

Tuesday – March 13, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Cecil Bothwell (family emergency)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Hunt gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 28, 2012**
- B. RESOLUTION NO. 12-54 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONSTRUCTION CONTRACT WITH CANA CONSTRUCTION FOR THE BREVARD ROAD 24-INCH WATERLINE AND WATER SYSTEM IMPROVEMENTS PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with Cana Construction, in the not-to-exceed amount of \$162,188.00, for the Brevard Road 24-inch Water Line and Water System Improvements Project.

On February 2, 2012, the Water Resources Department issued an Advertisement for Bids for the Brevard Road 24-inch Water Line and Water System Improvements Project to upgrade the water system between Interstate 26 and the entrance to the Biltmore Square Mall. The scope of the project includes all labor, materials, and equipment required for: (1) the installation of approximately 848 linear feet of a new 24-inch ductile iron pipe with related appurtenances; and (2) completion of the last planned section of transmission line along Brevard Road.

On February 23, 2012, Water Resources received seven (7) bids for the project in response to the Advertisement for Bids. Companies responding were:

1. Cana Construction – Waynesville, NC
2. Steppe Construction, Inc – Mill Spring, NC
3. T & K Utilities, Inc. – Asheville, NC
4. Patton Construction Group, Inc.– Arden, NC
5. Chandler Construction Services, Inc.– Ninety Six, SC
6. Wateree Construction Company, Inc. – Sumter, SC
7. Payne, McGinn and Cummins, Inc.– Travelers Rest, SC

The bids were reviewed by the Water Resources Department and the City's Office of Economic Development (Minority Business Plan Compliance) with all officers recommending approval of Cana Construction as the lowest, responsible bidder in the amount of \$162,188.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- This project will complete the last planned section of an important transmission main, which enables the Water Resources Department to efficiently feed large volumes of water from the Mills River Treatment Plant to West Asheville and the rest of the water system.
- This project is aligned with the City and the Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects in order to provide safe and reliable service.
- Approval of the construction contract to the lowest, responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would prevent the completion of this important transmission line link in the City's water system.

The Water Resources Department currently has the funds needed for this project budgeted in the Water Resources' Capital Improvement Projects Fund.

City staff recommends City Council approval of the City Manager to enter into an agreement with Cana Construction, in the amount of \$162,188.00, for the Brevard Road 24-Inch Water Line & Water System Improvements.

RESOLUTION BOOK NO. 34 – PAGE 292

C. RESOLUTION NO. 12-55 - RESEOLUTION SUPPORTING RESIDENTIAL PROPERTY ASSESSED CLEAN ENERGY (PACE) THROUGH HOUSE RESOLUTION 2599, PACE ASSESSMENT PROTECTION ACT OF 2011

Summary: The consideration of a resolution to encourage federal legislators to support House Resolution 2599.

Residential PACE: The PACE model ran into significant barriers on when the Federal Housing and Finance Administration (FHFA) wrote directives in July 2010 and February 2011 to Fannie Mae, Freddie Mac and the Federal Home Loan Banks to "continue to refrain from buying mortgage loans secured by properties with outstanding first-lien PACE obligations and carefully monitor through their seller-servicers any programs that create such first-lien obligations." The FHFA's stated primary concern is that these type of loans "pose unusual and difficult risk management challenges for the (banks)".

Addressing Federal Barriers

Municipalities across the country have coordinated efforts to address the FHFA barrier through two primary routes: HR 2599 a federal legislative fix and an Advanced Notice of Rulemaking (ANRM) a judicial fix. Asheville City Council can join these efforts to support removing the federal regulatory barriers to residential PACE.

1) HR 2599: This bill is to prevent Fannie Mae, Freddie Mac and other Federal residential and commercial mortgage lending regulators from adopting policies that contravene established state and local property assessed clean energy laws.

2) Advanced Notice of Rulemaking (ANRM): The FHFA was challenged in federal court regarding the legality of the FHFA's ability to intervene regarding PACE without following the required process of rulemaking. Resulting from this case the FHFA is

seeking public comments regarding whether their previous directive should be maintained, changed, or eliminated and whether other restrictions or conditions should be imposed.

Addressing State Barriers

Should federal regulatory barriers be removed North Carolina municipalities would then need to reevaluate state PACE legislation to ensure it complies with new federal guidance.

Commercial PACE: To implement a commercial PACE program the City of Asheville would need to borrow money for the purpose achieving community energy reductions through installing energy efficiency and renewable energy improvements on voluntary private properties. The city would repay the money they borrow by levying a special property tax assessment on the participating private properties. These special property tax assessments would need to cover all costs of implementing the program and would theoretically be made available to the property owner through the energy efficiency savings. In order to implement these projects the city would have to hire a third party administrator to manage procurement, installation and the assessment process on the city's behalf.

Addressing Financing

Staff's analysis indicates that the only financially feasible method for commercial PACE capitalization is through utilizing Qualified Energy Conservation Bonds (QECB's). QECB's are qualified tax credit bonds which allow the borrower to only pay back the principle and the bondholder receives federal tax credits in lieu of traditional bond interest. QECB's are allocated to states who then make allocations to local jurisdictions. For each allocation 70% must be used for public projects and no more than 30% are allowed to be used for private activity projects. The City of Asheville did not receive a direct allocation. Buncombe County did receive an allocation totaling \$2,394,259 and it is staffs understanding that they do not intend to utilize this borrowing option. The QECB rules indicate that the county can allow the city to access this allocation on their behalf.

Commercial PACE next steps:

1. Establish strategic partnerships with potential commercial partnership to establish a stakeholder group of likely commercial borrowers for a pilot program.
2. Continue to research available financing methods.
3. Design a pilot program for council consideration.

This item went to the Sustainability Advisory Committee on Energy and the Environment on February 15th and was unanimously supported. The Council Finance Committee reviewed this item on February 28th at which point they recommend this go before the full Council.

These actions support the following Council strategic goals: (1) Explore opportunities to enhance affordability by reducing utility costs through innovative energy efficiency financing programs; and (2) Work with regional partners to create incentives for green building, energy conservation and energy independence.

There is no fiscal impact associated with the staff recommendation.

Regarding Residential PACE, staff recommends Council pass a resolution to encourage federal legislators to support HR 2599 and write a letter to the FHFA with public comments.

Councilman Davis stated that he would only support staff looking into Commercial PACE.

Councilman Hunt felt it was appropriate to incentivize energy efficiency through a program like PACE. He understands we are only directing staff to research the Commercial PACE further and it will be reviewed through the Finance Committee prior to coming to Council.

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D. RESOLUTION NO. 12-56 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A FOUR YEAR CONTRACT WITH THE N.C. DEPT. OF PUBLIC SAFETY TO PROVIDE REGIONAL HAZARDOUS MATERIALS EMERGENCY RESPONSE FOR REGION 6

Summary: The consideration of a resolution authorizing the City Manager to enter into the four year contract agreement with the N.C. Dept. of Public Safety to provide regional hazardous materials emergency response for Region 6.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N.C. Dept. of Public Safety formerly known as Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response. The region six areas encompass the westernmost twenty counties.

The N.C. Dept. of Public Safety formerly has offered a contract agreement to the City of Asheville for Hazardous Materials Emergency Response Services for contract years of July 1, 2012 through June 30, 2016. The City of Asheville has been a regional hazardous materials provider since FY 1994-1995. The State of North Carolina provides funding that fully supports the operational costs of the program.

