

Tuesday – January 8, 2013- 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 Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Marc W. Hunt (planned vacation)

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Pelly gave the invocation.

**I. PROCLAMATIONS:**

**Connecticut School Shooting**

Mayor Bellamy said that after the horrific elementary school shooting in Connecticut a lot of information has gone out to the parents in the City and County Schools. She has met with the County Commissioners, Sheriff, Police, Fire, Emergency Medical Services, Superintendents of the Asheville City and Buncombe County Schools, A-B Technical Community College, etc. about how to respond in our community. Sheriff Van Duncan is leading the effort to look at all our plans in place and to ensure they are the best plans. We will look to those that are in the emergency management field to help lead us. Behind the scenes, our public safety personnel are constantly meeting with our school systems to make sure they have updated plans regarding emergency management. The recent meeting wasn't the first time that our public safety personnel have met to talk about these issues. She pointed out that finding solutions to on-going problems will have to include mental illness, not just about gun safety. As we talk about these issues, she hoped we will look at them in a holistic manner. The Sheriff did ask for 30-60 days before he issued a report and the Police Chief will report back to Council if there are any budget implications.

**II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 11, 2012**
  
- B. SECOND READING OF ORDINANCE NO. 4149 - ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A PUBCYCLE SERVICE WITHIN THE CITY OF ASHEVILLE**  
  
**ORDINANCE BOOK NO. 28 – PAGE**
  
- C. RESOLUTION NO. 13-1 - RESOLUTION SUPPORTING STAFF TO DESIGNATE CERTAIN ON-STREET AND OFF-STREET PARKING SPACES FOR CAR SHARING PURPOSES**

Summary: The consideration of a resolution supporting the City's Traffic Engineer to designate certain on-street parking spaces for car sharing purposes on an as-needed basis and for the City's Traffic Engineer to designate certain off-street parking spaces (surface parking lots and parking garages) for use by specific car share companies on an as-needed basis.

City Council's current strategic operating plan includes an objective to "study alternative options for parking, to include the creation of a downtown trolley". The Downtown Master Plan (DMP) also mentions this objective as well as an action step to dedicate some public parking spaces for use by shared-car services in order to expand mobility choices and reduce the need for downtown residents to own cars.

The DMP Transportation Sub-committee explored both ideas and concluded that a primary obstacle for a downtown trolley is money including capital and operating funds. They also felt that there would be direct competition for the funds with the current transit system. The sub-committee favors the concept of car sharing and the U-Haul Company has approached the City with a program that only requires the City to provide on-street parking spaces and the enforcement of the spaces (The City would also fabricate, install, and maintain the appropriate sign needed to identify the parking space). Staff shared the potential program with the Downtown Commission and received their support during February 2012.

The City's Legal Department then performed extensive research and concluded that the City is authorized to reserve on-street parking spaces for car sharing purposes generally but not to specific car share companies. Although staff (traffic engineer) has the authority to designate and/or restrict on-street parking spaces (according to the code of ordinances), the Legal Department recommends City Council approval as well because the potential parking spaces are located in the public right-of-way and there could be a revenue loss. They also concluded that the City is authorized to reserve off-street parking spaces (surface parking lots and parking garages) to specific car share companies. City Council approval is recommended for the off-street parking spaces since there could be a loss of revenue.

This action complies with the City Council Strategic Operating Plan in the Multimodal Transportation Area by providing an alternative option for downtown parking and 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.

Pros:

- Would compliment the City's overall transportation system.
- Serve public purposes such as providing an alternate means of transportation, reducing traffic congestion, and lessening the environmental impacts of commuting.
- Would enable downtown residents to choose not to own a vehicle.

Con:

- Loss of revenue generating on-street parking space(s).

The fiscal impact for a car sharing program within the public right-of-way would be the value of a metered on-street parking space and the cost to fabricate and install an appropriate sign to identify the parking space. Based on revenues collected during FY 2011-12, staff estimates that the amount of lost revenue annually from this program would be less than \$1,900. The estimated cost to fabricate and install an appropriate sign is about \$50.

Staff recommends that City Council approve a resolution supporting the City's Traffic Engineer to designate certain on-street parking spaces for car sharing purposes on an as-needed basis and for the City's Traffic Engineer to designate certain off-street parking spaces (surface parking lots and parking garages) for use by specific car share companies on an as-needed basis.

**D. RESOLUTION NO. 13-2 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND, IF AWARDED, ENTER INTO A GRANT AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR CONSTRUCTION OF THE BEAUCATCHER GREENWAY**

Summary: The consideration of a resolution authorizing the Mayor to apply for and, if awarded, enter into a grant agreement with the N.C. Dept. of Environment and Natural Resources for construction of the Beaucatcher Greenway.

Funds are available through the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the Recreation Trails Program (RTP) to assist with the development of parks, recreational facilities, and greenways. The City wishes to submit a grant application not to exceed \$200,000. If awarded, grant funds will be used to reimburse the City for future expenses related to construction at the Beaucatcher Greenway.

The grant application requires a cash, in-kind, or force labor match of 25 percent of the requested funds (\$50,000). The cash match is available through funds currently budgeted in existing capital projects.

In 2008, the City received a grant from the North Carolina Parks and Recreation Trust Fund to assist with the land acquisition for Beaucatcher Greenway. City Council approved the City Manager to enter into a contract to develop architectural and engineering construction documents for Beaucatcher Greenway on November 27, 2012.

Construction for the greenway will begin at Memorial Stadium, travel north along the west slope of Beaucatcher Mountain to College Street for a total of 1.25 miles. The RTP grant application will support construction elements that include erosion control, grading, stone basing, and asphalt paving.

The Recreation Advisory Board endorsed Beaucatcher Greenway as a priority greenway linking downtown Asheville to the French Broad River at its meeting on April 9, 2012.

This action complies with the City Council 2012-2013 Strategic Operating Plan in the areas of Fiscal Responsibility in that it provides alternatives for enhancing the City's long-term financial commitment to Master Plan implementation, infrastructure maintenance, capital improvements, and public facilities. This action also complies with the Parks, Recreation, Greenways, and Cultural Arts Master Plan in that it 1) increases the urban network of parks and greenways in the downtown Asheville area; and 2) increases funding with alternative funding via grants and ensuring a high level of service in parks and facilities by addressing capital projects to meet community standards. In addition, this action complies with the River-To-Ridge Initiative in that Beaucatcher Greenway is a priority greenway corridor that will link downtown Asheville to the French Broad River via continuous multi-access parkway connecting bike lanes, sidewalks and greenways.

**Pro:**

- If awarded, the grant will reimburse the City for future construction expenditures up to \$200,000.

**Con:**

- The grant application process is competitive and a grant award is not guaranteed.

If awarded, the grant is for one-time construction cost for the Beaucatcher Greenway that will increase the budget not to exceed \$200,000. This increase is funded by a grant from the North Carolina in the Department of Department of Environment and Natural Resources Recreation Trails Program. The grant application requires a cash, in-kind, or force labor match of 25 percent of the amount requested (\$50,000), which is already available through a combination

of funds currently budgeted in existing capital projects. Thus, there is no impact to the City's General Fund budget.

City staff recommends City Council to adopt a resolution authorizing the Mayor to apply for and enter into an agreement for grant funds through the North Carolina in the Department of Environment and Natural Resources Recreation Trails Program not to exceed \$200,000 for reimbursement of future construction costs for the Beaucatcher Greenway.

#### **RESOLUTION BOOK NO. 35 - PAGE 150**

#### **E. RESOLUTION NO. 13-3 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITEWORK STUDIOS TO DEVELOP ARCHITECTURAL AND ENGINEERING CONSTRUCTION DOCUMENTS FOR THE CLINGMAN FOREST AND TOWN BRANCH GREENWAYS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Sitework Studios to develop architectural and engineering construction documents for the Clingman Forest and Town Branch Greenways, and to conduct other necessary pre-development activities for a project budget not to exceed \$370,000.

The Clingman Forest Greenway and Town Branch Greenway constitute a priority alternative transportation corridor through the core of the East of the Riverway Target Area. These multi-modal greenways will eventually connect with the Beaucatcher Greenway and comprise a significant and important portion of the River-To-Ridge Initiative.

*Clingman Forest Greenway* – The Clingman Forest Greenway will stretch between Aston Park at Hilliard Avenue and Clingman Avenue. The off-road, 0.5-mile trail will largely follow the unopened city right-of-way of Eugene Avenue through a wooded ravine. Secondary trails to rock outcrops along the perennial stream will be considered as well as connections to Asheville Middle School, YWCA, Aston Towers, and other destinations.

