

**MINUTES  
BREVARD CITY COUNCIL  
Regular Meeting  
March 7, 2011 – 7:00 PM**

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

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

Staff: Fire Chief Craig Budzinski, Assistant Planning Dir. Brad Burton, Planning Dir. Josh Freeman, Police Chief Phil Harris, Public Service Dir. David Lutz, HR Dir. LeAnn McCraw, 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** – Mr. Norman Bossert, Brevard Jewish Congregation, offered the Invocation. Boy Scout Will Newkirk, Scout Troup #701 led in the Pledge of Allegiance.

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

**Agenda** – Ms. Perkins moved, seconded by Mr. Morrow, the Agenda be approved as presented. Motion carried unanimously.

**Approval of Minutes** – Mr. Locks moved, seconded by Mr. Canady, the February 7, 2011 meeting minutes be approved as presented. Motion carried unanimously.

**Certificates and Awards** – Mayor Harris and Council thanked the Task Force members for their participation and presented Certificates of Appreciation to members of the "Music and Arts" and "Outdoor Recreation" Task Force, to Mr. Phil Davis, Tungsten Marketing, and to Task Force facilitator, Ms. Angela Owen.

**Public Hearing #1**– Proposed Text Amendment to the Unified Development Ordinance to Allow the Establishment of Kennels within Neighborhood Mixed Use Zoning (NMX) Districts.

At 7:22 PM the properly advertised and noticed public hearing to receive comments from the public on the proposed text amendment began. Mayor Harris read aloud the guidelines the public is asked to follow if they desire to speak at the public hearing. Four people had signed-up to speak.

J. Freeman presented the staff report. Public hearing was first held at Council's January 24<sup>th</sup> meeting. Council referred the text amendment back to staff and the Planning Board specific to the hours of operation, outdoor yard area and noise provisions. Planning Board by a 5-1 vote recommends Council adopt the presented text amendment ordinance.

The City zoning map showing NMX Districts throughout the City was projected. Council members discussed the uses permitted within the NMX District; and that when considering the dimensional requirements for a kennel, it limits where a kennel could be located; and, if adopted, the enhanced kennel standards will apply to any kennel, including those not within a NMX District.

Public Hearing Public Participation – Mayor Harris called upon those who had registered to speak.

Ms. Pam Crowe, 120 Pharoah Drive, stated as applicant for the text amendment she is present to answer any questions Council may have.

Ms. Berta Letkovich, 88 Can't Hardly Farm Drive. Stated she has known the Crowe's for several years and believe they would provide good care for pets, and there are very few kennels in the area convenient for those who live in the City. In favor of Council allowing the kennel.

Mr. Pete Peters, Park Avenue. According to the UDO, "pedestrian traffic" is a desired component for commercial uses within the NMX District; questioned if a kennel use is really the type of activity the city wants next to residential occupancy; and, questioned if the outside runs, holding pens and shelters 200' separation standard should be from property line rather than structure, especially in the case of a vacant lot. He is opposed to the proposed kennel text amendment.

Ms. Diana Zerby, 82 Jordan Road. Stated with all the dog problems (barking dogs) we already have in the City, this is the last thing that would be good – to provide for a kennel.

*~~~ At 8:01 PM Mayor Harris called for a 15 minute break explaining the Public Hearing will continue following the break. At 8:16 PM Mayor Harris called for the meeting and Public Hearing to continue. ~~~*

Council members discussed setback standards, the process an applicant would be required to follow when seeking to establish a kennel in NMX (zoning application, CAC, TRC, then BOA hearing and review) and, if the proposed text is imposing safeguards to make a kennel work, rather than asking the fundamental question if this particular use is appropriate in an NMX District.

Public Hearing Closed – Mayor Harris closed the public hearing at 8:25 PM.

**Public Hearing #2–** Proposed Amendment to the City of Brevard Zoning Map to establish the Gardens at English Village Planned Development District.

