson River Village Planned Development District.

Question/Answer: Mr. McKeller asked if he is correct that by approving the vending cart request upon Consent Agenda means approval and allows the applicant to move forward. Answer: Yes

Ms. Perkins moved, seconded by Mr. Canady, that the Consent Agenda as amended be approved. Motion carried unanimously. The following eleven (11) items were approved:

Consent Item #1 – Staff Reports from Public Services Department and Brevard Fire Department.

Consent Item #2 – Board Appointments:

> Appointment of Ms. Ann R. Hollingsworth to the Community Appearance Commission to fill the vacancy from previous member, Mr. David Prince. Term will expire February 2013.
>
> Reappointment of Mr. Byron M. Betsill to the Brevard Housing Authority. Term will expire November 2015.
>
> Reappointment of Mr. Frank Pearsall to the Board of Adjustment. Term will expire November 2013.

Consent Item #3 – **Resolution No. 01-2011** Authorizing Advertisement for the Purchase of One Rear Load Residential Refuse Truck Using the "Piggyback" Method.

RESOLUTION NO. 01-2011

A RESOLUTION AUTHORIZING ADVERTISEMENT FOR THE PROPOSED PURCHASE OF ONE REAR LOAD RESIDENTIAL REFUSE TRUCK USING THE "PIGGYBACK" METHOD

WHEREAS, the City has investigated previous purchases by other governmental entities and has found that purchases of equipment identical to that being requested have been made by other governmental entities; and

WHEREAS, using the "piggyback" method of purchase, it the desire of the City of Brevard to comply with the requirements of N.C.G.S. 143-129 and appropriately advertise for the proposed acquisition of one 2012 New Way 20 Cubic Yard Viper Rear Loader mounted on a 2012 International 7400.

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

Section 1. The City Manager is hereby authorized and directed to advertise the proposed purchase of one 2012 New Way 20 Cubic Yard Viper Rear Loader mounted on a 2012 International 7400 in the amount of $111,354.00 from Nu-Life Environmental, Easley, South Carolina, using the "Piggyback" method of purchase, in compliance with General Statutes 143-129(g).

Section 2. The Town of Waynesville, North Carolina, the public agency originally contracting for purchase of a 20 cubic yard rear load refuse truck, closely matches our specifications and appropriately bid for the acquisition of a 20 cubic yard rear load refuse truck, receiving a bid of $111,354.00. Upon this determination, it was decided that the City of Brevard should seek to make this purchase using the "Piggyback" method, as outlined in the General Statutes.

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

Adopted and approved this 24th day of January, 2011.

Consent Item #4 – **Ordinance No. 04-2011** Establishing a Budget for the Bracken Mountain Trail Design and Construction Project.

ORDINANCE NO. 04-2011

AN ORDINANCE ESTABLISHING A PROJECT BUDGET FOR THE CITY OF BREVARD BRACKEN MOUNTAIN TRAIL DESIGN

WHEREAS, in accordance with the applicable provisions of the North Carolina Local Government Budget and Contract Act; and,

WHEREAS the City of Brevard requires certain fiscal actions to effectively provide continued and improved service to its customers; and

WHEREAS, the City of Brevard City Council intends to complete the project, including providing local funds required to meet the overall project cost; and

WHEREAS, Brevard City Council now desires to establish a project budget to account for the receipt and disbursement of funds for the City of Brevard Bracken Mountain Trail Project.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA, THAT:

Section 1. Effective the date of passage of this ordinance, the City of Brevard Fiscal Year 20010-2011 Budget is hereby amended as described in Section 3, below, and a project budget for the City of Brevard Wayfinding Program is hereby established.

Section 2. Revenues for this project are budgeted as follows:

REVENUES	
Planning Department Capital Outlay 10-4900-7400	$23,000
North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, Adopt-A-Trail Grant, Grant Contract Number 3515	$5,000
TOTAL REVENUES	$28,000

Section 3. Projected expenditures are budgeted as follows:

EXPENDITURES	
Design of internal trails on Bracken Mountain Property, and design and permitting of a trail from the Bracken Mountain Property into Pisgah National Forest	$23,000
TOTAL EXPENDITURES	$23,000

Section 4. This ordinance shall remain in effect until the completion of the City of Brevard Bracken Mountain Trail Project.

