

**MINUTES
BREVARD CITY COUNCIL
Regular Meeting
February 15, 2016 – 7:00 PM**

The Brevard City Council met in regular session on Monday, February 15, 2016, at 7:00 p.m. in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

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

Staff Present – City Manager and Finance Director Jim Fatland, City Attorney Mike Pratt, City Clerk Desiree Perry, Special Project Director Josh Freeman, Public Works Director David Lutz, Fire Chief Craig Budzinski, Planning Director Daniel Cobb, Planner Aaron Bland, Parks and Property Management Director Lynn Goldsmith and Police Chief Phil Harris.

Press – None

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

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

C. Pledge of Allegiance – Boy Scout Noah Trent, Scout Troup 701, led in the Pledge of Allegiance.

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

E. Approval of Agenda – Mayor Harris asked that the Agenda be amended to add the February 11, 2016, letter from Mr. Davidson of the NC Department of Water Resources to the Consent Agenda as Item #5. Mr. Landreth moved, seconded by Mr. Morrow the Agenda be amended as requested and approved. Motion carried unanimously.

F. Approval of Minutes – Mr. Landreth moved, seconded by Ms. Hollingsworth, the January 19, 2016, meeting minutes be approved as presented. Motion carried unanimously.

January 28th and 29th Retreat Minutes – The following changes or corrections are to be made: Page 4, Action Item, change to read “.....Electric grid *plan or overlay* is needed.”; Page 7, Correct name from Mr. Mills to *Mr. Miles*; Page 8, Item 1, correct year from 2025 to 2045; Page 8, Item 6, Questioned if information was recorded correctly regarding the RBC’s. Clerk was asked to confirm with Mr. Brown, PE and Mr. Owen and to correct the minutes if needed. [Note: Clerk confirmed City purchased square shaft RBC’s; no change is needed.] Page 14, Powell Bill. Correct last sentence to read, “Wants the City to be proactive and *not* reactive.”

Mr. Morrow moved, seconded by Mr. Jones, the January 28th and 29th Retreat Minutes be approved as amended. Motion carried unanimously.

G. Certificates, Awards and Recognition

Certificate of Appreciation – Mayor Harris explained that due to the bad weather and ice on the roads earlier today, Dr. Allen Delzell is not able to be present to receive the Certificate of Appreciation for his six years of service on the Board of Adjustment. Dr. Delzell asked that the Certificate be mailed to him.

H. Public Hearing(s)

H-1. Transylvania Taxi, Request for Public Convenience and Necessity

Approval. This public hearing was properly noticed and advertised on January 4th and 11th, for Council's January 19, 2016, meeting. Letter of Notice to applicant, Mr. Hyatt, was mailed on December 22, 2015. Letter of Notice to Brevard City Cab, holder of a Brevard Certificate of Public Convenience and Necessity, was mailed on December 22, 2015. At the January 19th meeting, Mayor Harris explained the applicant, Mr. Jim Hyatt, requested the Public Hearing be moved to Council's next meeting. Council granted the request to hold the hearing at their next regular meeting scheduled for February 15, 2016.

Mayor Harris opened the public hearing at 7:18 P.M.

Mr. Fatland called upon Chief Harris to provide a report to Council. The applicant, Mr. Hyatt, submitted to the City two applications. An application for Public Convenience and Necessity to own and operate a taxi business, and, an application for a Taxi Driver's License that would allow Mr. Hyatt to serve as a taxi driver. Chief Harris explained that after having reviewed Mr. Hyatt's background, including both prior and present criminal and traffic violations, that he determined it was necessary to reject his request for a taxicab driver's license for Brevard. He advised Mr. Hyatt his request for a taxicab driver's license was denied and that his January 6, 2016, letter to Mr. Hyatt fully describes his reasons for denial.

Mr. Jim Hyatt, applicant, was called upon to present his request. Mr. Hyatt explained his business, Transylvania Taxi, is operating out of the County and that he is not located within the City. When he first opened his business he contacted the Transylvania County officials and was not made aware of his need to also check with the City. He began his taxi business and received a call from Chief Harris advising him that he needs to obtain a license in order to provide taxi service in Brevard. Stated he is aware of his background and record; however, wants opportunity to start this business.

Chief Harris explained he became aware of Mr. Hyatt's offering taxi service in Brevard by his having solicited business for "Transylvania Taxi" by means of his placement of advertising flyers and business cards within businesses located in the City of Brevard.

