

Monday – July 31, 2006 - 9:00 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; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman (participating via speaker phone); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

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

Present: Senator Tom Apodaca; Senator Martin L. Nesbitt, Jr.; Representative D. Bruce Goforth; and Representative Susan C. Fisher (Absent: Representative Wilma M. Sherrill)

Mayor Bellamy called the meeting to order at 9:00 a.m. in Room 200 of the Haynes Building at the A-B Technical Community College's Enka Campus. Vice-Mayor Jones then moved to recess the meeting to Room 128 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 Councilwoman Cape and carried unanimously.

At 9:50 a.m., Mayor Bellamy recessed the closed session to reconvene the meeting in Room 200.

At 10:10 a.m. Mayor Bellamy and Chairman Ramsey called their respective boards to order to discuss water-related issues.

Mayor Bellamy recapped the City's position from the last meeting on July 17, 2006, noting that each offer has received consensus.

Mayor Bellamy recapped the City's position from the County's latest proposal, noting that each item has received consensus by the City: 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

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would be dropped; and (8) the County and the City will cooperate in seeking the appropriate legislation necessary to implement this agreement. She said that if there are changes to the offer made by the County, she will ask for a recess in order for Council to consider those changes.

Commissioner Gantt said that the County believes very strongly that an independent authority is a much better choice for the people they represent. An independent board will save millions in betterment costs as that money could go back into the system. The County's principles are that everyone should be treated the same, money brought in from water should go back into fixing the system, and delivering water at the lowest possible cost. The independent board would be non-political and by far the most economical way to achieve those goals for the people they represent. The Metropolitan Sewerage District ("MSD") model is a successful model. The offer from the City on July 17, 2006, was basically \$125 Million over the next 20 years payment or some compensation to City Council and the water would be a City-run department along with some negotiation about the ½ mile

annexation. On the County's last offer, they offered a City-run department and \$1.1 Million to settle the matter. They will not enter into any serious discussions about using County money in any way for the \$6.2 Million, plus a CPI, over 20 years without some accountability for where the money is going to go and how it's going to be spent. We also believe the package should include the community assets, such as the Civic Center, Recreation Park, etc., that were in the Water Agreement in 1981. We concede these are regional assets and we think the County should be at the table from a financial standpoint. Our understanding from the last meeting that that was something City Council wanted to discuss separately, however, we feel that it was very important to put that together with the water discussions, just as it was 25 years ago.

Upon inquiry of Senator Nesbitt, Mayor Bellamy said that the City will commit to this agreement for 20-years.

Upon inquiry of Representative Fisher, Mayor Bellamy explained that the \$6.2 Million tax equity payment is 85% of the average differential across the State of North Carolina.

Councilman Mumpower said that Asheville should be treated like all other cities who own their water assets, noting that the City of Charlotte is essentially the whole County of Mecklenburg and is in no way similar to Asheville. He felt that the City has already compromised going down from 100% of the differentials to 85%, noting that City taxpayers will be paying 40% of that.

In response to Senator Nesbitt, Councilman Mumpower said that City Council has talked about how important it is that the differentials be implemented incrementally over time. In fact, one of their proposals was a 40% rate differential over a 7-year period and the freedom to go beyond that later, which would represent an increase in the County bill of approximately \$7 a month.

Upon inquiry of Representative Goforth, Mayor Bellamy said that the City's non-betterment costs to the N.C. Dept. of Transportation over the past five years was approximately \$600,000.

Representative Goforth felt the City should solicit proposals to see what they can get for their investment if the water system is run by an independent authority.

Vice-Mayor Jones said that there are other issues, other than money, with an independent authority. An independent authority is removed from the people and a City-run department holds direct accountability to City Council.

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Chairman Ramsey said that if the City Council is willing to consider an independent authority, then we need to find out the numbers so there can be a weighing of the different attributes of each model.

Mayor Bellamy said the County's concern over the \$6.2 tax equity payment was that they can't justify where the funds would go. The County can designate a portion of funds to go to the Civic Center or to the Golf Course, etc. and it is easy for the City to track those funds so the County can have that direct accountability. City funds are easily trackable and that should not be a hindrance to the negotiations.

