MINUTES
BREVARD CITY COUNCIL
Regular Meeting
March 2, 2015 – 7:00 PM

The Brevard City Council met in regular session on Monday, March 2, 2015, at 7:00 p.m. in the Council Chambers of City Hall with Mayor Jimmy Harris presiding. Meeting was originally scheduled to be held on Monday, February 16th; however, needed to be rescheduled due to inclement weather (ice storm).

Present - Mayor Jimmy Harris, Pro Tem Mac Morrow, Council Members Maurice Jones, Ann Hollingsworth, Wes Dickson and Charlie Landreth.

Staff Present – City Manager Joe Moore, City Attorney Mike Pratt, City Clerk Desiree Perry, Deputy Clerk Jill Murray, Planning Director Josh Freeman, Finance Director Jim Fatland, Building and Grounds Alex Marquez, Public Service Director David Lutz, Police Chief Phil Harris and Utility Director & City Engineer Jay Johnston, PE.

Press - Derek McKissock, Transylvania Times

A. Welcome and Call to Order – Mayor Harris called the meeting to order, welcomed those present and introduced Council members, Manager, Attorney and Clerk.

B. Invocation – Mr. Norman Bossert, Brevard Jewish Community, offered an Invocation.

C. Pledge of Allegiance – Mayor Harris led in the Pledge of Allegiance.

D. Certification of Quorum - The City Clerk certified a quorum present.

E. Approval of Agenda – Mr. Landreth moved, seconded by Mr. Morrow, the Agenda be accepted as presented. Motion carried unanimously.

F. Approval of Minutes – Mr. Morrow moved, seconded by Ms. Hollingsworth, the January 22, 2015, Work Session Minutes be approved as presented. Motion carried unanimously.

G. Certificates, Awards and Recognition - None

H. Public Hearing(s)

H-1. Proposed Rezoning of the Bryson Development & Mgmt. Ltd., property located at 72 Pisgah Highway (PIN 8597-45-4982-000) from Residential Mixed Use (RMX) to Downtown Mixed Use (DMX). Applicant: Bryson Development and Management LTD, Partnership; Agent is Mr. Sam Salman, Pisgah Forest Outdoors LLC. This public hearing was advertised on February 19th and 26th, Notice to neighboring property owners were mailed, and Notice was posted upon the property. Hearing was first advertised on Feb 2nd and 9th for a Feb 16th Public Hearing that was rescheduled due to inclement weather (ice storm).

Mayor Harris opened the public hearing at 7:17 P.M.

Mr. Freeman introduced and welcomed the property owner's Agents, Mr. Sam Salman and Mr. Paul Wilander. Mr. Freeman offered information from the staff report (on file) and projected images of the subject property and zoning map. Applicants seek rezoning of the property in order to construct a commercial business. The request is not consistent with the City's Land Use Plan; however, staff feels the proposed rezoning request is of sufficient size (not spot zoning) and location and is consistent with adjoining land uses and therefore support approval of the rezoning. The Planning

Board reviewed the rezoning request at their January 27th meeting and unanimously recommended Council's approval of the request.

Applicant has submitted a request for waiver of formalities asking for Council consideration to render their decision tonight, rather than considering the matter at their next regular meeting.

Public Hearing Public Participation - None

Public Hearing Closed – Mayor Harris closed the hearing at 7:24 P.M.

H-2. Proposed Amendment to Jennings Industrial Park Planned Development District (PDD #13-122) Signage Master Plan to Increase the Allowable Size for Ground Sign for Red Clay LLC (aka Oskar Blues) located at 342 Mountain Industrial Drive, PIN 8596-37-7910-000. Applicant: Red Clay, LLC (Oskar Blues); Agent is Mr. Aaron Baker. This public hearing was advertised on February 19th and 26th; Notice to neighboring property owners were mailed; and, Notice was posted upon the property. Hearing was first advertised on Feb 2nd and 9th for a Feb 16th Public Hearing that was rescheduled due to inclement weather (ice storm).

Mayor Harris opened the Public Hearing at 7:24 P.M.

Mr. Freeman offered information from the staff report (on file) and explained the applicants request is to amend the existing Jennings Planned Development District (PDD) Signage Master Plan in order to allow an increase in the size and height for a secondary ground sign. Applicant desires to place signage upon a spent grain silo that is to be installed at the Oskar Blues Brewery. The request, if granted, would be specific to the applicant's property located at 342 Mountain Industrial Drive and will not affect or increase allowances for other properties within the Jennings PDD. The property District standard allows for an 85 square foot secondary ground sign; applicant requests a 200 square foot sign. District standard allows for a maximum 25 foot high sign; applicant requests a sign height of 46 feet.

Brevard Planning Board met and considered the request at their January 27, 2015, meeting and recommend Council approval of the applicants PDD Master Signage Amendment request as submitted. Planning Board further recommended to the applicant they place the sign copy on the silo in a way that it is not visible to students or faculty at Pisgah Forest Elementary School.

Mayor Harris asked the applicants Agent, Mr. Baker, which way/direction they plan to have the company logo sign on the grain silo.

Mr. Baker replied the logo would face onto Mountain Industrial Drive, which is opposite of Pisgah Forest Elementary School.

Public Hearing Public Participation - None

Public Hearing Closed – Mayor Harris closed the hearing at 7:30 P.M.

