

Tuesday – February 8, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr. (arrived in meeting at 5:21 p.m.); Councilman Gordon D. Smith; 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**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF MS. KIT CRAMER, PRESIDENT AND CEO OF THE ASHEVILLE AREA CHAMBER OF COMMERCE**

Mayor Bellamy was pleased to recognize Ms. Kit Cramer, President and CEO of the Asheville Area Chamber of Commerce. Ms. Cramer was announced at the Chamber's new President and CEO on November 15, 2010. Prior to accepting the position in Asheville, Ms. Cramer was President of the International Downtown Association in Washington, D.C. Prior to that office, she worked for the Charlotte Chamber of Commerce for 17 years in various management capacities.

**B. CITY RECOGNITION IN NATIONAL ENVIRONMENTAL HALL OF FAME FOR MUNICIPAL SUSTAINABILITY EFFORTS**

Mayor Bellamy said that the City of Asheville is honored to join a league of both national and international organizations and individuals to receive an award from the National Environmental Hall of Fame. This award acknowledges the City for our leadership in energy efficiency, renewable energy and energy conservation.

Ms. Erika Schneider from Sundance Power Systems presented the award on behalf of the National Environmental Hall of Fame, to Mayor Bellamy and Energy Coordinator Maggie Ullman.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2011**

**B. RESOLUTION NO. 11-28 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH THE UNITED STATES OF AMERICA FOR CONTINUED OPERATIONS OF AN ARMY RESERVE CENTER AT 224 LOUISIANA AVENUE**

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the Mayor to execute a Lease Agreement with the United States of America for continued operations of an Army Reserve Center at 224 Louisiana Avenue, Asheville NC.

The property at 224 Louisiana Avenue known as the Army Reserve Center is an 8.857 acre tract on the West side of Louisiana Avenue about 200' from its intersection with Patton Avenue. Although most of the property is generally level, there is a steep slope with rock outcroppings covering the Southeast quadrant of the property. This presents a formidable challenge to further grading of the property, so the useable area is about 6+ acres. The property is currently zoned Institutional.

The property has been leased to the USA since 1950 at a rent of \$1.00 for the entire 50 year term. The single story building and other improvements located on the property were built by the Army Reserve and remain the property of the Reserve with the right of removal for the duration of the lease. The most recent lease was signed in 2000 at an annual rent of \$60,000 with escalations based on the Consumer Price Index.

At this time, the USA has offered to enter into a lease based on a rental rate that is more consistent with market based pricing, as follows:

- (1) Term of five years
- (2) Annual rental fee at an initial rate of approx. \$82,000 per year with 5% annual increases

The USA procured an appraisal of the property to produce the new rental rate. City staff has further reviewed the pricing, by gathering and comparing lease rates of similar size and location within the Asheville market. On both accounts, there appears to be a gap between what is currently being paid by the USA (now \$66,000/year) and the market rate for this property, approximately \$100,000 per year. The new rental rate put forth at \$82,000 and the 5% escalation rate allow a steady increase towards the market based price. The USA would pay for all utilities and other tenant expenses associated with operating the site.

The Notice of Intent to enter into a Lease Agreement with the United States of America was published on January 28, 2011, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility. Strategic real property management, through the renewal lease agreements, presents the City with revenue enhancements to the General Fund.

Pros:

- Enhanced revenue through the lease fee income
- USA provides a valuable public service and is an excellent tenant

Con:

- None

The proposed increase to the lease amount will be built into the upcoming budget cycle for the Fiscal Year 2011-2012 budget. During the next four subsequent years, the lease rate will increase by 5 percent annually. Over the life of the five year lease, the city will realize more than \$450,000 in revenue.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with United States of America on behalf of the City of Asheville.

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 resolution on the Consent Agenda and it would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously.

### **III. PRESENTATIONS & REPORTS:**

#### **A. INTERIM REPORT ON WATER RATE STUDY**

Water Resources Director said that in September 2010, City Council adopted a resolution authorizing Water Resources to enter into a contract with Raftelis Financial Consultants to conduct a Water Rates & Fees Study. Following is a summary of recent action steps that have been accomplished and/or are in progress:

- Organized a kick-off meeting with Water Resources staff to identify the goals, objectives, and expectations of the water rate study.
- Gathered billing, water usage, and meter data to determine if the current rate structure achieves revenue sufficiency, stability, and sustainability and ensures full cost recovery for services rendered.
- Analyzed past, current, and proposed budget data to predict future needs for the following costs: operating and maintenance, salaries, overhead, materials, debt service, Sullivan Act transfer, indirect costs, capital project needs, etc.
- Ensured any changes will be compatible with the new billing software.
- Attended a Finance Committee meeting to provide a progress update and receive feedback on the information presented.
- Benchmarked Asheville with other water utilities as a comparison.
- Developed a rate model with a five-year planning period that will be used to project water rates necessary to support all costs associated with providing water service.
- Propose changes to the existing rate structure to ensure that the water fund continues to be self-supporting while ensuring water customers pay fair and equitable rates.

