

Tuesday – May 24, 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.; 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

Ms. Megan Sanchez' Kindergarten Class from Emmanuel Lutheran School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 24, 2011, AS "BUDDY POPPY DAY"

Mayor Bellamy read the proclamation proclaiming May 24, 2011, as "Buddy Poppy Day" in the City of Asheville. She presented the proclamation to Ms. Kathy Cook, President of the Ladies Auxiliary to the Veterans of Foreign Wars and Past President Doris Edwards, who briefed City Council on some activities taking place during the day. The members of the VFW Post 891 invited Council to a Memorial Day cook-out on Sunday, May 29, 2011, at 2:00 p.m. at the VFW Post, 626 New Leicester Highway.

II. CONSENT AGENDA:

At the request of City staff, it was the consensus to add to the Consent Agenda (1) a resolution authorizing the City Manager to apply for and enter into an agreement with the U.S. Dept. of Justice in order to apply for 5 police officers under the COPS Hiring Program; and (2) a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event on June 11, 2011.

Mayor Bellamy asked that Consent Agenda Item "G" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 10, 2011

B. RESOLUTION NO. 11-100 - RESOLUTION AUTHORIZING YELLOWOOD DRIVE, RED CEDAR LANE, WHITE ASHE, AND SHORTIA LANE TO BECOME PUBLICLY MAINTAINED STREETS

Summary: The consideration of a resolution to accept Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane in Biltmore Park.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council. Biltmore Park agreed to a voluntary annexation contingent to the acceptance of the streets in Biltmore Park provided they are constructed to City standards.

Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane were constructed to City standards but inadvertently never accepted by the City for public maintenance.

Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane are developer-constructed streets that have an average paved width of 20 to 22 feet and a length of 0.02, 0.05, 0.13, and 0.05 miles, respectively.

Following City Council's approval of this resolution, Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane will be added to the official Powell Bill list.

This action is consistent with the agreement that Biltmore Farms and the City agreed to in the voluntary annexation agreement to accept streets constructed to City standards.

Pro:

- The City will receive Powell Bill funds from the NCDOT to assist in the maintenance of the roadway.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

Typically one-third of the actual maintenance cost of a street is reimbursed by the State through Powell Bill Funds. The financial impact will be minimal.

Staff recommends City Council adopt the resolution to accept Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane as City maintained streets.

RESOLUTION BOOK NO. 34 – PAGE 12

C. RESOLUTION NO. 11-101 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT PROPERTY OFF ELIZABETH STREET FROM BUNCOMBE COUNTY FOR THE REED CREEK GREENWAY

Summary: The consideration of a resolution authorizing the Mayor to accept the conveyance of real property adjacent to Elizabeth Street from Buncombe County for the implementation of Phase III of the Reed Creek Greenway.

Buncombe County owns a 0.03 acre remnant parcel (PIN 9649-23-8026-00000) located along Elizabeth Street. This parcel is needed by the City of Asheville in order to assemble the necessary right-of-way to implement Phase III of the Reed Creek Greenway. In February 2011, staff contacted Buncombe County to inquire about conveyance of this property and the county has offered to transfer the property at no cost to the city. Acquisition of the property would allow the Parks, Recreation, and Cultural Arts Department to secure needed greenway right-of-way at minimal cost.

This action complies with the (1) FY 10-11 City Council Strategic Plan in that it supports continuing a funding alternative for enhancing the city's commitment to master plan implementation, infrastructure maintenance, and capital improvements; (2) the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan; and (3) Parks, Recreation, Cultural Arts, and Greenway Master Plan in that it allows for the implementation of the Reed Creek Greenway, a high priority greenway corridor within the master plan.

This item has been reviewed by the Greenway Commission and has received the Commission's endorsement. This item has also been reviewed the by Recreation Advisory Board and at their meeting on May 9, 2011, and they recommended approval.

Pros:

- Securing this property is necessary for Phase III of the Reed Creek Greenway.

- Increases the City's inventory of park space.

Con:

- Modest additional maintenance costs.

No monetary consideration required for the conveyance. Any additional maintenance costs will be absorbed into the Parks Budget.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a 0.03 acre parcel of land, adjacent to Elizabeth Street, from Buncombe County for the purpose of implementing Phase III of the Reed Creek Greenway.

RESOLUTION BOOK NO. 34 – PAGE 14

D. RESOLUTION NO. 11-1-2 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY AT RIVERSIDE CEMETERY TO JON AND CAITLIN SLOOP

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property at Riverside Cemetery to Jon and Caitlin Sloop for the purpose of installing a sewer line to service a new single family residence.

The Riverside Cemetery is owned and maintained by the City of Asheville and is approximately 49 acres in size. An MSD sewer line runs along the Northwest boundary of the property and appears to service neighboring residential homes. Asheville residents Jon and Caitlin Sloop have a contract to purchase on an adjoining vacant parcel that fronts Westover Drive and borders Riverside Cemetery. The only available sewer connection is through the Cemetery, and as such Jon and Caitlin Sloop have approached city staff with a request to purchase an easement to install a sewer service line connection to this MSD main line. Parks and cemetery management staff have inspected the proposed easement area. The location is a steep and unusable portion of the City's property, and presents no apparent conflict with the cemetery use.

The proposed easement area is approximately 270.1 square feet (10 feet wide X 27.1 feet long) and would service a new single family residence. To develop a price for the sale of this easement, city staff discussed evaluation methods with MSD, since MSD is often in the position of acquiring easements of this type. In a typical scenario, MSD calculates a per square foot value, based on the tax appraisal of a subject parcel, then reduces the price per square foot by 50% to reflect an easement value.

In this instance, the lot at Westover Drive has a tax value of \$68,500 for 0.195 acres. This translates into a per square foot value of \$8.08 per square foot, and when reduced by 50% yields a \$4.04 per square foot easement value. When multiplied by the area of the easement (270.1), the asking price for the easement equals \$1091.41.

If approved, this action would comply with City Council's goal of Job Growth and Community Development by promoting sustainable, infill growth that makes efficient use of existing resources.

This item has been reviewed the by Recreation Advisory Board and at their meeting on May 9, 2011, and they recommended approval.

Pros:

- Modest amount of compensation for the property
- The easement would not interfere with the operation of the Riverside Cemetery nor any relevant future plans

Con:

- None

The modest amount of revenue generated by the sale of the easement will be deposited into the General Fund.

Staff recommends City Council approve a resolution authorizing the Mayor to convey a 270.1 square foot easement over a portion of City-owned property at Riverside Cemetery for the purchase price of \$1091 to Jon and Caitlin Sloop.

RESOLUTION BOOK NO. 34 – PAGE 15

E. RESOLUTION NO. 11-103 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2010-11

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes Goodman LLP (hereinafter referred to as Dixon Hughes) for auditing services for fiscal year 2010 - 2011.

North Carolina General Statute 159-34 requires that local governments have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission. In response to the aforementioned general statute, staff recommends retaining the services of Dixon Hughes to conduct the audit of the city's accounts for the fiscal year ending June 30, 2011.

Dixon Hughes has extensive experience auditing the City's financial systems, accounts and records. During the past two years, as the City has migrated to more complex financial systems through the implementation of the new enterprise resource planning (ERP) software Munis, Dixon Hughes has gained valuable insight and understanding of the financial system's processes and controls. These experiences will contribute to a more efficient and timely audit.

The proposed audit fee for fiscal year 2010-2011 is \$109,000. The initial fee for last year's audit was \$110,000 with a supplemental fee of \$43,000 for additional services relating to the implementation of the ERP software (a combined total of \$153,000). The fee proposal of \$109,000 represents a slight decrease from the prior year's base fee of \$110,000. No additional services are requested this year in connection with the ERP implementation.

As part of the engagement, Dixon Hughes has included a document required by the Auditing Standards Board that provides a framework for the auditor's communication with the Mayor and City Council and identifies some specific matters to be communicated. Pursuant to the Auditing Standards Board requirement, Dixon Hughes will communicate timely and directly with the Mayor and City Council on matters related to the financial statement audit that are, in the auditor's professional judgment, significant and relevant to the responsibilities of those charged with governance in overseeing the financial reporting process.

Additionally, Dixon Hughes has provided an audit schedule with milestones and timetables in an effort to improve audit planning and ensure that the audit report is delivered timely to the Local Government Commission.

This project complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility.

Pro:

- Contracting with the current external auditor will help ensure the timely and successful completion of the annual audit.

Con:

- None noted.

A fee of \$109,000 has been proposed for the audit and is included in the Finance Department's portion of the Fiscal Year 2011-2012 annual operating budget. The total cost for all services for the 2010-2011 audit year are less than last year's by \$44,000.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Dixon Hughes Goodman LLP in the amount of \$109,000 for auditing services for fiscal year 2010-2011.