Section 5. The Finance Officer and City Manager are instructed to take appropriate actions to implement this ordinance.

Section 6. This Ordinance shall become effective upon its adoption and approval.

Adopted this the 24 day of January 2011.

Consent Item #5 – **Ordinance No. 05-2011** Establishing a Budget for the Hap Simpson Park Project.

ORDINANCE NO. 05-2011

AN ORDINANCE ESTABLISHING A PROJECT BUDGET FOR THE CITY OF BREVARD HAP SIMPSON STREAM BANK RESTORATION PROJECT

WHEREAS, in accordance with the applicable provisions of the North Carolina Local Government Budget and Contract Act; and,

WHEREAS, the City of Brevard requires certain fiscal actions to effectively provide continued and improved service to its customers; and

WHEREAS, the City of Brevard has been awarded a grant from The North Carolina Department of Environment and Natural Resources Division of Water Resources in the amount of $22,500; and,

WHEREAS, the City of Brevard City Council intends to complete the project, including providing local funds required to meet the overall project cost; and,

WHEREAS, Brevard City Council now desires to establish a project budget to account for the receipt and disbursement of funds for the City of Brevard Hap Simpson Stream Bank Restoration Project.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA, THAT:

Section 1. Effective the date of passage of this ordinance, the City of Brevard Fiscal Year 20010-2011 Budget is hereby amended as described in Section 3, below, and a project budget for the City of Brevard Wayfinding Program is hereby established.

Section 2. Revenues for this project are budgeted as follows:

REVENUES	
Planning Department Capital Outlay – Account No. 10-4900-7400	$50,000
North Carolina Department of Environment & Natural Resources, Division of Water Resources, Grant Award Date: September 29, 2008	$22,500
TOTAL REVENUES	$72,500

Section 3. Projected expenditures are budgeted as follows:

EXPENDITURES	
Design and construction of river bank restoration and canoe access improvements	$72,500
TOTAL EXPENDITURES	$72,500

Section 4. This ordinance shall remain in effect until the completion of the City of Brevard Hap Simpson Stream Bank Restoration Project.

Section 5. The Finance Officer and City Manager are instructed to take appropriate actions to implement this ordinance.

Section 6. This Ordinance shall become effective upon its adoption and approval.

Adopted and approved this 24th day of January, 2011.

<u>Consent Item #6</u> – **Ordinance No. 07-2011** Amending FY 2010-2011 Budget for the Downtown Master Plan Project – Amendment No. 1.

ORDINANCE NO. 07-2011

AN ORDINANCE AMENDING THE FY 2010-2011 BUDGET FOR THE DOWNTOWN MASTER PLAN PROJECT AMENDMENT NO. 1

WHEREAS, the City Council of the City of Brevard has previously approved the budget for the operation of the City for Fiscal Year 2010-2011; and,

WHEREAS, it is necessary to make amendments to the budget in connection with the Engineering and Design of a Downtown Master Plan Block.

WHEREAS, the Brevard City Council desires to amend the FY 2010-2011 Budget accordingly.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 1. Effective the date of passage of this Ordinance, the Fiscal Year 2011 Budget for the Downtown Master Plan Project is hereby amended as follows:

Section 2. Revenues for this project are budgeted as follows:

Transfer from General Fund Planning Department	$ 50,000.00
Transfer from Heart of Brevard MSD	$ 11,000.00
Total Revenues	$ 61,000.00

Section 3. Expenditures for this project are budgeted as follows:

Engineering and Design	$ 61,000.00

Section 4. The Revenues for the Downtown Master Plan Project shall be increased by $50,000.00 to $61,000.00.

Section 5. The Expenditures for the Downtown Master Plan Project shall be increased by $50,000.00 to $61,000.00.

Section 6. This Ordinance shall remain in effect until the completion of the Engineering and Design of the Downtown Master Plan Block.

Section 7. The Finance Officer and City Manager are instructed to take appropriate actions to implement this Ordinance.

Section 8. This Ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 24th day of January, 2011.