Mr. Hyatt questioned his need for having a City license when in fact his business is located in Transylvania County and outside the City limits; asked if a limousine service is required to get a City license; questioned why a taxi business has to have City approval when other types of businesses do not; and, asked if a uber driver would need to get a taxi business or taxi drivers license.

Mr. Pratt offered some key words within the Code are "for hire". *"No person shall operate or permit a taxicab owned or controlled by him to be operated as a vehicle for hire upon the streets of the city without having first obtained a certificate of public convenience and necessity from the city council."* (City Code, Chapter 78, Section 78-61.) Mr. Pratt added, it does not matter where the taxi business base is located.

Mr. Pratt reminded Mr. Hyatt a public hearing is not the time to question and discuss City Codes, but rather it is the time for him to present his request to Council.

Mr. Hyatt offered in the past he was a school bus driver, attended truck driving school and got a CDL, and that had an outstanding safety record when with those companies. Most of the history the Police Chief referred to was in his past. The reason he delayed in making application after being advised by the Police Chief and City Clerk of his need to get a City taxi business license and taxi driver license, was due to his father having health needs. Stated he wants the opportunity to prove to Chief Harris, Council and this community that he is able to operate a taxi business in the County and City.

Mr. Landreth asked Mr. Hyatt to describe his proposed taxi business; asked how many drivers he would have, the number of vehicles he would operate, his proposed business hours, etc.

Mr. Hyatt stated he plans to offer around the clock 24-hour taxi service and at present he has one vehicle.

Mr. Jones noted the submitted application indicates his only having an entry level of insurance; commercial requires a higher level of insurance. He asked Mr. Hyatt if he is able to make the change in order to provide commercial insurance.

Mr. Hyatt replied, "Yes, I can increase the insurance if needed."

Mayor Harris asked Chief Harris if it is his recommendation to Council that Mr. Hyatt not be approved for a taxi business license (Public Convenience and Necessity) based upon the findings described in his January 6, 2016, letter to Mr. Hyatt, in which he denied his request for a taxi drivers license.

Chief Harris explained they are two separate applications. His denial was specific to the taxi driver license.

Mayor Harris asked if a person has been denied a taxi drivers license does that remove their right or ability to own or operate a taxi cab business.

Mr. Pratt offered City Code Section 78-67 (a) (3) which states, "*...has violated any ordinances of the city or the laws of the United States or of the state, reflecting unfavorably on the fitness of the holder to offer public transportation.*" What that means in this context is that if City Council can consider past criminal or traffic violations or moral misconduct to revoke a franchise, then Council can also consider those types of things when considering to approve a franchise. Mr. Pratt added if Council were to consider denial of the request, then they should by motion admit the Police Chief's letter and accept as evidence for the record.

Mr. Landreth moved, seconded by Ms. Hollingsworth, that Chief Harris' January 6, 2016, letter to Mr. Hyatt as has been discussed tonight to be accepted as evidence and included as part of the record. Motion carried unanimously. (Exhibit A)

Mr. Hyatt stated many of the things included in the letter took place many years ago, and that he was found not guilty of the trespassing charges. He wants the opportunity to show that he can represent the City and County well.

Mayor Harris asked Chief Harris where he obtained Mr. Hyatt's history and background information. Chief Harris replied from the NC State records.

Public Hearing Public Participation – None

Public Hearing Closed – There being no further questions or comments, Mayor Harris closed the hearing at 7:38 P.M.

H-2. North Carolina Small Cities Community Development Block Grant (CDBG) Downtown Redevelopment Fund Application. This public hearing was properly noticed and advertised on February 4th and 11th, 2016, in the Transylvania Times.

Mayor Harris opened the public hearing at 7:38 P.M.

Mr. Freeman stated the NC Small Cities Community Block Grant Downtown Redevelopment Fund is a relatively new NC Department of Commerce Fund administered by the NC Main Street Program. City would be working in cooperation

with the Heart of Brevard and Land of Sky Regional Council. The overall CDBG goal is to remove blighted/slum conditions by returning vacant/underutilized buildings to productive use, and, to encourage job creation. The program's approach is to focus investments on addressing code issues that are impediments to full use of a commercial structure. Eligible Expenditures Examples: Bring structure into compliance with ADA requirements, mitigation of asbestos, lead paint, upgrade water/sewer system within buildings, repair/replace roofs, windows, create fire separation materials in order to meet code, add fire suppression systems, etc.

