

Tuesday – December 11, 2012 – 3:30 p.m.
First Floor North Conference Room – City Hall

Worksession

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

Financial Impact Analysis of Water and Sewer Merger Study & Utility Governance Study

Director of Finance and Management Services Lauren Bradley provided Council with a PowerPoint that covered the financial impact analysis, water financial/valuation assistance, and governance models. Asheville conducted an analysis (1) to provide data and analysis to city Council in response to the charge in the Legislative Committee's report; (2) to evaluate the economic impact of various merger scenarios to all stakeholders - city taxpayers, water ratepayers and sewer rate payers; and (3) to compliment the body of research and analysis conducted by MSD.

She briefly summarized the executive summary presented below which uses the financial analysis included in the Metropolitan Sewerage District of Buncombe County's report entitled "Impact Study on MSD Rate Payers of Proposed Consolidation/Merger," including the projected staffing levels and associated financial impacts of a consolidated utility. In addition, the City of Asheville assumed in its calculations:

- If the sewer utility were consolidated under the City of Asheville, the City would add staffing and other costs to fully replace and provide services that are currently provided by MSD's central service structure. Most of the central service costs for operation of the wastewater utility would be added to the City of Asheville's General Fund and then allocated across the entire organization according to the methodology currently utilized in its Cost Allocation Plan (CAP), resulting in a cost of central services for the sewer utility of \$1,901,033.
- A high level cost allocation analysis was conducted in each scenario that involved water and sewer utilities consolidating under the City of Asheville. In each scenario, it was assumed that central service costs will be allocated to the sewer utility in the same percentages that they are allocated to the water utility in the City's current CAP.
- A high level cost allocation analysis was conducted in each scenario that involved water and sewer utilities consolidating under MSD. In each scenario, it was assumed that central service costs would be allocated to the water and sewer utility based on the each utility's respective share of customer accounts.
- An inflationary rate of 3 percent was assumed for salaries, fringe benefits and operating costs.
- Evaluation of cost impacts associated with compensation for utility assets was beyond the scope of this analysis. However, it should be noted that fair compensation for utility assets under either merger scenario would have an economic impact on the owners of those assets. Compensation for fair value of utility assets can come in many forms and over time but is necessary to ensure ownership interest is not diluted in a merger scenario. In addition, payment of compensation for the fair value of either utility system at the future expense of higher water and/or sewer rates should be carefully considered and avoided.

- Fixed costs associated with central services currently paid for by the water utility are quantified as an operating loss to City taxpayers when the utility is consolidated under MSD since those costs cannot be recovered by another non-General Fund source. That amount, in the current year, is estimated to be \$1,813,698. Likewise, elimination of the water utility's capital contribution to community infrastructure ("Sullivan Act" allocation) is quantified as a financial loss to City taxpayers under MSD consolidation. That amount, in FY 2014, is estimated to be \$1,341,262.
- Dollars presented have not been adjusted for net present value."

She then summarized the options and the findings below, using charts to explain the various options:

Option 1. Consolidation under MSD - Finding: A consolidated utility under MSD does not produce economic benefits to all stakeholders. This model could produce savings for sewer ratepayers while resulting in cost increases for city taxpayers and water ratepayers. Under this scenario, the economic benefit of owning the water utility is transferred from the city taxpayer and to the sewer ratepayer, unless fair compensation is included in such a transfer. Based on the water utility's 2013 budget, the cost to produce a gallon of water sold \$.0069. Under this scenario, the potential average annual cost savings to the water ratepayer per gallon sold is \$.000048, which would bring the cost per gallon sold to \$.00685 - an impact that is less than 1/10th of a quarter of a penny. Said another way, for every 1,000 gallons of water sold, the water system would see a savings of 5 cents. This level of savings would have no impact on future water rates.

Option 2. Consolidation under the City of Asheville - Finding: A consolidated utility under the City of Asheville produces economic benefits to all stakeholders. Under this scenario, the economic benefit of owning the water utility is maintained, to some degree, by the city taxpayer and not transferred to another stakeholder group. At the same time, economies of scale would produce savings within the sewer utility. The cost savings to the water utility, while positive, would likely have an immaterial impact on water rates.

Option 3. Status Quo - Finding: No stakeholders are at risk of economic loss under the status quo scenario. Both utilities are financially stable with solid financial results and strong credit ratings. Both systems have ample capacity to accommodate future demand, and both utilities utilize multi-year financial forecasts to plan and manager capital improvements and utility rates. Water and wastewater rates are projected to remain at affordable levels during the next ten years while funding necessary capital improvements.

Option 4. Functional Consolidation - Finding: All stakeholders could benefit economically from considering functional consolidation in centralized management and administrative functions. The financial analysis of consolidation under MSD and the City shows that the greatest opportunity for cost savings is presented by sharing central service functions, which could be accomplished through an interlocal agreement. Government units can issue debt to finance improvements of utility systems under an interlocal agreement. The efficiencies associated with functional consolidation would be enhanced by avoiding the significant upfront costs of operational consolidation that would be required for new facilities, IT infrastructure and software, transaction costs and other start-up expenses.

There was discussion surrounding the different options outlined by Ms. Bradley.

Mayor Bellamy said we received information that Cane Creek Sewer District has been added and information from a 2009 study which indicates that they have quite a bit of need for improvements. The original Study Commission mandated all the water and sewer systems within Buncombe County be looked at. She felt we needed to see a detailed analysis of what the true impact would be if we added Montreat, Black Mountain, Woodfin, Weaverville, etc. She felt we might consolidate purchases or partner on wholesale infrastructure or something to that effect to

get them to a better scenario. In addition with the recently added Cane Creek Sewer District, she felt we need to see their true needs and how does that cost all of us if we consolidate. We should ask MSD what the model would look like for them to consolidate only with Cane Creek Sewer District (and leave water out). She supported asking our MSD representatives to ask the MSD Board to look at those analyses because water and sewer won't see the same cost savings because they are two different functions.

Mr. Doug Bean, with Raftelis Financial Consultants (RFC), Asheville's water rate consultant, provided Council with a PowerPoint giving a brief overview of the financial assistance; valuation assistance; and governance and regional approaches.

Regarding financial assistance, they were asked to (1) review MSD's "Impact Study on MSD Rate Payers of Proposed Consolidation/Merger"; (2) Review Asheville staff's "Financial Impact Analysis: Water and Sewer Merger Study"; and (3) Assist in updating Asheville's rate model. Regarding the financial review, (1) The financial information used in the rate model is accurate; (2) The indirect cost allocation appears reasonable and is consistent with other similar utilities; and (3) RFC concurs with the information provided in the city's study, the "City of Asheville-Financial Impact Analysis".

Their valuation assistance consisted of (1) Market Approach (a) Based on comparable sales of similar utilities; (b) Can be used for public or private transactions; and (c) Transactions exist for sales of public utilities in NC and across the country; (2) Income Approach (a) Based on the premise that a utility is worth the present value of its future earnings; (b) Current Asheville utility cash flows are positive; and (c) Utility is valued into perpetuity, which cannot be negative or utility will not be able to continue to operate; and (3) Asset/Cost Approach (a) Based on the cost of the existing assets; and (b) Three Methods (i) Replacement Cost, (ii) Reproduction Cost New Less Depreciation "Preferred method for Asset/Cost Approach"; and (iii) Original Cost Less Depreciation (Net Book Value).

He used a chart explaining the reproduction cost new less depreciation.

Their utility governance analysis consisted of (1) identify benefits and regional drives of regional cooperation; (2) research; (3) case studies; and (4) experience. He then reviewed the governance and regional approaches (1) North Carolina utilities; (2) regional cooperative models; (3) regional drivers; (4) legal structures; (5) governance models; (6) case studies; and (7) findings & conclusions.

Key findings are (1) regionalization (a) Most utilities participate in some form of regional collaboration; (b) Primary drivers are financial and capacity; and (c) There are many different regionalization models; and (2) governance (a) No discernible difference in utility performance based on governance structure in North Carolina; (b) The distinction between "accountability vs. business" model is not pronounced in North Carolina; and (c) City Council/County Commission is the most common governance structure.

Two conclusions made are (1) Regional utilities could benefit from additional water system collaborations and additional wastewater collaborations; and (2) Shared services/functional consolidation could achieve timely savings while avoiding the expense and time of changing a governance structure.

Each Council member asked various questions and stated comments that supported Asheville keeping its water system. A major topic of discussion was how the implications of this will be statewide because this is an amendment to general law, not just a local act.

At Mayor Bellamy's suggestion, it was the consensus of Council to send a letter to MSD, through our City representatives, and have them look at (1) an MSD/Cane Creek Sewer District consolidation; (2) a consolidation with the other water districts in Buncombe County per the

Legislative Study Committee, because the only thing that has been looked at was the City of Asheville water system; and (3) the numbers we found in our evaluation to make Asheville whole opposed to the number they put forward, The City of Asheville's water system has an \$18 Million healthy Fund Balance which she thought would be wrong to be used to pay for other sewer system improvements.

Mayor Bellamy said that when we send our information to the legislators, we need to inform them of the cost it took to produce all this information and how we did not take this initiative lightly.

Mayor Bellamy acknowledged Representative Susan Fisher in the audience and thanked her for her willingness to hear all sides of the issue.

At 4:42 p.m., Mayor Bellamy adjourned the worksession.

Tuesday – December 11, 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

Councilman Hunt gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 12-255 - RESOLUTION IN MEMORY OF FORMER CITY MANAGER JAMES L. WESTBROOK JR.

Mayor Bellamy read the resolution in memory of former City Manager James L. Westbrook Jr.

Councilman Davis moved for the adoption of Resolution No. 12-255. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

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B. RECOGNITION OF DR. WESLEY GRANT SR. SOUTHSIDE CENTER RECEIVING THE PLATINUM LEED CERTIFICATION

Mayor Bellamy was pleased to note that the Dr. Wesley Grant Sr. Southside Center received the City's first Platinum LEED certification. Ms. Jane Mathews spoke about the importance of LEED certification and introduced some of the design and construction team in attendance. Mayor Bellamy thanked Ms. Mathews for her leadership on this project.

At Mayor Bellamy's request, it was the consensus of Council to install a plaque on the Dr. Wesley Grant Sr. Southside Center to include the seated Council and the architect for the project.

C. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized (1) Senior Firefighter Jay Bettencourt as Firefighter of the Year for the State of North Carolina; (2) Fire Chief Scott Burnett, Battalion Chief Chris Budzinski and member of Command Staff for the re-affirmation of the Fire Department's accredited agency status from the Center for Performance Excellence; (3) APD Sgt. Louis Tomasetti for receiving the NC Gang Investigator of the Year Award; (4) Superintendent of Water Maintenance Ivan Thomas as 2012 Distribution System Operator of the Year; and (5) Scott Brazil, Tommy Carver, Don Fender, Bobby Roberts, Frank Stroupe, Brandon Yates, Lee Morrison, and Bryan Abbajay for receiving the Road Scholar Certification through North Carolina State's Institute for Transportation Research and Education.

Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 27, 2012**
- B. RESOLUTION NO. 12-256 - RESOLUTION ADOPTING THE 2013 CITY COUNCIL MEETING SCHEDULE**
RESOLUTION BOOK NO. 35 - PAGE 142
- C. APPROVAL OF THE 2013 SCHOOL BOARD APPOINTMENT PROCESS**
- D. RESOLUTION NO. 12-257 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH STEPPE CONSTRUCTION INC. FOR THE PROJECT KNOWN AS 2005 AND 2010 ANNEXATION AREA SEWER SYSTEM IMPROVEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$116,521 plus a contingency of 20% (\$23,000) with Steppe Construction Inc. for the project known as 2005 & 2010 Annexation Area Sewer System Improvements, City of Asheville Project # SC-05-06-001 & SC-10-11-001.

City Council had approved the Annexation Services Plans for the Airport Road section of the 2005 Annexation area on June 28, 2005, and on May 25, 2010 for the 2010 Airport Road Annexation, respectively. Both of them require that an 8 inch sewer line be installed to bring the service to substantially the same level as other parts of the City. One section of sewer line from the 2005 Annexation is not included in this contract due to the lack of the required easement. We will continue to seek that easement in the future, but did not want to delay the construction of the other sections. The funds for that work will be retained in the 2005 budget for use when the easement is obtained. The project was advertised and on October 30, 2012, bids were opened with Steppe Construction Inc., of Mill Spring, NC, being the lowest responsible bidder with a bid of \$116,521. This was well below the Engineer's Estimate of \$166,805 and below the \$200,000 construction budget set aside for the project. A 20% contingency (\$23,000) has been added to allow payment for any unforeseen costs that typically arise during construction. The work produced from contract would help to fulfill the City's obligation as outlined in the 2005 and 2010 Annexation Services Plans for the Airport Road area.

This action complies with the City Council Strategic Operating Plan in that it will enhance the infrastructure within our municipal limits, and fulfill the City's obligation outlined in the 2005 and 2010 annexation of the Airport Road area.

Pros:

- Will allow for the construction of approximately 1,025 linear feet of new sanitary sewer within the Asheville City limits.
- Will fulfill the City's obligation of the 2005 and 2010 annexation of the Airport Road area.
- Will receive funds from MSD's Revenue Sharing program.
- Once turned over to MSD, the City will not be responsible for future maintenance of the sanitary sewer system.

Cons:

- The project will cost the City approximately \$116,521.
- Project management and contract administration will consume staff time.

This project will cost approximately \$116,521. The budget for this project is already included in the City's adopted Capital Improvement Program. Once the sewer system improvements are completed, MSD's Revenue Sharing Program should provide the City with 50% of all collected fees from the use of this sewer system for the next ten years.

City staff recommends City Council adopt the resolution awarding the contract to Steppe Construction Inc. and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$116,521 plus a contingency of 20% (\$23,000) with Steppe Construction Inc. for the project known as 2005 and 2010 Annexation Area Sewer System Improvements, City of Asheville Project # SC-05-06-001 and SC-10-11-001.

RESOLUTION BOOK NO. 35 - PAGE 143

E. ORDINANCE NO. 4142 - BUDGET AMENDMENT TO ACCEPT ENERGY EFFICIENCY REBATE FUNDS FROM PROGRESS ENERGY FOR THE FLEET LIGHTING RETROFIT

Summary: The consideration a budget amendment, in the amount of \$21,801, from Progress Energy, to appropriate energy efficiency rebate funds.

The proposed budget amendment is to appropriate energy efficient rebate funds that have been received by the City but not included as part of the adopted General Fund budget. Once accepted these rebate monies will be used to fund operating costs in the City's green and sustainability program.

This action supports Council strategic goals by continuing to identify strategies and costs for maintaining the city's annual energy reduction goal of 4%.

Pro:

- Accepting this rebate check will allow the city to continue investing in improving energy efficiency in public infrastructure.

Con:

- None can be identified.

The \$21,801 will be used as revenue to further fund energy efficiency programming.

City staff recommends City Council adopt the budget amendment in the amount of \$21,801 to appropriate energy efficiency rebate funds that have been received by the City from Progress Energy.

ORDINANCE BOOK NO. 28 - PAGE

F. ORDINANCE NO. 4143 - TECHNICAL BUDGET AMENDMENT TO FUND THE CITY'S ANNUAL CONTRIBUTION TO THE N.C. STATE TREASURER'S OPEB FUND

Summary: The consideration of a technical budget amendment in the amount of \$200,000 from General Insurance Service Fund Reserves to fund the City's annual contribution to the North Carolina State Treasurer's Other Post Employment Benefit (OPEB) Fund.

On December 13, 2011, City Council approved a resolution authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with an initial contribution of \$3,025,866, which was made during FY 2011-12. For the year ended June 30, 2012, the actuarially determined Net OPEB Obligation totaled \$1,849,254. This amount relates to both current and future post-employment retiree health care costs, reduced by actual expenses paid by the City. The prior year's Net OPEB Obligation totaled \$3,025,865, which the City subsequently funded in full with reserves held for this purpose. A one-time deposit established an OPEB trust, which is invested through the State Treasurer. While the City is unable to fully fund the current year's Net OPEB Obligation, Council may recall that staff outlined a plan on December 13, 2011, to incrementally increase the City's annual budget allocation in FY 2013 and beyond to meet this annual required contribution.

In order to make that contribution, Council must approve a budget amendment to provide authorization for the appropriation of the cash and the subsequent payment to the North Carolina State Treasurer's OPEB Fund. The contribution is being funded through an appropriation from unassigned internal service fund reserves.

This action complies with City Council's strategic goal to manage the City to the highest level of fiscal responsibility.

Pro:

- Provides budget authorization for the City's annual contribution to the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement.

Con:

- While this payment moves the City closer to meeting its annual required contribution, the City will have to plan for and budget a recurring contribution from the General Fund and other funds in the future.

After funding the initial OPEB liability, as of June 30, 2012, the General Internal Services Fund had \$1,393,802 in unrestricted net assets. This additional appropriation of \$200,000 will reduce unrestricted net assets to \$1,193,802. Staff recommends that this amount remain in the Internal Services Fund to serve as reserves for the City's self-insurance programs.

City staff recommends City Council approve the technical budget amendment in the amount of \$200,000 from General Insurance Service Fund Reserves to fund the City's annual contribution to the North Carolina State Treasurer's OPEB Fund.

When Ms. Judy Strong urged the City not to participate in the OPEB Fund but to instead use 401-K for retirements, Director of Finance & Management Services Lauren Bradley said that the OPEB benefits represent health care benefits that have been promised to employees after they retire. The City did discontinue this benefit for new hires. We are legally required to continue to fund that benefit. She also noted that the City does have a 401-K program for retirement.

ORDINANCE BOOK NO. 28 - PAGE

G. ORDINANCE NO. 4144 - BUDGET AMENDMENT TO PURCHASE AND INSTALL A BUS SHELTER AS PART OF CONDITIONAL ZONING OF CHAMBER OF COMMERCE/LENOIR RHYNE UNIVERSITY PROPERTY ON MONTFORD AVENUE

Summary: The consideration of a budget amendment, in the amount of \$16,200, from outside contributions, to purchase and install a bus shelter and concrete pad as part of the conditional zoning of the Chamber of Commerce/Lenoir Rhyne University property.

The Chamber of Commerce and Lenoir Rhyne University are required under a stipulation of the conditional zoning of the property located at 36 Montford Avenue to install a bus shelter at or near the location of the current bus stop. This action was reviewed and approved by City Council on February 28, 2012.

Due to high cost estimates, City staff determined that the City would partner with the Chamber of Commerce and Lenoir Rhyne University via an agreement whereby the Transportation Department would purchase and install the bus shelter and concrete pad as an acceptable method of fulfilling the condition of approval. The property owner will grant the City an appropriate easement to perform all the work and to maintain the shelter in the future.

The total turnkey project cost is \$16,200, which will be funded with contributions from the Chamber of Commerce and Lenoir Rhyne University. Due to the impending winter weather, the work will not begin until spring 2013. The project should be completed by the end of the current fiscal year.

This action complies with the City Council 2012-13 Strategic Operating Plan within the fiscal responsibility focus area by leveraging external partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- The City will purchase and install a needed bus shelter and associated concrete pads using funds provided through a conditional zoning process.
- The Chamber of Commerce and Lenoir Rhyne University have provided funds in the amount of \$16,200.

Con:

- The City will incur minimal administrative costs.

The total turnkey project cost is \$16,200. The minimal administrative costs will be absorbed in the current Transportation Department operating budget.

Staff recommends that City Council adopt a budget amendment in the amount of \$16,200 from outside contributions to purchase and install a bus shelter and concrete pad as part of the conditional zoning of the Chamber of Commerce/Lenoir Rhyne University property.

ORDINANCE BOOK NO. 28 - PAGE

H. ORDINANCE NO. 4145 - TECHNICAL BUDGET AMENDMENT TO APPROPRIATE FROM RESERVED FUND BALANCE THE REQUIRED BUDGET AUTHORIZATION FOR PRIOR YEAR CONTRACTS, PURCHASE ORDERS AND OTHER CARRY-OVER APPROPRIATIONS THAT HAVE ROLLED FORWARD TO FISCAL YEAR 2012-13

Summary: The consideration of a technical budget amendment in each of the City's annual operating funds to appropriate from reserved fund balance the required budget authorization for prior year contracts, purchase orders, and other carry-over appropriations that rolled forward to Fiscal Year 2012-13.

As part of its ongoing operations, the City enters into various contracts and purchase order agreements throughout the fiscal year. When these contracts and purchase orders are entered into, budget funds are encumbered for the full amount of the expected purchase. Often these contract and purchase orders are not fully completed and paid in one fiscal year. North Carolina General Statutes provide authorization for local governments to reserve the unexpended portion of these prior year commitments and roll those budgets forward to the new fiscal year.

As a part of the Fiscal Year (FY) 2011-12 annual audit, staff identified prior year commitments and carry-over appropriations to roll forward to FY 2012-13, and these dollar amounts were deducted from the unassigned fund balance amounts that were reported in the Comprehensive Annual Financial Report. The technical budget amendment will provide authorization to officially appropriate these amounts in the FY 2012-13 budget for each of the City's annual operating funds.

This action complies with City Council's strategic goal to manage the City to the highest level of fiscal responsibility.

Pro:

- Provides budget authorization for prior year contracts, purchase orders, and other carry-over appropriations that rolled forward to FY 2012-13.

Con:

- None.

As noted above this budget amendment simply provides budget authorization for prior year commitments which have already been reserved in the City's FY 2011-12 financial statements. There is no impact on available fund balance in the City's operating funds.

City staff recommends City Council approve the technical budget amendment in each of the City's annual operating funds to appropriate from reserved fund balance the required budget authorization for prior year contracts, purchase orders, and other carry-over appropriations that rolled forward to FY 2012-13.

ORDINANCE BOOK NO. 28 - PAGE

I. ORDINANCE NO. 4146 - BUDGET AMENDMENT FOR PHASE III OF RENOVATIONS FOR THE U.S. CELLULAR CENTER

Summary: The consideration of a budget amendment, in the amount of \$1,889,518, to accept funding from various sources to establish a Capital Budget for Phase III of the renovations for the U.S. Cellular Center to meet requirements for the Southern Conference Basketball Tournament and other major events.

