

Tuesday – June 28, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; 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: Councilman Cecil Bothwell (out of town)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF THE DECORATIVE RESTORATION PROGRAM AT A-B TECHNICAL COMMUNITY COLLEGE

Mayor Bellamy read the recognition of the Decorative Restoration Program at A-B Technical Community College. She said that the Program was founded in 1988 as a cooperative venture with the Biltmore Estate. Students have come from as far away as Alaska and Vermont to take advantage of the only full-time program of its kind in the country, which will be graduating its last class this year. The program has graduated nearly 300 students, all skilled artisans, a number of whom have begun thriving restoration businesses all across the country and have worked on the restoration of historic artifacts and buildings, churches and cathedrals. Still other graduates have become designers, decorative painters, and film producers.

Two passionate and visionary teachers have guided the Decorative Restoration program during its twenty-three years: Derick Tickle, a master craftsman who previously taught for London's distinguished City & Guilds, arrived from England in 1989 and directed the program until his retirement in 2005 when Tim Hanlon, a 1997 graduate of the program, took over its leadership.

We have these two instructors and their students to thank for the beautifully restored jewel-like ceiling of the County Courthouse, which took six years to complete, and for the uniquely decorative foyer and Council Chamber of City Hall. Visitors to the Biltmore House are awed by total effect of 17,500 pieces of gold-leaf covering the walls of George Vanderbilt's bedroom and the distinctive touches elsewhere in the house, evidence of a long-time collaboration between neighbors A-B Tech and the Biltmore Estate.

We appreciate the program's philosophy that the greenest building is the one already built. The Decorative Restoration Program has helped keep Asheville's heritage intact for today and tomorrow. Through its contributions, Asheville's citizens learn to appreciate our historic buildings, their decoration and construction, and to preserve them for future generations.

Mr. Jack Thomson, Executive Director of the Preservation Society of Asheville and Buncombe County, also expressed their appreciation for the work of the students from the Program, as the Program has promoted Asheville as the place to learn the importance of historic resources through professional appreciation and craftsmanship. He strongly encouraged the

current administration at A-B Tech to work with the preservation community in Asheville to develop a re-tooled restoration program.

II. CONSENT AGENDA:

At the request of Councilman Smith, Consent Agenda Item "D" was removed from the Consent Agenda for discussion and/or an individual vote.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 14, 2011**
- B. RESOLUTION NO. 11-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR NEW URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for new Urban Progress Zones within the City of Asheville.

In July of 2006 the NC General Assembly passed legislation (House Bill 2170) that created a new business tax credit program, replacing the William S. Lee credits, which were repealed for business activities that occurred on or after January 1, 2007. The newer program is called Urban Progress Zones.

On July 24, 2007, Asheville City Council passed a resolution authorizing the City Manager to submit an application for state designation of Urban Progress Zones (UPZs).

The application was successful and two zones were designated, and renewed the following year. In 2010, City staff performed a review of the effectiveness of the designated UPZs and found that very few businesses were taking advantage of it. Staff proposed that to increase effectiveness of the program and stimulate economic development 1) new zones should be created that expand the number of eligible businesses in the zones and 2) staff should collaborate with area economic development partners on a marketing initiative for the UPZ program. The action requested of Council today is to support proposal #1, the creation of new zones. Staff in the Information Technology Department provided the technical resources to create zones that better leverage the State of North Carolina's requirement that only fifteen percent of a municipalities land area can be used as an Urban Progress Zone. As a result, businesses that were formerly not located in the City of Asheville's zones, specifically those in East Asheville/Tunnel Road and West Asheville/Haywood Road and Patton Avenue, will now be eligible for the credit, providing they meet the NAICS coding and other requirements established by the State. Staff notes that the final Central and Western UPZ may or may not include the Westside Industrial Business Park located at 150 Westside Drive. The Industrial Park is shown as included in the current map; however as it is part of the City's jurisdiction but not within the City's primary jurisdictional area, the City will have to request that the Secretary of Commerce allow this interpretation of the Urban Progress Zone guidelines.

The Urban Progress Zone designation is compliant with the 2010-2011 Strategic Plan in the following areas: (1) Job Growth and Community Development: Support a strong local economy by continuing to implement sustainable growth; and (3) Fiscal Responsibility: Hold the line on taxes and support tax and fee relief. In addition, this action is in alignment with the City's adopted 2020 Plan, specifically as it applies to supporting Smart Growth and Infill Development.

Pro:

- This action will provide incentives for business growth and investment within targeted commercial and mixed use communities.

Con:

- Must reapply or renew each year.

Urban Progress Zones do not require city investment beyond identification of eligible zones and preparation or renewal of application. Credits are applied only to state taxes.

City staff recommends City Council approve a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for two new Urban Progress Zones within the City of Asheville.

Councilman Davis noted that with these Urban Progress Zones come some tax opportunities for businesses in these zones.

RESOLUTION BOOK NO. 34 – PAGE 57

C. RESOLUTION NO. 11-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED ADOPT-A-PARK AGREEMENT WITH JUST FOLKS

Summary: The consideration of a resolution authorizing the City Manager to sign an amended Adopt-a-Park Agreement with Just Folks to include a waiver for park use fees for Triangle Park for Fiscal Year 2011-2012.

Just Folks is a local non-profit organization whose primary purpose is to support community-building activities in the Eagle/Market Street area. The members of the Board of Directors are all residents who grew up in the area and are actively engaged in efforts to improve the environment in Triangle Park by providing more positive uses of the park. Their focus on Triangle Park began seven years ago when they were encouraged to produce cultural events in the park by a past City of Asheville Cultural Arts Superintendent. They have received support from the City in the form of park use fee and permit waivers for the past seven years for events that have included music festivals, community cookouts and other community-building events in the park May to December on Saturdays and Sundays. The events are free and open to visitors and community members.

In addition, they have a presence in the park at other times and organize workdays to clean up the park. This past spring, they signed an Adopt-a-Park agreement with the Parks, Recreation, and Cultural Arts Department to formalize their partnership with the City to adopt the park year round. As part of that agreement, the group agreed to:

- Conduct regular clean-ups
- Weed and maintain the planted beds
- Mulch paths and planting beds
- Provide volunteers to participate in these and other projects
- Provide the tools and materials to carry out regular maintenance and special approved projects

Just Folks is currently in the process of partnering with the Asheville Design Center and the city to develop a planting plan and carry out a mural project and other improvements in the park. Their presence and activities in the park have contributed to the reduction of nuisance behaviors in and around the park and improved the appearance of the park, thereby making it more attractive to downtown visitors and community members and meeting specific City Council goals for economic and community development

In Fiscal Year 2011-12, Just Folk is planning to hold two events each weekend during the course of the year. These include music events and community cookouts which are free

and open to everyone in the community. They are interested in holding events year round in the park and anticipate a total of 45 events for approximately 195 hours of programming.

Because of the group's partnership agreement with the City, and the direct relationship of their efforts to City Council goals and objectives, staff is recommending that the City amend its Adopt-a-Park agreement with Just Folks to include the waiver of park usage fees for the programming described. The nature of the group's programming meets a public purpose and the City's stated goals to partner with "sister agencies" to extend public programming in targeted areas.

This recommendation was presented to the Council Finance Committee at their May 24 meeting. Members of the Finance Committee unanimously supported the recommendation and approved its consideration with the full City Council.

This action complies with the City Council Strategic Operating Plan to be one of the safest and most secure communities compared to similar cities.

Pros:

- The events held by Just Folks in Triangle Park proactively promote positive community interactions in the area and have significantly improved public safety in "The Block".
- Strategic partnerships allow the city to leverage programming and events to reach a wider and more diverse audience.
- Provides additional quality cultural programming and diversity in a park that is generally not used for this type of event.
- Reduces staff time in processing fee waiver requests related to this group's events.
- This action is consistent with other partnerships the City has entered into for park programming in key community development areas.

Cons:

- The reduction in permit fees result in lost revenue for the city; however, the city has not budgeted for this revenue in Fiscal Year 11-12.

The estimated value of the waived park usage fees is \$2,500; however, this revenue has not been included in the Fiscal Year 11-12 budget.

Staff recommends that City Council authorize the City Manager to sign an amended Adopt-a-Park Agreement with Just Folks to include a fee waiver for park usage fees associated with programming in Triangle Park.

RESOLUTION BOOK NO. 34 – PAGE 60

D. RESOLUTION TO SUPPORT THE N.C. DEPT. OF TRANSPORTATION IN FUNDING, DESIGNING, AND CONSTRUCTING A SIDEWALK ALONG US 70 (TUNNEL ROAD) FROM THE VA HOSPITAL TO THE VETERAN'S QUARTERS IN EAST ASHEVILLE

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

E. RESOLUTION NO. 11-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER FOR PATTON CONSTRUCTION GROUP, LLC, FOR THE VIEWMONT ACRES WATER SYSTEM EXTENSION PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of \$23,413.24 to increase the construction contract for Patton Construction Group, LLC, from \$294,950.00 to \$318,363.24 for the Viewmont Acres Water System Extension Project.