Upon inquiry of Mayor Bellamy of where the County's offer of \$1.1 Million came from, Chairman Ramsey said that figure is the annual operating costs of McCormick Field, the Nature Center, the Golf Course, and the Civic Center. That figure doesn't include the capital costs and under our offer the County taxpayers as a whole would take over the financial responsibility for the capital needs of those facilities. In reality, it will potentially be much greater than \$1.1 Million. If the County taxpayers as a whole take over the financial responsibility for those facilities, then the County should have the control of those facilities and they can work with the City and the local delegation on the ultimate needs for those facilities, e.g., location, needs, etc., and find funding of those needs.

Mayor Bellamy felt that if the water system will be a municipal run system and the County's concern is the \$6.2 tax equity payment, she feels that can be negotiated.

In response to Councilman Mumpower, Chairman Ramsey reiterated that it is the County's contention that the City doesn't own the entire water system and the court system will make that determination.

Senator Nesbitt felt it would be beneficial for the City and the County to exchange data to support each's position on who owns how much of the water system lines.

A brief discussion took place regarding condition of the Civic Center and the City's efforts in addressing the issue.

In response to Senator Nesbitt, Mayor Bellamy said that it's important to honor the past, but we have been elected to look

at the future.

Chairman Ramsey said that we do want to settle this without litigation. He feels that what is separating the City and County, if we are talking about a municipal department, is the money. Our Board would still like to consider an independent authority and would be open to that discussion. If the City would agree to an independent authority, we realize the City would be making a major concession and based on that, there would be significant more compensation to the City and how that compensation would be paid would be open for negotiation.

Vice-Mayor Jones felt that our offers are much closer. The last litigation that was settled around this in 1958 with Candler, one of their conclusions was "the City of Asheville, however, still has the right to establish a different rate for service outside its corporate limits to persons, firms and corporations not located or residing in a district that has constructed and maintained at its own expenses water and water systems." This is part of the trail that we are trying to honor.

Councilman Davis explained that when the City terminated the water agreement, we were at a point to where the Water Authority was dysfunctional and the system was not functioning. The City had a study performed, which directed the repair of the system and we are moving rapidly towards fixing the system. We are providing good water at a reasonable rate, as reasonable as you can when you live in the mountains. Our water bills look extorted because of

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the MSD charge is printed on our bills. We are trying to get people to pay their fair share. He would not be willing to consider an independent authority.

Councilwoman Cape explained that an independent authority isn't accountable to the citizens. She felt the City of Asheville is doing a great job in managing their water system and should have the right to continue to do so.

Councilman Mumpower's position was that he didn't care if it was a city-owned system or an independent authority, as long as the City is fairly compensated for giving up control of the water system.

Councilwoman Cape felt that if the County thinks an independent authority is the answer, then give Council the data to support why the County thinks it's in the City's best interest.

Commissioner Gantt felt that the County provided that data in the 2004 offer combining recreation and water.

Councilwoman Cape didn't think that mixing everything in one pot is the best way to make decisions. We are all interested in working together on all those things, but it just doesn't have to be in one bundle to best represent our citizens.

Chairman Ramsey said some benefits of an independent authority include: (1) takes away the non-betterment costs; and (2) guarantees that 100% of the water money goes back into the system; and (3) since 45% of the customers live outside the City limits, it better reflects that it is a community-wide collaborative approach. He said that the County is willing to agree to a municipal-run system, and we also understand the concerns that Councilman Davis has that if the City absorbs additional costs that other municipalities in Buncombe County don't have to occur, then we are willing to look at those tax equity pieces to come up with a package to make sure that City of Asheville residents aren't unfairly burdened. But if the City is asking for \$6.2 Million and the County is offering \$1.1 Million, then we won't be able to come to terms.

Mayor Bellamy said that we all understand that the City wants a municipal-run system, the County doesn't want any diversion of funds, and the County doesn't want any rate differentials. We agree to that for 20 years. Regarding the compensation, she suggested we direct our respective managers to discuss that issue and report back to their respective bodies.

