

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. RESOLUTION NO. 09-238 - RESOLUTION OF APPRECIATION FOR KELLY M. MILLER**

Mayor Bellamy noted that Councilman Miller has a previously scheduled conference out of town and would not be able to attend the organizational meeting held on December 8, 2009. Therefore, she would like to recognize him at this meeting. She then read the resolution.

Resolution No. 09-238 was adopted by acclamation.

Mayor Bellamy thanked Councilman Miller for his service to Asheville and presented him with the resolution, a plaque and a City pen.

Councilman Miller thanked City Council, the Chamber of Commerce and the Tourism Development Authority staff for their support over the last year, as well as his wife, Kate, for her patience.

**RESOLUTION BOOK NO. 32 - PAGE 270**

**B. CITY OF ASHEVILLE ORGANIZATIONAL CHANGES**

City Manager was pleased to announce the new Fire Chief Scott Burnette, the Economic Development and Civic Center Director Sam Powers, and the new Director of Administrative Services Lauren Bradley.

Mayor Bellamy said that she is looking forward to working with each of these employees in their new roles.

**II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Items "C" and "E" were removed from the Consent Agenda for individual votes.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 10, 2009**

**B. RESOLUTION NO. 09-240 - RESOLUTION AUTHORIZING THE EXCHANGE OF REAL PROPERTY LOCATED ON COLLEGE STREET FOR PROPERTY LOCATED ON WINDSWEPT DRIVE**

Summary: The consideration of a resolution authorizing the exchange of real property located on College Street for property located on Windswept Drive.

The City of Asheville is in need of property located on Windswept Drive in order to assemble the land necessary to implement the Beaucatcher Greenway. Accordingly, the City of Asheville and Zealandia Holdings, LLC have negotiated an exchange of real property at College Street for real property on Windswept Drive. Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on November 13, 2009, describing the exchange of properties on the following terms:

The property owned by Zealandia Holdings, LLC is located on Windswept Drive. Measuring approximately 3.95+/- acres, this

parcel is comprised of PINs 9648-89-2982-00000 and 9649-80-4085-00000. The parcel is irregular in shape with Windswept Drive winding through the center of the property, wooded, steep in terrain, and zoned as RS-2, low-density residential. This parcel provides access to the historic bridge known as "Helen's Bridge," which was designed by Asheville architects Richard Sharp Smith and Albert Heath Carrier. In an appraisal dated August 26, 2009, the property was valued at \$250,000. The appraisal was performed by Benjamin Beasley and Associates, Inc.

The City parcel considered for exchange is near the end of College Street. The property is 5 acres+/- in size and is a portion of tax PIN 9649-70-7463-00000. At one time, this property served the City's water needs, and a large concrete water reservoir exists on site, measuring over 150 feet in diameter. This reservoir is no longer in use and completely empty, and is considered to be an encumbrance to the property that will require removal. Large water distribution lines encumber the property as well. This parcel is wooded, mostly steep in terrain, and zoning for this property is RS-2. In an appraisal dated August 26, 2009, this parcel was valued at \$330,000. This appraisal was performed by Benjamin Beasley and Associates, Inc.

In order to supply parking to the future greenway development, as well as retain the ability to develop modest resting areas with benches and walking trails, the City would like to retain ownership of approximately 1.2 acres of the reservoir parcel. Retaining the fee simple ownership of this portion will reconcile the difference in appraisal values, and the exchange will be full and fair.

In total, the exchange between the City of Asheville and Zealandia Holdings, LLC will entail several aspects. The City of Asheville will exchange 3.8 acres of property for Zealandia Holdings' 3.95 acres as an even exchange without any payments. In terms of the water infrastructure, the City has proposed to take care of the necessary water line closures and disconnections that are required; and Zealandia Holdings has proposed to perform the removal of the tank. Easements/right-of-way appropriate to each parcel will be developed for utilities and access. Closing costs will be split by the City of Asheville and Zealandia Holdings LLC.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Assembling land for the Beaucatcher Greenway complies with City Council's Strategic Plan in the Green Focus Area in that it advances a multi-modal transportation plan, which includes greenways, and pursues opportunities to preserve open space. This action also complies with the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

This item has been reviewed by the Greenway Commission and has received the Commission's endorsement on November 12, 2009. This item has also been reviewed the by Recreation Board and at their meeting on November 9, 2009, they recommended approval.

Pros:

- Assemblage of land necessary for the implementation of the Beaucatcher Greenway.
- Removal of abandoned water tank will improve site safety concerns.

Con:

- There is no negative impact.

The City's share of the closing costs is estimated at less than \$7,000, to include the appraisals, Phase One Environmental Report, legal fees and surveys. The major expense will be the disconnections of the water lines and will be the responsibility of the Water Resources Department. The Water Resources Department intends to perform this work in-house, with an estimated value of \$125,000 including labor and materials. This estimate is comparable or lesser than the estimated cost of removing the reservoir tank that will be performed by Zealandia Holdings, LLC.

City staff recommends City Council adopt a resolution authorizing the exchange of real property located on College Street for property located on Windswept Drive.

**RESOLUTION BOOK NO. 32 – PAGE 272**

**C. BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE FISCAL YEAR 2009-10 GRASSROOTS SCIENCE MUSEUMS COLLABORATIVE FOR THE WNC NATURE CENTER**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**D. RESOLUTION NO. 09-241 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR FUNDING THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM**

**ORDINANCE NO. 3807 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC**

## SAFETY FOR FUNDING THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant in the amount of \$135,714 from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management, for the procurement of equipment and training/exercise funds to be used by Hazardous materials Regional Response Team 6 – Asheville, and the associated budget amendment.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: FY2009-SS-T9-0046 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters. Training and exercise funds included in this grant will be used to provide responders the opportunity to demonstrate and validate skills learned in training, as well as to identify training gaps.

There are seven Regional Response Teams (RRT) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated detection and monitoring instruments, personal protective equipment and mitigation materials required to lessen the affects of terrorist's attacks and hazardous materials incidents.

The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

The City Council Public Safety Committee reviewed and supported this item at their November 17, 2009, meeting

### Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide \$135,714.00 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Training and exercise for emergency responders will aid in the enhancement of awareness levels of terrorists tactics and hazardous material incidents.
- Firefighter and citizen safety will be enhanced.

### Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

-

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council accept the non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management, to enhance AFD's capabilities to protect Asheville and Western North Carolina, and the associated budget amendment.

**RESOLUTION BOOK NO. 32 – PAGE 274**

**ORDINANCE BOOK NO. 25 – PAGE**

### **E. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT WITH THE U.S. DEPT. OF HOMELAND SECURITY FOR ADDITIONAL FIREFIGHTERS**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

### **F. RESOLUTION NO. 09-245 - RESOLUTION AUTHORIZING THE CITY MANAGER, HIS OR HER DESIGNEES, TO**

**ELECTRONICALLY SIGN CONTRACTS, PURCHASE ORDERS AND OTHER ASSOCIATED DOCUMENTS ON BEHALF OF THE CITY AND THE CHIEF FINANCIAL OFFICER TO SIGN THE PRE-AUDIT STATEMENT DOCUMENTS ELECTRONICALLY OR BY ANY OTHER MEANS SPECIFIED IN N.C. GEN. STAT. SEC. 159-28.1**

Summary: The consideration of a resolution authorizing the City Manager, his or her designees to electronically sign contracts, purchase orders and other associated documents on behalf of the City and the Chief Financial Officer to sign the pre audit statement documents electronically or by any other means specified in N.C. Gen. Stat. 159-28.1.

The City of Asheville processes hundreds of contracts and purchase orders in any given week. In an effort to stream line the process, the City is installing computer software which will allow for contracts and purchase orders can be approved electronically. Under North Carolina law, as delegated by City Council, the City Manager is authorized to sign contracts on behalf of the City. In addition North Carolina law requires the Chief Financial Officer to sign all pre-audit statements for all contracts and purchase orders. In order to move to a paperless system, it is necessary for the City Manager, his or her designee and the Chief Financial Officer to sign contracts, purchases orders and pre-audit statements electronically.

Regarding the City Council Strategic Operating Plan, this action complies with Affordable and Green in that the City will be reducing the amount of paper needed to process contracts and purchase orders.

Pros:

- Reduce the amount of paper used by the City
- Reduce the amount of time approval forms travel through interoffice mail
- Increase turn around times for contract and purchase order approvals
- Improve customer service

Con:

- None

The use of electronic signatures will save the organization approximately \$1,800 annually by eliminating the need for purchase order forms and supplies.

City staff recommends City Council adopt a resolution authorizing the City Manager, his or her designees to electronically sign contracts, purchase orders and other associated documents on behalf of the City and the Chief Financial Officer to sign the pre audit statement documents electronically or by any other means specified in N.C. Gen. Stat. 159-28.1.

**RESOLUTION BOOK NO. 32 – PAGE 278**

**G. RESOLUTION NO. 09-246 - RESOLUTION REAPPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Summary: The terms of DeRothea Williams and Ken Kaplan expired on November 13, 2009.

At the November 10, 2009, meeting, it was the consensus of Council to (1) reappoint DeRothea Williams to serve an additional three-year term, term to expire November 13, 2012; and (2) reappoint Ken Kaplan to serve a three-year term, term to expire November 13, 2012. Both terms are until their successors have been appointed.

**RESOLUTION BOOK NO. 32 – PAGE 279**

**H. RESOLUTION NO. 09-247 - RESOLUTION REAPPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Summary: The terms of Richard Leatherman and Celeste Collins expired on November 1, 2009. Both have served one, one-year term.

At the HIAC meeting on November 10, 2009, the HIAC recommended City Council reappoint Mr. Leatherman and Ms. Collins.

At the November 10, 2009, City Council meeting, it was the consensus of Council to reappoint Mr. Leatherman and Ms. Collins to each serve a three-year term respectively, terms to expire November 1, 2012, or until their successors have been appointed.

**RESOLUTION BOOK NO. 32 – PAGE 280**

**I. RESOLUTION NO. 09-248 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD**

Summary: Pastor Spencer Hardaway has resigned as a member of the Recreation Board thus leaving an unexpired term until June 30, 2012.

On November 10, 2009, it was the consensus of Council to appoint Hutch Kerns to serve the unexpired term of Pastor Hardaway, term to expire June 30, 2012, or until his successor is appointed.

**RESOLUTION BOOK NO. 32 – PAGE 281**

**J. RESOLUTION NO. 09-249 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE DONATION OF THREE REMNANT PROPERTIES ALONG BROADWAY STREET FROM THE N.C. DEPT. OF TRANSPORTATION FOR THE PURPOSE OF IMPLEMENTING PHASE II OF THE REED CREEK GREENWAY**

Summary: The consideration of a resolution authorizing the Mayor to accept, for no monetary consideration, the conveyance of three N.C. Dept. of Transportation (NCDOT) remnant properties for the purposes of implementing Phase II of the Reed Creek Greenway.

The NCDOT remnant properties identified by PIN 9649-14-7057-00000, 9649-13-9931-00000, and 9649-23-1821-00000 along Broadway Street are needed in order to reach 100% of the right-of-way necessary to implement Phase II of the Reed Creek Greenway.

Property 9649-14-7057-0000 is 0.28 acres in size, 9649-13-9931-00000 is 0.12 acres in size, and 9649-23-1821-00000 is 0.03 acres in size. The total acreage of property proposed for conveyance is 0.40 acres.

In August, 2009 staff contacted NCDOT to inquire about conveyance of the properties. NCDOT researched the properties and agreed to convey them to the city for no consideration with the stipulation that the properties will revert back to the State should they cease to be used for greenway purposes.

Upon City Council approval, NCDOT will take the conveyance proposal to the North Carolina Board of Transportation and Council of State for final approval. The City will only be responsible for paying deed recordation fees, which should not exceed \$100.00. NCDOT will prepare the deeds through the Attorney General's office.

This action complies with (1) City Council's Strategic Plan in the Green Focus Area in that it advances the promotion of emission-reducing transportation options including greenways, and pursues opportunities to preserve open space; (2) the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan; and (3) the Greenway Master Plan and the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

This item has been reviewed by the Council's Greenway Commission and has received the Commission's endorsement on November 12, 2009. It has also been reviewed the by Recreation Board and at their meeting on November 9, 2009, they recommended approval.

Pros:

- Securing these properties will allow Phase II of the Reed Creek Greenway to be implemented.
- Increases the City's inventory of park space.

Con:

- Modest additional maintenance costs.

No monetary consideration required for the conveyance. Deed recordation fees will be the responsibility of the City, which should not exceed \$100.00.

City staff recommends City Council to adopt a resolution accepting the conveyance of three NCDOT remnant properties for no monetary consideration for the purposes of implementing Phase II of the Reed Creek Greenway.

**RESOLUTION BOOK NO. 32 – PAGE 282**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Miller moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**C. ORDINANCE NO. 3806 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE FISCAL YEAR 2009-10 GRASSROOTS SCIENCE MUSEUMS COLLABORATIVE FOR THE WNC NATURE CENTER**

Summary: The consideration of a budget amendment, in the amount of \$35,621, for a grant from the N.C. Dept. of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Each year the State of North Carolina allocates and distributes funds to the 25 to 30 member museums, science centers and nature centers in North Carolina for the Grassroots Science Museums Collaborative as supported by North Carolina Senate Bill 1741. The WNC Nature Center is a member of the collaborative.