The City Council Public Safety Committee reviewed and unanimously recommended this action. This program is also consistent with the City's Strategic Operating Plan regarding partnerships.

Pros:

- The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire Department to enable us to competently handle hazardous materials emergencies.
- The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of the resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.
- During the eighteen years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program.
- Firefighter and citizen safety will be enhanced.

Con:

- None have been identified or known at this time.

This contract generates approximately \$65,000 in revenue for the City of Asheville which is expended on operating our hazardous materials emergency response program.

City staff recommends City Council authorize the City Manager to enter into the four year contract agreement with the N.C. Dept. of Public Safety to provide regional hazardous materials emergency response for Region 6.

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E. RESOLUTION NO. 12-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITE DEVELOPMENT CORPORATION INC. FOR THE PATTON AVENUE SIDEWALK PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute a contract (and all change orders in the amount of 20% of the contract or \$77,000) with Site Development Corporation, Inc. in the amount of \$387,307.25 for the project known as Patton Avenue Sidewalk Project, Project # ENG-11-12-005.

A formal request for bids was issued on February 3, 2012, and bids were opened on February 23, 2012. There were a total of 4 bids received with the lowest responsive bidder being a North Carolina based contractor, Site Development Corporation, located in Cliffside, N.C., with an amount of \$387,307.25. With the addition of a 20% contingency, the total budgeted amount for this project is \$464,307.25. This will be a unit price contract and not a lump sum contract and is part of the City of Asheville's CIP program.

This action complies with the City Council Strategic Operating Plan of Multimodal Transportation in that it will meet the need of increasing the output of sidewalk construction and provide sidewalk in an area that is in need of sidewalk linkage.

Pros:

- Provides a pedestrian linkage by connecting existing sidewalks.
- Will be a step forward in meeting the City's Strategic Plan and current fiscal year CIP goals.
- Is listed as an identified need on the City of Asheville pedestrian plan.

Cons:

- Project management and contract administration will consume staff time and City funds.
- Temporary lane and driveway closures.
- The new construction will increase the maintenance load on the City.

This project is part of the \$1.3 million sidewalk construction program that City Council approved as part of the FY 2011-12 Capital Improvement Budget. Funding will come from debt proceeds.

Staff recommends City Council to authorize the City Manager to execute on behalf of the City of Asheville a contract with Site Development Corporation in the amount of \$387,307.25 for the project known as Patton Avenue Sidewalk Project, and all change orders in the amount of 20% of the contract or \$77,000.

Councilman Pelly spoke in support of sidewalk construction in this area of the City.

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F. RESOLUTION NO. 12-58 - RESOLUTION AUTHORIZING THE MAYOR TO PURCHASE TWO EASEMENTS ACROSS PROPERTY LOCATED OFF ELIZABETH PLACE FOR THE PURPOSE OF IMPLEMENTING PHASE IV OF THE REED CREEK GREENWAY

Summary: The consideration of a resolution authorizing the Mayor to execute all necessary documents to purchase both temporary and permanent easements across property identified as PIN #s 9649-23-7140 and 9649-23-7067 located off of Elizabeth Place, in the amount of \$3,000, for the purposes of implementing Phase IV of the Reed Creek Greenway.

The City needs easements through two (2) contiguous properties in order to obtain the right-of-way necessary to implement the Phase IV of the Reed Creek Greenway. The total size of the permanent easement is 1,130 +/- square feet and the size of the construction easement is also 1,130 +/- square feet. The proposed compensation is based on the current land value per the Buncombe County Tax Assessment, at fifty percent (50%) of value for the permanent easement and ten percent (10%) of value for the construction easement. The joint owners of the parcels, Elizabeth C. Graham and Nancy Nutter, have agreed to accept \$3,000 as compensation for the easements needed. The City will pay for all transaction costs associated with the easement.

This action complies with City Council's Strategic Plan in the Multimodal Transportation section, in that it advances a multi-modal transportation plan, which includes greenways. This action also complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan.

Pros:

- Secures critical easements necessary for the completion of Phase IV of the Reed Creek Greenway.
- Increases the City's inventory of park space.

Con:

- Added maintenance costs.

Compensation for easements is \$3,000 plus closing costs. Funding for the stated purchase has been allocated by City Council via the FY 11/12 capital budget. City staff will prepare closing documents and perform final closing.

City staff recommends City Council adopt a resolution authorizing the Mayor to purchase two easements (PIN #s 9649-23-7140 and 9649-23-7067) in the amount of \$3,000 from Elizabeth Graham and Nancy Nutter for the purposes of implementing Phase IV of the Reed Creek Greenway.

Councilman Hunt spoke in support of these easements for greenway development.

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G. RESOLUTION NO. 12-59 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KOSTELEK PLANNING LLC TO PREPARE THE LONG RANGE TRANSPORTATION DEMAND MANAGEMENT PLAN

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Kostelec Planning, LLC. to prepare the Long Range Transportation Demand Management Plan.

Transportation Demand Management (TDM) is the application of policies and strategies that attempt to optimize existing transportation resources and infrastructure by mitigating single occupancy vehicle use in a defined area. TDM programs have the potential to deliver better environmental outcomes, lower parking demands, improved public health, stronger communities, and a more prosperous and livable city.

The TDM program, which was hosted by the City from FY 2005 until FY 2011, focused on promoting alternatives to single occupancy vehicles mainly inside the City limits. The program was funded by the City and the N.C. Dept. of Transportation (NCDOT) with each entity contributing 50% of the needed funds. NCDOT expressed the need to set regional goals to improve the quality of life for the citizens of Western North Carolina by providing education,

support and resources that would enhance and promote alternatives to driving alone. In order to evaluate the adequacy of these goals and to continue the program, the NCDOT wants to perform an analysis, known as the Long Range Transportation Demand Management Plan, which would provide new strategies that would allow transportation demand management to grow accordingly to regional needs.

Due to the regional nature of the study, and as recommended by the NCDOT, the City signed an agreement with the Land of Sky Regional Council of Governments (COG) to manage the study. The Council approved the agreement on August 23, 2011. The Council issued a Request for Proposals (RFP) on November 2, 2011, and it closed on December 30, 2011. Proposals were received from the following firms:

- Martin/Alexiou/Bryson, P.C.
- Kostelec Planning, LLC.
- UrbanTrans North America
- Tindale-Oliver & Associates, Inc.

The proposals were evaluated by a selection committee that included 14 members from different agencies, including the City of Asheville, Western North Carolina Alliance, Buncombe County, Henderson County, the NCDOT, UNC-Asheville, Haywood Community College, the Chamber of Commerce, and staff/members of the Technical Coordinating Committee and Transportation Advisory Committee of the French Broad River Metropolitan Planning Organization. The selection committee individually evaluated and scored the proposals, then combined the scores. The evaluation process took about two months and numerous meetings to ensure that all aspects relevant to the RFP were considered. During the process, the firms were asked to provide additional information to help clarify questions posed by the committee. The firms were evaluated based on their experience, similar projects completed, team qualifications, quality of proposal, and project management plan. This procurement process has followed Federal regulations that apply for professional services contracts and geographic preference is not a factor to be considered.

After careful review and consideration of all the evaluation factors and the information provided, the selection committee recommended Kostelec Planning, LLC to prepare the Long Range Transportation Demand Management Plan.