At 8:25 PM the properly advertised and noticed public hearing to receive comments from the public on the proposed zoning map amendment began. Mayor Harris read aloud the guidelines the public is asked to follow if they desire to speak at the public hearing. Two individuals had signed-up to speak.

J. Freeman presented the staff report (on file). Applicant, Western Carolina Community Action, Inc. (WCCA) is proposing a planned development district (PDD) to develop a 41-unit senior housing apartment structure on property at the intersection of Hillview Street and Rout Drive. (PIN #8586-11-9616-000) Applicant seeks a reduction in required number of off-street parking spaces from 82 to 41. Proposal is consistent with the Transportation Plan, on 2/16/11 CAC reviewed and recommended approval, on 2/15/11 BPB reviewed and recommended approval. Staff has prepared Ordinance No. 09-2011, and recommends Council's favorable adoption consideration.

Ms. Sheryl Fortune, Housing Director, WCCA; Mr. Chris Day, Civil Design Concepts; Mr. Don Tise, Tise-Keister Architects; Ms. Kathy Stilwell, Development Director, The Affordable Housing Group; and, Mr. Doug Harris, Harris Architects, presented a power point presentation detailing the proposed site and structure, floor plans, amenities proposed for the tenants only, parking areas, emergency exit and fire sprinkler system, and described in detail recognized reports that support their claim that 41 off-street parking spaces is sufficient for the 41-unit senior adult apartment, especially with the ability to use the adjacent WCCA Head Start's parking lot for any over-flow parking needs. Combination of both public and private money will support this project. WCCA and the Affordable Housing Group will be responsible for the project and contact for the City.

Mr. Day requested the proposed Ordinance No. 09-2011 be amended whereby the City's requested twenty foot (20") multi-purpose "Public Right-of-Way" for a bike path and pedestrian travel, and possible utilities, to be specifically identified as such. To leave it as "public right-of-way" could lead one to believe it could be developed as a street or alley allowing for vehicle traffic. It is not their desire or intention to allow the ROW to be utilized for any type of vehicle traffic.

Mayor Harris asked the representatives if they would be the ones to secure the construction companies, and if so, have they ever stipulated that materials be purchased locally? Citizens frequently ask Council members how any given development project will help with the local unemployment, and express that purchasing materials from within this County would be beneficial to the local economy.

Mr. Tise explained that the NC Housing Finance Committee is sensitive to this very question.

Public Hearing Public Participation – Mayor Harris called upon those who had registered to speak.

Mr. Pete Peters, Park Avenue. Recommended Council consider requesting or allowing the developer to not pave all of the off-street parking spaces but rather allow some to remain grass or gravel in an effort to provide better drainage.

Mr. Tommy Williamson, 35 Hillview Avenue. Questioned if in the future were there plans for a roadway through the development (an extension of Hillview Avenue) and stated he is opposed to ever having a roadway through the development allowing vehicular traffic.

Public Hearing Closed – Mayor Harris closed the public hearing at 9:33 PM.

### **Public Participation and Pre-Budget (FY 2011-12) Public Input Session**

Dr. Joe Cowart, 450 Lambs Creek Road. Stated he is a local dentist with more than 30 years experience who believes the City should consider placing fluoride into the public water supply as the benefits outweigh any risks. He provided some information on the subject to Council members (on file).

Ms. Diana Zerby, 82 Jordan Road. Recommends Council increase the water rates 7 to 10 cents per month rather than charge for a large or special pick-up fee for items left at the curb. Believes this will help remedy the trashy neighborhood situations of furniture, appliances, trash/debris, etc., sitting out in front yards that is not being picked up because the \$30 fee has not been paid. Recommends Council require pet owners of all dogs and cats to be taxed \$20 to \$30 per year; stated she understands the City Code requires licensing, but it has not been enforced for quite some time.

Susan Miller, Center for Dialogue. Shared the Center has been in existence for almost 22 years; averages 96% mediation resolution; and last year had 237 cases saving the tax payers approximately \$1,000 per case. Requested Council's consideration for grant funding to help their Youth Speak Program and Anger Management Course.