*Town Branch Greenway* – The Town Branch Greenway will extend from Depot Street, in the River Arts District, to the intersection of Phifer and McDowell Street. The 1.3-mile corridor will begin adjacent to Green's Market on Depot Street and extend off-road along the rear of the Dr. Wesley Grant, Sr. Southside Center and fire station and out to South French Broad Avenue. The off-road trail will pick up across the street and extend through the wooded ravine along Town Branch Creek to Congress Street. The greenway will cross Congress Street, follow the creek through City park property, cross over Choctaw Street and extend north through city property along Old Asheland Avenue. The corridor will terminate at the intersection of Phifer and McDowell Street.

The development of final design and construction documents for the Clingman Forest and Town Branch Greenways is one of the deliverables of the East of the Riverway Sustainable Multi-Modal Neighborhood Program, supported by a TIGER II Planning Grant awarded to the City of Asheville by the US Department of Transportation. The TIGER II funds allocated to the two Greenways totals \$280,000, supported by a City cash and in-kind match of \$56,000 (20% of grant funds).

City Council appropriated funds for staff to proceed with a land acquisition within these corridors by allocating funds in the CIP budgets of 2010-11 and 2011-12.

In February 2009, City Council approved the Parks, Recreation Cultural Arts, and Greenways Master Plan which identifies Clingman Forest and Town Branch Greenways as priority greenways.

Staff followed the municipal and required Federal Transportation Administration "Request for Qualifications" procurement processes to seek qualified, professional firms to develop final design and construction documents. Staff received eight applications, and a panel of staff and community members reduced this pool to three finalists. After thorough review and evaluation, the review panel recommended Sitework Studios, located at 352 Depot Street, Asheville, North Carolina as the most qualified to perform the architectural and engineering services for the Clingman Forest and Town Branch Greenways. Staff has successfully negotiated a final scope of work and project budget with Sitework Studios.

This action complies with the City Council Strategic Operating Plan Multimodal Transportation Goal to integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to the river, and other system improvements resulting in funding priority list. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it increases the urban network of parks and greenways in the downtown Asheville area. In addition, this action complies with the River-To-Ridge Initiative in that Clingman Forest Greenway and Town Branch Greenway are primary greenway corridors to link French Broad River and downtown Asheville via a continuous multi-access parkway connecting bike lanes, sidewalks and greenways.

Pros:

- Expand the ability to provide recreation resources to a number of residences and neighborhoods that can be linked to this corridor
- Provide a critical linkage in the River to Ridge Initiative
- Enhance multi-modal transportation in the community
- Compliment the recent improvements made by the City and private sector in these neighborhoods
- Engage community members in the design process
- Complements other multi-modal transportation planning efforts in the community

Con:

- Once complete, the project will require additional maintenance resources.

This project is funded with budgeted sources, with local funds leveraging significant federal funding. The \$370,000 to support the contract is budgeted via HUD TIGER II Grant (\$280,000), Stormwater Account (\$29,500) and the CIP Greenway Development Account (\$60,500). The City cash resources, along with City in-kind staff hours, are more than sufficient to meet the match required by the grant; such amounts have been approved by Council.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Sitework Studios to develop the architectural and engineering construction documents for the Clingman Forest and Town Branch Greenways for an amount not to exceed \$370,000.

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

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

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

### **III. PRESENTATIONS & REPORTS:**

## **A. GREENWAY COMMISSION UPDATE**

Mr. Jim Grode, Chairman of the Greenway Commission, briefed Council on their activities of the past year and goals for the upcoming year.

Mayor Bellamy was concerned of the Commission's goal to "pursue the means to readily add projects to the Parks & Recreation Master Plan". She said that the Master Plan is essentially unfunded and we are working on pieces of it. We already have a long list of projects that the community is waiting on. She questioned adding more projects into that plan that has already had substantial community input and no funding plan in place.

City Manager Jackson said that staff will be working with the Greenway Commission during their retreat to help distinguish between vision documents and a capital plan that has money behind it. There should be some flexibility for your advisory body to gain public input and make the vision document a live, dynamic document so that it gets refined overtime.

Mayor Bellamy asked that before public hearings are held about adding new projects that City Council is advised about what will be pursued. Mr. Grode said that what Mayor Bellamy is suggesting is exactly what the Commission had in mind. They would be looking at a vision document and not a funding-based document at this point.

Mr. Grode responded to Councilman Smith when he asked how the Greenway Commission will be involved in the multi-modal plan process.

On behalf of City Council, Mayor Bellamy thanked Mr. Grode for his leadership and the entire Commission for their dedication.

## **B. ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION UPDATE**

Ms. Hillary Cole, Chairman of the Asheville-Buncombe Historic Resources Commission, briefed Council on their activities of the past year and goals for the upcoming year. She requested the City write a letter to the County asking for an increase in the amount of money they provide to the HRC (in 2012 they received \$4,500), since it is a joint body created in 1979.

Vice-Mayor Manheimer said that there may be a way to approach the County other than a public address about increasing their funding, since the provision regarding the funding states that "an annual budget may be appropriated ...". She felt there may be a way to broach that conversation with the County and have them look at the funding differently.

At the request of Councilman Smith, Ms. Cole said that she would provide Council with a copy of the Historical Structure Inventory.

Ms. Cole responded to Councilman Smith when he asked what city in the nation would the HRC see as a model going forward. She said that Charleston, S.C., has a good preservation plan in place but it is extreme. Austin, Texas, has a good plan, and Salisbury, N.C., has a really good way of looking at preservation and development.

Mayor Bellamy asked that going forward, as you look at the different models, she hoped that the Commission would be open to looking at a hybrid of the different models for preservation minded development.

On behalf of City Council, Mayor Bellamy thanked Ms. Cole for her leadership and the entire Commission for their dedication.

### **C. WATER RESOURCES UPDATE**

Project Manager Phil Kleisler updated City Council on the Water Resources process update from December 11, 2012 - January 8, 2013. He then provided Council with the information sharing between the City and MSD, along with resolutions from the Town of Franklin and City of Conover opposing legislation that provides for the forced taking of municipal water systems. The City of Hendersonville had the item on their agenda; however, it was pulled at the last minute.

#### **RESOLUTION NO. 13-4 - RESOLUTION REQUESTING INCLUSION OF ITEM FOR N.C. LEAGUE OF MUNICIPALITIES ADVOCACY AGENDA FOR 2013: RETENTION OF LOCAL CONTROL OVER PUBLIC ENTERPRISE UTILITY SYSTEMS**

City Attorney Oast said that the North Carolina League of Municipalities will be holding its legislative advocacy goals conference on January 23 and 24. This is the occasion where the League develops and approves its legislative agenda for the coming session of the N.C. General Assembly.

Asheville's experience with recent legislative actions regarding its water system has attracted the attention of the League and several North Carolina cities. The potential for Asheville's experience to establish a precedent for other cities is a matter that concerns the League and its members, and we are asking the League to consider including an item addressing this issue among its legislative advocacy goals for 2013.

As noted above, the League's legislative advocacy conference is January 23 and 24. In order to be eligible for consideration, this request must be made on or before January 14.

Councilman Bothwell heard that the reason why the City of Hendersonville withdrew their resolution was due to a threat conveyed from one of the legislators that things would not go well for Hendersonville if they voted for it. We cannot allow the legislators to take assets from people in our City or our State.

City Manager Jackson said that we are continuing with our good faith relations with the Metropolitan Sewerage District (MSD). There are opportunities to achieve additional economies thorough partnerships and sharing of functional operations, such as fleet management and purchasing operations. He will be communicating in writing to the General Manager of MSD that we are happy to explore those in greater detail with them to make sure that both utilities are operating at peak efficiency.

Mayor Bellamy said that at the event with Governor McCrory he said that he was open to receiving information about the water system, so we did supply a package of information to him. Governor McCrory said that what was important to him was the system being run effectively. She has asked the City Manager to prepare some information for the Governor specifically on that issue, noting we have an increased bond rating, a Capital Improvement Plan, a program in place that details how we will spend our money and what the money will be used for, and that the investments made have transformed our system. She also suggested a copy of that information be provided to the City's legislative liaisons so they can approach the appropriate folks.

Vice-Mayor Manheimer said that when we met with the local legislators in the recent information sharing meeting, it was easy to be an advocate for Asheville and the running of our water system because our staff has done a great job. Since the agreement under the Water Authority was terminated, our financials are transparent, our bond rating has increased, and the investment in the system has been improved. One of the hurdles that we face legislatively is the perception about the running of the water system, and that has been addressed - the system is

extremely well run and extremely efficient and managed from a financial standpoint in a very responsible way. That cannot be a motivating factor for any legislative action.