Councilman Mumpower asked that Asheville be allowed to start an aggressive differential process and cap our differential at 25% for five years and then after that make it incremental. Then we have a clean system and don't get into all these other complexities.

Representative Fisher asked if the City can show how much money of that money will go to the Civic Center, Golf Course, McCormick Field and Recreation Park, and how much of those facilities are used by County residents, City residents, and regional people. If that can happen, then why can't we just look at that piece and go on with the water agreement alone.

Councilman Gantt said that the County is willing to take those facilities back and that the County still has bonds that they are paying off at about \$400,000 a year.

County Manager Greene asked that she and City Manager Jackson be given a compensation number to work with.

In response to Senator Nesbitt, Councilman Davis said that he does have difficulty in giving the recreational assets to Buncombe County, particularly the Civic Center. He feels that the County did a major renovation at McCormick Field but there is a quality of service by the

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County that he is not comfortable with. We need to be accountable to our people and if we give that to the County, the City will lose that control.

Regarding the Civic Center, Senator Nesbitt said that the people of this area deserve more than the current Civic Center. They deserve a place where we can bring culture to this area, a meeting place for this area, and we can draw major events. He doesn't think that venue does that or that it will do that.

Chairman Ramsey said that after listening to City Council, an independent authority is off the table. His Board will have to discuss (1) the 20-year term because his Board would prefer a longer term; and (2) the title and responsibility for recreational facilities. Again, his Board does not want any rate differentials. He would support giving our respective managers direction but was uncertain what that direction would be, given the City's \$6.2 Million offer and the County's \$1.1 Million offer.

Mayor Bellamy said that the City has spent the last eight months working on a plan of action for the Civic Center that includes looking at Parkside, a renovated arena, a performing arts center, etc. We can't do any of the proposals by ourselves. Are you willing to assist us in renovating the facility, whether it's where it is or moving it. Vice-Chair Stanley said that the County has been willing to assist from the very beginning. Mayor Bellamy said that since the County is willing to help us, then how is that different from our \$6.2 Million we are asking the County to assist with the funds if we know that we need help on this facility that you have agreed to help us. That can get us where we need to go and that fund would be set up differently with County oversight. The main point is how can we help each other. If the County needs an oversight committee, we would not be opposed to that.

Mayor Bellamy said that it appears that the recreation facilities and the compensation issue are intertwined. She feels that the respective managers should look at this issue because whatever plan the City comes up with at the Civic Center, the City cannot do it alone. We need the help of the County Commissioners and the state legislators. City Council is willing to discuss McCormick Field and the Nature Center.

Chairman Ramsey said that in the County's most recent offer asked that we be given title to those recreational facilities because we recognize that significant money needs to be spent on them. We would need to be able to issue bonds against those facilities to pay for that work. It was our hope that in the future we could receive alternative revenue sources to pay for those, but we also understood that the alternative revenue sources would not pay for 100% of the capital improvements. So it would need additional County tax dollars. The debt service on a \$50 Million debt is \$3 Million a year. If you combine the \$1.1 Million operational costs and the \$3 Million annual debt service, the amount is \$4.1 Million. He would not support the County paying \$6.2 Million.

At 11:46 a.m., Mayor Bellamy recessed the meeting in order for City Council to reconvene their closed session in Room 128 in order review the \$6.2 Million tax equity amount.

At 12:25 p.m. Councilman Davis moved to come out of closed session and reconvene the meeting in Room 200. This motion was seconded by Vice-Mayor Jones and carried unanimously. (At this time, Councilman Davis left the meeting.)

Commissioner Gantt said that they unanimously indicated that the County is not comfortable in giving unearmarked money to City Council under any circumstances. We can't borrow the money unless we have title to the facilities. The offers that the City has made indicate almost a presumption that there is a right to charge differential rates and a right to use the money for other purposes other than water, which we believe you do not have that authority. Any

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discussions we have concerning agreements need to be permanent and not a 20-year duration because we don't think it is in the best interests of the people we represent to come back in 20 years and do this all over again.