On June 8, 2010, City Council awarded the construction contract to Patton Construction Group, LLC, for the Viewmont Acres Water System Extension Project. The City of Asheville has received a grant from N.C. Dept. of Environment and Natural Resources (NCDENR) to replace the existing, private, failing water system at the Viewmont Acres Mobile Home Park. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The project consists of the construction and installation of approximately 2,850 Linear Feet of a new 8-inch waterline, fire hydrants, valves, and other appurtenances as well as the installation of five (5) private residential booster pump stations.

In order to complete the construction and close out the project, a change order is needed to increase the contract amount by an additional \$23,413.24 for a total contract amount of \$318,363.24. The change order is needed because of overruns to the original quantities estimated and to cover changes to the scope of the work, which were requested through work change directives issued by the Water Resources Department. These work change directives were necessary to accommodate unknown conditions, which were discovered during construction. There is sufficient budget within this project to fund the needed change order, so no budget amendment is required.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:

- Approval of the change order will allow the city to complete construction of the water system and close out the project, which will provide twenty-three (23) customers with a safe reliable drinking water source and much improved fire protection.
- The contract amount is fully reimbursable by the committed grant money, including the change order amount.

Con:

- If the change order is not approved, it would lead to forfeiture of part of the NCDENR grant funds and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the construction cost of \$318,363.24 (includes the change order amount) for this project until full reimbursement is received from the State. Funds for these upfront costs are already included in the Water Resource's Capital Improvement Program budget. Cost summary until reimbursement:

Viewmont Acres Construction Budget	\$582,171.00
<u>Original Construction Amount</u>	<u>\$294,950.00</u>
Amount Remaining in Const. Budget	\$287,221.00
<u>Change Order Amount</u>	<u>\$ 23,413.24</u>
Amount Remaining After Change Order	\$ 263,807.76

After the project is completed and closed out, the remaining funds will be returned to the Water Resource's Capital Reserve Fund for reallocation to a current or future capital project. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order in the amount of \$23,413.24 to increase the construction contract for Patton Construction Group, LLC, from \$294,950.00 to \$318,363.24 for the Viewmont Acres Water System Extension Project.

RESOLUTION BOOK NO. 34 – PAGE 62**F. RESOLUTION NO. 11-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER FOR T&K UTILITIES INC. FOR THE RICEVILLE FOREST TANK PROJECT****ORDINANCE NO. 3987 - BUDGET AMENDMENT FOR RICEVILLE FOREST TANK PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of \$35,470.00 to increase the construction contract for T&K Utilities, Inc., from \$289,535.06 to \$325,005.06 for the Riceville Forest Tank project; and the associated budget amendment in the amount of \$10,006 from existing water capital project funds.

Review: On October 26, 2010, City Council awarded a construction contract to T & K Utilities, Inc., for the Riceville Forest tank project, located in the Riceville Forest Subdivision in East Asheville off of Riceville Road. The work consists of the demolition and disposal of the existing 19,000 gallon steel ground storage reservoir, construction of a new 97,000 gallon glass fused to steel reservoir, installation and operation of a 21,000 gallon temporary water storage tank with temporary booster pumping system for 3 existing residences, and construction and installation of approximately 370 linear feet of 6-inch ductile iron pipe with related appurtenances.

In order to complete construction and close out the project, a change order is needed to increase the contract amount by \$35,470.00 for a total contract amount of \$325,005.06. The change order is needed because of overruns to the original quantities estimated and to cover changes to the scope of the work, which were requested through work change directives issued by the Water Resources Department. These work change directives were necessary to accommodate unknown conditions, which were discovered during construction. To provide the necessary budget authorization for this change order, the project budget for the Riceville Forest Tank project will need to be increased by \$10,006.

This project is part of City Council's strategic plans to improve city infrastructure.

Pro:

- Approval of the change order will allow the city to complete construction of the new water tank and close out the project.

Con:

- If the change order is not approved, the project will not be completed and it could incur more costs due to time delays.

Fiscal Impact: The Water Resources Department has a Riceville Forest Tank capital project in which funds are specifically reserved for this project. A budget amendment is needed to increase the project budget in order to cover the additional funds needed. The additional funds needed for the change order will be reallocated from the Reynolds Mobile Home Park Water System Improvement project, which was recently completed and closed out.

Riceville Forest Tank Construction Budget	\$315,000.00
<u>Original Construction Amount</u>	<u>\$289,535.06</u>
Amount Remaining	\$ 25,464.94
<u>Change Order Amount</u>	<u>\$ 35,470.00</u>
Budget Amendment Needed	\$- 10,005.06

Recommendation: City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order in the amount of \$35,470.00 to increase the construction

contract for T&K Utilities, Inc., from \$289,535.06 to \$325,005.06 for the Riceville Forest Tank project, and the associated budget amendment in the amount of \$10,006 from existing water capital project funds.

**RESOLUTION BOOK NO. 34 – PAGE 63
ORDINANCE BOOK NO. 27 - PAGE**

G. RESOLUTION NO. 11-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DELAY THE IMPLEMENTATION OF THE RECENTLY APPROVED FEE CHANGE FOR TRANSIT PASSENGER FARE TICKET BOOKS

Summary: The consideration of a resolution authorizing the City Manager to delay the implementation of the recently approved fee change for transit passenger fare ticket books.

The passenger fare structure for the Asheville Transit System consists of a \$1.00 per ride option and various pre-paid, discounted options including ticket books, monthly passes, annual passes, and bulk fares. Typically, passenger fares provide about 15% of the total annual operating budget.

The current ticket book includes 11 tickets and costs \$9.00 per book, which equates to \$0.82 per ticket. The change for Fiscal Year 2011-12, which was approved by City Council on April 12, 2011, includes 10 tickets at a cost of \$9.00 per book. The change equates to \$0.90 per ticket. Please note that the actual price of the ticket book is not changing, only the number of tickets included in each book.

Shortly after the change was approved, staff learned that a fare increase analysis is required by the Federal Transit Administration to ensure compliance of Title VI of the Civil Rights Act. Staff is asking that the subject fare increase be delayed until the Federal Transit Administration reviews and approves it. Once the fare increase is approved by the Federal Transit Administration, staff will then implement it.

This action complies with the current City Council Strategic Operating Plan by enhancing the affordability of the Asheville Transit System's passenger fare structure.

Pros:

- The City would comply with Title VI of the Civil Rights Act as it relates to the Federal Transit Administration policies.
- The Transit Master Plan recommends bringing discount fares closer to industry standards.

Con:

- Maximum potential monthly revenue loss is about \$102 (based on current customers that purchase ticket books).

Since the actual price of a ticket book would not change, it is difficult to predict the actual fiscal impact. The maximum potential monthly revenue loss is about \$102 (based on current customers that purchase ticket books).

Staff recommends that City Council approve a resolution authorizing the City Manager to delay the implementation of the recently approved fee change for transit passenger fare ticket books.

H. RESOLUTION NO. 11-132 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH USCOC OF GREATER NORTH CAROLINA, LLC FOR AN IN-HOUSE REPEATER AT 70 GASHES CREEK ROAD, ASHEVILLE, N.C.

Summary: The consideration of a resolution authorizing the City Manager to execute a Lease Agreement with USCOC of Greater North Carolina, LLC for antennas at 70 Gashes Creek Road, Asheville, N.C.

The City of Asheville operates a Facilities Maintenance Division at the building located at 70 Gashes Creek Road. The cellular coverage at that location is poor, and USCOC of Greater North Carolina, LLC (aka US Cellular) has offered to install up to four antennas, one donor antenna and one repeater at that site to boost the cellular signal. The antennas will be placed on the building rooftop and in the interior ceiling of the building. USCOC has offered to enter into a lease agreement for a term of five years, with a five year renewal at no cost.

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

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility. By allowing USCOC to place their equipment in a portion of the building for these antennas, the City will improve the cellular signal for employees without purchasing any additional equipment.

Pro:

- Enhanced cellular signal for city employees at Gashes Creek Road

Con:

- None

No consideration contemplated for this lease, due to the direct benefit to the City. Avoids city expenditure on cellular equipment needed to boost signal.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with USCOC of Greater North Carolina, LLC for antennas at 70 Gashes Creek Road, Asheville N.C.

RESOLUTION BOOK NO. 34 – PAGE 66

I. ORDINANCE NO. 3988 - BUDGET AMENDMENT TO MOVE THE PURCHASE OF A FIRE AERIAL LADDER TRUCK FROM THE GENERAL FUND TO THE GENERAL CAPITAL PROJECTS FUND

Summary: The consideration of a technical budget amendment, in the amount of \$1,200,000, to move the purchase of a fire aerial ladder truck from the General Fund to the General Capital Projects Fund.

As a part of the FY 2010-11 Adopted Budget, City Council approved a budget of \$1,200,000 for the replacement of a twenty-year old fire aerial ladder truck, with funding for the purchase coming from the issuance of debt proceeds. A formal bid was conducted in the current year, and Pierce Manufacturing Inc. was awarded the bid as the lowest responsive bidder; however, the truck will not be delivered until FY 2011-12. Therefore, the City will not be issuing the debt associated with the purchase of the truck until after the start of the new fiscal year.

Since this transaction will be spanning two fiscal years, staff is recommending that the budget for the aerial ladder purchase be moved out of the General Fund and into the General Capital Projects Fund, which is a multi-year fund that is more appropriately designed for these types of transactions.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Provides the required budget authorization for the purchase of the fire aerial ladder to be made out of the multi-year General Capital Projects Fund.