In response to Mayor Bellamy, Administrative Services Director Lauren Bradley said that we have contracted with Dixon Hughes Goodman LLP since 2006. We did not bid this contract out because as a service to the City we are able to extend those contracts, especially when there is an established relationship where they may have knowledge of our financial system.

In response to Mayor Bellamy recalling the City being late in sending in our audit to the Local Government Commission, Interim Finance Director Kai Nelson explained some contract changes this year consisting of improved external auditors communication with Mayor and Council and improved planning consisting of timetables and milestones to meet.

Upon inquiry of Vice-Mayor Newman, City Manager Jackson felt it is beneficial to rotate the audit contract every three years.

From a recommendation by Mayor Bellamy, it was the consensus of Council to have the Finance Committee review the audit contract for the following fiscal year.

RESOLUTION BOOK NO. 34 – PAGE 16

F. ORDINANCE NO. 3974 - BUDGET AMENDMENT TO FUND NORTH CAROLINA NATIONAL GUARD ARMORY IMPROVEMENTS

Summary: The consideration of a budget amendment, in the amount of \$10,000, for money paid to the City of Asheville by Ludus Production Inc., to establish a project budget for maintenance work on the property at 57 Shelburne Road, the former North Carolina National Guard Armory.

The City of Asheville entered into a use agreement on March 28, 2011, with Ludus Productions, Inc. allowing Ludus Productions the use of the building at 57 Shelburne Road. In exchange for this agreement, Ludus Productions paid to the City a sum of \$10,000. The City intends to utilize this money for necessary work to the 57 Shelburne Road site, including mitigation of lead contamination, asbestos, underground storage tank removal and mitigation, HVAC repairs, roof repairs, and other maintenance items.

This action supports the City's Strategic Goal of Fiscal Responsibility by leveraging internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- Assists in mitigating environmental issues.
- Utilizes unanticipated revenue for the site on the site.
- Augments Capital Improvement funding on the building.
- Allows more work to be accomplished in the next fiscal year on the site.

Con:

- None

This budget amendment is funded with the unanticipated revenue from Ludus Production, Inc. for use of the building at 57 Shelburne Road; therefore there is no financial impact to the City's General Fund.

City staff recommends City Council approve the budget amendment for \$10,000 to be added to the Capital Improvement Plan project.

ORDINANCE BOOK NO. 27 – PAGE

G. BUDGET AMENDMENT TO COMPLETE THE CLINGMAN AVENUE STREETScape PROJECT

This item was removed from the Consent Agenda for an individual vote.

H. ORDINANCE NO. 3976 - BUDGET AMENDMENT FOR THE ASHEVILLE EAST OF THE RIVERWAY SUBSTANTIAL NEIGHBORHOOD PROJECT

Summary: The consideration of a budget amendment, in the amount of \$1,020,000, to authorize the use of Federal Department of Transportation TIGER II Planning Grant Funds and local matching requirements for the Asheville East of the Riverway Sustainable Neighborhood Project to fund for the Asheville East of the Riverway Sustainable Neighborhood Project to fund contracted and administrative services for predevelopment planning.

The US Department of Transportation was authorized to award TIGER II Discretionary Planning grants pursuant to Title I (Department of Transportation) of Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009) (the "Act"). In national competition for funds, the City was awarded a grant of \$850,000. The City of Asheville and the Federal Transit Administration (DOT's administrator for the funds) have executed a Cooperative Agreement to complete pre-development planning for an integrated system of greenways, safe streets and improved transit service for Asheville East of the Riverway target area. This proposed budget amendment would authorize the use this funding for contracted services and administrative costs. The funding will assist both general and specific planning efforts. It will enable two long-standing conceptual greenways to move towards implementation, as well as contribute towards the construction readiness of a portion of the Wilma Dykeman Riverway. Other products from the use of these funds will include a transportation network plan and energy plan for the target area, and assessments of development potential for key city owned properties.

The \$1,020,000 amendment represents \$850,000 of the TIGER II grant funds and \$170,000 is the value of staff and partners time that will be assigned as in-kind contributions to the programs objectives.

This action supports the City Council's Strategic Goals under (1) Affordable, by providing an opportunity to enhance the City's long term financial commitment to master plan implementation, infrastructure maintenance, capital improvements and public facilities; (2) Green and Sustainable, by developing a plan to establish a community energy reduction goal in the east of the Riverway area; (3) Job Growth and Community development, by supporting local and regional sustainable community efforts, and specifically the East of the Riverway project; and (4) Multi-Modal Transportation, including the development of a multi-modal transportation plan that will include public transportation, greenways, streets, river access resulting in a prioritized funding list.

Pro:

- Enable the use of TIGER II Planning Grant funds to accomplish important city objectives;

Con:

- None

The federal funds carry a 20% match requirement; this requirement will be met through the designation on city staff time spent on the above projects as in-kind match, and also counting staff time by non-profit organizations partnering on the project as in-kind contributions. No cash match will be necessary so there is no impact on the City's General Fund budget.

Staff recommends approval of the budget amendment, in the amount of \$1,020,000, to authorize the use of Federal Department of Transportation TIGER II Planning Grant Funds for the Asheville East of the Riverway Sustainable Neighborhood Project to fund contracted and administrative services for predevelopment planning.

ORDINANCE BOOK NO. 27 – PAGE

I. ORDINANCE NO. 3977 - BUDGET AMENDMENT TO REFLECT UPDATED REVENUE RECEIVED FOR CIVIC CENTER RENOVATIONS

Summary: The consideration of a budget amendment, in the amount of \$2,327,331, to increase the Civic Center Capital Fund budget to reflect updated revenue received for Civic Center Renovations.

This amendment budgets the funding that has been secured to date from Tourism Development Authority, Buncombe County, the Alcoholic Beverage Control Board, along with existing Civic Center capital funds. It should be noted that an additional \$300,000 is included in the FY 2011-12 Budget Ordinance that Council is also adopting tonight. The amendment will allow the renovation project to proceed with the risers and seat bid package.

This amendment has been presented to the Civic Center Commission and recommended to City Council.

This action supports the City Council Strategic Plan by supporting the Civic Center as a regional entertainment destination and improving the Civic Center customer experience.

Pro:

- Provides Capital budget authorization for revenues in the Civic Center Capital Fund without increasing the General Fund transfer.

Con:

- None.

As noted above, this budget amendment is funded with revenue from outside entities and existing CIP funds. Therefore, there is no impact to the City's General Fund budget.

Civic Center staff and Commission recommend City Council approve a budget amendment to increase the Civic Center Capital Fund budget by \$2,327,331.

Councilman Davis was pleased to note the real partnership from the outside entities as everyone has worked a long time to improve the Civic Center.

ORDINANCE BOOK NO. 27 - PAGE

J. RESOLUTION NO. 11-106 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE

U.S. DEPT. OF JUSTICE IN ORDER TO APPLY FOR FIVE POLICE OFFICERS UNDER THE COPS HIRING PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the U.S. Dept. of Justice in order to apply for 5 police officers under the COPS Hiring Program (CHP).

The Asheville Police Department (APD) is requesting authorization to apply for 5 police officer positions to support the ongoing crime prevention activities at the walkover access to Hillcrest Apartments, suppress group and gang related violence in public housing areas in support of the Focused Deterrence strategy and engage youth through Police Activities League (PAL) activities. The APD has been presented with this opportunity to reapply for CHP funding in Fiscal Year 2011, after being mistakenly denied for funding by the COPS Office in Fiscal Year 2010.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using federal CHP monies to enhance public safety through the hiring of 5 police officers, and 2) Safe City in that the hired police officers would be working to improve public safety in neighborhoods with the highest levels of crime, and supporting recreation alternatives for youth at risk for gang exposure.

Pros:

- Federal CHP monies to cover the salary and fringe benefits for 5 police officers for three years.

Cons:

- \$215,000 increase to COA operating budget at the beginning of the fourth year.

In hiring the 5 police officers, the City of Asheville will receive \$645,000 in salary and fringe benefits from the CHP over three years. The City will absorb \$215,000 in salary and fringe benefits for the 5 police officers beginning the fourth year.

City staff recommends approval by City Council to apply for the 5 CHP police officer positions.

RESOLUTION BOOK NO. 34 – PAGE 19

K. RESOLUTION NO. 11-107 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAME EVENT ON JUNE 11, 2011

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event on June 11, 2011.

Asheville Grizzlies has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville Grizzlies Football Game Event and allow for consumption at this event.

The Asheville Grizzlies Football Game Event will be held on Saturday, June 11, 2011, from 5:30 p.m. – 11:00 p.m., within the boundaries of Memorial Stadium as per the event area limits referenced on the accompanying site map.

This action has no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Asheville Grizzlies

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event.

RESOLUTION BOOK NO. 34 – PAGE 20

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.

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. ORDINANCE NO. 3975 - BUDGET AMENDMENT TO COMPLETE THE CLINGMAN AVENUE STREETScape PROJECT

Summary: The consideration of a budget amendment, in the amount of \$250,000, to transfer savings from two completed capital improvement projects to the Clingman Avenue Streetscape project.

