

**MINUTES
BREVARD CITY COUNCIL
Regular Meeting
October 19, 2015 – 7:00 PM**

The Brevard City Council met in regular session on Monday, October 19, 2015, at 7:00 p.m. in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

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

Absent – Mayor Pro Tem Mac Morrow

Staff Present – City Manager and Finance Director Jim Fatland, City Attorney Mike Pratt, City Clerk Desiree Perry, Interim Planning Director Daniel Cobb, Parks and Property Management Director Lynn Goldsmith, Public Works Director David Lutz and Police Chief Phil Harris.

Press – Kevin Fuller, 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 – Fire Department Chaplain Morris Davis (retired) 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. Pratt recommended adding the drafted Ordinance supporting Brevard Music Center, as amended, to the Consent Agenda. Mr. Landreth moved, seconded by Mr. Jones, the Agenda be amended as requested by the City Attorney and approved. Motion carried unanimously.

F. Approval of Minutes – Ms. Hollingsworth moved, seconded by Mr. Dickson, the September 21, 2015, Minutes be approved as presented. Motion carried unanimously.

G. Certificates, Awards and Recognition

Together, Mayor Harris, Fire Chief Craig Budzinski and Assistant Chief Bradley Elmore presented the following:

Life Saving Award was presented to Firefighter Daniel Futrelle in recognition for actions at the Full Gospel Church on October 14, 2014, resulting in saving a life.

Recognition of Achievement plaque for 23 years of service to Brevard Fire Department, with a combined 30 years of NC firefighter service, was presented to retired Firefighter Gary Keener.

Recognition of Achievement plaque for 35 years of service as Chaplain to Brevard Fire Department and its members was presented to retired Chaplain Morris Davis.

Recognition of Achievement plaque for 30 years of service to Brevard Fire Department was presented to retired Firefighter Steven Denton Gravely. Mr. Gravely thanked Council for their support of the Fire Department.

North Carolina Order of the Long Leaf Pine was presented to retired Chaplain Morris Davis and retired Firefighters Gary Keener and Steven Denton Gravelly.

H. Public Hearing(s)

H-1. Annexation – Pisgah Forest Outdoors, LLC. Petition for voluntary contiguous annexation of property located on US Highway #276, 11 Mama's Place, Suite A and Suite B, Pisgah Forest (Tract D Revised) consisting of 1.94 acres. Transylvania County Property Identification Number 8597-45-4982. Public hearing was properly noticed and advertised on Monday, October 5, 2015.

Mayor Harris opened the public hearing at 7:25 P.M.

Mr. Cobb presented his annexation staff report (on file). On June 15, 2015, Pisgah Forest Outdoors, LLC, submitted a petition for voluntary contiguous annexation of their property on US Highway #276, PIN 8597-45-4982. Council directed the Clerk to investigate the sufficiency on August 17, 2015, with the City Attorney, and found the Petition is signed by all owners of real property lying in the area described therein, in accordance with NCGS 160A-31. On September 21, 2015, by Resolution No. 2015-XXXX Council directed the City Clerk to schedule tonight's public hearing. Planning Board has reviewed and considered the request and unanimously recommends approval. Staff recommends Council take action to approve the annexation as presented.

~~ Due to technical difficulty with the Council Chamber sound and recording system, Mayor Harris called for a five minute break. ~~

Public Hearing Public Participation - None

Public Hearing Closed – There being no questions or comments, Mayor Harris closed the hearing at 7:34 P.M.

H-2. 2015 Comprehensive Plan. This public hearing was properly noticed and advertised on Monday, October 5th and October 12th, 2015.

Mayor Harris opened the public hearing at 7:34 P.M.

Mr. Cobb presented his staff report (on file). Work officially began on updating the City's Comprehensive Plan in December of 2012 and public input sessions were held January through May of 2013. The Plan was then crafted by the Planning Board with their recommended draft completed on January 2, 2014. Council was presented the Planning Board's recommended draft on January 31, 2014. Following a series of work sessions throughout 2014 covering the plans various key topic areas, Council discussed the comprehensive plan update at their January 8, 2015 work session. Following this meeting Staff incorporated feedback, including modifying the design of the document for a more simple, reader-friendly appearance. Council was presented the final version at their meeting on September 21, 2015. Comprehensive land use plans are typically updated every 10 years; the last update to Brevard's plan was in 2002.

Once adopted, the Comprehensive plan will help guide the completion of several small area plans throughout the City, as well as the forthcoming form-based code. This will allow those plans and codes to be crafted in such a way that they help the City achieve the goals as presented in the Comprehensive Plan.

The Comprehensive Plan will be the primary guidance document for the City's future growth and development policies. Its primary function is to outline in writing the policy the community intends to pursue with respect to growth and development, and to determine steps necessary to put the policy into effect. As a tool for City staff and elected officials, the plan enables the City to anticipate changes and to guide those changes in an effective, efficient and orderly manner that is consistent with the desires of the community.

Mayor Harris thanked Planning Staff for bringing the Plan forward for review and shared that he likes the changes made to the format.