Con:

- None.

This technical budget amendment moving the budget from one fund to another has no overall fiscal impact to City.

City staff recommends City Council adopt the technical budget amendment in the amount of \$1,200,000 to move the purchase of a fire aerial ladder truck from the General Fund to the General Capital Projects Fund.

ORDINANCE BOOK NO. 27 - PAGE

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

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 11-127 - RESOLUTION TO SUPPORT THE N.C. DEPT. OF TRANSPORTATION IN FUNDING, DESIGNING, AND CONSTRUCTING A SIDEWALK ALONG US 70 (TUNNEL ROAD) FROM THE VA HOSPITAL TO THE VETERAN'S QUARTERS IN EAST ASHEVILLE

Summary: The consideration of a resolution to support the N.C. Dept. of Transportation in funding, designing, and constructing a sidewalk along US 70 (Tunnel Road) from the VA Hospital to the Veteran's Quarters in East Asheville.

The N.C. Dept. of Transportation (NCDOT) and the City of Asheville have been working together during the past year to construct sidewalks and install pedestrian crosswalks and signals along US 70 (Tunnel Road) in the East Asheville area.

A project to install sidewalk along the north side of Tunnel Road between Avon Road and Governor's View Road and to install pedestrian signals and crosswalks at the intersection of Tunnel Road and Beverly Road was completed during December 2010. Currently, City forces are constructing a sidewalk along the north side of Tunnel Road between New Haw Creek Road and Avon Road and the subject project should be completed by July 2011. The NCDOT is currently constructing a sidewalk along the south side of Tunnel Road between the Asheville Mall

and New Haw Creek Road with a private contractor and it should be completed during July 2011. The NCDOT will also install pedestrian signals and crosswalks at the intersection of Tunnel Road and Crocket Avenue/New Haw Creek Road to connect the two sidewalks.

Monies are included in the City's Capital Improvement Plan for Fiscal Year 2011-12 to construct a sidewalk along the north side of Tunnel Road between Governor's View Road and Maple Springs Road and the NCDOT is currently seeking a "Safe Routes to School" grant to fund a sidewalk along the north side of Tunnel Road between Maple Springs Road and Craig Circle. Once all of these projects are completed, which should be by the end of Fiscal Year 2011-12, there will be a pedestrian network connecting downtown Asheville to the Veteran's Quarters (assuming the subject project is approved).

This action complies with the City Council 2010-11 Strategic Operating Plan within the Fiscal Responsibility Area by leveraging internal and external partnerships for pursuing capital improvements and infra-structure projects. In addition, the subject action will enhance the pedestrian experience by providing a safe place to walk.

Pros:

- The NCDOT will fund, design, and construct the sidewalk.
- Increases the City's inventory of completed sidewalk.
- Eliminates a "goat trail".
- Satisfies a need for a group of our well deserved veterans.

Con:

- The City will be responsible to maintain the sidewalk after it is constructed.

There will be no initial financial impact to the City, although the responsibility of maintaining sidewalks belongs to the Public Works Department. Funds are budgeted every fiscal year for sidewalk maintenance.

Staff recommends that City Council approve a resolution supporting the efforts of the NCDOT in funding, designing, and constructing a sidewalk along US 70 (Tunnel Road) from the VA Hospital to the Veteran's Quarters in East Asheville.

Councilman Smith emphasized the fantastic partnership among the City, NC DOT and the community to make this a high priority for the City.

Councilman Smith moved to adopt Resolution No. 11-127. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 61

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE AREA RIVERFRONT REDEVELOPMENT COMMISSION UPDATE

Mr. Ricky Silver, Chairman of the Asheville Area Riverfront Redevelopment Commission (AARRC) said that the purpose of this update is to provide an overview of the AARRC's first year in operation and to provide the Commission's first general recommendations to City Council.

The AARRC (the City-initiated Commission charged with promoting the sustainability and continued development of the riverfront) has been meeting for a period of one year. Mr. Silver presented the following information to City Council: an explanation of membership; an overview of their study area; the nature and direction of their research and other work during their first year; and what to expect from the Commission in the future.

Chairman Silver then presented the following recommendations for consideration by Council:

- 1) Strengthen the City's physical investment in the Riverfront District. In addition to recognizing the need to support sustainable development via focused and coordinated investments in infrastructure like sidewalks and water lines, consider locating appropriate City employment centers or offices within the district to support the Riverfront District as a great place to work. Additionally, consider playing a leadership role in a public private partnership for a redevelopment or rehabilitation project.
- 2) Hire a consultant to perform a review of regulations and policies affecting redevelopment in the riverfront. This person, who should be an expert or have substantial experience in urban waterfront redevelopment, can provide the City and her partners with an overview of what helps and what hurts the community's vision implementation.
- 3) Acknowledge that a larger, more professionally driven redevelopment effort will eventually be needed to implement the community's vision for the riverfront. The AARRC, as a volunteer driven, City created advisory board will not be the appropriate structure to best manage and coordinate twenty to thirty years of complex development projects totaling hundreds of millions of dollars. The Commission expects (over the course of the next two years) to build the trust and partnerships needed to provide a successful base for a riverfront specific development company (or other type of organization) led by an executive director and other professional staff.

Recommendations one and two strongly align with the Job Growth and Community Development section, specifically, to support the riverfront redevelopment partnership and formation of a dedicated office, and to promote sustainable, high-density, infill growth that makes efficient use of existing resources. Recommendation three is in alignment with the Fiscal Responsibility section, specifically, to explore alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pro

- AARRC recommendations are in alignment with national best practices in urban waterfront revitalization programs; adopting them will further progress in the City's own program.

Con:

- AARRC recommendations require identification of funding.

Costs to support implementation of recommendations vary and can be explored based on the interest level of Council.

Council could indicate which recommendation(s) staff should pursue.

Councilman Davis, liaison to the AARRC, spoke about this very active Commission and was excited about what they have accomplished in one year.

In response to Councilman Smith, Mr. Silver said that the AARRC will work through staff to bring a plan forward to Council regarding hiring a consultant to perform a review of regulations and policies affecting redevelopment in the riverfront.

In response to Mayor Bellamy on what next steps the community can expect, City Manager Jackson said that he would provide Council with a compilation of AARRC's work plans so they can see the depth of work being accomplished.

When Mayor Bellamy asked about the fence being taken down and the re-alignment and re-naming of the road, Mr. Silver said that RADTIP will be making a recommendation and they have been very involved in that process. He said there are a lot of small projects happening in the area without their intervention and they don't want to get in the way of those projects.

On behalf of City Council, Mayor Bellamy thanked Mr. Silver and the entire AARRC for their hard work and efforts on this very important Commission.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 626 HAYWOOD ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING FOR THE EXPANSION OF THE EXISTING RESTAURANT SITE TO ACCOMMODATE ADDITIONAL PARKING AND DUMPSTER LOCATION WITH A MODIFICATION REQUEST TO LANDSCAPE BUFFER WIDTH

ORDINANCE NO. 3989 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 626 HAYWOOD ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING FOR THE EXPANSION OF THE EXISTING RESTAURANT SITE TO ACCOMMODATE ADDITIONAL PARKING AND DUMPSTER LOCATION WITH A MODIFICATION REQUEST TO LANDSCAPE BUFFER WIDTH

Mayor Bellamy opened the public hearing at 5:30 p.m.

Urban Planner Nate Pennington said that this is the consideration of an ordinance to conditionally zone property located on 626 Haywood Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Community Business II District/Conditional Zoning for the expansion of the existing restaurant site to accommodate additional parking and dumpster location with a modification request to landscape buffer width. This public hearing was advertised on June 17 and 24, 2011.

Mr. Pennington said that the applicant is requesting a Conditional Zoning for one (1) parcel zoned Community Business II (CB II) and RM-16 Residential Multi-Family High Density to (Community Business II/Conditional Zoning (CB II/CZ) for the expansion of the Sunny Point Café site in accordance with Section 7-7-8 of the UDO.

The project site consists of one split zoned parcel comprising 0.66 acres according to the submitted site plan. The existing Sunny Point Café is located on the corner of Haywood Road and State Street with an off-street parking lot located behind the restaurant and accessed via State Street. The restaurant and main parking lot were permitted in 2002 and a permit was issued in 2009 to cover the outdoor seating area along the State Street side of the restaurant. A single-family residence is also located on the property to the south (behind) the restaurant. This home, while located on CB-II property, has historically been used for residential purposes and is not a commercial structure. To the south of the residence is an unpermitted gravel parking lot created (primarily) for employee parking. The dumpster for the restaurant was located within this gravel lot as well. As part of the conditional zoning request, the applicant is seeking to legitimize the parking lot, allow for the relocation of the dumpster as recommended by the Planning and Zoning Commission (see below) and establish an office in the residence.

The property owner was issued a Notice of Violation by the Planning Department Code Enforcement Staff on March 24, 2011 for failure to secure zoning and building permits for 1) the

use of the vacant single-family residence as an office and, 2) the use of the RM-16 zoned portion of the property for an off-street parking lot and dumpster location (the dumpster was previously located behind the restaurant). To remedy this violation, the owner was informed to either cease commercial operations on the residentially zoned property or apply for a conditional zoning. As an interim measure, the restaurant temporarily ceased parking on the gravel lot and relocated the dumpster to the southern side of the residence on the commercial portion of the property.