The total project cost is \$99,620. The project will be funded by the Federal Transit Administration in the amount of \$79,696 (80%) and the North Carolina Department of Transportation in the amount of \$19,924 (20%). The City is not responsible for any of the project cost. The City, as designated recipient, will be responsible for overseeing the use of the project funds according to Federal Transit Administration and NCDOT regulations. The subject task will require staff time that is already budgeted.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility and green and sustainable focus areas, specifically operating the City of Asheville to the highest levels of fiscal responsibility, leveraging funding from Federal and State agencies; and setting and developing a plan for implementing a community energy reduction goal.

Pros:

- The project will be fully funded by the Federal Transit Administration and the NCDOT.
- The plan will address NCDOT and City of Asheville concerns about the future of the transportation demand management program.
- The plan will provide guidance for future transportation demand management initiatives regarding regional needs.

Con:

- Staff time is needed to oversee the use of the funds.

The total project cost is \$99,620. The Federal Transit Administration will provide 80% of the total project cost and the NCDOT will provide the remaining 20%. The City will oversee the use of the funds and will seek reimbursement from both agencies. The budget for the subject project was approved by City Council during January 2011.

City staff recommends that City Council authorize the City Manager to enter into a contract with Kostelec Planning, LLC. to prepare the Long Range Transportation Demand Management Plan.

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H. RESOLUTION NO. 12-60 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A 5-YEAR LEASE WITH DEWINE SEEDS – SILVER DOLLAR BASEBALL, LLC, FOR THE USE OF MCCORMICK FIELD FOR THE OPERATION OF THE ASHEVILLE TOURISTS MINOR LEAGUE BASEBALL TEAM

ORDINANCE NO. 4065 - BUDGET AMENDMENT FOR THE LIGHTING AND PLAYING SURFACE REPLACEMENT PROJECTS; AND TECHNICAL BUDGET AMENDMENT FOR FISCAL YEAR 2011-12 STREET MAINTENANCE EXPENSES

Summary: The consideration of (1) a resolution authorizing the City Manager to sign a new lease with DeWine Seeds –Silver Dollar Baseball, L.L.C. for the use of McCormick Field for the continued operation of the Asheville Tourists baseball; (2) a budget amendment, in the amount of \$390,000, from General Fund pay-as-you-go capital funds for the Lighting and Playing Surface Replacement Projects; and (3) a technical budget amendment, in the amount of \$390,000, from debt proceeds for Fiscal Year 2011-12 street maintenance expenses.

On July 1, 2005, the City entered into a 10-year lease with Asheville Tourist Baseball Club, Inc. for the use of McCormick Field to operate a minor league baseball program within the city limits of Asheville. On January 5, 2010, Palace Baseball, L.L.C. entered into an asset purchase agreement with DeWine Seeds – Silver Dollar Baseball, L.L.C. On January 26, 2010, City Council agreed to assign the lease with Palace Baseball, L.L.C. to DeWine Seeds – Silver Dollar Baseball, L.L.C for the continued operation of minor league baseball in the city limits of Asheville.

DeWine Seeds –Silver Dollar Baseball, L.L.C. has been operating the under the original 2005 lease agreement. The City and DeWine Seeds –Silver Dollar Baseball, L.L.C. have been working together to develop a lease with terms that are mutually beneficial for both parties. The current lease agreement calls for the City to provide the following services at a net annual operating cost to the City of approximately \$70,000:

Current	
Terms	10 years
Annual Lease payment to City	\$ 100,000
Annual Capital payment to City	\$ 40,000
	Responsible Party

<u>Current</u>	<u>City</u>	<u>Tourist</u>	<u>Cost</u>
Utilities	X		\$ 92,560.00
Stadium Clean-Up Playing Field	X		\$ 35,000.00
Maintenance	X		\$ 65,000.00
Facility Maintenance	X		\$ 17,000.00
			\$ 209,560.00
			Annually

Under a renegotiated lease, DeWine Seeds – Silver Dollar Baseball, L.L.C would assume responsibility for most operational functions of McCormick Field for baseball operations.

The proposed new terms are as follows:

1. Tourist assumes all operating and staff cost for field and stadium operations
2. Tourist receives all revenue for operations of the stadium.
3. The City will continue to provide building maintenance services for routine maintenance.
4. The City will continue to provide outside landscaping and tree trimming support.
5. The City and DeWine Seeds – Silver Dollar Baseball, L.L.C will develop a separate MOU for the following areas: (a) Facility Naming Rights; (b) Use of Operational Equipment; and © Long Range Capital improvements.

<u>Proposed</u>			
Terms	5 years		
Annual Lease payment	\$ 1.00		
	Responsible Party		
<u>Proposed</u>	<u>City</u>	<u>Tourist</u>	<u>Cost</u>
Utilities		X	
Stadium Clean-Up Playing Field		X	
Maintenance		X	
Facility Maintenance	X		\$ 10,000.00
			\$ 10,000.00 Annually

Under the new lease agreement, the City's net annual operating cost will be \$10,000. Also, as part of the lease agreement, the City commits to capital improvements in the facility according to the schedule below. These investments total \$765,000 and will be implemented over the 5-year term of the lease. It is anticipated that these improvements will be funded through General Fund pay go contributions that will be made available by increasing the amount of street maintenance projects that are funded by debt financing. The additional debt service from the streets projects will be approximately equal to the net operating loss under the current agreement.

During the 5-year term of this lease, if other unidentified maintenance issues not outlined below are identified by DeWine Seeds – Silver Dollar Baseball, L.L.C and agreed upon by the City, the below project list will be reprioritized in order to address the new maintenance issues and to stay within the total 5 year investment of \$765,000.

	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Lighting Replacement	90,000.00			
Playing Surface Replacement	300,000.00			

Clubhouse Renovations	100,000.00	
Bleacher Replacement		275,000.00

City Council Finance Committee reviewed the new lease terms on February 28, 2012, and recommended this item to the full City Council.

Pros:

- DeWine Seeds –Silver Dollar Baseball, L.L.C. is committed to keeping minor league baseball in Asheville.
- With the change in the economic climate, this gives the Asheville Tourists and the City an opportunity to make possible changes to a 10-year old lease developed by the previous owner of the Asheville Tourists.

Con:

- None

City will continue to provide Building Maintenance functions such as electrical, plumbing, and HVAC services for the stadium on an as needed basis. The cost is anticipated to be approximately \$10,000 per year and will be budgeted in the City’s Building Maintenance annual operating budget.

The City will fund the capital projects using General Fund pay-go capital contributions that will be freed up by increasing the amount of streets projects that are funded via debt financing. The additional debt service for the streets projects is anticipated to be approximately equal to the City’s current investment in operating the McCormick Field. A budget amendment in the amount of \$390,000 is included to appropriate funds for the Lighting and Playing Surface Replacement Projects in the current fiscal year. The other capital projects will be included in the five year CIP that staff presents to Council as part of the FY 2012-13 Budget. A technical budget amendment is also included to move \$390,000 in street maintenance expenses to the capital projects fund, where they will be funded with debt proceeds.

Staff recommends City Council adopt (1) a resolution authorizing the City Manager to sign a new lease with DeWine Seeds –Silver Dollar Baseball, L.L.C. for the use of McCormick Field for the continued operation of the Asheville Tourists baseball; (2) a budget amendment, in the amount of \$390,000, from General Fund pay-as-you-go capital funds for the Lighting and Playing Surface Replacement Projects; and (3) a technical budget amendment, in the amount of \$390,000, from debt proceeds for Fiscal Year 2011-12 street maintenance expenses.