Mr. Landreth noted the document describes Brevard as “above average” and “distinguished”, prefers “distinguished”. Within each section there is a set of instructions about monitoring and indicators that states we (City) will follow-up/monitor; however, some sections are not monitored by the City but by another party, when this is so it should specify who the monitoring party is. Broadband is an important infrastructure component and would like it to be included within the overview, goals and infrastructure section; broadband is also a policy issue that we need to advocate for with providers. Ms. Hollingsworth agreed broadband is important, and added she likes the documents monitoring aspect. Mr. Dickson added overall he really likes it and feels it is a well vetted plan.

Overall Council is pleased with the document and would like to see the changes described at tonight’s public hearing incorporated into the plan prior to printing and distribution.

Public Hearing Public Participation

No one signed up to speak. However, Ms. Patricia Wrinkle, asked from the audience if the comprehensive plan has anything to do with sidewalk and road repairs?

Mr. Cobb replied, “Yes”, in that infrastructure goals for the City, such as the City’s desire to be bike friendly, walkable including sidewalks are stated goals within the plan.

Ms. Wrinkle asked, “What about repairs? Our sidewalks are in terrible condition, and our streets have potholes everywhere. On Jordan Street I can see paint bringing attention to areas for repair; however I don’t see repairs being made.”

Mayor Harris suggested to Ms. Wrinkle that anytime she sees potholes or something that needs the City’s attention to please call the City Public Works Department.

Public Hearing Closed – There being no questions or comments, Mayor Harris closed the hearing at 7:55 P.M.

H-3. Proposed Text Amendment – Brevard City Code, Unified Development Ordinance, Chapter 8 Tree Ordinance. Public hearing was properly noticed and advertised on Monday, October 5th and October 12th, 2015.

Mayor Harris opened the public hearing at 7:55 P.M.

Mr. Cobb presented his staff report (on file). Purpose of the proposed text amendment is to amend the UDO regarding the City’s right to cause the removal of trees on private property. Currently the Section states, *“Tree removal on private property: The city shall have the right to cause the removal of any dead or diseased trees on private property when such trees constitute a hazard to life and property, or”* Staff somewhat frequently receives complaints from property owners asking that the City make their neighboring property owner to trim or remove a tree that they feel is too close to their property or dangerous as its branches overhang onto their property, etc. It is Staff’s opinion that the City should not be involved when citizen complaints only effect private property and not the general public.

Planning Board met on September 15, 2015, and unanimously recommended approval of the amendment with the addition of the following language, *“or the health, safety, or general welfare of the public.”*

Staff however recommends approval of the amendment excluding the Planning Board’s addition. Staff recommends amendment to read: “Tree removal on private

property. *The City may require removal of any dead or diseased trees or trees harboring insects, on private property when such trees constitute a threat to public property. The administrator will notify*"

Public Hearing Public Participation – None

Public Hearing Closed – There being no questions or comments, Mayor Harris closed the hearing at 7:59 P.M.

H-4. Proposed Text Amendment – Brevard City Code, Chapter 62 Placing Objects on Streets & Sidewalks. Public hearing was properly noticed and advertised on Monday, October 5th and October 12th, 2015.

Mayor Harris opened the public hearing at 7:59 P.M.

Mr. Cobb presented his staff report (on file). Currently property owners with frontage abutting a City sidewalk may display and sell goods, wares and merchandise from the sidewalk without need of an application and approval from the City. Recently there has been interest in converting existing alleyway space from vehicle/pedestrian into strictly pedestrian travel ways. This amendment is to exempt only those alleyways that are closed to vehicular traffic from the standard setback requirements. Regardless of the width of an alley, the proposed language would allow temporary items such as tables, chairs, benches, etc., to be placed in the alley. There would remain at least 36 inches of clear travel way for ADA access and pedestrian movement.

Proposed Text Amendment: Brevard City Code, Part II, Chapter 61.1

"(d) Alleyways closed to vehicular traffic shall not be subject to the sidewalk setback requirements as defined in Section 46-1.b, as a minimum at least 36 inches of unobstructed travel way must remain open and clear."

Public Hearing Public Participation – None

Public Hearing Closed – There being no questions or comments, Mayor Harris closed the hearing at 8:01 P.M.

H-5. Proposed Text Amendment – Brevard City Code, Part II, Chapter 34 Flood Damage Prevention Ordinance. Public hearing was properly noticed and advertised on Monday, October 5th and October 12th, 2015.

Mayor Harris opened the public hearing at 8:01 P.M.

Mr. Cobb presented his staff report (on file). Brevard has been a participating in the National Flood Insurance program (NFIP) since 1978. Since that time the City has received flood insurance rate maps (FIRM) approximately every 12 years. With each new set of maps the flood damage prevention ordinance is updated with references and new information not included in the previous version. The City's current flood ordinance was adopted in September 2009. During a recent discussion with NC Emergency Management staff it came to light that the City's ordinance, as adopted in 2009 is outdated due to changes at the Federal level. The State released a revised version of the model ordinance during the fall of 2013.

The most notable change in the ordinance is an exception provided for the development of public utilities (water and wastewater systems) within Zone AE of the special flood hazard area. Currently any development within Zone AE must demonstrate a "no rise" and no adverse impact, this requirement is not part of the model ordinance but is one characteristic of the City's Ordinance that provides additional protection of the natural floodplain not found in many ordinances. Creating this exemption allows public utility projects creating a rise of 0.05' (0.6 inches) or less to satisfy the "no rise" requirement.

