

Monday – July 17, 2006 - 9:10 a.m.  
Room 202 – Haynes Building  
A-B Technical Community College  
Enka Campus

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape (arrived at meeting at 10:10 a.m.); Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burlison

Present: Buncombe County Chairman Nathan Ramsey; Commissioner David Gantt; and County Attorney Joe Connolly. (Absent: Vice-Chair Bill Stanley, Commissioner Carol Peterson, Commissioner David Young, County Manager Wanda Green and County Clerk Kathy Hughes).

Mayor Bellamy called the meeting to order at 9:10 a.m. in Room 202 of the Haynes Building at the A-B Technical Community College's Enka Campus. Vice-Mayor Jones then moved to adjourn the meeting to Room 200 in order to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Davis and carried unanimously. (Councilwoman Cape was not present in the closed session.)

At 10:03 a.m. Councilman Freeborn moved to come out of closed session and reconvene the meeting in Room 202. This motion was seconded by Councilman Davis and carried unanimously.

At 10:00 a.m. Mayor Bellamy called the City Council meeting to order to discuss water-related issues.

Chairman Ramsey said that the majority of the County Commissioners could not attend this meeting, noting that a letter was sent last week indicating that. It was his understanding that on July 31, 2006, the entire County Commissioners are able to meet. However, he and Commissioner Gantt are available to answer any questions about the County's latest written offer.

Even though the County continues to strongly believe that an independent water authority is the best solution for the region, the County's latest offer on June 22, 2006, is (1) water will be a municipal system; (2) the County and the water districts will transfer to the City both the title and responsibility for all water facilities; (3) there will be no differential rates; (4) there will be no diversion of water revenues, and this will be verified annually through an independent review; (5) water will not be used as a tool to force annexation; (6) the City will transfer to the County both title and responsibility for McCormick Field, Nature Center, Golf Course, Recreation Park and the Civic Center. (This relieves the City of a net operating loss that is currently \$1.1 million annually and which will grow substantially in the future. Additionally, the County could address the much-needed and long-deferred issue of improving or replacing the Civic Center.); (7) all lawsuits on water issues and any related claims will be dropped; and (8) the County and the City will cooperate in seeking the appropriate legislation necessary to implement this agreement.

Mayor Bellamy noted that since Asheville is the hub of Western North Carolina, the reality is that our daytime population goes from 72,000 to over 100,000 individuals who come into the City to do their business. In most cities in North Carolina there is an equity payment or they use their water resources to help cover the infrastructure costs.

-2-

Mayor Bellamy felt it would be appropriate to go through the County's proposal point by point and let the Commissioners know of the City's position. Then the things that the City and County agree on to be taken off the table. For starters, since the County and the City both agree that the water will be a municipal run system, that item should be taken off the table.

Commissioner Gantt said that the County's proposal is a package and they need to have the entire Commissioners at the table, as well at the state legislators since the legislators have the taxing and funding power to help us make these things happen. After checking with the state legislators, the date when the Commissioners and legislators (except for Senator Apodaca) can be present is July 31, 2006.

Mayor Bellamy continued stating that the City will accept the County's proposal point that the water system will be a municipal-run system. Again, since both bodies agree, that should be an issue taken off the table.

Chairman Ramsey noted again that the County clearly wants an independent water authority in that they feel it is the best

for the region. He said that point is a major concession for their board. In addition, the County will be taking on a multi-million dollar annual financial cost. He didn't feel that the independent water system/municipal run system should be taken off the table but that doesn't mean that the County will pay \$6 Million a year to the City.

Mayor Bellamy asked if the County's position is now changing from their proposal to the City on June 22 in that they agreed that water will be a municipal-run system.

Chairman Ramsey said that, in his opinion, the City can't pick and choose from the County's proposal. He agreed with Commissioner Gantt that it is a package offer, however, he was agreeable to changing some of the provisions.

Mayor Bellamy said the City's goal is not to consider the County's proposal on an all or none basis. The City's goal is to see where we can agree.

Commissioner Gantt was willing to listen to what the City agrees on and then they will go back to their entire board.

Mayor Bellamy then reviewed the City's position on each of the County's latest proposal points: (1) water will be a municipal system – the City agrees to that; (2) the County and the water districts will transfer to the City both the title and responsibility for all water facilities – the City agrees to that; (3) there will be no differential rates – the City could agree to that, subject to tax equity payments with a Consumer Price Index (CPI) attached on a 20-year agreement; (4) there will be no diversion of water revenues, and this will be verified annually through an independent review – the City could agree to that, subject to tax equity payments with a CPI attached; (5) water will not be used as a tool to force annexation – the City will accept the provision from the County's June 2005 offer that new developments within a half-mile can be annexed using the same criteria other North Carolina cities utilize; (6) the City will transfer to the County both title and responsibility for McCormick Field, Nature Center, Golf Course, Recreation Park and the Civic Center. (This relieves the City of a net operating loss that is currently \$1.1 million annually and which will grow substantially in the future. Additionally, the County could address the much-needed and long-deferred issue of improving or replacing the Civic Center.) – the City is open to discuss this but wants to focus on water prior to any discussions on this provision; (7) all lawsuits on water issues and any related claims will be dropped – if the City receives support on the above responses, then this provision would be dropped; and (8) the County and the City will cooperate in seeking the appropriate legislation necessary to implement this agreement.

-3-

Mayor Bellamy said that the tax equity payment the City is requesting is \$6.2 Million, which is 85% of the average differential across the State of North Carolina. Those municipalities across the North Carolina use that 85% differential to help offset the costs of people coming from outside their municipality into the municipality to do business. The City is willing to talk about how we can get there, which may not be all cash payments. However, the City should be compensated and that is either with a rate differential or with a tax equity payment.