H-3. Proposed Amendment to City Code Chapter 62, Article 1 to Restrict South Alley (connecting East Main Street to Jordan Street) to Pedestrian-Only Traffic and to Allow Installation of a Boardwalk, that adjoins 36 East Main Street. Applicant: H/L Investments of NC, LLC; Agent is Domokur Architects. This public hearing was advertised on February 19th and 26th. Hearing was first advertised on Feb 2nd and 9th for a Feb 16th Public Hearing that was rescheduled due to inclement weather (ice storm).

Ms. Hollingsworth stated she and her husband owns property that adjoins the applicant's property and therefore she needs to be recused from the discussion and any Council action, and that she would be willing to leave the dais during the discussion if Council would like her to do so.

Mr. Morrow moved, seconded by Mr. Landreth, Ms. Hollingsworth be recused from the discussion and any future possible action on the matter.
Vote on the motion:

Aye – Mr. Morrow, Mr. Landreth, Mr. Jones and Mr. Dickson
Noes – None.
Motion carried.

Council did not request Ms. Hollingsworth to leave the dais during the discussion.

Mr. Freeman offered information from the staff report (on file) and explained the applicant has recently purchased the building at 36 East Main Street which fronts onto South Alley from the Main Street section and would like the ability to further subdivide the space inside the building for multiple, independent tenants. City Code currently does not allow for the construction of obstacles in a public way (alley). The proposed text amendment would allow for the construction of an elevated pedestrian walkway (boardwalk) in South Alley, so that entrances for new businesses can be accessed from South Alley. Proposed is to restrict the distance of approximately 95 feet from Main Street to pedestrian traffic only, not the entire length of the South Alley.

Mr. Freeman and Council reviewed and discussed the warranty provisions of the drafted Ordinance. Approval of a boardwalk is not in perpetuity. When the boardwalk needs to be replaced, and if a future City Council chooses to not maintain it, they have the ability to do so. Applicant has been made aware of this condition.

Mayor Harris recalled that years ago the City had the curb cut removed from South Alley to reduce motor traffic, and, installed posts to prohibit motorized vehicle traffic in the Alley.

Mr. Dickson asked, if request is approved, what impact it would have on City utilities and the Public Works crew workload?

Mr. Freeman explained there are utilities are in the alley. Water meters would need to be relocated, a load bearing wall will need to be addressed, relocation of sewer taps, and sewer line relocation from behind Falls Landing Restaurant building and the Hollingsworth property will also need to be addressed. Work will be negotiated by the City with the property owners.

Mr. Landreth asked what the likely number of store fronts would result if the boardwalk is approved.

Mr. Domokur replied likely two additional store fronts and, if done, would go from one-unit into a three-unit structure.

Mr. Pratt asked about the language in the draft Ordinance, Section 62-1(c) (6). Mr. Freeman explained it is the decision of the applicant to either fund the boardwalk themselves, or, for them to solicit sharing expense to construct with the adjoining property owners. Following discussion, agreed the language should be changed to read, "…shall be constructed at the expense of one or more of the adjacent property owners…".

<u>Public Hearing Public Participation</u>

Mr. Mike Young, 5 Park Avenue, explained he is the owner of the Falls Landing Restaurant located at 18 East Main Street. He asked for clarification on the area being proposed to be closed because he uses the Alley access off of Jordan Street for his business and parking. Does not want closure of South Alley to restrict or change the way they are currently using South Alley.

Mr. Freeman assured Mr. Young the proposal, if adopted, would not impact or change his ability to use South Alley.

Mr. Richard Coadwell, Heart of Brevard President, stated the Heart of Brevard Board unanimously supports the proposal to move forward to restrict the Alley to pedestrian traffic only and to allow a boardwalk.

Mr. Jones asked Mr. Coadwell if there is a possibility for façade funding assistance for the project. Mr. Coadwell replied, "Yes, however the funds are limited."

Public Hearing Closed – With no additional comments or questions, Mayor Harris closed the hearing at 7:56 P.M.

I. Special Presentation(s)

I-1. Transylvania Partnership for Economic Development Update – The presentation could not be made tonight. Mr. Jones moved, seconded by Mr. Landreth Council table the Presentation (no specific date was offered). Motion carried unanimously.

J. Public Participation

Ms. Leslie Logemann, Transylvania Farmers Market. Ms. Logemann provided a handout to Council containing a recap of the Farmers Market 2014 season, Farmers Market 2015-16 Budget, and their 2015-16 Grant request. The Farmers Market has received their 501C3, growth included sales of $250,000, Market is continuing to grow revenue and are in the process of applying for grants, getting more volunteers including a grant write, and an Annual Fund Raiser is being planned, as well as, additional educations offerings for children and seniors. There were 74 registered and 67 physical vendors in the 2014-15 season. On behalf of the Farmers Market, she thanked Council for their support and requested they fund the Market's FY 2015-16 grant request of $17,000, the same amount as last year. (Copy of Farmers Market Report and Budget was provided to the Clerk and filed with meeting Agenda Packet.)

Ms. Nancy DePippo, Friends of Ecusta Trail. Ms. DePippo stated the Friends of Ecusta Trail supports the preservation of the old rail line to a multiuse pedestrian trail as the highest and best use of the line. They believe doing so is in keeping with the City's vision and strategies to "leverage outdoor opportunities and connectedness of community to foster economic development and enhance quality of life". (A copy of the comments Ms. DePippo's read aloud is on file with the agenda packet materials.)

Mr. Marshall Karesh, 649 Cherrywood Lane, Pisgah Forest, spoke in favor and support of the rail line being converted to a walking/hike/job/biking trail that would not only be used and enjoyed by City and County residents, it would also serve as a means to have a trail to our adjoining Henderson County, and, would encourage more tourism with its economic benefits.

