

**MINUTES
BREVARD CITY COUNCIL
Regular Meeting
April 18, 2011 – 7:00 PM**

The City Council of the City of Brevard met in regular session on Monday, April 18, 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, Acting City Attorney Mike Egan, and City Clerk Desiree Perry.

Staff: Firefighter Tim Budzinski, Asst. Planning Dir. Brad Burton, Firefighter Bradley Elmore, Bldg & Grounds Dir. Lynn Goldsmith, Planner Sarah Lutz-Pietersen, Public Service Rep. Wesley Shook, Executive Assistant Jeanette Owen, and Finance Dir. Terry Scruggs.

Press: Derek McKissock, Transylvania Times

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

Invocation and Pledge – Pastor Richard Jennings, Joy Outreach Fellowship, offered the invocation. Mayor Harris 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. Morrow moved, seconded by Mr. McKeller, the Minutes from the March 7, March 21, and April 4, 2011 meetings be approved as presented. Motion carried unanimously.

Special Presentation – Quarterly Financial Report

Terry Scruggs presented the quarterly financial report. General Fund Revenue – Commended the County Tax Office for their 99.7% property tax collection rate through March; State distributed revenue representing 7.56% of the general fund budget shows Powell Bill and ABC revenues are lower than anticipated; Sales tax revenue collected through February has met budget, despite February collections were well below average; and shared next year projections are to realize a moderate growth.

Expenditures - City departments on average have about 28% budget allocation funds remaining, and a few capital outlay expenditures have been ordered but not yet received and paid for.

Utility Fund – 94% of City revenue is received from water and sewer. Reported he is concerned at the amount of leak adjustments granted in this 9-month period totaling \$112,000. Suggested consideration is given into changing the current policy of granting two leak adjustments per year based on the average usage or consumption, which results in 100% forgiveness of dollar amount over the average consumption.

Public Hearing – The Cottages at Brevard Planned Development District.

The Cottages at Brevard

Applicant: Pendergraph Companies; Agent: Odom Engineering, PLLC; Property currently within Zoning Districts, RMX and GR-6; PIN 8586-74-6503-000; Case Number PDD-11-030.

At 7:27 PM the properly advertised and noticed public hearing to receive comments on the proposed zoning amendment for a planned development district began. Mayor Harris read aloud the guidelines the public is asked to follow if they desire to speak at the public hearing.

S. Lutz-Pietersen presented the planning staff report describing the proposed project as affordable housing for seniors age 55 and older consisting of twelve quadplexes totaling 48 living units upon an approximate 8-acre tract of land known as the former Trantham property. Developer seeks a reduction in off-street parking requirements; proposes to build a connection from the projects internal walking path to the City's bike path; and improvements to the traffic signal at the intersection of Green Acres Avenue at Asheville Highway. Approved by NCDOT is a 3-light preemptive signal that will remain 'green' along Broad Street/Asheville Highway until motorists on Green Acres desiring to exit left, at which time the light will turn to 'red' on Broad/Asheville Hwy. and trip to 'green' allowing motorists to exit from Green Acres. Whenever EMS needs to exit they will manually trip both this and the Fisher Road traffic signal lights to 'red' allowing quick and safe exit for EMS vehicles.

Developer, Ms. Frankie Pendegraph, Pendergraph Companies, explained she and two engineers from Odom Engineers are present to answer any questions Council or citizens may have about the Cottages at Brevard project. She shared her background in the construction and development trade including naming a few other completed projects they have done the State. Described the proposed Cottages units will meet handicapped requirements; will have an on-site manager for its residents; grounds will be heavily landscaped and meeting the City's requirements by having either a fence or vegetative buffer; desire to retain the stone wall along the front of the property; the previously described traffic signal improvements to be done; and, they are talking with adjoining church representatives to complete negotiations for a right-of-way. Property is currently under contract for purchase. Affordable Housing financing will likely be approved as this project site scored the highest in the area.

** 8:10 PM – Council discovered a few pages of the proposed Ordinance No. 10-2011 were missing from their materials. Mayor called for a break to allow staff to make copies of the missing pages. At 8:18 PM Mayor called for the end of the break and for the Public Hearing and meeting to continue.*

Council's discussion and comments while reviewing the application materials, staff report, draft ordinance, and from the presentations included:

- Mayor shared he would hope that if the project is funded, that consideration would be given by the developer to allow local businesses and subcontractors to make competitive bids for building materials and services.
- Concern was raised that the traffic signal, as proposed, would add to the already congested N Broad Street/Asheville Highway, especially during school traffic hours.
- Concern was raised people traveling along Fisher Road, including parents during school hours, would choose to drive through The Cottages in order to utilize the left signal proposed at Green Acres, rather than remain on Fisher Road.
- Expressed disappointment and questioned why re-alignment of the roadway at the proposed traffic signal has not been discussed between the applicant, city staff and NCDOT. Appears this would be the perfect opportunity to do so.
- Two entrance points questioned and Planning staff responded it is a City Code requirement. Questioned if the City, as well as the residents within the proposed development, would be better served by not requiring this but to have instead a cul-de-sac or similar one-way street system.
- In light of the traffic concerns along N Broad/Asheville Hwy., Fisher and Green Acres, it seems appropriate for the City to require the developer to provide a traffic impact study.