Funds will be used to enhance Nature Center operations and to make improvements to the facility and animal exhibits at the Nature Center.

The action complies with the City Council 2009-10 Strategic Plan in the Green focus area in that it supports the operation and maintenance of all city parks. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding via grants.

Pros:

- Provide additional funds to support the overall operating cost of the Nature Center
- Provide funds to enhance special projects and services to Nature Center visitors
- Provide funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Con:

- None

The grant will increase the City's operating budget by \$35,621 in a special projects account designated for the WNC Nature Center.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget of \$35,621 for the WNC Nature Center with a grant from the N.C. Dept. of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Councilman Mumpower was troubled with the dysfunctional court system and felt that the state should use those funds for that purpose. In addition, he felt we will be using borrowed money that will need to be paid back by our children and grandchildren.

Councilwoman Cape moved for the adoption of Ordinance No. 3806. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 25 – PAGE**

**E. RESOLUTION NO. 09-242 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT WITH THE U.S. DEPT. OF HOMELAND SECURITY FOR ADDITIONAL FIREFIGHTERS**

Summary: The consideration of a resolution authorizing the Fire Department to apply for a grant in the amount of \$540,000 from the US Dept. of Homeland Security to obtain funding for six additional firefighter positions.

The US Dept. of Homeland Security has recently issued guidance for the Fiscal Year 2009 Staffing for Adequate Fire and Emergency Response (SAFER) program. This is a grant opportunity for fire departments to add additional firefighters. The grant is a 3 year matching grant. In years 1 and 2, the grant covers 100% of the cost for the additional firefighter's salaries and benefits. The matching portion for the grant occurs in year 3, which is the full cost of these firefighter's salaries and benefits. This could be a good opportunity for our City to add needed personnel and have their cost completely absorbed by this grant for two years.

We currently operate 4 firefighter companies on 8 of our 17 fire companies (47%). One of our companies operates with two firefighters (Haw Creek). This grant could assist with increasing additional fire companies to four firefighter staffing which helps accomplish the following strategic priorities:

- Increased firefighter safety
  - Studies performed in Providence, RI, and Austin, TX, have shown that four firefighter companies reduce firefighter

injuries and reduce the physiological effects of firefighting activities on firefighters.

- Increased efficiency translates into increased firefighter safety during fire emergencies. Tasks that are performed more quickly reduce the exposure time for firefighters as well as mitigate emergencies earlier. In summary, a small fire is safer to firefighters than a large fire.
- Increased efficiency
  - We have conducted critical task analyses of our 3 firefighter and 4 firefighter companies. These analyses of actual fireground activities showed that 4 firefighter companies perform up to 41% more efficient during fire emergencies and up to 92% more efficient during medical emergencies.
- Increased service delivery
  - Increased efficiency translates into increased service delivery for citizens during fire and medical emergencies. Performing tasks quicker provides better service to citizens. Fire and medical emergencies have been shown to significantly worsen as time progresses. Mitigating emergencies earlier lessens the impact on citizens.
  - Earlier incident mitigation places fire companies in service and available to respond to other citizen needs earlier. The increased efficiency of 4 firefighter companies increases unit reliability and lessens the amount of time that citizens are receiving help from fire stations further away.
  - Additional firefighters are the one area that increases our ISO rating performance the most and moves us closer to an ISO 2.

We recommend applying for 6 firefighter positions for the following reasons:

- The grant program guidance indicates that a much higher priority for awards will be given to applicants who are increasing staffing to comply with the OSHA 2 in/2out standard. The strongest application we can compile would be to address our 2 firefighter company at Haw Creek to four firefighter staffing. This is the only area that we currently are not meeting the OSHA standard. This is also our only stand alone company that does not operate with 4 firefighters.
- We feel that a grant that asks for less or more would not be competitive.

This action complies with the Strategic Operating Plan by increasing safety, efficiency, and service delivery; therefore this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

The City Council Public Safety Committee reviewed and supported this item at their November 17, 2009, meeting

Pros:

- Firefighter safety, efficiency, and service delivery will be increased.
- Hiring 6 new firefighters will help reduce overtime. The firefighters obtained from this grant could be placed on shift without a requirement to be minimally staffed positions. These positions will fully meet the requirements and intent of the grant as more of our companies will be fully staffed more frequently.
- The grant covers 100% of the cost for these firefighters for two years.

Con:

- We would assume the full cost of these employees in year three (FY 12/13)

The City would receive \$270,000 each year for two years. In year three, and potentially beyond, the City would have to absorb the \$270,000 annually.

City staff recommends that City Council authorize the fire department to apply for a grant in the amount of \$540,000 from the US Dept. of Homeland Security to obtain funding for six additional firefighter positions.

Councilman Mumpower felt we should fund our own police and fire services and not take these borrowed federal dollars that will have to be repaid by our children and grandchildren.

In response to Councilman Newman's concern about sustaining these firefighters after year two given our budget, Fire Chief Scott Burnette explained where those firefighters will be assigned and that there is a goal within the Fire Department's strategic priorities to increase staffing, safety and efficiency in service delivery to our citizens.

Fire Chief Burnette responded to Councilwoman Cape regarding the guidelines for this particular grant.

Councilman Newman felt that these positions will be effective in terms of how they will be deployed; however, when he thinks of the City's public safety priorities in general, to him the biggest needs we have are for expansion of police officers in making neighborhoods safer and where we have a lot of problems and simply need more people to address them.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-242. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

**III. PRESENTATIONS & REPORTS:**

**A. GUN BUY-BACK PROGRAM INITIATIVE**

Vice-Mayor Davis, Chair of the Public Safety Committee, said that the Public Safety Committee took formal action on November 17, 2009, to propose a Gun Buy-Back program for a two week timeframe prior to the December holidays (\$10,000 total).

He explained that the Public Safety Committee has identified \$5,000 of private grant money from Eblen Foundation and \$5,000 of grant money available from the Housing Authority for the purpose of administering a Gun Buy-Back Program. The Committee has asked the Police Department to consider a \$5,000 match for its Fiscal Year 2009-10 departmental operating budget. The Police Chief has acknowledged that the department has the financial capacity to earmark \$5,000 for its existing Community Outreach Program, if that is the direction of City Council.

In addition, the Committee has asked for implementation of the program prior to the December holidays and to be administered through the Police Department, similarity to past programs. The Police Chief has acknowledged staff's ability to absorb this new initiative in the timeframe described, if that is the direction of City Council.

Pro:

- The Gun Buy-Back Programs effectively removes guns from the community, which serves to limit availability of guns for criminal activity.

Con:

- Re-prioritization of Community Service dollars from other community service initiatives.

As previously noted, implementation of this program would require the Police Chief to allocate \$5,000, or 10%, of the total existing Community Outreach dollars accordingly.

The Public Safety Committee recommends approval and implementation of this Gun Buy-Back Program two weeks prior to the December holidays. Staff is prepared to act upon this recommendation if approved.

In response to Vice-Mayor Davis, Police Chief Hogan said that last year we purchased approximately 183 guns through the very successful Gun Buy-Back Program in a three-weekend period. Last year the City bought small guns and weapons for \$50 each and for the more radical-type guns they paid \$100 each.

Mr. Gene Bell, Executive Director of the Housing Authority of the City of Asheville, said that it's not unusual to find guns in vacated units in public housing. They supported any initiative to get guns off the streets and they have contributed \$5,000 towards this effort.

Councilman Russell noted that guns are one of the highest targeted items in homeowner theft.

There was a brief discussion, initiated by Councilman Mumpower, about why the City doesn't re-sell the guns from the Buy-Back Program instead of destroying them (or using them for training purposes if it is a unique weapon). Chief Hogan felt the principle is that if you re-sell the guns, they could end up back in the cycle and back on the street. Councilman Mumpower felt that if we sold them to reputable, well-intended citizens that we would have the potential to create a reoccurring funding source and fund this program a couple of times a year.

Mayor Bellamy noted that if we did re-sell the guns, it was imperative that the process be transparent.

It was the consensus of Council that the Police Chief report back to Council regarding his investigation of what the best process would be to re-sell the guns and if he feels that is the best process for our community to implement.

Vice-Mayor Davis moved to implement the Gun Buy-Back Program, similar to the past, two weeks prior to the December holidays; and directed the City Manager to consider, in the future, a way to turn the re-sale of guns into a revenue stream. This motion was seconded by Councilman Russell and carried unanimously.

**B. ECONOMIC STIMULUS PACKAGE UPDATE**

**RESOLUTION NO. 09-250 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH GREEN LIGHT ELECTRIC FOR THE PROJECT KNOWN AS FAIRVIEW ROAD SIGNAL UPGRADES, TIP # U-**



**RESOLUTION NO. 09-252 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH RIVERTOP CONTRACTING FOR THE PROJECT KNOWN AS CORRIDOR ENHANCEMENTS IN DOWNTOWN ASHEVILLE, TIP # U-5174/CITY OF ASHEVILLE PROJECT # ARRA 09-10-02**

**RESOLUTION NO. 09-252 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH MOORE & SONS SITE CONTRACTORS FOR THE PROJECT KNOWN AS ASHEVILLE SIDEWALK IMPROVEMENTS, TIP # U-5186, CITY OF ASHEVILLE PROJECT # ARRA 09-10-05**

**RESOLUTION NO. 09-253 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH MOORE & SONS SITE CONTRACTORS FOR THE PROJECT KNOWN AS COXE AVENUE MILLING, PAVING, RE-STRIPING, AND DRAINAGE; AND SOUTH SLOPE RE-STRIPING AND DRAINAGE, TIP NUMBERS U-5173 AND U-5177/CITY OF ASHEVILLE PROJECT NUMBERS. ARRA 09-10-01 AND ARRA 09-10-04**

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of city staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of the following: (1) A resolution to award the construction contract for the Fairview Road signal upgrade project to Green Light Electric in the amount of \$58,678.95; (2) A resolution to award the construction contract for the Downtown Streetscapes project to Rivertop Contracting in the amount of \$79,006.00; (3) A resolution to award the construction contract for the Asheville sidewalks project to Moore & Sons Site Contractors in the amount of \$436,920.00; and (4) A resolution to award the construction contract for the Coxe Avenue resurfacing and South Slope bicycle lane marking to Moore & Sons Site Contractors in the amount of \$214,208.70.

ARRA funding was awarded for these projects through the French Broad River Metropolitan Planning Organization (MPO). The grant agreements and budget amendments were approved by the Asheville City Council on August 11, 2009, and August 25, 2009, and it is now time to approve the contract award. After this Council action, the documents will receive final review by N.C. Dept. of Transportation (NCDOT) and Federal Highways, and then the contracts can be executed. Each of these contracts is a unit price contract, not a lump sum contract.

All but the sidewalk project are fully funded by ARRA, and in consideration of the bids received, ARRA funding can be expected to cover the full cost of the sidewalk project. Kimberly Avenue resurfacing, selected for funding by the MPO only if funds are available (which depends on the costs for the other MPO projects), remains on hold, probably until at least March 2010.

Fairview Road Signal Upgrades, TIP # U-5175; City of Asheville Project # ARRA 09-10-03

This project will upgrade the existing traffic signals, install pedestrian signals and will add crosswalk markings at the intersections of Fairview Road and Oteora Boulevard/Baldwin Street, and Fairview Road and Cedar Street, at Oakley Elementary School. The contract specifies that work may begin as soon as January 4, 2010, and must be completed by May 4, 2010.

Formal request for bids was issued on October 15, 2009, and bids were opened November 5, 2009:

<u>Bidder</u>	<u>Address</u>	<u>Bid Amount</u>
Haynes Electric	Asheville, NC	\$60,000.00
<b>Green Light Electric</b>	<b>Weaverville, NC</b>	<b>\$58,678.95*</b>

\*Green Light Electric is a woman-owned business.

Downtown and Gateway Streetscapes, TIP # U-5174; City of Asheville Project # ARRA

09-10-02

This project will plant several existing medians and bulb outs in downtown Asheville. The contract specifies that work may begin as soon as January 4, 2010, and must be completed by May 4, 2010.

Formal request for bids was issued on October 15, 2009, and bids were opened November 5, 2009:

<u>Bidder</u>	<u>Address</u>	<u>Bid Amount</u>
Allison Landscaping	Hendersonville, NC	\$141,648.00
Landmark Landscapes	Arden, NC	\$81,438.86
<b>Rivertop Contracting</b>	<b>Black Mountain, NC</b>	<b>\$79,006.00*</b>

\*Rivertop Contracting is a woman-owned business.

Sidewalks, TIP No. U-5186: City of Asheville Project # ARRA 09-10-05

This project will construct sidewalks on Hilliard Avenue, Depot Street, Evelyn Place, Hendersonville Road, Linden Street, Short Michigan Avenue, and a multi-use path along Choctaw Street. The contract specifies that work may begin as soon as January 4, 2010, and must be completed by September 17, 2010.