The Planning Board met on September 15, 2015, and unanimously recommended approval of the ordinance as presented.

Mr. Jones noted the ordinance speaks to the City having a Flood Administrator and designee and asked if the City has a designee. Mr. Cobb replied, "Yes", Josh Freeman is a Certified Floodplain Manager (CFM), and new staff member Paul Ray will be working towards CFM designation.

Public Hearing Public Participation - None

Public Hearing Closed – There being no questions or comments, Mayor Harris closed the hearing at 8:09 P.M.

I. Public Participation

Mr. Scott Saulsbury, 131 Rollins Place Road, expressed his concerns with recent newspaper articles that reported that the City is polluting the French Broad River. Article said the City is trying to fix an ongoing sewer discharge problem; however, so far 800 plus thousand gallons of untreated sewage has been discharged into the river. Questioned why it is taking so long to address and fix the City's sewer system.

Ms. Pat Pettit, 17 Grove Circle, shared she came before Council a few months ago expressing her concerns with short term rentals and their impact on residential neighborhoods. She thanked Council for listening to her concerns and taking action by directing Planning Staff to research and pursue the matter. She stated it is a growing problem; recently a house had 28 people staying there over a weekend and pulled in and hooked up a RV to accommodate additional people. Other cities have had the same problem and are addressing it and she hopes Brevard will too.

Boy Scout Noah Trent, Troop 701, shared their Troop meets in the lower level of First United Methodist Church on Monday evenings. His Scout Master is Mr. Jason Trent and the Troop has about 30 members. He is currently working towards getting his badge on communication.

J. Special Presentation(s) - None

K. Consent Agenda and Information - Consent Agenda items are considered routine and are enacted by one motion. Mayor Harris read aloud the items listed, noting K-5 Ordinance Supporting Brevard Music Center that was added earlier in the meeting, and asked if Council desired to remove an item for discussion, or, to add an item(s) to the Consent Agenda.

Mr. Jones moved, seconded by Ms. Hollingsworth, New Business Items M-1, M-3, M-4, M-5, M-6 and M-7 be added to the Consent Agenda; adding for Item M-7 that Ms. Betty Scruggs be reappointed and Mr. Derrick Swing be appointed to the Terrell Scruggs Scholarship Committee, and that the Consent Agenda be approved as amended. Motion carried unanimously.

The following Consent Agenda items were approved:

K-1. Staff Reports

- a. Finance Report for month ended September 30, 2015
- b. Public Works Report, August 2015
- c. Planning Department Quarterly Report, July-Sept., 2015

K-2. Annexation Certificate of Sufficiency, Lastinger Properties, LLC and Resolution No. 2015-26 Fixing A Date of Public Hearing

Certificate of Sufficiency

I, Desiree D. Perry, City Clerk, do hereby certify that I have investigated the petition submitted by **Lastinger Properties, LLC**, PIN 8597-47-3949 containing 64.54 acres more or less, and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with NCGS 160-A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Brevard this 19th day of September, 2015.

Desiree D. Perry, CMC, NCCMC
City Clerk

RESOLUTION NO. 2015-26
A RESOLUTION FIXING A DATE OF PUBLIC HEARING
ON THE QUESTION OF ANNEXATION PURSUANT TO
NCGS 160A-31, AS AMENDED

WHEREAS, a petition regarding annexation of the contiguous area described herein has been received; and,

WHEREAS, the Brevard City Council has by Resolution No. 2015-24 directed the City Clerk to investigate the sufficiency thereof; and,

WHEREAS, certification by the City Clerk as to the sufficiency of said petition has been made.

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

Section 1. That a public hearing on the question of annexation of the contiguous area described below as requested by Lastinger Properties, LLC, will be held at Brevard City Hall at 7:00 P.M. on the 16th day of November, 2015.

Section 2. The area proposed for annexation is described as follows:

Location: Off of US Highway #276, 113 Mama's Place, Pisgah Forest, NC. Tax Property Identification Number 8597-47-3949

Metes and Bounds Property Description:

