



MINUTES

November 3, 2022

REGULAR MEETING OF THE CITY COUNCIL

CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members: Dr. Jennifer Hensley, Debbie O'Neal-Roundtree, and Jerry A. Smith Jr., J.D.

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle, City Attorney Angela Beeker, Communications Manager Allison Justus, Budget Manager Adam Murr, and others

1. **CALL TO ORDER**

Mayor Volk called the meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with all members in attendance.

2. **INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG**

The City Council observed a moment of silence for prayer or reflection followed by the Pledge of Allegiance to the Flag.

3. **PUBLIC COMMENT** *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*

John Liberatos addressed City Council requesting consideration of installation of a permanent radar sign.

Adam Johnson addressed City Council requesting consideration of support for climate action plans within the City's upcoming comprehensive plan.

Katril Davis addressed City Council requesting consideration of adoption of a climate action plan.

Sofia Fernandez addressed City Council requesting consideration of adoption of a climate action plan.

Steffie Rouche addressed City Council requesting consideration of adoption of a climate action plan and stated the plan would pay for itself through energy efficiencies.

Barbara Hughes addressed City Council requesting reconsideration of additional social districts in downtown stating she feels there is too much alcohol downtown now. Ms. Hughes further expressed concerns of DWI fatalities.

Crystal Cauley addressed City Council regarding the Sullivan Park Refresh Project stating the newly furnished park has encouraged community volunteerism and appreciation. Ms. Cauley expressed thanks to City staff and Council for their support.

Lynne Williams addressed City Council via Zoom electronic software regarding Boyd Park and response times of the Fire Department. Council Member Dr. Jennifer Hensley clarified that there are no increased response times for calls for service.

4. **CONSIDERATION OF AGENDA**

Council Member Jerry A. Smith Jr., J.D. moved that City Council approve the agenda as presented. A unanimous vote of the Council followed. Motion carried.

Council Member Lyndsey Simpson requested to amend the agenda by removing Items 8A, Establishment of Social Districts in Downtown Hendersonville, and 8B, Continuation of American Rescue Plan Discussions from discussion at this time.

Council Member Jerry A. Smith Jr., J.D. moved that City Council approve the agenda as amended. A unanimous vote of the Council followed. Motion carried.

5. **CONSENT AGENDA**

A. Adoption of City Council Minutes – *Angela L. Reece, City Clerk*

B. Budget Amendments – *Adam Murr, Budget Manager*

- C. Utility Extension Agreement for the Blue Ridge Commerce Center Development – *Brendan Shanahan, Civil Engineer IV*

Resolution #R-22-133

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH ASHEVILLE INDUSTRIAL OWNER, LLC. FOR THE BLUE RIDGE
COMMERCE CENTER**

WHEREAS, the City of Hendersonville owns, operates and maintains a water and sewer system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service and sanitary sewer service as a part of their development projects; and

WHEREAS, the Developer extends public water lines and sanitary sewer lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water and sewer line extension process; and

WHEREAS, Asheville Industrial Owner, LLC., the “Developer” and “Owner”, will enter into a Utility Extension Agreement with the City to provide water and sewer service to the Blue Ridge Commerce Center.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Utility Extension Agreement with Asheville Industrial Owner, LLC., the “Developer” and “Owner” to provide water and sewer service to the Blue Ridge Commerce Center is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina, this 3rd day of November 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

- D. Utility Extension Agreement for the Creekside Community Development – *Brendan Shanahan, Civil Engineer IV*

Resolution #R-22-134

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH THE WEST FAMILY LIMITED PARTNERSHIP AND AMBACH
COMMUNITIES, LLC., FOR THE CREEKSIDE COMMUNITY DEVELOPMENT**

WHEREAS, the City of Hendersonville owns, operates and maintains a water system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, Ambach Communities, LLC., the “Developer” and The West Family Limited Partnership, the “Owner”, will enter into a Utility Extension Agreement with the City to provide water service to the Creekside Community Development.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Utility Extension Agreement with Ambach Communities, LLC., the “Developer” and The West Family Limited Partnership, the “Owner” to provide water service to the Creekside Community Development is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina, this 3rd day of November 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

- E. Utility Extension Agreement for the Mills River Townhomes Development – *Brendan Shanahan, Civil Engineer IV*

Resolution #R-22-135

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH LONGBRANCH DEVELOPMENT, LLC., THE FRANKLIN
FAMILY TRUST DATED THE 19th OF MAY 1994 AND CALVARY FELLOWSHIP OF
WESTERN NORTH CAROLINA, INC., FOR THE MILLS RIVER TOWNHOMES
DEVELOPMENT**

WHEREAS, the City of Hendersonville owns, operates and maintains a water system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, Longbranch Development, LLC., the “Developer” and The Franklin Family Trust Dated the 19th of May 1994 and Cavalry Fellowship of Western North Carolina, the “Owners”, will enter into a Utility Extension Agreement with the City to provide water service to the Mills River Townhomes Development.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Utility Extension Agreement with Longbranch Development, LLC., the “Developer” and The Franklin Family Trust Dated the 19th of May 1994 and Cavalry Fellowship of Western North Carolina, the “Owners”, to provide water service to the Mills River Townhomes is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.