Councilman Davis said that the City owns McCormick Field and as with all its property, we must be good stewards of it. He was happy that the Asheville Tourists are in Asheville to bring quality entertainment to the entire family.

Councilwoman Manheimer said that under this new lease we are shifting several annual reoccurring costs that the City used to be paying and exchange, because McCormick Field is a City-owned facility, we will be making capital improvements. We will issue some debt in order to do that but our debt service payment will be approximately the same as what we were paying under the current lease. She said this is a good partnership for some much needed improvements to the baseball facility.

**RESOLUTION BOOK NO. 34 – PAGE 299
ORDINANCE BOOK NO. 27 – PAGE**

I. ORDINANCE NO. 4066 - BUDGET AMENDMENT TO FUND DEMOLITION OF UP TO THREE STRUCTURES THAT HAVE BEEN FOUND AS UNSAFE,

UNFIT FOR HUMAN HABITATION AND MEET THE DEFINITION OF DILAPIDATED

Summary: The consideration of a budget amendment using \$45,000 from General Fund fund balance to fund demolition of up to three structures that have been found as unsafe, unfit for human habitation, and meet the definition of dilapidated following the City of Asheville Minimum Housing Code process.

The Building Safety Department enforces Article VII of Chapter 4, of the Code of Ordinances, or our Minimum Housing Code. Section 4-217 of the Housing Code outlines a process for remedying defects that may lead to the structure being found unsafe or unfit for human habitation. The Department is responsible for enforcing the State Building Code that references General Statutes, specifically GS 160A-425 through GS 160A-432, the unsafe building statutes.

Complaints on a structure's condition can come from many different sources, such as the tenant, the neighbors, APD, AFD, social services, visible from the road by the inspector, etc. An inspector investigates the complaint. If the structure is occupied the inspector will communicate with the tenant and landlord or owner to correct the items identified. The structures that are vacant, and meet the definition of dilapidated are extremely difficult to bring into compliance. We encourage the owners to demolish the structure and to board the structure to prevent entry as a safety precaution until demolition is completed. Following the Housing Code, or in some cases the General Statutes, dilapidated structures require the owner(s) to demolish or repair within a specified time after an administrative hearing. If the order is not met, City Council can order the structure demolished and place a lien on the property. Once the property is sold, the City is reimbursed for the cost of the demolition and other associated costs such as legal service time. The property taxes are paid prior to the City's lien then any other liens are after those priorities.

Demolition contractor's bids are requested, including the Public Works Department, when the structure and work are within their scope. Over the past four years, staff has taken one commercial structure to Council for demolition and has received payment for that cost. Public Works has demolished one small single-family home where a lien was placed on the property for the costs of the landfill tipping fees and other costs. Demolition costs are fluid based upon many factors. The size, construction type, and if salvageable items are present to lower the cost for the contractor are specific to each structure. If asbestos is present, the cost will go up for the removal or for disposal of the structure in a landfill for hazardous items. Most single-family home demolitions will range from approximately \$9,000 to \$20,000.

The Building Safety Department must seek Council authorization for demolitions to confirm the process, that the structure meets the definition, and to authorize the funding. Funding for demolitions for at least the last ten years has come from Fund Balance. All proceeds from the lien upon the property selling are returned to Fund Balance. The Building Safety Department has several locations where the structure meets the definition of dilapidated. Our efforts have been concentrated on seeking the owners to correct the situation, collaborating with other organizations and the owner to remove or repair the structures, and to not begin the process to require Council to order the structure demolished unless all other avenues have been exhausted. We now have several single-family homes and one commercial structure that we have had no success in remedying the dilapidated conditions. Once these structures follow the legal process they will individually come back to City Council for authorization.

This action complies with the City Council Strategic Operating Plan goal to support the creation and preservation of affordably and home ownership opportunities in Asheville so that all citizens have access to safe, sufficient and affordable housing.

Pros:

- The removal of an unsafe and dilapidated structure from the community ensures that communities do not have structures that would allow children and others to enter and potentially be injured.
- Increases the appeal and potentially the tax value of the neighboring properties by the removal of a dilapidated structure.

Cons:

- The payback of a lien is an unknown time duration based upon the sale of the property.
- May impact the June 30, 2012 General Fund fund balance.

Staff is recommending that Council appropriate \$45,000 from General Fund fund balance for the cost of these demolitions. As noted above, all proceeds received from the lien upon the property selling will be returned to fund balance.

City staff recommends City Council approve the budget amendment in the amount of \$45,000 from General Fund fund balance to fund demolition of dilapidated structures.

ORDINANCE BOOK NO. 27 - PAGE

J. ORDINANCE NO. 4067 - BUDGET AMENDMENT TO APPROPRIATE PARKING FUND FUND BALANCE TO PROVIDE AN EQUITY CONTRIBUTION TOWARD THE CONSTRUCTION COSTS FOR THE BILTMORE AVENUE PARKING GARAGE

Summary: The consideration a budget amendment to appropriate \$3.0 million from the Parking Fund fund balance to provide an equity contribution toward the construction costs for the Biltmore Avenue parking garage (formerly referred to as 51 Biltmore).

Construction of the new parking garage at Biltmore Avenue, which is approximately 90% complete, is ahead of schedule and on budget. The current budget for this project is \$14.1 million, with funding coming entirely from debt proceeds. As reported to Council this past November as a part of the FY 2010-11 Comprehensive Annual Financial Report (CAFR) presentation, the Parking Fund ended FY 2010-11 with available fund balance of approximately \$3.35 million more than the established target level.

Staff is recommending that Council appropriate \$3.0 million from Parking Fund fund balance to provide an equity contribution to the Biltmore Avenue Parking Garage project. This action will reduce the amount of funds that need to be borrowed to approximately \$11.1 million. Staff estimates that reducing the amount of the loan proceeds by \$3.0 million will save approximately \$1.2 million in interest costs over the life of the loan.

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

Pros:

- Reduces the amount of funds borrowed for the Biltmore Parking Garage Project, thereby reducing the amount of interest costs over the payback of the loan.
- Lowers the annual debt service payments, which creates greater flexibility in the Parking Operating Fund budget.

Con:

- None.

This \$3.0 million appropriation will leave the Parking Fund with an available fund balance of approximately \$500,000. The target level fund balance for the Parking Fund (8% of the fund's operating budget) is \$151,622.

Annual debt service payments for the Biltmore Avenue Parking Garage will be reduced as a result of the proposed equity contribution. For example, staff estimates that the first year of debt service payments will go down from \$ \$1,140,515 to \$ 889,760. This adjustment will provide greater long-term flexibility in the Parking Fund's annual operating budget.

City staff recommends City Council approve the budget amendment to appropriate \$3.0 million from the Parking Fund fund balance to provide an equity contribution toward the construction costs for the Biltmore Avenue parking garage.

ORDINANCE BOOK NO. 27 – PAGE

K. RESOLUTION NO. 12-61 - RESOLUTION APPOINTING ESTHER CARTWRIGHT TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Summary: Rod Baird is one of two members of the RiverLink Board of Directors appointed to serve on the River District Design Review Committee. Mr. Baird no longer serves in that capacity, thus leaving an unexpired term until September 1, 2013. RiverLink has requested City Council to appoint Ms. Esther Cartwright, who is a seated Board member, to fill out Mr. Baird's term.