Formal request for bids was issued on October 21, 2009, and bids were opened November 12, 2009:

<u>Bidder</u>	<u>Address</u>	<u>Bid Amount</u>
Econ International Corp.	Charlotte, NC	\$466,041.00*
Fletcher Grading Contractors	Arden, NC	\$439,341.69
J.L.S. Company	Arden, NC	\$446,084.40*
<b>Moore &amp; Sons Site Contractors</b>	<b>Mills River, NC</b>	<b>\$436,920.00</b>
Patton Construction	Arden, NC	\$560,932.00
Tennoca Construction	Candler, NC	\$908,792.03

\*Econ International Corp. is a minority-owned business and J.L.S Company is a woman-owned business.

Coxe Avenue, TIP No. U-5173, and South Slope Bike Lanes, TIP No. U-5177: City of Asheville Project # ARRA 09-10-01 and ARRA 09-10-04

These two projects were combined into one construction contract. The projects will provide a full-width resurfacing of Coxe Avenue and mark bike lanes on Coxe Avenue, Asheland Avenue, Hilliard Avenue, Martin Luther King, Jr., Drive, and Choctaw Avenue. The contract specifies that work may begin as soon as January 4, 2010, and must be completed by September 17, 2010.

Formal request for bids was issued on October 27, 2009, and bids were opened November 18, 2009:

<u>Bidder</u>	<u>Address</u>	<u>Bid Amount</u>
APAC Atlantic, Inc.	Candler, NC	\$278,867.40
J.L.S. Company	Arden, NC	\$219,058.04*
<b>Moore &amp; Sons Site Contractors</b>	<b>Mills River, NC</b>	<b>\$214,208.70</b>

\*J.L.S Company is a woman-owned business.

Once these resolutions are adopted, the documentation can be forwarded to the NCDOT for final reviews and authorizations, including review of the contractors' Disadvantaged Business Enterprise (DBE) efforts and goals.

This project supports the City Council's strategic plan goals of proactively pursuing funding opportunities with state and federal economic stimulus packages and leveraging funding for regional transportation improvements.

Pros:

- Improves Asheville's transportation facilities
- Implements projects in the City's adopted pedestrian and bicycle plans
- Provides long term investment in the City's infrastructure
- Improves pedestrian safety at a school

Con:

- The City will be responsible for future maintenance of the projects
- Project management and contract administration will consume staff time

These projects will bring more than \$788,000 in active transportation infrastructure improvements to the City, and there is a reasonable expectation that no matching funds will be required. At the August 25, 2009, meeting, City Council approved the appropriation of \$366,812 from fund balance to cover costs for the sidewalk and Kimberly Avenue projects that were not funded with ARRA proceeds. If this City funding is not needed for these projects then it will be returned to fund balance.

City staff recommends City Council adopt each of the resolutions identifying the recommended lowest responsible bidder and authorizing the City Manager to execute the contracts.

Councilman Mumpower could not support these actions because these are borrowed federal dollars that our children and

grandchildren will have to repay.

Mayor Bellamy thanked Ms. Bills for her efforts in reaching out to our local vendors, noting that all contracts are local companies.

Councilman Mumpower felt strongly that the City needs to do everything they can to hire legal citizens to work on these projects.

Public Works Director Cathy Ball said that we were able to realize approximately \$663,000 from the engineer's estimates to what the actual bids came in. One of the projects we had gotten Council approval for was Kimberly Avenue but based on the engineer's estimates we weren't going to be able to afford that. City Council then appropriated \$400,000 that we might have to use to be able to fund that project. Since we now have the balance of \$663,000, we went back to the NCDOT and asked if we could include Kimberly Avenue and have it fully paid for out of the balance of that amount. They have said to move forward with it; however, the City can't meet the December 31 deadline because it's impossible for the City to bid the project, get the bids in and come to City Council before December 31. She asked for Council's support to request the North Carolina Secretary of Transportation extend the December 31 deadline one month so that we can include Kimberly Avenue in this process. She understands that the State's staff and NCDOT is supportive of that, but it may take some additional action from City Council to make that happen. She suggested a letter from the Mayor in support of that process be sent to the Secretary.

Vice-Mayor Davis asked for a friendly amendment to instruct staff prepare a letter for Mayor Bellamy's signature to the North Carolina Secretary of Transportation supporting the one-month extension of the December 31 deadline so that the Kimberly Avenue project can be included in this process. Councilman Newman and Councilwoman Cape accepted the friendly amendment.

Ms. Ball updated Councilman Miller regarding the Azalea Road project.

Upon request of Mayor Bellamy, Ms. Ball said that she would provide Council with a listing of the streets that are planned for improvements this year.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished copies of the resolutions and they would not be read.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-250. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 32 – PAGE 284**

Councilman Miller moved for the adoption of Resolution No. 09-251. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 32 – PAGE 285**

Councilman Newman moved for the adoption of Resolution No. 09-252. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 32 – PAGE 286**

Councilman Newman moved for the adoption of Resolution No. 09-253, and to instruct staff prepare a letter for Mayor Bellamy's signature to the North Carolina Secretary of Transportation supporting the one-month extension of the December 31 deadline so that the Kimberly Avenue project can be included in this process. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 32 – PAGE 287**

**C. QUARTERLY REPORTS**

**Public Safety Committee Chair Report**

Vice-Mayor Davis, Chair of the City Council Public Safety Committee, provided Council with an update of their activities during the last quarter. He thanked his other Committee members of Mayor Bellamy and Councilman Newman for their hard work on this Committee.

Mayor Bellamy was pleased to present Police Chief Hogan with a plaque from Getting Back to Basics Inc.'s Annual Event she recently attended. Said program originated in the Police Department and is supported also by the Fire Department. That program helps teenagers to stay on the right track and keep them out of gangs, along with parental involvement. The program thanked the Asheville Police Department for supporting the goals of Getting Back to Basics Inc.

### Strategic Operating Plan Update

Assistant City Manager Jeff Richardson reviewed with Council the End of the Year Strategic Operating Plan in the following areas (1) Affordable; (2) Green; (3) Safe; (4) Sustainable; and (5) Fiscal Responsibility.

In the affordable focus area (1) Affordable Housing Fee Rebate Program; (2) Comprehensive Annual Performance Evaluation Report; (3) 2011-2015 Consolidated Strategic Housing and Community Development Plan; and (4) Newly Purchased Land in West Asheville.

In the green focus area (1) Mills River Solar Panel Array; (2) Total Carbon Reduction: 2.5%; (3) Historic Preservation; and (4) Launched a New Pilot Project, City Share.

In the safe area of Pack Square Park (1) North Pack Street re-paved and opened; (2) The circle in front of Pack Place completed; (3) Roger McGuire Green opened to the public; (4) Interactive fountain programmed and running; (5) Veterans' monument completed; and (6) \$16,817,830 raised, with \$3,685,034 remaining to complete Construction/Pavilion.

Regarding safe, he provided the following chart of Asheville Police Department Drug Charges/Seizures:

	<u>FY 08-09</u>	<u>FY 09-10 (33% Complete)</u>
Dealers Charged	85	38 (45%)
Firearms Seized	121	60 (50%)
Currency Seized	\$68,999	\$33,569 (49%)
Individuals Charged	717	274 (38%)
Drug Dollar Amount Seized	\$295,980	\$363,361 (123%)

In the safe area for the Downtown Patrol Unit, (1) Number of business contacts: 2,594; (2) Citations and/or arrests: 829; (3) Special Operations: 169; (4) Hours of foot patrol: 418; (5) Hours of bike patrol: 919; and (6) Hours "Other": 663.

Also in the safe area regarding (1) Nuisance Court (a) Cases: 26; (b) Case Reviews: 9; (c) Guilty Pleas: 13; and (d) Community Service Hours: 290; and (2) Downtown Cleanliness (a) Graffiti Removal Sites: 556; (b) Sidewalk Cleaning: 9.24 miles; and (c) Private Property Graffiti Identified: 142 Locations.

Regarding sustainability, he provided the following chart of the ARRA grant success: For Year End FY 2008-09 the entitlements were \$7,597,242; the grant funding applied for to date is \$12,800,249; and the grant funding awarded to date is \$994,500. For the Quarter 1 Fiscal Year 2009-10, the entitlements are \$7,597,242; the grant funding applied for to date is \$16,242,152; and the grant funding awarded to date is \$1,497,500.

In the sustainable area, (1) Civic Center Roof on Schedule; (2) Shiloh Community Center Project; and (3) Expanded Partnerships with UNC-Asheville. Also in the sustainable area regarding the Downtown Master Plan (1) Action Committee; (2) Urban Design Committee; and (3) UDO Modifications Related to Economic Conditions. In the Development Services area (1) Grand Opening; (2) Completed on Time and Under Budget; (3) Permits & Projects; (4) Cooperation with Asheville Fire Department; and (5) Educational Classes.

In the area of fiscal responsibility (1) Early Retirement Program (a) 27 Staff to Date; (b) \$256,755 Annual Cost Savings; and (2) Montford Commons Development Project (Public/Private Partnership Opportunity) (a) Financial Analysis Underway.

Mayor Bellamy commended Director of Administrative Services Lauren Bradley for her leadership in Council's nuisance court initiative and looked forward to working with her in her new leadership position.

Energy Coordinator Maggie Ullman responded to Mayor Bellamy when she questioned if we have a cost analysis of the return on investment for surpassing our annual carbon reduction goal.

At Mayor Bellamy's suggestion of a quarterly report on the City's investments in land purchases and what those purchases have meant to the City, City Manager Jackson said that staff is finalizing the first major annual report and will have measurements for Council to see.

### Quarterly Financial Report

Chief Financial Officer Ben Durant provided Council with the following executive summary of the First Quarter of 2009-10 financial information in this report reflects the City's overall financial position for the fiscal year through September 2009.

**Amendments.** The General Fund budget presented in this first quarter report reflects the adopted budget of \$92,688,293; plus \$1,097,031 in prior year encumbrances that rolled over from FY 2008-09; along with ten budget amendments approved by Council during the first quarter that totaled \$603,538. Two of the budget amendments involved an appropriation from fund balance: 1) \$366,812 was appropriated from fund balance as the City match for transportation improvement projects that were partially funded with an ARRA grant; and 2) \$60,000 was appropriated from fund balance to expand the number of early voting sites. The other amendments were funded with various grants and donations. He provided council with a complete list of first quarter General Fund budget amendments.

Adopted Budget	92,688,293
Encumbrances	1,097,031
10 Budget Amendments*	<u>603,538</u>
9/30/2009 Budget	<u>\$94,388,862</u>
* Fund balance appropriations since July 1 total	-
\$426,812	

**Revenues.** Through September 30, 2009, the City has collected \$11,336,483 in General Fund revenue, which represents approximately 12.5% of the total General Fund revenue budget. Sales tax collections continued to decline in the fourth quarter of FY 2008-09 and the first quarter of FY 2009-10. As a result, sales tax revenue is expected to come in under budget in the current year by \$1,000,000. On a positive note, during the first quarter the City received a \$391,000 reimbursement check for expenses associated with the January 2008 demolition of property on Tunnel Road. *Based on current year-end estimates, staff is projecting that FY 2009-10 total General Fund revenue will come in under budget by \$659,000.*

**Expenditures.** General Fund expenditures through September 30, 2009 total \$20,793,663 or 22.0% of the budget. *Based on spending in the first quarter and historical trends, staff is currently estimating that the General Fund departmental budgets will be 99.5% committed by the end of the current fiscal year producing a budget savings of \$407,000. Staff, however, is estimating that expenditures in the Health Care Fund will exceed revenues by approximately \$1.0 million. It is anticipated that health care reserves, which ended FY 2008-09 at approximately \$1.13 million, will be used to cover this shortfall.*

**Fund Balance.** The City ended FY 2008-09 with available fund balance of \$16,696,979, which equated to 18.7% of FY 2008-09 expenditures. *Based on current year-end revenue and expenditure estimates for FY 2009-10 staff is projecting that available fund balance will decrease to \$14,223,431, which will equate to 15.1% of estimated year-end expenditures.*

He said that Water Resources Director Steve Shoaf provided Council with information noting that in 2007 City Council approved a \$40 Million Revenue Bond for water system improvement projects as part of Asheville's commitment to upgrade aging infrastructure, ensure reliable water service, and improve fire protection. In April 2008 the City launched 11 major water improvement projects which status was summarized.

He then provided Council with a brief overview of the Fiscal Year 2009-10 First Quarter Report as follows: (1) Current year budget trends show a \$659,000 General Fund revenue shortfall; (2) Available Fund Balance is projected to decline to 15.1%; and (3) The FY 2010-11 preliminary budget forecast includes a significant imbalance between revenues and expenditures.

He then reviewed the current General Fund budget, along with the General Fund budget amendments.

General Fund Revenue highlights include (1) Sales tax revenue is down 12.9% in the 1st quarter - Projected to fall \$1.0 million short of budget; (2) State will withhold 2/3 of beer & wines tax revenue - \$250,000 revenue loss; and (3) Powell Bill revenue is down 10.4% or \$250,000 compared to prior year - Anticipated in the budget.