Vehicular access to the existing and proposed parking lots is gained via State Street. Pedestrian access to the site is provided along both Haywood Road and State Street where sidewalks currently exist.

According to the site plan and the information provided by the applicant, a minimum of 27 off-street parking spaces are required including the necessary accessible spaces. The CB-II district allows for a 20% reduction to off-street parking, resulting in a minimum of 22 spaces required. The site plan illustrates the minimum 22 spaces required which will be brought into compliance with parking standards if the conditional zoning request is approved. A bike rack capable of accommodating 5-6 bikes already exists onsite and satisfies the required bicycle parking standards.

Street trees currently exist along Haywood Road and a portion of State Street. Three additional street trees will be installed along State Street and additional parking lot landscaping will be required in the area of the proposed parking lot to the west and south of the single-family residence. A 20' wide type "A" vegetative bufferyard is required along the southern and western perimeter of the portions of the property where the new parking lot and dumpster pad have been sited. A modification request to this standard is being sought (see below).

The open space requirement for this type of development is 5% of the total site size; a total of 1,437 square feet for this site. The site plan illustrates that 1,438 square feet has been reserved to meet this requirement.

The applicant is requesting a total of one (1) modification to the site plan which must be approved by City Council. The staff supports the request.

1. *Property Line Buffer* – Section 7-11-3(d)(1) of the UDO requires bufferyards to be installed for proposed developments adjacent to dissimilar zoning designations to provide a transition between districts of varying intensities. In this case, a 20 foot wide bufferyard will be required along the southern and western perimeter of the portion of the property where the new parking lot and dumpster pad have been sited. Sunny Point Café utilizes a large majority of undeveloped property for gardening in order to produce fruit, herbs and vegetables for the restaurant. Given this scenario, the applicant is requesting reduced buffer widths so as not to shade out the areas used for gardening. In lieu of not providing a full 20 foot buffer width, the alternative proposed is to provide a ten (10) foot buffer with a solid six (6) foot fence facing the adjoining properties. **The staff supports the request to reduce the landscape buffer due to the passive use of the garden and the distance between the parking area and adjoining property.**

This proposal was recommended for approval with conditions by the Technical Review Committee on May 16, 2011. A neighboring property owner expressed concerns regarding the location of the dumpster, proposed dumpster screening, parking, buffer width, the size of required plantings and outdoor lighting (no lighting is proposed).

At their regularly scheduled meeting on June 4, 2011, the Planning and Zoning Commission reviewed this project and was advised of the staff's concern about the potential negative impact the applicant's preferred location of the dumpster (originally proposed within the newly created parking area) may have on the adjacent condominium development located to the south of the parking area. (Refer to finding #4 below).

The Commission also heard public comment from a neighboring property owner who echoed staff's concerns regarding the proposed dumpster location and also had questions regarding the "no parking" signs that were installed along State Street and asked if they could be replaced by signs that would limit parking to specific hours. The staff directed the property owner to contact the City traffic engineer regarding this matter and the request is currently being explored by the traffic engineering staff.

Upon consideration of the concerns expressed about the dumpster location, both the applicant and the Commission agreed upon a new location for the dumpster and unanimously approved the project with the following additional conditions:

- The location of the dumpster is to be placed next to the single-family residence.
- The use of the dumpster is limited to non-food waste.
- The enclosure (screening in accordance with all UDO requirements) is to be large enough to accommodate the dumpster and the composting bins.

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.** The project proposes the adaptive reuse of a single-family residence as well as a parking lot that would bring the property into compliance with off-street parking standards, given recent expansions in operations. The restaurant is compatible with the surrounding businesses along the Haywood Road corridor and has a pedestrian orientation along Haywood Road.

The residential units to the southern and westernmost extent of the property will be buffered with a Class "A" bufferyard. While the bufferyard width would be reduced by ten (10) feet if the modification request is approved, a privacy fence will be installed facing the neighboring property owners and the parking lot would be further separated from the neighbors by the surrounding gardens and open space.

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 south and west of the parking lot will be buffered by additional vegetation, open space and gardens. There is concern, however, about the proposed location of the dumpster and the potential for negative impacts (noise, pests, commercial pick-up activity and odor) it may have on adjacent residential uses.

The Planning & Zoning Commission approved the plan with the dumpster relocated to the south side of the converted residence with added conditions and this location should sufficiently address the potential impacts. This location also is satisfactory to the

residents to the south, as that development is more than 100 feet from the dumpster enclosure and will be buffered by vegetation and a solid privacy fence.

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 located within the Haywood Road commercial corridor. The restaurant itself is oriented towards Haywood Road and is consistent with both the existing zoning and character of the Haywood Road commercial corridor in which it is located. The restaurant structure includes a small second story residence. The existing single-family detached residence that will adjoin the staff parking lot and a garden is proposed to be converted from a residence to an office. The preservation of the character of the existing single family residence combined with the limited impact/activity of a small restaurant office also helps to provide a transition from the busy commercial activity to the nearby residential uses. While additional parking is proposed along State Street, the parking lot is small in nature (6 spaces) and will be mitigated by factors including additional vegetation, a fence and garden/open space areas separating the adjacent residential properties.
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 expansion of uses associated with the restaurant is consistent with the goals of infill development along an established commercial corridor. However, these goals must be balanced against other goals related to the preservation of the character of Asheville's working class neighborhoods which tend to be more vulnerable to commercial encroachment.
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 at the intersection of Haywood Road and State Street and is within approximately .25 miles of an entrance to I-240. A City of Asheville bus stop is located next door in front of the Lucky Otter restaurant to accommodate public transportation at the intersection of Haywood Road and Nevada Avenue. Adequate water supply, fire and police protection, and other city services are verified during the TRC review process.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The subject project will not adversely impact the surrounding street network from a traffic engineering perspective.

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 mitigate a split zoned commercial property and bring the site into compliance with UDO standards.
- Provides an opportunity to rehabilitate and adaptively re-use a single-family residence located in a commercially zoned district.

Con:

- There is no perfect location for the dumpster in this fairly urban location as it would need to be closer to adjacent residences to the west or to the south, or closer to the restaurant outdoor seating area.

Staff recommends approval of the project as submitted by the applicant and modified by the Planning and Zoning Commission, including the modification to reduce the bufferyard width.

Mr. Tony Hauser, representing the owner, was available to answer questions.

Ms. Emily Harrell urged Council to support the expansion as Sunny Pointe Café is an integral part of west Asheville.

A west Asheville homeowner supported the conditional zoning as the Café creates goodwill in the community.

Ms. April Moon, speaking on behalf of Sunny Pointe Café, spoke in support of the conditional zoning in that it was never their intent to be out of compliance. She asked that the modification be granted as more landscape buffering would destroy their garden.

Mayor Bellamy closed the public hearing at 5:39 p.m.

City Attorney Oast reminded Council that if the property is conditionally zoned it may not always be Sunny Pointe Café on that property.

In response to Mayor Bellamy regarding the possible odor of the composting drifting into the residential neighborhood, Ms. Moon said that a local business picks up their compost three times a week and the composting is covered. She had heard no complaints from neighbors at this time.

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

Councilman Smith moved for the adoption of Ordinance No. 3989, to conditionally zone property located on 626 Haywood Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Community Business II District/Conditional Zoning for the expansion of the existing restaurant site to accommodate additional parking and dumpster location with a modification request to landscape buffer width. 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 full cut-off fixtures (including wall packs) 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 (single family structure must retain its residential character). Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project shall undergo final review by the TRC prior to issuance of any required permits; (6) The use of the dumpster is limited to non-food waste; and (7) Dumpster enclosure shall be large enough to accommodate covered compost containers. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 27 - PAGE

B. PUBLIC HEARING TO CONSIDER REZONING 380 LONG SHOALS ROAD AND 6 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3990 - ORDINANCE REZONING 380 LONG SHOALS ROAD AND 6 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT

Due to a conflict of interest, Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter. This motion was seconded by Councilman Davis and carried unanimously. At this time, Councilwoman Manheimer left the Chamber.

Mayor Bellamy opened the public hearing at 5:41 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 380 Long Shoals Road and 6 Schenck Parkway from Central Business District to Highway Business District. This public hearing was advertised on June 17 and 24, 2011.

The subject properties are prominently located at the beginning of Schenck Parkway (the entrance to Biltmore Park Town Square), and represent the first developed site one encounters on the north side of Long Shoals Road when heading east from the I-26 interchange. The relevant history of construction and zoning around the site goes back more than ten years.

The site was developed with a gas station, convenience store, and restaurant in 2000. At that time, the applicant (and operator of these businesses) owned a leasehold for the site of this development, but the land was owned by Biltmore Commercial Properties, LLC. None of the site was then in the City of Asheville's zoning jurisdiction; a portion was in the Buncombe County Limestone Township zoning area—zoned Commercial Services, and a part was not zoned.