Chairman Ramsey said that the only other alternative to raise the funds would be a General Obligation Bond to be voted on by the taxpayers.

Mayor Bellamy confirmed that the County's offer of \$1.1 Million will not change unless the City gives them title to the facilities.

Mayor Bellamy noted that the County has debt on McCormick Field and they don't have title to it. County Manager Greene responded that they had to pledge another asset because they didn't have clear title to McCormick Field.

When Vice-Mayor Jones asked if we have the appraised value of the Civic Center, McCormick Field, Recreation Park and the Golf Course, City Manager Jackson said that he did not have those figures available.

Mayor Bellamy said that the reason why the water agreement was terminated was because Asheville wanted to be treated like all other municipalities in North Carolina. Today we were willing to reduce on our rate differentials because that is something that other municipalities are negotiating, however, the City of Charlotte has other funding mechanisms to help with other things in their community. We need help with our regional facilities and we have heard clearly from the County that they are willing to help, but we need a commitment from our legislators as well.

Senator Nesbitt said that the legislative delegation is ready, willing and able to help with the Civic Center, but they need to have a product to sell. He was agreeable in taking the studies and needs already identified by the community, however, he wanted someone to take a regional look at the Civic Center so that we make sure when we spend this money that we are doing what we need to do for the next 30-50 years.

Mayor Bellamy said that Council is now offering the compromise from a \$6.2 tax equity payment from the state average of 85% to a \$4.5 Million tax equity payment, which represents approximately a 64.5% of the state average. With the water agreement, we were at \$2.4 for law enforcement and \$1.1 that we received from the water system to help with these issues. We are now only asking for \$1 Million, which would represent 65% of the state average. When we terminated the water agreement, we wanted to make sure that the system was being effectively repaired and we wanted to make sure we had orderly growth and management. Over the last 18 months we have proven that we can run that system. Again, we are willing to come down to \$4.5 Million, which represents 65% of the state average to prove to you that we can do a good job.

Chairman Ramsey said that based on the current offer on the table by the County, if the County took over title to the Civic Center, the debt service on a \$50 Million debt is \$3 Million a year. If you combine the \$1.1 Million operational costs and the \$3 Million annual debt service, the amount is \$4.1 Million. Again, he said that the County would need title to the Civic Center, Recreation Park, McCormick Field and the Nature Center so they can issue debt on those.

Vice-Mayor Jones felt there are other ways to re-direct money that would not impact the County's bottom line, i.e., how the sales tax is allocated now. If there is a genuine willingness to dig deep, there are ways to come up with the money.

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Mayor Bellamy said that City Council has given direction to City Manager Jackson to work with the County Manager on the \$4.5 Million tax equity payment to see what kind of an agreement could be worked out.

Chairman Ramsey said that the County has given the City the scenario of the \$4.1 Million tax equity payment.

Vice-Mayor Jones felt that the County Manager needed to have broader discretion in how to come up with compensation, other than the only way to get to the \$4.1 Million is for the City to give title to the facilities so the County can issue debt. If that is the only way, then she is not willing to go down that road.

Senator Apodaca said that this is like a marriage in that we dated in the 1920's and decided to get married around 1935-40. Then a couple of years ago our partner wanted a divorce - didn't tell the other partner, just went to a lawyer and got a divorce. He said we now have issues about who brought what assets to the marriage and that issue has to be decided first. The other issue is that the partner who instituted the divorce now wants child support in addition to other things. The City wants their cake and icing too. The City doesn't want to give up the Civic Center, McCormick Field, etc. but still wants to keep the water monies. He said they have to draw the line somewhere. It may come to the point where the delegation may have to decide and they don't want to do that. He said that temporarily they did, but they can undue whatever they did if they are so inclined - if it is going the way it should.

Chairman Ramsey and Mayor Bellamy agreed that the respective managers will sit down and discuss the tax equity issue and see what the next steps will be. In addition, they directed them to arrange another follow-up meeting date.

At 1:10 p.m., Mayor Bellamy and Chairman Ramsey adjourned their respective meetings.

CITY CLERK

MAYOR