The City and its partners have been actively engaged in renovations to the U.S. Cellular Center. This partnership has resulted in continued funding for additional construction. In July 2012, the Buncombe County Tourism Development Authority awarded the City \$1.375 Million in Product Development Grant Funds for renovations to the ExploreAsheville.com arena. The City has one remaining payment of \$150,000 from the original \$2 Million grant awarded in 2010. Buncombe County Commissioners partnered with the City by approving \$1,200,000 for the project, of which \$73,460 is allocated for the pending renovation phase. The Civic Center Enterprise Fund Capital Improvement Program (CIP) program will provide \$130,000 for this

portion of the project. The Asheville ABC Board's Education Fund will provide \$25,000 for funding for equipment for ABC educational programming. The U.S. Cellular naming rights agreement will provide \$72,118 towards the pending project. There are also some cost savings from previous renovation projects that will be used in the pending project.

Source of Funds:

TDA Grant #1	150,000
TDA Grant #2	1,375,000
Buncombe County	73,460
CIP	130,000
ABC	25,000
US Cellular Naming Rights	72,118
Savings From Roof	53,940
Savings from General Project	10,000
TOTAL	1,889,518

The action supports current and prior Strategic Operating Plan Goals: Fiscal Responsibility, by leveraging internal and external partnerships for pursuing capital improvement projects and infrastructure projects; Green and Sustainable, by taking the City's sustainability program to the next level, which will include plumbing improvements, and energy efficient lighting; and the Job Growth and Community Development Focus Area, by creating more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals.

The action also complies with the Civic Center Commission's Strategic Plan, as well as recommendations of the 2006 Civic Center Task Force. The action supports the Downtown Master Plan, which calls for a near-term action step to maintain and upgrade the existing Civic Center and Thomas Wolfe Auditorium to serve for at least the next five to ten years.

Pros:

- Action meets the requirements to facilitate the Southern Conference, and the resulting economic impact.
- Action will support improved visitor experience and increased revenue capabilities for the US Cellular Center by increased efficiency for Lobby, more efficient Box Office, and increased opportunities for promoter use of the renovated facility.
- Action leverages significant partnership funding to allow for greater levels of renovation.

Con:

None noted.

Funding already approved by the TDA and Buncombe County, along with Civic Center capital funds as outlined in the five-year Capital Improvement Program totals approximately \$1.889 million as noted above. The total cost of Phase III renovations, including the design contract, will likely be between \$2.1 and \$2.5 million. A portion of the design costs for Phase III have already been budgeted and charged to the Phase II project budget. Staff will move those previously budgeted expenses and offsetting revenue from the Phase II project budget to the Phase III project budget. The construction period will run into the FY 2013-14 budget year, and currently staff anticipates approximately \$700,000 in additional construction funding will be available for the project as of July 2013. In addition, staff and US Cellular Center Commission members continue to explore additional revenue sources.

City staff recommends City Council adopt a budget amendment in the amount of \$1,889,518, to accept funding from various sources to establish a Capital Budget for Phase III of the renovations for the U.S. Cellular Center to meet requirements for the Southern Conference Basketball Tournament and other major events.

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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.

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

III. PRESENTATIONS & REPORTS:

A. ECONOMIC DEVELOPMENT COALITION UPDATE

Mayor Bellamy announced that this update will be rescheduled.

B. DEVELOPMENT SERVICE DEPARTMENT UPDATE

Development Service Department Director Robert Griffin provided Council with information detailing how his Department is committed to developing a culture of timeliness, accuracy, and consistency in processing, reviewing, and inspecting all projects, improving the customer experience, meeting code and ordinance requirements, and recognizing the economic benefit all applications bring to Asheville.

He then provided information on a change to the front of the City Hall Building. We anticipate this being done around March, 2013.

When Mayor Bellamy suggested that the handicapped access ramp be located on the other side of the front of City Hall, City Manager Jackson said that they will research it and report back to Council.

C. WATER RESOURCES UPDATE

RESOLUTION NO. 12-259 - RESOLUTION REAFFIRMING ASHEVILLE'S RETENTION OF ITS WATER SYSTEM

Project Manager Phil Kleisler updated City Council on the Water Resources process update from November 27 - December 11, 2012. He reviewed with Council the proposal that the MSD Planning Committee received, briefly reviewed the City Council worksession held earlier in the day, reviewed some upcoming meetings, and presented City Council with a proposed resolution reaffirming Asheville's retention of its water system. He then provided Council with the information sharing between the City and MSD.

Councilman Smith moved for the adoption of Resolution No. 12-262, noting that (1) Council remains unanimously opposed to legislation that forces the transfer of the City of Asheville's municipal water system to another entity; (2) Council is committed to leading an effort to achieve cost savings for all stakeholders through shared services of regional utility providers; (3) Council remains convinced that local solution arrived at by an open, collaborative process is preferable to a legislative directed disposition of municipal assets; and (4) The forced taking of the local government infrastructure sets a dangerous precedent in the state of North Carolina, a

precedent that will have a chilling effect on any local government investing in needed infrastructure in the future, thereby endangering business opportunities and economic stability in the state and resulting in job losses for our citizens in Western North Carolina and across the state. This motion was seconded by Councilman Bothwell.

Mr. Barry Summers felt disappointed that the people who want to take our water system will not respect this resolution as seen by their continuing to draft the bill.

Councilman Bothwell noted that both the City's financial analysis of proposals on the table and the analysis by Raftelis demonstrated that if we proceed with the merger proposed by the State legislators that the City ratepayers are subsidizing sewer customers both in Buncombe County and in Henderson County. There are ways we can work with MSD to save money for both entities, but it is not through consolidation. The State is not just taking our water system, they are penalizing the ratepayers.

Mayor Bellamy stressed that this is a general law that can happen to any community in North Carolina.

The motion made by Councilman Smith and seconded by Councilman Bothwell carried unanimously.

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IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE ALLIED HEALTH & WORKFORCE DEVELOPMENT FACILITY LOCATED AT 240 VICTORIA ROAD TO DEVELOP AN APPROXIMATELY 185,421 SQUARE FOOT EDUCATION FACILITY

ORDINANCE NO. 4147 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE ALLIED HEALTH & WORKFORCE DEVELOPMENT FACILITY LOCATED AT 240 VICTORIA ROAD TO DEVELOP AN APPROXIMATELY 185,421 SQUARE FOOT EDUCATION FACILITY

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

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

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing. Mayor Bellamy also noted that she received a copy of the minutes of the neighborhood meeting but would base her decision solely on what is before Council.

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:59 p.m.

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

Ms. Fields said that this is the consideration of the issuance of a conditional use permit for Asheville-Buncombe Technical Community College Allied Health & Workforce Development Facility located on 240 Victoria Road to develop an approximately 185,421 square foot education facility (Aerial Map - City Exhibit 4).

Ms. Fields said that the applicant, Asheville-Buncombe Technical Community College (AB Tech), is requesting conditional use approval of site plans to construct a new Allied Health and Workforce Development Facility (184,208 square feet) on their campus. As the proposed new facility has a gross floor area of more than 100,000 square feet, this project is being reviewed under the Level III review process (conditional use permit).

The project site, 13.13 acres, is located on PIN 9648.33-4217 and a portion of PIN 9648.33-7732. The small portion of the latter parcel is included so that all parking for the project will be on the same parcel and so that retaining walls will not cross property lines (building code requirement). The portion will be combined with the larger parcel to form one parcel prior to final project approval. The project site currently bears addresses of 240, 101, and 103 Victoria Road. It is the former site of the Saint Genevieve of the Pines School and has been owned and utilized as part of the AB Tech campus for a number of years. The property is zoned Institutional (Site Plan - City Exhibit 5).

AB Tech proposes to demolish all but one (Ivy Building – auditorium/chapel) of the existing structures located on the site to allow for the construction of a building to serve as the new Allied Health and Workforce Facility for the college. The 154,530 square feet of the structure that will be completed at this time will serve as a mixed use facility housing classrooms, laboratories, offices, the campus day care center, and an 832 seat auditorium. [A portion (9,584 square feet) of the fourth floor of the structure and the entire fifth floor (20,094 square feet) of the structure will not be finished at this time (Front Elevation - City Exhibit 6) These areas will be built as a shell with only the framework, corridors to stair towers, stairs, elevators and rough ins of toilet rooms constructed at this time. When the remainder of the building is completed, additional parking or a modification will be required]. The building will be seventy-one feet in height; five stories with a small lower level on a portion of the western side of the structure (location of the child care facility). The building is being designed to be LEED certified.

Approximately 11.9 acres of the site will be graded in preparation for the construction of the facility and accompanying parking. Approximately 10.1 acres will be impervious at completion. The phasing of the project has been designed to allow the existing child care center (which is in a building slated for demolition) to continue to operate until a temporary certificate of occupancy is issued for the new building. At that time the remaining site work will be completed.

Access to the site is (and will remain) via Victoria Road where the two existing access points/drives will be improved. A traffic impact study has been completed and the

recommendations of the study and the City's Traffic Engineer have been adopted in the proposed plans. Five hundred and fifty-eight parking spaces are provided on site; the minimum required by the City is 546. Pedestrian access to Victoria will be afforded in the center of the site with minimal conflicts between pedestrian and vehicular traffic. Sidewalks will be provided along Victoria. A bus shelter will also be provided on Victoria. (Site Plan - City Exhibit 5)

Landscaping required for this project includes building impact landscaping, street trees, street buffer, Type A and B buffers, and vehicular use area landscaping. Fifteen percent of the site is required to be set aside for open space. The plans indicate more than the required amount of open space.

This project was reviewed and approved with conditions by the Technical Review Committee on October 1, 2012. Many of the comments made in the TRC report have been or are being addressed by the development team working closely with City staff.

A meeting with residents of the Livingston Heights community was scheduled for December 5, 2012, to review the project with them. Mr. David Nash, Chief Operations Officer for the Asheville Housing Authority will present their summary of the meeting.

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 project will meet all requirements of the North Carolina Building Code and the City of Asheville and will be reviewed in detail by the North Carolina Department of Insurance and the City of Asheville's Technical Review Committee to ensure compliance with safety requirements.
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.**
As most of the site is already developed with buildings and parking facilities and the site is in an area heavily developed with institutional uses, there are few significant natural features on the site or in the area to be protected. The site is in a very prominent setting elevation-wise which has been taken into consideration in the design. Most of the pine trees that line Victoria Road will be lost due to the development; however, the planting plans propose that a number of pines will be newly planted in respect for the history of the site.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The parcels in the area surrounding the site are largely occupied by other institutional uses and the site itself has been used for years for educational purposes. Where the project site abuts multi-family or single-family properties, landscape buffering will be provided. The new Allied Health and Workforce Development Facility is expected to be a complimentary use and should not injure the value of adjoining or abutting 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 Allied Health and Workforce Development Facility is proposed to be five stories in height. While this is larger than the educational buildings currently located on the site it is

in keeping with other institutional buildings in the vicinity. Significant vegetation will be provided on the site and open space exceeds that required by the City. The development is compatible with the scale, bulk, coverage and character of the other institutional uses in the area.