In 2001, the City of Asheville expanded its ETJ, and the unzoned portion of the land came into the City's zoning jurisdiction. CBD zoning was applied to the area west of Schenck Parkway as this most closely resembled the existing Town Center buildings already developed under the County's jurisdiction. (The City's Urban Village zoning district did not yet exist.)

In February 2006, the Master Plan and related zoning change (to Urban Village) for the Biltmore Park Town Square west of Schenck Parkway was approved. The subject properties were not included, as the plans did not effect any changes thereon.

In 2007, the subject properties were part of an annexation by the City of Asheville. The annexation became effective in late 2007, and discussions ensued about assigning a zoning district for the portion of the site which had been in the Buncombe County zoning area. City staff proposed zoning a 10+ acre area, including the entire site, to Highway Business, to be consistent with the other three corners at the intersection. The landowner (Biltmore Commercial Properties, LLC), however, preferred to maintain the pre-existing CBD zoning, as it provided more options (e.g. building height, residential density) for a future extension of higher impact uses consistent with the nearby urban village, without having to submit a master plan. The CBD zoning became effective for the entire site in early 2009.

Meanwhile, by summer of 2008, the applicant's gasoline sales operation had been affected by the widening of the Long Shoals Road right-of-way taking place as part of the construction of the new interchange. The pumps and canopy had to be removed from the southern edge of the site. When investigating the potential for relocating the pumps, the applicant learned that the CBD zoning not only doesn't ordinarily allow retail gasoline sales, but has building design and setback requirements that would preclude the type of construction he sought to pursue. In 2009, the applicant successfully applied for and received variances to allow the placement of pumps and a canopy on the east side of the site. (The construction of this part of the project was completed earlier this year.)

In December 2010, the 10+ acre parcel on which the site is located was subdivided, and the subject properties were sold to the applicant. Now as the owner (not simply the leaseholder) of the property, the applicant has requested rezoning of his properties to Highway Business. If approved, the rezoning would eliminate most, if not all, of the design-related and use-related nonconformities that currently exist. The applicant would also be able to obtain a permit for the

sort of pylon sign he would like to erect, and would be able to redevelop or adapt the site with similar highway-oriented uses without having to seek special approvals from the Board of Adjustment.

As is mentioned above, staff feels that Highway Business would be the most appropriate zoning for the subject properties, together with the 8+ acres of area to the north and west that are also zoned CBD. The owner of the neighboring CBD properties (Biltmore Commercial Properties, LLC) was contacted about expanding the area of this proposed rezoning to include their property as well. Their representative, Paul Szurek, indicated willingness to support such an expansion, but only if conditions could be added to the rezoning. Because the standard rezoning application submitted by the applicant (unlike a conditional zoning petition) does not allow the imposition of special conditions, the neighboring properties were not included.

As such, the proposed rezoning, if approved, would leave a remnant of the CBD zoning wrapped around the back of the subject properties zoned Highway Business. The placement of a district promoting urban, multi-story, high-density, pedestrian-friendly design tucked behind an area (at the corner of a major intersection) with a suburban corridor zoning district and developed with suburban, single-story automobile-oriented businesses is not an ideal outcome. Neither, however, is the existing situation, where a property owner is burdened by a zoning district incompatible with his legally established uses while his neighbors at the other three corners of the same intersection enjoy the type of development standards he seeks.

Additionally, the proposed rezoning would strand a small area zoned CBD on the east side of the subject area. Owned by the Biltmore Park Commercial Association, Inc. (affiliated with the Biltmore Commercial Properties, LLC), and about 0.03 acres in size, this parcel exists for the purpose of a sign, and its zoning is considered to be of less significance to staff. Further, the owner has indicated that they do not wish to participate in a rezoning at this time.

Staff's view is that the likely development opportunities for the entire 10+ acre area zoned CBD will be more in keeping with the HB standards, and staff is hopeful that the owners of the CBD-zoned properties adjacent to the subject area will also soon request a rezoning to HB.

At their June 1, 2011, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning. Other than the petitioner's agent, there was no comment from citizens at the public hearing, and staff has not received any communication from the public on this matter.

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

Pros:

- HB zoning is highly compatible with the surrounding development and road system.
- Would alleviate multiple hardships for property owner.

Cons:

- Would create an adjacent zoning district in an awkward position with little potential for compliant development.

Staff feels that the proposed rezoning would unquestionably be an improvement for the subject property, however, it would clearly result in a less desirable situation on the adjacent property. Recognizing that the owner of the adjacent property relinquished ownership of the subject property, with knowledge of the development pattern that was in place, staff feels a case can be made for approval of the request.

Mr. Craig Justus, representing Henderson Oil Company, emphasized that this is the most appropriate zoning for the property. He asked Council to support the rezoning.

Mayor Bellamy closed the public hearing at 5:45 p.m.

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. 3990. This motion was seconded by Councilman Davis and carried unanimously (Councilwoman Manheimer recused).

At this time, Councilwoman Manheimer re-entered the meeting.

ORDINANCE BOOK NO. 27 – PAGE

V. UNFINISHED BUSINESS:

A. STATE LEGISLATIVE UPDATE

City Attorney Oast said that the General Assembly adjourned from its 2011 Regular or “Long” Session on Saturday, June 18. It will reconvene on July 13 to consider a limited agenda, primarily including redistricting, but also to consider any ratified bills that were vetoed by Governor Perdue. He provided Council with a copy of the adjournment resolution.

He provided Council with a summary of some of the legislation of importance to municipalities generally has been prepared by the N.C. League of Municipalities. In the coming weeks, we will receive more detailed information from the League, the School of Government, and various professional organizations, and will report that information to Council as necessary.

General Laws

Among the laws that will have an effect on City operations are the following:

- (a) Annexation. HB 845 was the bill that substantially revised the general annexation law. This will affect all future annexations. Significant changes include (1) a requirement that annexing cities install water and sewer connections to individual properties, and (2) a requirement that any annexation be subject to a “petitioned denial” process, whereby the property owners in the annexed areas can defeat the annexation with a petition from the owners of 60 percent of the parcels in the area. The Governor is expected to sign this bill.
- (b) Required use of “E-verify.” This law, HB 36, requires the use of “e-verify” by public employers. The City already requires “eligibility to work” verification, so this should not affect our hiring practices much. This will apply to local governments beginning October 1 of 2011. It also will apply to private employers, including our contractors, but implementation is delayed for at least a year. We will need to consider the implications for our contract process. The State Department of Labor has been given enforcement responsibility, and a complaint process is prescribed in the law, so the law helpfully addresses those persistent issues.
- (c) Building Inspections. SB 683 affects the ability of cities to conduct regular inspections of some buildings on a programmatic basis. We are reviewing this law for its effect on the City of Asheville’s inspection program.

Local Laws:

Developments of particular interest to the City of Asheville are summarized below:

- (a) Local Annexations. HB 36 and SB 27. These are two other annexation laws that retroactively require that certain annexations in process (or even completed) be subject to the “petitioned denial” process outlined in the general law. This affects the Biltmore Lake annexation. This does not mean that the Biltmore Lake annexation is automatically undone yet; the petition process still has to be followed, and the necessary percentage must still be obtained. The Board of Elections is tasked with running that process, and it will start soon. The City must reimburse the costs of the petition process.
- (b) Woodfin/Asheville Boundary Adjustment. As reported previously, we got pretty far with the bill that would adjust the boundary of Asheville and Woodfin in the UNC-A, 19-23/Broadway, and Reynolds Mountain entrance areas. However, the survey work revealed more issues that needed clearing up than we anticipated, and we ran out of time to finalize the surveys and descriptions before the General Assembly adjourned. This will be taken up again next year, and we can use all the work that we have done in that process.
- (c) Asheville Airport. HB 552. This is the bill that would establish the Airport Authority as an independent authority, and require the conveyance of the Airport property (owned by the City; leased to current authority), without compensation. Council has discussed this at length, and has expressed its concerns to the legislature. This bill passed out of the House and is in the Senate, where it was referred to Committee. It remains eligible for consideration in the 2012 “Short” Session.
- (d) Water System – MSD Merger. HB 925. This is the bill that would have required the City to convey the water system to MSD. After objection by Council, this bill was converted to a study bill, and passed out of the House. The Senate amended the bill and it was sent back to the House for concurrence, but the House failed to concur prior to adjournment. The study bill remains eligible for concurrence in the session that will convene on July 13.

Due to discussion regarding establishing a relationship with our legislators, Councilman Davis and Councilwoman Manheimer briefed Council on a meeting they had with Representative Moffitt last week. They talked about all the legislation that affects Asheville and our greater area. They brought forth Council’s thoughts and believed that everyone left the meeting with a better understanding of each other. Other meetings with other legislators are being planned. They felt it was good to have Council reach out to our legislators.

Mayor Bellamy said that she will be travelling to Washington, DC, on an unrelated matter, and is in the process of arranging meetings with representatives at the White House and the Federal Dept. of Transportation to discuss the Federal Aviation Administration ruling as it relates to not paying the City due compensation for our Airport property. She is not supportive of the City not being fairly compensated if the Airport is going to leave our ownership.