Mayor Bellamy suggested Chairman Ramsey to go back to his board and relay the City's position on the County's latest offer, noting that the County response on an entire package or nothing is not a good process. She hoped at the meeting on July 31, which the County has arranged, the bodies can be open to discuss the provisions on a point-by-point basis and move forward.

Noting that this is only his perspective, Chairman Ramsey said that the more burden that all County residents would incur, then in exchange for that it seems to him that the City would make concessions. The largest financial obligation that the County was willing to incur was when it was an independent authority and the County was stepping out in making a major financial commitment to do that. This is so controversial, because over the past 80 years, the City has never charged differential rates for water customers and has never been able to tell future water customers that they had to be voluntarily annexed to receive water services. That is the way it's been because it is the County's contention that the City doesn't own the entire water system but the Court system will settle that point. He also pointed out that regarding a differential rate, our current overall rate is higher than the City of Hendersonville's outside rate. The County understands that the City incurs some expenses that should probably be borne by more taxpayers than those who live in the City of Asheville, e.g., Civic Center and the recreation assets. That is why they come into the picture, because it is not fair for City taxpayers to solely bear the burden for regional facilities. And that is the intent of the County to address some of that.

Chairman Ramsey requested the City make a list of the different inequities (elaborating on some of the costs) that the Asheville taxpayers are incurring that other 5 incorporated towns in Buncombe County don't have to incur, then, from his perspective, the County will be look at that to try to make sure that all taxpayers in our community are treated equitably.

Councilman Newman said that the City residents are paying for a lot of things by ourselves that have a lot of regional benefit that we think should be shared more regionally, especially if we would agree to not operate the water system the way that

more other cities who own their systems in the State of North Carolina do.

Councilman Mumpower said a big inequity is that the City should be fairly compensated for what whatever percentage of the water system that we do own as do other cities like Hendersonville, Weaverville, etc. who own their systems. He noted that this system which has been in place for 80 years hasn't worked and could not understand why would we want to continue that and why would we not want to embrace the same model that every other city in North Carolina uses that owns their system.

Councilman Freeborn said that one of the biggest reasons why our rates are so much higher in this water system is because under the previous governance structure, problems were not fixed until the last minute when it costs the most to fix them. As a municipal run system, we will be proactive in fixing things ahead of schedule so we can ultimately save money in the long run. The present system does not work.

Vice-Mayor Jones did recognize the significance of the County's proposal for the system to be a municipal-run system, but also it was huge for the City to give up the rate differentials for

-4-

a tax equity payment. She hoped that the City and County can begin to talk about a mixture of payment and waiving of fees to get to a number for the tax equity payment that we think is fair. She was sure that the legislators want the City and the County to work this out and since this is the last week of session, she felt it was urgent that the City and County meet again this week.

Chairman Ramsey said that his entire board will need to discuss the provision that new developments within a half-mile can be annexed using the same criteria other North Carolina cities utilize. He would also like the list of the inequities that Asheville taxpayers pay that other municipal-taxpayers in our community don't pay. Personally, if the City wants the half-mile annexation and the \$6.2 Million tax equity payment with a CPI, there would be no way he would support that. But, if the City can put some costs down that the City currently bears that are regional costs and the City feels like the County should assist in those, then he would be willing to sit down and discuss that. He personally would not support the one-half annexation provision as it is because the County had a threshold that it was larger developments and that is something we can discuss. Regarding the urgency to meet before the session ends, he felt sure that if a resolution or an interlocal agreement was reached, then when the General Assembly reconvenes next session, that they would make the necessary changes in state legislation.

There was a brief discussion surrounding the tax equity payment provision.

When Vice-Mayor Jones asked for the County to share with the City their documentation of property that the County owns, Chairman Ramsey responded said that the City gave to the County an itemized list of 18 miles of water lines and claimed that was all the County owned. The question is from a title standpoint and that is something the Courts will have to decide.

Councilwoman Cape said that when a builder builds a water line it is standard that they want the water system to take it over.

Councilman Newman asked if it would be helpful at our next meeting to talk about the question of ownership of the system, because the City feels it very clear that 95% of the water lines are not in question. County Attorney Connolly felt that information regarding ownership would be beneficial but asked that the information be provided to the County prior to the next meeting so the Commissioners will have an opportunity to review and respond. Vice-Mayor Jones felt the County should provide their documentation because it's not fair to have City staff do all the legwork. If the County feels strongly about this, then we need to compare notes. Chairman Ramsey felt we are getting into the heart of a legal issue and the attorneys for the City and County will handle this through a discovery process.

When Councilman Mumpower asked if there was agreement to determine the value of the system and who owns what part of the water system as a starting place for negotiations. And if there is an agreement, then ask staffs on both sides to bring their respective information to the table. Chairman Ramsey felt it would be helpful on the ownership aspect, because we will never agree on the value standpoint.

Chairman Ramsey asked that the City respond to the County's latest proposal in writing before the next joint meeting date, giving his entire board the opportunity to review and respond. Mayor Bellamy said that the City will hand deliver the written response to Chairman Ramsey's office, noting that this is the second proposal the City has put in writing to the County since the beginning of this year.

It was the consensus of all seated that the next meeting would be on July 31, 2006, at this same time and place if possible, unless the City and County Managers are able to arrange a meeting sooner.

Mayor Bellamy then adjourned the City Council meeting at 11:23 a.m.

---

CITY CLERK

---

MAYOR