Consent Item #7 – **Ordinance No. 08-2011** Establishing the Habitat for Humanity Planned Development District.

ORDINANCE NO. 08-2011

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF BREVARD; CREATING THE HABITAT FOR HUMANITY PLANNED DEVELOPMENT DISTRICT

WHEREAS, the City of Brevard has the authority, pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, this Ordinance is consistent with the City's 2002 Land Use Plan and other official plans; and

WHEREAS**,** the City of Brevard Planning Board has reviewed the proposed ordinance and recommends its enactment by City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BREVARD, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE, HEREBY ORDAINS THE FOLLOWING:

Section One. Upon petition of Transylvania Habitat for Humanity, Inc. (hereafter, "Habitat"), the Official Zoning Map of the City of Brevard is hereby amended to create the Habitat for Humanity Planned Development District (hereafter, "District") as more particularly set forth herein.

Section Two. The zoning classification of that certain real property identified on Transylvania County tax maps by the following PIN number and deed book / page number, is hereby zoned as the Habitat for Humanity Planned Development District (hereafter, "District"), said zoning district being further depicted in Exhibit A (Sheet 1), attached hereto and made a part hereof:

8597-30-5995-000; Deed Book 431 Page 587.

Section Three. The District is a conditional zoning district established pursuant to the Unified Development Ordinance of the City of Brevard by means of authority granted by the North Carolina General Statutes.

Section Four. Future development and use of lands situated within the District, and the processing of applications to develop and use such lands, shall comply with all applicable provisions of Brevard City Code, the conditions, which are more particularly set forth herein, and the final master plan entitled, which is attached to this ordinance as Exhibit B (Sheets 1-18) and incorporated herein. This Ordinance and its exhibits shall run with the land and shall be binding on Habitat, its heirs and assigns.

Section Five. Habitat is hereby granted vested rights for a period of five (5) years to complete the project in accordance with the final master plan and the terms and conditions of this ordinance.

Section Six. Conditions.

a. Except as set forth in this section and the final master plan, development within the District shall comply with all applicable provisions of Brevard City Code, including but not limited to,

1. Unified Development Ordinance
2. Chapter 62. Streets, Sidewalks, and Other Public Ways
3. Chapter 70. Utilities

b. The Planning Director, or designee thereof (hereafter, " Administrator") may approve minor modifications to the final master plan. Major modifications to the master plan shall be considered as a new Planned Development District proposal in accordance with the procedures set forth in Chapters 2 and 16 of the Unified Development Ordinance.
c. Habitat shall seek and secure zoning site plan approval from the Administrator prior to commencing development activity within the District.
d. Habitat shall render all applicable fees to the Administrator prior to receiving final zoning approval for any structure from the City of Brevard, and prior to receiving a Certificate of Occupancy for any structure from Transylvania County.
e. Land Uses.

1. Only those uses of land that are set forth in the following Table of Allowable Uses may be permitted within the District. Such uses are further defined in Chapter 19 of the Unified Development Ordinance.
2. The term "P" indicates that the use of land is allowable "by right" and may be authorized by the Administrator. The term "SUP" indicates that the use of land is allowable by Special Use Permit and may be authorized by the City of Brevard Board of Adjustment.
3. All permissible uses shall comply with any applicable condition or standard as set forth in the Unified Development Ordinance.
4. Table of Allowable Use:

PERMISSABLE USES OF LAND	PERMIT PROCESS
Accessory Rental cottage / cabins	P
Adult / Child Day Care Center (6 or more)	P
Adult / Child Day Care Home (Less than 6)	P
Agriculture	P
Amusements, Indoor	SUP
Animal Services	P
Artist Workshop	P
ATM	P
Banks, Credit Unions, Financial Services	P
Bed and Breakfast Home	P
Bed and Breakfast Inns	P
Business Support Services	P
Campground/Artist Colony/Summer Camp	SUP
Cemeteries	PS
Colleges/Universities	SUP
Community Service Organization	P
Contractor's Office and Equipment Shed	P
Cultural or Community Facility	P
Dwelling-Duplex	P
Dwelling-Multifamily 3-4 units/bldg (not including Condominium Buildings or multiple structures)	P
Dwelling-Secondary	P
Dwelling-Town Home or Condominium Structure	P
Equipment Rental	P
Family Care Home (Less than 6 residents)	P
Farmers Market	P
Funeral Homes	P
General Retail	P
Government Services	P
Group Care Facility (6 or more residents)	P