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.

This project supports the comprehensive plan stated goal of “the City working with Asheville-Buncombe Technical Community College to address the needs of the college as it expands”. Additionally, the project is proposed to be LEED certified which aligns with greenbuilding and smart growth focuses found in both the comprehensive plan and the City Council’s Strategic Operating Plan.

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

The proposed project is located on a roadway that serves major institutional uses at present and is served by the S4 transit route. The project has been reviewed by the Technical Review Committee who found that existing infrastructure appears to be adequate and the preliminary review has not revealed any problems for future service to the development.

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

The development plans for this project along with the accompanying traffic impact analysis have been reviewed by the City’s Traffic Engineer. Several suggested revisions to the originally submitted plans have been made to improve both vehicular and pedestrian traffic.

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

The project was reviewed by the Planning and Zoning Commission on November 7, 2012, who unanimously (6-0; Chairman Cannady recused) recommended approval of this application to the Asheville City Council. No one spoke on this matter except members of the development team.

Pros:

- The proposal satisfies an important City goal found in the comprehensive plan of advancing and maintaining the City’s role as Western North Carolina’s regional education center.
- The applicant will be seeking LEED certification, meeting key “green building” goals of the City.
- The project will provide a much needed state of the art facility for the Asheville-Buncombe Technical Community College on property currently underutilized by the college.
- The historic chapel/auditorium located on the site will be preserved.

Con:

- The building is significantly larger than the existing buildings on the site which may be seen as a negative by some adjoining residents.

Staff recommends approval of the Level III development proposal for the Allied Health and Workforce Development Facility for AB Tech and issuance of a conditional use permit for this facility.

The project was reviewed by the Planning and Zoning Commission on November 7, 2012, who unanimously (6-0; Chairman Cannady recused) recommended approval of this application to the Asheville City Council.

Mr. Scott Donald, architect representing the owner, explained the different floors of the five story facility. As the building rises to the 4th and 5th floors, it will have smaller footprints. Using schematic drawings, he showed the building prospective (Applicant Exhibit 1). He said that they have paid close attention to the massing of the roof and terracing, which will be potential for green roofs. Showing a view from the Wall Street Parking Deck (Applicant Exhibit 2), Mr. Donald said that the elevation they are starting out is 2204 and Mission Hospitals ground floor is approximately 2196. Showing a view from McDowell Street toward the new building (Applicant Exhibit 3) he explained how the building is a much needed project for AB Tech. They showed a picture of what the building impact will look like from the backyard of Livingston Street Apartments (Site Plan - City Exhibit 3; Applicant Exhibit 4). In that rendering, it showed landscape buffers and the site line views, noting that this is a winter view with only a thin line of single row trees that separates the two properties now. There will be several layers of buffering to help mask the building from them. They will also be paying close attention to light pollution and keep the lighting on their property.

Mr. David Nash, Chief Operations Officer for the Housing Authority, briefly outlined the comments made at the neighborhood meeting with the developers. Even though the building is very attractive, based on its scale and location it will be quite prominent above the neighborhood. They do support the development but requested the following: (1) the existing storm water runoff needs to be fully resolved to stop the erosion problems and they are confident that the project engineers will take into account both the current inadequacy of that storm water control system and the increased storm water that will come from this new development; (2) AB Tech consult with residents on Erskine Street about constructing an intentional pedestrian link between this new campus and Erskine Street (at this time he was not sure if the residents would like a bike path or some other formal access); (3) AB Tech include a job training component in the construction of this new facility for participants in the Green Opportunities training programs and other qualified residents of the neighborhood; and (4) AB Tech provide preferential access for our residents who are students at AB Tech to the child care center that will be located in the new building.

Mr. DeWayne Barton, representing Green Opportunities, spoke about how important it is when there is a development like this in the community to include the community. It is good for community members to see them work on their neighborhood. He hoped they can work this out so it benefits everyone.

After rebuttal, Mayor Bellamy closed the public hearing at 6:18 p.m.

When Mayor Bellamy asked about the plan to address the storm water concerns, Mr. Donald said they are looking at the existing infrastructure that goes beyond the site and onto Victoria Road. They have agreed with the neighborhood that the existing basin will be brought up to standards and they will also follow all the City's regulations regarding storm water control.

When Mayor Bellamy asked if a condition needed to be placed on the permit to make sure all storm water issues are addressed, City Attorney Oast said that some, if not all, of the issues will be addressed with this plan. He noted that the TRC recommendations will be included as part of the ordinance.

Mayor Bellamy felt the required buffer between the back of the new building and the Livingston Street Apartments is inadequate and needs to be widened with perhaps evergreens. Mr. Donald said that they can exceed the landscaping standards and agreed to widen the buffer.

Mayor Bellamy asked that the developer continue to talk to the neighborhood (1) about the transition of the existing informal path between the new building and Erskine Street; (2) opportunities for local participation not only in construction jobs but educational opportunities; and (3) light spilling into the neighborhood. Mr. Donald said that they have agreed to have quarterly meetings with the neighborhood over this three-year project and regarding local participation, they already are using local labor and materials.

Councilman Hunt was concerned that there might be too limited an inclusion of bicycle facilities. The 5% rule for bike racks, which seems to equate to 28 total, seems tiny compared to the potential demand given the populations served. The City had Mission Hospitals include bike lanes on the nearby Mission campus with their recent changes, and this seems like a chance to include more infrastructure as well to connect the areas. After a brief discussion about the width of the road and whether it can be striped for bike lanes, Councilman Hunt asked that City staff and the developer make their best effort to distinguish bike lanes, with possibly share arrows.

In response to Councilman Hunt, City Traffic Engineer Jeff Moore said that there are no plans to reconfigure Victoria Road. He said that this project is well thought out to handle the traffic.

There was a brief discussion, initiative by Councilman Smith, regarding a bus shelter on both sides of the road; however, Transportation Director Ken Putnam used a transit map (City Exhibit 7) to show that through this stretch the bus only goes in one direction.

In response to Mr. Pelly, Mr. Joe Bace, AB Tech Facilities Director, said that they update their Master Plan every five years.

Councilman Bothwell 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. 4147, granting a conditional use permit adopted the proposed plan for the Asheville-Buncombe Technical Community College Allied Health & Workforce Development Facility located on 240 Victoria Road to develop an approximately 185,421 square foot education facility, 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 issuance of any required 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 this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) The landscape buffer between the building and Livingston Street apartments be widened. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 28 - PAGE

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL USE PERMIT FOR THOMS ESTATE SUBDIVISION LOCATED OFF OF FRENCH WILLOW DRIVE AND BOUNDED BY WILD CHERRY ROAD, BEAVERDAM ROAD AND ELK MOUNTAIN SCENIC HIGHWAY, TO ALLOW CHANGES TO COMMON AREA AMENITIES, SECONDARY FIRE DEPARTMENT ACCESS AND A VARIETY OF ARCHITECTURAL DESIGNS FOR SINGLE FAMILY RESIDENCES

Due to notice requirements, this public hearing will need to be pulled and rescheduled.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO UPDATE OUTDOOR LIGHTING STANDARDS

ORDINANCE NO. 4148 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO UPDATE OUTDOOR LIGHTING STANDARDS

Assistant Planning & Development Director Shannon Tuch said that this was the consideration of an ordinance to amend the Unified Development Ordinance to update the existing standards regulating outdoor lighting. This public hearing was advertised on September 14 and 21, 2012. On September 25, 2012, the public hearing was continued to November 27, 2012. On November 27, the public hearing was continued to this date.

The City of Asheville has had standards regulating outdoor lighting since 1998. More recently in 2008, there was a comprehensive update to those standards and as part of this update, the standards were moved from the *Standards and Specifications Manual* to the UDO where it would be easier for the public to find and reference the necessary standard. This also allowed the various technical departments to share in the review and enforcement of these standards where, at present, outdoor lighting is reviewed by the Department of Public Works (street lights), Building Safety (building lights) and Planning and Development (site lighting).

In 2011, the Department of Public Works in support of the sustainability master plan, announced a multi-year plan to phase in new LED street lights. In order to support this change, a wording amendment would be required to ensure that all new privately installed street lights would match the city's new LED street lighting standards. Since an amendment was required, staff took the opportunity to review all the current standards and see if there were other areas where updates, either for energy efficiency or for other reasons, were warranted and this effort was supported by the Sustainability Advisory Committee on Energy and the Environment (SACEE). A small work group composed primarily of staff from the three technical departments responsible for administering the standards, along with various outside stakeholders that included a neighborhood representative, Progress Energy staff, and the manufacturing industry representatives communicated through meetings and e-mails in order to develop accurate and efficient standards. With a couple exceptions (noted below), the changes are not generally considered substantive and are primarily clarifications and re-organization designed to clarify and expand options for developers and to improve the review process. The primary changes are summarized as follows:

1. **Reorganization of content.** Because the ordinance is reviewed and administered by three separate technical disciplines within the City, re-organizing the content of the ordinance helped clarify who was responsible for which standard. It also helped establish general standards applicable to all lighting, versus those standards that were specific to each discipline.
2. Eliminate standards and language no longer needed as a result of the most recent update to the **NC State Energy Code**.
3. **New definitions** section (b) for:
 - LED Bug rating system
 - Low luminosity lighting – 1,000 lumens or less
 - Low level decorative lighting – 60 lumens or less
 - Very low luminosity lighting – 15 lumens or less
 - Low voltage lighting
 - Other basic terms: Lamp, fully shielded, Seasonal lighting, etc.

Establishing new definitions allowed additional exemptions to be proposed.

4. All new **floodlights** are now banned in the CoA as noted in the definitions and *Prohibitions section (f)*. There was some deliberation at the workgroup and SACEE meeting on whether to prohibit any additional floodlights or to go a step further and prohibit and amortize flood lights (similar to unshielded dusk-to-dawn lights). The recommendation to prohibit and amortize leased utility lights are reflected in the draft ordinance with Progress Energy's support. This would not extend to privately owned flood lights which would be grandfathered.
5. There is now an exception in section (j)(4) for **wall mounted fixtures** that use low luminosity lighting (1,000 lumens or less), provided a translucent lens is used that covers the light source. This provides greater a greater range of fixture options.
6. Some more offensive building lighting are now prohibited in section (f)(8). This includes:
 - **Building accent luminous tubes** (LED, neon, fluorescent or other similar technology) in are now required to be shielded, and the exception for trademark structure is now removed.
 - Lighting of an **angled building surface** (i.e., roof pitch) is now prohibited.
 - **Illuminated wall panels**, which had always been prohibited under the sign code, are now also identified as prohibited in the lighting ordinance.
7. Clarify that all lighting, as a general rule, shall be full cutoff and aimed downward, Section (g)(1). Individual exceptions are provided for elsewhere.
8. New **LED standards** were incorporated in section (g)(8).
 - 4,300 Kelvin degree maximum CCT (correlated color temperature) rating to minimize glare.
 - Maximum lumens will be 6,000 in residential districts and 15,000 in commercial districts.
 - Street light BUG ratings shall be no higher than (1-1-1) in residential districts and (3-3-3) in commercial districts.
 - Area light BUG ratings shall be no higher than (3-0-1) for standard area lights and no higher than (3-1-1) for decorative area lights.
 - Building lights are restricted to a rating of (0-0-0)
9. **Lighting of alleys** in section (h)(4)(a)(v) must now use full cutoff design, unless otherwise excepted.
10. **Street lighting** in section (h)(5) sets **lumens** to match LED standards: no greater than 6,000 in residential neighborhoods and no greater than 15,000 in commercial districts. Exceptions are included at intersections where higher light levels are needed. The City standard light must be used.
11. **Street lighting in historic districts** [Section (i)(4)(f)(ii)] may no longer use "non-cutoff" fixtures, but cutoff and semi-cutoff fixtures are still allowed when the historic guidelines require it.
12. An exception for **cutoff post-mounted decorative lights** is removed. Recommended by SACEE, a previous exception to the full cutoff requirement allows a cutoff light no taller than 18-feet and no greater than 9500 lumens to be used.
13. There is now an exception in section (j)(4) for **wall mounted fixtures** that use low luminosity lighting (1,000 lumens or less), provided a translucent lens is used that covers the light source. This provides greater a greater range of fixture options.