This is the first of two public hearings required in advance of an application submittal. Hearings are to obtain citizen input into the identification of need and desired activities for infrastructure upgrades of downtown buildings. A letter of intent is being submitted and if it is accepted staff will then proceed with the CDBG Fund application. CDBG Downtown Redevelopment Fund will require a lot of upfront investment by a property owner. Information on potential structure(s) will be provided at the next hearing.

Public Hearing Public Participation – None

Public Hearing Closed – There being no further questions or comments, Mayor Harris closed the hearing at 7:47 P.M.

I. Public Participation - None

J. Special Presentation(s)

J-1. League of American Bicyclists Bicycle Friendly Communities Program Overview.

Mr. Bland shared at Council's annual retreat, the idea of working towards Brevard being designated as a bike friendly city was brought up as an item for further discussion. Therefore tonight he will make an informational presentation on the program including the Bicycle Friendly Communities rating methodology. (See also staff report on file.) If Brevard were interested in applying, could do so as early as April; 2016 application deadline is August 9th. There is no cost or risk in applying. If we apply and are not designated, we would receive valuable feedback from the program.

Council members briefly discussed the program, expressed their interest in Brevard working toward the designation, and thanked Mr. Bland for his presentation.

K. Consent Agenda and Information - 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.

Mr. Landreth moved, seconded by Mr. Jones, the Consent Agenda items be approved as presented. Motion carried unanimously. The following items were approved:

K-1. Staff Reports:

- a. Public Works Department December 2015 Monthly Report
- b. Finance Department January 2016 Monthly Report
- c. Police Department Oct-Dec 2015 Quarterly Report

K-2. Amend Contract for Audit for Year Ended June 30, 2015. Council approved to amend the contract with Gould Killian CPA Group, P.A. for audit services by an additional \$7,500 increasing the audit contract from \$29,900 to \$37,400 for the year ended June 30, 2015.

K-3. Resolution No. 2016-02 A Resolution Awarding Contract for the Auditing of the City's Financial Statements and Accounts for the Year Ending June 30, 2016.

RESOLUTION NO. 2016-02

**A RESOLUTION AWARDING CONTRACT FOR THE
AUDITING OF THE CITY'S FINANCIAL STATEMENTS AND ACCOUNTS
FOR THE YEAR ENDING JUNE 30, 2016**

WHEREAS, the City of Brevard conducts an annual independent audit of its financial statements and accounts in accordance with the North Carolina Local Government Budget and Fiscal Control Act, as amended; and

WHEREAS, the City desires to award contract for the performance of the audit of its financial statements and accounts ending June 30, 2016, to the firm of Gould Killian CPA Group, P.A.;

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

Section 1. The firm of Gould Killian CPA Group, P.A. is hereby awarded contract for the performance of the City's annual audit of its financial statements and accounts for the fiscal year ending June 30, 2016, for the contract price of \$30,100. This audit shall be performed under the single audit basis.

Section 2. The Mayor and City Finance Director are hereby authorized and directed to execute the standard Local Government Commission contract with Gould Killian CPA Group, P.A. for said audit.

Section 3. After execution by the auditor and City, said contract for the City's audit shall be forwarded to the North Carolina Local Government Commission for its approval and execution as prescribed by law.

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

Adopted and approved this the 15th day of February, 2016.

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

- a. National Park Service 100th Anniversary
- b. City Advisory Boards & Committee Appreciation Dinner, March 7, 2016
- c. FY2016-17 Budget Public Input and Non-Profit Requests, March 21, 2016

K-5. City of Brevard WWTP, Settlement Agreement as Amended, File No. C-14-002, Ad I; NPDES Permit No. NC0060534 – City Council admitted into the record the February 11, 2016, letter from G. Landon Davidson, P.G., Regional Supervisor, Water Quality Regional Operations Section Asheville Regional Office Division of Water Resources, NCDEQ. (Exhibit B)

L. Unfinished Business - None

M. New Business

M-1. Transylvania Taxi, Mr. Jim Hyatt. Consideration of a Resolution Approving a Certificate of Public Convenience and Necessity for the Operation of Taxicabs.

Mayor Harris explained the public hearing was held earlier and now Council will decide whether or not to grant a business franchise license for a taxi cab business within Brevard as requested by Mr. Hyatt; not consideration of a taxi driver.