Mayor Bellamy noted that the Governor saw the protestors on Macon Avenue and he asked that any discourse stay at the level of respect.

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 Pelly moved for the adoption of Resolution No. 13-4. This motion was seconded by Councilman Bothwell and carried unanimously.

#### **RESOLUTION BOOK NO. 35 – PAGE 152**

#### **IV. PUBLIC HEARINGS:**

- A. 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**

**ORDINANCE NO. 4150 - ORDINANCE AMENDING 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**

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

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

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

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

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



After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:56 p.m.

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

Mr. Pennington said that this is the consideration of 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.

Mr. Pennington said that applicant is requesting an amendment to the previously approved conditional use permit to modify elements of the approved master plan related to common amenities, access and architectural features.

The project site consists of a subdivision of approximately 82.72 acres located within the vicinity of Elk Mountain Scenic Highway, Tsali Trail, Beaverdam Road and Wild Cherry Road. (Aerial map - Attachment to City Exhibit 3) The site is accessed by an internal "spine" road known as French Willow Drive. Other smaller streets have been constructed within the subdivision with direct access to French Willow Drive. The majority of the subject property is zoned RS-4 and the steepest portion of the property to the north is zoned RS-2. The site is located in the City of Asheville's corporate limits with the exception of approximately one acre that is located in the extra-territorial jurisdiction (ETJ). Surrounding properties are zoned RS-2, RS-4, RS-8 and RM-6.

The Thoms Estate project was approved by City Council on April 10, 2007, as a 132 unit residential subdivision, reviewed as a conditional use permit for 4 phases. They started Phase I (City Exhibit 4 - Copy of Master Plan). The project received modifications from City Council under a previous system that allowed for development standards to be modified if the project achieved at least three (3) higher standard amenities as identified on the Exceptional Development Checklist. As part of this approval, City Council approved modifications to setbacks, lot sizes, lot widths, road right-of-way widths and sidewalk requirements. Sidewalks were constructed along Elk Mountain Scenic Highway, Tsali Trail and a portion of Wild Cherry Road. A fee-in-lieu of sidewalk construction was collected for the remaining frontage along Wild Cherry Road. Pedestrian access was proposed at multiple access points including Elk Mountain Scenic Highway, Tsali Trail and Wild Cherry Road and a greenway easement was proposed along Beaverdam Creek.

Grading and infrastructure construction started on the site in the fall of 2007 under the direction of the former owner – Global Development Resources. Lot sales were lackluster and construction of this project later coincided with the downturn in the economy in 2008. The property was foreclosed upon by BB&T Bank in 2010 and the bank moved forward with the development of the remaining subdivision infrastructure for phase I and two subsequent phases – II and IIIA. Pursuant to the original CUP approval, subsequent phases receive a final review by the Technical Review Committee. Two final phases of the project remain – IIIB and IV. Earlier this year, BB&T sold the property to the current developer – Gated Communities of Asheville, LLC.

The original approval included an ambitious list of amenities that were more typical of higher end subdivisions during the height of the real estate boom in the middle of the last decade. The current owner is proposing an onsite alternative to the secondary fire department access and to scale back some of the common area amenities. The following modifications are requested:

- The original approval required that a cross access agreement be executed between the Thoms property and the property retained by Selene Thoms (Thomsland Inc) for fire access purposes. The revised request includes a redesigned road system that provides direct, onsite access to Phase IIIB and IV. This request has been reviewed and approved by the Fire Marshal's office. **The staff supports this request.**
- The developer has agreed to follow the original condition that the gates remain open from sunset to sundown. They would like to consider an adjustment to the hours, but not at this time.
- Home plans were required to be prepared by registered, licensed architects and reflect renderings/elevations representative of the European Cottage/Manor Style including extensive use of stone, brick and exposed timbers. The revised request proposes to utilize the European Cottage/Manor Style of residential construction as well as other architectural styles common in the neighborhoods of North Asheville (Attachment to City Exhibit 3). Registered, licensed architects will still prepare these plans that will still make extensive use of stone, brick and exposed timbers. **The staff supports this request.**
- The Manor House and gardens were proposed to be restored and used as a community/fitness center and include a pool. The revised request proposes to demolish the existing Manor House and construct a small community pavilion, gardens, fire pits, walking paths, playground, soccer field, basketball court and horseshoe pits. The change is because the developer has found the home to be in very poor condition, making it fiscally prohibitive to restore for this purpose. Also, the revised concept for the use does not support the originally proposed level of amenities. **The staff supports this request.**
- A museum was to be provided in one of the historic structures on the property (Manor House or Killian House). In lieu of this requirement, a memorial garden featuring a statue of Harold Thoms and plaques highlighting his contributions to the City of Asheville will be installed. **The staff supports this request.**
- An existing barn and stone silo were to be adaptively reused/transformed into a community pavilion. The barn was previously demolished without approval by the original developer, and the silo was deemed unsafe by a consulting structural engineer and is now proposed to be demolished. The remaining stone is proposed to be reused to construct the fire pits listed above. **The staff supports this request.**
- A conservatory was required to be provided. The revised request does not include a provision for a conservatory primarily because of the reduced level of amenities being offered. **The staff supports this request.**
- Sidewalk/Bus Shelter Alternatives: A sidewalk was required to be constructed along Beaverdam Road (City Exhibit 5 - Gray copy of Beaverdam Road Sidewalk Compliance Plan). The developer has requested to construct a greenway path that would be positioned further back from Beaverdam Road in lieu of traditional sidewalk construction along Beaverdam Road. After further review, staff verified that Beaverdam Road is not a needed linkage as identified in the *City of Asheville Pedestrian Thoroughfare Plan* or as part of the original CUP approval. In lieu of the sidewalk along Beaverdam, the following options have been offered to the developer by the City Transportation Director:
  - Construct the proposed greenway path making sure that the portion of the path that parallels Beaverdam Road is constructed according to current City of Asheville standards, including a 10-foot width and an asphalt surface and extending it to Skyview Drive and Sycamore Street as proposed by the developer.

- Pay a fee-in-lieu-of sidewalk construction for the remaining property frontage along Beaverdam Road from Sycamore Street to the property line (200 feet +/- at \$57.30 per linear foot = \$11,460).
- In addition to the sidewalk options listed above, the developer has the option to relocate the required bus shelter from its previous proposed location near the Killian House closer to the intersection of Beaverdam Road and Wild Cherry Road including the appropriate pedestrian connection (concrete sidewalk) back to French Willow Drive.

**The staff supports this request.**

- A small parking area was to be provided in the vicinity of the stone silo. A parking area is proposed in the vicinity of the community pavilion and in lieu of the parking area near the stone silo, a small looping trail is proposed. **The staff supports this request.**

This project was approved with conditions by the Technical Review Committee on November 5, 2012. No opposition has been received at the time of this writing. As an amendment to a previously approved Conditional Use Permit, review by the Planning & Zoning Commission is not required.

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

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

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

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

The proposed use and development of the land is compatible with the natural features and topography of the site. The majority of the infrastructure for the first three phases of the project has been completed and the remaining infrastructure and landscaping that has not been installed is covered by a valid letter of credit.

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

The proposed residential use is compatible with the surrounding residential neighborhood and should not injure the value of nearby properties. Completing the remaining subdivision infrastructure and remaining two (2) phases of the project should benefit the neighborhood and bring closure to a project that has been under some level of construction since 2007.

**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 completion of a single-family residential subdivision is compatible with surrounding land uses that are similar in scale and density with this project. The proposed modification to architectural designs for the single-family homes will be more compatible with surrounding residences than only constructing European Cottage/Manor Style homes.

**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 plan is still in general alignment with the concept plan that was originally approved by City Council and therefore still consistent with conformity to the comprehensive plan and other adopted policies. The amendment was submitted with the goal of providing more realistic common amenities to residents of the Thoms Estate. The proposals to gate the property 24 hours a day and not provide sidewalk along Beaverdam Road, however, are inconsistent with City adopted ordinances, goals and policies.

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

This site is served by the #2 bus route and a bus stop is located at the intersection of Beaverdam Road and Wild Cherry Road. The placement of a bus shelter along Beaverdam Road near the Killian House has always been a requirement of this development. The modification to allow for onsite secondary fire access provides assured ingress/egress to the site for emergency vehicles. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

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

There is no traffic congestion or traffic hazard anticipated as a part of this proposal.

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

Pros:

- This amendment will allow the developer to proceed with and close out a subdivision that has been under some form of construction and grading activity since 2007.
- The proposed modifications to common amenities are more realistic than the ambitious list of amenities proposed by the original developer.

Con:

- The amendment proposes to gate the development 24 hours a day and not construct sidewalk along Beaverdam Road.