14. In an effort to follow the intent of limiting light escape from **daylighted** features, a requirement for glazing (typically used already) and a prohibition to upright the skylight well were added. It was also clarified that these standards are intended for commercial applications so one and two-family dwellings have been exempted.

This amendment was shared and discussed at the regular Council of Independent Business Owners (CIBO) meeting held on July 13, 2012, where several questions regarding the extent of the changes to the standards were answered. No requests for changes were made.

This amendment was reviewed by SACEE at their May 16, 2012 and again at their November 28, 2012, meeting where the draft changes were supported and recommended to the Planning & Zoning Commission for consideration.

The ordinance was reviewed by the Planning & Zoning Commission at different stages of its development and was finally reviewed and approved at their September 5, 2012, meeting where there was moderate discussion and debate regarding the options for LED area lights. Ultimately, the Commission voted to approve the amendment unanimously (6-0) with the stricter BUG rating standard. Additionally, some members of the Commission also expressed interest and support for strengthening the standard for non LED post-top decorative lights and wanted to encourage consideration of a full cut-off requirement to match Buncombe County's requirement. Support for this was not unanimous and no formal motion was made.

Although the draft ordinance was supported by the Commission, staff decided to hold off on moving the draft to Council when additional opportunities for improvement were identified by city staff in the Building Safety Department. Additional time was taken to review the suggestions and incorporate additional edits. The latest set of changes may not have legally required re-review by the Commission but to ensure that the Commission would be fully aware of all the changes it was decided that the latest draft would return to the Planning & Zoning Commission for a second review at their December 5, 2012, meeting. The most substantial change was to incorporate the recommendation from SACEE to eliminate the cutoff option for non-LED post-top decorative fixtures. At the Planning & Zoning Commission's December 5, 2012, meeting they adopted the draft ordinance unanimously.

This proposal primarily supports the City Council Strategic Operating Plan goal for "Green & Sustainable" and "Safe" with its promotion of energy efficient light fixtures and other standards that better control uplighting, glare, night blindness, and shadows.

Pros:

- Clarifies standards and options for developers and property owners.
- Provides new flexibility and low impact options for owners and designers – reduces the number of existing non-conformities.
- Encourages the use of energy efficient fixtures.
- Limits or discourages unsafe glare.

Cons:

- Will require the removal and/or replacement of utility leased flood lights non-conforming over time when complaints are received.
- Will render some existing lighting designs non-conforming, although it is thought to a small number of isolated cases.

No direct fiscal impact on the ordinance amendment itself. The switch to LED streetlights will have a long-term fiscal benefit to the City through reduced energy costs.

Recommend approval of the proposed wording amendment and find that it is consistent with City adopted plans and goals.

Mayor Bellamy opened the public hearing at 7:38 p.m.

Mr. Dane Barrager, representing the Sustainable Advisory Committee on Energy & the Environment, supported the ordinance because it encourages LED and other more efficient forms of lighting, reduces light pollution, and it conforms with the County's ordinance.

Mayor Bellamy closed the public hearing at 7:40 p.m.

When Councilman Bothwell asked what the standard proof is for trademark lighting, Ms. Tuch said that staff asks for documentation.

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

Councilman Bothwell 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. 4148, This motion was seconded by Councilman Hunt and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE

V. UNFINISHED BUSINESS:

A. CONTINUATION OF CONSIDERATION OF OPEN SPACE REQUIREMENTS FOR WELLINGTON ESTATES CONDITIONAL ZONING

City Attorney Oast said that at the City Council meeting on November 27, Council held a public hearing on the request for conditional zoning for 42 Airport Road, also known as the Wellington Estates Mobile Home Park. The owner/applicant had ceased the mobile home use of the front portion of the property near Airport Road (13.65 acres), and it had been rezoned to Highway Business (HB) at the owner's request. The owner now seeks to reestablish the mobile home use, and is pursuing a conditional zoning to RM16, with a manufactured home overlay, in order to approximate the previous density.

Because it is considered a new development, the City's development standards would ordinarily apply. This includes the requirement that open space be provided, in accordance with 7-11-4 of the City Code. The open space must be publicly accessible, or available to the residents of the development, but may include such things as wetlands, flood plains, steep slope property, and land which is otherwise not suitable for development. The amount required is 500 sq. ft. per unit, not to exceed 10 percent of the development acreage. In this case, that amount is 1.365 acres. The code contains a "fee in lieu of" provision, which allows for a fee equal to the value of the land (computed on a *pro rata* formula) to be paid into a fund for use by the City for recreation/open space in the area near the development. Because the Wellington Estates site was already developed, the owner would have found it difficult to reconfigure it to provide the required open space, so City staff recommended payment of a fee in lieu.

At the Council meeting, some members of Council inquired whether the fee could be waived. The reasoning was that the property was being developed with a form of affordable housing, it is not as dense as the code would allow, and there are a significant number of mature trees on site that the applicant does not propose to remove. Stated another way, the question is not whether the fee in lieu of could be waived, but whether the new/re-established development would be required to comply with the open space ordinance, of which the fee in lieu alternative is a part.

Under the conditional zoning ordinance, City Code Sec. 7-7-8, the same standards and requirements for the corresponding general use district (in this case, RM16) apply within a conditional zoning district, unless modified by the Planning Director (up to a specified threshold) or by the City Council (beyond that threshold). This encompasses a modification that would make compliance with certain code requirements unnecessary. Thus, it appears in this case that Council may modify the open space ordinance as it applies to this property so that compliance with the ordinance is not required, thereby dispensing with the need for the fee in lieu.

If Council decides to modify the requirement in this case, the reasons for doing so should be stated. To the extent that the modification is based on the applicant's representations that existing trees on site will be preserved, it is recommended that a condition be attached to the modification. Such a condition could be the preparation of a tree preservation plan that incorporates some of the requirements from the City's ordinance.

Councilman Davis didn't run the risk of setting a precedent; however, this is reusing affordable property that has mature trees. We should be encouraging this type of adaptive reuse.

Councilman Davis moved to (1) condition the modification that the preparation of a tree preservation plan that incorporates some of the requirements from the City's ordinance; and (2) modify the open space ordinance as it applies to this property so that compliance with the ordinance is not required, thereby dispensing with the need for the fee in lieu, for the stated reasons: (a) the property was being developed with a form of affordable housing, it is not as dense as the code would allow; and (b) there are a significant number of mature trees on site that the applicant does not propose to remove. This motion was seconded by Councilman Bothwell and failed on a 3-4 vote, with Mayor Bellamy, Councilman Bothwell and Councilman Davis voting "yes" and Vice-Mayor Manheimer, Councilman Hunt, Councilman Pelly and Councilman Smith voting "no".

Mayor Bellamy felt we are penalizing someone for bringing back affordable housing and the preservation of mature trees.

Planning & Development Director Judy Daniel confirmed that the developer needs to pay a fee in lieu for deficient open space.

From the audience, Mr. Morosani said that he would leave the mature trees and pay the \$50,000 fee in lieu.

At 7:00 p.m., Mayor Bellamy announced a 20-minute recess.

B. CONSIDERATION OF AN ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR RETAIL TENANT IDENTIFICATION SIGNAGE

At the petitioner's request, Councilman Hunt moved to continue this matter until February 12, 2012. This motion was seconded by Councilman Bothwell and carried unanimously.

C. CONFIRMATION OF PERMANENT BOARD OF DIRECTORS FOR THE MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN

Councilman Hunt said that the BID nominating committee has completed its application review process and is recommending a slate of initial permanent board members for City Council consideration.

At the October 9, 2012, formal meeting, City Council adopted a resolution creating a downtown Municipal Service District, also known as a Business Improvement District, in downtown Asheville. The resolution states "that a permanent board of directors for the BID be

appointed no later than December 15, 2012.” The resolution does not state how the initial permanent board of directors would come into being and therefore, Council suggested creation of a nominating committee of two City Council members and three interim Board members and the five of those appoint two additional people to bring a recommended slate of initial permanent board members to the City Council.

In addition to Jan Davis and Marc Hunt, the nominating committee consisted of Kim MacQueen, George Saenger, Lou Bissette, and Adrian Vassallo. The application process was advertised and a total of 29 applications from well-qualified candidates were received by the nominating committee through November 16, to ensure consideration. The committee was pleased with applicant response, which made the recommendation process extremely competitive and difficult to narrow down. The application and selection process emphasized diverse representation of the downtown business district to include: major real estate property owner within the BID area (property above \$10 million tax value), small/medium real estate property owner within the BID area (property under \$10 million tax value), resident living within the BID area, office tenant operating within the BID area, and owner or operator of a retail business or restaurant within the BID area.

The recommended slate of initial permanent board members are:

- John Monroe, Southern Development of NC
- John McKibbin, Aloft Hotel
- David Brown, D.L.B Properties
- Rick Jackson, McGuire, Wood & Bissette
- Jim Samsel, Samsel Architects
- Karen Tessier, Market Connections
- Susan Griffin, downtown resident
- Kim MacQueen, downtown resident
- Mary Robinson, Roberts & Stevens, P.A.
- Ruth Summers, Grove Arcade Foundation
- Michel Baudoin, Bouchon & Creperie Bouchon
- Franzie Charen, Hip Replacements, Asheville Grown Business Alliance
- Stephanie Swepson-Twitty, Eagle Market Street Development Corporation
- Dwight Butner, Vincenzos Restaurant

In addition to the recommended slate of board members, the Asheville City Council shall appoint one board member as an ex-officio voting member of the board, as shall the Buncombe County Commissioners and Asheville Downtown Association. Once these appointments are made, this will bring the total board number to 17.

City Council's resolution to create a BID did not include funding for the current fiscal year. Consideration for funding and options for dedicated revenue streams will be discussed during the upcoming FY 13-14 budget process. City Council is authorized to enter into contract with the entity that is formed (Asheville Downtown Inc.) and would consider the list of proposed services to be provided and projected budget necessary to provide those services prior to July 1, 2013.