General Fund Revenue highlights include (1) State utility tax revenue to exceed budget by \$200k; (2) \$391,000 reimbursement for Tunnel Road property demolition; and (3) Overall, general fund revenues are projected to *fall short of budget by \$659,000.*

General Fund expenditures highlights include (1) Early Retirement Incentive Program; (a) Departmental Savings Plans to Recover Payouts; and (b) Budget Office Review; (2) Operating Budgets are Tight; and (3) Anticipate 99.5% of budget will be spent at year end - \$400,000 in savings.

He then reviewed the Fiscal Year 2010 current year estimate (Fund Balance). The year-end estimate is 15.1%. Using a chart he explained the ten year Fund Balance trends.

Regarding the Health Care Fund, current trends indicate that expenses will exceed revenues by \$1.0 million. Health Care

Reserves total \$1.13 million.

He then briefly reviewed the Enterprise Funds.

**Ordinance No. 3808 – Budget amendment from the current Water Resources Fund budget to fund capital projects as outlined in the Sullivan Act Amendment**

Mr. Durant said that this is the consideration of a budget amendment, in the amount of \$1,657,481, from the current Water Resources Fund budget to fund capital projects as outlined in the Sullivan Act Amendment.

This report outlines progress on the identification of sources of funding for projects to be funded in FY 2009-10 in response to the June 2009 Sullivan Act Amendment. A process for identifying projects and a ranking system for project selection is presented. FY 2009-10 Water Resources funds have been identified and are ready for transfer into a designated General Fund capital account.

Water Resources staff identified funding to support the expenditure of up to 5% of Water Resources revenue as outlined in the June 2009 Sullivan Act Amendment. It is assumed that Water Resources revenue for this fiscal year will be \$33,149,629, and 5% of this amount totals \$1,657,481. Staff's approach for the current fiscal year was to identify money already budgeted and not likely to be used in the current year. Staff first looked to existing projects that are completed and have some amount of funding remaining. Staff also tapped funding from some existing projects that may need to be restored in subsequent years. Seven (7) capital projects have funds that could be transferred to meet the Sullivan Act Amendment requirement. These projects are:

WC0005	\$ 90,890	Interest Accumulation Account
WC0501	\$689,103	NCDOT Brevard Rd. Improvements
WC0703	\$ 50,000	Distribution System Improvements
WC0704	\$ 50,000	Master Plan Development
WC0804	\$ 75,000	24" & 36" Line Replacement Study
WC0805	\$500,000	River Flow meters
WC0908	\$ 2,485	Parker Ave. service lines

Total from capital: \$1,457,478

One operations account will also be used to meet the Sullivan Act Amendment requirement. It is the Meter Services Capital Outlay / Other – Improvements account.

330-5005-409-7003 \$200,003 Meter purchases, etc.

To implement the enhancement of water system projects with street and sidewalk improvements, there will be a five (5) year project plan that:

1. Looks at Water Resources projects planned for the 5-year period;
2. Investigates opportunities to enhance these projects with needed associated street and sidewalk improvements;
3. Applies a ranking system that is used to assign priorities to the enhancement portion of these projects for funding via the Sullivan Act Amendment; and
4. Develops a timeline and cost estimates for projects that are likely to be implemented.

The Water Resources and Public Works Departments will collaborate to develop the 5-year project plan and present the plan to City Council for consideration as part of the FY 2010 2<sup>nd</sup> Quarter Report.

Regarding the Strategic Operating Plan, this initiative enhances the City's efforts to operate the City of Asheville's organization to the highest fiscal responsibility. Through planning and combining resources, the intended outcome will be better project conception and implementation aimed at meeting community needs.

Pros:

- Better infrastructure that meets community needs.
- Coordinated project activity that minimizes construction-related disruption and produces enhanced results.

Cons:

- The Sullivan Act Amendment will use Water Resources funds for non-water capital projects.
- Some projects may have an extended timeline to finish all phases due to a larger scope.

This change in operation will transfer approximately 5% of Water Resources revenue to the General Fund for capital projects each year. Over a five-year planning period, this represents over \$7.5 million transferred from Water Resources to the General Fund.

City staff recommends City Council adopt the budget amendment approving the transfer of funds for Fiscal Year 2009 -10, and approve the concept of a five-year project planning process.

There was a brief discussion, initiated by Councilman Mumpower, regarding the process which brought the Council to this point of being allowed to transfer 5% of Water Resources revenue for eligible capital projects.

At Mayor Bellamy's request, Councilman Russell, as Chair of the Finance Committee, said that they will be providing an update on how much the City has invested in the water system thus far.

Throughout discussion, Mr. Durant answered various questions/comments from Council, some being, but are not limited to: clarification of the year-end Fund Balance; request to show the actual revenue sources that support each budget amendment; do we have any innovative programs, similar to the Asheville Project, to reduce our health care costs and request for Council to receive quarterly updates on this process; how is the projection of the \$1 Million shortfall of sales tax revenue computed; how much interest does Fund Balance earn; what is the City's annual cost for health care; suggestion to possibly partner with the Metropolitan Sewerage District in their 5-year Capital Improvement Plan to see if there is some overlapping of projects for potential cost savings; due to the possibly delay any major purchases, is it feasible to delay the contract for installation of the new irrigation system at the Golf Course; is the City's data in line with the Chamber of Commerce information regarding room occupancies; concern of Council living within their means and not reaching into Fund Balance; clarification that the sales tax numbers are for July and August only; request for a graph showing the full picture of capital improvements made over the year as Council has addressed capital needs that have went unaddressed for years; what is the City's Fund Balance percentage vs. the State's suggested percentage; City should not have a large Fund Balance with capital improvements that need attention; and if the City dips to a 13-14% Fund Balance, does it affect our bond rating.

Budget Director Tony McDowell reviewed with Council the preliminary Fiscal Year 2010-11 budget forecast.

The General Fund revenue outlook is (1) Economy will continue to impact revenue growth in FY 2010-11; (2) Property & sales taxes make up 70% of budget; (3) Overall, revenues are projected to be flat; and (4) No fund balance will be appropriated.

The General Fund expenditure outlook is (1) Continued increases in health care costs; (2) Decrease in federal funding for Transit; (3) Slight increase in operating costs; (4) Allocation for employee raises; and (5) No growth in capital expenditures.

He then reviewed with Council the budget outlook of the General Fund Gap.

He provided Council with some budget balancing strategies for moving forward as (1) The \$5.1 million budget gap reflects a structural imbalance between revenues and expenditures; (2) Departments will prepare 4% and 8% budget reduction packages for submittal in late January; and (3) Staff will provide a detailed white paper analysis of the City's financial position prior to the January Council retreat.

Budget Director Tony McDowell reviewed with Council the preliminary Fiscal Year 2010-11 budget forecast.

The General Fund revenue outlook is (1) Economy will continue to impact revenue growth in FY 2010-11; (2) Property & sales taxes make up 70% of budget; (3) Overall, revenues are projected to be flat; and (4) No fund balance will be appropriated.

The General Fund expenditure outlook is (1) Continued increases in health care costs; (2) Decrease in federal funding for Transit; (3) Slight increase in operating costs; (4) Allocation for employee raises; and (5) No growth in capital expenditures.

He then reviewed with Council the budget outlook of the General Fund gap of about \$5.1 Million.

He provided Council with some budget balancing strategies for moving forward as (1) The \$5.1 million budget gap reflects a structural imbalance between revenues and expenditures; (2) Departments will prepare 4% and 8% budget reduction packages for submittal in late January; and (3) Staff will provide a detailed white paper analysis of the City's financial position prior to the January Council retreat.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3808. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 25 - PAGE**

#### **IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT**

Mayor Bellamy said that this public hearing was continued from January 15, 2008, at the applicant's request in order to work with the neighborhood, especially since a valid protest petition was submitted, which remains in effect. Then again on July 15, 2008, the public hearing was continued to October 28, 2008, at the applicant's request in that it became necessary, due to the recent economic conditions, the ownership group is currently exhausting opportunities and trying to secure financing and/or additional partners to help with the project economics. On October 28, 2008, at the applicant's request, this motion was continued to October 27, 2009.

Mayor Bellamy said that on September 1, 2009, Mr. Chris Peterson requested this matter be removed from City Council consideration.

On October 23, 2009, the following letter was received from Mr. Marty Kocot, PE, from LandDesign Inc.: "The ownership group (Mr. Foster Shriner, Mr. Chris Peterson and Mr. Cam Pace) of the proposed "Horizons" Urban Village project have asked me to formally request an additional twelve (12) month extension on the Urban Village Rezoning currently in progress. We realize this request to extend this project again is a bit unusual but the economic conditions we are all experiencing are bit unusual as well. It is and has always been the desire of the partnership group to create a wonderful project on the Merrimon Avenue site as a gateway point to the City and an extension of time on the Urban Village Rezoning request for this project gives us the best chance to succeed. To date thousands of dollars have been spent crafting and guiding the project through TRC and P&Z only to have the economy delay us from obtaining the needed financing. We are hopeful that this additional time will allow the economic market to improve and the project to move forward for consideration by City Council. This project has the ability to create local jobs and help with the economic recovery."

On October 27, 2009, a motion was made to continue the matter for two weeks until November 10, 2009. On November 10, 2009, the matter was continued again until November 24, 2009.

From Staff Report by Urban Planner Julia Cogburn: "This is the consideration of a property request for an additional twelve (12) month continuance of the public hearing on the rezoning petition for the Horizons Urban Village Project.

"In November of 2007, the Asheville Planning and Zoning Commission reviewed a rezoning petition for the Horizons Urban Village project located on an 8.54 acre site on Merrimon Avenue. The Commission voted to recommend the rezoning (7-0) and the conceptual site plan (5-2) presented by the developers/property owners of the project, and the matter was scheduled to be heard by Asheville City Council in January of 2008. At that time, the developers requested a six (6) month continuance in order to review the site design particularly as it related to the height of some of the buildings. Building height was a major issue for the adjoining neighbors of this project. In June of 2008, the property owners requested an additional three (3) month continuance primarily due to economic conditions. In October of 2008, the property owners requested and obtained an additional twelve (12) month continuance from the Asheville City Council. The property owners are now requesting an additional twelve (12) month continuance due to the continuing economic slowdown.

"The major concern with granting an additional continuance is the effect it may potentially have on the valid protest petition submitted with respect to this project. The owners of sixteen (16) properties within one hundred (100) feet of the development parcel signed a petition. This petition was deemed to be a valid protest petition in accordance with NCGS § 160A-385 as the signatories properties totaled 21.9% of the property within one hundred (100) feet of the development parcel. Twenty (20%) percent is required for a valid protest petition. NCGS § 160A-386 states that the petition must be submitted at least two (2) normal working days before the date established for the public hearing (which was done) and must meet the qualifying standards for a protest petition "at the time of the vote on the zoning amendment." The effect of a protest petition is that it triggers a supermajority voting requirement on a zoning issue. The concern is that if property ownership changes during the time of continuance of this project, that the petition becomes invalid without an opportunity to resubmit another petition.

"Options for Council include:

1. Grant the continuance. The project would be considered by Council on November 23, 2010. The protest petition may or may not be valid depending upon property ownership at that time.
2. Do not grant the continuance. The developer would have to resubmit the project at the time that they were prepared to move forward with the development.
3. Postpone the hearing indefinitely. Reschedule the public hearing when the developer is ready to move forward with the project. Staff would recommend, if this option is chosen, that the request for a public hearing must be made by a date certain.



Pro:

- Allows the property owners additional time to work on the details of an urban village project for this property.

Cons:

- Gives extensive continuation to a project that was first submitted to the City of Asheville in June of 2007.
- May create additional confusion/effort for those who previously submitted a protest petition on this project.

"City staff recommends City Council adopt one of the following three options: (1) Grant the continuance. The project would be considered by Council on November 23, 2010. The protest petition may or may not be valid depending upon property ownership at that time; (2) Do not grant the continuance. The developer would have to resubmit the project at the time that they were prepared to move forward with the development; or (3) Postpone the hearing indefinitely. Reschedule the public hearing when the developer is ready to move forward with the project. Staff would recommend, if this option is chosen, that the request for a public hearing must be made by a date certain."

Councilman Mumpower moved to allow Council to discuss the options presented. This motion was seconded by Vice-Mayor Davis and carried unanimously.

City Attorney Oast briefly outlined the three options available for Council as outlined above. If the option to postpone the hearing indefinitely and reschedule the public hearing when the developer is ready to move forward with the project is Council's choice, then the current protest petition may remain valid although there is not a lot of guidance in the statutes on this. It may extend the date or establish a new date for filing a new protest petition or correcting any deficiencies in the old protest petition because a new date would be established for the public hearing. Mr. Chris Peterson, property owner, inquired about the Permit Extension Act of 2009, but since this is a zoning approval that is pending and has not been acted on, that law would not apply.

Councilwoman Cape moved to postpone the hearing indefinitely and reschedule the public hearing when the developer is ready to move forward with the project, with the stipulation that this matter will be discussed again on November 23, 2010, if no public hearing is requested prior to that date. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **Closed Session**

At 7:27 p.m., Mayor Bellamy announced a short recess, at which time City Council would conduct a closed session.

