

Tuesday – October 23, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; 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: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Manheimer gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 24, 2012, AS "FOOD DAY"

Councilman Smith read the proclamation proclaiming October 24, 2012, as "Food Day" in the City of Asheville and briefed Council on some activities taking place during the day.

Mayor Bellamy thanked Councilman Smith, the Asheville-Buncombe Food Policy Council, and the other various community partners for their participation and leadership for locally grown food.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 9, 2012

B. RESOLUTION NO. 12-233 - RESOLUTION ENDORSING THE BUNCOMBE COUNTY GREENWAYS AND TRAILS MASTER PLAN

Summary: Buncombe County has recently completed a Greenways and Trails Master Plan Update. Buncombe County Parks, Greenways and Recreation Services worked with a representative of the City of Asheville throughout the planning process. The planners conducting the study received a considerable amount of input from interested citizens of the City of Asheville through an online survey and public meetings. The plan proposes several corridors within the city limits of Asheville that will connect the city neighboring towns and points of interest. A countywide system of connected trails and greenways will provide recreational opportunities; increase health benefits by the provision of access to more physical activity opportunities; increase traffic safety with bike and pedestrian infrastructure; and increase economic prosperity for the City of Asheville through increased jobs, increased housing values and increased tourism and local spending by travelers of a greenway. City Council is of the opinion that it is in the best interests of the citizens and residents of the City to support this plan that proposes countywide greenways with connected trails. That the City Council hereby expresses its endorsement of the Buncombe County Greenways and Trails Master Plan.

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C. ORDINANCE NO. 4124 - SECOND AND FINAL READING OF AN ORDINANCE AMENDING TO THE FRANCHISE AGREEMENT WITH THE EDUCATION RESEARCH CONSORTIUM

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D. RESOLUTION NO. 12-234 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH BROWN AND CALDWELL FOR THE WATER RESOURCES ASSET MANAGEMENT PLAN UPDATE

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Brown and Caldwell in the amount of \$69,969 to increase the professional services contract for the Water Resources Asset Management Plan Update from \$99,880 to \$169,849.

On September 27, 2011, City Council awarded a professional services contract to Brown and Caldwell for the Water Resources Asset Management Plan Update. Since completion of the \$40 million revenue bond projects and numerous other capital improvement projects, an update to the RPM and Asset Management Plan was needed to update the asset inventory, R&R schedule, and capital project plan. A change order is needed to incorporate data from Munis and the SCADA Historian in order to access water consumption, water production and water revenue data to develop the priority Asset Information Management System (AIMS) dashboard reports. When the City transitioned from H.T.E. to Munis, the links to the data were broken and Brown and Caldwell needs to reestablish those links in order to access the data needed for the Asset Management Plan Update.

The total additional fee for this change order is \$69,969, which will bring the total contract amount to \$169,849.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pro:

- Approval of the change order will allow Brown and Caldwell to incorporate Munis and SCADA Historian data into the AIMS, thereby creating easier access to customer, work order, and financial information.

Con:

- None.

The amount needed for this change order is currently available in the Water Resources Operations Fund.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order with Brown and Caldwell in the amount of \$69,969 to increase the professional services contract for the Water Resources Asset Management Plan Update from \$99,880 to \$169,849.

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E. ORDINANCE NO. 4128 - BUDGET AMENDMENT TO PURCHASE TWO BUSES FROM THE CITY OF GASTONIA

Summary: The consideration of a budget amendment in the amount of \$44,074 from Transit Capital Reserves to purchase two 2004 35-foot Gillig buses from the City of Gastonia.

The City of Gastonia Transit Division no longer needs the subject buses, and they removed them from service on July 5, 2011. They were replaced with buses funded by ARRA funds. The City of Asheville has the opportunity to purchase both buses at a cost of \$9,537 each (the buses originally cost \$286,098 each) or a total of \$19,074.