This project is part of City Council's strategic plans to explore opportunities to ensure effectiveness and value for water fees charged and to operate the City of Asheville to the highest level of fiscal responsibility.

Pro:

- Present a progress report of the water rate study and solicit input to include in the final report.

Con:

- The study is not complete at this time. A final report with findings and recommendations is expected to be completed by April 2011.

Staff is looking for City Council feedback on the information presented by Raftelis.

Mr. Lex Warmath, representing Raftelis Financial Consultants, provided Council an update regarding the status of the Water Rate Study. He said some pricing and community objectives from Council will help them shape the next steps in the rate study.

Using charts, he showed how the revenues are slightly above the expenses for Fiscal Year 2011-12, and they do not see a need to adjust rates for next year in order to meet their revenue requirements. However, based on some assumptions (which he explained in detail), Council will need to do something over the next several years since there starts to be a gap between projected expenses and revenues under current rates.

He explained (1) how Asheville compared to other communities (a) Asheville's water sold is below average for comparable systems; and (b) City's annual capital spending is below average for comparable systems; (2) how Asheville compared to local customers, explaining how Asheville's rates are high, but that was based on Asheville's average customer usage (which is very low). The other cities (Hickory, Raleigh, Cary, Knoxville, Greensboro, Charlotte, etc.) have a tiered structure to encourage conservation; again however, Asheville customers conserve; and (3) how Asheville compared nationally, which for residential customers Asheville is higher than the average and for large industrial users, Asheville is much lower than the average.

He showed statistics on the usage and revenue distribution by class. It showed the majority of usage is by single-family residential and a good part is by multi-family residential; however, there is a much bigger proportion of revenues coming from residential customers than their demand profile would indicate.

He reviewed the following rate structure modification ideas: (1) raise commercial and multi-family rates relative to single family (a) provide more equitable cost recovery; (2) separate irrigation from residential rate (a) targets true to elective usage; and (3) capital improvement charge (a) meter differentials.

In response to Mayor Bellamy, Mr. Shoaf said that there is no recommended increase for Fiscal Year 2011-12. The next step is that Raftelis will prepare the final report which will include not only their findings but recommendations moving forward as well as a computerized rate model where we can plug in different scenarios. Going next year forward they will be going through the normal budget process on how Council like to approach the different scenarios.

In response to Councilwoman Manheimer, Mr. Warmath said that they would like to get some policy direction from Council to generate alternative models. City Manager Jackson said that the sooner we can get the changes in policies, the sooner we can get it considered in the rest of the budget cycle which runs through at least the end of May, 2011.

Out of Council member discussion, they were interested in seeing (1) the rate structure adjusted for single-family residential customers who are subsidizing commercial/industrial users; (2) the rate structure adjusted for single-family residential customers who are subsidizing multi-family users; (3) an incentive plan for conservation; (4) the effect of stopping the Sullivan Act transfers; (5) seeing the commercial/industrial users being more in line with other cities; (6) opportunities to upgrade pumps that will help save energy and money; (7) ways to cut expenses departmentally; (8) what our wholesale customers are paying compared to our peers across the state and if low to gradually increase the rates so they can budget for it in future fiscal years; and (9) separating out the actual Sullivan Act transfers from support services.

It was the consensus of Council that City Manager Jackson instruct Mr. Shoaf to guide the consultant in completing the analysis to include rate adjustments for the March 22 worksession.

### **CLOSED SESSION**

At 5:51 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) 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 N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2)

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 Bothwell and carried unanimously.

At 6:10 p.m., Councilwoman Manheimer moved to come out of closed session and return to the Council meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

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

##### **A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ALLOW THE COMBINATION OF THE STORMWATER UTILITY FEE ONTO THE COMBINED UTILITY BILL**

##### **ORDINANCE NO. 3946 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A MODIFICATION TO THE STORMWATER ORDINANCE**

Mayor Bellamy opened the public hearing at 6:13 p.m.

Stormwater Services Manager McCray Coates said that this is the consideration of an ordinance amend the Unified Development Ordinance (Section 7-12-6) which would allow the combination of the stormwater utility fee onto the Combined Utility Bill. This public hearing was advertised on January 29 and February 4, 2011.

Staff is currently working to improve efficiency by placing the stormwater utility fee on the Combined Utility Bill (water bill). Currently the Stormwater Utility Fee is billed separately, with single family residential properties billed once annually and non-single family properties billed twice annually. The Combined Utility Bill is on a bi-monthly billing cycle. City staff has received requests from numerous individual property owners asking for the combination to take place.