At 7:27 p.m., Councilman Miller moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is approximately 11 acres at Shelburne Road and Hominy Creek Road, and 615 Swannanoa River Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) 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 potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Newman and carried unanimously.

At 7:52 p.m., Councilman Miller moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

#### **A. PUBLIC HEARING TO CONSIDER FLOODPLAIN ORDINANCE TEXT CHANGES AND NEW FLOODPLAIN MAPS**

**ORDINANCE NO. 3809 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING ENVIRONMENTAL PROTECTION STANDARDS FOR FLOOD PROTECTION**

**ORDINANCE NO. 3810 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING FLOOD PROTECTION DEFINITIONS**

**ORDINANCE NO. 3811 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING DEVELOPMENT REVIEW PROCEDURES**

**ORDINANCE NO. 3812 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING VIOLATIONS, PENALTIES AND ENFORCEMENT PROVISIONS**

Mayor Bellamy opened the public hearing at 7:58 p.m.

Stormwater Services Manager McCray Coates said that this is the consideration of adopting the following four Unified Development Ordinances, which include the Flood Insurance Rate Maps (FIRM) and the Flood Insurance Study (FIS) report, as

follows: (1) Environmental Protection Standards for Flood Protection Article XII, Section 7-12-1; (2) Flood Protection Definition Section 7-2-5; (3) Development Review Procedures, Section 7-5-12; (4) Violations, Penalties and Enforcement Provisions Section 7-18-2.

He said that the purpose of this report is to provide the Planning and Zoning Commission with information related to the proposed Flood Damage Prevention Ordinance and to ask the Planning and Zoning Commission to approve the proposed Ordinance in order for staff to present the Ordinance to the City Council.

The Federal Emergency Management Agency (FEMA) in consultation with the State of North Carolina, have issued new Flood Insurance Rate Maps (FIRM) applicable to the City of Asheville. The City of Asheville is required to adopt the new maps and amendments to its floodplain regulations consistent with the Flood Insurance Study (FIS) to maintain membership in the National Flood Insurance Program (NFIP). The NFIP provides federally backed flood insurance to property owners in the City of Asheville jurisdiction located in flood prone areas. The new FIRMs, have, in some cases, modified the location of the floodway, 100-year floodplain, and 500-year floodplain boundaries in the City of Asheville. The new locations of the floodway may limit how affected property owners may use their properties. The proposed amendments to the text of the floodplain regulations are consistent with the Flood Damage Prevention Model Ordinance prepared by the State of North Carolina, taking into consideration the revised FIS and the revised FIRMS.

In order for the City to be in compliance with the requirement necessary to remain a member of the National Flood Insurance Program (NFIP) provided by FEMA, the City must adopt a revised Flood Damage Prevention Ordinance that is in compliance with the North Carolina Division of Emergency Management Model Flood Damage Prevention Ordinance. The model ordinance was created to satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regard to the adoption of required floodplain management regulations. The North Carolina model ordinances have been reorganized, simplified and expanded over the years to clarify older ordinance language.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010 and is adopted by the approval of the Flood Damage Prevention Ordinance

The Flood Damage Prevention Ordinance must be adopted prior to January 6, 2010, which is the effective date as established by FEMA, or the City could be removed from the NFIP program.

A Flood Ordinance Project Oversight Group has been formed to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and to City Council on the revised Flood Damage Prevention Ordinance. This group, in a limited capacity, assisted staff in the development of the proposed Ordinance. The members of the committee include John Broadbrooks, Barber Melton, Karl Koon, Karen Cragnolin, Paul Szurek and Bob Smith.

City staff has held one recent public meeting to discuss the Flood Damage Prevention Ordinance and the revised Flood Insurance Rate Maps (FIRM) with the public. Previous public meetings were held in 2008 prior to the State finalizing the FIRMS which provided the opportunity for public input related to the FIRMS.

#### Pros and Cons:

- The City will satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regard to the adoption of required floodplain management regulations.
- The Flood Damage Prevention Ordinance follows the State model ordinance which is recommended by the NC Floodplain Mapping Program to be the best way to obtain FEMA approval.
- The Flood Damage Prevention Ordinance follows closely with other jurisdictions within Buncombe County and western North Carolina as it relates to floodplain regulations.
- The regulatory flood elevation (freeboard above the base flood elevation) is set at 2 feet for both commercial and residential. Currently it is 2 feet for residential and 1 foot for commercial.

Mr. Coates noted that the Planning and Zoning Commission, at their November 19, 2009, mid-month meeting unanimously adopted the ordinances with an amendment to the non-conforming section in Section 7-12-1 as follows: "A nonconforming use shall be deemed discontinued after a period of more than 2 years ..." to be consistent with the UDO. The original draft was 365 consecutive days.

Mr. Coates explained that through the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA, updated FIS and FIRM applicable to the City of Asheville have been released.

City staff recommends City Council adopt the following four Unified Development Ordinances, which include the Flood Insurance Rate Maps (FIRM) and the Flood Insurance Study (FIS) report, as follows: (1) Environmental Protection Standards for Flood Protection Article XII, Section 7-12-1; (2) Flood Protection Definition Section 7-2-5; (3) Development Review Procedures, Section 7-5-12; (4) Violations, Penalties and Enforcement Provisions Section 7-18-2.

Mr. Coates explained the following Flood Ordinance modifications of the FIRM maps: (1) Three public participation meetings

for new FIRM maps held on December 11, 12, and 13 of 2007; (a) December 11, Black Mountain Town Hall. Approximately 70 persons attended a presentation by the state with open question and answer with state, engineers contracted to complete the maps, and local government staff; (b) December 12, AB Tech Enka Campus. Approximately 25 persons attended; and (3) Dec 13, Asheville Public Works Building. Approximately 35 persons attended; (2) Advertising included the County and City websites; contacted fire chiefs to post; Buncombe County TV aired information; press releases sent to Mountain Xpress, Asheville Citizen Times, Urban News, WLOS, Asheville Daily Planet, WNCW, and Asheville Tribune; and (3) This resulted in several articles (a) Clarke Morrison December 13 Citizen Times article on meetings, and 90-day appeal/protest period; (b) Brian Bartlett December 11 Citizen Times entitled "Learn How New Flood Maps May Affect Your Property"; (c) December 9 the Citizen Times article entitled, "Determine Your Level of Flood Risk" which advertised each of the 3 meetings; (d) December 5 Citizen Times article entitled, "Flood Maps to be Displayed" which advertised each of the three meetings; (e) Dec. 5 Mountain Xpress article entitled, "Waterlogged: New Maps Predict Bigger Floods for Swannanoa Valley"; and (f) The three meetings were advertised in this article.

Regarding the FIRM Maps, (1) The new FIRMS have, in some cases, modified the location of the floodway, the 100-year floodplain, and the 500-year floodplain boundaries in the City of Asheville; and (2) Amendments to the Flood Ordinance text reflect required regulation changes associated with the new FIRMS, and required changes made to the N.C. Division of Emergency Management Model Flood Damage Prevention Ordinance.

With regard to the NFIP Program, (1) The National Flood Insurance Program (NFIP) provides federally backed flood insurance to property owners in the City of Asheville jurisdiction located in flood prone areas; (2) The City of Asheville is required to adopt the new maps and amendments to its floodplain regulations consistent with the FIS to maintain membership in the NFIP; and (3) The updated Flood Damage Prevention Ordinance must be adopted prior to January 6, 2010, which is the effective date as established by FEMA, or the City could be removed from the NFIP program.

He said that a municipal flood ordinance group was formed to discuss the flood regulations in Buncombe County, including representatives from the City of Asheville, Buncombe County, Black Mountain, and Montreat. Recommendations from the Group determined it was best to utilize the Model Flood Ordinance created by the NC Floodplain Mapping Program (NCFMP) as the base document to ensure State and FEMA approval. Recommendations from the Group determined it was best for the area to have similar flood damage protection requirements.

Also, the Flood Ordinance Project Oversight Group was formed to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and to City Council on the revised Flood Protection Ordinance. This group, in a limited capacity, assisted staff in the development of the proposed Ordinance. The members of the committee include John Broadbrooks, Barber Melton, Karl Koon, Karen Cragolin, Paul Szurek and Bob Smith. This Group will continue to meet to discuss floodplain related regulations and guidelines.

Mr. J. P. Johns, PE, Principal with McGill Associates, said that the following sections of the Code of Ordinances will need to be amended: (1) Article II, Section 7-2-5, Definitions; (2) Article V, Section 7-5-12, Floodplain Development; (3) Article XII, Section 7-12-1, Flood Protection; and (4) Article XVIII, Section 7-18-2, Penalties and Violations.

He then explained in detail some of the following major changes: (1) Some definitions related to flood ordinance terminology have been added or modified as required by FEMA; (2) The regulatory flood elevation (freeboard above the base flood elevation) is set at 2 feet for both commercial and residential. Currently it is 2 feet for residential and 1 foot for commercial; (3) No new habitable structures or substantial improvements to habitable structures shall be permitted in floodways and non-encroachment areas, except this subsection requirement shall not be applicable to structures that have substantial damage; and (4) No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted in the floodway unless: (a) It is demonstrated that the proposed encroachment will not increase the base flood elevations during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed by a registered professional engineer in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment. Utilities in the floodway now must provide a No-Rise impact analysis (not required in the current ordinance). This is required by FEMA.

Mr. Johns then outlined the following processes: (1) Public Meeting held on November 17, 2009; (2) Approved by NC Floodplain Mapping/FEMA on November 19, 2009; and (3) Asheville Planning and Zoning Commission on November 19, 2009, unanimously approved the ordinances with one exception as it related to discontinued uses in the nonconforming section of 7-12-1. Originally proposed 365 days was modified to 2 years to be consistent with the UDO.

Council action is requested to conduct the public hearing and then act upon the recommended modifications to the ordinances.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy closed the public hearing at 8:09 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3809. This motion was seconded by Councilman Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 25 - PAGE**

Councilman Mumpower moved for the adoption of Ordinance No. 3810. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 - PAGE**

Councilwoman Cape moved for the adoption of Ordinance No. 3811. This motion was seconded by Councilman Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 25 - PAGE**

Councilman Mumpower moved for the adoption of Ordinance No. 3812. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 - PAGE**

**V. UNFINISHED BUSINESS:**

**A. UPDATE ON ANNEXATION AGREEMENT DISCUSSION WITH THE TOWN OF WOODFIN**

Mayor Bellamy provided Council with the two Town of Woodfin's counter-proposal maps (received one day earlier in the afternoon) regarding (1) the Erwin Hills/Lees Creek area (noting the delineating line of New Leicester Highway); and (2) the line regarding Elk Mountain Scenic Highway to the Blue Ridge Parkway. As this was the last meeting of the current Council, she felt it was appropriate to let the entire body know of Woodfin's counter-proposals.

City Attorney Oast provided Council with three detailed maps of the Erwin Hills/Lees Creek area; UNC-Asheville area; and the Merrimon Avenue/Weaverville Road area.

In response to Councilman Newman, it was City Attorney Oast's understanding that there is no disagreement with the Town of Woodfin on the two boundary adjustment areas (that would not be part of the annexation agreement) of (1) the Reynolds Mountain boundary adjustment area, subject to the N.C. Dept. of Transportation's approval; and (2) the UNC-Asheville boundary adjustment area.

Councilman Newman moved to (1) endorse the proposal submitted by the Town of Woodfin as to Elk Mountain Scenic Highway; (2) reaffirm the City's position as to the Reynolds Mountain boundary adjustment area, subject to the N.C. Dept. of Transportation's approval; (3) reaffirm the City's position as to the UNC-Asheville boundary adjustment area; and (4) reaffirm the City's position regarding the Leicester/Erwin Hills area (3.54 miles in the City's extraterritorial jurisdiction area be in Asheville) along with the City's commitment not to annex into Leicester Township for three years contingent upon the same commitment by the Town of Woodfin. This motion was seconded by Vice-Mayor Davis.

In response to Councilman Mumpower, Mayor Bellamy said that the City put a proposal forward to the property owner of the Sherwood Heights area; however, the property owner chose to continue with his voluntary annexation request into the Town of Woodfin, which Woodfin recently annexed.

Councilman Mumpower felt that all meets with the Town of Woodfin should be held in an open forum and property owners in the affected areas should be allowed to have input into that process.

Ms. Betty Jackson urged Council to be sensitive to the people who live in the area that the City of Asheville and the Town of Woodfin are talking about annexing. She asked for transparency in all discussions.

Mr. James Sheeler urged for the City to stage a forum where people can express their feelings on annexation, noting that there is no transparency in the process.

Ms. Carolyn Williamson also asked for transparency in the annexation process, noting that it is expensive for people in the affected area to fight the process.

Vice-Mayor Davis said that Asheville does not have an interest in extending the current City limits to the area Woodfin tried to annex. We have been in dialogue with Woodfin regarding future growth.