3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina, this 3rd day of November 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

- F. French Broad River Intake Project Engineering Amendment 7 – *Brent Detwiler, City Engineer*

Resolution #R-22-136

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO AN
AGREEMENT WITH BLACK & VEATCH AS PART OF THE FRENCH BROAD RIVER
INTAKE PROJECT**

WHEREAS, the French Broad River Intake Project (Project No. 16007) is under construction; and

WHEREAS, an engineering agreement with Black & Veatch was previously executed to complete the construction administration work associated with the project; and

WHEREAS, the construction of the project has been extended as a value engineering measure; and

WHEREAS, the construction timeline extension has resulted in the need to amend the agreement with Black & Veatch to cover the extended construction administration, construction observation, and postconstruction services.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The City Manager is authorized to enter into an Amendment to an Agreement with Black & Veatch for the French Broad River Intake Project, as presented.

Adopted by the City Council of the City of Hendersonville, North Carolina, this 3rd day of November 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

- G. Purchase of +/- 0.92 Acre Lot on Williams Street – *John Connet, City Manager*

Resolution #R-22-137

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE
PURCHASE OF +/- 0.92 TRACT ON WILLIAMS STREET**

WHEREAS, the City is desirous of purchasing property, being a lot or parcel of land in the City of Hendersonville consisting of _/ 0.92 acres, being identified as Tract II-B on that plat recorded in Plat Book 2015 at Page 9941 of the Henderson County Registry, having Tax Parcel ID# 9568-98-6135, and any appurtenances thereto (collectively the “Property”), and more specifically described in Exhibit “A”, which is attached hereto and incorporated herein by reference; and

WHEREAS, an appraisal has been performed for the Property, indicating that it has a fair market value of \$240,000; and

WHEREAS, the City has offered to pay the fair market value as indicated, and the Property Owner is in agreement;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Contract for Purchase and Sale of Real Property between the City of Hendersonville and Nelson & Company Investments, LLC, for the Property, having as the sale price the sum of \$240,000.00, is hereby approved as presented.
2. The City Manager is authorized to enter execute the contract, with such changes as he deems appropriate, in consultation with the City Attorney, provided such changes do not place any financial obligation on the City beyond that contemplated by the terms of the Contract as presented.
3. The Mayor, City Manager and City Attorney are authorized to execute such other contracts, and deeds and any and all other documents, and to take any and all actions, reasonably necessary to carry out the terms of the approved Contract, including but not limited to making conveyances and reasonable expenditures for costs and expenses for the purposes stated herein.

Adopted by the City Council of the City of Hendersonville, North Carolina, this 3rd day of November 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

H. Ordinance to Allow Electronic Meetings for Subcommittees – *Angela Beeker, City Attorney*

Ordinance #O-22-59

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES FOR THE CITY OF HENDERSONVILLE, ARTICLE V, BOARDS, COMMISSIONS AND COMMITTEES, TO PROVIDE FOR ELECTRONIC MEETINGS FOR SUBCOMMITTEES

WHEREAS, City Council has been asked to permit subcommittees of City boards, commissions and committees to meet electronically; and

WHEREAS, City Council finds that with the advent of streaming and video-conferencing technology, access to electronic meetings is more readily available to the general public than in times past; and

WHEREAS, permitting electronic meetings of subcommittees will foster participation by volunteers by making subcommittees more convenient; and

WHEREAS, permitting subcommittees to meet electronically is in the best interest of the City at this time.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that Chapter 2, Administration, Article V, Boards, Commissions and Committees, of the Code of Ordinances for the City of Hendersonville shall be amended to add new Sections 2-226 through 2-230 follows:

CHAPTER 2 - ADMINISTRATION

ARTICLE V. BOARDS, COMMISSIONS AND COMMITTEES

Sec. 2-226 General Provisions

The provisions of this article shall apply to all boards, commission and committees created by City Council, provided, however, that where a board, commission or committee is created pursuant to specific enabling legislation of the North Carolina General Assembly, the specific enabling legislation shall preempt any provisions of this article, applicable to such board, commission or committee, where the terms of this article and such enabling legislation are in conflict. Where specific enabling legislation or other applicable law for a board, commission or committee grants discretion to the City Council to adopt different, additional, or more or less restrictive provisions to govern a board, committee or commission, the provisions adopted by City Council shall be deemed to control.

Sec. 2-227 Definitions.