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L. RESOLUTION NO. 12-62 - RESOLUTION AMENDING THE 2012 CITY COUNCIL MEETING SCHEDULE TO INCLUDE A WORKSESSION ON TUESDAY, MARCH 27, 2012, AT 3:30 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL

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

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL UPDATE

Dr. Larry McCallum, Chairman of the Board of Directors of the Asheville-Buncombe Community Relations Council (CRC), was pleased to introduce their new Executive Director Sarah Nunez. He said that are working on transparency for the governance and operation of the Council.

Ms. Nunez outlined many changes they were making as an organization to move forward. Regarding inclusion (1) they will conduct a listening tour, (2) reconnect with communities; (3) do outreach; and (4) have bilingual staff and volunteers. Accountability will include deliverables, data collection and an Audit Committee from the Board of Directors. Sustainability will include strategic planning, diversify funding, and board development. Vision will

include (1) programs that align with their mission; (2) have a broad appeal to all citizens of Asheville and Buncombe County; (3) build trust; and (4) build respect.

Dr. McCallum and Ms. Nunez responded to various questions/comments from Council, some being, but are not limited to: will the services and the programs be similar to what has been offered in the past and will they offer any new services; is Buncombe County committed to funding the CRC and at what level; has the community been bringing the CRC fair housing concerns and if so, how is the CRC handling those concerns; approximately how many fair housing referrals are made weekly; what types of data will be collected; what is the purview of the Audit Committee; what is the CRC's perception of the needs of the community; and how does the CRC hope to affect change in eliminating discrimination in our community.

Mayor Bellamy suggested Ms. Nunez provide Council with their Strategic Operating Plan, showing their benchmarks going forward.

Mayor Bellamy thanked Dr. McCallum for his work on the CRC and Ms. Nunez for the hard work she has accomplished since recently been appointed Executive Director.

B. EBLEN TOY RUN

Mr. Bill Murdock, representing the Eblen Toy Run, and Mr. Steve Kaser, representing Smoky Mountain Town Run, presented City Council with a certificate of appreciation for their support for the Smoky Mountain Toy Run. The Eblen St. Nicholas Project stated 15 years ago with 12 children being assisted at Christmas. Two years ago they assisted 325 children and now through partnership like the City of Asheville, last Christmas they assisted 6,000 children. Mayor Bellamy, who invited Building Safety Director Robert Griffin and Police Chief William Anderson to accept the Certificate with her, was pleased to accept it on behalf of the City of Asheville.

C. QUARTERLY REPORTS

Finance Committee Chair Report

Vice-Mayor Manheimer, Chair of the Finance Committee, updated Council the progress and achievements made by the Finance Committee during the second quarter of the fiscal year.

Planning & Economic Development Committee Chair Report

Vice-Mayor Manheimer, Chair of the Planning & Economic Development Committee, updated Council on Committee actions through the second quarter of our fiscal year (October through December, 2012).

Public Safety Committee Chair Report

A report submitted by Councilman Bothwell, Chairman of the Public Safety Committee, was provided to Council on some major accomplishments during this quarter.

At the suggestion of Mayor Bellamy, it was the consensus of Council to ask that the Public Safety Committee look for an opportunity to name an existing or future piece of City-owned property in memory of our fallen firefighter Capt. Jeffrey Bowen, along with a policy for any employee who loses their life on the job.

Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February, 2011, strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the Fiscal Year 2011-12.

This report outlines key operational updates during the first and second quarters of our fiscal year (July 2011 – December 2011).

Affordable

- Affordable Housing Fee Rebates: As part of an effort to make housing in Asheville more affordable, the Water Resources Department administers an Affordable Housing Rebate Program. This program provides a 50% rebate on water fees if the constructed house or apartment meets the definition of "affordable". During the first two quarters of this fiscal year, there have been 43 rebates, totaling \$59,805. This is a notable increase from the same quarters of the previous fiscal year: \$27,935.
- Community Development: Through the first two quarters of this fiscal year, there were 163 new affordable housing units produced, which included 31 new home ownership units and 132 new affordable rental units. A total of 50 housing units were preserved through repair or rehabilitation. Twenty four households became first time home buyers with HOME and CDBG assistance; 179 households received rental assistance, which helps prevent instances of homelessness.
- Temporary Use Amendment: This amendment expands the temporary use standards to allow food vendor sales on institutional properties in residential districts. This would allow a small produce vendor to set up on a church or school property in neighborhoods where they may be able to better reach underserved communities. This amendment also seeks to address an enforcement disparity by requiring permits for certain temporary uses in commercial areas.
- Sign Code Amendment: This is a collection of miscellaneous amendments designed to update the standards to address changing practices and businesses. This amendment includes increased signage options for special events, campaign signs, temporary signs, development signs, and strengthens standards for digital billboards.

Fiscal Responsibility

- Automated Meter Reading Project: The installation of automatic water meter devices began in the first quarter of fiscal year 2011. To date over 28,000 total devices have been installed (50% of all City meters). The cost to this point is \$5 Million, which included the new meters, the reading devices, labor and other miscellaneous materials.
- Diversity in Revenue Stream: Wrist bands sold during events at the U.S. Cellular Center generated \$100,000 of new revenue during the first two quarters of this fiscal year.

Job Growth and Community Development

- Workforce Development: (City Health Clinic Expansion) The City has made considerable strides in attracting and retaining quality employees. The City Health Services Clinic has opened its new location at 155 Biltmore Avenue, with one part-time Physician Assistant hired. Through the direction of City Council, staff assembled a Blue Ribbon Healthcare Task Force to learn more about employee benefits and provide recommendations for benefits during the current fiscal year. As consistent with those recommendations, healthcare costs sharing has been implemented, as well as a health premium differential for participation in the wellness program.

(Youth Development)

At a time when more than 70 percent of teenagers are unemployed, the City of Asheville Youth Leadership Academy (CAYLA) is committed to investing in youth and expanding available opportunities for them to succeed. Each spring, 30 students at Asheville High School are selected for CAYLA. In addition to volunteer projects and group workshops, these students are placed in diverse work environments, to include nine City departments and a growing array of local businesses and nonprofit agencies. To date, 100% of CAYLA graduates have been accepted to college (with 93% currently attending); participants have received over \$500,000 in merit scholarships (not including Pell Grants); over 2,000 hours of community service have been completed since 2007.

(Staff Training)

Lastly, there has been a coordinated effort to provide high quality trainings to City staff. In total, staff and outside consultants provided 61 classes to 477 attendees during the first and second quarter of this fiscal year. Examples of trainings include sessions on the City's Core Values (e.g. ethics and diversity), policy-specific sessions (e.g. workplace harassment), leadership and time management.

- Downtown Development: The public-private partnership of Aloft Hotel (51 Biltmore Avenue) is approximately 85% complete, slightly ahead of schedule and on budget.
- Limited Fees: Staff continues to support business by limiting taxes, fees and regulations. During the first two quarters of this fiscal year, 52% of all parking citations in the central business district were warnings.
- Homeless Initiative: During the last two years, this initiative prevented or ended homelessness for 669 people in 320 households. Since January 2011, over 400 people accessed permanent, supportive housing.
- Community Center: As the first Asheville community center opened since the Montford Center in 1974, the new Dr. Wesley Grant Sr. Southside Center recognizes a great local leader and an historic cultural neighborhood. This is the City's first LEED Certified building and staff is currently applying for LEED Platinum status. Additionally, proceeds from the recent sale of the Reid Center will be invested in the next phase of the Grant Center.
- Development Rebates and Permits: City Council approved the use of *Change-out Rebates* during the 2009 fiscal year. These allow residents over the age of 65 to receive a rebate when contracting work on a single family home. There have been 23 rebates issued this fiscal year, totaling \$1,150.