VI. NEW BUSINESS:

- A. RESOLUTION NO. 11-133 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CONVEYANCE OF REAL PROPERTY LOCATED AT 14 RIVERSIDE DRIVE FROM THE PUBLIC SERVICE COMPANY OF NC SUBJECT TO A N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES BROWNFIELDS AGREEMENT**

Ms. Stephanie Monson, Urban Planner for Economic Development, said that this is the consideration of a resolution authorizing the Mayor to accept the conveyance of real property

located at 14 Riverside Drive, from the Public Service Company of NC (“PSNC”) subject to a North Carolina Department of Environment and Natural Resources Brownfields Agreement.

The Public Service Company of NC (“PSNC”) owns real property at 14 Riverside Drive that includes 0.29 acres of River District-zoned land and a one story brick building that is a contributing structure to the Riverside Industrial National Historic District. The property is now vacant, however at one time, the building served as the operations office for a manufactured gas plant. This parcel is adjacent to the 30 Riverside Drive parcel to the north, which the City accepted as a donation of real property from Progress Energy in June 2008, after a lengthy environmental assessment and cleanup process in effort to mitigate the remnants of the gas manufacturing process.

Given the historical use, this property is an ideal candidate for the State of North Carolina’s Brownfields Program. In October 2009, when the donation was first evaluated by staff, the City enrolled the PSNC building in the Brownfield Program. The required environmental assessments for the PSNC building are now complete and PSNC and Progress Energy have arranged for any needed clean up on the site. Once the clean up is completed the State will create a Brownfields Agreement for the site that absolves the City of any liability from previous environmental contamination. This agreement will be recorded as a deed restriction regarding potential uses for the site. The successful execution of said Agreement, in addition to the completion of a current parcel survey and title search being coordinated by the City’s Legal Department, is considered by staff to be the remaining due diligence required before the City is prepared to accept the proposed donation of property.

The proposed acquisition of 14 Riverside Drive is part of the City’s strategy to develop a continuous park/open space amenity along the west side of Riverside Drive as conceptualized in the Wilma Dykeman RiverWay Master Plan and other City-adopted plans. City staff has coordinated Brownfield Program efforts with RADTIP (River Arts District Improvement Project; Preliminary Engineering for a 2.2. mile section of the Wilma Dykeman RiverWay Master Plan) planning activities over the past twelve months. If Council agrees to accept this donation of property subject to completion of due diligence, staff intends to pursue the following actions in the area:

- Removal of the chain link and razor wire fence surrounding both the City-owned property at 30 Riverside Drive and the PSNC building;
- Planning and development of a low impact trail along City-owned and other properties on the west side of Riverside Drive to support pedestrian activity and safety in the area until the new (RADTIP) multimodal roadway is built;
- Phase II of Between the Bridges public involvement process for an expanded group of stakeholders.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility - the partnership between the City, PSNC and the State Brownfields Program allows each entity to leverage assets to activate a vacant property along an emerging corridor. This action aligns with the goal of Green and Sustainable, furthering the City’s opportunity to integrate and implement a multi-modal transportation plan that includes sidewalks, bike paths, signal preemption, transit, greenways, and other system improvements. This action also directly supports the implementation of the Wilma Dykeman RiverWay Master Plan and aligns with Parks Recreation and Greenways Master Plan and the City’s 2020 Master Plan.

This item has been reviewed by the Asheville Area Riverfront Redevelopment Commission on May 19, 2011, and has received the Commission’s endorsement.

Pros:

- The public ownership of this property improves the City's planning and implementation efforts to support the City's Riverfront Redevelopment Program, including the development of the Wilma Dykeman RiverWay and the Greenway system in general.
- The City will be absolved of liability through a completed Brownfield Agreement with the State of North Carolina

Con:

- An addition to the City's real property assets will require additional resources for development and maintenance.

No monetary consideration required for the conveyance. Any additional due diligence costs, including survey and title work, will be absorbed into the Economic Development Budget. The cost of removing the fence is estimated under \$5,000 and will be done through a local contractor with budgeted funds. Any future impact regarding redevelopment is unknown; however the City is eligible for federal funding to support the planning and future rehabilitation of the building for public purposes. Any redevelopment options for the PSNC building will come before Council as part of the public process.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept real property located at 14 Riverside Drive (PIN # -96-7846-00000) from the Public Service Company of NC subject to a N.C. Dept. of Environment and Natural Resources Brownfields Agreement.

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

Councilman Davis said that his father worked the bulk of his adult life in that building and provided Council with some historical information of the property.

Mayor Bellamy thanked PSNC and Progress Energy for their partnership with the City of Asheville.

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

Councilman Russell moved for the adoption of Resolution No. 11-133. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 67

B. RESOLUTION NO. 11-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH MCGILL ASSOCIATES FOR ENGINEERING SERVICES FOR THE LAKE CRAIG PROJECT

Public Works Director Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to complete negotiations and sign a contract with McGill Associates for the engineering services necessary for completion of Phase I of the Lake Craig Project.

The City of Asheville has the opportunity to provide improved access to the Azalea Park along Azalea Road, provide a much needed water connection to the John B. Lewis Soccer Complex and to provide additional flood protection to Biltmore Village.

Azalea Park is a regional attraction that hosts a major soccer complex. This complex draws a wide range of the public which increases the traffic along Azalea Road. The City is proposing to widen and improve the roadway in this section. The City proposes to combine flood

control recommendations and utilize material from floodplain fill removal for the roadway improvements.

The City also plans to provide a much needed water supply connection to the Park. Currently, the pavilion does not provide a potable water source. The project will include connection to the City's water system.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. Through a study performed by Brown and Caldwell, the Lake Craig Project has shown potential to provide significant flood reduction benefits. The flood control features of the project include stream relocation and restoration, removal of floodplain fill and flood bench restoration and the rehabilitation or replacement of an existing dam.

Within the scope of the project, McGill Associates will perform the engineering services necessary to provide improved roadway connections to the John B. Lewis Soccer Complex, provide a much needed connection to the City of Asheville water system, and to provide flood mitigations to the properties down stream of the Lake Craig Dam which will include the evaluations of the existing dam. The Lake Craig Project was the highest priority in the Swannanoa Flood Risk Management Project which was accepted by City Council on May 10, 2011.

On May 26, 2009, by Resolution No. 09-108, the City Manager was authorized to enter into a Feasibility Cost Share Agreement for the Swannanoa Flood Risk Management Project with the Army Corps of Engineers to provide professional services for a feasibility study for reducing flood damage in the Swannanoa River Watershed. That resolution will allow the City Manager to modify the existing agreement with the US Army Corps of Engineers allowing engineering services performed by McGill Associates to be utilized as matching work in kind funds for the Corps Feasibility Cost Sharing Agreement.

This action complies with the City's plans and commitments to administer \$2.5M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on April 1, 2007. In addition, this project has complied with the Council's Strategic to provide a safe community for our citizens.

Pros:

- Implements the priority objective of the Swannanoa Flood Risk Management Project
- Provides safe access for the citizens that visit this area
- Provides water to the soccer complex
- Priorities are set for expending the remainder of state flood mitigation funding and for pursuing future state and federal grant funding for this project.

Con:

- The City of Asheville currently does not have the funding to complete the construction phase of project. Construction/rehabilitation of the dam will require the involvement and funding of the US Army Corps of Engineers or the North Carolina Division of Water Resources.

Staff has budgeted \$1,263,206 for the engineering services necessary to complete Phase I of the Lake Craig Project. Funding for this engineering services contract will come from a combination of remaining Senate Bill 7 money and capital funds made available from the water funds for work associated with the installation of water line infrastructure as permitted by state statute which are already budgeted in the Azalea Road capital improvement project. The total estimated cost for Phase I of this project, which includes the engineering services as well as the roadway, utilities, and river relocation construction is \$4.15 million. The chart below shows the projected budget for Phase I. City Staff is working with the Army Corps of Engineers as well as

the North Carolina Division of Water Resources to identify future funding for the completion of the Dam construction which will be associated with Phase II of this project. These sources would require matching contributions from the City in order to secure these funds.

Typical engineering contracts range from 10 to 15 percent of the total project cost; the engineering services for this project are higher due to the need to determine the structural stability of the existing dam. The analysis of the dam will determine what design is required under the future Phase 2 of this project. There is also additional cost associated with the engineering services for the project due to detailed coordination with various agencies including the Army Corps of Engineers and FEMA.

City staff recommends City Council approve a resolution authorizing the City Manager to complete negotiations and sign a contract with McGill Associates for the engineering services necessary for completion of Phase I of the Lake Craig Project for up to \$1,263,206.

Ms. Ball reviewed the following Lake Craig Project objectives (1) flood damage reduction in Biltmore Village (a) Restore/replace dam; (b) remove sediment/fill from floodplain; and (c) qualify project for additional Corps funding; (2) improve roadway access to Azalea Park/Gashes Creek neighborhood; (3) extend water service to John B. Lewis Soccer Complex; (4) relocate Swannanoa River to more efficient hydraulic alignment; and (5) identify future recreational/educational enhancements.

She then showed the conceptual plan. Lake Craig agency coordination included US Army Corps of Engineers; Federal Emergency Management Agency; N.C. Division of Emergency Management; N.C. Division of Water Resources; N.C. Division of Water Quality; and N.C. Dept. of Transportation.

Ms. Ball then used pie charts to explain the project expenditures and revenues.