Staff recommends approval of this amendment to the previously approved Conditional Use Permit including the modifications supported by the staff and the conditions recommended by City staff.

In response to Councilman Bothwell, Mr. Pennington said that there are no changes to the open space they will be providing.

In response to Councilman Pelly, Mr. Bob Grasso, land planner for the project, explained in detail (using City Exhibit 5) the sidewalk alternative being requested, noting that the section for the fee in lieu of is steep and they would need to take down a lot of trees to try to get a sidewalk in close to Beaverdam Road. The length of the greenway from Wild Cherry to Skyview Drive is

approximately 800 feet. The loop inside the greenway is not to greenway standards, but but the standards for the development. Right now they are dedicating the right-of-way with the greenway trail.

In response to Councilman Pelly, Director of Transportation Ken Putnam said that staff is confident the sidewalk alternative is a better solution. He feels the trail will be used by more immediate people in the neighborhood.

Ms. Laurie Pandy, owner of two lots in the Thoms Estate, said she has not been made aware of anything, but still receiving homeowner bills for pool dues and club dues for pools and clubs that don't exist. Homeowners should be included in any plans for the development.

Mr. and Mrs. Eric Niwinski, property owners on Wild Cherry Road, said they do need a sidewalk on Beaverdam Road. Ms. Niwinski wanted to confirm that this development will also be a bicycle friendly. She said that this is the second failed developer and wanted to make sure that the current developer will follow standards. They questioned by the City allowed the infrastructure problems occur without any interference. Hours of construction also is a concern.

Mr. Shawn O'Connell, area resident, said his biggest concern was the need for sidewalk connectivity. He also asked that soil erosion runoff be monitored.

At 6:22 p.m., Mayor Bellamy closed the public hearing.

At Mayor Bellamy's request, Mr. Pennington replied to some of the public comments. The current developer brought the property on March 29, 2012. BB&T were the prior owners and they finished Phase I, Phase II and Phase III-A. He said there were a number of substandard construction details so BB&T had to go back and correct a lot of the mistakes done by the previous developer. We have 1 or 2 inspectors are assigned permanently for the development. We have a Letter of Credit on a couple of items remaining in Phase I, but for the most part, Phase I, Phase II and Phase III-A are to completion.

In response to Mayor Bellamy, Mr. Grasso said that when he worked for BB&T he had several meeting with property owners and area residents. The current owner has met with Ms. Pandy and he provided Council with a letter that the new owner sent to all property owners (Applicant Exhibit 1). As far as construction hours, he has talked with the contractor to make sure that they know it's important that they work within the construction hours. Every effort has been made to try to control the water run-off when infrastructure repairs were made. They will continue to work on those items throughout the project. They will do their best to be a good neighbor.

In response to Vice-Mayor Manheimer, Mr. Putnam said staff is actively trying to pursue the sidewalk connection from Kimberly to Elk Mountain Scenic Highway. The major problem has been right-of-way from the County Club Golf Course. We also recognize that in the future an important connection will be along Elk Mountain Scenic Highway to bring the sidewalk from this development all the way down. He explained that the gap on Beaverdam Road towards the property itself is not listed on the Master Plan, so for any project on that corridor they have the option of a fee in lieu of. Assuming it would be a long time before the gap would be completed, because we are concentrating on gaps that are needed linkages in the Master Plan, we felt a greenway system path that runs parallel to Beaverdam Road would still give the walkability sense. This will not be a fix for every project, but he feels it is for this particular place. The gap is now on their radar to fill.

When Councilman Smith asked about a future dog park, Director of Parks, Recreation & Cultural Affairs Roderick Simmons, said that because he has not heard of this before now, there is no staff analysis of what it would take to run a dog park or how it fits into the Master Plan. He suggested that they have the opportunity for public dialogue on the best use of that open space.

In response to Mayor Bellamy, Mr. Grasso said they will construct a small community pavilion, gardens, fire pits, walking paths, playground, soccer field, basketball court and horseshoe pits. Since the Asheville Country Club is close by, they are trying to fill the gap of the services that the County Club doesn't offer.

In response to Councilman Pelly about the hours of construction, Assistant Planning & Development Director Shannon Tuch said the construction hours in the ordinance are from 7 a.m. to 7 p.m. She noted that there is an application process to extend the hours because for some projects it doesn't make sense to stop half-way through at 7 p.m. They can apply for an extension of construction hours for a limited period of time. Beyond that, it does become a noise ordinance issue and the Police Department is responsible for regulating the noise ordinance.

Councilman Davis 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. 4150, amending a conditional use permit for the Thoms Estate, including the modifications supported by the staff, 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 and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (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. This motion was seconded by Councilman Smith and carried unanimously.

#### **ORDINANCE BOOK NO. 28 - PAGE**

#### **B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REMOVE A BAN IN PLACE FOR OUTDOOR SPEAKERS APPLIED TO EATING AND DRINKING ESTABLISHMENTS LOCATED IN THE CENTRAL BUSINESS DISTRICT AND RIVER DISTRICT ZONED AREAS**

#### **ORDINANCE NO. 4151 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REMOVE A BAN IN PLACE FOR OUTDOOR SPEAKERS APPLIED TO EATING AND DRINKING ESTABLISHMENTS LOCATED IN THE CENTRAL BUSINESS DISTRICT AND RIVER DISTRICT ZONED AREAS**

Mayor Bellamy opened the public hearing at 6:43 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance amending the Unified Development Ordinance to remove a ban in place for outdoor speakers applied to eating and drinking establishments located in the Central Business District and River District zoned areas. This public hearing was advertised on December 28, 2012, and January 4, 2013.

For some time, there has been a prohibition on outdoor speakers for the 'eating and drinking establishments' use in seven zoning districts including the Central Business District and River District. A similar ban in the CBD (and five other zoning districts) is in place for the "Microbrewery" use that was created several years ago. These UDO bans appear to have been created out of concern for potential noise conflicts between outdoor seating areas of these food and beverage use businesses (focused CBD and River) or to avoid noise conflicts with nearby

residential areas (the situation for the other zoning districts). (Although, there is not a ban for the nightclub use, which may also have outdoor seating areas.)

Over time, however, the number of restaurants downtown and in the River district has grown tremendously, creating successful dining and entertainment districts where ambient music has come to be expected in the outdoor seating areas. The existence of the ban was brought to the Downtown Commission from a downtown restaurant operator who had received a 'notice of violation' letter from staff. Staff had received a complaint about the outdoor speakers that were in place in an outdoor dining area.

The speaker ban has been difficult to enforce since most business operators do not consider this type of feature a 'use' and therefore do not expect to have it addressed by a zoning permit. Few business owners would apply for a building permit just to install speakers since it is such a minor addition. As the number of restaurants and "drinking establishments" has expanded, the use of speakers has reportedly grown; but there have been very few complaints about noise levels (besides the one noted earlier) in either district. As a rule, the downtown and river district business owners work well with their neighbors because of their close proximity to one another. Therefore, the staff is recommending that this ban be removed from the Central Business and River zoning districts. (This change will also affect the two small CBD zoned areas along Haywood Road in West Asheville. Much of Haywood Road is zoned CBII, where there is no ban.)

No change to the restriction for "eating and drinking establishments" is recommended for the other affected districts (Office, Office Business, Office II, Institutional, and Neighborhood Business), or for the other districts where the "microbrewery use" is permitted (Office, Office II, Office-Business, Institutional, and Resort) as they have greater potential for being in or immediately adjoining residentially zoned areas and having conflict and noise concerns. The "eating and drinking establishments" section of the UDO also bans drive-through facilities for all these zoning districts and no change to that restriction is proposed.

If the outdoor speaker ban is removed noise complaints would be enforced through the noise ordinance. That ordinance was recently reviewed and strengthened by City Council, and the Asheville Police Department will continue to enforce noise complaints using the 'reasonable person' standard. Staff feels that in many cases, noise complaints are best handled by the noise ordinance and not by the UDO.

The Downtown Commission at their meeting on October 12 voted 6-0 to recommend removal of the ban in the CBD. After the DTC discussion and further review of the UDO, staff also felt that the ban for speakers in the River District would be likely to meet support since these districts are similar in their support for eating and drinking establishments. The issue was presented to the River Arts District Business Association and at their November 27 meeting they voted 9-0 to endorse the proposed amendment removing the speaker ban. He talked with a few members of the West Asheville Haywood Road Corridor Group about the speaker ban removal for the CBD and most were supportive of it.