Barbara Green, WCCA. Requested Council's consideration to help fund the Senior Center at Silvermont Opportunity Center that serves about 400 people per month. It is a 30 year program that annually costs about \$1,000 per person.

Jackie Witherspoon, Boys and Girls Club. Requested Council's consideration to provide grant funds for the Boys and Girls Club that serves on average 150 youth per day with an open-door "no child is turned away" policy. Over 70% of the youth performed at above average; 0 dropouts; 68% live in poverty; 67% from single family households with 91% parents work full-time. Has had reduction of state and federal funds. The Club is operating without reserve funds.

*~~ At 9:56 PM Mayor Harris called for a 5 minute break. At 10:02 Mayor called for the meeting to continue. ~~*

Owen Carson, 141 Montview Circle. Invited Council's participation in "Challenge Day" an elementary school environmental service day scheduled for Saturday, April 30<sup>th</sup>, 2011 from 3:15 to 4:00 PM. Children will be planting trees, conducting water quality tests, working in local gardens and performing a variety of other activities. Children will be asked to present their Challenge to City Council members.

Madrid Zimmerman, Heart of Brevard. Described the various programs and ways the HOB serves and reduces costs for the City while promoting Brevard's downtown. Requests Council's consideration for grant funding. Main marketing proposal this year will

be to create a highly visible campaign through electronic billboards on major commuting highways around important feeders in the Charlotte, NC, Greenville/Spartanburg, SC, and Atlanta, GA, areas. (A copy of Grant Application presentation notes is on file.)

Rebecca Suddeth, Transylvania Heritage Museum. They have not submitted a grant application this year. Extended appreciation to the City for the assistance provided in their relocation process to the end of West Main Street. Reported they have been designated as a Preserve America Community, and invited Council and citizens to participate in one of their tours offered ten times a year.

Stoney Blevins, The Family Place. The JC's recently gave them their building located on Old Highway #64, for which they are most thankful for. Building needs some repairs, fencing, lattice under the building, partitions in the building, and, a play center for the children. Requests Council's consideration to provide grant funds to help with these projects.

Sarah Pooser, The Haven. 18-Bed Homeless shelter building is anticipated to be completed by the end of June, hire a Director in July and an assistant director in August to be open to provide housing for the homeless in September. Requests Council grant funding of \$5,000 towards operating costs.

**Consent Agenda** – Mayor Harris explained Consent Agenda items are considered routine and are enacted by one motion. No items were listed upon the Agenda. He asked if Council desired to add any New Business Agenda item to the Consent Agenda for adoption consideration.

Consent Item #1 – Gardens at English Hills. Mr. Locks moved, seconded by Mr. McKeller, New Business Item #3 (M-3) Amending the Official Zoning Map of the City of Brevard creating the Gardens at English Hills Planned Development District, **Ordinance No. 09-2011**, be added to the Consent Agenda and approved subject to the following two changes:

1. Correct to read paragraph "f" (page 3);and
2. Change text to read: WCCA shall dedicate a public right-of-way to the City of Brevard. Such right-of-way shall extend from Hillview Street or Rout Drive, to the northwest boundary of the subject property. Such right-of-way shall be dedicated to the City of Brevard prior to issuance of final zoning approval and Certificate of Occupancy for any structure within the district, and shall follow an alignment that is mutually acceptable to WCCA and the Administrator. Such right-of-way shall be twenty feet (20') in width and only be utilized for the purposes of non-motor vehicular transportation, and may be relocated by developers at their expense so long as the boundary line intersection points are set and approved by the City at the time of dedication.

Motion carried unanimously.

#### **ORDINANCE NO. 09-2011**

##### **AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF BREVARD; CREATING THE GARDENS AT ENGLISH VILLAGE 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 Western Carolina Community Action, Inc. (hereafter, "WCCA"), the Official Zoning Map of the City of Brevard is hereby amended to create the Gardens at English Village 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 Gardens at English Village Planned Development District (hereafter, "District"), said zoning district being further depicted in Exhibit A, attached hereto and made a part hereof:

8586-11-9616-000; Deed Book 456 Page 399.