Councilman Newman stressed that Asheville believes it's a good idea that as cities grow, through whatever means, there will be areas that make sense to annex. The City is simply trying to come up with a general agreement of the City's boundaries as they will not be the same in 30 years as they area now. It makes sense for both bodies to come up with a shared vision.

Councilman Mumpower noted that there are no planned annexations by the City of Asheville.

City Attorney Oast said that prior to an annexation a public hearing is required to be published, but individualized notices are not required.

At the request of Mayor Bellamy, it was the consensus of Council for City staff to contact people in the area affected by the agreement if the agreement goes forward.

The motion made by Councilman Newman and seconded by Vice-Mayor Davis carried unanimously.

## **B. CONSIDERATION OF RESOLUTION REQUESTING FINAL DECISION AND CONSTRUCTION OF THE I-26 CONNECTOR**

Mayor Bellamy said that Mr. Davis Gantt, Chairman of the Buncombe County Board of Commissioners, has requested that the Mayors of the City of Asheville, Town of Black Mountain, Town of Biltmore Forest, Town of Montreat, Town of Weaverville and Town of Woodfin to join in on a resolution requesting final decision and construction of the I-26 Connector. Said resolution is requesting that the N.C. Dept. of Transportation take into consideration all of the information gathered to this point and expedite any additional requirements to enable the construction of the I-26 Connector to begin as soon as possible.

Councilman Newman felt that the completion of the project as quickly as possible is a vital goal, but is not the only goal that we have for the project. Every time Council has adopted a position on this, we have included a request that it be completed as quickly as possible as part of the resolution. His concern is that we not only want to get the project completed quickly, but we want to get it done right. Therefore, he moved to add the following additional language to the resolution: "WHEREAS, we wish to thank the NCDOT for considering the concerns of the community and the design of this important project, especially the concerns of the neighborhoods that will be most directly affected by the project, including west Asheville; and WHEREAS, we also wish to thank the NCDOT for taking into consideration local land use plans as it weights on the decisions about the alternatives including the Unified Development Ordinance, the 2025 Plan, the Wilma Dykeman Riverway Plan and other city plans in previous resolutions from the City Council; and WHEREAS, we also appreciate NCDOT's efforts to continue working with the community to hone the alternatives in order to achieve the best possible design." This motion was seconded by Councilman Russell.

When Mayor Bellamy asked for public comments, none were received.

There was discussion, initiated by Vice-Mayor Davis, about how Asheville could amend the language of this resolution, which has been already adopted and signed by the other municipalities. Mayor Bellamy suggested the resolution be adopted as presented by Chairman Gantt and include a cover letter addressing Councilman Newman's additional language request.

Councilwoman Cape felt Asheville should have the ability to add additional language since the Connector is going through the center of our community. She fully supported the unified resolution, but suggested since this is not time sensitive, she suggested the amended language be re-circulated to the other municipalities and it be re-considered by Council in January.

Mayor Bellamy explained that this request is coming to Asheville at this time due to the fact that the Buncombe County Commissioners scheduled their meeting with City Council during the middle of our election process. She had suggested they postpone meeting with Council until the election was over to review their respective goals. During that time the Commissioners met with all the other municipalities and obtained approval of the resolution. The meeting with the Commissioners will be scheduled in January, 2010.

Councilman Russell suggested that instead of amending the body of the resolution with the three additional Whereas' that the resolution be amended by adding an additional resolved paragraph, as crafted by Councilman Newman.

It was the consensus of Council to delay consideration of this resolution until the joint meeting with the Buncombe County Commissioners in order to advise them of Council's concerns. Mayor Bellamy said that she would contact Chairman Gantt with Councilman Newman's proposed language to see if there is consensus to amend the resolution. Councilman Newman and Councilman Russell withdrew their motion.

## **C. DISCUSSION OF LIVING WAGE POLICY FOR SERVICE CONTRACTS**

American Recovery & Reinvestment Project Manager Brenda Mills said that this is the consideration of a resolution adopting a living wage policy for general service contracts.

The purpose of this staff report is to provide additional analysis on the application of a living wage policy to City of Asheville contracts. At its meeting on October 28, 2008, City Council asked staff to provide information on: (1) options for applying a living wage policy to contracts awarded by the City of Asheville; (2) the estimated fiscal impact to the City of Asheville if a policy were implemented; (3) the administrative costs incurred by the City for monitoring such a policy; (4) the estimated administrative costs to contractors; and (5) additional stakeholder input.

This direction was preceded by three dates on which a living wage policy was considered by City Council. The Asheville-Buncombe Living Wage Campaign first presented the item to City Council at its meeting on March 13, 2007. On May 22, 2007, City Council established a living wage for full- and part-city employees at \$10.86 per hour for employees without health insurance and \$9.50 per hour for employees with health insurance. City Council then directed staff to conduct additional analysis on the financial impact of a living wage policy for City contracts at its meeting on October 28, 2008. This report addresses the City Council direction received at that meeting.

### (1) Options for applying a living wage policy to city contracts

State purchasing law is complex given that the law prescribes bidding and award procedures for certain types of contracts that meet specific dollar thresholds. Staff has conducted research and consulted with the North Carolina School of Government to determine what kinds of contracts are best suited for consideration of a living wage policy. A summary of those conclusions are presented in the table below.

Type(s) of contract	Advisable for living wage policy?	Why or Why not?
<ul style="list-style-type: none"> <li>Construction or repair work \$500,000+</li> <li>Purchase of apparatus, supplies, materials, or equipment \$90,000+</li> </ul>	No	State law requires formal, competitive bid procedures and that the contract is awarded to the "lowest responsible bidder taking into consideration quality, performance and time specified...". Application of policy may be in violation of the law.
<ul style="list-style-type: none"> <li>Construction or repair work \$30,000-500,000</li> <li>Purchase of apparatus, supplies, materials, or equipment \$30,000-90,000</li> </ul>	No	State law requires informal bidding and contracting procedures and that the contract is awarded to the "lowest responsible bidder taking into consideration quality, performance and time specified...". Application of a living wage policy may be in violation of the law.
<ul style="list-style-type: none"> <li>Construction contracts for building projects \$300,000+</li> </ul>	No	State statutes the manner in which these projects are specified, bid and awarded. Application of a living wage policy may be in violation of the law.
<ul style="list-style-type: none"> <li>Professional services including architectural, engineering and surveying services</li> </ul>	No	State law prescribes special requirements for the procurement of these services and stipulates that an award must be based on qualifications. Application of a living wage policy may be in violation of the law.
<ul style="list-style-type: none"> <li>General service contracts of any amount</li> </ul>	Yes, with considerations	State law prescribes no procurement or bidding procedures for most general service contracts. General service contracts \$25,000+ are covered by the City of Asheville's contract policy, which states that three informal quotes should be obtained and that the contract be awarded to the lowest responsive bidder. Application of a living wage policy may be in violation of the city's contract policy. The policy would have to be amended to accommodate provisions of a living wage policy. In addition, the volume of contracts in this category may be administratively difficult to manage if a living wage policy were applied. Outside agency contracts would fall within this category.
<ul style="list-style-type: none"> <li>Any contracts under \$30,000 except for professional services including architectural, engineering and surveying services</li> </ul>	Yes, with considerations	A city may use any procedure it deems appropriate for any contract under \$30,000, with the exception of professional service contracts that must be awarded based on qualifications. Contracts under \$30,000 are covered by the city's contract policy, which states that at least two price quotes should be obtained before awarding a contract. The volume of contracts in this category may be administratively difficult to manage if a living wage policy were applied. Omitting contracts for the purchase of goods from the policy would alleviate some of the volume while having a limited impact on the goals of a living wage policy because most goods and supplies are produced outside the local area. Outside agency contracts would fall within this category.

Given this analysis and taking into consideration the legal and administrative factors associated with implementing a living wage policy, staff would recommend a defined scope of contracts for City Council when consideration of this policy. This scope would include general service contracts between \$5,000-30,000.

## (2) Fiscal impact to the City of Asheville's contracting costs

In order to ensure bidding practices are fair and that contract awards are not determined on the ability of the contractor to pay a living wage to employees, it is the best practice for governmental entities to bear the cost of requiring a living wage as part of the contract.

Unfortunately, the ability to estimate the financial impact a living wage policy would have on general service contracts is limited by data management capabilities with the City's current financial management software (HTE), the lack of hourly wage information in current service contracts, and the reluctance of private business owners to share what they consider to be proprietary or sensitive information.

As an alternative, staff has analyzed samples of general service contracts in an effort to present a snapshot of what the financial impact might be. Information compiled by staff shows:

- Among all registered vendors with the city, general service contractors make up the largest number (see Chart 1), and so a living wage policy in this category has the potential to impact the most vendors.
- At the same time, most vendors in this category provide general services like appraisers, information technology vendors, electrical contractors, demolition services, vehicle repair and environmental services. These service areas typically pay at or above living wage levels, as shown by a sampling of current general services contracts (see Chart 2). Service providers who may not meet living wage requirements include custodial and landscaping services. These contracts may have a cost increase if a living wage is required (see Chart 3 for vendor estimates on contract increases).

**Chart 1. Breakdown of Vendors registered with the City of Asheville**

Type of Vendor	Number Per Category	Percentage of Total
Service	780	19.4%
Professional	54	1.3%
Procurement	529	13.2%
Construction	60	1.5%
Government Agencies	95	2.4%
Non-Profits	244	6.1%
Employees	456	11.4%
Citizens / Individuals	1794	44.7%
<b>Total Vendors</b>	<b>4012</b>	

**Chart 2. Sampling of city contracts comparing current wages to living wage standards**

Contract Type	Current Contract Price or Hourly Wage	Cost difference to adding a Living Wage
Concrete Cleaning	\$12.00 to \$15.00 / hour	None
Door Controls & Repair	\$17.50 / hour	None
<b>Janitorial Contract</b>	<b>\$7.00 to \$9.00 / hour</b>	<b>\$2.35 to \$4.35 / hour</b>
<b>Landscaping &amp; Mowing</b>	<b>\$9.00 to \$10.00 / hour</b>	<b>\$1.35 to \$2.35 / hour</b>
Legal Services	\$200 / hour	None
Mail Management	\$10.00 and up an hour	None
Painting	\$12.00 / hour	None
Surveying service	\$50.00 to \$120.00 an hour	None
Utilities Contractor	\$12.00 and up / hour	None
Vault Services	\$16.00 and up an hour	None
Waste Management	\$12.00 and up an hour	None

**Chart 3. Sampling of city service contracts with current wages comparing with living wage rate of \$11.35**

Contract Type	Current Hourly Wage	Current Annual Contract Price	Cost differential if Living Wage is incorporated (estimated by vendor)	Benefits Provided
<b>Custodial</b>	\$8.00	Janitorial (7)		

	\$10.00 Lead Worker				
	\$15.00 Supervisory staff				
	(1)	\$86,400.00	+ \$17,108.80		Sick and Annual
<b>Mowing Contract #1</b>	Equip Operator \$12				One week paid vacation only
	Supervisor \$14	\$33,012.00	None		
<b>Mowing Contract #2</b>	Five Seasonal FT Employees	\$60,655.00	+ \$9,648.00		No employer benefits

### (3) Administrative costs for monitoring a living wage policy

If a living wage policy were implemented for general service contracts \$5,000-\$30,000, staff would recommend budgeting funds for the City to contract for auditing services during the first year of implementation. The auditor would be charged with reviewing certified payrolls provided by vendors for a sample percentage of all contracts. Staff estimates the costs for these services to be \$10,000-15,000, although they may be more or less depending on the number of contracts executed during the year.

### (4) Administrative costs for contractors

Currently, it is the best practice for governments to absorb incremental costs associated with a living wage policy so there is not a financial impact to the vendors doing business with the government entity. These costs would be built into the contracted fees that get passed along to the City of Asheville. According to the Asheville-Buncombe Living Wage Campaign, as of February 2009, the current living wage rates are \$11.35 per hour for employees with no employer provided health benefit and \$9.85 per hour for employees with employer paid health benefit. These recommended wage rates have increased since Council approved a living wage for city employees.

### (5) Additional stakeholder input

There was collaboration with the Chamber of Commerce to conduct a survey to gauge business owners' thoughts on the living wage. This survey was sent to Chamber members and minority business owners in February 2009. The survey was also sent to stakeholder groups such as the Asheville-Buncombe Living Wage Campaign and the Council of Independent Business Owners (CIBO) to provide to their members.

#### Policy considerations:

Given the limited availability of data to estimate costs associated with implementing a living wage policy, staff would offer the following options for City Council consideration:

#### **Option 1 – Gather additional contract data January-June 2010 for further evaluation**

Without more specific data about how a living wage would affect the cost of general service contracts, staff could begin requiring contractors to provide two sets of cost proposals during the next six months, one for a standard bid and one that would include the incremental costs necessary to cover a living wage requirement. Staff could use the data provided over this timeframe to more accurately estimate the costs associated with a living wage policy.