The Planning and Zoning Commission considered the proposed amendment at their meeting on December 5. After substantial discussion, the Commission supported the amendment with a vote of 4-2. At the meeting the only non-supportive public comment was from a west Asheville resident concerned about allowing outdoor speakers in the two CBD sections along Haywood Road. He felt that the close proximity to residential neighbors could create noise complaints and negatively impact the area. In a response, the staff noted that the majority of the properties along Haywood Road are zoned Community Business Two (CBII) and that outdoor speakers are allowed in this district. Several Commission members expressed some concern that the noise ordinance will not do enough to curtail businesses making too much noise. Some members were also concerned that not enough consideration was being made for the residents living in areas like the CBD. Staff noted that there are different expectations for noise when

residents live in areas zoned for higher density mixed-uses. If City Council reviews the noise ordinance after a year, several Commission members expressed a desire that noise complaints from eating and drinking establishments with outdoor speakers be reviewed as well.

This action supports the City Council Strategic Operating Plan for job growth and economic development which seeks to remove barriers to a robust and vital economy through the removal of unnecessary regulations.

Pros:

- Supports the continued vitality of downtown Asheville and the River district.
- Removes an unnecessary restriction from the CBD and River Districts.

Con:

- There is community concern about how noise complaints will be resolved.

City staff recommends City Council adopt an ordinance to remove a ban on outdoor speakers in the Central Business and River districts by amending the UDO.

Mr. Rich Lee was concerned about the two portions of CBD on Haywood Road because that zone is about one building deep and most of the properties adjoining are renters and they may not be aware of the noise ordinance or recourse if they have complaints.

Mr. Alvis Tingle, Kenilworth resident, hoped that Council would ban outdoor speakers in bars and restaurants due to the expected problem of noise.

At 6:52 p.m., Mayor Bellamy closed the public hearing.

Councilman Davis said that in one year Council will be revisiting the noise ordinance and this portion will be reviewed as well.

Councilman Smith said that it will be up to responsible business owners to make this work.

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

Councilman Smith 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. 4151. This motion was seconded by Councilman Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 28 – PAGE**

At 7:05 p.m., Mayor Bellamy announced a 20 minute recess, at which time a closed session would be held.

#### **Closed Session**

At 7:05 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; Roger Aly. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing payment of economic development incentives will occur in open



session. The statutory authorization is contained in G.S. 143-318.11(a)(4); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:37 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR AMENDMENTS TO GENERAL REGULATIONS RELATED TO MOBILE FOOD VENDING WITH NEW RESTRICTIONS FOR OPERATING IN BILTMORE VILLAGE AND AN AMENDMENT TO ARTICLE 5, CHAPTER 16 OF THE CODE OF ORDINANCES TO EXTEND THE HOURS OF OPERATION FOR PUSHCARTS**

**ORDINANCE NO. 4152 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR AMENDMENTS TO GENERAL REGULATIONS RELATED TO MOBILE FOOD VENDING WITH NEW RESTRICTIONS FOR OPERATING IN BILTMORE VILLAGE AND AN AMENDMENT TO ARTICLE 5, CHAPTER 16 OF THE CODE OF ORDINANCES TO EXTEND THE HOURS OF OPERATION FOR PUSHCARTS**

Urban Planner Alan Glines said that this is the consideration of an ordinance (1) amending to Chapter 7 of the Code of Ordinances of the City of Asheville to provide minor adjustments to the mobile food vending ordinance and add limitations to vending in the Biltmore Village Historic District; and (2) amending Chapter 16 of the City Code to extend the hours of operation for sidewalk pushcarts. This public hearing was advertised on December 28, 2012, and January 4, 2013.

The mobile food vending ordinance, primarily but not exclusively related to the use of food trucks downtown, was adopted late in the summer of 2011 and has been in place for over one year. When it was adopted City Council directed staff to come back after about a year to provide comments about how the ordinance has worked.

One main site for mobile food vending has been approved and is operating in the downtown area at 51 Coxe Avenue. The parcel was leased and took several months for site improvements to be completed (street trees and power service to operate the trucks). The ordinance allows a limit of 10 trucks to operate in the downtown Central Business District. In early November the tenth and final food truck received final inspection and approval for the site, so there are no more permits available in the downtown CBD unless a current operator lets their permit expire. The food truck lot appears to be successful but the food vendors have indicated that they would like to expand this operation into the evening and weekend hours. The operators are also interested in finding other sites in downtown to create an additional lot to expand the available work shifts. Locations are difficult to secure because it usually means displacing some other income-generating use on the lot such as surface parking.

The amendment proposed below was initiated by staff after review of the ordinance in preparation for the one-year anniversary of its passage. The current ordinance and proposed amendments have been reviewed and discussed with representatives of the downtown mobile food vendors, the Downtown Commission, the Asheville Parks and Recreation Department staff, the Historic Resources Commission (see below for additional input from the HRC) and with the Planning and Economic Development Committee. The Parks and Recreation Department did not feel that any changes were needed for operating at park sites, noting that aside from special

events there is not enough consistent demand to operate a food truck at a park location. The trucks are already allowed for special events.

The proposed changes are meant to address issues that have arisen during this first year of operation related to defining the use better, operational standards, and signage.

### **Summary of Changes:**

**Definition-** The amendment would change the definition of mobile food vendor to include trucks that just serve drinks for example and don't contain a *kitchen*. (For example, we have seen several coffee trucks start operating.)

**Operation standards-** Changes are proposed to keep the ordinance in accord with recent new posting requirements from the Health Department; and a change is proposed for operating hours to allow mobile food vendors flexibility to maintain their schedules using social media or other mutually agreeable methods of notification.

**Signage** - The Mobile Food Vendors have requested an additional allowance for signage on their trucks. Flexibility in truck signage allows the truck to be recognizable in spite of the variety of locations that trucks vend from (trucks usually work from a variety of different venues).

### **Biltmore Village Historic District:**

The Historic Resources Commission (HRC) recently conveyed their interest in adding limitations for operating food trucks in the Biltmore Village Historic District. Biltmore Village is commercially zoned and under the current wording in the ordinance there are no limitations for mobile food vending there. Currently a single truck is operating using a temporary use permit (allowing 180 days of operation per calendar year).

A Biltmore Village merchant, who is also the president of the Biltmore Village Merchants Association, became concerned about the mobile food vending operator and brought the issue to the Historic Resources Commission Director for consideration. After a number of meetings reviewing the topic it became apparent that the commissioners were closely divided on the issue. Some members of the Commission felt this activity to be out of character with the district's goals and the adopted *Biltmore Village Development Plan* while others did not feel that it would have a negative effect. It was apparent to Commission members that it would be difficult to apply design guidelines to the trucks since they are not structures for which the guidelines were written and such impermanent uses are not clearly within the parameters of the commission's work. There was discussion of expanding the aesthetic guidelines for the trucks (which might just focus on appropriate colors) but in the end this was not a part of the approved recommendation.

After substantial discussion, the HRC, at their meeting on 11/14/12, voted 6-4 (5 for, 4 against and one abstention) to continue to allow mobile food vending but with limitations similar to those established for the downtown Central Business District. The CBD restriction allows only ten trucks and no temporary use permits for mobile food vending. In Biltmore Village the staff recommends a limit of two trucks based on the small scale of the district and no temporary use permits. As required in downtown, trucks would have to establish a permanent location and provide limited site improvements (primarily street trees and sidewalk access). Trucks would also be required to provide electric power to the site instead of using generators in order to maintain the ambiance of the district. These limitations on the operation of food trucks would be waived in the case of special events which apply for approval under other permits (this same rule is true for downtown too).

Vocal opposition to allowing any mobile food vendors remains from a number of merchants and property owners in Biltmore Village, along with support from other merchants.

The Planning and Zoning Commission reviewed the amendments to the ordinance at their meeting on 12/5/12. Most of the Commission's discussion, beyond the general background questions about the details of the current ordinance, was centered on the ordinance to limit the mobile food vendors in Biltmore Village proposed by the Historic Resources Commission.

Two representatives of the Biltmore Village Merchants Association who said they represented about 27 property and business owners in the district, stated that they wanted the food trucks to be totally banned. They presented a petition to the Commission with signatures from many Village merchants. They are concerned that the trucks will erode the character of the district which is represented by the guidelines and their investment in property there.

The property owner of the business who is allowing the coffee truck to operate on his property spoke in support of allowing a few food trucks. He stated that the truck provides a needed service in the district and that the district is a commercial area and that he is supportive of the ordinance changes as drafted.