**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 and certain conditions, which are more particularly set forth herein, and the preliminary master plan, which is attached to this ordinance as Exhibit B and incorporated herein. This Ordinance and its exhibits shall run with the land and shall be binding on WCCA, its heirs and assigns.

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

**Section Six.** Conditions.

- a. Except as set forth in this section and Exhibit B, Preliminary 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 preliminary 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. WCCA shall seek and secure final master plan approval from the City of Brevard Planning Board, and zoning site plan approval from the Administrator, prior to commencing development activity within the District.
- d. WCCA 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 |
|--------------------------------------|----------------|
| Adult / Child Day Care Center / Home | P              |
| Community Service Organization       | P              |
| Cultural or Community Facility       | P              |
| Dwelling-Multifamily                 | P              |
| Group Care Facility                  | P              |
| Home Occupation                      | P              |
| Housing Service for the Elderly      | P              |
| Meeting Facilities                   | P              |
| Parking                              | P              |
| Special event (Temporary Use)        | P              |

f. WCCA shall dedicate a public right-of-way to the City of Brevard. Such right-of-way shall extend from Hillview Street or Rout Drive, to the northwest boundary of the subject property. Such right-of-way shall be dedicated to the City of Brevard prior to issuance of final zoning approval and Certificate of Occupancy for any structure within the district, and shall follow an alignment that is mutually acceptable to WCCA and the Administrator. Such right-of-way shall be twenty feet (20') in width and only be utilized for the purposes of non-motor vehicular transportation, and may be relocated by developers at their expense so long as the boundary line intersection points are set and approved by the City at the time of dedication.

**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 7th day of March, 2011.

Consent Item #2 - Mr. Morrow moved, seconded by Mr. Canady, New Business Item #1 (M-1), the formal acceptance of the combined presentations of the "Music/Arts" and "Outdoor Recreation" Task Forces and direction for staff to evaluate the associated strategies and tactics for implementation through the Code, Resolution, Budget or Capital Improvements Plan, be added to the Consent Agenda and approved as presented. Motion carried unanimously.

**Unfinished Business** – None

### **New Business**

Item #M-2 - Mr. Morrow moved, seconded by Mr. McKeller, **Ordinance No. 03-2011** Amending the City of Brevard Code of Ordinances Unified Development Ordinance Chapters 2 and 3, to allow Kennels within Neighborhood Mixed Use Zoning Districts by Special Use Permit be approved as presented.

Discussion:

- NMX districts are very limited within the City limits and given all the restrictions for a kennel, one would be no more disruptive than a minor vehicle repair shop, drive-thru restaurant, day care center, or other uses allowed in the NMX district without restrictions.
- Concerned there are other NMX districts where allowing a kennel would not be an appropriate use.
- Concerned costs to soundproof will be too great.
- Believes the 200' separation will not provide adequate protection from noise and other intrusions associated with a kennel.
- Fundamental question – knowing that residential is a part of the NMX District, is it appropriate for a kennel to be in the District?

Call To Vote:

Aye: Mr. McKeller, Mr. Morrow and Mr. Locks

Nay: Mr. Canady and Ms. Perkins

The 3/2 vote will require a second reading of the Ordinance at the next regular Council meeting.

Item #M-4 – Police Chief Harris provided an update on the Firing Range at the Wastewater Treatment Plant stating that: (1) In response to citizen concerns over noise and frequency of use, a schedule of use has been established; Range will not be used the first week of the month; all firing is to be completed by 10:00 PM or earlier; reduce weekend use; mediation steps are in process (planting of trees); restricted automatic fire uses with a minimum 30-day notice to the neighbors; and encouraging local "Bear Arms" use and other shooting ranges available to area law enforcement staff.

Mr. Locks thanked the Chief for the report and asked that he report back to Council periodically to provide them an update.