City staff is seeking the ability to combine these utility bills where matching accounts are present and where practicable. For a single family residential property owner who currently receives a stormwater utility bill in the amount of \$28.08 once a year, the utility fee will be placed on the combined utility bill on a bi-monthly basis in the amount of \$4.68. For the non-single family property owner who currently receives the stormwater utility bill two times per year, they will receive the combined utility bill with the stormwater utility fee included which will be one-sixth of their annual rate. For those accounts that are not serviced by another utility, an individual stormwater utility bill will be generated and sent to the property owner on the same billing cycle as currently established.

Staff is asking for this now because the City is in the process of updating the billing software currently used. In addition, the new software allows staff the ability to move forward and provide the citizens better customer service by combining the bills.

The current billing cycle for the stormwater utility fee for single family residents takes place January-February. Non-single properties receive the bill bi-annually in November-December and again in May-June. The proposed changes will begin in July of 2011.

Regarding challenges, (1) customer education will be necessary; (2) not all water accounts are possible to match with the stormwater utility (some stormwater accounts will need to be billed separate from the water bill); (3) customer service staff will need additional training to respond to questions as they relate to the stormwater utility fee; and (4) if the water service is discontinued, individual billing will be required to be sent to the property owners.

This action complies with City Council's Strategic Operating Plan under Fiscal Responsibility in that it (1) Provides more efficiency in current process; and (2) Reduces extra billings for the different services provided by the City.

Pros:

- By placing the stormwater utility fee on the combined utility bill, an increased collection rate from 94% to 98 % is estimated to occur for matched accounts
- This will provide an additional customer convenience by receiving one standardized bill instead of two or more
- This will reduce duplication of administrative costs by the alignment of billings for Water, MSD, Recycling and Stormwater.
- Combination of the utility bills will reduce postage costs and paper use.
- The new utility billing system will facilitate change in process (MUNIS)
- Cash flow will be improved as a result of the combination

Cons:

- Education of the customers will be necessary
- Not all water accounts are possible to match with the stormwater utility (some stormwater accounts will need to be billed separately from the Water Bill)
- Customer Service Staff will need to be educated to respond to questions as it relates to the stormwater utility fee
- If water service is discontinued at a location, separate Stormwater billing may be required to be sent to the property owner under specific circumstances.

Including the stormwater utility fee on the Combined Utility Bill will have a net positive budget impact of approximately \$69,000.

Staff recommends City Council approve the modifications to the stormwater utility ordinance allowing the stormwater utility fee to be placed on the combined utility bill, to be effective July 1, 2011.

A resident on Forest Hill Drive recommended the bills be sent out electronically to save postage.

Mayor Bellamy closed the public hearing at 6:20 p.m.

In response to Mayor Bellamy, Mr. Kevin Hymel, GIS and Application Services Manager, explained that after the system goes live, the process of phasing in electronic billing will be an option.

Mr. Coates responded to Councilman Davis regarding tenant-occupied bills.

In response to Councilman Russell, Councilwoman Manheimer said that the Finance Committee is discussing changing the name of the bill. City Manager Jackson said that staff would provide that information to Council in a memorandum.

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

Councilman Smith moved for the adoption of Ordinance No. 3946. This motion was seconded by Councilman Bothwell and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING RESUBMISSION OF A DENIED CONDITIONAL USE AND SEPARATION REQUIREMENTS**

**ORDINANCE NO. 3947 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING RESUBMISSION OF A DENIED CONDITIONAL USE**

**ORDINANCE NO. 3948 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING SEPARATION REQUIREMENTS**

Mayor Bellamy opened the public hearing at 6:26 p.m.

Planning & Development Director Judy Daniels said that this is the consideration of two ordinances amending the Unified Development Ordinance (UDO) relative to changes to development review procedures regarding (1) resubmission of a denied conditional use; and (2) and separation requirements to be more consistent with adopted plans and goals. This public hearing was advertised on January 29 and February 4, 2011.

Recent development projects have raised concerns regarding the ability to divide larger development projects not supported by the Council as a means to reduce review thresholds effectively circumventing intended Council reviews and/or conditions designed to mitigate the impact of larger projects. The proposed modifications are intended to better reflect the intent of the Council and the 2025 Master Plan in two ways.