Once the buses are received, they will need some minor work before placing them into service. The work includes painting/stripping on the outside, camera review equipment, radio system, and storage considerations. The estimated cost for this work for both buses is \$25,000. Therefore, the total cost to purchase the two buses and prepare them service will be \$44,074.

The current bus fleet includes 30-foot buses and there could be some challenges with larger buses on some of the routes due to narrow street widths and vertical grades. This purchase would give staff the opportunity to thoroughly test a larger bus on the various routes and it would provide good information and guidance to staff for future decisions regarding the size of the bus fleet. It is becoming more and more difficult to purchase smaller buses because many transit systems are using larger buses.

This action complies with the current City Council's Strategic Operating Plan in the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

This item has been reviewed and endorsed by the Transit Commission at a called meeting on October 10, 2012.

Pros:

- The acquisition of 35-foot buses will allow staff to test a bigger bus to serve the ART system without incurring the cost of buying new ones including identifying federal and state funding sources and following a procurement process.
- The buses will be placed in areas with high ridership and will provide a more comfortable customer experience.

Con:

- The purchase of the buses was not contemplated in the FY 2012-13 budget, therefore funding will have to be taken from Transit Capital Reserves.

There is currently \$57,000 available in Transit Capital Reserves that has accumulated from projects that came in under budget. Staff is recommending that Council appropriate \$44,074 from the reserves to cover the cost of the purchase and outfitting of the two buses. After this appropriation, there will be approximately \$13,000 available for future allocation.

Staff recommends that City Council approve a budget amendment in the amount of \$44,074 from Transit Capital Reserves to purchase two 2004 35-foot Gillig buses from the City of Gastonia.

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F. ORDINANCE NO. 4129 - BUDGET AMENDMENT FOR THE ACQUISITION OF REAL PROPERTY AS NEEDED

Summary: The consideration of a budget amendment in the amount of \$825,000 from Parking Services Fund reserves for the acquisition of real property as needed.

This budget amendment establishes a budget within the Parking Services Fund for the purchase of real property as needed for parking services for the City of Asheville. Real estate acquisition during a period of favorable market conditions will benefit the City by maximizing the value of the purchase price paid.

For budgeting purposes, a total estimated project budget has been set at \$825,000 to include cost of acquisition, survey, and legal fees.

This action complies with the City Council Strategic Operating Plan by demonstrating fiscal responsibility through maximizing the value of real property assets.

Pro:

- Current real estate market has allowed for opportunities to purchase real property at favorable purchase prices

Con:

- Requires an appropriation from the Parking Services fund balance

Funds will be appropriated from the Parking Services Fund's reserves. Based on current estimates, the Parking Services Fund has \$1.16 million in reserves. The City's financial policy requires the fund to maintain 8% of its operating budget in reserves, or about \$182,000. This budget amendment will reduce reserves to approximately \$335,000, or 14.8% of the operating budget.

City staff requests City Council adopt a budget amendment of \$825,000 for the acquisition real property related to parking.

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

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE SISTER CITIES UPDATE

Mr. Russ Martin, Vice-President of Asheville Sister Cities, was pleased to update City Council on the activities of Asheville Sister Cities.

Ms. Karon Korp, Chair of the Valladolid Committee of Asheville Sister Cities, stated that Asheville has 6 Sister Cities – Vladikavkaz, Russia; San Cristobal de las Casas, Mexico; Sumur, France; Karpenisi, Greece; Valladolid, Mexico; and Osogbo, Nigeria. She then updated City Council on their recent projects and activities. The programs, projects and partnerships of Asheville Sister Cities have a direct economic impact on western North Carolina. Through the dedication of this vibrant volunteer organization, Asheville reaches around the world, and brings it home, making a difference in so many lives. Their mission is to promote peace, understanding, cooperation and sustainable partnerships through formalized agreements between international cities and the City of Asheville, North Carolina. She thanked City Council for their support and provided them with a packet of information regarding Asheville Sister Cities.

Ms. Valeria Watson-Doost was pleased to talk about their project in Osogbo, Nigeria, and presented Mayor Bellamy with a flag, plaque and a painting from one of their local artists from the Osogbo Sister Cities Association. She also presented the Mayor with a certificate from the President of Valladolid, Mexico.