After receiving public comment there was lengthy discussion about the potential impact of having trucks in the district. As with the discussion at the HRC, some Commission members felt that aesthetic considerations should be taken into account in the district. It was clarified that State law only allows regulation for structures and other permanent features in historic districts based on federal regulations and that trucks would not be considered a structure. The zoning code in contrast could impose some aesthetic controls such as color of the trucks. There was interest by some on the Commission to encourage City Council to ask the Historic Resources Committee to consider aesthetic regulations that could come back as an amendment to the UDO ordinance. After a thorough conversation that included options for banning the trucks outright or allowing only a single truck, the Commission voted (5-1) to endorse the staff recommendation of allowing no more than 2 trucks under restrictions similar to those in the downtown CBD.

#### **Hours of Operation for Push Carts:**

In January 2012 a number of changes were approved by City Council concerning the operation and permitting of activities in sidewalk right-of-way areas. These activities included operation of pushcarts, outdoor dining, and outdoor merchandise sales. The changes were generally clarifications and related to encroachment consistency. During the course of the year, some pushcart operators came to a meeting of the Downtown Commission with two concerns: (1) they would like pushcarts included in all outdoor community events and festivals, with the exception of Bele Chere and not be required to vacate their sites; and (2) they would like the pushcart hours of operations be extended from 11:00 p.m. to 2:00 a.m. The Downtown Commission is looking into special events permitting at this time and asked that the pushcart operators to be involved in that process. The DTC recommend support for this request for the extension of the hours of operation with a vote of 8-0.

These proposed modifications comply with the City Council Strategic Operating Plan goals of job creation and community development by supporting diversified job growth but with reasonable regulations to assure a balanced approach to managing the communities where business activities take place.

#### **Pros:**

- Allows the ordinance to remain up to date to current standards and practices
- Moves to balance business enterprise with maintaining the special character of a key area of the city
- Allows the City code to remain relevant to adjustments in community interests

#### **Cons:**

- The nature of some ordinances is such that they require review and adjustment over time

- There remains debate in the community about the extent and nature of impacts from food trucks

City staff recommends City Council adopt (1) amendments to Chapter 7 of the Code of Ordinances of the City of Asheville to provide minor adjustments to the mobile food vending ordinance and add limitations to vending in the Biltmore Village Historic District; and (2) amendment to Chapter 16 of the City Code to extend the hours of operation for sidewalk pushcarts.

Mayor Bellamy opened the public hearing at 7:51 p.m.

Mr. Stan Collins, member of the Biltmore Village Merchants Association, was concerned that allowing mobile food vending units to occupy space in Biltmore Village will create a change to the overall image and overall visual character of the Village. That change would be counter to the established district guidelines. Visitors and locals come year after year to the village because it has appeal and retaining that image is critical to the life of the Village. The guidelines established in 1988 were to improve the market image and enhance the overall character of Biltmore Village. They wish to protect the property and values that people are looking to expect in the Village. From a historical prospective, food trucks can be incongruent with the strict historical guidelines that direct the businesses in the Village. The presence of food trucks in the Biltmore Village Historic District can undermine decades of careful monitoring of historic regulations. He felt that a mobile food truck constructed to look like the vehicles from 1900-1910 would be a wonderful draw.

At 7:56 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Smith, Mr. Glines explained (1) that there are not many potential locations in Biltmore Village due to the limited parking; and (2) how the two truck limit was arrived at.

Councilman Smith said that we've had food trucks around since the 1890's and because we don't have the preview to be able to have them look a certain way, he was inclined to allow the use and bring back the matter for review after a little time to play out.

Councilman Davis, who originally had concerns about mobile food trucks vs. bricks and mortar businesses, did not have those same concerns anymore. Now he feels like they contribute to the area and felt they may add to the flavor of Biltmore Village even though they are not historic looking.

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

Councilman Davis 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. 4152. This motion was seconded by Councilman Smith and carried unanimously.

## **ORDINANCE BOOK NO. 28 – PAGE**

### **V. UNFINISHED BUSINESS:**

### **VI. NEW BUSINESS:**

- A. RESOLUTION NO. 13-8 - RESOLUTION DIRECTING SOLICITING PROPOSALS FOR PREPARATION OF FORM-BASED ZONING REGULATIONS FOR THE HAYWOOD ROAD CORRIDOR**

Planning & Development Director Judy Daniel said that this is the consideration of a proposal to authorize City staff to pursue consulting services to create a “form-based” land use regulatory code for one corridor area of the city.

Early in 2012, during budget discussions, the City Council indicated a desire to have Planning staff select a consultant for work on a “first phase” or “demonstration” project using Form Base Coding for one area of the City. The Council decided to wait until closer to the end of the year to determine whether to direct staff to move forward on that project; directing staff to return to the Planning and Economic Development (PED) Committee for direction.

During the discussion, the City Council expressed a desire for this project as an element in its ongoing efforts to move toward more sustainable development patterns. The Council, since the adoption of the 2025 Comprehensive Plan, has increased its commitment to methods of accommodating growth that are more fiscally and environmentally sustainable than the patterns that prevailed since the middle of the 20<sup>th</sup> Century. This project will be an important next step toward the central themes of sustainability and resiliency that have become increasingly important to city leaders. A selected consultant team would work with city staff, the general public, interested stakeholder groups, a City Council-appointed Steering Committee, the Planning and Zoning Commission and other relevant boards and commissions, and the City Council.

The amount identified by the Council for this initial project was up to \$100,000. During the discussion the staff noted that initial research into this type of project advised that it is very likely that this amount would not be sufficient to fund a complete project unless the area chosen is quite small (although we will not know this for sure until the RFQ proposals have been evaluated). Depending on the size of the area chosen for this project, the Council may wish to consider the “first phase” to be the visioning and planning element, with an earmark for next year to complete the final product of an adoptable code for the chosen area.

As directed, staff talked with the PED Committee in November about options for a Form Base Code project. After discussion, the PED members directed staff to return to the Council in January with two alternative proposals to consider – one in the River District, and one along Haywood Road in West Asheville. These two areas were chosen because they offer contrasting opportunities in two areas that are experiencing growth and considerable change and thus offer the likelihood that the new code would begin to be implemented soon after its adoption. The substantial investment to create this new regulatory structure should be in an area likely to see substantial ongoing investment in this decade. These areas also represent potential for replicating the code structure in other locations with similar characteristics. If the City plans to move toward such coding for more areas of the City in the future, selection of a pilot area with potential for replication would be a good first step.

Staff met soon after that meeting to discuss ideas for these two options. Each offers different but important advantages and limitations. Each represents areas where change has been dramatic and ongoing, even during the past several years of low economic growth; with more change is anticipated.

An initial general thought was that it would be easier for the West Haywood community to agree on the “form” they wished to preserve and enhance; but given the accelerating pace of larger scale change in the River District, it might be more important to work on agreement for a new “form” for that area. Staff also realized that with the newly awakened interest of residents along the west side of the French Broad River, it might be important for the study area to include that part of the River District – including Haywood Road from the river up to Beecham’s curve.

The River District has seen an increasingly rapid pace of changes and planning efforts in the past few years. A project centered there could be a central catalyst capitalizing on all that input and creativity. While not as replicable as West Haywood, the project recommendations

would have applicability in the Swannanoa River Corridor area around and west of Biltmore Village. In addition, the River District has already seen substantial public investment in recent years (such as the East of the Riverway work and the RADTIP study), and is facing a faster rate of change while dealing with more complex issues of adjustment as it evolves from an industrial past into a mix of retail, entertainment, residential, and arts uses, while retaining elements of industrial uses. The added investment of regulatory code that complements that work is likely to provide added leverage and additional investment from the public and private sectors.

In contrast, an advantage of West Haywood is that a “form” pattern built for that area would lend itself to being replicated in other older urbanizing neighborhood corridors of the city. West Asheville already has a general form (moderate density urban neighborhood scale, with strong adjoining neighborhoods).

The choice for Council will be between a somewhat less complex effort along West Haywood, where desired form for development already has more general support (due to planning efforts in the past few years); or a more complex effort in the River District. In that area, determination of agreement on form may take more initial effort, but flood concerns pose unique challenges that a form code could address. In the River District, establishment of a central vision (with a lot of flexibility for creative entrepreneurs), would likely become a catalyst for further exciting change in the ongoing evolution of this central spine for the city and the region.

With those considerations in mind, the staff recommends that the Council authorize a Request for Qualifications (RFQ) for a Form Base Code Project for either:

- A. A portion of the northern section of the River District (Clingman at Depot Street down to and including the bulk of the RADTIP study area, and west along Haywood Road from the French Broad River to Beecham’s Curve, north along Riverside Drive to the railroad overpass, and south along Depot Street to the Grant Center); or
- B. Haywood Road from the French Broad River west to its intersection with Patton Avenue.