The first amendment below would ensure that decisions of City Council to deny development projects are upheld and that the proposed change expands the range of projects that are precluded from going forward after denial by the Council. Currently a Level III conditional use permit is already denied. This expands that to other types and levels of developments. The first amendment is as follows:

“Sec. 7-5-5(e)(3)(d) - Conditional Use approvals, resubmission of denied applications:

d. No application for approval of a ~~conditional use development project~~ development project (conditional use, site plan, project plan) under any approval process (Level I, Level II, or Level III), shall be filed with or accepted by the planning and development department ~~if that project~~ which is identical or substantially similar to a conditional use or conditional zoning application which has been denied by the city council within one year of the final action by the city council denying the request.”

The second change ensures that separation requirements that were intended primarily to assist development projects in commercial areas do not cause unintended impact to residential neighborhoods. This change was proposed by City staff last year. What we had in mind are places like the Airport, which might be doing a runway expansion, parking lot expansion, or an office expansion. They didn't relate to each other, but they were within a contiguous area. Limiting that separation requirement meant Council didn't have to review things that were minor in the greater scheme of what is reviewed. Staff was not considering residential situations when that was proposed and the current development that caused this conservation did bring it to staff's attention. Staff felt that should be corrected. The second amendment is as follows:

“Sec. 7-5-9(b)(1)(c) - Level II Site plan review process:

c. Properties not adjoining or fronting single-family zoning, that are within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such. Properties adjoining or fronting single-family zoning, located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such."

This action complies with the City Council Strategic Operating Plan in that it supports sustainable development practices by ensuring the appropriate levels of review are reserved for high density/higher impact projects where mitigating conditions may be necessary for community compatibility. This action also complies with the 2025 Master Plan in that it supports the goal of providing options for new development while minimizing impact and balancing compatibility with existing neighborhoods.

The Planning & Zoning Commission reviewed these proposed amendments at their January 20 meeting. With 4 of 6 current commissioners present, they voted 4-0 to not support the first amendment (related to applications similar to denied proposals), and 2-2 on the second amendment (separation requirements). Because these amendments were initiated by the staff, they proceed to the Council with these recommendations.

The Commission generally seemed to express concern that the proposed amendments were too closely related to the recent Caledonia project, and needed more time and thought to consider what "unintended consequences" they might cause. Two commissioners supported the change to the separation requirement, supporting the staff position that the UDO change that decreased the separation requirement was not intended for locations that adjoined residential neighborhoods, but for commercial areas.

Pros:

- Will protect the intent of the Council when they deny a conditional use application, and
- Will better protect residential areas from inappropriate higher density/higher intensity development

Cons:

- Will limit development options for properties that were denied a conditional use approval, and
- Will put some additional limits on property in residential areas

City staff recommends City Council adopt the two ordinances amending the UDO.

The following individuals spoke in support of Council adopting the two UDO amendments:

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods (CAN)  
 Ms. Tracy Stubbing, resident on Finalee Avenue  
 Ms. Susan Roderick, member of the Technical Review Committee  
 Kenilworth resident  
 Ms. Miller Graves, resident on Caledonia Road  
 Ms. Roberta Newman, Kenilworth resident  
 Mr. Terry Weeks, resident on Pickwick Road  
 Ms. Teddy Jordan, resident on Normandy Road  
 Ms. Patsy Brison, attorney representing Kenilworth Residents Association

Mr. Mike Butrum, representing the Asheville Board of Realtors, felt City Council should table these amendments in order to give the parties involved the opportunity to meet to find a win/win solution, so there are not any unintended consequences.



Mr. E. Thomison Holman, attorney representing Caledonia Apartments, LLC, explained why he felt the proposed amendments are improper, are inconsistent with prior decisions, sets bad policy and is bad policy for City residents. Procedurally, he believed that this matter is not properly before City Council with regard to the first amendment. There needs to be compliance with Section 7-7-4 and that has not occurred with regard to the amendment regarding the separation requirements. Substantively, circumstances given rise to these amendment and the fast track demonstrate that the amendment has been proposed in direct response to the Caledonia projects and that is an improper purpose. Caledonia respectfully reserves all of its rights and remedies relating to this. Broader issues which City Council needs to consider are (1) Code provisions were not enacted because of one developer or one neighborhood and they not the reasons why the Code should be changed; (2) loss of economic benefits to the community which Council considered when it adopted the economic relief amendments in June of 2009; (3) substantial consideration, beginning in the fall of 2008, was put into the amendments before they passed in March and June 2009; (4) even if City Council did not pass the permanent economic relief amendments, the economic reasons for passing the amendments have not gone away; (5) good projects that could and will have a substantial impact will be killed or hurt by these amendments; (6) if the amendments are adopted, the direct effects will be the projects that won't occur and the indirect effects will be the message sent to other developers weighing whether to invest their own livelihood and dollars in Asheville vs. elsewhere if they feel the rules will or may be changed at any moment; (7) adopting these amendments will establish a bad policy, regardless of what Council may think of the Caledonia projects, will weaken the integrity of the UDO; (8) it's critical that people who consider investing in the City know that the rules are applied equally and know that if they follow the rules they won't be changed in the middle of the process; and (9) understanding that the UDO needs to be malleable, but not such that provisions can be so easily modified or discarded based on isolated perceived negative affects of a particular provision. If Council believes that the benefits to these amendments outweigh the cost, he urged them to table a vote on these amendments and implement the same study and consideration given to when it was passed initially.