The following parcel of land is located off of Pisgah Highway (U.S. HWY 276) in the Brevard Township, Transylvania County, North Carolina. Being all of that property conveyed to Lastinger Properties, LLC by a deed from The Bryson Development and Management Limited Partnership on the 16th day of June 2015 as recorded in Document Book 730 Page 412 of the Transylvania County Register of Deeds and being more particularly described as follows:
BEGINNING AT A 5/8" REBAR, said rebar being a common corner of Document Book 730 Page 412, Document Book 721 Page 395, Document Book 721 Page 398 and United States of America Tract V-1 as shown in Plat File: 2 Slide: 262 of the Transylvania County Registry and located N 16°53'46" W a horizontal ground distance of 912.15 feet from a 5/8" rebar set with a "Kee" cap and having North Carolina State Plane Coordinates(2011) of Northing: 575682.339 feet and Easting: 894465.203 feet;
Thence with the common line of Document Book 730 Page 412 and United States of America Tract V-1 the following (9) courses and distances:
(1) N 08°01'54" E a distance of 131.17 feet to an existing 2" iron pipe with cap;
(2) N 52°53'34" W a distance of 341.44 feet to an existing 5/8" rebar with "Raxter" cap;
(3) N 52°53'34" W a distance of 987.60 feet to an existing 2" iron bar;
(4) N 30°47'50" E a distance of 938.07 feet to an existing 2" iron pipe with cap in a rock pile;
(5) N 79°13'50" E a distance of 810.59 feet to an existing 2" iron pipe with cap in a rock pile;
(6) N 38°50'06" E a distance of 1011.06 feet to an existing 4" steel rail;
(7) S 76°03'55" E a distance of 225.00 feet to an existing 2" iron pipe with cap in a rock pile;
(8) S 60°41'56" E a distance of 147.37 feet to an existing 2" iron pipe with cap;
(9) S 09°23'51" E a distance of 477.17 feet to an existing 4" steel rail; said steel rail being a common corner of Document Book 730 Page 412, United States of America Tract V-1 and Deed Book 221 Page 462 of the Transylvania County Registry and located S 58°33'15" W a distance of 148.29 feet from an existing 5/8" rebar;

Thence leaving the aforementioned common line and with the common line of Document Book 730 Page 412 and Deed Book 221 Page 462 of the Transylvania County Registry the following (4) courses and distances:

- (1) S 27°40'58" W a distance of 642.12 feet to an existing 1" iron rod;
- (2) S 27°42'51" W a distance of 518.37 feet to an existing 5/8" iron pipe;
- (3) N 87°51'02" W a distance of 120.52 feet to an existing 1" axle;
- (4) S 27°09'27" W a distance of 159.89 feet to an existing 5/8" rebar in a branch; said rebar being a common corner of Document Book 730 Page 412, Deed Book 221 Page 462 and Deed Book 431 Page 479 of the Transylvania county Registry;

Thence leaving the aforementioned common line and with the common line of Document Book 730 Page 412 and Deed Book 431 Page 479 of the Transylvania County Registry S 27°10'09" W a distance of 439.08 feet to an existing concrete monument with a "Raxter" cap; said concrete monument being a common corner of Document Book 730 Page 412, Deed Book 221 Page 462 and Deed Book 363 Page 53 of the Transylvania County Registry; and located N 83°09'22" W a distance of 305.69 feet from an existing 1/2" rebar;

Thence leaving the aforementioned common line and with the common line of Document Book 730 Page 412 and Deed Book 363 Page 53 of the Transylvania County Registry the following (2) courses and distances:

- (1) S 27°10'42" W a distance of 420.04 feet to an existing 1 1/4" iron pipe;
- (2) S 23°14'13" E a distance of 130.46 feet to an existing 5/8" rebar; said rebar being a common corner of Document Book 730 Page 412, Deed Book 363 Page 53, Document Book 560 Page 344 and Document Book 721 Page 395 of the Transylvania County Registry; and located N 23°11'23" W a distance of 123.61 feet from an existing 5/8" rebar set with a "Raxter" cap;

Thence leaving the aforementioned common line and with the common line of Document Book 730 Page 412 and Document Book 721 Page 395 of the Transylvania County Registry S 82°14'09" W a distance of 222.19 feet TO THE TRUE POINT OF BEGINNING.

Being all of a tract of land containing 64.54 Acres, being the same more or less, according to a Plat of survey recorded in Plat File 16 Page 443 of the Transylvania County Register of Deeds by Kee Mapping and Surveying, PA (License # C-3039) on and between the dates of 01/26/15-02/06/15 and under the supervision of Nolan R Carmack, NC PLS (License # L-5076) and should be referenced for a more complete description.

Section 3. Notice of said public hearing shall be published in the Transylvania Times, a newspaper having general circulation in the City of Brevard, at least ten (10) days prior to the date of said public hearing.

Section 4. This Resolution shall become effective upon its adoption and approval.

Adopted and approved this the 19th day of October, 2015.

K-3. Community Development Contracts. Council accepted the October 2015 reports submitted by: a. Transylvania Community Arts Council; b. Transylvania Farmers Market; c. Brevard/Transylvania Chamber of Commerce; and, d. Heart of Brevard

K-4. Correspondence (No Action. Offered as information only.)

- a. Tommy Williamson awarded NC Water Operators Association C-Surface Operator of the Year
- b. Ben Robinson, NC Water Operators Association Operator's Spotlight

K-5. Ordinance No. 2015-25 An Ordinance Supporting the Brevard Music Center As Amended

**ORDINANCE NO. 2015-25
AN ORDINANCE SUPPORTING THE BREVARD MUSIC CENTER
AS AMENDED**

Whereas, on September 21, 2015, City Council enacted Ordinance No. 2015-21, which was intend to read as follows:

Whereas, the City Council notes as a result of certain charitable donations made by Frank and Donna Patton, the City has at present the sum of \$50,000.00 which can be used to support the Brevard Music Center; and

Whereas, City Council is aware that Mr. and Mrs. Patton support many community causes, including the Brevard Music Center; and

Whereas, the City Council notes that this is the eightieth (80th) anniversary of the Brevard Music Center; and

Whereas, City Council is very much aware of the positive cultural and economic impact of the Brevard Music Center on the community; and

Whereas, City Council thinks it fitting and appropriate to support the Brevard Music Center in celebration of its eightieth (80th) anniversary; and

Whereas, City Council is also aware of the need of the Brevard Music Center for the construction of new dormitories; and

Whereas, City Council believes that it is consistent with the highest and best use of certain funds presently held for Pedestrian and Bike Path Capital Improvements, that they be transferred to the General Fund, to in turn be immediately disbursed to the Brevard Music Center, Inc., for construction of new dormitory facilities at the earliest time that the said Brevard Music Center, Inc., is able to make such use of these monies.