On February 9, 2010, City Council approved a contract with Moore & Sons Site Contractor's Inc. to construct the Clingman Avenue Streetscape project. Shortly after the project was awarded, members of the bicycling community voiced their concerns about the bicycle climbing lane not going all the way to Hilliard Avenue.

After much discussion, it decided to extend the climbing lane all the way to Hilliard Ave, in the contract with Moore & Sons. In order to accomplish this, an extensive utility relocation effort needed to be designed and carried out, in addition to new infrastructure to accommodate the full length of the climbing lane. These funds were not originally budgeted into the project. These relocations are the controlling operation to project completion. Once they have been completed, Moore & Sons can begin construction on the two lane section of Clingman Avenue, and ultimately complete the project. Staff estimates that an additional \$250,000 is needed to complete this project.

Staff has identified savings from two other recently completed construction projects that can fill the funding needs for Clingman Ave. The Patton Avenue sidewalk project was recently completed with \$135,000 remaining in City funds. The Kimberly Avenue ARRA project was also completed under budget, with \$115,000 left in available City funds. Staff proposes that these funds totaling \$250,000 be transferred to the Clingman Avenue Streetscape project for completion.

Staff has recently successfully completed a federal financial and engineering audit of the project. This was due to the fact that the project was partially funded by NCDOT and FHWA grants. Those grant funds have already been recovered from the respective agencies to the City.

The audits did require follow up upon project completion. This budget amendment will allow this to happen.

As you may already be aware of, the “lower” section of the project has been complete since last fall. We have received much positive response from the community. We anticipate that completion of the “upper” section will do the same.

The project complies with Council's Strategic plan in the Focus Area of Sustainability, as it will address the City's aging infrastructure, as well as fully leveraging funding from the State for transportation improvements. The project also addresses the Focus area of Green, due to the improvements to the City's multi-modal transportation options, and the unique stormwater bio-retention swale to capture and naturally filter storm run off. In addition, this action complies with the Comprehensive Bicycle Plan.

The project will provide many improved bicycle and pedestrian features, and include a roundabout at the intersection of Clingman Ave. and Roberts Street. It also includes new on-street parking from Roberts Street to Clingman Ave. Extension, bike lanes on both sides from Riverview Street to Clingman Ave. Extension, and a bicycle climbing lane on the up grade side of Clingman Ave. from Clingman Ave. Extension to Hilliard Ave.

Pros:

- Approval of this action will allow for the completion of the Clingman Streetscape project, providing a gateway to a major entrance to the City's west side.
- Utilize saved City funds, thus not requiring any additional funds from the General Fund.
- Fulfilling two previously approved agreements with NCDOT.
- Create a more bicycle and pedestrian friendly facility for the Clingman community by having a full length bicycle climbing lane the entire length of the project.

Con:

- Obligates savings from the Patton Avenue sidewalk project and the Kimberly Avenue ARRA project that otherwise would have gone into capital reserves.

As noted above, this budget amendment will be funded with savings from the Patton Avenue sidewalk project and the Kimberly Avenue ARRA project. If these savings were not used for the Clingman Avenue project, then they would go into capital reserves and be available for future capital needs.

City staff recommends City Council adopt a budget amendment in the amount of \$250,000 to complete the Clingman Ave. Streetscape project.

Mayor Bellamy noted that several times last year she had requested that any left-over capital funds from completed sidewalk projects be used toward more sidewalks. She expressed concern that the left-over funds from the Patton Avenue sidewalk project are being used to complete the bicycle climbing lane all the way up to Hilliard Avenue (noting that she is supportive of the bicycle lane).

Director of Administrative Services Lauren Bradley explained that the savings identified from projects that didn't close until the third quarter of the fiscal year.

Engineering Services Manager Greg Shuler explained the original scope of the Clingman Avenue project. He said the reason why the extended bike lane was not included in the original design was due to the excessive cost of relocating numerous utilities, which he described. Out of the \$250,000, \$135,000 was left-over Patton Avenue sidewalk money.

City Manager Jackson said that it was the direction of Council that the amount of funds for sidewalks increase with this budget as a result of closed out projects. In the Fiscal Year 2011-12 budget for the sidewalk program, under the Capital Improvement Program, there is \$165,000 from savings from closed projects. There is a total of approximately \$2 Million going toward sidewalk construction, which is two times the total that is being used on sidewalks in the current year.

Mayor Bellamy understood that is being accomplished for Fiscal Year 2011-12; however, in this current year we are allocating \$135,000 from a sidewalk project for bike lanes.

Vice-Mayor Newman was supportive of this very important linkage, but noted spending \$250,000 for this bike lane linkage was expensive. He wanted to make sure that we feel good that this is going to deliver the best benefit to the City, as there are a number of city-wide projects from the bicycle plan which will improve the bicycle environment in Asheville. Mr. Shuler responded that this linkage is identified on the Pedestrian Thoroughfare Plan, along with support from the bicycle community, as well as our Transportation Department. He felt this will certainly improve the safety of bicyclists.

Councilman Russell moved for the adoption of Ordinance No. 3975. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 27 – PAGE

III. PRESENTATIONS & REPORTS:

A. QUARTERLY REPORTS

Finance Committee

Councilman Russell, Chairman of the Finance Committee, updated Council on some major accomplishments during the 3rd quarter of the Committee as follows:

Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January 2010 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the Fiscal Year 2010-11. Staff continues to use a video format to provide project updates so that Council hears from a variety of line and management staff involved in key goals and milestones.

He then showed Council a video showing the staff's progress on the key strategic areas for this quarter.

In addition, as a subset to this presentation, staff provided the Economic Development Key Indicator Report.

City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. For the first three weeks of implementing the Registry, 13 couples have registered.

This information is to update City Council on key operational initiatives specific to the Strategic Operating Plan. No action is necessary at this time.

In response to Councilman Smith, Director of Transportation Ken Putnam said that the City does have a plan of action regarding maintenance under the Hillcrest Bridge.

In response to Councilman Smith, Mr. Putnam said that there will not be bike lanes on Brevard Road; however, they will construct a wide outside lane for bicyclists.

Financial Report

Director of Administrative Services Lauren Bradley said that the financial information in this report reflects the City's overall financial position for the fiscal year through March 2011.

The following is the executive summary:

Amendments. There were three General Fund budget amendments adopted during the third quarter: 1) \$5,071 in contributions from the Asheville Parks and Greenways Foundation to support various programs and special projects within the Parks, Recreation & Cultural Arts Department; 2) \$15,000 to recognize additional revenue received from the Asheville Tourists that is being used to fund operations and capital improvements to McCormick Field; and 3) \$284,000 from capital reserves to fund the replacement of HVAC equipment at Pack Place Education, Arts & Science Center. A summary of the budget changes since July 1 is presented below.

Adopted Budget	\$ 91,635,962
Health Care Technical Adjustment	(3,553,000)
Budget Amendments:	
City Hall Repairs*	450,000
Annexation Revenue & Expenses	166,757
Parks & Greenway Foundation	5,071
Asheville Tourists Payment	15,000
Pack Place HVAC Repair**	<u>284,000</u>
3/31/2011 Budget	<u>\$ 89,003,790</u>

* Fund balance appropriation

** Capital reserve appropriation. There is approximately

\$166,000 remaining in capital reserves

Revenues. Through March 31, 2011, the City has collected \$71,719,635 in General Fund revenue, which represents approximately 81% of the total General Fund revenue budget. In March, the City received an additional \$86,300 in Powell Bill funding after the State corrected an error in its original Powell Bill funding for FY 2010-11. The City also continued to see modest growth in sales tax revenue during the third quarter, with revenue for the year now up 1.7% compared to last fiscal year. Revenue from building permits continues to trend lower than budget. In addition, the third quarter report from the ABC Board indicates that the City's revenue that from ABC sales will come in under budget this year. Overall, staff is now projecting that *total FY 2010-11 General Fund revenue will come in under budget by \$1.35 million.*

Expenditures. General Fund expenditures through March 31, 2011, total \$60,891,538 or 68.4% of the budget. This rate of expenditure is slightly lower than in prior years, which reflects the impact of the savings strategies that staff has implemented during the fiscal year. *These strategies include a selective hiring program, line item reductions, deferring capital expenses where possible, and seeking opportunities to maximize efficiency in operations.*

Fund Balance. The City ended FY 2009-10 with available fund balance of \$12.3 million, which equated to 14.2% of FY 2009-10 expenditures. *Based on financial results through the third*

quarter, staff is still projecting that FY 2010-11 expenditures will roughly equal revenues, which means available fund balance will remain at \$12.3 million or 14.2% of estimated expenditures.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS INGLES MARKETS INC. LOCATED AT 863 BREVARD ROAD FOR THE CONSTRUCTION OF A 99,073 SQUARE FOOT GROCERY STORE AND GASOLINE FUELING STATION WITH MODIFICATION REQUESTS TO OFF-STREET LOADING, OFF-STREET PARKING AND RETAINING WALL STANDARDS

ORDINANCE NO. 3978 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS INGLES MARKETS INC. LOCATED AT 863 BREVARD ROAD FOR THE CONSTRUCTION OF A 99,073 SQUARE FOOT GROCERY STORE AND GASOLINE FUELING STATION

City Clerk Burlison administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Urban Planner Nate Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for the project identified as Ingles Markets, Inc., located at 863 Brevard Road, for the construction of a 99,073 square foot grocery store and gasoline fueling station with modification requests to off-street loading, off-street parking and retaining wall standards. This public hearing was advertised on May 13 and 20, 2011.