This action complies with City Council's Strategic Operating Plan in the goal of Fiscal Responsibility - The City of Asheville will support a stronger more prosperous community by making smart investments that accomplish lasting, tangible returns; Goal 2: Explore alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities; Objective 4: Seek efficiencies in master plan implementation by identifying plan interdependencies, funding sources and key partnerships.

Per Council's October 9 direction, the nominating committee submits this slate of candidates for favorable consideration for the initial permanent BID board.

Councilman Hunt moved to confirm the recommended slate of initial permanent Board of Director members for the municipal service district for downtown. This motion was seconded by Councilman Davis.

Councilman Smith felt that this type of entity needs to be sensitive to the needs of the homeless downtown. Because of that, he offered a friendly amendment to add two more seats for homelessness system experts. These people would be those that work with downtown homeless populations and who understand the services that are available as well as the conditions that lead people to come into homelessness in the first place. He suggested that the two additional members be drawn from the existing members on the Homeless Initiative Advisory Committee (HIAC). He suggested a schedule that applicants apply by January 8 and those appointments be made on January 22.

Councilman Hunt and Councilman Davis accepted the friendly amendment.

When Councilman Hunt asked if it would be acceptable for the Nominating Committee meet once those applicants are advanced so they can work with them, Councilman Smith thought that was a good idea. Councilman Smith said that the HIAC doesn't meet again until January 14 and it may not be timely to ask them to do the nomination, but as liaison to the HIAC he would be happy to reach out to Chairman David Nash and the membership to solicit names of those who might be interested to be involved.

Councilman Hunt felt that since this will be forming over months, he felt it might be better not to rush the process due to the holidays and wait until February 15. Councilman Smith said that he was trying to get the two new members seated before the first permanent BID Board meeting.

Mayor Bellamy agreed for two service providers on the Board, but didn't see the need for us to appoint from the existing HIAC membership because there is very little racial diversity on the HIAC. She personally supported Michael Woods from the Western Carolina Rescue Ministries.

In response to Councilman Bothwell, Councilman Hunt said the outreach for applicants was strong.

When Councilman Bothwell noted there is no faith organizations represented and the fact that there are several churches in the downtown area, Councilman Davis noted that the Board can't represent every group in Asheville and with a board this large he anticipated vacancies at which time a member from that group could be appointed. Councilman Hunt also noted that Council will have the authority to appoint 1/3 members of the replacement board members and the details of which seats those will be will be worked out in the by-laws.

Ms. Kim MacQueen, member of the Nominating Committee, the Interim BID Board and the initial BID Committee, said that their original program was a clean, green and safe, however, since October the program was geared more toward clean and green oriented with the thought that the safety part be delayed for at least 2-3 years. After talking to BID boards across the state, they operate very strongly with small break-out committees. She sees this board operating with very active working break-out committees. She asked that a single slot be made available for a homelessness system expert, similar to the Downtown Association seat, and then allow as many people as want to work on specific issues to work on the break-out committees.

Mr. Timothy Sadler felt that Rev. Amy Cantrell, Co-Founder of Be Loved Community, would be an excellent asset to the BID Board.

The amended motion made by Councilman Hunt and seconded by Councilman Davis to confirm the recommended slate of initial permanent Board of Director members for the municipal service district for downtown, with the addition of two seats for homelessness system experts carried unanimously.

Councilman Hunt moved to appoint Councilman Davis as the City Council ex-officio voting member of the municipal service district for downtown. This motion was seconded by Councilman Pelly and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 12-258 - RESOLUTION SUPPORTING THE RIVER ARTS DISTRICT TRANSPORTATION IMPROVEMENT PROJECT (RADTIP)

Transportation Planner Dan Baechtold said that this is the consideration of a resolution of support for the road, sidewalk, parking and greenway improvements of the River Arts District Transportation Improvement Project.

The City of Asheville has been engaged in a two-year process to study a portion of the Wilma Dykeman Riverway Plan that has come to be known as the RADTIP (River Arts District Transportation Improvement Project). The RADTIP will construct roadway improvements, sidewalks, bike lanes and greenways along Lyman Street and part of Riverside Drive. The project implements a portion of the Wilma Dykeman Riverway Plan.

This process, which included extensive input from stakeholders and the public, has identified a preferred alignment and preliminary design for the RADTIP. This alignment was presented to the City Council at a joint work session with the Asheville Area Riverfront Redevelopment Commission on November 13, 2012. The design and the results of the study were also presented to the public at an open house on December 6, 2012.

At the November 13th work session, City Council asked staff to re-introduce this item at a regularly scheduled council meeting for formal action. This resolution indicates support by the City of Asheville for the RADTIP project and the preferred alignment.

The project includes upgrades to the roadway, including straightening the sharp curve on Lyman Street, and the addition of stormwater infrastructure, bicycle lanes, sidewalks, on-street parking, greenway multi-use trails, street trees and other amenities.

This project supports the City of Asheville's Strategic Operating Plan under the goals of Multi-Modal Transportation and Job Growth and Community Development. In addition the project supports implementation of numerous master plans including the Wilma Dykeman Riverway Plan, Sustainable Economic Development Plan, Greenway Master Plan, and the 2025 City Development Plan.

Pros:

- The project has received widespread public support.
- All of the options and impacts of the road alignment have been thoroughly studied.
- This project supports key strategic goals of the city.

Con:

- Implementation of the RADTIP will require additional funding and a multi-year investment.

This action does not have an immediate fiscal impact. The resolution does not commit the city to any future expenditures, but it does express support for a multi-million dollar, multi-year capital investment.

City staff recommends that City Council adopt a resolution in support of the River Arts District Transportation Improvement Project.

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

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

Councilman Bothwell moved for the adoption of Resolution No. 12-258. This motion was seconded by Councilman Davis and carried unanimously.

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B. ORDINANCE NO. 4149 - FIRST READING OF ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A TROLLEY BIKE TOUR SERVICE (PUB CYCLE) 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 trolley bike tour service (pub cycle) within the City of Asheville.

City staff has been working with a citizen that is interested in starting a trolley bike tour service (pub cycle) within the City of Asheville under the business name of Peech Development, Inc., dba Amazing Pubcycle. Initially, the service would only be allowed in the Central Business District (CBD) and only on city-maintained streets and approved state-maintained streets that have a posted speed limit less than 35 mph. It is the responsibility of the citizen to confirm with the N.C. Dept. of Transportation (NCDOT) that the vehicle can be operated along state-maintained streets within the CBD.

By definition, a trolley bike or party bike, pedibus, cycle pub, beer bike is a multi-passenger human powered vehicle. It is sometimes mistaken for a larger scale pedi-cab, but it is not since it is powered by the passengers while the steering and braking is controlled by a driver who does not provide pedaling power. The vehicle that will be used for this specific business is a pedal-assisted motorized electric vehicle that is licensed with the North Carolina Division of Motor Vehicles as a slow moving vehicle. The vehicle travels at about 6 to 8 mph and has the ability to travel at 25 mph.

The business model includes several themed tours for customers to choose including, but not limited to, a morning spin class, a progressive dinner tour, a brewer-man tour, corporate events, singles mixers, and various fundraisers. The tours would follow specific routes that have been pre-approved by the Transportation Department. Initially, the hours of operation would be between 1:00 pm and 3:00 am Monday through Friday and no restrictions on Saturday, Sunday, and City Holidays. The City reserves the right to change the hours of operation at its sole discretion with a 30-day notice.

The citizen has worked closely with several City departments including the Planning Department, the Transportation Department, the Legal Department, the Asheville Police Department, and the Economic Development Department and at this time, all concerns have been addressed. The citizen is very committed for the business model to be successful and he intends to work closely with staff to make any necessary tweaks during the first year of operation.

The Downtown Commission gave general support for the concept of a trolley bike tour service at their meeting on November 9, 2012. They suggested that the citizen contact the Chamber of Commerce as to the feasibility of using the Chamber as its beginning and ending points since ample off-street parking is available.

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 November 26, 2012. The Public Safety Committee agreed with staff to limit the number of franchise agreements to one for the first year so that the possible impacts to existing traffic flow can be analyzed by the Asheville Police Department and the Transportation Department.

Pros:

- Supports diversified job growth and business development.
- Enhances the visitor experience to downtown Asheville.
- No direct fiscal impact to the City.

Cons:

- 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 trolley bike tour service (pub cycle) within the City of Asheville.

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

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

Councilman Smith moved for the adoption of Ordinance No. 4149 on its first reading. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE

C. RESOLUTION APPROVING REDUCTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT LOAN PAYOFF FOR 64 PINE GROVE AVENUE

Community Development Analyst Randy Stallings said that this is the consideration of a resolution to settle a Community Development Block Grant rehab loan on 64 Pine Grove Avenue for less than the amount owed.

The City provided a \$12,000 amortized and a \$27,669.81 deferred CDBG rehabilitation loan to Mary J. Foster in February 2006. Upon the death of Ms. Foster in December 2011, a balance of \$8,667.09 remained on the amortized loan. The deferred portion of the loan becomes due and payable only upon sale of the property or a transfer in ownership. The outstanding balance owed to the City at the present time is \$36,336.90. Additionally, HomeTrust Bank holds two senior notes totaling \$22,810. Total outstanding liens on the property are \$59,147.

Ms. Foster's son is the Administrator of the Estate and desires to keep the home in the family by selling same to his niece for \$60,000. The 2006 tax assessed value is \$95,900. An August 2012 appraisal reflects an "as is" value of \$89,000. The appraiser noted that the exterior paint is peeling and Mr. Foster has stated that roof repairs are needed.

The Estate submitted a written offer to settle the account for \$15,000, which HCD Committee rejected with a counter offer of \$27,252.68. The \$27,252.68 counter-offer represents 75% of the outstanding principal balance owed to the City. This amount, if approved by City Council and accepted by the borrower, would represent a satisfaction of both the amortized and deferred portions of the note.

This action meets the Council's Strategic Goals of Affordable, Job Growth and Community Development, as funds received from rehab loan payments are returned to the CDBG pool for future allocation to projects meeting these goals and relevant objectives.

Pros:

- The proposed action will enable the City to immediately recover \$27,252.68 for reinvestment in CDBG eligible activities.
- Approval would allow the estate to sell the property free of liens and encumbrances.

Cons:

- Forgiveness of debt could create a precedent for future requests of a similar nature.
- Home is being sold in a non-arms-length transaction substantially below market value.
- No assurance can be provided that the home will not be sold for a significant profit once the City lien has been released.
- Requires the City to forgive \$9,084.22 in loan principal, representing a loss of taxpayer funds.

Approval of this request and payment of the approved settlement amount by the estate would return \$27,252.68 to the City for reallocation to CDBG eligible activities. If this request is declined or not accepted, the repayment to the City will remain due and payable under the original loan terms.

The Housing and Community Development Committee recommends a reduction of the outstanding balance on the loan from \$36,336.90 to \$27,252.68 as payment in full, subject to receipt of payment by the City by January 21, 2013, or any approved extension thereof as set forth in the resolution.

Councilman Pelly was concerned about setting a precedent in reducing the loan especially since there is no demonstrated financial hardship and there is significant equity above and beyond what is owed on the house. He would have to vote against this action.