Home Occupation	P
Housing Service for the Elderly	P
Live-Work Units	P
Manufacturing, Light	SUP
Manufacturing, Neighborhood	P
Media production	P
Medical Services - Clinic, Urgent Care Center	P
Medical Services – Doctor office	P
Meeting Facilities	P
Metal products fabrication, machine or welding shop	SUP
Open Christmas Tree Lots (Temporary Use)	PS
Parking	P
Personal Services	P
Post Office	P
Professional Services	P
Public Safety Station	P
Recreation Facilities, Indoor	P
Recreation Facilities, Outdoor	P
Religious Institutions	P
Religious Meeting (Temporary Use)	P
Research and development	P
Restaurant	P
Satellite real estate sales office (Temporary Use)	P
Schools – Elementary & Secondary	P
Schools – Vocational/Technical	P
Seasonal Structures (Temporary Use)	P
Special event (Temporary Use)	P
Storage - Outdoor storage yard as a primary use	P
Storage - Warehouse, indoor storage	P
Studio – Art, dance, martial arts, music	P
Swimming Pool (Indoor)	P
Theater, Live Performance	P
Utilities-Class 1 & 2	P
Vehicle Services – Minor Maintenance/Repair	SUP
Wholesaling and distribution	P
Wireless Telecommunication Facility-Stealth	P

5. The use "Storage - Outdoor storage yard as a primary use" is permissible only within secured areas as delineated upon the master plan.

Section Seven. The Planning Director is hereby authorized and directed to modify the City's Official Zoning Map consistent with this Ordinance.

Section Eight. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

Section Nine. All ordinances or portions thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section Ten. This ordinance shall be in full force and effect from and after the date of adoption.

Adopted this the 24th day of January, 2011.

Consent Item #8 – Approved Application from Bella's Italian Ice's (Arlene Silvia) for a Vending Cart License, as submitted.

Consent Item #9 – **Resolution No. 02-2011** Endorsing the Application of SAFE with the City of Brevard as the Sponsoring Organization for Construction Project Home Funds from the Asheville Regional Housing Consortium.

RESOLUTION NO. 02-2011

A RESOLUTION ENDORSING THE APPLICATION OF S.A.F.E. WITH THE CITY OF BREVARD AS THE SPONSORING ORGANIZATION FOR CONSTRUCTION PROJECT HOME FUNDS FROM THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

WHEREAS, S.A.F.E., a local non-profit domestic violence agency, has requested that the City of Brevard sponsor their application for HOME funds for a planned construction project; and,

WHEREAS S.A.F.E.'s proposed project would improve the provision of services to the community specifically those with special needs including the homeless and abused, which is a clearly defined goal for Transylvania County in the Consolidated Strategic Housing and Community Development Plan 2010-2015 adopted by the City of Asheville and Asheville Regional Housing Consortium; and

WHEREAS, the City of Brevard is a member government of the Asheville Regional Housing Consortium and fully supports the goals of the Consolidated Housing Plan.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA, THAT:

Section 1. The City hereby agrees to endorse the application of S.A.F.E. for construction project HOME funds for the year 2011 in the amount $163,905.00.

Section 2. The City Manager is hereby authorized to sign all applications related to this agreement.

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

Adopted this the 24th day of January 2011.

Consent Item #10 – **Ordinance No. 01-2011** Development Agreement between Davidson River Village, LLC, and the City of Brevard, as amended including Attorney Michael Egan's Memorandum dated 1/24/2011.

A copy of **Ordinance No. 01-2011** is attached to these minutes and incorporated herein by reference.