He said that the applicant is requesting site plan approval for one parcel zoned RB (Regional Business) for the redevelopment of an existing Ingles grocery store in accordance with Section 7-5-9(a) of the UDO which designates review for commercial buildings with a gross floor area of more than 100,000 square feet. Level III projects are reviewed as Conditional Use Permits in the Regional Business district.

The project site consists of one parcel comprising 8.06 acres according to the submitted site plans. The project proposes to demolish the existing Ingles store in phases so as to remain open during construction and reconstruct a larger grocery store (City Exhibit 4 – Site Plan). Further, the project will include a gas canopy and retail kiosk along Brevard Road. The following list provides a breakdown of the existing shopping center and the proposed development:

<u>Existing</u>	
Ingles Store:	53,572 SF
<u>Proposed</u>	
New Ingles Store:	99,166 SF
Gas Canopy/Retail Kiosk:	<u>4,853 SF</u>
Total Shopping Center:	104,019 SF

The combined square footage of the development meets the Level III review threshold (projects exceeding 100,000 square feet) and is subject to the Conditional Use Permit findings outlined in Section 7-16-2(c) of the UDO.

The project is proposed to be phased in a way that will allow Ingles to remain operational during all phases of construction. Phase I involves the demolition of a portion of the building along the northern perimeter including grading for a portion of the new building. Once this is complete, construction will begin in this area on the new building. When complete, Ingles will relocate into the new portion of the building and the rest of the remaining building will be demolished and rebuilt to form a unified store as part of Phase II.

Primary access to the site is from an existing traffic light along Brevard Road. A secondary un-signalized entrance (to be used primarily as a truck route) is proposed near the existing adjacent Citgo gas station and convenience store to the south.

According to the site plan, 297 spaces are required inclusive of required ADA parking. A bike rack with fifteen (15) spaces is proposed in front of the new Ingles store. A modification request is being sought to authorize a reduction in the amount of required off-street parking (see Modifications section below).

Significant landscaping will be required throughout the site, including street trees, parking lot landscaping, street buffering, building impact landscaping, dumpster/loading zone screening, and a Class "B" bufferyard along the northwest portion of the rear property line. The rear buffer separates the neighboring residential zoning designation (RS-4) from the commercial zoning designation (RB) of the subject property.

The open space requirement for this type of development is 15% of the total site size; a total of 1.2 acres for this site. The site plan illustrates that 1.38 acres has been reserved to meet this requirement.

While signage is illustrated on the elevation drawings for this project, it is not part of this development review. Signage for the development will be reviewed in detail with the master sign package application following the public hearing on this project.

The applicant is requesting a total of three (3) modifications to the site plan which must be approved by City Council. The staff supports all three (3) of the requests.

1. *Retaining Walls* – Section 7-10-5 of the UDO requires that foreground landscaping or attached vegetative screening be required for any retaining wall sections over 20 feet in height regardless of location relative to a public or private street. Retaining wall "C" is proposed to be located behind and partially to the side of the new building in the northwest corner of the subject

property. The wall varies in height and approximately 85 linear feet will exceed 20 feet in height. The wall will be constructed adjacent to a vehicular access aisle that wraps around the store. The applicant has requested a modification to not include foreground or attached vegetative landscaping along the 85 linear feet of wall that exceeds 20 feet. The wall will meet the standard requiring it to be faced with natural or artificial stone, brick, form-liner art or patterns. Given the difficulty in planting in such close proximity to the vehicular access aisle and the location of the wall behind and partially to the side of the store, the **staff supports this request.**

2. *Off-Street Parking* – Section 7-11-2(c)(1) of the UDO requires a minimum number of off-street parking spaces based on land use. The Ingles development requires a total of 297 spaces. 217 spaces are provided resulting in a deficiency of 80 spaces or approximately 26% of the required total. The applicant has provided staff with a parking analysis for supporting the parking reduction based on the peak operating hours of the store. Therefore, the **staff supports this request.**

3. *Off-Street Loading* – Section 7-11-2(c)(3) of the UDO requires a minimum number of loading berths based on structure size. For a store of this size, four (4) loading berths are required. The applicant has proposed two (2) loading berths as part of their development. This design is similar to other Ingles stores throughout the area including the location closest to downtown Asheville on Tunnel Road. The site is encumbered by sloping topography along the rear perimeter of the property. Therefore, the building was designed to include the loading berths along the south side of the building towards the rear of the property. The applicant has stated that the Ingles distribution center is located approximately 20 minutes from the Brevard Road store and the proximity of the center to the store allows for coordinated deliveries. Given the topography of the site and the proximity of the distribution center, the **staff supports this request.**

This proposal was recommended for approval with conditions by the Technical Review Committee (TRC) on March 7, 2011. No members of the public were present to speak on this project. The staff did receive a phone call sometime after the meeting from a neighbor who lives on Wedgfield Drive who was concerned about trash and debris blowing upward from the existing Ingles store onto adjacent properties.

At their regularly scheduled meeting on May 4, 2011, the Planning and Zoning Commission unanimously approved this project. One neighboring property owner spoke about concerns related to trash and debris blowing onto her property from the Ingles site in the past but expressed positive support for the project moving forward.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

This project represents the redevelopment of the existing Ingles store into a larger grocery store, gas canopy and retail kiosk.

The residential neighborhood to the rear of the property is separated from this project by sloping topography and a Class "B" bufferyard. The remaining portions of the property are surrounded by similar commercial developments of similar zoning along the Brevard Road corridor.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As noted in Finding #2, the proposed development is compatible with surrounding commercial uses and the residential nature of the property to the rear of the development will be buffered by additional vegetation, open space and the existing topographical elevation change.
4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The site is adjacent to a hotel to the east, a gas station to the west and a number of commercial uses along the Brevard Road corridor including the Biltmore Square Mall, fast food restaurants and other commercial developments. The proposed use is consistent with both the existing zoning and character of the Brevard Road commercial corridor in which it is located while maintaining sensitivity to the adjoining residential neighborhood along Wedgefield Drive behind the proposed store through the use of mitigating factors including additional landscaping, open space and existing topography.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment and expansion of the store is consistent with the goals of infill development along an established commercial corridor.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located just off Brevard Rd (NC 191) and is within approximately one (1) mile of an entrance to I-26. A bus shelter is proposed along Brevard Road to accommodate public transportation. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
A traffic impact study has confirmed that the proposed use will not cause undue traffic congestion or create a traffic hazard along the existing street network. The main access point is currently controlled by an existing traffic signal.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Provides an opportunity to redevelop and upgrade an existing developed site.
- The project will ultimately provide additional jobs to the local economy.

- An enhanced architectural building and landscaped parking lot will significantly improve the overall appearance of the grocery store making the development more compatible with the surrounding area.

Con:

- None noted

Staff recommends approval of the project as submitted by the applicant, including the modifications supported by the staff.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:02 p.m.

The Civil Engineer for the project made himself available for Council questions.

Mayor Bellamy closed the public hearing at 6:04 p.m.

Upon inquiry of Councilman Bothwell, Mr. Pennington said that Ingles has submitted a lighting plan within the 20 foot candle range in accordance with the City requirements.

Councilman Smith felt it may be time for the City to review our parking requirements city-wide as they may be too high.

Councilman Russell moved for the adoption of Ordinance No. 3978, granting a conditional use permit for the project identified as Ingles Markets, Inc., located at 863 Brevard Road, for the construction of a 99,073 square foot grocery store and gasoline fueling station with modifications to off-street loading, off-street parking and retaining wall standards, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Manheimer and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

B. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR A NEW INGLES STORE AND ANCILLARY USES LOCATED AT 863 BREVARD ROAD

ORDINANCE NO. 3979 - ORDINANCE APPROVING A SIGNAGE PLAN FOR A NEW INGLES STORE AND ANCILLARY USES LOCATED AT 863 BREVARD ROAD

Urban Planner Kim Hamel said that this is the consideration of an ordinance approving a signage plan for a new Ingles store and proposed ancillary uses located at 863 Brevard Road. This public hearing was advertised on May 13 and 20, 2011.