Mr. Joel Storrow, representing McGill Associates and Project Manager of the Lake Craig Project, outlined the Lake Craig Project team consisting of McGill Associates – Project management, roadway, utilities; Schnabel Engineering – Dam investigation; Dewberry – Flood modeling; Equinox Environmental – Environmental/recreation; Wolf Creek Engineering – River relocation; LandDesign – Public input; and John Morris – Corps of Engineers/Funding liaison.

He said the Lake Craig Project elements include (1) dam investigation and recommendations; (2) hydraulic and hydrologic modeling; (3) Azalea Road improvements; (4) waterline extension to soccer complex; (5) Swannanoa River relocation; and (6) Corps of Engineers coordination.

Regarding dam investigation (1) key elements (a) structural analysis; (b) geotechnical evaluation; and (c) spillway adequacy; (2) cost estimates; (3) recommendation (a) rehabilitate; and (b) replace; and (4) Corps of Engineers' oversight.

Regarding hydraulic & hydrologic modeling (1) detailed survey (a) topography and (b) cross-section; (2) flood modeling; (3) refine benefit/cost ratio; and (4) Corps of Engineers' oversight.

He then reviewed the roadway improvements and waterline extension. He outlined the advantages to the roadway improvements.

Regarding the Swannanoa River relocation (1) shift river away from Azalea Road embankment; (2) remove sediment from floodplain; (3) restore floodplain bench; and (4) environmental permitting.

Regarding Recreation Park enhancements, they will develop recommendations for future upgrades for greenway linkages; river access; historic landmarks/markers; parking; and outdoor classrooms.

He envisioned the project timeline as follows (1) Notice to proceed – July 2011; (2) Dam investigation/Flood modeling – July-October 2011; (3) Swannanoa River relocation, Azalea Road and waterline design – September-December 2011; (4) Agency review and permitting – January-March 2012; (5) construction bidding – April-May 2012; and (6) construction begins – Summer 2012.

Mayor Bellamy questioned why other City departments (e.g., Public Works Department and the Parks & Recreation Department) are not contributing to this project as the project has more implications than just the waterline. She felt we could do more with the funds permitted by state statute. Ms. Ball responded that when we originally looked at the project, this was the opportunity we had to be able to utilize those to make improvements that probably would have come from other funds, but in this case it is in conjunction with improving the roadway. There is not a waterline now to the Pavilion.

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

Due to a conflict of interest, Councilman Russell moved to recuse Councilwoman Manheimer. This motion was seconded by Councilman Smith and carried unanimously.

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

Councilman Russell moved for the adoption of Resolution No. 11-134. This motion was seconded by Councilman Davis and carried unanimously (Councilwoman Manheimer recused).

RESOLUTION BOOK NO. 34 – PAGE 68

C. MOTION TO PARTNER WITH BUNCOMBE COUNTY TO ISSUE A REQUEST FOR PROPOSALS TO EVALUATE OPTIONS FOR COMMUNITY MEDIA DEVELOPMENT, SMALL BUSINESS AND JOB GROWTH OPPORTUNITIES, AND PUBLIC EDUCATION SERVICES RELATED TO MEDIA TECHNOLOGY

Director of Administrative Service Lauren Bradley said that this is the consideration of a Request for Proposals to evaluate options for community media development, small business and job growth opportunities, and public education services related to media technology.

In May 2011, public access studio space provided by a third-party organization closed as a result of funding challenges. Due to the status of the organization, the City decided not to renew or extend its recently expired contract for public access management services.

Given this transition, the City Council Finance Committee directed staff to work with Buncombe County to develop a Request for Proposals (RFP) for community media development services, projects or initiatives with an emphasis on the following components:

- **Community development:** Creating a vision of a County and a City that is ahead of other communities in building a media network and resources that are progressive and green, and one that places the power of new media in the hands of local citizens;
- **Economic and workforce development:** Creating a strategy that connects government, education, community, and business in a proactive economic and workforce development movement;

- **Industry development:** Further developing the media arts industry in Asheville and Buncombe County such that it creates new jobs and opportunities for the community; and
- **Training and education:** Training for the 21st Century media world where a small investment can buy you a studio, post production resources and a door to a career.

The expansion of traditional and non-traditional distribution channels as well as community-based initiatives supporting the arts, economic development and education makes this an optimal time to seek proposals for new types of services. As a result, the RFP does not require the provision of a public access channel, although proposals can be submitted for those services. Instead, the scope of the RFP has been broadened to encourage further innovation and community partnerships to ensure the success of media technology development initiatives into the future.

If approved, the RFP would be issued by July 1, 2011, with responses due by August 1, 2011. The Housing & Community Development Committee (H&CD Committee) would receive staff evaluations of proposals at its meeting in August. A final recommendation to award the contract would be brought forward for County Commission and City Council consideration in September 2011.

Production equipment purchased by the former public access management entity is the property of the City of Asheville. Some or all of those assets could be included within the context of the contract award. However, staff will not have a complete and verified inventory of equipment by July 1. As such, the equipment could be added as an addendum to the RFP in the near term or included as a matter of negotiations if the selected proposal would benefit from those assets.

The structure of the funding contemplated in the draft RFP intended to provide seed funding to enable a new community media development initiative to achieve financial independence and sustainability within three years. Proposals will be required to include plans for maintaining the services, program or project once the funding period for implementation has ended. These documents must include an overall business plan and forecasting of future revenues and expenditures.

During the three year award period, funding will be provided according to the following schedule:

- Year 1 (Sept. 2011-Sept. 2012): \$60,000
- Year 2 (Sept. 2012-Sept. 2013): \$40,000
- Year 3 (Sept. 2013-Sept. 2014): \$20,000
- After three years, funding would be discontinued.

Buncombe County and the City of Asheville would split the funding allocation each year, whereby each government would provide \$30,000 in year 1, \$20,000 in year 2, and \$10,000 in year 3.

In the FY 11-12 budget, the City has allocated \$30,000 for community media services. These funds were originally budgeted to continue public access management services. If the selected proposal does not incorporate public access, staff recommends that the City use the full allocation of PEG funding for the City's government channel, as allowed by State statute. The City could then use \$30,000 of General Fund dollars currently allocated to the government channel for the award of this contract.

The RFP criteria would include policy goals (30%); performance measures (15%); partnerships (10%); public participation (10%); applicability to mission (5%); ability document and evaluate results (5%); and budget, resources and likelihood of success (25%).

Pros:

- Broadens the scope of possible services and initiatives such that capital-intensive studios, production facilities and staffing may longer be a challenge.
- Incorporates an emphasis on economic development, job creation, and workforce training.
- Proposes a funding model that encourages self-sufficiency within three years.

Con:

- With the expansion of the scope, the RFP does not require the provision of a public access channel, although submissions may include one. Once the public access channel is not operational for 120 days, it could be challenging to resume a channel in the future.

Staff recommends City Council approve a motion to partner with Buncombe County to issue a Request for Proposals to evaluate options for community media development, small business and job growth opportunities, and public education services related to media technology.

Vice-Mayor Newman suggested that instead of the H&CD Committee evaluating the proposals, the Finance Committee continue to follow-through as there would be learning curve for the H&CD Committee and the Finance Committee has valuable knowledge of the process. Councilman Russell, Chair of the Finance Committee, said the Finance Committee would be happy to evaluate the proposals prior to them coming to City Council.

Councilman Russell moved to (1) authorize City staff to partner with Buncombe County to issue a Request for Proposals to evaluate options for community media development, small business and job growth opportunities, and public education services related to media technology; (2) issue the RFP by July 1, 2011, with responses due by August 1, 2011; and (3) have the Finance Committee receive staff evaluations of proposals with a final recommendation to award the contract being brought forward for County Commission and City Council consideration in September 2011. This motion was seconded by Councilman Smith.

When Mayor Bellamy asked for further clarification on the RFP as she felt we needed to be clearer on what we are trying to get, Ms. Bradley said that the RFP was drafted to be intentionally broad enough to where there could be innovative, creative proposals brought forward - maybe even approaches we haven't even thought of because we don't work in new media now that could further the economic development and job creation goals, etc. Because that industry in Asheville has grown so much in the last decade we wanted to allow some flexibility to have some of those entrepreneurial ideas to come forward to be measured against Council's high level policy goals. It is intentionally broad because we don't know what the ideal vehicle is to achieve these goals would be but wanted to allow the opportunity for them to come forward outside of just the model of public access management.

In response to Councilman Davis, Ms. Bradley said it's the County's desire that the RFP be written broadly so that it could include a public access channel but that it's not required to include a public access channel. She believed they would reconsider their participation if we draft the RFP otherwise.

Based on previous Council discussion, Mayor Bellamy understood we were going to issue an RFP for a management company to run a public access channel, but the draft RFP does not require the provision of a public access channel.

Ms. Bradley responded to Mayor Bellamy in that there is no proposal in mind that the RFP was written for. There are a lot of opportunities in our community from educational institutions and other organizations that work in media development. If the proposal did not include public access, staff would recommend that the City use the full allocation of PEG funding for the City's government channel.

Councilwoman Manheimer said the Finance Committee discussed the RFP being very broad concept because there might be innovative ideas we hadn't conceived of yet. We didn't want to limit proposals to just being the model of a television channel.