M E M O R A N D U M

To:	Honorable Mayor & Members of City Council
From:	Michael Egan, Consulting Attorney
Date:	24 January 2011
Subject:	Davidson River Village

Agents for Davidson River Village have identified several technical errors in the various documents being considered for adoption. The necessary corrective actions are summarized below. For ease of understanding, additions to text are indicated by underlining; whereas, deletions are indicated by strike-through. It is further recommended that the Clerk be directed to reform the document in accordance herewith prior to execution.

1. **Section 1 of Ordinance #01-2011.** It is the intent of the parties that the amended development agreement shall not extend the term of the original development agreement which was scheduled to terminate on 2 February 2029. The second sentence of this section is not specific as to the year and, indeed, is unnecessary inasmuch as the term is stated in the development agreement which is incorporated by reference. It is recommended that Council strike the second sentence so that the section reads:

   "Section 1. A development agreement between Davidson and the City, which is identified as Exhibit A and which is incorporated by reference, is hereby approved."

2. **Title of Exhibit A of Ordinance #01-2011.** The title of this Exhibit incorrectly refers to the Ordinance whereby the original development agreement was adopted. It is recommended that this incorrect reference be stricken and replaced with a reference to "Ordinance #01-2011".

3. **Article III of Exhibit A of Ordinance #01-2011 (the Development Agreement).** In light of the commentary for Paragraph 1, above, it is recommended that Article III be revised to read as follows:

   III. **TERM.**

The term of this Agreement ~~shall~~ commenced on the 2nd day of February, 2009, and shall terminate twenty (20) years thereafter (hereinafter the "Term").

4. **Article V of Exhibit A of Ordinance #01-2011 (the Development Agreement).** The intent of the parties is that future development of the District shall be regulated by the regulations in place (except as otherwise stated in the Ordinance) as of the date of adoption of the original Development Agreement. The language in the Amended Development Agreement has not been modified to reflect that; therefore, it is recommended that Article V be revised as follows:

V. **"CHANGES TO DEVELOPMENT REGULATIONS; EFFECT OF FUTURE LAWS.**

The Development Regulations relating to the Property subject to this Agreement shall not be amended or modified during the Term, without the express written consent of Davidson as provided in Section VI below, except as provided in the Ordinance or in accordance with N.C. Gen. Stat. 160A-400.26(c). Davidson shall have vested Development Rights to undertake the Project in accordance with the Development Regulations in place as ~~of the date of the adoption of the Ordinance~~ 2 February 2009, except as modified by the Ordinance, for the entirety of the Term and no future enactments of, or changes or amendments to the Development Regulations shall apply to the Property without the express written consent of Davidson as provided in Section VI below. Provided, however, the establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or changes to ordinances or regulations required by State or federal law, or which relate to technical construction specifications, and which are general in nature and are applicable to all property subject to land use regulation by the City, including, but not limited to, building, fire, plumbing, electrical, mechanical codes, utilities, streets, sidewalks and other public ways."

Consent Item #11 – **Ordinance No. 02-2011** Establishing the Davidson River Village Planned Development District.

A copy of **Ordinance No. 02-2011** is attached to these minutes and incorporated herein by reference.

Unfinished Business - None

New Business

Item M-3 – Ordinance No. 03-2011 Amending the Unified Development Ordinance to Allow Kennels in the NMX District via Special Use Permit.

Council Discussion: (1) Initially skeptical due to standards and expense; however, apparently not so. (2) Facilities are routinely thoroughly inspected by NC State Vet Board. (3) Specify hours (daily and weekend) allowed using the outdoor exercise area to be considered. (4) Annual City inspection to verify noise-reduction equipment and other City provision/standards continue to be met. (5) Discussion tonight occasionally became focused site-specific, important to consider more broadly, suggested to check what the County's language is with respect to noise, smell, etc., as they are making plans for the new Animal Shelter.

Mr. McKeller moved, seconded by Mr. Morrow, the text amendment be referred back to the Planning Board for consideration of restriction of outdoor exercise specific to hours; in conjunction look at the County's Ordinance with respect to noise and odor; and, provide for annual inspections by the City.

Discussion: Economic impact. Not our call or job to assess the economic impact of this type of business but rather to determine reasonable restrictions to adequately protect the neighborhood from undue hardship.

Mayor called for the motion. Motion carried unanimously to send the text amendment back to the Planning Board.