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

Reverend Rich Handschin, Lutheran Church of the Good Shepherd, stated they are not opposed to the proposed senior adult housing project.

Mr. Maurice Jones asked if it is correct that there are two different senior adult housing projects being proposed for Brevard, both seeking Affordable Housing funding.

Mayor Harris replied to Mr. Jones and confirmed, "Yes".

Public Hearing Closed – Mayor Harris closed the public hearing at 8:33 PM.

Public Participation – Prior to the meeting the following person(s) signed-up to speak:

Mrs. Carolyn Winchester, 103 Grandview Drive, Brevard. Mrs. Winchester thanked the City Manager for his coming to her property and walking along the creek bank with her to see how trash, debris, and overgrowth from a neighboring property has caused damage to her property, and to see the culvert that fails to carry the water. She received the Report from the Planning Department and asked when the enforcement actions described will begin. Stated she attended all of the meetings when Laurel Village was being considered and was assured that storm drains and basins would handle the water – she claimed they

have not done so. Shared her disappointment that City stormwater standards were not in place (adopted) when Laurel Village Development was approved by the City.

Attorney Egan confirmed to both Council and Mrs. Winchester that her described concerns with neighboring property owners is a private dispute between adjoining property owners, not for Council to address, and that remedies are available in the law to address these situations (civil matter).

Ms. Karen Shaffer, 68 Grandview Avenue, Brevard. Ms. Shaffer stated her property adjoins Mrs. Winchester, and shares some of the same concerns because she too has noticed sewage odors and has seen raw sewage in the creek. Second Topic: Showed Council copies of photos taken of trees that have been improperly pruned and topped (destroyed) and stated improper topping of trees is taking place all over the City. Are there gaps in the City's UDO that allows this? If so, here to ask that City staff be directed to give priority to this issue.

Mr. David Heckman, 92 Green Acre, Brevard. Stated he power washes his house and can't see paying for water that does not go back into the system and asked if the City would consider having a separate meter for such situations. Second Topic: Hopes the drainage situation at Green Acre and Tranthum property intersection where rain water frequently stands will be addressed.

Mr. Terry McCracken, 258 Illahee Road, Brevard. Representing Transylvania Little League, he provided Council with a letter (on file) containing an update on the Travel Ball and Lease request. Stated NCGS would allow the City to give the ball fields (land) to a non-profit, and would like the City to consider doing so by giving them the land to own, maintain and manage. If not interested in doing so, asked that a 10-year lease be considered between the City and the Little League.

Ms. Sheryl Fortune, WCCA, PO Box 6685, Hendersonville. NC. Ms. Fortune came on behalf of WCCA Executive Director David White, to present his letter dated April 18, 2011, that asks Council to provide a letter to Asheville Regional Housing Consortium supporting the reallocation of HOME funds from the Estatoe (aka Rosman) Apartments to The Gardens at English Village project.

Mr. David Dungan, 63 Throwbridge, Brevard. Stated he came to hear the discussion related to Mr. Jackson Wine's request for a game room license that is upon tonight's Agenda, and would like the opportunity to comment or ask questions after hearing the specifics of what Mr. Wine is requesting from Council.

Consent Agenda – Mayor Harris explained Consent Agenda items are considered routine and are enacted by one motion. He read aloud the one (1) item listed and asked if Council desired to remove the listed item for discussion, or, add any items from New Business to the Consent Agenda.

Mr. McKeller moved that New Business Item M-3, request of Jackson Wine for a Game Room license be added to the Consent Agenda and approved with the condition that the applicant receives Zoning Compliance from the Planning Department prior to issuance of

the license. Further, the City Manager be directed to initiate a revision to the City Code to require: (1) "Zoning Compliance" be required for all such license applications, (2) that review of game room license applications be performed administratively by the appropriate City staff, not Council, and, (3) that the Consent Agenda, as amended, be approved. Mr. Morrow seconded the motion. Motion carried unanimously.

Consent Item #1 (K-1) – Re-adoption of an ordinance establishing a project budget for the City of Brevard Bracken Mountain Trail Design.

**ORDINANCE NO. 04-2011
(As readopted on 04/18/2011)**

**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 \$28,000

TOTAL EXPENDITURES	\$23,000
	\$28,000

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 the 24 day of January 2011.

Readopted this the 18th day of April, 2011.

Consent Item #2 (M-3 to K-2) – Application for Game room License at 185 King Street, LLC, as submitted by Mr. Jackson Wine. Request granted with condition Zoning Compliance from the Planning Department be granted prior to the City Clerk's issuance of the game room license.

Agenda – Motion to Amend

Ms. Perkins moved, seconded by Mr. McKeller, the Agenda be amended to add WCCA's request for a letter of support, as presented during Public Participation, as New Business Item #M-3. Motion carried unanimously.

Unfinished Business – None

New Business

Item M-1 – **Ordinance No. 10-2011** Amending the Official Zoning Map of the City of Brevard Creating the Cottages at Brevard Planned Development District.