NOW, THEREFORE, CITY COUNCIL HEREBY ENACTS THE FOLLOWING ORDINANCE:

Section 1: The sum of fifty thousand dollars (\$50,000.00) is hereby transferred from the Pedestrian and Bike Path Fund, to the General Fund, and to be immediately disbursed therefrom to the Brevard Music Center, Inc., for the uses described herein above.

Section 2: This Ordinance shall be effective upon its adoption and approval by City Council.

Now, therefore, City Council hereby adopts this Ordinance amending Ordinance No. 2015-21 to read as stated herein above, nunc pro tunc.

Adopted and approved by City Council this the 19th day of October, 2015.

K-6. (M-1) Ordinance No. 2015-26 An Ordinance to Extend the Corporate Limits of the City of Brevard. Pisgah Forest Outdoors, LLC, voluntary annexation of contiguous property located on Highway #276.

**ORDINANCE NO. 2015-26
AN ORDINANCE TO EXTEND THE CORPORATE LIMITS
OF THE CITY OF BREVARD, NORTH CAROLINA**

WHEREAS, the Brevard City Council has been petitioned under G.S. 160A-31, as amended, to annex the area described herein, and,

WHEREAS, the City Council has by Resolution No. 2015-19 directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition (relying on the opinion of the City Attorney) and the City Council adopted Resolution No. 2015-22 fixing a date of public hearing. A public hearing on the question of this annexation was held at the Brevard City Hall at 7:00 o'clock, P.M. on the 19th day of October, 2015, after due notice by publication on the 5th of October, 2015;

WHEREAS, the City Council does hereby find as a fact that the petition meets the requirements of G.S. 160A-31, as amended.

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

Section 1. By virtue of the authority granted by G.S. 160A-31, as amended, all of that property lying in Transylvania County, owned by Pisgah Forest Outdoors, LLC, as shown and recorded on Plat File 16, Slide 396 and Plat File 4, Slide 410 in the Transylvania County Registry (Transylvania County Property Identification Number 8597-45-4982) and that certain annexation plat provided by the Petitioners to be duly recorded upon annexation is hereby annexed and made a part of the City of Brevard as of the 19th day of October, 2015.

Said property is more fully described as follows:

Metes and Bounds Property Description:

Being all of Tract D (Revised) as shown on Plat File 16, Slide 396 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 total distance of 50.35 feet (passing a 5/8 inch set rebar, 0.3 feet above grade, at 20.29 feet in the northern margin of the 60 foot right of way of U.S. Highway #276) 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 total distance of 181.70 feet (passing a set 5/8 inch rebar, 0.6 feet above grade, at 30.02 feet in the northern margin of the 60 foot right of way of U.S. Highway #276) 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 a new line South 69 degrees 23 minutes 38 seconds East for a total distance of 129.95 feet (passing a 5/8 inch set rebar, set at grade, at 99.96 feet in the western margin of a 30 foot wide right of way) to a set 5/8 inch rebar, 0.4 feet above grade, in the line of the Forest Gate Shopping Center as shown on Plat File 4, Slide 410;

THENCE with the line of the Forest Gate Shopping Center South 20 degrees 36 minutes 22 seconds West for a distance of 371.19 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 1.94 acres more or less.

Section 2. Upon and after the 19th day of October 2015, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Brevard and shall be entitled to the same privileges and benefits as other parts of the City of Brevard. Said territory shall be subject to the municipal taxes according to G.S. 160A-58.10.

Section 3. Pursuant to G.S. 160A-29, the Mayor of the City of Brevard shall cause to be recorded in the office of the Register of Deeds of Transylvania County, North Carolina, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 hereof, together with a duly certified copy of this Ordinance. Such a map shall also be delivered to the Transylvania County Board of Elections as required by G.S. 163.288.1.

Section 4. Notice of adoption of this Ordinance shall be published once, following the effective date of annexation, in a newspaper have general circulation in the City of Brevard.

Adopted and approved the 19th day of October, 2015.

K-6. (M-3) Ordinance No. 2015-27 Amending Brevard City Code, Unified Development Ordinance, Chapter 8.2.L Tree Protection and Landscaping.

**ORDINANCE NO. 2015-27
AN ORDINANCE AMENDING BREVARD CITY CODE,
UNIFIED DEVELOPMENT ORDINANCE – CHAPTER 8.2.L – TREE
PROTECTION AND LANDSCAPING**

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended that Brevard City Code, Unified Development Ordinance, Chapter 8, be amended to modify the City's role in the removal of trees on private property; and,

WHEREAS, a public hearing was conducted on Monday, October 19, 2015, by Brevard City Council; and,

WHEREAS, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Unified Development Ordinance Chapter 8, be amended as outlined below.