The proposed master signage plan is being reviewed concurrently with a Level III, Conditional Use application (also prepared by the applicant) for the redevelopment of the site.

The signs included in this proposal address the attached building signage for the new supermarket, and the signage proposed for a new gasoline sales station.

The project site consists of 8.06 acres, is zoned Regional Business (RB), and is considered a single-tenant development as no other tenant, except for Ingles exists on the site. Single-tenant development signage is permitted for the new supermarket component of the project, and also for the gasoline service station since the use can stand independently from the grocery store and is able to comply with Unified Development Ordinance (UDO) development and design standards as if it were on its own parcel.

As separate single tenants, each tenant is permitted up to 125 square feet of attached signage that could be separated into two separate signs for a cumulative total not to exceed 125 square feet. In addition, a separate free-standing sign is permitted for a total of, again, 125 square feet with a height not to exceed 25 feet.

Signage is requested for each separate service and includes:

- Multiple attached signage for the principal Ingles supermarket
- Attached signage for the retail gasoline service center (Gas Express); and
- One single tenant free-standing pylon sign with a changeable copy panel.

The following table provides a summary of the signage proposed, as well as, what would be allowed under the existing sign code.

INGLES MARKET ATTACHED SIGNAGE: (EXHIBIT I)	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Ingles (Store Sign)	202.02 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	77.02 s.f.
American Owned	36.0 s.f.	Not allowed unless part of above	36.0 s.f.
Fresh Foods	29.46 s.f.	Not allowed unless part of above	29.46 s.f.
Starbuck's	16.0 s.f.	Not allowed unless not visible from the R.O.W.	16.0 s.f.
Cafe	**8.48 s.f.	Not allowed unless not visible from the R.O.W.	8.48 s/f/
Pharmacy Drive-Thru	*13.13 s.f.	Wayfinding/directional	allowed
TOTAL ATTACHED SIGNAGE:	291.96	5 signs versus 2	166.96
FREE STANDING (EXHIBIT II)			
Free-standing Pylon	180.26 s.f.	1 sign @ 125 s.f	55.26 s.f

*The Pharmacy Drive-Thru sign was not included in the total square footage since it is considered wayfinding or directional signage. ** There is also a precedent for exempting the Café sign when reduced in size so as not to be visible from the public right-of-way or adjacent properties.*

*Note: The gas services station and kiosk are treated as a single tenant since the property area can be subdivided to stand on its own as a separate development. **When a free-standing sign*

is not proposed, (1) additional attached sign is permitted on the building for a total of 3 attached signs (1@ 125 s.f. and 2 signs @ 62.50 s.f)

GAS SERVICE STATION AND KIOSK SIGNS (EXHIBIT III AND IV)	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Gas Express and Ingles: Canopy	36.8 s.f.	1 sign @ 125 s.f. (may be split into 2 signs max.)	Permitted and Complies
Ingles, canopy	19.25 s.f.	Split sign allowance	Permitted and Complies
Kiosk Signage	15.03 s.f.	3 rd attached sign permitted	Permitted and Complies
TOTAL ATTACHED SIGNAGE:	71.08 s.f	3 rd attached sign permitted: No free-standing sign proposed	Permitted and Complies

As stated above, both the grocery store and gas service station are regarded as separate tenants and are allowed the same single tenant allowances. The attached signs proposed for the grocery store exceeds the number of signs allowed (5 instead of 2) and also exceeds the total square footage allowed (291.96 s.f. instead of 125 s.f.). The free-standing pylon sign for the site also exceeds the total square footage allowed (180.26 s.f. instead of 125 s.f)

The signage for the gas center actually meets the existing sign code requirements since a free-standing ground sign is not proposed for the gas center.

The stated purpose of allowing the consideration of a separate signage plan is as follows:

The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.

In the context of the significant number of applications for signs received daily by the City, it is somewhat difficult to recognize the creativity in the proposed signage plan. Also, when compared to the unique characteristics associated with other larger redevelopment plans presented by Ingles, a signage plan at this site is somewhat more difficult to support given that the redevelopment is on a much smaller parcel and that a multi-tenant component is not included in this application.

We do, however, feel that a precedent has been set through the approval of three other sign packages for Ingles, all of which are substantially similar to the signage included in this report, including one approval for a single-tenant development on Tunnel Road. We also support Ingles proposal to seek only one free-standing sign at this location versus other approvals that permitted two or three free-standing signs at one location.

Pros:

- Provides clear and recognizable signage to a large grocery retailer; and
- Unlike other sign plan approvals for Ingles, only one free-standing sign is proposed for the development.

Cons:

- Exceeds existing standards without creatively addressing pedestrian-orientation or wayfinding;

- May continue to set a non-conforming precedent for other stores in Asheville.

Staff recommends that the signage plan for the Ingles development located at 863 Brevard Road be approved as submitted with the following conditions: (1) All signs shall meet the required setbacks, site distance triangles and building code requirements; (2) Window films shall be limited to images only; and (3) All signs shall comply with the proposed standards and no exceptions or variances are permitted.

Mayor Bellamy opened the public hearing at 6:09 p.m., and when no one spoke, she closed the public hearing at 6:09 p.m.

Councilman Smith was concerned that it felt like Council is granting a special exemption to a single company (Ingles). If it's Council's will to have a bigger signage plan for big box stores, he would be open to studying it, but he did not support a standing exemption.

Councilman Bothwell could not support the signage plan as he felt the existing sign regulations are adequate and all businesses should comply.

Vice-Mayor Newman explained that we have a policy that states there are standard signage regulations that anyone is allowed by a use by right. And, if there is a large project, the developer can present a master plan for signage, which is more tailored for that specific site. He disagreed that this is a special exemption for Ingles, as Council has approved several cases where there was a consolidation of signs for a more aesthetically pleasing site. He felt that allowing the signage plan allows a developer to be creative.

There was a brief discussion regarding the City's ability to govern billboards vs. signs.

At the suggestion of Councilman Russell, it was the consensus of Council to have the Planning & Economic Development Committee review the existing sign code requirements.

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

Councilman Russell moved for the adoption of Ordinance No. 3979. This motion was seconded by Councilwoman Manheimer and carried on a 5-2 vote with Councilman Bothwell and Councilman Smith voting "no."

ORDINANCE BOOK NO. 27 – PAGE

- C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING MASTER PLAN FOR THE PROJECT IDENTIFIED AS BUNCOMBE COUNTY COURTHOUSE LIFE SAFETY ADDITION, LOCATED AT 60 COURT PLAZA, TO ADD PHASE II FOR THE CONSTRUCTION OF A NEW 105,000 SQUARE FOOT BUILDING IDENTIFIED AS BUNCOMBE COUNTY COURTS BUILDING AND STREETSCAPE ENHANCEMENTS ALONG COLLEGE STREET WITH MODIFICATION REQUESTS TO STANDARDS AS FOUND IN SECTION 7-8-18 OF THE UNIFIED DEVELOPMENT ORDINANCE**

ORDINANCE NO. 3980 - ORDINANCE TO AMEND THE CONDITIONAL ZONING MASTER PLAN FOR THE PROJECT IDENTIFIED AS BUNCOMBE COUNTY COURTHOUSE LIFE SAFETY ADDITION, LOCATED AT 60 COURT PLAZA, TO ADD PHASE II FOR THE CONSTRUCTION OF A NEW 105,000 SQUARE FOOT BUILDING IDENTIFIED AS BUNCOMBE COUNTY COURTS BUILDING AND STREETSCAPE ENHANCEMENTS ALONG COLLEGE STREET

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to consider an amendment to the Conditional Zoning master plan for the project identified as Buncombe County Courthouse Life Safety Addition, located at 60 Court Plaza to add Phase II for the construction of a new 105,000 square foot building identified as Buncombe County Courts Building and streetscape enhancements along College Street with modification requests to standards as found in Section 7-8-18 of the Unified Development Ordinance. This public hearing was advertised on May 13 and 20, 2011.

She said that this is a request for review of a proposed amendment to a previously approved Conditional Zoning in the CBD (BP # 10-1957 – Ord. No. 3881) to accommodate the construction of a new courts building adjacent to the Buncombe County Courthouse.

The project area consists of 4 parcels with an approximate area of 1.864 acres. The site is located at the corner of College Street and Davidson Street (closed ROW) and extends eastward along College Street towards the roundabout. This area is zoned Central Business District and is currently vacant – acting as the staging area for the Life Safety Addition currently under construction.

The Life Safety Addition (LSA) approval from 2010 is modified under this proposal, removing the lobby entrance and monumental staircase / hardscaped plaza as shown on those plans. This amendment includes the Phase II building alluded to during the 2010 LSA review, a revised plaza / streetscape design and includes the demolition of the rear portion of 205 College Street.

The proposal is for a new four-story Buncombe County Courts Building which will have 105,000 square feet of gross floor area. The height is shown as 74'4" to the floor of the highest occupied level and 86' to the top of the parapet.