#### **Option 2 – Implement a living wage policy for general service contracts \$5,000-30,000**

This option would allow the City to apply a living wage policy to a limited number of contracts, allowing staff to assess the overall financial and operational impacts prior to broader policy application. Under this option, staff would recommend applying living wage provisions to general service contracts between \$5,000 and \$30,000 for a one year period beginning July 1, 2010. A program design and budget would be developed by staff for inclusion in the FY 2010-2011 budget.

Pro:

- Further progress in achieving living wage policy objectives.

Cons:

- Potential loss of vendors.
- Potential increase in service contracting and administrative expenses.

If accountability is required with implementation, audit services estimated at \$10,000-15,000 would be required. Staff is unable to quantify the impact of such programs on contracting costs at this time.

Staff recommends City Council receive this information and provide direction on the next steps in consideration of a living



wage policy for the City of Asheville.

Councilwoman Cape suggested delay on this matter for clarification on any legal factors associated with implementing a living wage policy. She questioned why the City would have to bear the cost of requiring a living wage as part of the contract, since the City would be contracting with the low bid and that could be a requirement.

Councilman Newman agreed with Councilwoman Cape and felt the City should require the contractor to pay a living wage.

In response to Councilman Newman and after Ms. Mills explained that the City of Durham and Durham County have living wage policies which they apply to general service contracting, Councilman Newman asked for a broader sampling of other communities.

Councilman Mumpower explained why he did not support this concept. He believed in the concept of people making a decent living, but not this way. He felt we are manipulating the system for a few people and creating, what he believed, a dishonest system. He felt we need to keep fighting the illegal immigration pool that is affecting wages.

Councilman Miller moved to direct staff to gather additional contract data from January-June 2010 for further evaluation and report back to Council. This motion was seconded by Councilman Newman.

Councilman Miller felt there may be some unintended consequences of implementing a living wage policy and would be interested in seeing that impact.

Vice-Mayor Davis, small business owner who does pay a living wage, has spoken to other small business owners who could not afford to bid on projects if they are required to pay a living wage. Contracts from \$5,000-30,000 will affect a lot of small businesses. He felt it was the wrong time to start this policy that may affect existing jobs because due to our economy some businesses are barely surviving now. He would be interested in seeing additional data; however, couldn't support staff spending a lot of time on the details at this time.

Councilman Newman withdrew his second in that he felt additional information was needed; however, this is a bigger public policy issue and felt the new Council should decide on whether this will be a priority.

Councilman Mumpower then seconded Councilman Miller's motion.

Ms. Sarah Osmer, Director of Just Economics, let Council know that there is a lot of research available on what other cities have done in implementing a similar policy and they have found that the budgetary cost to contractors is less than 1/10<sup>th</sup> of 1% of their overall budget. It is also important to note that we are talking about 5 service contractors (janitorial and lawn service) and we should be able to collect the information quickly. She provided Council with a Living Wage Compliance Form that Durham County uses and it does not require an outside auditor. She felt the cost of \$10-15,000 for auditing services seems high and noted some cities fold that duty into a current staff person's responsibility. She felt Council should not delay on this issue.

Mr. David Rigby, intern with Just Economics, provided Council with a form that describes how Durham County measures compliance. He felt that Council should act on this policy issue on a more timely fashion.

Ms. Laura Copeland, with the Asheville Area Chamber of Commerce, supported staff being given additional time for further analysis.

Mr. Greg Goren, with Children First Communities and Schools, urged Council to act on this issue sooner because budget discussions will almost be completed by the time the additional research is presented to Council. He ultimately hoped for a living wage for service contracts.

Mr. James Sheeler urged Council to adopt a living wage policy for service contracts.

In response to Councilman Mumpower, City Manager Jackson explained the research staff would be conducting in the 6-month timeframe; however, if Council is only interested in taking other people's research, then that can be done in a shorter period of time. Director of Administrative Services Lauren Bradley also explained that the 6-month process was not to miss the budget process, but to coincide with it.

Mayor Bellamy said that at Council's retreat there will be an opportunity to hear an update on major issues and at that time Council can decide on whether they want this issue to move forward or not. If it moves forward, then staff can proceed with obtaining data from the new software and obtain additional research, then Council can consider its options during budget deliberations.

Councilman Miller and Councilman Mumpower withdrew their motion.

**D. RESOLUTION NO. 09-254 - RESOLUTION APPROVING A FUNDING PLAN TO COMPLETE \$2.3 MILLION IN STORMWATER CAPITAL IMPROVEMENT PROJECTS**

Director of Public Works Cathy Ball said that this is the consideration of a resolution directing the City Manger to include \$2.3 million for stormwater capital improvement projects in a comprehensive bond package to be financed in December 2009.

In 2005, City Council established a Stormwater Utility Enterprise Fund. Of the approximate \$2.5 Million budget, \$300,000 was dedicated annually to capital improvement projects. Several projects have been completed since Fiscal Year 2006. These projects include Simpson Street, Richmond Hill Drive, Greenleaf Circle, South French Broad to Patton Avenue, All Souls Crescent, and Atlanta Avenue, Burton Street, and Bryant Street drainage improvements.

Staff has identified several additional stormwater capital projects that need to be completed. Some of these projects include failing storm drainage pipes while others are necessary to improve water quality. A list of additional projects that need to be completed is provided below:

Priority	Description	FY 11	FY 12	Total
1	Stormwater Phase II Environmental Compliance - City Vehicle Wash Bay	\$300,000		\$300,000
2	Old Toll Road Drainage Improvements	\$350,000		\$350,000
3	North Bear Creek (from Johnston Blvd to W. Rash Road) Drainage Improvements	\$309,000		\$309,000
4	Town Branch Water Quality Improvement	\$125,000	\$425,000	\$550,000
5	Evelyn Place Drainage Improvements	\$55,000		\$55,000
6	Fairway Drive Drainage Improvements		\$101,000	\$101,000
7	Ballentree Subdivision Drainage Improvements		\$218,000	\$218,000
8	Gardenwood Road Drainage Improvements		\$62,000	\$62,000
9	Michigan Avenue Drainage Improvements		\$274,000	\$274,000
10	North Market Street Drainage Improvements		\$85,600	\$85,600
	<b>Total</b>	<b>\$1,139,000</b>	<b>\$1,165,600</b>	<b>\$2,304,600</b>

The aforementioned projects are currently not included in the Fiscal Year 2009-10 adopted stormwater capital improvement budget. In August 2009, staff recommended to the Finance Committee that one option would be for the City to appropriate stormwater capital reserve funds (i.e. fund balance) to fund some of the projects listed above.

Since that time, staff has done further analysis. The approximate capital reserve balance in the Stormwater Enterprise Fund is \$1.1 Million. Finance staff recommends that we maintain at least a 40% fund balance in the capital reserve or approximately \$1 million (consistent with fund balance policy for the water fund) to cover unforeseen emergencies and to provide adequate cash flow. Therefore, there is not a significant balance in capital reserve account to complete the capital projects.

As an alternative, staff is recommending that Council indentify the aforementioned projects as high priorities and direct staff to include them as a part of the fiscal Year Fiscal Year 2009-10 financing package that will be issued in the December/January timeframe. Any additional debt service costs associated with adding these projects to the current package will be paid from the Stormwater Utility Enterprise Fund through line item transfers

**Pros:**

- This recommendation would allow the City to complete some significant capital stormwater improvements to help reduce damage to life and property.
- This recommendation would allow the City to comply with a State mandate to contain water runoff from vehicle and equipment washing.
- This recommendation would improve water quality in the Town Branch Watershed.
- This recommendation provides for implementation of the Dingle Creek Master Plan

**Con:**

- Based on initial estimates, financing these projects will require a commitment of approximately \$185,000 in annual debt service costs from the Stormwater Utility fund for the next 20 years.

The first debt service payment may come due in June 2010; therefore, staff is prepared to pay approximately \$95,000 from the current Stormwater Enterprise Operating Fund through line item transfers. Thereafter, debt services costs would be approximately \$185,000 annually. The Stormwater Fund's proposed Fiscal Year 2010-11 revenue structure may need to be adjusted to

accommodate the additional annual debt service costs.

The consideration of a resolution directing the City Manger to include \$2.3 million for stormwater capital improvement projects in a comprehensive bond package to be financed in December 2009.

Councilman Mumpower felt that the need is compelling; however, he could not support the action due to the economy climate.

In response to Mayor Bellamy, Ms. Ball said that there is \$1.1 Million in the stormwater savings account, which is about 45% of the revenues that are generated every year.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-254. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **RESOLUTION BOOK NO. 32 – PAGE 288**

#### **E. CONSIDERATION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH LANDSCAPES UNLIMITED LLC FOR THE INSTALLATION OF A NEW IRRIGATION SYSTEM ON THE BACK NINE HOLES AT THE ASHEVILLE MUNICIPAL GOLF COURSE**

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Landscapes Unlimited LLC for the installation of a new irrigation system on the back nine holes at the Asheville Municipal Golf Course, for an amount not to exceed \$238,000.

City Council approved \$300,000 as part of the City's Fiscal Year 2009-10 capital improvement budget for the irrigation system and back flow preventers at the Asheville Municipal Golf Course. The City issued a request for proposals for the project and the lowest, responsible bid was received from Landscapes Unlimited, LLC, located at 1201 Aries Drive, Lincoln, Nebraska, for a cost not to exceed \$238,000. This expense, along with the cost of and the installation of a water tap and back flow preventers will total about \$265,000.

This action complies with the City Council Strategic Operating Goal in the Green Focus Area in that it achieves long term energy goals to reduce electricity cost and conserve water, and it supports the operation and maintenance of all city parks. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it ensures a continued high level of service in the park system via strategies that address maintenance and safety improvements.

Pros:

- The contract amount plus the cost of the water tap and backflow preventers will not exceed the approved project budget of \$300,000.
- The new irrigation system will replace an old and antiquated system that is manually operated and in continuous need of repair.
- The new system will save considerable time and money in the form of staff time, repair costs and water use.
- The new system will increase water efficiency while improving overall playability of the golf course.
- Water and cost savings due the replacement of an old, leaking and obsolete system.
- Back flow preventers are required by the Water Department and will put the Golf Course in compliance with public health and safety standards.

-  
Con:

- There will be some inconvenience to golfers during the time of construction and installation however construction will occur during the non-peak season.

- Three hundred thousand dollars was approved in the City's Fiscal Year 2009-10 Capital Improvement Budget for this project.

- Staff recommends City Council to authorize the City Manager to enter into a contract with Landscapes Unlimited, LLC not to exceed \$238,000 for the installation of an irrigation system on the back nine holes of the Asheville Municipal Golf Course.

In response to Councilman Mumpower, Mr. Simmons said that the Golf Course has not broken even on the Golf Course since the City took over operation from the County. They do not plan a subsidy from the City this year.

Councilman Mumpower felt this is a nice program but not necessary, and due to our budget realities going forward, he could not support this action.

Throughout discussion, and in response to Councilman Newman, Mr. Simmons said that this contract will allow the City to be in compliance with public health and safety standards and will also give us the technology to manage the system.

Mayor Bellamy agreed that the project needed to happen, but felt that due to the anticipated budget shortfall and since this will come out of General Fund dollars, she would prefer to delay the process.

When Councilwoman Cape asked if there are fines associated with the back flow preventer requirement, Mr. Roderick said that we have received notice of violations, but no official notice of fines yet.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of the resolution. This motion was seconded by Councilman Miller and failed on a 2-5 vote, with Councilman Russell and Councilman Miller voting "yes."

**F. DISCUSSION OF VARIOUS STRATEGIES PROPOSED IN THE DOWNTOWN MASTER PLAN RELATED TO PROJECT REVIEW PROCESSES**

Mayor Bellamy thanked the Downtown Commission members for the enormous amount of time they have devoted to the Downtown Master Plan process. Due to the lateness of the evening and in order to give the item the proper attention by the proper body, she felt this should be considered by the new Council.

Councilman Mumpower moved to postpone action on this item. This motion was seconded by Councilwoman Cape and carried unanimously.

Planning & Development Director Judy Daniel said that when this is heard by Council, they will be pleased to see that there is virtually consensus on the first group of issues and that guidance is needed only on one issue.

**G. RESOLUTION NO. 09-255 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE DOWNTOWN DEVELOPMENT AGREEMENT DECISION MAKING PERIOD FOR THE PROPOSED PARKING GARAGE AT 51 BILTMORE AVENUE TO INCLUDE AN EXTENSION OF THE OPTION TO PURCHASE THE PROPERTY LOCATED AT 51 BILTMORE AVENUE FOR SIX ADDITIONAL MONTHS FROM JANUARY 1, 2010, TO JUNE 30, 2010**

Director of Public Works Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to extend the Downtown Development Agreement decision making period for the proposed parking garage at 51 Biltmore Avenue to include an extension of the option to purchase the property located at 51 Biltmore Avenue for six additional months from January 1, 2010 to June 30, 2010.

In October 2008, City Council approved a Downtown Development Agreement with McKibbon Hotel Group, Public Interest Projects and the City of Asheville for the purpose of constructing a parking garage. The design of the parking garage is complete. The architect is in the process of applying for all applicable permits.

As designed, the project consists of the following:

- four hundred ten (410) parking spaces;
- public restrooms;
- four (4) parking spaces for electric vehicles;
- ten (10) bike lockers; and,
- public art component.