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

SECTION 01. Brevard City Code, Unified Development Ordinance, Chapter 8.2.L is hereby amended (as shown in *italic*) to read as follows:

8.2. - General provisions.

- A. Maintenance of existing built and vacant lots: Every owner, occupant, agent or person in control of property shall cut down and remove from the property all weeds, grass, vines and other growth which endangers the property or any other property, or which is likely to burn. This requirement shall not require the clearance of surface water protection areas or the removal of significant or protected tree and shrub species.
- B. Pre-construction conference: Prior to the commencement of any new development activities an on-site pre-construction conference shall take place with the developer and the administrator to review procedures for the protection and management of all protected landscape elements identified on the landscape protection plan.
- C. Existing vegetation, fences, walls, and berms: The use of existing trees or shrubs to satisfy the landscaping requirements of this section is strongly encouraged. Existing significant vegetation within the landscaped area shall be preserved and credited toward standards for the type of perimeter landscaping required, unless otherwise approved by the City of Brevard at the time of site plan approval. Existing berms, walls, or fences within the landscaped area but not including chain link fencing, may be used to fulfill the standards for the type of perimeter landscaping required, provided that these elements are healthy and/or in a condition of good repair. Other existing site features within the required perimeter landscaped area which do not otherwise function to meet the standards for the required landscaping shall be screened from the view of other properties or removed, as determined during review and approval of the site plan.
- D. Installation of new vegetation and other features: New plant material should complement existing vegetation native to the site. If existing significant vegetation and other site features do not fully meet the standards for the type of landscaping required, then additional vegetation and/or site features (including fences) shall be planted or installed within the required landscaping area. The use of indigenous, native and/or regionally grown species of trees, shrubs, vines, groundcovers and perennials is encouraged in order to make planted areas compatible with existing native habitats.
- E. Grading and development in required landscape areas: The required landscaping shall not contain any development, impervious surfaces, or site features that do not function to meet these standards or that require removal of existing significant vegetation. No grading, development, or land-disturbing activities shall occur within this area if forest canopy, specimen trees, or significant vegetation exists within the buffer yard, unless approved by the administrator. If grading within a buffer yard is proposed, slopes of 3:1 or less are encouraged to ensure the proper transition of grades to the adjacent property and to facilitate landscaping and maintenance.

- F. Easements and rights-of-way: Nothing shall be planted or installed within an underground or overhead utility easement or a drainage easement without the consent of the city and the easement holder at the time of site plan approval.
- G. Protection during surveying: No tree greater than 12 inches in diameter at breast height (DBH) located on public property or within a required tree protection area shall be removed for the purpose of surveying without an approval from the administrator.
- H. Tree trimming: Every owner of any tree overhanging any street or right-of-way within the city shall trim the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The public works director and utilities director are authorized to remove and/or trim trees and shrubs from public properties and public rights-of-way. North Carolina Department of Transportation is authorized to remove and or trim trees and shrubs in the public rights-of-way owned by the State of North Carolina. Approval is required to trim a tree in a tree protection area, required landscaping area, or buffer yard more than 25 percent of its overall canopy.
- I. Trimming and removal by utility companies: Trees to be removed from the public right-of-way by electric utilities and other overhead utilities must be replaced by such entity in equal quantity and minimum caliper size with an approved species.
- J. Tree topping: Tree topping shall be prohibited on all trees on public property, designated rights-of-way, required tree protection areas, landscaping, and buffer yards unless otherwise approved by the administrator. Trees severely damaged by storms or other causes, or certain trees under utility lines or other obstructions where other pruning practices are impractical may be exempted from this article at the determination of the administrator.
- K. Removal of dead trees on public property: Approval by the administrator shall be issued for trees that are dead, infected by disease, or determined to be a hazard to public safety and welfare. Should any tree designated in a tree protection area, required landscaping area, or buffer yard die, the agency shall replace it within 180 days with a tree(s) equal size.
- L. *Tree removal on private property: The City may require removal of any dead or diseased trees or trees harboring insects, on private property when such trees constitute a threat to public property. The administrator will notify in writing the owner(s) of such trees. Removal shall be done at the owner(s) expense within 60 days after the date of service of notice. In the event of failure of the owner(s) to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal as a lien on the owner's property taxes.*
- M. Stumps: All stumps of trees and park trees shall be removed so that the top of the stump does not project above the surface of the ground.
- N. Use of off-site landscape easements: Permanent off-site landscape easements may be used to meet required buffer yards provided that the size or shape of the parcel significantly restricts the ability to reasonably use the property and meet the buffer yard requirements. These easements must be recorded prior to or in conjunction with the approval of the site or subdivision plan.
- O. Protective measures during construction: Protective barricades shall be placed around all protected trees designated to be saved prior to the start of development activities or grading. Barricades shall be erected five feet past the drip line for any tree to be saved or tree save areas. Protective barricades shall remain in place until development activities are completed. The area within the protective barricade shall remain free of all building materials, dirt or other construction debris, construction traffic, storage of vehicles and materials, and grading shall not take place within five feet of the drip line of the existing trees to be protected.