The proposed Courts Building includes the lobby / entry vestibule shown in the original LSA proposal, with upgraded areas for security guards and a separate security office, entry points with two metal detectors and an handicapped accessible gate and an adjacent exit area. All visitors to the historic County Courthouse will use this entry point as well, and will be routed through the new Courts Building to the LSA and then into the historic Courthouse. This consolidated ground level entry/exit lobby enhances security options for the Courthouse in a way to make for more efficient check-in and allows guards to monitor all coming and going from the building(s).

The plaza design from the previous approval is revised under this submittal and will be significantly enhanced and enlarged with benches, increased landscaping, pedestrian pathways and monumental steps. These improvements will aid in providing clear visual direction to pedestrians as to where to access the Courthouse as well as offering public gathering spaces. Sidewalks directly along College Street will be enlarged to 11' in width and street trees are provided along this frontage. The site layout proposes eliminating all on-street parking spaces along College Street for security purposes.

The following modifications require approval by City Council with a recommendation from the Downtown Commission and Planning & Zoning Commission:

1. Pedestrian Entrance – The pedestrian entrance is required to be on a frontage line, however in this design, the lobby is located off of the College Street frontage to face into the plaza / gathering spaces.
2. Fenestration – 70% of the street-level façade is required to be composed of windows, doors and other openings but due to security concerns, there are no openings proposed along the College Street frontage.

3. Solid Expanses – Area of opaque wall are not permitted to extend more than 20' in length at the street level without windows, doors or other openings. For security concerns, the entire ground level along College Street is opaque.

The Technical Review Committee (TRC) evaluated this request on April 4, 2011, and it was approved with conditions. No opposition has been received as of the writing of this report.

On April 8, 2011, the Downtown Commission unanimously (9-0) recommended approval of the project and design, including the modifications of pedestrian entrance, fenestration and solid expanses, with the following conditions (1) encourage the applicant to look at the cap and see if there is a way to minimally increase detail; (2) the applicant should look at possibilities to integrate the street furniture (bollards, benches, handrails) from a design standpoint from Pack Square Park into this area; and (3) encourage the application to look at street trees with a more upright growth pattern and higher limb height and (4) try to lessen the number of bollards to minimize visual impact. They also recommended approval of two modifications that were subsequently determined not to be needed: setback and signage.

The Planning & Zoning Commission discussed this proposal at their meeting on May 4, 2011 and unanimously (7-0) recommended approval of the project, including the modifications as described in this report.

Life Safety Addition proposed to be completed by May 2012. Courts Building proposed to be completed by January 2013.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

There are no significant natural or topographic features on the site. There is a slight grade change running along the frontage which is accommodated along College Street through the plaza design and monumental steps leading pedestrians to the entry point.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The development is not expected to injure the value of adjoining or abutting properties. The use enhances and improves the existing government and public safety functions along this block (all adjoining and abutting parcels are owned by the County).

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The new Courts building is appropriate to the area, which has evolved as a governmental "campus" location for City and County uses. The proposed development is generally

compatible with the Buncombe County Courthouse in design and character by use of like materials, while allowing for a more contemporary vision. Additionally, the changes to the plaza and College Street pedestrian area will greatly enhance the character of the waiting spaces and viewing areas for the various war and fallen officer monuments.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The *Asheville City Development Plan 2025*, the *Downtown Asheville Center City Plan* and the *Downtown Master Plan* all stress that having a mix of uses – which includes civic (governmental) – is an asset and vital for the strength of downtown. Specifically, the City and County services are essential to bringing people downtown, providing employment and reinforcing downtown’s status as the center of the region. The *Center City Plan* states that it is important to consolidate governmental uses to the existing “campus” location (p. 60-61) which this proposal facilitates.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposal is located near major road facilities and along multiple City bus routes in the walkable Central Business District. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday; no traffic impact statement is needed.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides an upgraded, modernized judicial facility with enhanced security for judges as well as the public, secure access to and from the jail and the layout of the building allows room for future expansion.
- The overall project provides needed safety and access upgrades to the Buncombe County Courthouse building, prolonging the usability of this iconic historic structure.
- Moving courts uses from the Buncombe County Courthouse building creates opportunities for renovation and expansion with the historic structure.
- Enhancements to the plaza and widened sidewalk create greater visibility along College Street as well as a cohesive, designed streetscape experience.

Con:

- Due to the nature of the use, security restrictions result in elimination of on-street parking as well as a non-active ground level façade, which may somewhat lessen the pedestrian experience and activity along College Street in front of the building.

Staff recommends approval of the amendment to the conditional zoning as submitted by the applicant, including the modifications to location of pedestrian entrance, fenestration and expanses of solid wall.

Mayor Bellamy opened the public hearing at 6:24 p.m., and when no one spoke, she closed the public hearing at 6:24 p.m.

Mr. Keith Hargrove, architect for the project, responded to Mayor Bellamy's concerns regarding the materials on the side of the building facing College Street, as that is a gateway into downtown.

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

Councilman Davis moved for the adoption of Ordinance No. 3980, to amend the Conditional Zoning master plan for the project identified as Buncombe County Courthouse Life Safety Addition, located at 60 Court Plaza, to add Phase II for the construction of a new 105,000 square foot building identified as Buncombe County Courts Building including (1) streetscape enhancements along College Street; and (2) modifications to standards as found in Section 7-8-18 of the Unified Development Ordinance, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The applicant is required to record the signed ordinance with the Buncombe County Register of Deeds. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 27 - PAGE

V. UNFINISHED BUSINESS:

A. STATE LEGISLATIVE UPDATE

City Attorney Oast said that this is a review of activity in the 2011 Session of the North Carolina General Assembly.

Council adopted its Legislative Agenda on January 25, 2011. The North Carolina General Assembly convened for the 2011 regular session on January 26. By letter dated February 21, 2011, the City transmitted its legislative agenda and supporting materials to the local delegation. The deadline for submitting local bills to bill drafting and for the introduction of local bills in either house has passed. The next significant deadline in the General Assembly is the "crossover" deadline, now June 9, which is the date by which a bill needs to be adopted in one chamber of the General Assembly in order to "cross over" to the other chamber and remain eligible for consideration during this session.

I. Asheville Requests.

- A. Woodfin/Asheville boundary adjustment. We have engaged a surveyor to provide a more precise description of what the new boundary will be. We contacted property owners in the area to let them know what was happening but have heard nothing

back. We will work up final language for inclusion in the bill and provide it to legislative staff. If adopted, law would be effective July 1.

- B. Clarification of the Video Service Competition Act. Although there has been much discussion and debate about legislation for cities to engage in fiber-optic service as a public enterprise (popularly known as “municipal broadband”), there has been no discussion of preserving local government I-Nets (or other facilities) that were part of local cable franchises.
- C. Financing of local energy improvements. A bill to implement the NC Save\$ Energy Program which would provide assistance where needed for energy efficiency improvements to personal residences, has been introduced in the House. Our office provided some assistance to the legislative staff. Senator Nesbitt is also interested in this initiative, and we have supplied information to his office.

II. Other Legislative Matters Affecting Asheville.

- A. Annexation. There continues to be much interest in revising the annexation law. A bill has been introduced (HB 845) that would allow annexation to continue, but would require that cities install water/sewer connections within a certain time, and would provide a petition process for residents in the annexation area to opt out. This does not appear to affect current annexations, and is not a moratorium. However, other bills to “undo” specific annexations, including Biltmore Lake, remain in play, and will likely come up for consideration once HB 845 is acted on (adoption seems likely).
- B. Greater Asheville Area Regional Airport Authority. On March 30, a bill (HB 552) was introduced to establish the Greater Asheville Regional Airport Authority as an independent authority. The City of Asheville did not request this bill, and had no input into the language of it. The proposal provides for Henderson County, Buncombe County, and Asheville each to have two seats, with the seventh seat to be appointed by the other six, and generally provides for the Authority to have some governmental powers, such as the ability to own real property.

Most if not all of the land on which the airport is situated is owned by the City of Asheville, and leased to the Airport Authority. Of particular concern to the City regarding the legislation is a provision that requires the City to convey its property to the Airport Authority, apparently without compensation. We are investigating what property would be involved, how the property was acquired, who paid for it, and the effect of FAA regulations on our ability to convey the property and receive compensation.

Council had a strong reaction to this bill at last month’s meeting, and the members of our delegation have been advised that Council opposes this bill. We are advised that a proposed committee substitute (PCS) is being developed, but have not seen any alternative language.

- C. Merger of Water System/Sewer System: To the surprise of practically everyone, a bill was introduced on May 5 (the day after NCLM Town Hall Day) that, though crafted as general legislation, would apply only to the City of Asheville. The bill requires the City to convey the water system to MSD.

This bill has attracted a lot of attention from the League of Municipalities, and other legislators, as well as the local media. Again, this forced conveyance appears to be without compensation, and we are investigating whether this can be legally done. The League of Municipalities has advised us that it will oppose the bill.