On behalf of City Council, Mayor Bellamy thanked the Board of Directors Asheville Sister Cities Inc. for the relationships they have built across the globe on behalf of Asheville.

B. CIVIC CENTER COMMISSION UPDATE

Economic Development/Civic Center Director Sam Powers was pleased to introduce Mr. Chris Corl as the new General Manager of the U.S. Cellular Center.

Mr. Corl said that he was excited to be in Asheville and looked forward to working with City Council. On behalf of City Council, Mayor Bellamy welcomed Mr. Corl and his family to Asheville.

Civic Center Commission Chairman Mike Burke introduced the new General Manager Chris Corl. He then updated City Council on (1) how their activities align with City Council's Strategic Operating Plan, (2) the renovations to date; and (3) the Phase II renovations including renovating and relocating the Box Office' renovating the main lobby; new exterior entrance to ExploreAsheville.com Arena; additional storage; renovating Concourse and Arena Floor restrooms; renovating Thomas Wolfe Auditorium lower lobby; and upper seating bowl industrial cleaning. He explained how they offer diversity from the 2011 events; and their partners. He briefly outlined the significant future opportunities.

On behalf of City Council, Mayor Bellamy thanked Mr. Burke for his leadership and the entire Civic Center Commission for their hard work on this Commission.

C. CIVIL SERVICE BOARD UPDATE

Civil Service Board Chairman Larry Harris updated City Council on the activities and mission of the Civil Service Board. He was happy to report that in the past year no grievances have been heard by the Board.

On behalf of City Council, Mayor Bellamy thanked Mr. Harris for his leadership and the entire Civil Service Board on their hard work on this Board.

D. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources process update from October 9 - 23, 2012. The October 30, 2012, water/sewer analysis meeting has been cancelled and will be rescheduled due to the various studies from the City, MSD and the City of Hendersonville will not be completed by October 30. Staff and Raftelis continue to work on the financial analysis and governance models. Regarding the MSD Study, on November 1 the draft report will be presented to the MSD Planning Committee and on November 14, the final report will be provided to the MSD Board. He then provided Council with the information sharing between the City and MSD.

IV. PUBLIC HEARING:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 671 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT TO ALLOW THE CONVERSION OF AN EXISTING CHURCH INTO A PRIVATE SCHOOL, AND A REQUEST FOR MODIFICATIONS TO THE LANDSCAPE STANDARDS

**ORDINANCE NO. 4130 - ORDINANCE TO CONDITIONALLY ZONE
PROPERTY LOCATED ON 671 SAND HILL ROAD FROM RM-6
RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL
DISTRICT TO ALLOW THE CONVERSION OF AN EXISTING CHURCH INTO
A PRIVATE SCHOOL, AND A REQUEST FOR MODIFICATIONS TO THE
LANDSCAPE STANDARDS**

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone the New Classical Academy located at 671 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Institutional District to allow the conversion of an existing church into a private school, and a request for modifications to the landscape standards. This public hearing was advertised on October 12 and 19, 2012.

Mr. Glines said that this proposal is to establish a private school within an existing church structure. The conditional zoning application is needed in this case for two reasons; First, although schools are allowed under the existing RM-6 residential zoning (as a USSR), the minimum lot size is 2 acres (the actual lot size is 1.91 acres) and variances are not allowed for USSR's. The second reason is that the project is requesting a modification for a property line landscape buffer along the east side of the parcel and the conditional zoning process allows City Council to modify certain requirements with the approval of a proposed site plan. The New Classical Academy is operating in Weaverville at this time and is proposing to relocate to this site for their 40 students in grades K-8. The site currently has a church building totaling about 3,400 square feet on two levels. The building will be modified to meet building code standards for school uses while maintaining some capacity for operation of the church. It is not proposed to be expanded. Playground space on site will also meet state safety standards and requirements.