Lastly, the table below outlines permitting activity during the first two quarters of the previous three years.

	July - Dec 2009	July - Dec 2010	July - Dec 2011
Single Family	94	108	94
Multi Family	1	17	14
Townhouses	72	27	12
Duplexes	0	0	0
Commercial	30	31	22
Residential Additions/Alterations	556	641	430
Commercial Additions/Alterations	707	1007	799

Mobile Homes	7	5	1
Total Building Permits Issued	1467	1836	1372
Total Valuation of Permits	\$116,694,831	\$111,010,090	\$93,788,009

Green and Sustainable

- Technological Efficiencies: The City of Asheville's green PC & data center reduction project reduced energy consumption while preserving a high level of service to customers. Through a large-scale computer upgrade project, the City is expecting to realize a 72% - 82% reduction in computer energy use.

The first phase of the initiative downsized and modernized the City's 20-year-old data center through a combination of virtualization and cloud computing adoption. The second, concurrent phase, changed the way that the City handled PC desktops in two ways: sizing, and auto-shutdown.

- LED Streetlight Replacements: The City is currently in the second phase of LED streetlight replacements. This phase includes replacing streetlights in the Kenilworth neighborhood (100% complete), West Asheville (95% complete) and parts of Oakley (starting in mid March). To date, there have been 3,200 streetlights installed.
- Public Transit: When compared to the previous fiscal year, there has been a 9.8% reduction in fuel usages (approximately 21,700 gallons). This is largely due to the addition of five new buses, an effort to reduce idling, the streamlining of bus stops, eliminating the Weaverville route and merging two existing routes.

Safe

- Nuisance Court: As you can see from the table below, there has been a considerable increase in Nuisance Court activity when compared to the same quarters of the previous fiscal year.

	July - Dec 2010	July - Dec 2011
New Cases	114	189
Community Service Hours Completed	1,258	3,222

- Graffiti: The City's graffiti program currently consists of 30 individuals, each doing one month of community service through the Nuisance Court. Their daily outings focus on downtown, public property. In addition to sidewalk cleaning and trash pickup, this program removed 4,236 graffiti tags during the first two quarters, up from 3,318 compared to the same quarters of the last fiscal year.
- Americans with Disabilities Act (ADA) Compliance: The Public Works Department continues to install and maintain ADA measures in public right-of-ways. During the first two quarters of this fiscal year, 27% of all known ADA issues were addressed.
- Community Programming: The Parks, Recreation and Cultural Arts Department offers a variety of community programs that are safe, well maintained and affordable. Seven programs focus specifically on at-risk youth:

School-age Child Care Program
 Therapeutic Recreation Program
 Center Afterschool/Teen Program
 Outdoor Adventure
 Youth Athletics

Aston Tennis Youth Programs
Skatepark Youth Programs

During the first and second quarters of the fiscal year, these programs have provided 6,111 service hours to 4,690 participants (cumulative participation).

- Gang Violence Prevention Programs: Gang Violence Prevention Grants continue to be used for anti-gang programs in the community. During the second quarter of this fiscal year, 416 hours of programming was completed, reaching 211 youth in four schools.

Multimodal Transportation

- Sidewalks: As the table below reflects, sidewalk repairs have grown substantially when compared to the previous fiscal year. Sidewalk installation during the 2010 fiscal year is relatively large due to increased financial resources through American Reinvestment and Recovery funds.

Sidewalk (Linear Feet)	July - Dec 2010	July - Dec 2011
Repaired	728	1,479
Installed	4,934	2,585

- Multimodal Mapper: Staff has worked to leverage existing funds in pursuing pedestrian and bike friendly community opportunities. The Multi-Modal Mapper "Active Mapper" is now available to citizens at <http://gis.ashevillenc.gov/mapAsheville/activemapper>. This simple webGIS application allows users to easily locate features such as sidewalks, greenways, multiuse paths and bicycle lanes.
- AT&T Surface Parking Lot: The City opened a new 45-space parking lot on O.Henry Avenue, on the AT&T property. The lot is leased from AT&T for five years and is equipped with solar-powered multi-space meter machines. This significantly increases our ability to address the parking concerns in the Grove Arcade area.

City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 31 couples have registered.

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

Upon inquiry of Mayor Bellamy, City Manager Jackson said that we have been experiencing an increase of graffiti on private property, which is beyond our influence to remove quickly. He suggested Chief Anderson work with the Public Safety Committee to evaluate past policies, current directions and the effectiveness of not only what we are doing, but look to see if there are other new trends. Mayor Bellamy said that we should involve the community as there have been community members who have expressed a desire to be part of the solution, in particular Mr. Carr with Tops for Shoes.

City Manager Jackson briefly updated Council on his recent trip to a National League of Cities Committee meeting. In summary, Council should be proud of the goals they have set in making Asheville sustainable and vibrant.

Financial Report

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through December, 2011.

Amendments. The General Fund budget presented in the second quarter report reflects: (1) the adopted budget of \$87,645,955; (2) a technical amendment adjusting the fleet external charge budget, and; (3) seven budget amendments totaling \$660,803, none of which involved an appropriation from fund balance.

Adopted Budget	87,645,955
Fleet Technical Change	(1,221,594)
Budget Amendments:	
NCDENR Park Recycling Bin Grant	30,000
NC Arts Council Grassroots Arts Grant	49,850
Buncombe County/Changing Together Partnership	63,000
Debt-Funded Purchase of Computer Equipment	350,000
State Haz-Mat Grant	25,000
Federal COPS Hiring Grant	118,543
State Senior Opp. Center/Harvest House Grants	<u>24,410</u>
12/31/2011 Budget	<u>\$87,085,164</u>

Revenues. Through December 30, 2011, the City has collected \$50,756,337 in General Fund revenue, which represents approximately 58.3% of the total General Fund revenue budget. Revenue collections through the first six months are almost identical to collections at this same point in the previous fiscal year. Staff received property tax data from Buncombe County in January that showed that the FY 2011-12 tax levy grew by only 1.3%. As a result, staff has revised downward the property tax revenue estimate for the current year. Sales tax revenue is on track to exceed budget. Staff projects that state utility tax revenue and several other smaller revenues will fall short of budget in the current year based on FY 2010-11 actuals. Overall, staff is currently estimating that **total FY 2011-12 General Fund revenue will come in under budget by \$580,000 or 0.67%.**

Expenditures. General Fund expenditures through December 31, 2011 total \$40,102,673 or 46.0% of the budget, which is typical for this point in the fiscal year. Fuel expenses continue to run ahead of where they were one year ago and are expected to have an impact on the budget. In addition, Fire Department overtime expenses are running ahead of budget. Fuel and overtime costs will likely require technical adjustments in the FY 13 budget to reflect actual expenditures. **Savings in other areas of the budget, such as full time salaries and utilities, are expected to offset the projected over expenditures in fuel and fire overtime. Staff also continues to seek opportunities to generate additional savings by closely monitoring expenses and by maximizing efficiency in operations. Staff anticipates being able to generate the necessary expenditure savings to fully offset the minor revenue shortfall.**

Fund Balance. The City ended FY 2010-11 with available fund balance of \$13.18 million, which equated to 15.2% of FY 2010-11 expenditures. **FY 2011-12 available fund balance is expected to remain at 15.2% of estimated expenditures.**

In response to Councilman Smith, City Manager Jackson said that staff will provide Council with the information on where the vehicle replacements are being made and the percentage that are hybrid and alternative fuel.