In June 2009, City Council extended the Downtown Development Agreement six months due to the inability of McKibbon Hotel Group to obtain funding due to current economic conditions.

The Downtown Development Agreement is structured to expire on December 31, 2009. The agreement allows for one additional extension. Staff is requesting that Council authorize the City Manager to execute the extension of the agreement which primarily includes the extension of the option for the purchase of the property at 51 Biltmore Avenue.

This project is in alignment with the Strategic Plan by promoting sustainable, high-density, in-fill growth that makes efficient use of resources and by making environmentally efficient capital improvements. In addition, this action complies with the Parking Action Plan adopted by City Council.

Pros:

- According to the findings of the downtown parking study, this area has a deficit of public parking. This parking garage would address this need.
- Project should allow the development of workforce housing more feasibly due to reduced capital requirements for constructing private parking which in turn supports lower priced housing units.
- Capitalize on relationship with mixed use developer who is willing to partner with the City and make private property available for public use.
- Offer the opportunity to leverage public parking as an economic development tool.
- Offers community benefits such as additional jobs and tax base for the City created by the mixed use elements.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.

Cons:

- Public-private partnerships tend to be complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.
- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- The cost of the land is higher than the appraised value. Originally the owner did not want to sell the property but rather lease the property to the City for sixty years. After the City determined that it was a better financial decision for the City to purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

The cost to extend the option for the property at 51 Biltmore Avenue for an additional six months is \$5,000.

City staff recommends City Council authorizing the City Manager to extend the Downtown Development Agreement for the proposed parking garage at 51 Biltmore Avenue to include an extension of the option to purchase the property located at 51 Biltmore Avenue.

Councilman Mumpower felt it was reasonable to extend this agreement; however, he believed that with the economic reality at hand and the investment of City dollars, he could not support this action.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-255. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no".

**RESOLUTION BOOK NO. 32 – PAGE 289**

**H. UPDATE ON WATER SERVICE REQUEST FROM CHAPEL HILL CHURCH ROAD AREA**

Water Resources Director Steve Shoaf said that purpose of this memorandum is to provide the Council requested construction cost estimate for a waterline and associated fixtures along Chapel Hill Church Road and Gilmore Drive, which is outside the City limits. This line is intended to provide water service to parcels directly connected to these two roads. This cost estimate was prepared by our Water Engineering Division.

Using a map, he explained that the installation would require approximately 2200 linear feet of 8" ductile iron pipe, approximately 400 linear feet of 6" ductile iron pipe, and approximately 400 linear feet of 2" copper line. In addition this job would require about 350 feet of ¾ inch copper line for service connections from the water main to the meter. The estimate includes a provision for the necessary fittings to be used during installation. This installation would also include 6 fire hydrants spaced along the length of the 8 and 6 inch waterlines to be used for fire protection and water quality flushing.

The total construction cost estimate is \$227,630 if the waterline can be installed with minimal (one lane) of paving repair along the road. If there is a need for full-width paving, this would add an estimated \$64,000 to the cost of the project and bring the total up to \$277,070.

This estimate includes design, materials, equipment, and labor costs for installation. As you recall, during the nearby Oaks project, Buncombe County purchased all materials, and the City contributed the design, equipment, and labor for installation. This accounted for approximately 44% of the Oaks project costs. The included labor costs for the Chapel Hill Church Rd. project is estimated between 35 and 40 percent.

This cost estimate does not include running private water service lines from each meter to the residence. The existing off-premise meters would be abandoned and property owners would bear the expense of the connection from the meter to the house. Owners of property developed at a later date would be expected to pay all tap and meter labor and fees similar to other connections to our system.

The preferred treatment of contaminated ground water is air stripping followed by carbon adsorption, which can create an air quality issue. A possible alternative to running water lines into this area would be the installation of carbon filtration "point of entry" devices attached to the individual wells. This option would be effective for low levels of contamination and would buy time and peace of mind for some whose wells are not contaminated at this time. A locally represented business provided budget estimates of \$4,000 for purchase or \$2,000 per year for lease of the necessary equipment. If purchased, the maintenance and testing costs are borne by the owner, and if leased, maintenance costs are covered by the supplier while testing costs are again borne by the end user. At \$4,000 per installation, the initial cost for 21 installations would be approximately \$84,000 and may represent a viable alternative to an expansion of the distribution system. Similar to the installation of waterlines, this option would need further investigation to explore practicality and efficacy.

This memorandum is provided for informational purposes only.

In response to Councilman Russell, Urban Planner Blake Esselstyn said that this property is entirely in Buncombe County. Using a map, the distance between the road and the City limits would be more than 1 mile. As a crow flies, the distance is approximately 1,000 feet from the City limits; however, one large parcel is not included in the discussions.

In response to Councilwoman Cape, Mr. Shoaf said that the closest waterline is on Pinner's Cove Road and the property owners have asked for an extension of a waterline up Chapel Hill Church Road up to Gilmore Drive. The entire length of line would be approximately 2,600 feet of waterline.

In response to Mayor Bellamy, Mr. Shoaf said that the line on Pinner's Cove Road was installed by developers to serve communities further out.

Mayor Bellamy felt it would be appropriate to send the City's analysis information to Buncombe County to assist them in their discussions. She noted that during the Sullivan Act discussions, it was clear that Buncombe County owns the lines they have installed outside the City limits. She felt this would be an opportunity for the City to ask them to address this concern that is outside the City's jurisdiction.

In response to Vice-Mayor Davis, City Manager Jackson said that his interpretation of an e-mail circulated is that the County is not extending services at this time as they did to the Oaks Subdivision. They would seek remedy from the Environmental Protection Agency and the N.C. Dept. of the Environment and Natural Resources based upon verified well contamination.

It was the consensus of Council to have the City will transmit all their information via letter to Buncombe County and copy the property owners who have reached out to City Council as well as Senator Burr. In addition, also communicate the City's willingness to partner with other governmental entities in extending water lines to the Chapel Hill Church Road area.

## **VI. NEW BUSINESS:**

### **A. EMPLOYEE FITNESS POLICY**

#### **Councilman Mumpower Proposal for Annual Fitness Screen for Public Safety Employees**

Councilman Mumpower said that we appear to have a number of public safety officers who may not be in a position to handle the physical demands of their respective responsibilities. The lack of physical fitness places officers at risk and limits their effectiveness in addressing the physical demands associated with their good efforts.

His proposal is that the City of Asheville establishes a policy of annual fitness tests for all public safety employees – including our police officers and firefighters. Based on staff research requested Asheville is the only major city in North Carolina that does not have a fitness testing program for firefighters. One third of North Carolina cities conduct annual physical fitness tests for police officers – Charlotte and the Highway Patrol offer models for consideration.

Methods for implementation of a three step process is as follows:

- Year One – Voluntary participation in a nonbinding physical fitness test.
- Year Two – Mandatory participation in a nonbinding physical fitness test.
- Year Three – Mandatory participation in a binding physical fitness test w/ follow-up mediation as needed.

- Fully fund gym membership.
- Focus is on educating, salvaging, and uplifting our public safety personnel as primary mission.

He provided Council with several e-mail links and noted that the City of Charlotte has had an annual fitness test policy since the early eighties while the Highway Patrol has a semi-annual test. Support is provided through education and resources versus compensatory exercise time.

He said that he initially raised this issue about 3 years ago and have collaborated with the City Manager and staff since that time on exploring potentials. Over the past year staff has completed a thorough study of North Carolina realities on mandatory annual public safety fitness tests. Prior to completing his tenure, he wanted to assure that this issue received formal consideration.

### **Staff Memorandum**

Ms. Lisa Roth, Human Resources Director, provided Council with the following information on physical examinations and fitness testing:

#### Part 1: Police & Fire

A study of annual Medical Exams and Fitness Testing compared the City of Asheville's Police and Fire Departments to similar North Carolina and South Carolina Municipalities. A summary of the findings are shown below.

Municipalities Surveyed: Gastonia, NC; Greensboro, NC; Greenville, NC; Greenville, SC; Hickory, NC; and High Point, NC:

- Annual Physical Exams
  - COA Fire Department – new and current Fire Department employees are required to submit to an annual physical separate from the medical insurance. The Physical includes a medical exam, blood work, EKG, Pulmonary Function and Stress test. The cost is \$350 per employee
  - All other municipalities surveyed require their Fire Department employees to submit to an annual Physical with similar tests included. The only variable is the treadmill stress test requirements. Thirty three (33%) require treadmill stress tests for all ages, 33% is optional based on physician recommendation, and 33% require stress tests for employees age 50 and over.
  - COA Police Department – new Police Department employees are required to submit to a physical, but do not require an annual physical for current employees. Only 1 other municipality surveyed does not offer an annual Physical to their current police department employees, but only recently (2010) changed this requirement due to budget cuts (were offered in 2009). All other police departments require (50%) or offer (25%) an annual Medical Exam to current police department employees.
  - If an employee does not pass the Stress Test as a part of their annual Physical, duty status can be affected. All follow up care is coordinated through Health Services and specialist providers.
- Fitness Exams - The City of Asheville does not require or offer current Fire or Police Department employees to complete a fitness test other than the stress test for Fire Department employees. Both Fire and Police require a fitness exam for new employees.
  - All but one municipality conduct an annual or bi-annual fitness test of their Fire Department Employees. Sixty seven (67%) percent require at least an annual fitness test consisting of tasks similar to the Fire Fighter Physical Agility Test required for new hires.
  - Fifty (50%) percent of the municipalities surveyed had Fitness Committees made up of Fire Department employees in all stations.
  - Sixty seven (67%) percent of municipalities surveyed require at least 1 hour of physical activity per shift for all Fire Department Employees.
  - Thirty three (33%) percent of Police Departments conduct an annual or bi-annual fitness tests that require some form of strength, agility, POPAT or Aerobic fitness level.
  - Municipalities provide the results of fitness testing (fire & police) to employees and fitness committee (if applicable). There is no direct penalty or reward for passing test, but team effort and peer pressure designed to encourage all failures to pass test.

#### Part 2: CDL & Laborer Positions

- New CDL employees and promotions are required to have a limited physical exam that is handled by an Occupational Health Nurse. CDL guidelines indicate this testing should be performed on a regular basis, but not less than every 2 years. This has previously not been tracked or required by Health Services.
- Physical Labor Positions – Neither new nor current physical labor positions require any type of physical exams.

### Part 3: Recommendations

All City employees have access to an Annual Physical through the City's medical insurance plan. Of the estimated 1,721 Adult employees and dependents covered by the medical plan, 565 received Preventive Services/Physical Exams through the medical plan. The average cost under the medical plan was \$360, but individual prices range from \$150-\$1,500 depending on the services included in the exam. These figures may be artificially low since some providers code physicals with a diagnosis code (hyperlipidemia, high blood pressure, etc.). Fire Department physicals are not included in these figures because they are paid under the Fire Department budget.

The following changes would be recommended to the City's New Hire and Annual Physicals:

- Fire Department – No changes to current process of requiring annual physicals paid by AFD budget.
- Police Department – Follow the current Fire Department policy of requiring physicals based on the age of the employee. Most common recommendation is age <30 every 3 years, 30-39 every 2 years, 40+ annual exams. Physicals should be paid out of the APD budget and include hearing, labs, and stress tests. Estimated cost of \$350-\$500 per employee per exam.
- CDL Employees – Continue to provide CDL physicals by Health Services for all new hires. Begin immediately to follow CDL guidelines to track and provide a CDL physical exam by Health Services as required (12-24 months). Estimated impact to budget is additional staffing time and lab fees. Expected annual cost of less than \$10,000.
- Laborers – Require Health Services "CDL-type" Physicals for all new and current employees. These exams should include basic hearing tests, vision, urinalysis and vitals. Health Services is not currently staffed to handle the volume required, but estimate additional nursing staff would be necessary 1-2 days per week. Workers Comp claims may be positively impacted if injuries are discovered and/or documented early.

In response to Councilman Mumpower, Ms. Roth said that the City didn't survey Charlotte, N.C., or the Highway Patrol as they studied cities Asheville's size.

Councilwoman Cape felt an annual fitness test is a form of prevention. She felt more benchmarking information might be needed on how this helps our insurance ratings, what is the offset cost, how many people are hurt on the job that may have benefitted from this program, etc.

When Mayor Bellamy asked for public comments, no one spoke.

Mayor Bellamy felt this program, and others similar to the Asheville Project, the Weight Watchers Program, nutritional counseling, etc., might help to bridge the health insurance gap.

Councilman Mumpower moved to instruct City staff to explore the development of an annual fitness testing procedure for our public safety employees to include voluntary, mandatory and other options and possibilities that could be deliberated by the future City Council. This motion was seconded by Councilwoman Cape and carried unanimously.

### **VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Councilman Mumpower stated that he would be unable to attend the December 8, 2009, organizational meeting of the new Council. It has been his pleasure to serve on City Council and thanked everyone who tried to help him fulfill his role the best way he knew how. He wished everyone the best going forward.

### **VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:40 p.m.

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CITY CLERK

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MAYOR