The site is a 1.91 acre parcel that slopes up gently from Sand Hill Road. The existing driveway is shared with a residential community of 46 homes behind the lot. The location along Sand Hill Road is good for a school use from an access standpoint and the site provides ample room to provide for parking needs and outdoor play space.

The school currently has an enrollment of 40 students and would like to eventually grow to a maximum of 60 students. The existing facilities are expected to be able to accommodate this future increase because the existing parking area is ample and could be expanded if necessary. The traffic demands from future growth could also be managed using the existing driveway. If the school should grow beyond 60 students, then a traffic management plan will be required to be submitted for analysis by appropriate City staff.

As was noted before the project is seeking approval for a modification from normally required property line buffer plantings along the east side of the property. This is requested because there is insufficient space along the edge of the existing driveway and the property line to buffer the residences on that side. Staff supports this request because it is an existing driveway that serves several uses. The school use is generally compatible with residential uses and the existing residential uses already have some landscape material planted along the property edge that provides screening.

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 school activity is not expected to endanger public health or safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** This site that slopes up gently from Sand Hill Road. The existing building will be renovated to accommodate the school use.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** A school is compatible with the character of the neighborhood and is not expected to injure the value of neighboring properties.
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 existing church building and the school will operate within this structure. While the building is larger than some of the homes in the community, it is in-scale with the general development pattern of the neighborhood.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is an adaptive use of an existing building and meets city adopted goals of sustainability and higher density development where infrastructure is in place to support the development.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Sand Hill Road is a collector street in the west area of Asheville and can handle the traffic volumes. All of the utility and safety related infrastructure is sufficiently present in or serves this area.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposal has been reviewed for traffic safety concerns which can be safely handled by Sand Hill Road.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because it meets City adopted goals for adaptive reuse of existing properties where infrastructure is in place to support the proposed activities.

This conditional zoning request was recommended for approval by a 7-0 vote at the Planning and Zoning Commission. There were no members of the public present at the meeting to speak about this proposal.

Pros:

- An existing building will be more fully utilized
- The property is positioned for convenient access to transportation systems
- The proposed use is compatible in a neighborhood setting

Con:

- The existing site configuration limits the ability to fully comply with standard landscape buffers for a portion of the site

Staff recommends that the application be approved with the conditions outlined in the staff report and the Technical Review Committee report because the use is appropriate to that site and to the neighborhood in which it is located.

Mayor Bellamy opened the public hearing at 5:47 p.m. and when no one spoke, she closed the public hearing at 5:47 p.m.

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

Vice-Mayor Manheimer found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4130 , to conditionally zone the New Classical Academy located at 671 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Institutional District to allow the conversion of an existing church into a private school, and approval of the buffer line modifications noted on the plan, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) Any changes to the existing building size or orientation be reviewed for compatibility with the approved plans; and (5) Should the school grow beyond 60 students the school administrator will submit a traffic management plan for analysis by the appropriate City departments. This motion was seconded by Councilman Bothwell and carried unanimously.

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V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. ORDINANCE NO. 4131 - FIRST READING OF AN ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A PEDAL BICYCLE TAXI SERVICE WITHIN THE CITY OF ASHEVILLE

Director of Transportation Ken Putnam said that this is the consideration of an ordinance granting a franchise agreement for the operation of a pedal bicycle taxi service within the City of Asheville.

City staff has been working with a citizen that is interested in starting a pedal bicycle taxi service within the City of Asheville under the business name of Asheville Bike Taxi, LLC. The service would be allowed in the Central Business District, the River Arts District, and the Historic Montford District. In addition, it would be allowed to use SR 3548 (Clingman Avenue) from Clingman Avenue Extension to Hilliard Avenue in order to gain access to the River Arts District. The North Carolina Department of Transportation has confirmed that the subject service can use state-maintained streets except for fully-controlled access streets like the interstate system.

The service is prohibited from operating on public streets that have a speed limit of 35 mph or higher. The one exception is the section of Clingman Avenue that provides access to the River Arts District. This section of street has a bicycle climbing lane and the pedal bicycle taxis are required to use it.