III. Other Bills of Interest. With the filing deadlines now passed, the volume of bills being introduced has dropped considerably. Some bills that were covered in my last report have attracted considerable interest, they include:

- HB 687 – Provide that when cities and counties enact ordinances or take administrative actions for which there is no statutory authority, and the ordinance or action is an abuse of authority, a successful plaintiff may recover attorney fees.
- HB 652 – Property Owners Protection Act. Award attorney fees to successful litigants in land use cases against local government.

The issue with these bills is that they could potentially result in the award of attorney fees any time a legal case is resolved against a local government. Under existing law, local governments (and employees and officials) have some ability to exercise professional judgment in carrying out their duties. These laws would have the effect of limiting that ability. This would apply in the administrative (code enforcement) as well as legislative (ordinance policy adoption) contexts. The League of Municipalities strongly opposed these bills.

Upon inquiry of Councilman Bothwell, Mayor Bellamy explained Senate Bill 183. In summary, the legislation would dramatically expand the allowable cutting of trees along public roadways in front of billboards and allow clear cutting in front of existing billboards in our communities. In addition, it would limit our ability as cities and citizens to protect the appearance of our communities. Specifically, trees and vegetation could be cleared in a 380-foot zone around billboards outside of cities and a 340-foot zone in cities along interstates and freeways, an increase from the current 250-foot cut zone. The bill would prohibit enforcement of local tree ordinances in front of billboards along interstates and federally assisted highways. She said that trees and green spaces are more valuable to our community than increasing the prominence of billboards. Protecting our neighborhoods' appearance reflects the values of our citizens and the message we want to project to our businesses and our visitors. She said the Tree Commission has also asked Council to watch this bill carefully. Councilman Bothwell then moved to instruct the City Attorney to watch this legislation and offer the City's opposition to Senate Bill 183. It was the consensus of Council to have City Attorney Oast provide information to Council on this legislation.

At Councilman Smith's request, Councilman Bothwell, liaison to the Sustainable Advisory Committee on Energy & the Environment, said that he would have them review House Bill NC Saves legislation and provide Council with a recommendation.

Councilman Smith expressed concern over House Bills 687 and 652, noting that it will be taxpayer dollars used to defend the City of Asheville.

Mayor Bellamy updated the Council on a motion that passed the Metropolitan Sewerage District (MSD) Board of Directors. She said they voted last week to have the MSD Planning Committee study the issue of whether the City of Asheville's water system should be consolidated with MSD. She did not support the motion, or the legislation. She spoke with Representative Moffitt and he did indicate that he would amend the bill to have it be a study bill; however, that has not happened. He felt it would be appropriate for Council to send a letter to our legislators that we oppose our water system being given to MSD.

Councilman Davis supported sending a letter to our legislators in addition to having an Opinion Editorial in the newspaper.

Councilman Russell, member on the MSD Board, said the reason the Board sent this to the MSD Planning Committee was simply to have the Planning Committee respond back to the Board with what they think about this idea. Board members can speak individually or they can

have the Board come up with a position to say that MSD is not in a position to study consolidation. MSD does not have the funds to purchase and acquire the City's water system. He said the MSD Planning Committee will probably come to the conclusion that we should just watch the bill and see what happens. It is his understanding that the motion was not to MSD study the consolidation, but to have the MSD Planning Committee recommend to the Board their thoughts about the bill.

Mayor Bellamy noted that MSD Chairman Aceto stated that MSD is going to study this issue should the City's water system become a part of MSD, separate and apart of this bill passing, because this has come up previously. She felt City Council needs to take a position that opposes the State taking our water system and consolidating it with another entity, especially with no City input. She felt the City should write a letter to our legislators stating our strong opposition. There are other bills introduced that we did not react to and they are becoming law.

Councilwoman Manheimer felt we need to voice our concern about the bill. She felt Council should consider engaging a lobbyist so we can have someone represent Asheville. It was the consensus of Council to have the Planning & Economic Development Committee study the idea of engaging a lobbyist with information provided by City staff regarding costs, lobbyist recommendations and expectations.

Vice-Mayor Newman said that the letter should point out the City's significant investments made in modernizing the water system; that there are already extensive legislative regulations on the water system to ensure that the revenues to the system are reinvested in the system; that City taxpayers over many decades have invested in the system including the acquisition of over 20,000 acres of land so that the City of Asheville is in the fortunate position of having one of the most pristine drinking water sources in the United States; that the City is open to a range of different ways to work with the County and other partners on service delivery, but that any manor study of that should be based on consultations and not outside groups from any level initiating that that single-handedly.

Councilwoman Manheimer moved to authorize Mayor Bellamy to send a letter to our legislators expressing our strong opposition to the bill transferring the City's water system to MSD, with a copy of said letter being sent to MSD. Said letter to include points outlined by Vice-Mayor Newman. This motion was seconded by Councilman Smith and carried unanimously.

Rev. Christopher Chiaronmonte urged Council to oppose this legislation.

B. ORDINANCE NO. 3981 - ORDINANCE ADOPTING THE FISCAL YEAR 2011-12 ANNUAL OPERATING BUDGET

Administrative Services Director Lauren Bradley said that this is the consideration of an ordinance adopting the Fiscal Year 2011-12 Annual Operating Budget.

The Fiscal Year 2011/2012 Proposed Annual Budget was formally presented to City Council on April 26, 2011. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on April 29 and May 6, 2011. City Council conducted a public hearing on the Proposed Budget on May 10, 2011.

Operating Budget Adjustments

The net proposed FY 2011/2012 operating budget presented to City Council on April 26th was set at **\$132,360,547**, including a General Fund appropriation of **\$87,549,955**. Since the Proposed Budget was presented to City Council, there have been three adjustments that have altered the total of the budget that is presented tonight for Council adoption.

- 1) **Recycling Program Enhancements:** At its May 10, 2011, meeting, Council approved enhancements to the household recycling program that include the purchase of 95 gallon containers and the implementation of a recycling rewards program. The net annual operating cost of these program enhancements is expected to be approximately \$213,000. To fund this additional cost, Council approved an increase in the household recycling of \$0.65 per month. Since the program enhancements and the fee increase will not take place on July 1, 2011, staff has only included a partial year's worth of revenue and expenses in the FY 2011/2012 operating budget. The amount added to the FY 2011/2012 operating budget totaled **\$180,000**.
- 2) **Funding for the Asheville-Buncombe Regional Sports Commission:** Also at the May 10, 2011, meeting, Council approved the addition of **\$45,000** to the FY 2011/2012 operating budget to provide support to the Asheville-Buncombe Regional Sports Commission. This funding will provide the Sports Commission the resources it needs to hire a full time Executive Director that will continue the work of creating, recruiting, and supporting sporting events in the community.
- 3) **COPS Hiring Program Grant:** After the Proposed Budget was presented to Council, the City received notification that it will receive a grant award under the Fiscal Year 2011 Federal COPS Hiring Program. In a separate action before Council tonight, staff is seeking approval to apply for COPS funding for 5 additional police officers. The COPS funding will pay for 100% of salary and benefit costs for these 5 officers for the first three years of their employment. The City will be responsible for funding the officers beginning in year four. The grant award will be received in October. Staff is proposing that the **\$129,000** in funding that was included in the Proposed Budget to hire three additional officers in association with the opening of the Hillcrest Bridge be removed from the Budget at this time pending receipt of the COPS grant funds in October.

The net result of these changes increases the operating budget by **\$96,000** to **\$132,456,547**, and the General Fund appropriation to **\$87,645,955**. It should be noted that neither of the two changes mentioned above altered the proposed property tax rate of \$0.42 per \$100 of assessed value that was presented to Council on April 26th. Therefore, the property tax rate in FY 2011/2012 will remain the same as the current year tax rate. The proposed General Fund budget also includes no appropriation from the City's fund balance. All essential City services are continued in the Proposed Budget.

Capital Improvement Program (CIP) Changes

In association with the recycling program enhancements, staff has added \$1.5 million to the FY 2011/2012 CIP to fund the purchase of the 95 gallon containers. This purchase will be debt financed and the debt service expenses are included in the operating budget adjustment mentioned above.

Public Works staff has also updated its cost estimates for two projects that were included in the FY 2011/2012 Proposed CIP that was presented to Council on April 26th. Staff is now anticipating that the Montford Street rebuild project will cost \$493,000, and the Wild Cherry bridge replacement will cost \$700,000. Both projects will be debt financed, and the new cost estimates do not change the overall CIP budget for FY 2011/2012, but staff wanted to highlight the changes to Council prior to budget adoption.

This action complies with the Fiscal Responsibility focus area of City Council's Strategic Operation Plan: Operate the City of Asheville's organization to the highest fiscal responsibility.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.

- Proposed General Fund Budget is balanced with no tax rate increase or fund balance appropriation and all essential City services are continued.