Councilman Smith spoke in support of the big box van that was converted into a mobile art lab for the community. It has served thousands of people in its first year and has been one of the most cost effective successful popular programs we've ever seen come out of the Parks, Recreation and Cultural Arts Department.

D. TRANSIT MARKETING PLAN UPDATE

Transit Manager Mariate Echeverry provided Council with a Transit Marketing Plan update regarding the effects of gas prices in transit. Considerations taken in account should be the transit operations, measures to offset the cost, and how to help the community. She showed a graph of the rise in fuel costs from \$1.23 in 2003 to \$3.79 in 2011. She said that there has been a 4% increase in ridership from July 2011 through January 2012.

Measures to offset the cost include (1) fleet changes (a) addition of five hybrid buses to the fleet (March 2011); and (b) nine more buses are coming in November 2012; and (2) route efficiency (a) elimination of Weaverville route; (b) merging of Route 28 and 29 in new 170; (c) merging of route 3 with 52; (d) streamlining bus stops; and (e) reducing idling.

We can help the community by setting up Park and Rides along transit routes; partner with larger employers to educate their employees about transportation choices; create a card with basic transit information, as well as bike and pedestrian information; use the Transit Master Plan implementation campaign to reach out to people; use social media to community the benefits of riding the bus; partner with Buncombe County TV; sponsor bike classes; offer bike and pedestrian trip planning (Google maps); promote carpooling: Share the Ride NC; Promote Strive Not To Drive; and create a pamphlet related to vehicle maintenance to conserve fuel.

Councilman Hunt felt that Council should pay particular attention to the marketing component of the transit budget.

In response to Councilman Smith, Ms. Echeverry explained the several funding partnerships in acquiring hybrid buses.

Councilman Smith, liaison to the Transit Commission, was pleased to announce the new Chair of the Transit Commission Julie Mayfield and briefly explained the new route structure.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A REDUCTION TO THE SQUARE FOOTAGE THRESHOLD THAT TRIGGERS A MAJOR WORKS DESIGN REVIEW BY THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

ORDINANCE NO. 4068 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A REDUCTION TO THE SQUARE FOOTAGE THRESHOLD THAT TRIGGERS A MAJOR WORKS DESIGN REVIEW BY THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Urban Planner Nate Pennington said that this is the consideration of an amendment to the Unified Development Ordinance regarding a reduction to the square footage threshold that triggers a major works design review by the River District Design Review Committee (RDDRC). This public hearing was advertised on March 2 and 9, 2012.

Development in the area identified as the River District has increased in the past few years. New construction, demolitions and redevelopment are transforming an area once known for industry and manufacturing into a vibrant area of mixed uses in and surrounding the well established River Arts District – home to a number of thriving artist's studios and galleries.

With all the new activity, concern has been raised by the RDDRC that the existing square footage threshold for major works review is too large. The most recent concern relates to a newly constructed building on the old Long John Silvers site at 14 Swannanoa River Road. It was under the threshold for review by the Committee (Zoe's Kitchen is 2704 square feet) and thus the RDDRC did not have an opportunity to provide comments to the developer. RDDRC review of new structures is limited to those of 5,000 square feet or more. Smaller structures are reviewed

at a staff level as a minor work, although the staff only has the ability to refer to and make suggestions from the River District Design Review Guidelines. Because the RDDRC believes it would be helpful for the City and for developers in the River District to have the benefit of their reviews, they have proposed the expansion of their review to smaller structures and for a larger geography that includes zoning other than River District. The RDDRC is not, however, proposing to change their directive for mandatory review, but voluntary compliance program.

The RDDRC recommended that the threshold for major works review be lowered to 500 square feet. The original recommendation also included a request to expand the geographical review area; however, consideration of this request has been postponed until the City has implemented the new permitting software and tracking the review area can be more effectively performed. The proposal for the reduced review threshold was presented to the Asheville Area River Redevelopment Commission (AARRC) on November 10, 2011 and the Council's Planning and Economic Development (PED) Committee on November 15, 2011. While both generally supported the rationale for the changes, the PED Committee expressed a concern that the proposed 500 square foot threshold is too low and will subject too many small projects to a required review by the RDDRC. Both groups also supported delaying the consideration of the geographical change until the new software can be implemented (Fall/Winter 2012). Implementation of that change would be very difficult for the staff until the new computer software is available.

The Planning and Zoning Commission reviewed this request at their January 4, 2012, meeting. After hearing a presentation and recommendation from staff that the amendment be approved at a 1,500 square foot threshold, discussion ensued amongst the members regarding an appropriate square footage threshold for major works review. A motion was made to reduce the square footage threshold for major works design review from 5,000 square feet to 1,500 square feet. This motion was seconded but failed on a 3-4 vote. After further discussion, a new motion was made to reduce the threshold to 2,500 square feet. This motion was seconded but also failed on a 3-4 vote. As a result, the proposal is carried forward to the Council without support from the Planning and Zoning Commission.

This proposal does not directly relate to the goals outlined in the City Council Strategic Operating Plan but is most closely aligned with the goal for "job growth and community development" by balancing business needs with community needs and concerns.

Pros:

- Provides opportunity for additional input related to design review for new construction that would have previously been reviewed on a staff level.
- Provides for a more consistent design style in the river district.

Con:

- Subjects smaller projects to formal design review and will require more staff resources for a more complex review process.

Increased review times for projects now deemed as major works would be likely, although the amount of additional staff time needed is expected to be relatively modest.

The Planning staff shares the concern of the PED Committee regarding the 500 square foot threshold. As an alternative, the staff recommends a 1,500 square foot threshold along with an exemption for accessory structures (decks, etc.) and additions to a building primarily occupied by mechanical, electrical and communications equipment (elevator/stairway shafts, HVAC, etc.). Approval of the change to a 1,500 square foot threshold is recommended.

Mayor Bellamy opened the public hearing at 6:31 p.m.

Mr. Terry Meek, Chair of the RDDRC, explained how it would be helpful for the City and for developers in the River District to have the benefit of their reviews. The RDDRC believes that

the mandatory review but voluntary compliance is still the best approach. They do not want to saddle development with any undue delays or unnecessary additional costs, but they see their review as an opportunity to have more eyes on the project and be proactive. He then gave the Commissioners a brief report on the requested revisions to the geographical review area. He requested Council approve both the reduction in the square footage threshold and the geographical change.

Rev. Christopher Chiaronmonte said that this amendment will only allow the City more control.

Mayor Bellamy closed the public hearing at 6:44 p.m.

Mayor Bellamy said that staff's report at this time is for the reduction on the square footage issue and felt it would be appropriate for them to bring back a separate report on the geographical change once the new computer software is available.

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

Councilman Davis moved for the adoption of Ordinance No. 4068 reducing the square footage threshold that triggers a major works design review by the RDDRC to 1500 sq. ft. along with an exemption for accessory structures (decks, etc.) and additions to a building primarily occupied by mechanical, electrical and communications equipment (elevator/stairway shafts, HVAC, etc.). This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

It was the consensus of Council to consider the New Business items prior to the Unfinished Business item.

V. NEW BUSINESS:

A. BOARDS & COMMISSIONS

Regarding the Board of Adjustment, the following individual has applied for the vacancy: Dimi Kulakov. Because there are two alternate openings and one applicant, it was the consensus of Council to re-advertise in two months.