The hours of operation are limited to between 9:00 am and 3:00 am Monday through Friday and between 7:00 am and 3:00 am Saturday and Sunday. The City reserves the right to change the hours of operation at its sole discretion provided that we give a 30-day notice.

City Council approved a similar franchise agreement during March 2008; however, the business model was not successful.

This action complies with the City Council's Strategic Operating Plan in the Job Growth and Community Development Area by supporting diversified job growth and business development.

This item has been reviewed by the Council's Public Safety Committee and it received the Committee's endorsement on September 24, 2012. The Public Safety Committee recommended removing the limitation of five pedicab vehicles.

Pros:

- Supports diversified job growth and business development.
- Provides alternative transportation choices in the downtown area.

Cons:

- No direct fiscal impact to the City.
- Could impact vehicular traffic flow.

There is no known fiscal impact for the subject franchise agreement.

Staff recommends that City Council approve an ordinance granting a franchise agreement to Asheville Bike Taxi, LLC for the operation of a pedal bicycle taxi service within the City of Asheville.

Mr. Fred English felt Asheville didn't need this type of service.

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. 4131. This motion was seconded by Councilman Davis and carried unanimously.

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B. RESOLUTION NO. 12-235 - RESOLUTION APPROVING THE EARLY RELEASE OF HOUSING TRUST FUND LOAN FUNDS TO MOUNTAIN HOUSING OPPORTUNITIES FOR THE EAGLE-MARKET PLACE PROJECT

ORDINANCE NO. 4132 - BUDGET AMENDMENT TO APPROPRIATE FUNDING FOR THE LOAN DISBURSEMENT

Community Development Analyst Randy Stallings said that this is the consideration of a resolution approving the early release of Housing Trust Fund (HTF) loan funds to Mountain Housing Opportunities (MHO) for the Eagle Market Place project; subject to approval of exceptions to current policy and Housing and Community Development Committee conditions of approval; and a budget amendment in the amount of \$300,000 from Housing Trust Fund reserves to appropriate funding for the loan disbursement.

The Housing and Community Development Committee has reviewed a request from Mountain Housing Opportunities to proceed to Housing Trust Fund loan closing on the Eagle Market Place project. Several exceptions to current program guidelines by City Council are required to facilitate this request. City Council approved a HTF loan of \$300,000 to the project in March 2011. Funds have been held in reserve since that time awaiting approval of state tax credits. The tax credit award was received on August 23rd. In addition to the Housing Trust Fund loan, the project was also awarded \$462,600 in HOME funds and \$1 million in a future funding commitment.

Exception number 1: MHO is requesting that all funds be made available to reimburse predevelopment expenses that have been incurred to date. These soft costs include option fees, building permits, architectural design, engineering, surveying, environmental reports, market studies and legal fees. Current policy requires that all HTF funds be used for hard construction costs and/or land acquisition only.

Exception number 2: Current policy requires that all funds be drawn down proportionately with other funding sources and funds are to be disbursed at closing only for land acquisition. MHO is requesting that all funds be made immediately available at loan closing.

Exception number 3: Current policy requires a third party appraisal and verification of senior loan terms prior to our subordination to another lender. These documents have not yet been provided. Staff analysis has been based solely on the tax assessed value and proposed loan terms provided by the developer. A proposed term letter has been provided by a local lender; however, the developer will remain in communication with other local lenders to obtain the most favorable terms. The developer has agreed that the final determination of value and verification of senior loan terms can be provided prior to closing.

Risk Analysis: The developer has provided a copy of the market analysis prepared in March 2012. Once the project is fully completed, an estimated 1.4% capture rate and anticipated vacancy rate below 1% provide a very favorable outlook for project success. The highest risk on this transaction, as with all new construction, is at the front end of the deal when the existing collateral is likely insufficient to support the outstanding debt. This is especially true in the early stages of development. The risk to the City will decrease substantially over time as the construction progresses and the property value increases.