Item M-6 – Appeal of Abatement Order, West Main Development, LLC.

Attorney Pratt explained the applicant/appellant has asked for a continuance. Also, no monetary amount is determined at this time. Recommended Council reschedule to a date and time certain.

Mr. Morrow moved, seconded by Mr. Canady, as recommended by the City Attorney, the matter be continued to their regular scheduled meeting of Monday, March 7, 2011, 7:00 PM. Motion carried unanimously.

Remarks by Officials

Mayor Harris congratulated Ms. Perkins for being selected as, "Business Person of the Year" by the Brevard Chamber of Commerce.

Mr. Locks shared the NCLM Municipal Advocacy Goals meeting had over 200 people in attendance to make, amend and vote upon goals.

Mr. Pratt noted **Order No. 02-2011** specific to the first public hearing had been drafted and included within tonight's Agenda packet for possible Council action. If adopted as drafted it would approve the applicants request to the closing of the right-of-way / alleyway.

No motion was made.

Closed Session, Potential Litigation and Personnel – Mayor Harris asked the City Attorney if it would be appropriate to convene a closed session for the purpose to discuss two potential litigation matters, followed by closed session to discuss two personnel matters. City Attorney advised it would be appropriate pursuant to GS 143-318.11 (a)(3) along with the appropriate motion seconded and vote, to discuss the potential litigation matters, and, pursuant to GS 143.318.11 (a)(6) along with the appropriate motion seconded and vote, to discuss personnel matters. Attorney reminded Council will need to end closed session, return to open session, and make appropriate motion to enter back into closed session.

Pending Litigation: 1 – Glade Homes, LLC vs City of Brevard
2 – Edward Reinhart, Janelle Marie Blanchard, and Timothy Reinhart vs City of Brevard

Closed Session #1 - At 9:40 PM, Mr. McKeller moved, seconded by Mr. Morrow, Council go into closed session to discuss potential litigation. Requested to remain with Council in closed session were: Mr. Pratt, Mr. Moore, Mr. Freeman and Ms. Perry. Motion carried unanimously.

~~A five (5) minute recess took place in order to allow all who were not authorized to remain to leave Council Chambers.~~

No official action was taken in closed session and the Minutes of the Closed Session are authorized to be sealed.

At 9:47 PM, Mr. McKeller moved, seconded by Mr. Morrow, the closed session be adjourned into regular session. Motion carried unanimously.

Closed Session #2 - At 9:47 PM, Ms. Perkins moved, seconded by Mr. Morrow, Council go into closed session to discuss potential litigation. Requested to remain with Council in closed session were: Mr. Pratt, Mr. Moore, Mr. Freeman and Ms. Perry. Motion carried unanimously

No official action was taken in closed session and the Minutes of the Closed Session are authorized to be sealed.

At 9:55 PM, Mr. McKeller moved, seconded by Mr. Morrow, the closed session be adjourned into regular session. Motion carried unanimously.

Closed Session #3 - At 9:55 PM, Ms. Perkins moved, seconded by Mr. Canady, Council go into closed session to discuss a personnel matter. Motion carried unanimously. Requested to remain with Council in closed session were: Mr. Pratt, Mr. Moore and Ms. Perry.

No official action was taken in closed session and the Minutes of the Closed Session are authorized to be sealed.

At 10:06 PM, Mr. Canady moved, seconded by Mr. Locks, the closed session be adjourned into regular session. Motion carried unanimously.

Closed Session #4 - At 10:06 PM, Mr. Morrow moved, seconded by Mr. Locks, Council go into closed session to discuss a personnel matter. Motion carried. Requested to remain with Council in closed session were: Mr. Pratt and Mr. Moore. Mr. Pratt will provide Minutes of the closed session.

No official action was taken in closed session and the Minutes of the Closed Session are authorized to be sealed.

Adjourn - There being no further business before Council, Mr. Morrow moved, seconded by Mr. Locks, the meeting be adjourned. Motion carried. Meeting adjourned at 10:20 PM.

Desiree D. Perry
City Clerk

Jimmy Harris
Mayor

Minutes Approved: February 7, 2011