Councilman Hunt was also troubled with setting a precedent because it does seem that there is capacity to fully repay the loan. Therefore, he moved to recover all of the balance and that we do so by requiring \$20,000 immediately and finance the residual balance due on both loans combined over 10 years at whatever the prevailing Affordable Housing Trust Fund interest rates that we normally charge.

In response to Vice-Mayor Manheimer, Community Development Director Jeff Staudinger said that there is no policy relative to forgiveness of old CDBG loans. Generally speaking the practice has been that those loans are repaid in full. We have deferred many of those loan packages and since he has worked for the City, none have been forgiven.

In response to Vice-Mayor Manheimer, Mr. Staudinger said that affordability for the household was determined at the time the loan was made. If the household could afford a monthly payment, a monthly payment was agreed to, but the amount necessary to do the necessary repairs if a portion could not be afforded by the household) wasn't seen as an impediment to doing the work and that portion was deferred until the sale or transfer of the property. For this loan, a portion of the loan was a performing loan and a portion of the loan was deferred.

Mr. Staudinger said that there may be a way to do Councilman Hunt's proposal but it cannot be done with CDBG funds less there is an income qualified person living in the house. The family has not provided evidence that an income qualified person would continue to live in the house. In that case, since CDBG funds must always show benefit to low and moderate income persons, that portion of the loan cannot be further deferred with CDBG funds. One option could be that we could look at local funds replacing some of those CDBG funds. This has not been discussed at the Housing & Community Development Committee.

In response to Vice-Mayor Manheimer, Mr. Staudinger said that the death of Ms. Foster triggers repayment due and the need to make arrangements for that deferred portion. We don't press that to happen, but often times this results in a transfer of the property. When the property is transferred and the closing happens in advance and we learn that is happening, then we have to take the action to recover the CDBG funds.

In response to Vice-Mayor Manheimer, Mr. Staudinger said this is a mortgage on the property. A portion of the mortgage was performing and a portion of that was deferred payment of principle and interest.

Councilman Davis was concerned that this was a housing rehab loan in 2006 and in looking at the house now, he wondered what type repairs were made since the roof and gutters need to be replaced, the house needs to be repainted, etc. Mr. Staudinger replied that the rehab records were found for this property so we have full documentation of the rehab. There was significant rehabilitation work for the property, which included replacement of all appliances and rebuilding of the kitchen, replacement of the bathroom, roof replacement (which at that time may have been a partial roof replacement), etc.

After further discussion, at Mayor Bellamy's suggestion, it was the consensus of Council to refer this back to the Housing & Community Development Committee to rethink this process not only for this issue but if we get the PACE Program using sustainability funds.

Councilman Hunt withdrew his motion.

Vice-Mayor Manheimer felt it would be helpful to have some policy going forward for future review of these type issues.

D. RESOLUTION NO. 12-260 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO A CONSERVATION EASEMENT TO THE CONSERVATION TRUST FOR NORTH CAROLINA APPLICABLE TO THE NORTH FORK AND BEE TREE RESERVOIR WATERSHEDS

City Attorney Oast said that this is the consideration of a resolution authorizing amendment of the Conservation Easement applicable to the North Fork and Bee Tree reservoir watersheds.

The North Fork and Bee Tree Reservoir Watersheds are subject to a conservation easement held by the Conservation Trust for North Carolina (herein "CTNC"). This easement was entered into in 1996, and was one of the first in North Carolina. One of the recommendations of the 2011-12 Legislative Research Committee studying the water system was for the City to work with CTNC to clarify the easement to aid in the protection of the drinking water used by the water system.

Individuals experienced in the field of conservation easements, including attorneys and conservationists, have reviewed the 1996 easement and have identified several ways in which the North Fork/Bee Tree Watershed easement might be revised to make it more consistent with current recommended practices. With this in mind, we have been working with Greg Gregory of the Asheville law firm of Marshall, Roth & Gregory to revise the easement. Mr. Gregory has

experience working with conservation organizations and conservation easements, and has ready access to other experts in the field.

He has met with Mr. Gregory on several occasions, and discussed several areas in the easement that should be considered for review and possible revision. They also reviewed information supplied by other conservation organizations, including the Southern Appalachian Land Conservancy and the Conservation Trust for North Carolina, as well as the easement for the Waynesville watershed, which is more recent than the North Fork/Bee Tree Watershed easement. Bearing in mind that the primary purpose of the watershed is to be a source of raw water for the water system, there is considerable overlap between that purpose and the purposes of land conservation. However, there are some areas where clarification is advisable.

1. Forest Management. The watershed was logged in the early part of the 1900's (before the City acquired it), but is now thickly forested. While one purpose of a conservation easement is to keep land in a natural or undisturbed state, some management of the forest within the watershed is needed to ensure that the watershed fulfills its primary purpose of providing drinking water. A forestry management plan was prepared in 2004, but has not been implemented. Forestry management goes much beyond harvest-oriented logging to include such issues as road and trail maintenance and construction, stream health, fire control and emergency access, and control of invasive plants and insects. Active maintenance in these areas can be critical to maintaining forest health for drinking water purposes.

The revised easement provides for the development of a detailed forest stewardship and property management plan, including wildlife and plant inventories, habitat protection, invasive species control, and stream buffers. Commercial logging of any kind is prohibited; to the extent that selective harvesting of trees is needed to maintain the watershed, prior notification and a plan are required.

2. Recreation/Other Uses. The current easement allows the use of the watershed property for recreation purposes not inconsistent with the watershed use. The City has previously allowed a segment of the mountains to sea trail to cross the upper end of the watershed property. Other uses, such as the filming of "The Hunger Games" movie, have occurred there. The range of permitted uses – other than water production and related uses - - has been more clearly defined. In essence, there is no commercial use of the property permitted, and no recreational use, except with permission of the Grantee. While this is a broad prohibition, the easement contained language that would allow for "other uses" that do not impair the conservation values, such as educational or research activities; or "any use for which a large, undeveloped tract of property is necessary or desirable."

3. Water Production. The revised easement affirmatively allows for use of the property for drinking water production. He showed a map which clearly identified the areas where the production facilities are located, and provided that such facilities may be enlarged, replaced, and maintained to ensure continued production of drinking water. The areas on which these facilities are located are excluded from the easement. Expansion of facilities on to the easement area is permitted if necessary for water production.

4. Enforcement. The revised easement contains more detailed provision regarding the Grantee's rights as to enforcement. Specifically, the revised easement allows access to Grantee to ensure compliance with the terms of the easement regarding water production activities, and other activities by the City. The easement also contains provisions, typical of many such arrangements, for notice of violation of the easement terms, and an opportunity to cure.

5. Surveys/Plats. As noted above, the easement provides for preparation of forest stewardship and property management plans. The responsibility for performing this work rests with the Grantor and Grantee jointly, with no allocation of responsibility for performing or paying for it. We have been advised that CTNC has obtained a commitment for funding for the initial plans, and the easement now reflects that. Subsequent updates (every 10 years) will be the City's responsibility, subject to annual budgetary allocation. Additional grant funding may be available for this in the future.

Similarly, the watershed property and its internal areas (impoundment area, water production facilities) have not been surveyed. A survey is the most precise way of identifying property boundaries, and the areas within the property. As with the forestry and property management plans, this survey work is important to fulfilling purposes of the easement, but it is recognized that the cost of completing it is substantial. Grant funding may also be available for some or all of this work. The City and CTNC could agree, via joint memorandum or letter, to cooperate in seeking funding for and facilitating the survey work.

While a survey does not yet exist, a written description does, and this is sufficient for purposes of the easement. A map has been prepared from the written description supplemented with GIS information, showing the boundaries and the location of the impoundment areas and water production facilities. The easement makes reference to this map. As survey work is completed, the easement can be amended to refer to it.

6. Binding Effect/Eminent Domain. The revised easement runs within the land, and would continue to be binding on the successors and assigns of the parties. An easement has value as an interest in land. If the property were taken for use by a governmental agency and the easement terminated, the holder of the easement is entitled to compensation for the value of the interest or partial interest taken.

7. Finalization/Recordation. This is an amendment to an existing easement, not the original grant of the easement. The statutes applicable to the granting of easements by cities provide for several ways to accomplish the grant. One method consistent with the original authorization in 1996 is to authorize the execution of the amendment, direct the clerk to publish a notice of the City's intent, and to finalize the transaction ten days after the advertisement has run. Using this method, the transaction could be completed by year's end.

This action is consistent with the recommendations of the legislative research commission, and consistent with the City's desire to maintain and improve the water system, as expressed in Resolution No. 12-36, adopted in February 2012.

Pros:

- Fulfills legislative request
- Strengthens protections for watershed
- Clarifies some ambiguities in current document
- Recognizes and preserves primary purpose of drinking water production

Cons:

- Limits flexibility with regard to other consistent uses of property
- Unknown cost of 10 year updates to plans.

Adoption of the resolution has no immediate financial impact. The cost of future surveys and plan updates would be included in the Water Resources Fund budget.

Adoption of the resolution is recommended.

Mr. Gregory explained what a conservation easement is and reviewed in detail the outlined above by City Attorney Oast.

Councilman Hunt said that years ago our leaders and citizens clearly had a vision that acquiring pristine forested watershed to ensure the quality of drinking water was very important, and in 1996 the conservation easement was adopted. Since 1996 the skill and thoroughness of understanding how conservation easements work and skill of attorneys at drafting them effectively has come a long way. We have many conservation easements on nearby watersheds, e.g., Woodfin, Waynesville, Sylva, Andrews, Bryson City, etc. All those easements are significant improvements and provide more thorough and certain protection for these conservation values. He felt that CTNC is an excellent reliable partner to adopt to the changing environment. This is a step to make sure that the original easement matches our practices in protecting the watershed.

Councilman Hunt moved for the adoption of Resolution No. 12-260, subject to minor editing changes. This motion was seconded by Councilman Bothwell.

Mr. Gregory said that this amended easement is subject to minor editing changes, noting that even there is no commercial recreation is allowed, the City would be able to request certain uses that are not served in the laundry list and, as long as the request does not impair the conservation values the property, the approval of that use would not be unreasonably denied or withheld by the CTNC. The CTNC would be able to impose conditions on that and that clause or term would only last so long as the City is still the owner of the property.

Mayor Bellamy asked several pertinent questions and received responses as follows:

1. Looking at other conservation easements, does the CTNC compensate the entity?
Mr. Gregory said there can be easements of purchase or a bargain sale, but that is not the approach with this one, noting the easement already exists and we are only amending and restating it. No dollars have been exchanged.
2. The easement states that there is some buy-in effect and if we are to break the easement we have to compensate CTNC. What is the basis of that compensation?
Mr. Gregory said that the CTNC is a 501 (c) (3) non-profit and they have certain duties they have to comply with in terms of holding these easements. From 1996 they already have a present compensable property right in this property that if there were any kind of condemnation that award is split between the property owner and the easement holder.
3. Concern that if the water system is taken from us by the State gives us a check through MSD, according to this easement, we have to split it with CTNC.
Mr. Gregory said that is by operation of the law. Even if that clause were not in there, it would be split between the two entities because part of the property right with what an appraiser could attach a dollar value to that is already owned by the CTNC. The reason why that clause is in there is to clarify and state the existing state of facts.