Item #M-5 – At Council's December 6, 2010 meeting a motion was introduced and seconded to investigate subject of placing fluoride in the City's water; however, motion was not voted upon. Staff seeks Council's direction if they desire to evaluate the use of fluoride in Brevard's drinking water.

Consensus: Staff to proceed to develop an evaluation process in cooperation with staff from the Department of Public Health.

Item #M-6 – Consideration of Appeal of Nuisance Abatement Order and Imposition of Lien by West Main Development, LLC. (Quasi-Judicial)

Mr. Pratt asked staff if the applicant was notified and made aware that their Appeal was scheduled for tonight. Staff affirmed Mr. George Williams of West Main Development, LLC, was notified.

Mr. Pratt explained as no one is present representing Mr. Williams, Council could therefore take note that the information is in the Agenda packet and affirm by vote. Council is to affirm or not affirm the City Manager's action which includes the engineer's statement from Mr. Goforth, PE.

Mr. Morrow moved, seconded by Ms. Perkins, the City Attorney be directed to place a lien in the amount of \$43,564.44 against property owned by West Main Development, LLC, PIN 8586-41-7455-000 and described in Deed Book 529, Page 677, on record in the office of the Transylvania County Register of Deeds.

**Discussion:**

- Has the problem relative to the retaining wall been solved?
- If it ever happens again, will we be in the same situation we are in now?
- While intended to be a temporary fix, it appears to be a more permanent fix.
- Work performed quickly so that Probart Street can be reopened.

**Call to Vote:**

Aye: Mr. Morrow, Ms. Perkins, Mr. McKeller and Mr. Canady

Nay: Mr. Locks

Motion carried by a 4/1 vote.

**Remarks by Officials**

Mayor Harris shared a future "Council vs County Commissioners" fund-raiser bowling event is being planned.

Mayor Harris asked staff to review the fee in lieu for parking standards and policy to see if it is working as it was intended; is the formula used to determine the fee reasonable; and stated that by requiring a parking impact fee we may have some unintended circumstances.

Consensus: Direct staff to review parking fee in lieu and report back to Council.

Ms. Perkins shared all Council members and several City staff members were present at the Transylvania County 150 Opening Ceremony. Asked Council to consider being an event sponsor for the September 30<sup>th</sup> evening event and host the entertainment stage at Brevard College bringing Edwin McCain for a full performance. Approximate cost would be \$7,500. Also taking place that evening would be a live orchestra, a big multi-media event and the unveiling of a piece of history. Want to brand the stage "City" that evening. Looking for Council to make a commitment to support the County's birthday, which is a big part of our City heritage as well.

Mr. Locks asked if there would be co-sponsors for this event.

Ms. Perkins explained, yes, they are working on sponsorship packages now.

Mr. Moore asked if Council were to consider making such a commitment, which budget year is being proposed to pay the fees?

Ms. Perkins replied the fees would be paid from the upcoming FY 2011-2012 budget; plan to have it as part of next year's budget consideration. The County is looking for a commitment from the City to begin the stage element process.

Mr. Moore explained a financial commitment cannot be done tonight. Review of the request can begin; however, cannot approve as money has not been allocated in this year's budget. Can be part of the upcoming budget review process.

Mr. McKeller shared if it is an important enough priority to give this request priority over non-profits, that would pretty much guarantee that it be fulfilled.

Mayor Harris asked if a budget amendment from the fund balance should be considered.

Mr. Pratt suggested the amount the County is requesting be confirmed. Then, if Council desires to do so, a budget amendment by ordinance would be required.

Mr. Pratt shared he will be out of town on Thursday the 17<sup>th</sup> and Friday the 18<sup>th</sup> in order to attend a conference.

**Adjourn** - There being no further business before Council, Mr. Morrow moved, seconded by Ms. Perkins, the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 11:20 PM.

Desiree D. Perry, City Clerk

Jimmy Harris, Mayor

Minutes Approved:  
April 18, 2011