Mr. Gary Lightfoot, 62 Summer Place Court, stated he moved here 17 years ago and loves this community, and that he is a big supporter of the Ecusta Trail. He is an avid bike rider and believes, based on other communities that offer rails to trails, our doing so would result in increased property values too – especially those properties that adjoin the trail.

K. Consent Agenda - Consent Agenda items are considered routine and are enacted by one motion. Mayor Harris read aloud the items listed and asked if Council desired to remove an item for discussion, or, to add an item(s) to the Consent Agenda. Mayor suggested consideration be given to add Items M-1 Ordinance granting the Bryson rezoning request; M-2 Ordinance amending the Jennings PDD Master Signage Plan; M-4 Resolution awarding bid for City-wide 6" gravity sewer upgrade; M-5 Resolution to Investigate Sufficiency of Annexation Petition; M-7 Resolution in Support of the Ecusta Trail; M-8 Grant water connection outside the ETJ; M-9 Amend Council 2015 Meeting Schedule; and M-10 Resolution Adopting Conflict of Interest Policy.

Mr. Landreth read aloud three changes he would like incorporated into the drafted Resolution in Support of the Ecusta Trail, and provided a copy to the Clerk.

Mr. Dickson requested Council include a condition to be placed within the Ordinance Amending the Jennings PDD that the proposed sign does not face Pisgah Forest Elementary School.

Mr. Landreth moved, seconded by Mr. Dickson, the Resolution In Support of Ecusta Trail be amended as read aloud by Mr. Landreth. Motion carried unanimously.

Mr. Dickson moved, seconded by Mr. Morrow, the Jennings PDD Ordinance be amended to include the orientation of the sign is to be away from the elementary school. Motion carried unanimously.

Mr. Jones moved, seconded by Mr. Landreth, the Consent Agenda be amended to include New Business Items M-1, M-2 (as amended), M-4, M-5, M-7 (as amended), M-8, M-9 and M-10, and that the Consent Agenda be approved as amended. Motion carried unanimously.

The following fifteen (15) items were approved. (Reports are on file.)

K-1. Public Works Department Monthly Report
K-2. Planning Department Work Plan Quarterly Update
K-3. Engineering and Utilities Quarterly Update
K-4. Parks and Property Management Quarterly Update
K-5. FEMA Fire Prevention and Safety Grant
K-6. National Flood Insurance Program Performance Audit of the City of Brevard
K-7. 2015 Annual Strategic Planning Retreat: Facilitator's Report

K-8. (M-1) **Ordinance No. 2015-01** Amending Official Zoning Map by Rezoning Bryson Property NMX to DMX

ORDINANCE NO. 2015-01

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF BREVARD BY REZONING PROPERTY OWNED BY BRYSON DEVELOPMENT AND MANAGEMENT LIMITED PARTNERSHIP TO DOWNTOWN MIXED USE ZONING DISTRICT

WHEREAS, whereas, a public hearing was conducted on March 2, 2015, upon a request from Bryson Development and Management Limited Partnership, to rezone certain property located along US Highway 276 (72 Pisgah Highway), from a Residential Mixed Use Zoning District to a Downtown Mixed Use Zoning District; and,

WHEREAS, the property proposed for rezoning is known by Transylvania PIN No. 8597-45-4982-000, described in Deed Book 00210 Page 0125, and owned by Bryson Development and Management Limited Partnership; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed rezoning is inconsistent with the City of Brevard Land Use Plan Future Land Use Map, but finds that the proposed rezoning will result in a more rational and consistent pattern of land uses upon the subject parcel and its immediate vicinity; that the proposed rezoning will enhance development potential in a manner that is compatible with surrounding land uses; that the proposed rezoning is of sufficient size and configuration given the proposed district and is appropriate in terms of its geographic location; and that the proposed rezoning does not constitute "Spot Zoning;" and,

WHEREAS, the City Council of the City of Brevard, after hearing all persons wishing to comment on the rezoning, desires to approve the request and amend the City's Official Zoning Map accordingly.

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

Section 1. In accordance with N.C.G.S 160A-364, as amended and Brevard City Code, the Official Zoning Map of the City of Brevard is hereby amended to rezone the property described herein from a Residential Mixed Use Zoning District to a Downtown Mixed Use Zoning District.

Section 2. The Downtown Mixed Use Zoning District, which is established by this Ordinance, is described in Exhibit A to this Ordinance and depicted upon Exhibit B to this Ordinance, which are attached hereto and incorporated herein by reference.

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

Adopted and approved upon first reading this the 2nd day of March, 2015.

K-9. (M-2) **Ordinance No. 2015-02** Amending Jennings Industrial Park Planned Development District Signage Master Plan

ORDINANCE NO. 2015-02

AN ORDINANCE AMENDING
THE JENNINGS INDUSTRIAL PARK
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 unanimously recommended approval by City Council.

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

Section One. Upon petition of the property owners of Jennings Industrial Park (hereafter, "Jennings"), the Jennings Industrial Park Planned Development District (hereafter, "District") is hereby amended as 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 Jennings Industrial Park Planned Development District (hereafter, "District"), said zoning district being further depicted in Exhibit C, attached hereto and made a part hereof:

Transylvania Vocational Services, 8596-48-3055-000, Deed Book 00213 Page 0460
Transylvania Vocational Services, 8596-47-5642-000, Deed Book 00418 Page 0444
BNJ Investments LLC, 8596-47-1344-000, Deed Book 00595 Page 0063
Richard G. Jennings, III, 8596-37-5808-000, Deed Book 00402 Page 0401
Red Clay LLC (AKA Oskar Blues), 8596-37-7910-000, Deed Book 00621 Page 0694

Section Two. 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 Three. 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 "Jennings Industrial Park Signage Master Plan", which is attached to this Ordinance as Exhibit A, B, and C and incorporated herein. This Ordinance and its exhibits shall run with the land and shall be binding on Jennings, its heirs and assigns.