(a) The following words shall have the meanings stated when used in this article.

(1) Board, commission or committee shall mean any appointed group of people, consisting of 2 or more members, appointed by City Council for a local government purpose, including but not limited to advisory, quasi-judicial, or administrative.

- (2) Enabling legislation shall mean general, local, or special legislation adopted by the North Carolina General Assembly granting specific authority to the City Council for creating a particular board, commission or committee. As an example, N.C.G.S. § 160D-302 grants authority to the City Council to create a zoning board of adjustment.
- (3) Electronic meeting shall mean a meeting where a quorum of the board, commission, or committee, or a subcommittee, is participating in the meeting through electronic means of communication, and not in person. Electronic means include any means of communication through the use of technology which enables two or more persons to engage in simultaneous communicate without being in the physical presence of one another, and includes, but is not limited to telephone conferences and video conferencing (e.g. Zoom meetings, or Microsoft Teams meetings). Email exchanges among a quorum of the members shall not be considered a electronic meeting under this article. As used herein, "electronic meetings" shall not be considered a "remote meeting" for purposes of N.C.G.S. 166A-19.24.
- (4) Quasi-judicial board, commission or committee shall mean a board, commission or committee carrying out a quasi-judicial function. Notwithstanding anything stated in this article to the contrary, except where specifically authorized by the Code of Ordinances for the City of Hendersonville, or the North Carolina General Statutes, a quasi-judicial board, commission or committee may not form a subcommittee to conduct or assist with conducting a quasi-judicial proceeding, or to provide a recommendation or perform any investigation, with respect a matter that may be the subject of a quasi-judicial proceeding before the quasi-judicial board, commission or committee.
- (5) Remote meeting shall mean a remote meeting defined by and held pursuant to the authority of NCGS § 166A-19.24, as amended, during declarations of emergency made under NCGS 166A-19.20. Nothing herein shall be deemed to impose greater requirements for remote meetings than the requirements of the North Carolina General Statutes, or to prohibit remote meetings permitted by NCGS § 166A-19.24.
- (6) Subcommittee shall mean a group of people, consisting of 2 or more members, appointed by a board, commission or committee, or by the chairperson of a board, commission or committee, for the purpose of acting in an advisory capacity to assist the board, commission, or committee in carrying out its authorized function or authority (ref. Sec. 2-228). Unless otherwise specifically authorized by City Council or specific enabling legislation, a board, commission or committee may not delegate its function or authority to a subcommittee. As an example, the Planning Board may not delegate its authority to approve a development plan to a subcommittee of the Planning Board. As another example, an advisory board to the City Council could not create a subcommittee to also be advisory to City Council. In both examples, the subcommittee would be permitted to make a recommendation to the board, commission or committee to assist the board, commission or committee in carrying out their advisory or administrative function.

Sec. 2-228 Authority of Boards, Commissions and Committees

Boards, commissions and committees shall have the only such authority and exercise only those functions specifically granted to them by City Council or by the North Carolina General Assembly through specific enabling legislation.

Sec. 2-229 Charters and Rules of Procedure

Except where specifically provided otherwise in the Code of Ordinances for the City of Hendersonville, City Council approval shall be required for all charters creating or organizing a board, commission or committee, and their rules of procedure or bylaws.

Sec. 2-230 Meetings

(a) Electronic Meetings.

(1) Boards, Commissions and Committees - (Reserved).

a. (Reserved)

(2) Subcommittees

a. Electronic meetings are authorized for subcommittees. All electronic meetings held by a subcommittee must comply with the provisions of this article.

(b) Rules Governing Electronic Meetings.

- (1) All electronic meetings must be conducted in accordance with the North Carolina Open Meetings Law, NCGS Chapter 143, Article 33C, as amended. Where these rules and the Open Meetings Law conflict, the most restrictive shall be complied with. In construing which is the most restrictive requirement, the requirement providing the greatest notice to the public, or greatest opportunity for attendance by the public, shall be deemed to be the most restrictive.
- (2) All votes must occur by roll call of the members.
- (3) Any documents being considered must have been provided to each member participating in the electronic meeting.

- (4) All members must be able to hear what is said by the other members and by any member of the public permitted by the members to speak at the electronic meeting.**
- (5) The minutes of the electronic meeting must reflect that it was an electronic meeting, and must reflect the technological method used to conduct the electronic meeting. As an example, the minutes would reflect that the meeting was an electronic meeting held on Zoom.**
- (6) The electronic meeting must be simultaneously available to the general public for streaming.**
- (7) A physical location must be provided to allow members of the public to attend and listen to the meeting. The physical location must be stated in the notice of the meeting, required by the Open Meetings Law.**
- (8) Members participating by electronic means and in person shall both be counted as present, and can vote.**
- (9) During the meeting, a quorum of the membership shall not deliberate or communicate by text, email, group chat or by any other means in which a participant or member of the general public could not hear or listen to what is being communicated.**

Adopted by the City Council of the City of Hendersonville, North Carolina, this 3rd day of November 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

- I. Clear Creek Greenway Professional Engineering Services Contract Execution – *Brendan Shanahan, Civil Engineer IV*

Council Member Lyndsey Simpson. moved that City Council approve the consent agenda to include a correction to the minutes as noted. A unanimous vote of the Council followed. Motion carried.