City Attorney Oast advised Council that this is an ordinance amendment that will apply not to a particular project, but potentially to many.

Ms. Patty Beaver, representing the Council of Independent Business Owners (CIBO), felt that Council is in such a haste to pass these amendments, that they have not gone through the normal public scrutiny that usually takes place before major UDO amendments are approved. They are unaware of meetings with the normal organizations, such as CIBO, Board of Realtors, the Homebuilders, the Chamber of Commerce, and all the various neighborhood associations in the area. This is unusual since they have always participated on one of the groups or as part of larger committees working on these changes. In the past these efforts have resulted in all kinds of well-thought-out regulations. Their concern is that quick passage leads to unintended consequences that may have been flushed out during the normal process that Council has always followed in the past. She asked Council to consider carefully their actions to make sure that what they are doing will be the best for the entire community. Should Council find it worthwhile to delay for further study, they would certainly be available to participate.

Mr. Rick Grant, developer, felt that changes to the UDO due to knee jerk reaction from one project sends the wrong messages to potential developers. City Council needs to encourage, not discourage, sensible development.

Mayor Bellamy closed the public hearing at 7:08 p.m.

In response to Councilman Russell, City Attorney Oast explained the Planning & Zoning Commission vote. Because one of the ordinance amendments failed to get a positive recommendation, we treat that as a negative recommendation for the purposes of forwarding it onto Council. That is consistent on how we interpret Section 7-7-4 over the years.

In response to Councilman Russell regarding the fast track of the ordinance amendments, City Attorney Oast said that staff has followed the process outlined in the City Code. As far as other interest groups being able to comment, he wasn't aware that that opportunity was ever denied. The Planning staff usually do that kind of outreach or not, depending on the nature of the ordinance.

In response to Councilman Russell, Ms. Daniel said that regarding the Planning & Zoning Commission, they had a quorum. Regarding their lack of support, they expressed their opinions and they had their vote. This type of amendment initiated by staff requires only to go to the Planning & Zoning Commission to get their opinion before it is brought before City Council. Other types of amendments, if rejected by the Planning & Zoning Commission are not brought to the Council. This type of amendment is. Her position in proposing these amendments was that staff heard Council's intent and concerns, and felt it was important to give Council the opportunity to speak toward that in preservation of their intent. This does not stop anything, but gives staff the opportunity to look at something and if it was essentially the same project that the Council had considered before, staff would say that needs to wait one year. If it is substantially different, the project would go forward. Regarding the separation requirements, the amendment is correcting something that was not intended. In terms of quick action, since it came to their attention, she felt it was worthwhile to bring it forward for Council's attention.

When Councilman Russell felt that 1500 feet is a big space, Ms. Daniel pointed out that that was the requirement adopted in 1997 until it changed in 2009.

Councilman Russell felt it would have been helpful to have the minutes of the Planning & Zoning Commission discussion for their review.

In response to Councilwoman Manheimer regarding the first amendment, City Attorney Oast said that since the UDO was adopted in 1997, we have a few other land use processes to use – not only the conditional use permit, but conditional zoning, which did not exist at the time the original language was put in place.

Councilman Bothwell felt both amendments bring more consistency to the UDO. The provision in place regarding resubmission of a denial conditional zoning seems to be the will of the Council. He didn't think that Council thought the same project would reemerge in a different form through a different avenue before the one-year. Regarding the separation requirement, we are just reverting back to what was adopted in the original UDO.

Councilman Smith felt we work hard to streamline a more predictable process for builders in Asheville. This understandable and equitable process was to make it predictable for builders, neighborhoods and Council. Everyone needs to trust in the process.

Mayor Bellamy said that members of Council have previously received copies of the ordinances and they would not be read.

Vice-Mayor Newman moved to adopt Ordinance No. 3947, amending the development review procedures regarding resubmission of a denied conditional use. This motion was seconded by Councilman Bothwell.

Vice-Mayor Newman felt it was a mistake to do too much when the economy is down or do too much when building is booming. He felt Council needs to think of the long term policy to encourage the right kind of pattern of development. He felt Council has done a number of different policies that have been very pro-growth for Asheville, but he felt these amendments are positive clarifications to safeguard the areas that are more residential.