Section Four. Conditions.

a. Except as set forth in Section 4.b, below, development within the District shall comply with all applicable provisions of Brevard City Code, including but not limited to,

1. City of Brevard Unified Development Ordinance, general provisions and provisions specifically applicable to properties within General Industrial Zoning Districts

2. Chapter 62. Streets, Sidewalks, and Other Public Ways

3. Chapter 70. Utilities

b. The following ground and wall signage may be permitted within the District:

1. Primary Ground Sign:

i. One, Primary Ground Sign may be installed at the intersection of Old US Highway 64 and Mountain Industrial Drive.

ii. The Primary Ground Sign may be installed with the permission of the property owner; such permission to be conveyed by means of a stand-alone parcel of land, which shall be conveyed to an association of all property owners within the District, or by means of a lease agreement between such property owner and all other property owners within the District.

iii. The Primary Ground Sign shall contain one panel for each property owner or tenant within the industrial park, and the maximum allowable surface area of the sign face shall be equally distributed among the individual sign panels.

iv. Maximum square footage of sign face: The Primary Ground Sign face, including all individual panels, shall not exceed 140 square feet in size. Individual panels shall not exceed 8' in width nor 3 feet in height.

v. Maximum height: The Primary Ground Sign shall not exceed 20 feet in height above adjacent grade as determined by the Administrator.

vi. Setbacks: The Primary Ground Sign shall be set back a minimum of 10 feet from all property lines and rights-of-way lines.

2. Secondary Ground Signs:

i. One Secondary Ground Sign may be permitted upon each parcel of land within the District. A total of five, Secondary Ground Signs may be permitted within the District.

ii. Maximum square footage of sign face: Secondary Ground Sign faces, including all individual panels, shall not exceed 40 square feet in size; further, the Red Clay LLC (aka Oskar Blues) secondary ground sign shall not face towards the Pisgah Forest Elementary School..

iii. Maximum height: Secondary Ground Signs shall not exceed 8 feet in height above adjacent grade as determined by the Administrator..

iv. Setbacks: Secondary Ground Sign shall be set back a minimum of 10 feet from all property lines and rights-of-way lines.

3. Public Wayfinding Signs:

i. Two, Wayfinding Ground Signs may be permitted within the District.

ii. Wayfinding Ground Signs shall be owned and maintained by the City of Brevard, and may be installed upon private property by permission of the property owner, or within the public right-of-way of Mountain Industrial Drive, subject to the standards and practices of the *Manual of Uniform Traffic Control Devices*.

iii. Wayfinding Ground Signs shall be designed in such a way as to be generally consistent with the design of the City's "Wayfinding and Graphic Communications System."

iv. Maximum square footage of sign face: Wayfinding Ground Sign faces, including all individual panels, shall not exceed 16 square feet in size.

v. Maximum height: Wayfinding Ground Signs shall not exceed 8 feet in height above adjacent grade as determined by the Administrator.

vi. Location: Wayfinding Ground Signs shall be located in a manner that is generally consistent with locations as show upon Exhibit B to this Ordinance.

4. Wall Signage:

i. One Wall Sign may be permitted for each business within the District. In such cases where the structure containing a business fronts upon both Old US Highway 64 and Mountain Industrial Drive, such business is permitted a second wall sign.

ii. A business within the District may place wall signs upon any exterior wall of the structure containing the business. However, in no case shall a wall contain more than one sign per business.

iii. Maximum square footage of sign face: Wall Sign faces shall not 50 square feet in size.

c. The Planning Director, or designee thereof (hereafter, " Administrator") may approve minor modifications to the final master plan as shown upon Exhibits A and B; provided, however, that in no case shall Administrator approve modifications that would exceed the dimensional requirements as set forth in Section 5.B, above. 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.

d. Jennings shall seek and secure zoning site plan approval from the Administrator prior to commencing development activity within the District.

e. Jennings 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.

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

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

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

Adopted this the 2nd day of March, 2015.

K-10. (M-4) **Resolution No. 2015-01** <u>Resolution to Award Bid for City-wide Six Inch Gravity Sewer Upgrade</u>

RESOLUTION NO. 2015-01

A RESOLUTION AWARDING THE CONSTRUCTION WORK FOR THE CITY OF BREVARD SIX-INCH GRAVITY SEWER UPGRADE PROJECT

WHEREAS, the City of Brevard has previously approved the City of Brevard 6-inch Gravity Sewer Upgrade Project, herein after; "The Project"; and

WHEREAS, the Project has received approval and permits from the NCDENR – DWQ state regulating agency; and

WHEREAS, the City of Brevard has secured funding for The Project through a secured loan from NCDENR - DWI in the amount of $1,680,000 towards The Project; and

WHEREAS, the City of Brevard has received approval from the NC Department of State Treasurer, Local Government Commission to accept the loan; and

WHEREAS, the City of Brevard has placed The Project to public bid under state requirements, and has received bids that are within the established budget for The Project; and

WHEREAS, the City of Brevard, upon recommendation of the City's Consulting Engineers, Brown Consultants, PA, desires to accept the low bid, award and construct The Project; and

WHEREAS, in accordance with G.S. 143-129, the City of Brevard received formal proposals for the City Wide 6 Inch Gravity Sewer Upgrade Project at 11:00 A.M. on Thursday, January 22, 2015, at Brevard City Hall; and,

WHEREAS, after receiving the Bid Tabulation from this bid opening for the proposed project, the Brevard City Council now desires to approve an award of contract.