Except for driveway access points, sidewalks, curb and gutter; no paving with concrete or other impervious materials within five feet of a tree drip line shall be allowed unless otherwise approved.

SECTION 02. As to any conflict between this Ordinance and any parts of existing Ordinances, the provisions of this Ordinance shall control.

SECTION 03. 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 04. The enactment of this Ordinance shall in no way affect the running of any Amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION 05. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19th day of October, 2015.

K-7. (M-4) Ordinance No. 2015-28 Amending Brevard City Code, Part II, Chapter 61 Subsection 62.1 Placing Objects on Streets and Sidewalks

**ORDINANCE NO. 2015-28
AN ORDINANCE AMENDING BREVARD CITY CODE
PART II - CHAPTER 61 SUBSECTION 62.1 –
PLACING OBJECTS ON STREETS AND SIDEWALKS**

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended that Brevard City Code, Chapter 62.1, be amended to allow placement of items in non-vehicular alleyways; and,

WHEREAS, Brevard City Council finds that while these proposed amendments are consistent with the City of Brevard Land Use Plan and other plans and policies of the City of Brevard; and,

WHEREAS, a public hearing was conducted on Monday, October 19, 2015, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Part II, Chapter 62.1 be amended as outlined below.

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

SECTION 01. Brevard City Code, Part II, Chapter 62.1 is hereby amended to read as follows:

- c) An elevated pedestrian boardwalk may be placed within the northeastern portion of south alley, subject to the following provisions:
 - 1) Such boardwalk shall be handicapped accessible and compliant 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 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.

- 5) 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.
- d) Alleyways closed to vehicular traffic shall not be subject to the sidewalk setback requirements as defined in section 46-1.b, as a minimum at least 36 inches of unobstructed travel way must remain open and clear.

SECTION 02. As to any conflict between this ordinance and any parts of existing Ordinances, the provisions of this Ordinance shall control.

SECTION 03. 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 04. The enactment of this Ordinance shall in no way affect the running of any Amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION 05. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19th day of October, 2015.

K-8. (M-5) Ordinance No. 2015-29 An Ordinance Amending Brevard City Code Part II, Chapter 34 Flood Damage Prevention

**ORDINANCE NO. 2015-29
AN ORDINANCE AMENDING BREVARD CITY CODE
PART II – CHAPTER 34 – FLOOD DAMAGE PREVENTION**

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended that Brevard City Code, Part II, Chapter 34, be amended to update references and create exemption for public utilities; and,

WHEREAS, Brevard City Council finds that while these proposed amendments are consistent with the City of Brevard Land Use Plan and other plans and policies of the City of Brevard; and,

WHEREAS, a public hearing was conducted on Monday, October 19, 2015, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Part II, Chapter 34 be amended as outlined in Exhibit A which is included with this Ordinance.

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

SECTION 01. Brevard City Code, Part II, Chapter 34 is hereby amended as depicted in Exhibit A. (Amendments are shown in red.)

SECTION 02. As to any conflict between this Ordinance and any parts of existing Ordinances, the provisions of this Ordinance shall control.

SECTION 03. 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 04. The enactment of this Ordinance shall in no way affect the running of any Amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION 05. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19th day of October, 2015.

K-9. (M-6) Ordinance No. 2015-30 Declaring a Road Closure for Halloween Fest

ORDINANCE NO. 2015-30
AN ORDINANCE DECLARING A ROAD CLOSURE FOR HALLOWEEN FEST

WHEREAS, Brevard City Council acknowledges a long tradition of providing an annual Halloween Fest for the pleasure and enjoyment of its citizens; and,

WHEREAS, Brevard City Council acknowledges this festival provides an opportunity for day-long, family-oriented activities; and,

WHEREAS, Brevard City Council acknowledges this festival requires a portion of Main Street (Highway 276) to be closed for setup, activities, and cleanup.

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

SECTION 01. Pursuant to authority granted by G.S. 20-169 the City of Brevard hereby declares a temporary road closure during the day and times set forth below on the following described portion of a State Highway System route:

Date: Saturday, October 31, 2015
Time: 7:00AM – 10:00PM
Route Description: Main Street (US 276) between Gaston Street and Johnson Street

SECTION 02. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19TH day of October, 2015.

K-10. (M-7) Board and Committee Appointments

Terrell Scruggs Scholarship Committee – Reappointed Betty Scruggs to a second term; term will expire July 2018. Appointed Derrick Swing, replacing Chief Phil Harris; term will expire July 2018.

M. New Business

M-2. Comprehensive Plan – Mr. Landreth moved, seconded by Mr. Dickson, Council table adoption of the 2015 Comprehensive Plan until the next regular meeting so that the changes discussed tonight can be incorporated into the plan. Motion carried unanimously.

N. Remarks By Officials / Future Agenda Considerations

Mayor Harris shared our practice is to not engage during public participation. The City’s sewer system is reliable and capable, and the City has and continues to take actions to improve the system. When we receive a rain event like we’ve experienced over the past month, a discharge can take place. We are consulting with and implementing engineering recommendations to alleviate this situation. When a discharge takes place it is the City staff who reports the occurrence to the State.