Mayor Bellamy raised questions concerning a public hearing on the same night as adoption of the original UDO in 1997 regarding a zoning vested rights request. City Attorney Oast said that the process was one available in our Code and is authorized by law. It is a mechanism by which Council can recognize a vested right in a certain site specific development plan. That has not occurred here. The approval by the TRC was conditional and he is not sure if we are talking about the same thing.

Mayor Bellamy felt that when the UDO amendments were adopted in 2009, Council felt like it was the right thing to do and it had gone through the proper channels as far as public outreach. She felt that regarding the project discussed tonight, the developer felt the project was different enough not have to wait the one-year. She felt that the amendment adopted in 2009, which included residential, is now being utilized by a developer. Her concern is that the amendment is still not clear to what we feel is wrong as it relates to the project talked about. If the City is sued, that will be more taxpayer dollars to defend something still not clear. She also felt that the ordinance was fast-tracked to Council. She wondered if a mediator could talk to the developer and neighborhood to see if there can be a win/win solution and then address this issue with the normal template we use having input from other groups. Sounds like the neighborhood is saying that they support development, but not at 100 units. Developers are saying that they have property and they want to develop it. She felt we have gone against our normal process in building trust with the community.

Councilman Davis was concerned with these amendments on the rush to get it to Council. He wondered about the definition of substantial difference. He would rather these amendments go through the normal process for public outreach.

Councilwoman Manheimer wanted to be known as a community that is somewhat predictable for the business community because that is fair. She also didn't want to drive away people that have money and time and great things to invest in Asheville. However, she feels the amendment is to enforce the spirit of the law and not just the letter of the law.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell, carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

City Attorney Oast noted that because the ordinance was not adopted by 2/3 vote of Council, this ordinance will need to come back to Council at their next meeting for the second and final reading.

#### **ORDINANCE BOOK NO. 26 – PAGE 450**

Vice-Mayor Newman moved to adopt Ordinance No. 3948, amending the development review procedures regarding separation requirements. This motion was seconded by Councilman Bothwell.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell, carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

City Attorney Oast noted that because the ordinance was not adopted by 2/3 vote of Council, this ordinance will need to come back to Council at their next meeting for the second and final reading.

In response to Mayor Bellamy, Ms. Daniel said that between now and the second reading she would do outreach to various groups and report back to Council.

#### **ORDINANCE BOOK NO. 26 – PAGE 452**

At 7:39 p.m., Mayor Bellamy announced a short recess.

**V. UNFINISHED BUSINESS:**

**A. UPDATE AND PREVIEW OF PLANS FOR THE VISITORS CENTER IN PACK SQUARE PARK**

Mr. Guy Clerici, Chairman of the Pack Square Conservancy Board, said that they have received a grant from the Buncombe County Tourism Development Authority which will allow them to complete the downsized pavilion. The grant covers not only construction, but landscape architecture work and finishing the mid-park area entirely. The size of the pavilion has been reduced to 60% in order to reduce the impact of that site, maintain the view corridors, etc. He outlined the changes from the original building, noting that the pavilion is now 1,300 sq. ft. compared to the original building of 4,600 sq. ft. The building is also intended to provide the City means of adding if necessary in the future or taken away. They have incorporated a lot of the use of the park into this design.

Mr. Charles Krekelberg, project designing architect, using the site plan, explained the building's current design. It is now a support building that supports the use of the park. On the left side there are four unisex restrooms on a central corridor and a rinse-off area. In the middle is a covered breezeway. On the right side is the Visitor's Center, a toilet facility and three offices for the Pack Square Conservancy. From the Visitor's Center desk, there will be visual connection of the restrooms and rinse off area. The building is surrounded by landscaping, allowing tents to be located in the Park area that may support the amphitheatre or a significant event taking place in the Park.

In response to Councilman Bothwell, Mr. Krekelberg said that the rinse off water was not required to be heated, noting that limiting use was the goal.

When City Attorney Oast said that under our agreement that established the Pack Place Conservancy in 2001, City Council does retain approval of the design elements of the park.

Councilwoman Manheimer was unaware that a vote was to be taken at this meeting and that the report was only an update. Therefore, she asked for a motion to recuse her from voting due to a conflict of interest. Councilman Russell moved to recuse Councilwoman Manheimer from voting in this matter. This motion was seconded by Councilman Smith and carried unanimously.

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

Councilman Russell moved to approve the downsized design elements of the pavilion. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer being excused).

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-29 - RESOLUTION TO IMPLEMENT DISCOUNTED TRANSIT TICKET AND PASS PROGRAM TO SERVE PERSONS EXPERIENCING HOMELESSNESS**

Homeless Initiative Coordinator Amy Sawyer said that this is the consideration of a resolution to provide Agencies serving persons experiencing homelessness with discount transit tickets and passes for distribution to those persons, effective now through the remainder of this fiscal year.