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

Section 1. A contract for the City Wide 6 Inch Gravity Sewer Upgrade Project (CWSRF Project No. CS3760676-04) is hereby awarded to Dillard Excavating Company, Incorporated, NC License #8893, 9411 August Road, Pelzer, SC 29669, for the bid price of $1,148,215.00 as received at 11:00 A.M., on Thursday, January 22, 2015, in accordance with the City's bid documents for this Project.

Section 2. The City Manager upon award approval from the NCDENR DWQ, is authorized and directed to sign a contract with Dillard Excavating Co. Inc.

Section 3. The City Manager is authorized and directed to take all necessary actions required by the NCDENR DWQ to complete The Project, including all close out documents.

Section 4. The City Manager is authorized and directed to process and approve any required change orders up to The Project's budget limit that may be needed to complete The Project.

Section 5. The City Manager shall advise the Board periodically on the status of completion of The Project.

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

Adopted and approved this 2nd day of March, 2015.

K-11. (M-5) **Resolution No. 2015-02** Resolution to investigate the Sufficiency of Petition for Annexation and Fix Date for Public Hearing

RESOLUTION NO. 2015-02

A RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE THE SUFFICIENCY OF A PETITION FOR AN ANNEXATION PURSUANT TO NCGS 160A-31, AS AMENDED

WHEREAS, a petition was received on February 11, 2015, requesting the annexation of a contiguous area described in said petition as the William P. Bryson, Jr., Lucy W. Bryson, Nancy B. Hughes, and Howard T. Hughes property (Tract C), and the Bryson Development and Development Limited Partnership property (Tract D), Transylvania County Property Identification Number(s) 8597-46-3120 and 8597-45-4982 and located on U.S. Highway #276.

Metes and Bounds Property Description:
Being all of two tracts of property as shown on Plat File 4, Slide 223 and further identified as "Tract C" as recorded in Document Book 481, Page 634 and the remaining unidentified tract to the south of "Tract B" and surrounding "Tract C" to the north and east being hereinafter described and identified as "Tract D" as recorded in Document Book 210, Page 125, both tracts being subdivided out of a larger parcel as recorded in Deed Book 104, Page 101 and beginning on a 5/8 inch found rebar, the southwest property corner of Lot 2 of the Forest Gate Shopping Center as recorded in Plat File 4, Slide 410 in the Transylvania County Registry.

THENCE South 20 degrees 36 minutes 22 seconds West for a distance of 50.35 feet to an unmarked point in the centerline of U.S. Highway 276;
THENCE North 73 degrees 04 minutes 53 seconds West for a distance of 212.31 feet along the centerline of U.S. Highway 276 to an unmarked point in the centerline of U.S. Highway 276, the southeast corner of Big Inc. as recorded in Document Book 591, Page 491 of the Transylvania County Registry and further shown on Plat File 7, Slide 369;
THENCE following the property line of Big Inc, paralleling more or less an existing barbed wire fence North 14 degrees 47 minutes 53 seconds East for a distance of 181.70 feet to a leaning found concrete monument 0.4 feet above grade at the base of a wooden fence post at the angle point of the barbed wire fence;
THENCE following the property line of Big Inc. North 42 degrees 07 minutes 20 seconds East for a distance of 273.48 feet, paralleling more or less the barbed wire fence to a 1 inch found iron pipe 3.0 feet above grade, a corner of Marvin L. Scott and others as recorded in Document Book 107, Page 197 of the Transylvania County Registry and further shown on Plat File 7, Slide 369;

THENCE following the Scott line North 48 degrees 07 minutes 13 seconds West for a distance of 413.65 feet to a 1 3/4 inch found iron pipe 1.1 feet above grade in the line of the U.S. Government Tract V-1 said tract being recorded in Plat File 2, Slide 262;

THENCE with the U.S. Government line North 08 degrees 01 minutes 25 seconds East for a distance of 514.33 feet to a 5/8 inch found rebar 0.5 feet above grade the southwest corner of the Nancy and Howard Hughes property and being identified as Tract B as recorded in Document Book 210, Page 133 and also shown on Plat File 10, Slide 423 as recorded in the Transylvania County Registry;

THENCE following the Hughes line North 82 degrees 15 minutes 03 seconds East for a distance of 222.20 feet to a 5/8 inch found rebar in the centerline of a branch, the common property corner of Hughes and the southwest property corner of Pisgah Trading Post being further identified as Lot 6B of the Forest Gate Shopping Center recorded in Plat File 4, Slide 410 and Plat File 13, Slide 187 as recorded in Deed Book 363, Page 53 and also being the northwest corner of Lot 5 of the Forest Gate Shopping Center and being further identified as the Walmart Tract on Plat File 4, Slide 410 and owned by Walmart Real Estate Business Trust as recorded in Document Book 560, Page 344;

THENCE along the line of the Forest Gate Shopping Center as shown on Plat File 4, Slide 410 the following six (6) calls South 23 degrees 10 minutes 52 seconds East for a distance of 123.60 feet to a 5/8 inch found rebar 0.8 feet above grade;

THENCE South 34 degrees 48 minutes 26 seconds East for a distance of 161.11 feet to a 5/8 inch found rebar in a stump 0.6 feet above grade;

THENCE South 27 degrees 51 minutes 32 seconds East for a distance of 280.49 feet to a found concrete monument;

THENCE South 06 degrees 51 minutes 31 seconds East for a distance of 8.35 feet to a found concrete monument;

THENCE South 20 degrees 37 minutes 21 seconds West for a distance of 231.82 feet to a 5/8 inch set rebar 0.3 feet above grade with a plastic identification cap;

THENCE South 20 degrees 36 minutes 22 seconds West for a distance of 522.89 feet to a 5/8 inch found rebar the point and place of beginning.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 9.07 acres more or less.