Mr. Pratt shared Council controls a monopoly and determines whether the City needs one, two or thirty taxi companies, much like it controls a cable company. To grant approval Council needs to find it is in the best interest to do so in regards to convenience and necessity as it has been presented to Council. Without finding that it is in the public's best interest for convenience and necessity, you cannot grant it. To

approve, Council will need to find that there is a public interest in convenience and necessity and that the letter presented into evidence does not prevent the applicant from operating a taxi company with regard to his past history and record.

Mr. Landreth moved that in the absence of compelling evidence of the public convenience and necessity for a public taxi and in consideration of the public record of the applicant's history, I move we find that there is no need for an additional taxi cab company at this time. Motion was seconded by Mr. Daniel and carried unanimously.

N. Remarks by Officials / Future Agenda Considerations

Mayor Harris stated at Council's January meeting Mr. John Cottingham came and spoke about Pisgah Conservancy and that he would like for Brevard to be a founding member; therefore \$1,000 of the Mayors Discretionary funds will be provided towards this conservancy effort.

Mayor Harris shared he really enjoyed Council's retreat. He found it to be informative, logical, and pragmatic. The information received was easily understood and helped him to better know the needs of the community, and, he added the Managers recommended Committee structure is working well and has exceeded his expectations.

Mr. Morrow had no comments.

Mr. Landreth shared next Monday (Feb 22nd) Oskar Bleus will be hosting "Make A Difference Monday" with the proceeds to benefit the Boys and Girls Club and encouraged folks to attend.

Certified Retirement Community – Mr. Landreth shared he recently met a gentleman with the State Economic Development Partnership who spoke on certified retirement communities, and asked if Council has interest or sees value in considering that label or status. Mayor Harris and Mr. Morrow replied they are interested in knowing more.

Mr. Fatland stated he will have staff to look into it.

Mr. Jones expressed his appreciation to Mr. Lutz and the Public Work's staff for their hard work as they made repairs to the force main earlier in the month despite the very cold weather.

Mr. Daniels shared Council's annual retreat was more like a workshop or work session and suggested the City might want to change the name from annual retreat to annual workshop or work session.

Ms. Hollingsworth thanked the City Clerk for the quick turn around on the retreat minutes.

Mr. Pratt expressed his appreciation to Mr. Lutz and the Public Work's staff for their hard work and having the City streets cleared so quickly after the recent snow.

O. Closed Session – Mayor Harris asked the City Attorney if it would be appropriate for Council to hold four closed sessions to discuss three matters of economic development and a potential property acquisition matter. City Attorney advised pursuant to **GS § 143-318.11. (a)(3) (4) (5)** 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 8:20 p.m. Mr. Jones moved, seconded by Mr. Landreth, Council go into closed session to discuss an economic development mater. Motion

carried unanimously. (An eight minute break was taken to allow Council Chambers to be cleared.)

Council Returned to Regular Session – At 9:03 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 9:03 p.m. Mr. Landreth moved, seconded by Mr. Jones, Council go into a second closed session to discuss an economic development matter. Motion carried unanimously.

Council Returned to Regular Session – At 9:33 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.

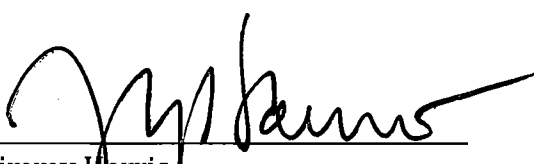
Closed Session #3 – At 9:33 p.m. Mr. Jones moved, seconded by Ms. Hollingsworth, Council go into a third closed session to discuss a property acquisition matter. Motion carried unanimously.

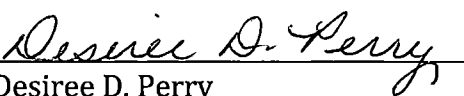
Council Returned to Regular Session – At 9:43 p.m. Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

Closed Session #4 – At 9:43 p.m. Mr. Morrow moved, seconded by Mr. Landreth, Council go into a fourth closed session to discuss an economic development matter. Motion carried unanimously.

Council Returned to Regular Session – At 9:55 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. Landreth moved, seconded by Mr. Jones, the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 9:55 P.M.


Jimmy Harris
Mayor


Desiree D. Perry
City Clerk

Minutes Approved: March 21, 2016