For several years the Homeless Coalition and other community networks such as BEACON (the Buncombe Emergency Assistance Coordinating Network) have recognized that transportation is one of the biggest unmet needs in the community, and a barrier to obtaining and maintaining housing,

A key way agencies assist people asking for help with transportation is to offer people bus tickets and passes. Over time, agencies have independently approached the City of Asheville seeking free or discounted tickets and passes to varying degrees of success. Agencies have also worked with their donors to provide people with transportation aid when possible. However, the support has been intermittent and often only partially meets the need of any one household.

To gain consistent access to bus tickets and passes for a greater number of people, the Homeless Coalition, which represents a collective of over 40 different agencies and groups, voted to create a plan and make a collective request to the City of Asheville. The goal would be to access affordable bus tickets and passes for people experiencing homelessness or at imminent risk of experiencing homelessness in the community.

Subsequently, the Homeless Coalition developed a transportation subcommittee to review the need, availability, and possible solutions to accessing bus passes and bus tickets for people experiencing homelessness or at imminent risk of experiencing homelessness. This Transportation Subcommittee met with the City of Asheville Transportation Department to discuss bus fee/rate structures and options.

As a result, the Transportation Department has included in their Fiscal Year 2011-12 budget a proposal that agencies would be able to purchase tickets at the discounted rate currently available only to people with documented disabilities. This rate is one-half the market rate. If approved by City Council as part of the upcoming year's budget, this would go into effect July, 2011 (at the onset of the new fiscal year).

The Homeless Coalition and Homeless Initiative Advisory Committee support the Transportation Department's proposal to offer discounted passes to agencies on behalf of people experiencing homelessness or at imminent risk of experiencing homelessness. The Coalition has developed a process for purchasing bus tickets at the discounted rate.

The Homeless Coalition and Homeless Initiative Advisory Committee, however, see that this is an immediate need. To that end, the Homeless Initiative Advisory Board approached the Housing and Community Development Committee (HCD) at their January 21, 2011, meeting to explore whether the discount could be made available now.

After hearing the proposal, and getting feedback regarding its financial implications, the HCD Committee endorsed unanimously bringing this proposal before the entire Council.

The Homeless Coalition is also working with a team of community members who are independently working to raise funds to offset the cost of tickets and passes. "Bus Pass it On" is looking for donations and to partner with local businesses in this effort.

These changes directly support the City's Strategic Operating Goals as follows: (1) *Affordable*: this program would enhance the affordability of Asheville Transit's bus pass program; and would support initiatives to end chronic homelessness;

Pros:

- Directly assist persons experiencing homelessness access housing, jobs and services;
- Existing organizations are in place to operate this programs and ensure that the purposes for which the transit discounts are used are appropriate;

Con:

- Service agencies will need to raise the funds to purchase the discounted passes.

The Transit Division indicates that the proposal does not have a measurable fiscal impact. No change in costs results because the proposal does not affect schedules, personnel and or other costs of delivery of transit services. It may result in an increase in revenue, depending on demand.

City staff recommends City Council adopt the resolution to support the immediate implementation of the discounted bus pass program to serve persons who are homeless, effective to the end of this fiscal year.

Vice-Mayor Newman, Chair of the Housing & Community Development Committee, spoke in support of the resolution and responded to Councilman Bothwell on how the prices were determined.

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 Bothwell moved for the adoption of Resolution No. 11-29. This motion was seconded by Councilman Smith and carried unanimously.

#### **RESOLUTION BOOK NO. 33 – PAGE 337**

#### **B. DISCUSSION OF EARLY VOTING SITES FOR 2011 CITY COUNCIL ELECTION**

Mayor Bellamy said that the Buncombe County Board of Elections is in the process of preparing their budget for 2011-12 and has asked if City Council will want early voting sites for their election this year.

City Clerk Bureson provided Council the following information to assist Council in their decision: (1) In 2009, City Council requested by Buncombe County Board of Elections to add four additional early voting locations one week before the general election on November 3, 2009. They were located at Parks & Recreation on Gashes Creek Road, North Asheville Branch Library, West Asheville Branch Library and South Buncombe Branch Library. Out of the total cost for the November election (\$122,786), approximately \$39,406 were costs associated with the early voting sites. This is a conservative estimate. There were 3,357 City voters who took advantage of the early voting sites; (2) The City of Asheville will have 37 normal polling places in October and then again in November. If remote sites are opened in November, the Board of Elections will have to provide ballots for all voters for all municipalities, per the State Board of Elections; (3) The City must notify the Board of Elections 90 days before the election in order for them to submit a plan of implementation to the State Board of Elections for approval. Generally, the sooner we let the Board of Elections know about remote sites the better; (4) While the Board of Elections will certainly aim to provide the desired location for the one-stop sites, ultimately the final specific decision lies with the County Board of Elections and the State Board of Elections. Many factors have to be considered in these decisions; (5) Citizens will indeed always have the opportunity to vote early at the downtown office at 35 Woodfin Street for the full time period; and (6) A cost guideline would be \$1,000 per day per site. This is an estimate since there are many line items that are significantly affected by the number of sites opened, i.e., training, advertising, travel, number of employees, overtime, etc.