WHEREAS, said petition has been received by the City Council of the City of Brevard, North Carolina; and

WHEREAS, NCGS 160A-31, as amended, provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Brevard deems it advisable to proceed in response to this request for annexation.

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

Section 1. The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council the result of her investigation.

Section 2. This Resolution shall become effective upon its adoption and approval.

Adopted and approved this the 2nd day of March, 2015.

K-12. (M-7) **Resolution No. 2015-03** Resolution In Support Of The Ecusta Trail

RESOLUTION NO. 2014-03

A RESOLUTION IN SUPPORT OF THE ECUSTA TRAIL

WHEREAS, the City of Brevard includes outdoor recreation as a part of its vision statement, and has a strategic objective to enhance quality of life by bringing people of all ages together through physical connections within our community and to our natural assets of woods and water; and

WHEREAS, the Assault on the Carolinas has become a cycling event attracting nationwide participation and is a premier event for our community; and

WHEREAS, Pisgah National Forest and DuPont State Park are regarded as among the best mountain bike venues in the United States; and

WHEREAS, the National Trails System Act of 1983 facilitates the preservation of railway rights-of-way to create rail trails; and

WHEREAS, the City of Brevard participated in funding of the 2012 economic impact study conducted by Friends of the Ecusta Trail, reporting an initial impact of $42 million and annual impact of $9.4 million; and

WHEREAS, the business community includes manufacturers and retailers who depend on a strong marketplace for outdoor recreation equipment, and many other businesses that benefit from high tourism rates; and

WHEREAS, the strength of the visitor-based economy has a direct financial benefit for the City of Brevard, and therefore, also for Transylvania County; and

WHEREAS, the City of Brevard would be a prime destination of a regional bike path.

NOW, THEREFORE, BE IT RESOLVED THAT:

The City Council of Brevard does hereby declare its support for the Ecusta Trail as an asset to the cultural and economic vitality of our community.

Adopted and approved this the 2nd day of March, 2015.

K-13. (M-8) Granting of Water Connection Outside the ETJ - Council granted request of Mr. Newton and Mrs. Marilyn Lockhart to connect their house located on North Country Club Road, and that is located outside of the City's ETJ, to the City's water system. Approved with the condition they request voluntary inclusion of the subject property within the City's ETJ.

K-14. (M-9) Amend Council 2015 Meeting Schedule – Council amended the schedule by rescheduling the Open House to Friday, March 6th, reschedule March 2nd Work Session to March 23rd, and, reschedule April 6th Work Session to Monday, March 30th. (No meeting on April 6th.)

K-15. (M-10) **Resolution No. 2015-04** Resolution Adopting Conflict of Interest Policy

RESOLUTION NO. 2015-04

A RESOLUTION ADOPTING A CONFLICT OF INTEREST POLICY FOR THE CITY OF BREVARD

WHEREAS, it is essential for the City of Brevard's officers, employees, and agents to remain free from all conflicts of interest, whether real or apparent, in order for the City of Brevard to maintain the public trust of its Citizens; and,

WHEREAS, North Carolina State Law prohibits City officers, employees, an agents from voting upon or other otherwise participating in the selection, award, or administration of contracts in which they have a direct or indirect financial interest; and,

WHEREAS, the City Council of the City of Brevard desires to enact a conflict of interest policy for the City of Brevard.

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

Section 1. A Conflict of Interest Policy for the City of Brevard, which is set forth in Exhibit A to this Resolution, and which is incorporated herein by reference, is hereby adopted and enacted.

Section 2. The Conflict of Interest Policy shall apply to all City officers, employees, an agents, which includes Brevard City Council, appointed boards and commissions of the City, and individuals and organizations providing services to the City on a contract basis.

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

Adopted and approved this the 2nd day of March, 2015.

L. Unfinished Business – None

~~ At 8:23 Mayor Harris called for a ten minute break. ~~

M. New Business

M-3. Ordinance Amending City Code Chapter 62 Restricting South Alley to Pedestrian-Only Traffic and to Allow installation of a Boardwalk

Note: Previously in the meeting, by motion, Ms. Hollingsworth was recused from participating in the discussion and any action on this matter.

Mr. Pratt stated the wording in Section 62-1 (c) (5) is erroneous as the exact footage is not known; recommends the Ordinance be amended to read, "such boardwalk…and shall not extend in a southwestern direction more than the building length located at 36 East Main Street"; and, subsection (6) be amended to read, "Such boardwalk shall be constructed at the expense of one or more owners of the buildings, and shall…".

Mr. Domoker stated he is in agreement with the recommended changes.