Regarding the Homeless Initiative Advisory Committee, the following individuals have applied for a vacancy: Debbie Metcalf, Micheal Woods, Michael Akers, Timothy Sadler, John Spears and Charles Barber. It was the recommendation of the Boards & Commissions Committee to re-advertise in two months.

Regarding the Community Relations Council (CRC), the City has four appointments to make, including one possible reappointment of Mike Hahn. The following individuals have applied for a vacancy: Charles Rosenblum, Kathryn Liss, Itiyopiya Ewart, Rachael Tanksley-Russell, Francis Dibari, Melissa Blazen and Carol Rogoff Hallstrom. The CRC recommended Council appoint Charles Rosenblum, Rachael Tanksley-Russell and Francis as they feel those folks will bring the skills and gender to balance the Board. It was the consensus of Council to interview Charles Rosenblum, Rachael Tanksley-Russell, Francis Dibari, Kathryn Liss, Itiyopiya Ewart, Carol Rogoff Hallstrom and Mike Hahn on April 24 (taking into consideration the recommendations by the CRC) after Council reviews the CRC's Strategic Operating Plan. Ms. Sarah Nunez, Executive Director of the CRC, explained that their Strategic Operating Plan will not take place until next fiscal year and hoped that Council would appoint members as soon as possible they need leadership to help guide the CRC.

VI. UNFINISHED BUSINESS:

A. UPDATE ON SENATE BILL 183 (SELECTIVE VEGETATION REMOVAL)

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

City Attorney Oast said that since the Council meeting of February 28, 2012, he has received and reviewed several documents regarding the new law allowing removal of vegetation in front of and around billboards, and have had several discussions with attorneys and others interested in this issue.

I. Brief History and Effect of Law:

- A. Senate Bill 183 was adopted by the General Assembly this summer (N.C. Sess. L. 2011-397). In essence, that law allows for expanded "cut zones" in front of outdoor advertising signs (billboards) along some State controlled roads. The law also provides for non-removal of certain species of trees, and for replanting.
- B. Pursuant to the law, temporary rules were to be promulgated by the North Carolina Department of Transportation to administer the SVR process. These rules became effective on March 1. On and after this date, billboard owners may apply for SVR permits.
- C. Municipalities have the ability under the law to review and comment on SVR permit applications within their jurisdiction. Asheville has requested the local district office of the DOT to make SVR applications available for the City's review.

II. What is Occurring Locally:

- A. DOT has issued temporary rules; we have obtained a copy of them.
- B. In conversations with other cities, and the League of Municipalities, we have learned of some issues to be aware of in our review of these SVR permit applications. These conversations are continuing.
- C. City Planning, Transportation, and Legal staff have met to review which roads are affected by the new law.
- D. City staff will soon be meeting with local DOT staff to ensure consistent understanding of which roads and signs are covered by the new law and the process by which the City will be notified and allowed to express any comments on the SVR permit applications.
- E. 15 SVR permit applications have been received for signs in Buncombe County; three of those are located in the City's jurisdiction.

III. Lawsuit Challenging New Rules:

- A. On February 29, a lawsuit was filed by Scenic NC, Inc., through the Duke Environmental Law and Policy Clinic.
- B. The basis of the legal challenge is that DOT did not follow the proper process in developing and promulgating the new rules, including inadequate notice and some other procedural issues. There were no hearings locally.

- C. So far, no cities have signed on as plaintiffs in this matter. Some of the sign companies have been allowed to intervene. A temporary restraining order was applied for, but was not allowed. In part, this was because DOT did not plan to issue SVR permits immediately, but the permits will issue soon.

IV. Issues in Need of Further Review:

- A. Clarify which roads and signs the new law applies to.
- B. Clarify whether the new law applies within the extraterritorial jurisdiction.
- C. Review and understand the new rules.

He said that we continuing to research and review this matter, and to discuss the issues with the Duke Environmental Law and Policy Clinic, the League of Municipalities, and representatives of other cities.

He said that Scenic NC has requested for Asheville for assistance, which may come in the form of intervention in the civil action as a party. He felt that any further discussion should be in closed session.

Ms. Judy Mattox, Chair of the local Sierra Club, provided Council with a copy of "Civil Bill of Costs" and a letter dated March 13, 2012, from Ryke Longest, Director of Duke Law, to City Attorney Bob Oast, which reads "Thanks so much for your interest in intervening in the litigation initiated by Scenic NC against the N.C. Department of Transportation (ND DOT) regarding the temporary rules that were made effective March 1, 2012. NC DOT and the Outdoor Advertising Association have asked the Court to dismiss our lawsuit altogether at a hearing currently scheduled for March 19, 2012. If the City wants to intervene and be heard on the NC DOT's Motion to Dismiss, time is running out. If there is a need for more time for the City to file, I will need to file a motion to continue the Hearing by Thursday afternoon at the latest. If the City decides that it intends to seek to intervene, I will be happy to seek a continuance of the Hearing. I will need to get a letter from you addressed to me asking me to see a continuance for that reason. I would need such a letter by Thursday at noon sent to me and then I would file a Motion for Continuance before 5:00 on Monday, attaching the letter to my Motion." She urged Council to intervene. She said the costs would be \$200 cost to file a complaint and attorney fees. If you lose the case you may be asked to share in the court costs, which they felt would be under \$1,000. She said there are 200,000 trees in our state that are at risk.

At this time, Vice-Mayor Manheimer re-entered the meeting and continued to participate.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. David Garver supported the Asheville Values Assessment and urged Council to bring greater public awareness to the issues raised in the report, and for Council to become even more a leader in environmental responsibility. Mayor Bellamy said that she would make arrangements for Council to receive a copy of the report.

Rev. Christopher Chiaronmonte was concerned with the way Asheville has treated the homeless.

Mr. Carl Silverstein, Executive Director of Southern Appalachian Highlands Conservancy, felt that since the conversation easement on the watershed property was adopted over 16 years ago, there have been some innovations on easements that improve the practice of stewardship of properties. He asked that Council be open to amending the easement. It was the consensus of Council to refer this to the Planning & Economic Development Committee for review.

Ms. Judy Strong felt that discretionary activities such as baseball and the golf course should be self-sustained.

Councilman Davis urged the community to support the UNC-Asheville Men's Basketball Team in their play-offs this week.

Councilman Davis thanked all the community volunteers, sponsorships, Economic Development Director/Civic Center Director Sam Powers, the Sports Commission, UNC-Asheville, staff at UNC-Asheville, staff at the US Cellular Center, City staff, and everyone associated with the Southern Conference. He said it was a very successful weekend from an economic standpoint and from a civic standpoint. Mayor Bellamy was also pleased and thanked the team of people who volunteered, including all the assistance from the Asheville Independent Restaurant Association. She was very pleased with the renovations of the US Cellular Center.

Councilman Smith mentioned that a report recently came out ranking the Asheville Metropolitan Statistical Area as third in the nation for food hardship. He pointed out that the Asheville Metropolitan Statistical Area consists of Madison, Buncombe, Haywood and Henderson counties – a broad number of governments, people and systems. The Asheville-Buncombe Food Policy Council has been putting together policy suggestions which they hope will be a parallel process with the Food Council so we can take a comprehensive look at this and come up with some solution.

Closed Session

At 7:30 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Scenic NC Inc. and the N.C. Dept. of Transportation. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) 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 contained in G.S. 143-318.11(a)(4); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:30 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:30 p.m.

CITY CLERK

MAYOR