The consultant for this project would work with the selected community area to develop an agreed vision of what elements of form and design would be desired as these areas are built out; and the creation of an overlay code for the corridor that modifies the zoning to achieve that form as the “default” development pattern. The creation of this type of code involves substantial initial public input during the “visioning” process; followed by detailed design work on the part of the consultant to create the code – which is oriented toward specific design requirements, rather than traditional standards such as density limits, setbacks, and height restrictions.

The \$100,000 amount available will influence the amount of work that can be accomplished. Staff recommends that it is important for the funding to include actual governing code, not just a plan for that code. If cost estimates from consultant are higher than anticipated, the staff would recommend either narrowing the proposed area so a complete section with code can be completed; or consideration of this initial work as the visioning plan phase only with a commitment to fund the completion of the work and code in the next fiscal year. (For comparison purposes, the city of Austin, TX recently sent an RFQ for the creation of form based code for much of the entire city, allocating up to \$2 million for the project.)

This action will work toward achieving goals in multiple elements in the Council Strategic Goals including Fiscal Responsibility, Affordable, Green and Sustainable, Job Growth and Community Development, and Multi-modal Transportation.

There would be no immediate fiscal impact from this decision other than staff time involved in completing and posting the RFQ and reviewing the applications. If a contract is awarded, a commitment of up to \$100,000 from the General Fund would be required for consultant services in addition to staff time required to work with the public and the consultant.

Councilman Davis felt that both projects have good merits. The opportunity lies in the River District because that will need the planning for further development, but Haywood Road is something more usable in other districts in the future. In addition, there has been a lot of work done on the Haywood Road corridor.

In response to Councilman Davis on whether the \$100,000 would be adequate to cover the entire project in the River District, Ms. Daniels said that the River District would be a more complex process and probably use up more of the funds on the visioning process than Haywood Road would. It would take more money to do the River District unless you wanted to do it a couple of blocks at a time.

Councilman Bothwell felt we might not see much change on Haywood Road with the established businesses in the old buildings along much of the commercial corridor. The form based code might be in place but not have any effect for decades. Ms. Daniels said that during the recession we have seen existing buildings reformed and reused. The core is built up and the areas you might see new development is on both areas of the core.

When Mayor Bellamy asked if we are talking with any developers for the Haywood Road corridor, Urban Planner Alan Glines said that the Haywood Village property is for sale and last year he spoke with potential buyers. People have also been looking at some under utilized properties along the corridor and considering new things. There is, at this time, a lot of renovations and not so much the new construction yet.

Mayor Bellamy felt we should work hand in hand with the developers during this RFQ process to get them bought into the process. She wanted to make sure that this is a good investment and that we will see some buildings constructed to the form we are developing.

When Mayor Bellamy asked for this to be included in our strategic plan updates, City Manager Jackson said that the process is to select the person to put together a project plan and schedule and that will come to Council in the form of authorization of a contract so Council will see the scope of services and schedule at that time.

Councilman Smith supported the Haywood Road area because the Haywood Road vision plan has been going on for a number of years and there have been a lot of voices involved. This would be a capstone for that process. Because of the number of voices already involved he felt this will be a shorter process than in the River District. Also, Haywood Road is relevant because we are seeing a lot of east-west Asheville growth issues occurring now.

The following individuals supported the Haywood Road area model for various reasons, mainly those outlined by Council:

- Ms. Pattly Torno, Chair of the Asheville Area Riverfront Redevelopment Commission,  
Member of WECAN Neighborhood Association; founding member of the River Arts District
- Ms. Emily Goodwell, west Asheville resident
- Ms. Leslie Fay, west Asheville resident

Vice-Mayor Manheimer moved to adopt Resolution No. 13-8. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 156**

**B. POLICY DIRECTION FOR THE DISPOSITION OF CITY-OWNED PROPERTY AT 91 RIVERSIDE DRIVE KNOWN AS THE ICE HOUSE**

**RESOLUTION NO. 13-5 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TAYLOR & MURPHY CONSTRUCTION COMPANY INC. FOR THE DEMOLITION OF THE STRUCTURE LOCATED AT 91 RIVERSIDE DRIVE KNOWN AS THE ICE HOUSE**

**ORDINANCE NO. 4153 - BUDGET AMENDMENT FOR THE DEMOLITION OF THE STRUCTURE LOCATED AT 91 RIVERSIDE DRIVE KNOWN AS THE ICE HOUSE**

Vice-Mayor Manheimer said that her firm does represent Taylor & Murphy Construction Company, and at the direction of City Attorney Oast, she will recuse herself, due to a conflict of interest, from voting on the resolution and ordinance. City Attorney Oast said that Vice-Mayor Manheimer can and should participate in the policy direction discussion.

Riverfront Redevelopment Coordinator Stephanie Monson Dahl said that this is the consideration of policy direction for the disposition of a structure(s) in the River Arts District known as the Ice House.

The City of Asheville purchased the Ice House property at 91 Riverside Drive, PIN #9638973694, on November 30, 2012. The purchase includes 2.2 acres of open space on the French Broad River and approximately 1 acre of developed property on the east side of Riverside Drive where an approximately 50,000 square foot building known as the Ice House is situated. The structure is generally characterized as being:

- Significantly dilapidated, unsafe, and the site of a substantial level of criminal activity, requiring City's compliance with Chapter 4, Article 6 of the Unified Development Ordinance regarding unsafe buildings.
- A contributing structure to the Riverside Industrial Historic District, potentially eligible for historic tax credits if rehabilitated with some level of negative impact to the collection of historic industrial buildings if demolished.
- Located on a parcel integral to the revitalization of the region's riverfront, being strategically located in the River Arts District Transportation Improvement Project (RADTIP) Area, the East of the RiverWay Area, and the Between the Bridges area.

Due to its poor condition, a decision on the immediate disposition of the structure needs to be the first step by Council towards a final decision on the highest and best use of the property. The policy options for the structure presented in this staff report include: delay of a decision, long term retention and preservation of building, immediate demolition, or other Council option.

Staff suggests the next step in Council's evaluation of this site should be consideration of the community's stated vision and goals, and a professional engineering and financial analysis, to be created in the spring and summer of 2013 via the Riverside Drive Strategic Plan process. That process is being funded by Council's \$50,000 allocation of Federal Tiger II grant funding from the East of the RiverWay Transformation Development component; aimed at transforming underutilized city-owned property into assets of regional significance.

After that process is complete and recommendations are presented, it is anticipated that Council will be asked to adopt a resolution on a preferred redevelopment plan for the area, to provide direction on the redevelopment process desired to achieve that plan, and whether staff should align that process with the bidding and construction of the RADTIP.

Policy Options for Disposition of the "Ice House" Structure:

- 1) *Delay of Decision on Disposition (to a Later Date)*



Council could opt neither to immediately demolish the building nor to immediately “mothball” the building for historic preservation. The purpose for making this decision would be to give Council additional time to determine if other information or resources regarding a more preferable option have yet to be brought to Council’s attention.

Next steps would include:

- Extension allowing delay of compliance with the unsafe building ordinance
- Staff performance of additional due diligence regarding additional policy options
- Direction from Council regarding timeline for staff due diligence and Council decision on disposition

Pros:

- Forestalls or prevents demolition, to which some constituents are opposed.
- Gives Council more time to make a decision.

Cons:

- Requires continued outlay of resources and funding to secure the building and the surrounding area.
- Negatively impacts the physical appearance of the area, which could continue to encourage crime and detract from private investment.

Fiscal Impact: Staff estimates it will cost an initial \$12,000 to \$15,000 to provide an acceptable level of short-term security for the building and the site. This does not include staff time devoted to increased patrols, or resources used for coordination of efforts and use of city labor to secure building. The extension of this plan from a short term, interim (60-day) option to a six-month option or longer would not be recommended without additional physical improvements to the building itself. Because of this, it is estimated that for every six months, this option would cost \$50,000 to \$60,000.

## 2) *Long Term Retention/Preservation of Building*

Council could opt to “mothball” (repair, secure, and preserve for a use in the future) the building in hopes of attracting a redevelopment partner interested in historic preservation at some future date. The purpose of making this decision would be to prioritize the historic preservation of this building more than other redevelopment goals for riverfront revitalization.

Next steps would include:

- Short term extension of compliance with unsafe building ordinance
- Staff analysis of the process for mothballing this specific building (parallel tracked with extension of compliance)
- Council approval of funding to mothball the building.
- Further Council direction regarding the desired process for soliciting a qualified redevelopment partner.

Pros:

- Adaptively reuses a contributing building to a National Historic District/avoids demolition.
- Retains potential for private sector use of historic tax credits if redeveloped to accordance with federal or state standards.
- Physical appearance could be an improvement over the “delay of decision” option.

Cons:

- Minimizes the long-term redevelopment options on the site.