Mr. Morrow moved, seconded by Mr. Landreth, the Ordinance to Amend City Code Chapter 62 be amended as described, and adopted as amended.
Vote on Motion:
Aye: Mr. Morrow, Mr. Landreth, Mr. Jones and Mr. Dickson
Noes: None
Motion carried.

ORDINANCE NO. 2015-03

AN ORDINANCE AMENDING BREVARD CITY CODE
CHAPTER 62. STREETS, SIDEWALKS, AND OTHER PUBLIC WAYS
ARTICLE I. IN GENERAL
SECTION 62-1. PLACING OBJECTS ON STREETS AND SIDEWALKS

WHEREAS, citizens have requested an amendment to Brevard City Code, Chapter 62. Streets, Sidewalks and other Public Ways, Article I. In General, Section 62-1. Placing Objects on Streets and Sidewalks, to authorize the installation of a pedestrian boardwalk within a portion of South Alley; and,

WHEREAS, after review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard to approve the amendments as recommended.

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

SECTION 01. Brevard City Code, Chapter 62. Streets, Sidewalks and other Public Ways, Article I. In General, Section 62-1. Placing Objects on Streets and Sidewalks, is hereby amended to read as follows:

Sec. 62-1. - Placing objects on streets and sidewalks.

(a) No brick, stone or wood or other substance obstructing the free passage of persons or vehicles shall be placed or allowed to lie in any of the alleys, streets, sidewalks or other public ways of the city <u>except as permitted by the provisions of 62-1.c</u>, nor, except as permitted in this chapter or by the provisions of section 46-1, shall any person place or allow to lie on or in any of the streets, sidewalks, alleys or other public ways of the city any boxes, crates, casks or barrels of any description, or any other obstruction of any kind; provided, any person erecting a building may, with the permission of the city manager, place building materials for immediate use on the streets or sidewalks in such a way as to not unduly interfere with vehicular or pedestrian traffic.

(b) Any existing door which opens outward over a public sidewalk may remain in place so long as the building owner executes an agreement acknowledging that the door could present a safety hazard to pedestrians and holding the city harmless for any and all costs to the city, including attorney's fees, court costs and all damages suffered by any pedestrian claiming injury from such door, provided that (1) no such door shall occupy more than 24 inches of space over the public sidewalk and (2) the city manager reviews, approves and accepts the specific provisions contained in the hold harmless agreement. Should no such agreement be made within 30 days' notice to the building owner, then all doors on such building which open over the public sidewalk shall be removed by the building owner.

<u>(c) An elevated pedestrian boardwalk may be placed within the northeastern portion of south alley, subject to the following provisions:</u>

(1) Such boardwalk shall be handicapped-accessible and complaint with all applicable provisions of the Americans with Disabilities Act, the North Carolina Accessibility Code, and the North Carolina Building Code.

(2) Such boardwalk may be permitted at the discretion of the City Manager, and may be removed at the discretion of the City Manager.

(3) Such boardwalk is a public way, and shall remain open to the general public at all times.

(4) Such boardwalk shall be managed as a public sidewalk in compliance with Section 46-1.

(5) Such boardwalk may extend along the northeastern portion of south alley, and may extend in a southwestern direction for a distance not to exceed the length of the building located at 36 East Main Street.

(6) Such boardwalk shall be constructed at the expense of one or more adjacent property owners, and shall be warranted by the same for a period not less than three years; such warranty shall be provided in a manner that is approved by the City Manager.

SECTION 02. Any person violating the provisions of this Ordinance shall be subject to the penalties set forth in Brevard City Code.

SECTION 03. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this ordinance shall control.

SECTION 04. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 05. The enactment of this Ordinance shall in no way affect the running of any enforcement actions, or otherwise cure any existing code violations.

SECTION 06. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this 2nd day of March, 2015.

M-6. Caldwell Street Widening Project, Budget Ordinance, Right of Way Dedication Agreement and Municipal Agreement with NCDOT

Mr. Freeman offered information from the staff report (on file) and explained the Caldwell Street Widening Project is a final phase in an overall traffic project called the "unbalanced couplet". Improvements to Caldwell Street were identified in the 1998 Brevard Thoroughfare Plan when NCDOT conducted traffic studies in the community and identified several issues along Broad and Caldwell Street, specifically congestion, a high number of accidents and narrow pavement widths.

Municipal Agreement - Because the City is both a partner and a subcontractor in this project, the City must enter into a municipal agreement with NCDOT that details the City's responsibilities in regards to this project.

Permanent Utility Easement – In order to construct the project, many utilities will have to be relocated, including those for Duke Energy, Comporium, and Morris Broadband. As there are utilities located on property owned by the City (Clemson Park and the City parking area adjacent to Jordan Street) the permanent utility easement will legalize the existence of those utilities and give those companies the ability to work on their infrastructure. This affects the City in the sense that it limits the City's ability to build in the easement area, much like it would be for City utilities. NCDOT has proposed to reimburse the City for the easement; Staff negotiated a price which will pay for the proposed sidewalk improvements (brick soldier course) and the majority of the sidewalk construction the City will be responsible for.

Project Budget Ordinance – Finance and Planning Staff have crafted a budget ordinance which proposes to move funds from the capital reserve fund to pay for all water, sewer, stormwater and sidewalk work and from the Downtown Master Plan fund to fund the proposed crosswalks.

Council described concerns with having a stamped concrete design rather than brick for the crosswalks as it is a noticeable deviation from and will not be consistent with the Downtown Master Plan. Emphasized the importance to communicate concerns and further discuss this concern with NCDOT. Hendersonville has areas where the "stamping" was done and it is already worn and wearing away.