City Council requested additional information to be made available at the March 8 meeting before a determination is made. Said information includes: how many people took advantage of early voting in 2007 when it was only located at the Board of Elections; how many

people took advantage of the early voting site in 2009 at the Board of Elections building only; and, will A-B Tech share in the cost of the general election since they will have a question on our ballot.

**C. RESOLUTION NO. 11-30 - RESOLUTION APPOINTING A CHAIRMAN TO THE CIVIL SERVICE BOARD**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that Larry Harris currently serves as Chairman of the Civil Service Board. The Civil Service Law for the City of Asheville, Section 2, Chapter 303 of the 1999 Session Laws of the North Carolina General Assembly provides that the Chair of the Civil Service Board shall be appointed annually by the City Council.

The current members of the Civil Service Board include: Chairman Larry Harris, Jacquelyn Hallum, Alan Coxie, Virginia Robinson and Marvin Rosen.

It was the recommendation of the Boards & Commissions Committee to reappoint Larry Harris to serve an additional year as Chairman of the Civil Service Board.

Councilwoman Manheimer disclosed that Mr. Harris is a partner in her law firm; however, City Attorney Oast has advised her that that would not disqualify her from voting in this matter.

Councilman Russell moved to reappoint Larry Harris to serve an additional year as Chairman of the Civil Service Board. This motion was seconded by Councilman Bothwell and carried unanimously.

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**D. RESOLUTION NO. 11-31 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Robert Oast Sr. and Parker Andes, as members on the Tree Commission, expired on December 31, 2010. Both individuals are not eligible to serve another term.

On January 25, 2011, City Council instructed the City Clerk to arrange interviews for Debbie Emmons and Mike Kenton.

Councilman Smith moved to appoint Debbie Emmons and Mike Kenton to each serve a three-year term respectfully, terms to expire December 31, 2013, or until their successors have been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 339**

**E. BOARDS & COMMISSIONS**

Regarding the Asheville-Buncombe Fair Housing Commission, it was the consensus of Council to readvertise for the vacancies due to no interested applicants.

**RESOLUTION NO. 11-32 – RESOLUTION RESCINDING RESOLUTION NO. 11-27 EXTENDING THE TERM OF LOUIS BISSETTE ON THE METROPOLITAN SEWERAGE DISTRICT**

Vice-Mayor Newman said that at the January 25, 2011, City Council meeting, Resolution No. 11-27 was adopted extending the term of Mr. Louis Bisette on the Metropolitan Sewerage District (MSD) Board for six months, term to expire June 30, 2011. However, after City Attorney

review of the applicable statutes, it has been determined that City Council may not extend or shorten MSD terms. Mr. Bisette can, however, continue to serve until his successor has been appointed and qualified. Therefore, Resolution No. 11-27 will need to be rescinded.

Vice-Mayor Newman moved to adopt Resolution No. 11-32 to rescind Resolution No. 11-27. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 340**

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

**A. CLAIMS**

The following claims were received by the City of Asheville during the period of January 3-17, 2011: Jennifer White (Streets), Eric Velez (Water), Melanie Yeager (Fire), Brenda Farmer (Fire), Marc Murray (Streets), Debra Cochran (Streets), Linda Horton (Streets), Justin Wyatt (Police), Amanda Hyler (Transit), Mike Herron (Sanitation), Teresa Mosely (Water), Jeff Mayen (Streets), Pat McAfee (Sanitation), AT&T (Water) and Wayne Jewsbury (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

The following claims were received by the City of Asheville during the period of January 28-February 3, 2011: Chris Taylor (Water), Brent Edgerton (Sanitation), Terry Peterson (Streets), Robert Hudson (Parks & Recreation), Charter Communication (Water), Sara Wainwright (Water) and Emily Watford (Parks & Recreation). These claims have been referred to Asheville Claims Corporation for investigation.

Ms. Kyle Ross spoke about a Police Department lawsuit. City Attorney Oast noted that City Council cannot discuss personnel matters or matters in litigation. He also advised Ms. Ross and anyone else that he didn't believe speaking at a City Council meeting insulates anyone from causes of action based on libel or slander.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:25 p.m.

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CITY CLERK

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MAYOR