Planning staff recommended approval of Ordinance No. 10-2011 as presented.

Council members restated their concerns that: (1) A Traffic Impact Analysis has not been done and believe that one should be; (2) Another traffic signal or described changes to the existing traffic light will create a situation similar to the Deer Lake traffic signal; and, (3) This road carries our City's heaviest traffic and frequently, especially during school traffic hours, experiences considerable traffic congestion.

Ms. Pendergraph stated she has no objection to providing a Traffic Impact Analysis (TIA).

Mr. McKeller moved **Ordinance No. 10-2011** The Cottages at Brevard PDD be approved with the condition that a Traffic Impact Analysis (TIA) be provided as part of the Final Master Plan. Motion was seconded by Ms. Perkins.

Discussion: For clarification, Mr. Morrow asked if the requested TIA Study is to include, along with the customary development and traffic review, study specific to their

concerns regarding the school traffic. Mr. McKeller and Ms. Perkins confirmed, "yes" it is their intention that the TIA Study shall also include the school traffic.

Vote on the Motion: Motion carried unanimously.

ORDINANCE NO. 10-2011

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF BREVARD; CREATING THE COTTAGES AT BREVARD 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 generally 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 with conditions.

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 Pendergraph Companies (hereafter, "Developer"), the Official Zoning Map of the City of Brevard is hereby amended to create the Cottages at Brevard 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 Cottages at Brevard Planned Development District (hereafter, "District"), said zoning district being further depicted in Exhibit A, attached hereto and made a part hereof:

8586-74-6503-000; Deed Book 246 Page 481.

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 the Developer, its heirs and assigns.

Section Five. The Developer 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. The Developer 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. The Developer 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.
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
Cultural or Community Facility	P
Dwelling-Multifamily	P
Meeting Facilities	P
Parking	P
Special event (Temporary Use)	P

f. The Developer shall provide a final stormwater plan, accompanied by appropriate narrative and hydrological data, shall be submitted to, and approved by, the City Engineer prior to Final Master Plan approval.

g. The Developer shall build the connection of the proposed internal walking path to the City's existing bike/hike path.

h. The Developer shall provide a lighting plan, which will protect neighbors but provide good internal security, in accordance with 17.5.L.3 shall be provided and approved prior to Final Master Plan approval.

i. The Developer shall comply with all NCDOT design requirements for pedestrian infrastructure and traffic flow, including but not limited to the placement of the sidewalk along the Asheville Highway.

j. The Developer shall cooperate with NCDOT to obtain the installation of a traffic signal at the intersection of Green Acre Avenue and Asheville Highway prior to Certificate of Occupancy.

k. The Developer shall provide a pedestrian connection across the Asheville Highway – either through cooperation with NCDOT or by acquiring easement across adjacent property to build a sidewalk that will connect with the crosswalk at Fisher Road.

l. The Developer shall repave Green Acre Avenue to the satisfaction of the Public Services Director post-construction.

m. The Developer shall have a Traffic Impact Analysis (TIA) completed prior to Final Master Plan approval and implement the recommendations of the TIA to the satisfaction of Staff and the Planning Board.

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 18th day of April, 2011.

Item M-2 – Grandview Drive Stream

Mr. Moore explained that City's staff members are few and therefore we must operate on a "complaint driven" basis rather than staff patrolling for potential violations. Anyone with concerns is asked to call the Planning staff immediately upon discovery of a potential violation for staff to investigate.

Mr. Burton stated near the Winchester property is a confluence of two bodies of water and suggested establishing a benchmark in order to better monitor the situation. City is not in a position to take on the responsibility of cleaning and fixing the stream. However, the City does have within its Health and Sanitation Code standards to address debris and

grass/vegetation over 24" in height, which he can take swift and sure action upon. He will check into the Harris' property and if a violation exists, he will address it. As for the sewage at the creek described tonight by Mrs. Winchester and her neighbor (Ms. Shaffer), he is not aware of any recent occurrences; however, if there is he asked that they advise him so the appropriate City staff can check into the situation.

Mayor Harris stated the Planning Report has addressed the concerns of Mrs. Winchester and affirms violations to the City Code will be addressed.

Item M-3 – WCCA Letter of Support

Ms. Perkins moved Council accept Mr. White's letter and the City Manager to provide a letter of support for Mayor Harris's signature on or before Friday, April 22, 2011. Motion was seconded by Mr. Canady and passed unanimously.

Remarks by Officials

Mayor Harris shared an invitation to the Town of Mills River's Open House on Friday, April 29th has been received and encourage all Council members to attend.

Mr. Locks shared he is no longer serving on the WCCA Board and believes that Ms. Valeria Gardin would be willing to serve in his place. He will ask that she submit an Application for Board membership for Council's appointment consideration at the May 2nd meeting, in time for her to attend WCCA's orientation meeting scheduled for May 4th.

Adjourn - There being no further business before Council, Mr. Morrow moved, seconded by Mr. Locks, the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 9:55 PM.

Desiree D. Perry
City Clerk

Jimmy Harris
Mayor

Minutes Approved: May 16, 2011