Councilman Russell also noted that the Finance Committee wanted to be open-minded because what the PEG funds were intended to do in 1989 might not be the same in 2011.

In response to Mayor Bellamy regarding our equipment, Ms. Bradley said we are in the process of inventorying and obtaining that equipment from the former location. At this time, we don't have an inventory that could be included as part of the RFP; however, if a proposal for the management of public access or any other proposal that came forward that could use that type of equipment, we could as a part of negotiations of a contract consider some allocation of that equipment if it were a good fit for the proposal that came forward.

Mayor Bellamy questioned if there is a benchmark or scoring checklist associated with how the different options in the RFP are going to be evaluated. Ms. Bradley responded that staff will come up with a scoring sheet that will weight the point system based on the merits of the project. The RFP criteria is outlined in the RFP. Staff looked at best practices of other RFP processes that were run similar to this, like the National Endowment of the Arts and other types of federal agencies. Staff tried to model ours as closely after their process to make sure we had a transparent and fair process given that this is more of a creative proposal competition, than one where you would be bidding on a specific service for building something based on a specification provided.

Councilman Davis said he was very supportive of public access television several years ago with it being a good use of PEG funds. However, during this economy he wasn't sure if the money wouldn't be better spent for other economic development pieces.

Councilwoman Manheimer said we can use the \$30,000 for our government channel. One option would be to abandon the project altogether since we don't have a lot of money and use the PEG money on a public access function we are already performing— which is the government channel. Another option is we might want to see the City support something but are not sure what it would be. Personally she is not open to going through this exercise because we don't have \$30,000 and we already have the government channel.

Councilman Smith said this is a partnership with the County and they are matching us dollar for dollar on whatever comes forth. As far as economic development, we have an opportunity to partner with the County on something that may end up being very innovative. If nothing comes forward that meets Council's goals in September, we still have the opportunity to vote against it. He is willing to see what proposals come in.

Vice-Mayor Newman agreed with Councilman Smith in that if there are no strong proposals that merit that type of investment, Council can vote it down.

Mr. Steve Holland said in an effort to keep the public access channel alive, he asked Mr. Joe Scott from Intellisound to submit a proposal for an interim professional management of Public Access Television Channel 20 on a six month basis during the time that the City and County develops an RFP, solicits and evaluates responses to it and selects a proposal. The Intellisound proposal was submitted to City and County staff on June 6. Since that time he was made aware that Buncombe County has not certified the Public Access Channel with the North Carolina

Department of Revenue and does not intend to do so by the July 15 deadline. That provides the opportunity for the City to certify the channel and receive the Supplemental PEG funding (estimated at \$36,000 annually) that would otherwise be lost and redistributed to other counties and cities in North Carolina. By having a Channel Operator in place by June 30, the channel will meet all the requirements for certification with the North Carolina Department of Revenue. He asked that Council consider approving an interim Management Agreement with Intellisound, Inc. to operate the channel on a six month basis. He provided Council some information, along with a draft management agreement with Intellisound, Inc.

Mr. John Blackwell understood the purpose of this RFP was to have a successful management of the public access channel. He supported Intellisound's interim proposal for management of the public access channel.

Mr. Tim Peck pointed out that one of Council's policy goals in the RFP states "...building a creative economy that is progressive ...". If that means pushing a particular political ideology he objected and urged Council to strike that item as a goal for this initiative.

A gentleman spoke in support of the draft RFP process and was looking forward to writing a proposal that would focus more on tourism and economic development.

Dr. Milton Byrd, URTV producer, said that the access of public television is 100% public participation. The fact that the content of the television shows that are produced are the responsibility of the producers, not the management organization. There is a clear separation for the public to have that freedom of speech through that media. He hoped we can all work together to solve the problem.

Rev. Christopher Chiaromonte said that Asheville controls the content on the government channel and the public won't have free press in Asheville anymore if there is no public access channel.

The Director of the Asheville Area Arts Council said there are a lot of incredible artists in Asheville that use multi and digital media of all different types and supported issuing the RFP.

Rev. Lisa Landis, URTV producer, said URTV was a model for the nation and urged Council to continue the public access channel so their voices can be heard.

In response to Mayor Bellamy, Councilman Russell clarified that his motion included the policy goals in the staff report.

It was the consensus of Council to have Ms. Bradley change the wording in the RFP from "progressive" to "innovative" or "forward thinking" to remove any inkling of political slanting.

When Mayor Bellamy noted that the percentage criteria of 10% for public participation pretty much gives the indication that there's not going to be a public access channel. Ms. Bradley responded that the intent was not to weight the criteria such that it would negatively impact proposals that came forward with a public access channel. That criteria was put in there to encourage public participation in terms of the creation of the proposal and then the implementation of the initiative. With Council's direction, she can re-vamp the criteria if they feel it does restrict public access television.

Mayor Bellamy would be in support of seeing the percentage for public participation increased in whatever form presented. He hoped this will be a transparent process.

The motion made by Councilman Russell and seconded by Councilman Smith carried on a 5-1 vote, with Councilman Davis voting "no."

D. RESOLUTION NO. 11-130 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Civic Center Commission. .

The terms of John West, Carol Ann McLendon and James Richards will expire on June 30, 2011.

The following individuals have applied for vacancies: Saul Chase, Christopher James Bradford, Flora Marr, Heather Hunter, Elizabeth Franks and Karl R. Katterjohn.

On June 14, 2011, Vice-Mayor Newman moved to reappoint John West and Carol Ann McLendon to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) instruct the City Clerk to arrange interviews for Ms. Flora Marr and Ms. Elizabeth Franks. This motion was seconded by Councilman Russell and carried unanimously.

On June 28, 2011, City Council interviewed Ms. Flora Marr. Ms. Franks was unable to attend the interview.

There was a brief discussion on whether to wait to interview Ms. Franks or continue with the appointment process. Some members of the Civic Center Commission who were present during the interviews expressed encouragement for proceeding with an appointment.

Councilman Smith moved to appoint Ms. Flora Marr as a member of the Civic Center Commission to serve a three year term, term to expire June 30, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 64

E. RESOLUTION NO. 11-135 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Public Art Board. .

The terms of Kenn Kotara, Jaan Ferree, Julie Calhoun-Roepnack and Barry Pate will expire on June 30, 2011.

The following individuals have applied for vacancies: William F. Meller, Richard G. Lee, Susanne Hackett, Leslie Shaw, Ami Worthen, Gwynn Rukenbrod, Jessica McCuan, Leslie Klingner and Jennifer Gordon.

It was the consensus of Boards & Commissions Committee on June 14, 2011, to (1) reappoint Ms. Ferree and Ms. Calhoun-Roepnack to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; (2) appoint Ms. Suzanne Hackett to serve a three-year term, term to expire June 30, 2014, or until her successor has been appointed; and (3) recommend interviewing Ms. Jennifer Gordon and Ms. Leslie Klingner.

After a brief discussion on June 14, 2011, Vice-Mayor Newman moved to (1) reappoint Jaan Ferree and Julia Calhoun-Roepnack to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) instruct the City Clerk to arrange interviews for Ms. Susanne Hackett, Ms. Ami Worthen, Ms. Gwynne Rukenbrod,

Ms. Jessica McCuan, Ms. Jennifer Gordon and Ms. Leslie Klingner. This motion was seconded by Councilman Smith and carried unanimously.

On June 28, City Council interviewed Ms. Ami Worthen, Ms. Gwynne Rukenbrod, Ms. Jessica McCuan, Ms. Jennifer Gordon and Ms. Leslie Klingner. Ms. Hackett was unable to attend the interview date and time; however, she expressed interest in serving on the Board.

Vice-Mayor Newman clarified that the Public Art Board was recently expanded from seven members to nine members.

After Council spoke highly of the candidates, Ms. Worthen received 2 votes, Ms. Rukenbrod received 4 votes, Ms. McCuan received 1 vote, Ms. Gordon received 4 votes, and Ms. Klingner received 1 vote. Therefore, Gwynne Rukenbrod and Jennifer Gordon were appointed as members to the Public Art Board to each serve three-year terms respectively, terms to expire June 30, 2014, or until their successors have been appointed.

Mayor Bellamy suggested the Board be expanded to 11 because there is a lot of interest and the caliber of candidates speaks a lot about our community and their commitment to public art. Vice-Mayor Newman said that the Boards & Commissions Committee will review the size of the Board. He asked Councilman Smith, liaison to the Public Art Board, to get their thoughts on membership size as well.

RESOLUTION BOOK NO. 34 – PAGE 69

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Lisa Landis recited some of the Constitution regarding free speech. She will fight for her First Amendment.

Dr. Milton Byrd spoke about leadership and management.

Rev. Christopher Chiaromonte spoke about the need for Asheville to work more to alleviate homelessness.

Lawsuit

The City was served with a Complaint from Nationwide Mutual Insurance Company on an unknown date. The Complaint for judgment is in excess of \$10,000 – Meter gasket failed causing excessive pressure in the waterline to property of Jean Sponseller at 2 Bent Tree Drive. The Risk Management Division has referred the matter to the City's Third Party Administrator. The Third Party Administrator will assign to counsel outside the office.

Closed Session

At 7:31 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(4); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:53 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:53 p.m.

CITY CLERK

MAYOR