The determination of value in this request is critical to the decision to release funds. The project consists of five (5) parcels that will be deeded to Eagle Market Place, LLC at closing and aggregated under one Property Identification Number for development. Four (4) of these parcels have been donated by Eagle Market Street Development Corporation. The remaining parcel (42 S. Market St) is under contract. The current tax assessed value for all five (5) parcels (exclusive of buildings slated for demolition) is \$1,962,710. The estimated appraised value as indicated by the developer is in the range of \$2.3 to \$2.5 million; however, staff has not yet been provided a third party appraisal.

The developer has suggested a bank loan of \$1,070,000 with the City and County releasing \$300,000 each from their HTF loan commitments. The Combined Loan to Value ratio based solely upon the current tax assessed value would be 85% at the proposed loan amount. An "as is" appraised value of \$2.3 million would result in a Combined Loan to Value ratio of 72.6%. A ratio below 75% is considered the industry standard. Staff feels this amount of risk is tolerable but still significant given the undeveloped status of the collateral. It is anticipated that a current appraisal will exceed the tax assessed value of the property; however, true market demand cannot be fully ascertained given the unique nature of the site. The recent completion of the A-Loft hotel provides at least some benefit as a comparable project, and Staff would note that the prime location of the property should be attractive to investors in the event the project were unable to secure the necessary financing for beginning construction.

Additional Requirements: At their October 11th meeting, the Housing and Community Development Committee recommended that the following terms and conditions should be met prior to loan closing as a condition of approval:

1. Funds to be released for reimbursement of "soft costs" in the amount of \$300,000. MHO to provide copies of paid invoices and/or copies of canceled checks for all predevelopment services provided prior to closing.

2. Funds to be released at closing for purposes other than land acquisition. The City must be provided a minimum of ten (10) business days to process check request.
3. MHO to draw all funds immediately rather than on a proportional basis with other funding sources.
4. Closing subject to receipt of firm Commitment Letter from a local lending institution at a loan amount of no more than \$1.3 million.
5. Closing subject to receipt of satisfactory property appraisal(s) for all five (5) parcels comprising the project development area. Combined Loan to Value (CLTV) is not to exceed 80%.
6. Seller to pay delinquent taxes in the amount of \$14,454.39 at closing from sale proceeds.
7. MHO to provide a Draw Schedule reflecting timing and amount of anticipated disbursements from all funding sources prior to closing.
8. MHO to provide copies of Uniform Relocation Act (URA) disclosures provided to current tenants.
9. Closing is conditional on the satisfaction of additional requirements that may appear in the firm Commitment Letter from a local lending institution.
10. Closing Agent to provide Preliminary Title Commitment reflecting aggregation of all five (5) development parcels under one Property Identification Number (PIN).
11. City of Asheville to close in second lien position.
12. Loan to close at the following terms: \$300,000 at 2% annual interest-only payments, 20 year term.

The project directly supports the City's Strategic Operating Goals: (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed project provides new housing units located near transit lines, higher urban development densities, and encourage higher standards of energy efficiency. The project also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- The developer has successfully completed projects of similar size and scope, and has demonstrated sufficient organizational capacity to complete the project.
- Enables the developer to complete the land assembly necessary to begin construction.
- The City of Asheville is heavily invested in the success of this project.
- Allows the developer to keep debt service lower throughout the construction period.

Cons:

- Requires numerous exceptions to existing policies and guidelines.
- Significant risk to the City throughout the construction period.
- Other lenders are not sharing proportionately in that risk.
- Staff is unable to adequately evaluate the collateral without a current appraisal report.
- Taxes on the subject property are currently delinquent.
- Approval would create a precedent that may affect future requests of a similar nature.

As noted above, the loan was approved in a prior fiscal year. In order to disburse the funds in the current fiscal year, a budget amendment in the amount of \$300,000 is needed to appropriate the funds from the Housing Trust Fund reserves. There will be no fiscal impact at the present time; however, approval of higher risk loan activities does increase the potential for future loan losses in the event of default.