Mr. Jones noted, if Council chooses to vote on the Municipal Agreement, Betterments (pg. 2) #6 needs to be corrected to read, "The Municipality will *be* responsible…"

Mr. Landreth moved, seconded by Ms. Hollingsworth, the Municipal Agreement be corrected as described by Mr. Jones, and that Council accept and approve the Caldwell Street Widening Project Municipal Agreement with NCDOT, the Right of Way Dedication and Permanent Easement Agreement with NCDOT, and the Project Budget Ordinance for the Caldwell Street Widening Project. Motion carried unanimously.

Municipal Agreement – On file with City Contracts and Agreements
Right of Way Dedication Agreement – On file with City Contracts and Agreements

ORDINANCE NO. 2015-04

AN ORDINANCE ESTABLISHING A PROJECT BUDGET FOR CALDWELL STREET WIDENING PROJECT, STIP #U-5104

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 North Carolina Department of Transportation intends to construct and further widen Caldwell Street at the bequest of the City of Brevard to complete the "unbalanced couplet" as proposed in the adopted 2007 Comprehensive Transportation Plan; and,

WHEREAS, the City will enter into a Municipal Agreement with FHWA/NCDOT that will require specific infrastructure items to be constructed as a part of the overall project as Brevard City Council intends to complete the project, including providing local funds required to meet the cost of items as required in the Municipal Agreement; and,

WHEREAS, Brevard City Council now desires to establish a project budget to account for the receipt and disbursement of funds for the Caldwell Street Widening 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 2014-2015 Budget is hereby amended as described in Section 3, below, and a project budget for the Caldwell Street Widening Project (U-5104) is hereby established.

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

REVENUES	
Transfer from Water & Sewer Capital Reserve	$ 35,000
Transfer from Stormwater Capital Reserve	$ 46,000
Transfer from Streets Capital Reserve	$ 58,500
Transfer from Downtown Master Plan	$200,000
Easement payment from NCDOT	$ 22,500
TOTAL REVENUES	$362,000

Section 3. Projected expenditures are budgeted as follows:

EXPENDITURES	
Water & Sanitary Sewer relocations	$ 90,000
Sidewalk construction	$ 26,000
Oakdale Stormwater construction	$ 46,000
Crosswalk construction	$200,000
TOTAL EXPENDITURES	$362,000

Section 4. This Ordinance shall remain in effect until the completion of the Caldwell Street Widening (U-5104) 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 2nd day of March, 2015.

N. Remarks By Officials / Future Agenda Considerations

Mayor Harris – Recognized Mr. John Wayne Hardison and thanked him for his gift of placement of the Christmas tree lights along Main and Broad Streets for the past few years.

With the City's recent purchase of the former Duke Power building on Cashiers Valley Road, he asked for Council's consideration that a Resolution be drafted to name the building after former City Council Member Cornelius Hunt who died while in office and who served with distinction and was a wonderful representative for all Brevard citizens.

Mr. Morrow moved, seconded by Mr. Jones, that such a resolution be drafted for Council's consideration at their April meeting. Motion carried unanimously.

Mr. Morrow – Recommended everyone attend the Heritage Museum opening next Friday, and encouraged folks to consider becoming a member of the TC Historical Society. The Allison Deavor House 200 year celebration is scheduled for July 25th.

Ms. Hollingsworth – Extended her appreciation to the Public Works Department for their service and promptly removing the snow from the streets.

Mr. Landreth – Expressed his appreciation to the Friends of Ecusta Trail who filled the Council Chambers tonight, and for their working together to make Brevard a better place.

Mr. Landreth moved, seconded by Ms. Hollingsworth, Councils support for a staff letter to NCDOT requesting continued evaluating the crosswalk design in our downtown to be consistent (brick) with the City's Downtown Master Plan. Motion carried unanimously.

Mr. Jones – Thanked and expressed his appreciation to the people of the community for their contributing to make this City a better place, be they profit or non-profit, all are working together. Wants our City to be the place we hope and dream it to be.

O. Closed Session – Mayor Harris asked the City Attorney if it would be appropriate for Council to hold a closed session to discuss two matters of land acquisition. City Attorney advised pursuant to **GS § 143-318.11. (a)(3)** and **(6)** it would be appropriate to convene a closed session on the matter. A closed session requires a separate motion, second and vote to discuss the matter.

O-1. Closed Session - At 9:01 P.M. Ms. Hollingsworth moved, seconded by Mr. Jones, Council go into closed session to discuss a property acquisition matter. Motion carried unanimously. Authorized to remain for the closed session with Council and the Attorney were the City Manager, Clerk, Deputy Clerk, Planning Director and Public Works Director. (A four minute break was taken to clear Council Chambers.)

Council Returned to Regular Session - At 9:16 pm Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

O-2. Closed Session - At 9:16 P.M. Mr. Landreth moved, seconded by Mr. Jones, Council go into a second closed session to discuss a property acquisition matter. Motion carried unanimously. Authorized to remain for the closed session with Council and the Attorney were the City Manager, Clerk, Deputy Clerk, Planning Director and Public Works Director.

Council Returned to Regular Session - At 9:47 P.M. Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

P. Adjourn – There being no further business, Mr. Jones moved, seconded by Ms. Hollingsworth, the meeting be adjourned. Motion carried and the meeting was adjourned at 9:47 P.M.

s/______________________________
Jimmy Harris
Mayor

s/______________________________
Desiree D. Perry, CMC, NCCMC
City Clerk

Minutes Approved: April 20, 2015