6. PRESENTATIONS

- A. Proclamation - Homeless Youth Awareness Month - *Mayor Barbara G. Volk***

Mayor Barbara G. Volk presented a proclamation recognizing Fire Prevention Week.

- B. Proclamation - American Indian Heritage Month - *Mayor Barbara G. Volk***

Mayor Barbara G. Volk presented a proclamation recognizing American Pharmacists Month

- C. Proclamation - Retirement Appreciation for Dr. Janet Bull - *Mayor Barbara G. Volk***

Mayor Barbara G. Volk presented a proclamation recognizing the 15th anniversary of the Hands On! Children's Museum to the Museum's director and staff.

- D. Certificate of Commendation - *Mayor Barbara G. Volk***

Mayor Barbara G. Volk presented a Certificate of Distinction

- E. Recognition of Andy Brogden and Patrick Warren - *Tom Wooten, Public Works Director***

Public Works Director Tom Wooten recognized

- F. Quarterly MVP Recipients – *John Connet, City Manager***

- G. Fiscal Year 2022 Audit Presentation – *John Buchanan, Finance Director***

Finance Director

7. PUBLIC HEARINGS

- A. Zoning Text Amendment: Multi-Family in the 7th Ave MSD (P22-75-ZTA) – *Matthew Manley, AICP – Planning Manager***

~~Planner Tyler Morrow advised the City of Hendersonville has received a petition from Elizabeth Cantrell, Timothy & Lisa Clubb, and Robin Kay Riley for contiguous annexation of PINs 9559-96-0225, 9559-86-9361, and 9559-86-9317 located on Haywood Road that is approximately 0.843 acres.~~

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:46 p.m.

There were no comments.

The public hearing was closed at 6:47 p.m.

Get the motion from the agenda-with-motions and insert.

This item FAiLED. A unanimous vote of the Council followed. Motion carried.

8. UNFINISHED BUSINESS

- A. ~~REMOVED: Establishment of Social Districts in Downtown Hendersonville~~ – *Council Member Simpson*
- B. ~~REMOVED Continuation of American Rescue Plan Discussions~~ – *Adam Murr, Budget Manager*

9. NEW BUSINESS

- A. **ADA Obstructions in Hendersonville** – *Amy Siegler, ADA Advocate*

City

- B. **Electric Vehicle Infrastructure Discussion** – *Will Garvey, Environmental Sustainability Board Member*

ESB-

- C. **Recommendation for 2045 Comprehensive Plan Consultant** – *Matthew Manley, AICP – Planning Manager*

- D. **Consideration of Ordinance Amending Chapter 20, Article II, Noise of the Hendersonville City Code** – *Rodney Gilliam, VLGMF Intern*

This was not considered. Put off.

- E. Discussion Regarding the Closing of 4th Avenue on Halloween – *Jennifer Hensley, Council Member*

Jennifer He

10. CITY COUNCIL COMMENTS

Council Member

11. CITY MANAGER REPORT – *John F. Connet, City Manager*

- A. Cash and Investment Report – *John Buchanan, Finance Director*

For information.

- B. Cancellation of November 23, 2022 City Council Workshop - *John Connet, City Manager*

Motion to amend meeting schedule to cancel November 23rd meeting. 5-0.

Jill I canceled the meeting. We don't need to advertise this. I did send to sunshine list and fix the calenders. You will need to amend the notice or put up a cancellation for it though on the board.

12. CLOSED SESSION

A. Closed Session – John Connet, City Manager

Jill you will need to get the revised motion. They only cited 1, and 3. Not 6. Get attorney to send to you.

At 9:22 p.m. Council Member Jerry A. Smith Jr., J.D. moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1), (3), (4) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, to discuss matters relating to the location or expansion of industries and businesses in the area served by the public body and to consider the qualifications, competence, performance and character, fitness conditions of an individual public officer, to consult with an attorney retained or employed by the City Council to preserve the attorney client privilege, and to discuss a claim or pending claim or potential litigation. A unanimous vote of the Council followed. Motion carried.

At get time from attorney p.m. Council Member Debbie O'Neal-Roundtree moved that City Council return to open session. A unanimous vote of the Council followed. Motion carried.

13. ADJOURN

There being no further business, the meeting was adjourned at 8:51 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Jill Murray, City Clerk