The Housing and Community Development Committee recommends approval of the request subject to the stated terms and conditions.

Ms. Kathryn Mitchell, representing the Riverfront Development Group, a North Carolina non-profit at 2 South Pack Square, said that she sent an e-mail to City Council outlining their

objections to these actions. Among other objections, their main objection is that state and federal laws prohibit and limit the transfer of substantially all of the assets of a non-profit corporation to a for-profit business corporation, which the Eagle-Market Place Corporation is a standard business corporation and not a non-profit. The same requirement is made of the Internal Revenue Service. That requirement is that if substantially all the assets of a non-profit are to be disposed of, they must be disposed of to another non-profit entity, estate or an entity that will further its exempt purposes.

Ms. Stephanie Swepson-Twitty, President and CEO for Eagle-Market Streets Development Corporation, said that it is not all of Eagle Market Streets properties that are being brought into this project. Additionally, they have researched that this is not a reasonable objection and that these properties are being given for a charitable and low to moderate income benefit.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that it is customary and ordinary for a tax credit development to be operated by a limited liability company, which the non-profits are managing members of. Property is not granted to a limited liability company, it is sold to the limited liability company. The investors put their cash in, in return for federal housing tax credits. That is the system of housing tax credits that was created by the Reagan Administration many years ago. It is customary and ordinary to be done this way.

City Attorney Oast said that to the extent that the objection is based on the conveyance or transfer of the property to an entity that is non-profit entity, as Mr. Dedman explained, in order for an entity to take advantage of tax credits, it has to be a for-profit entity. The way those are formed is for the non-profit entity to become the managing partner of an LLC, such that the non-profit continues control of the operations. It is not an unusual thing to do and a structure that exists in several instances downtown, e.g., The Grove Arcade. The objection raised causes him no legal concern. There are some risks to the request that is being made and those have been outlined by staff.

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

Councilman Davis moved for the adoption of Resolution No. 12-235, subject to the terms and conditions stated above. This motion was seconded by Councilman Hunt and carried unanimously.

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Councilman Smith moved for the adoption of Ordinance No. 4132. This motion was seconded by Councilman Davis and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Elaine Poovey, representing residents in the Bear Creek Road community, requested traffic calming (speed bumps) on Bear Creek Road. At the approximate cost of \$6-7,000 for 3 speed bumps, the community is willing to pay \$2,000. After hearing that the Public Safety Committee will be discussing speed in neighborhoods at their November meeting and that Council will be looking at transportation pieces during the next budget cycle, Mayor Bellamy asked City Manager for an update on the Bear Creek Road residents request. Councilman Pelly also felt that if the City has a traffic calming policy, then they should make a commitment to implement it.

Rev. Christopher Chiaronmonte spoke to Council about goodness vs. bias.

Mr. Fred English, Haw Creek resident, spoke to Council about the topless rally.

Mr. Teddy Jordan, representing the Kenilworth Neighborhood Association, spoke about some of their successes in their neighborhood. She asked Council to schedule a community meeting in their neighborhood.

Ms. Shirley Dozier, resident on Montford Avenue, said that the papers she presented at the October 9 meeting have been given to the Legal Department for resolution; however, she said they have not contacted her and that the Legal Department could be a part of the problem. She recommended that City Council meet with her on the site so she can explain her problem to them.

Mayor Bellamy announced the board/commission vacancies for the month of November.

Councilman Smith welcomed Moogfest to the City this weekend and encouraged visitors to not only check out the acts, but eat at the local restaurants and drink our local beer.

Councilman Hunt said that he and Councilman Davis are members on the Nominating Committee for the Business Improvement District (BID) Board. He encouraged interested citizens to apply for one of the several seats on the BID Board. The deadline for application is November 16 and they can be found on the City's website, or through the City Clerk's Office.

Mayor Bellamy invited the community to the October 30, 2012, City Council Community meeting at the Shiloh Recreation Center at 6:30 p.m.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:24 p.m.

CITY CLERK

MAYOR