Con:

- None.

As noted above, the Proposed FY 2011/2012 General Fund budget is balanced with no fund balance appropriation. Based on year-end projections for the current fiscal year and the planned expenses for FY 2011/2012, staff is estimating that at the end of FY 2011/2012 fund balance in the General Fund will equal 14.2% of expenses.

Staff requests that Council review the FY 2011/2012 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Councilman Bothwell moved for the adoption of Ordinance No. 3981. This motion was seconded by Councilwoman Manheimer.

At the request of Councilman Russell, it was the majority consensus of Council to have the Finance Committee quickly review our manufacturing rates regarding water rates to possibly create a manufacturing customer class within our rate structure in order to grow and preserve that section of our economy that is most sensitive.

Councilman Bothwell felt that we also need to discuss the larger concept of if it is appropriate to use water rates in order to attract business and provide jobs. He felt that development is going to find us because we are a great city.

Vice-Mayor Newman said that thinking long-term we are clearly moving towards a more conservation oriented water structure. In the far future, there is the potential that the City might need to construct an additional water treatment plant. He would like for Council to consider making a policy goal that in our long-term management plan, if possible, we want to avoid the need to construct an additional water treatment facility in our region. The two reasons for that goal are (1) water lines themselves will require huge capital investments and building new is extremely expensive; and (2) energy consumption reduction over time as there are enormous electricity demands spent on water production and water distribution.

Councilman Bothwell said that in the short term rates may play a role in whether or not businesses want to come to Asheville, but it is the truth that we are experiencing globally a shortage of fresh water. The fact that we have plentiful water will be an attraction to the many industries in the longer-term future. Nudging businesses toward conservation policy helps us preserve that very valuable resource that businesses will look for.

Councilman Davis felt to not make plans for another site for water production would be a mistake. He felt we need to leave that door open. We may be the region's best supply of water, but as drinkable water becomes more scarce, then our assets become more valuable.

Vice-Mayor Newman said his goal is just an idea that Council might want to look at. If the demand is there, it is our responsibility to meet that demand. He just doesn't want it to be a foregone conclusion that we are going to build a new water treatment plan, if we can make some smart decisions and avoid the \$40 Million capital expense.

Mayor Bellamy asked the Finance Committee to consider the fact that even though the City's budget runs from July 1 – June 30, most companies do not and when we implement our fees or rate increases mid-year, they are scrambling to keep their budgets intact. She felt we need to let individuals and companies know in advance that the City will increase rates so people can plan and budget for it. She said that she could not support the budget for the following

reasons (1) no salary/cost of living increase for City employees, especially for those who are on the lower end of the salary scale and especially with the health care cost increase; (2) closure of the East Asheville Community Center will harm our community; (3) even though we have seen a decline in building activity we have not seen the proportionate same decline in the Building Safety budget; (4) studying a trolley system downtown should not be a top priority; (5) it is not transparent to the public of the City's services and the costs for those services; (6) Council's policy is a 15% Fund Balance, but yet another year we are below that threshold at 14.2%; (7) even though the proposed budget shows we are transferring \$500,000 from the Parking Fund to Transit and \$383,000 from the General Fund to Transit, we are making seniors and those with disabilities (through deletions of routes) have to walk further to catch a bus; and (8) increase of the recycling fee when Asheville is already one of the most successful recycling cities in our State. She felt Council must consider the number of individuals in our community that live below the poverty level and look at our policies and practices on what it costs to live in our community.

Councilman Bothwell felt that only through a tax increase can we address some of the Mayor's concerns and he would lend that support.

Councilman Russell would not support a tax increase.

Vice-Mayor Newman asked for a friendly amendment to the motion to encourage the City Manager to find resources for irrigation system improvements at the Golf Course next fiscal year as he felt it is a cost effective investment that will pay for itself over a short period of time. Councilman Bothwell and Councilwoman Manheimer accepted the friendly amendment.

Mayor Bellamy felt we should look at privatizing the Golf Course.

Councilman Davis was also concerned that City employees will not receive a cost of living increase for the third year in a row. He hoped that if we do see a revenue increase in the upcoming year that a cost of living increase be one of the first things we consider.

Councilman Bothwell said that citizens need to be educated on what can be recycled as they will save on tipping fees.

Councilman Smith said that per capita spending in the City of Asheville is lower today than it was 10 years ago. That speaks a lot to efficiency, innovation and creativity in government. He supported Council's goal of 15% Fund Balance noting that the 14.2% this year reflects the economies realities. Should some of these revenues increase, his top priorities would be (1) return to the 15% Fund Balance; (2) consider City employee salaries; and (3) figure out how to get back to the 2008-09 levels of the Housing Trust Fund (\$600,000). Regarding transit, despite rising fuel costs, transit is being funded at about the 2008-09 budget level and that speaks a lot to Transportation Department. They must figure out how to maintain the system despite the fact that gas is \$3.85/gallon and the users continue to demand exemplary service. The Transit Master Plan implementation is designed to make whole system more reliable and more convenient and for greatest number of people. As the Plan goes forward, we are going to be able to improve the system noticeably for everyone in Asheville, while keeping the operating costs basically flat. Regarding raising revenue, he is not in favor of a tax increase; however, he is in favor of a more vigorous and robust approach towards helping our legislators understand the need for us to get to the state average on the occupancy tax in Asheville.

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

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

The motion made, and amended, by Councilman Bothwell and Councilwoman Manheimer and carried on a 6-1 vote, with Mayor Bellamy voting "no".

ORDINANCE BOOK NO. 27 – PAGE**VI. NEW BUSINESS:****A. RESOLUTION NO. 11-104 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Vice-Mayor Newman said that the terms of Diane Duermit and Hillary Cole, as members on the Asheville-Buncombe Historic Resources Commission, expire on July 1, 2011. In addition, there currently exists a vacancy left by Ms. Amanda Warren until June 1, 2012.

At the May 10, 2011, City Council meeting, it was the consensus of Council to interview Brendan Ross, Brian Cook, Allen Currens and Randall Hall. Mr. Hall asked that his name be removed from the consideration at this time.

Also at the May 10 meeting, City Council reappointed Hillary Cole to serve an additional three-year term, term to expire July 1, 2014, or until her successor has been appointed.

After Council spoke highly of the candidates, Brendan Ross received 5 votes, Brian Cook received 6 votes, and Allen Currens received 3 votes. Therefore, (1) Brian Cook was appointed as a member of the Asheville-Buncombe Historic Resources Commission to fill the unexpired term of Ms. Warren, term to expire July 1, 2012, or until his successor has been appointed; and (2) Brendan Ross was appointed to serve a three year term, term to begin July 2, 2011, and expire July 1, 2014, or until her successor has been appointed.

RESOLUTION BOOK NO. 34 – PAGE 17**B. RESOLUTION NO. 11-105 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the term of Lou Bissette, as a member on the Metropolitan Sewerage District (MSD) Board, expired on January 19, 2011.

The following individual applied for the vacancy on the MSD Board: Barbara Field.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Councilwoman Esther Manheimer, explaining her qualifications.

Mayor Bellamy pointed out that Mr. Bissette is currently Chairman of the MSD Planning Committee that has been recently directed to study the issue regarding Asheville's water system. Vice-Mayor Newman recalled Council extended Mr. Bissette's term until he finished work on the water extension lines. Since that has happened, the Boards & Commission's Committee felt his replacement is due.

Councilman Russell spoke highly of Mr. Bissette's six years of service to the MSD Board.

Councilman Russell moved to appoint Councilwoman Esther Manheimer to serve a three-year term, term to begin immediately and expire on January 19, 2014, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 18

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy said that the Buncombe County Board of Elections has asked the City if they have any suggestions for a location for the early voting site in east Asheville. It was the consensus of Council that they not be involved in the specific location of early voting sites as they don't want to give the appearance of a conflict of interest. They did request that the site be generally convenient. They did note that, as an option suggested by the Board of Elections, Kenilworth Presbyterian is a viable location and amenable to Council.

Dr. Milton Byrd, Mr. Lisa Landis and Rev. Christopher Chiaromonte spoke to the need of public access via the WNC Community Media Center.

Ms. Dixie Barkdoll was opposed to the auditor who will be performing the Police Department audit.

Mr. Mark Cates commended the Council on their vote for the budget. Council's projection of a 3% increase in sales tax revenue is good news and was pleased that Council believes the economy will improve and grow.

Councilman Bothwell was pleased that the City of Asheville is in good standing regarding the HUD home block grant monies.

Mayor Bellamy reminded the community of Memorial Day activities.

The City was served with a Complaint on May 2, 2011, which is generally described as follows: C&C Business Services, Inc. v. City of Asheville. The nature of the proceeding is a complaint for breach of contract, based on Jeff Coffey's janitorial service contract. This matter will be handled in-house.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:56 p.m.

CITY CLERK

MAYOR