Human Relations Study Committee

Mr. Jones presented to Council a report dated October 16, 2015, from the Human Relations Study Committee (on file). He reported that since establishing the Human Relations Study Committee, Transylvania County has disbanded their Human Relations Council. Council appointed committee member, Lynn Joyce, is not able to serve and the Committee brings recommendation to appoint Patty Stark to fill the vacancy from Ms. Joyce. Committee asks for Council's approval to post a survey (using survey monkey) on the City's website for the public to complete. (A copy of the draft survey was provided to Council members to review.) The Committee will report the results of the survey to Council.

Mr. Landreth suggested the survey options be shortened for quicker readability.

Mr. Jones moved, seconded by Ms. Hollingsworth, Council receive the Report, appoint Ms. Stark to the Committee, and approve the placing of the survey onto the City's website. Motion carried unanimously.

Mr. Landreth requested staff to provide Council with a policy on the receiving of gifts. He would like it to include how gifts can be restricted, and, that potential donors can clearly understand and evaluate their philanthropy. Wants anyone who desires to give the City a gift (money, stocks, etc.) to have a clear understanding what restrictions can or would be placed.

Mr. Pratt was asked to check to see if the State Statutes addresses the giving of gifts and restrictions or understandings of its use as described. If a Statute does, to then evaluate whether or not we need additional language (local policy) for Council.

Mr. Landreth stated he has a second item for Council's consideration. Mr. Landreth moved that the City initiate a rezoning of the properties along Asheville Highway at the new Davidson River Village Connector Road to Morris Road from GR to CMX. With the Public Safety Facility and the new intersection coming in just south of the Holiday Inn and Jennings, it will be an opportunity for commercial development. Motion was seconded by Mr. Jones and carried unanimously.

Amend Council 2015 Meeting Schedule - Mr. Jones moved, seconded by Mr. Landreth, Council's meeting schedule be amended to add meeting with the TC Board of Commissioners on Monday, October 26th at 7:00 p.m., to discuss the County Courthouse. Motion carried unanimously.

Mr. Fatland reported the last RBC has been installed at the Wastewater Treatment Plant and the Superintendent appreciates that the City took a less expensive route, and he has reported the Plant is working better than it has in the past thirteen years. Mr. Fatland expressed his appreciation to the Public Works Department and staff for their cross training, and for the good job they do making notifications and in documenting when overflows happen, as well as, for their continued efforts taken to address sewer overflows.

O. Closed Session – Mayor Harris asked the City Attorney if it would be appropriate for Council to hold closed sessions to discuss matters of property acquisition and economic development, City Attorney advised pursuant to **GS § 143-318.11. (a)(3) (4)** it would be appropriate to convene provided separate closed sessions on the matters are held. Each closed session will require a separate motion, second and vote to discuss the matter. Council will enter and exit regular session for each closed session.

Closed Session #1 - At 9:01p.m. Mr. Landreth moved, seconded by Ms. Hollingsworth, Council go into closed session to discuss a potential property acquisition matter. Motion carried unanimously. Authorized to remain with Council and the Attorney were the Manager and Finance Director, City Clerk, Public Works Director, Interim Planning Director, and Project Development Director. (A brief break was taken to allow Council Chambers to be cleared.)

Council Returned to Regular Session – At 9:29 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.

Closed Session #2 – At 9:29 p.m. Mr. Landreth moved, seconded by Ms. Hollingsworth, Council go into a second closed session to discuss a property acquisition matter. Motion carried unanimously. Authorized to remain with Council and the Attorney were the Manager and Finance Director, City Clerk, Interim Planning Director and Project Development Director.

Council Returned to Regular Session – At 9:32 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.

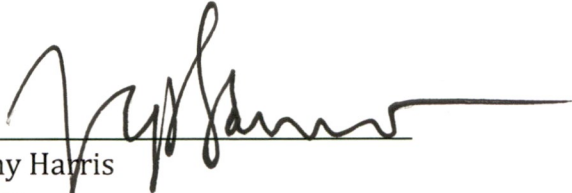
Closed Session #3 – At 9:32 p.m. Mr. Landreth moved, seconded by Ms. Hollingsworth, Council go into a third closed session to discuss a property acquisition matter. Motion carried unanimously. Authorized to remain with Council and the Attorney were the Manager and Finance Director, City Clerk, Interim Planning Director and Project Development Director.

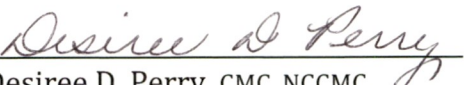
Council Returned to Regular Session – At 10:27 p.m. Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

Closed Session #4 – At 10:27 p.m. Mr. Jones moved, seconded by Mr. Landreth, Council go into a fourth closed session to discuss an economic development matter. Motion carried unanimously. Authorized to remain with /council and the Attorney were the Manager and Finance Director, City Clerk, Interim Planning Director and Project Development Director.

Council Returned to Regular Session – At 10:51 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. Dickson moved, seconded by Mr. Jones, the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 10:51 P.M.


Jimmy Harris
Mayor


Desiree D. Perry, CMC, NCCMC
City Clerk

Minutes Approved: November 16, 2015