Vice-Mayor Manheimer said that if the system is somehow transferred to MSD and it includes this property, it would still be subject to an easement. The City may lose title entirely to the property, but it would still be subject to the conservation easement.

Mr. Gregory said that there may be some compensation due to the property owner at that point, but if the conservation easement is not interfered with, none of that compensation would go to the CTNC.

The legislators have a broad range of options. They could take the property subject to the easement or eliminate the easement.

4. What is the term of the conservation easement? We are saying that whatever happens to the watershed, City Council doesn't have any final say-so over it or how its run. We do have a responsibility to pay for and implement the forest management plan and update it every 10 years. We also have to prepare forest stewardship and property management plans, that are not even approved by City Council. We also don't know how much those will cost but we still need to implement it. We are binding future councils and are giving up ultimate authority over the watersheds.

Mr. Gregory said that this easement is in perpetuity, forever. The grant has already been made in 1996 and that was perpetual as well. The language of the document is that broad enough to include potential funding or cost sharing to see if grant monies are available.

City Attorney Oast said that we are relinquishing a greater degree of discretion than we had under the previous conservation easement. This is the product of the work done and shared with the Planning & Economic Development Committee. This is a policy decision for City Council. While it is true we are relinquishing some additional discretion with this amended easement, there was already a lot we couldn't do with the property.

5. This easement calls for disputes to go straight to court. She asked for some language to say that if after 30 days the dispute has not been taken care of, that we go to mediation opposed directly to court.
6. It's clear that the Grantor has access to the grounds for improving the water quality, but the Grantee has unlimited access. It should also be limited for the Grantee as well.
7. Regarding termination, it reads that the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award. That language should be clarified because it's not clear that if the City receives some money from the property being taken from us, it still reads as if CTNC gets a portion of that money even if the easement continues to go with the land.
8. If the CTNC cannot fulfill its obligations, why doesn't it come back to City Council for reconsideration instead of being assigned to Southern Appalachian Highland Conservancy listed, which is a Tennessee corporation? And, shouldn't there be a provision in the easement to let the Grantor know of the assignment?

City Attorney Oast said the Southern Appalachian Highland Conservancy does have a strong presence here in Asheville. We thought it was important to have a back-up holder of the same stature as CTNC.

Mr. Gregory said that the original easement has a back-up holder named the Nature Conservancy and part of the effort was to take it from a national organization as a back-up holder to someone local. The assignability of this document is the assigned by the holder already. He said said that a notice provision can certainly be added to the easement.

9. Mayor Bellamy asked if language could be included in the easement that specifically states that the Grantor retains the right to determine the ultimate use and distribution of the drinking water produced by the protected property.

Vice-Mayor Manheimer felt that Article III spells out quite clearly that the property is to be used for water supply.

Mr. Gregory said that the language in the first paragraph of Article III can be clarified to make it explicit that the Grantor undertake those uses.

Throughout Council discussion, Mr. Gregory and City Attorney Oast continued to respond to various questions/comments from other members of Council.

Councilman Davis felt this amended conservation easement goes beyond of what he anticipated. We have been good stewards of this property for many years.

Councilman Hunt said that there is a generous donor that often supports land conservation in different parts of the state and the CTNC has approached that donor and has received a tentative indication that he will fund those plan costs.

Councilman Bothwell understood these changes are making the conservation easement less brittle, because it doesn't say "yes" or "no" but at the same time it gives us better protection.

In response to Councilman Pelly, City Attorney Oast said that even though the State can terminate or condemn the easement that does not mean they wouldn't have to pay the holder of the easement the value of the rights that were taken.

In response to Councilman Davis, Water Resources Director Steve Shoaf said that his interest is protecting the water quality. He felt that the amended easement meets their needs in terms of water production. He agreed that we have done a good job in protecting this area and they have been interpreting the conservation easement to the strictest sense. The area that concerned him is able to be addressed under the amended conservation easement - the health of the forest in that we have a risk of forest fires due to dead fall and litter build-up, we need to be keeping track of that so that we don't have a catastrophic event on the watershed that would disrupt water quality. This amended easement will address that and we will be keeping a closer eye on the condition of the watershed. We have a written management plan but basically our approach is hands off. No one goes in and we have a staff of two that monitors and a hired security guard that helps monitor.

Councilman Smith will support this amended easement because he feels it is being standardized and modernizing. It was requested by the Legislative Study Committee to clarify the easement and was pleased that we may have someone to fund the plans.

Vice-Mayor Manheimer said there was strong community support for this conservation easement. We are ready for a long-term commitment in terms of the use of the property and the protection of it going forward and the point is to bind future councils. We are helping them make the future decision to always protect the property for this stated purpose.

Mr. Steve Schulte, Asheville resident, questioned what the legal relationship is between the protected property, the CTNC trust that holds that protected property, and the actual water (liquid). He asked for clarification on what the other uses would be allowed regarding recreation and if any of those uses involve the liquid water. He felt there are two issues (1) who distributes the water; and (2) who owns the water, who controls it and what rights do we really have to it. The right for us to use and distribute water does not exist in that document and the easement should be amended to include that language.

Mr. Bob Gale, Ecologist and Public Lands Director for the Western North Carolina Alliance, spoke in support of the amended conservation easement.

Mr. Hugh Erwin, Conservation Planner with the Wilderness Society, supported the amendments to the conservation easements.

City Attorney Oast said that the purpose of the conservation easement is to preserve the pristineness of the watershed and the forest resources within it. He then responded to the questions raised by Mr. Schulte.

Mayor Bellamy said that if we don't use the property anymore for water, the Grantee gets to set forth the rights of what will happen. Mr. Gregory said there are other consistent uses, like protecting and managing the forest and habitat, but he didn't think the easement contemplates that it would not be used for water. That is the number one use that is trying to be protected.

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

The motion made by Councilman Hunt and seconded by Councilman Bothwell, subject to minor editing changes discussed, carried unanimously.

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E. RESOLUTION NO. 12-261 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT THROUGH THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY FUND

Assistant City Manager Jeff Richardson said that this is the consideration of a resolution authorizing the City Manger to apply for grant funding from the Tourism Product Development Fund (TPDF) during the 2013 funding cycle for the (1) Phase I of the "River to Ridge" initiative, a multi-modal approach to connecting visitors from the River Arts District to Overlook Park in downtown Asheville through a phased series of projects and (2) Phase III renovations at U.S. Cellular Center.

The Buncombe County Tourism Development Authority's Tourism Product Development Fund (TPDF) was created by the State Legislature in 2001. This makes funding possible for tourism projects that will increase the number of overnight stays by visitors in Buncombe County lodging properties. Project requirements must (1) increase lodging nights; (2) be shovel ready; and (3) matching funds.

The City has previously received TPDF funding for the Wayfinding Partnership and two phases of upgrades to the U.S. Cellular Center, including the ExploreAsheville.com Arena. Additionally, the WNC Soccer Foundation received \$400,000 of funding for the City's John B. Lewis Soccer complex in 2002, 2004, and 2009. A history of all projects that have received TPDF funding is available on the website.

A "Frequently Asked Questions" information sheet that outlines the criteria and funding process for the TPDF is available on the website. This document answers many of the questions about the guidelines and eligibility for funding of projects.

In an effort to leverage resources and build on priorities in the City's strategic operating plan, develop partnerships with the Tourism Development Authority, and meet core funding criteria of the TPDF, staff has identified two projects for this year's funding cycle. Given that the TPDF does not fund design work, all preliminary work will be completed by the City.

The current year project requests will be for (1) U.S. Cellular Center renovations Phase III (a) TDA request is \$850,000; (b) mezzanine level renovations to Explore Asheville.com Arena, club level amenities/additional meeting rooms; and (c) City match - \$505,000; and (2) Phase I: River to Ridge Initiative: Overlook Park Development (a) TDA request is \$1 Million; (b) overlooks, picnic areas, lighting, benches, signage, park entrance improvements, trash bins; and (c) City match - \$1 Million.

This action supports the City's strategic priorities to invest in infrastructure and facilities while leveraging diverse sources of revenue to implement goals included in the City's master plans.

Pros:

- Allows the City to apply for revenue sources - outside of property taxes – to address infrastructure and other high priority projects.
- Like the U.S. Cellular Center project, the River to Ridge initiative is a multi-year, multi-phase project that would provide an opportunity to apply for funds in future TPDF cycles.

Cons:

- Projects must be "shovel ready" and include matching dollars; therefore, the City must program funds in the five-year CIP for land acquisition, design and other preliminary work to make projects eligible for future grant cycles. Funding is not guaranteed, and so the City would either have to delay projects or program contingency funding for construction if grant funds were not awarded.

Funding awarded during the 2013 cycle would allow the City to accelerate the Greenway Master Plan, the Wilma Dykeman Riverway Plan, the Bicycle and Pedestrian Plan and complete Phase III renovations to the U.S Cellular Center. Cost estimates for additional project components are being developed at this time and will be available by the time applications are due in January. CIP funding has been budgeted for components of both recommended projects. If grant funding was awarded for these projects, the projects could either be extended or CIP funds could be directed to other projects.

Future year considerations for 2014, 2015 and 2016 will be (1) Phase II: River to Ridge Initiative: Town Branch Connection; (2) Phase III: River to Ridge: Depot Street Connector and Clingman Forest Greenway; and (3) Nature Center Visitors Enhancement Project.

City staff recommends City Council approve the resolution as proposed.

Mr. Richardson and Parks, Recreation & Cultural Arts Director Roderick Simmons responded to various questions/comments from Council, some being, but are not limited to: where the City matching funds coming from for both of the projects; Friends of the Nature Center would like their project moved up from 2016; and are there places for people to access the Overlook greenway.

When Councilman Hunt felt we should be connecting downtown to the river as a priority, Mr. Simmons said that we already have the money budgeted for the design of the Beaucatcher project.

In response to Mayor Bellamy, City Manager Jackson said that staff can produce the Capital Improvement Plan and go through the list of projects that might qualify but McCormick Field is not a project that rises to meet that criteria. Staff did not provide the list of projects that would not meet the criteria for the Product Development Funds. Mr. Richardson noted that the TDA wants to see an immediate connection of the investment and will this increase room nights. Some of the necessary improvements of the McCormick Field CIP, bleacher replacement as an

example, staff didn't feel that an improved level of seating would increase room nights. There is an exhaustive internal process to try to identify the projects that will be most competitive.

Ms. Judy Strong urged Council to apply for funds for McCormick Field because it is shovel ready and you have money funded to pay for the project. She suggested the City apply for the McCormick Field and ask for perhaps a match of half what is needed and if they approve it, the City will have at least half of their matching funds for something else.

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

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-261. This motion was seconded by Councilman Smith and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Timothy Sadler expressed concern for the natural gas industry.

In response to Councilman Hunt, Councilman Smith, liaison of the Transit Commission, said that they looked at going from B-5 to another blend but after much study it was ultimately decided not to pursue that.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:07 p.m.

CITY CLERK

MAYOR