- Minimizes or negates use of site for short-term temporary uses that could support revitalization.
- Requires substantial financial commitment from the Council without any guarantee that a viable reuse will be found in a reasonable timeframe.
- Likely partners for reuse may look to the City for substantial additional financial contributions; and given the condition of the structure, the types of uses for which it is a viable use are limited.
- Supports building vacancy in an area where City is heavily invested in revitalization efforts.

Fiscal Impact: Minimum cost to the City to “mothball” the building is estimated at \$180,000; however, this estimate does not include continuing security and maintenance of the existing structure from today until a redevelopment partner is found.

### 3) *Immediate Demolition*

Council could opt to pursue a contract to demolish the 50,000 square foot structure while preserving and securing the iconic smokestack. The purpose for making this decision would be to prioritize public safety while still allowing for the promotion of urban infill and new construction to promote riverfront revitalization; while preserving a visible element (and the most architecturally interesting portion) of the historic industrial past.

Next steps would include:

- The authorization for staff to execute a contract for the demolition for the building
- Further Council direction regarding staff’s suggested process for Council’s continued consideration of the highest and best use of the property

Pros:

- Immediately eliminates the hazards associated with the building’s condition and fulfills the unsafe building ordinance requirement.
- Allows the developable portion of the site to support interim uses aligned with revitalization of the riverfront, such as temporary commercial or special event uses or parking for the same and for business accessibility or riverfront recreation
- Provides a shovel ready site for developers looking to partner with the City on new construction

Cons:

- Eliminates a contributing building to the National Riverside Industrial Historic District, meaning any potential future use of historic tax credits are lost upon demolition
- Option eliminates a historic asset reflecting the cultural history of Asheville pre-World War II

Fiscal Impact: Staff proposed to use the parking fund to implement this proposal if directed. The Parking Fund ended FY 2011-12 with available fund balance (in excess of the 8% policy target) of \$1,161,762. At its October 23, 2012 meeting, Council approved the appropriation of \$825,000 from Parking Fund fund balance for property acquisition. Council would be asked to approve an additional \$225,000 for demolition, leaving approximately \$110,000 in available fund balance remaining in the Parking Fund. The current bid for demolition is approximately \$145,000. Staff expects to use the difference to abate asbestos within the building, secure and preserve the iconic smokestack, and do minimal site repair.

### 4) *Other Option*

Council may opt to direct staff to pursue a policy direction for the disposition of the building that is not supported by staff analysis but is preferable to Council. Staff is aware of citizen suggestions to reuse of the building for purposes like a museum, artist live-work spaces, or housing for people experiencing homelessness. Staff assessment is that the building's internal design and type of construction coupled with its substantially deteriorated state realistically negates any suitable or fiscally responsible rehabilitation proposals. A more detailed discussion of the consequences of pursuing a museum project can be found in the document "Supplemental Memo" which can be accessed via the link on Attachment C- Redevelopment Planning Considerations.

Staff review suggests that while all policy options could address some Council goals, option #3, Immediate Demolition, provides Council with the opportunity to most clearly address the following:

- Fiscal Responsibility: leverages City's opportunities to partner with private developers to implement master plans
- Safe: significantly improves public safety of the River Arts District and surrounding neighborhoods
- Job Growth and Development: promotes infill growth using existing corridors, and promotes riverfront revitalization.

The River District Design Review Committee met on December 5, 2012, and declined to vote on an advisory position to Council because a straw poll of members showed no consensus could be made. The Asheville Area Riverfront Redevelopment Commission met on December 13, 2012, and voted 11-1 to advise Council to authorize the demolition of the building.

Although existing policies seem to align most clearly with the demolition option, given the many facets to consider, the staff asks for Council direction. If Council chooses to immediately demolish the structure, staff recommends that Council 1) authorize the City Manager to sign a contract for the demolition of the structure located at 91 Riverside Drive, and 2) approve a budget amendment in the amount of \$225,000 from Parking Fund fund balance to fund the demolition expenses.

Councilman Bothwell heard the arguments about preservation of the building, but he hasn't understood what the value of the building might be. A substantial structure like the Ice House would be extremely expensive to build new. He wondered if we mothball it for \$180,000, would we be preserving a million dollar building. His sense is we shouldn't tear down something that there is a substantial significant investment in if there is a chance for reusing it somehow. The building substantial has value, but we don't know who it would have value to yet.

Mayor Bellamy's concern about deferring it is that we have had the Flying Frog building for many years and not done well by it. We have other issues that are more pressing. When she was told about the purchase, it was for a roadway improvement. She felt it's time for us to move forward if we embrace the RADTIP. It would be very costly for us to rehabilitate the building and if there are people who wanted to do it, it would have been done.

Councilman Davis explained that Asheville Area Riverfront Redevelopment Commission looked at this property several years ago and some travelled to Chattanooga to look at a transformational project for the river. Mr. Terry Meek came up with a good concept of a riverfront museum and shared that concept with others for the building. However, the building has a lot of problems and the private sector has not come forward. It seems a terrible loss to tear the building down, but he didn't think there was enough there to salvage to make it worthwhile.

Councilman Smith agreed that Mr. Meek's vision was good and if we were in a better economic time it would have been worth pursuing. His chief concern is around safety in the building. Hopefully we can preserve the smokestack and the integrity of that structure is such

that we can do so. In addition, he would also like to ask, since the building is a contributing structure in the area and has so much history, the HRC to begin work on some kind of historic marker on that site.

Mr. Luke Perry, representing the West End/Clingman Avenue neighborhood, read a letter noting that few options are left for the Ice House. Residents are concerned about the loss and deterioration of significant historic structures in their neighborhood and hope that a renewed effort can be harnessed between public, private and civic partners to create the vision and funding to give new life to these structures before we are faced again with demolition. If Council moves forward with the demolition, WECAN recommends: (1) every effort is made to preserve and save any existing significant historical elements of the building, including the large brick chimney, any old remaining machinery, etc. for future reference; (2) a kiosk or informational display that references historical information about the history on the site of the building; (3) demolition contractor to have at least one employee working in the demolition who resides in one of the surrounding neighborhoods and to work with Green Opportunities to ensure that this occurs; and (4) City remain in constant and open dialogue with the public and surrounding neighborhood about the future development possibilities of the Ice House and consider how this site and those around it can engage and create productive public spaces that reference the exceptional history of the riverfront area and surrounding residential community.

Mr. Matt Sprouse, President of the River Arts District Business Association, explained their mission and because of the health and safety issue, they ask the City to demolish the Ice House and make every effort to preserve the smoke stack. He also asked for a kiosk and preservation of any other parts of the building to show the history of the area.

Mr. Terry Meek, Chair of the River District Design Review Committee and member of the Asheville Area Riverfront Redevelopment Commission; said he was speaking as an individual. He appreciated the vision of the City in purchasing the building. It's an important piece of property and urged the Council to look at this from a long-term standpoint - not just what is most convenient now. He met with City Council previously and conveyed his idea of a French Broad River Museum of Cultural and Natural History in that building, but that is not the only idea for the building. He believes the building still has great merit. He urged Council to not demolish the building because the City has already placed an RFQ for a strategic planning initiative for this area, which this building is a part of. He asked that Council postpone the action at least until it can be a part of this strategic planning initiative.

In response to Mr. Timothy Sadler who wondered if the property might work for a food processing facility, Councilman Smith said that it would not be cost effective for this building.

At 9:05 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and the ordinance and they would not be read.

Councilman Smith moved to demolish the Ice House property, with the preservation of the smokestack and a historical marker. This motion was seconded by Vice-Mayor Manheimer and carried on a 5-1 vote, with Councilman Bothwell voting "no".

Councilman Bothwell moved to recuse Vice-Mayor Manheimer from participating on the vote of the resolution and budget amendment, due to a conflict of interest. This motion was seconded by Councilman Smith and carried unanimously.

Councilman Smith moved for the adoption of Resolution No. 13-5. This motion was seconded by Councilman Pelly and carried unanimously (Vice-Mayor Manheimer was recused).

**RESOLUTION BOOK NO. 35 – PAGE 153**

Councilman Smith moved for the adoption of Ordinance No. 4153. This motion was seconded by Councilman Pelly and carried unanimously (Vice-Mayor Manheimer was recused).

**ORDINANCE BOOK NO. 28 – PAGE**

City Manager Jackson said we are asking property owners to better secure their properties to prevent public safety issues. We don't want to lose all the character of the area.

**C. RESOLUTION NO. 13-6 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN TO BEAUCATCHER PROPERTIES LLC (SCATTERED SITE) AND GIVENS ESTATES INC. (GIVENS PARK APARTMENTS)**

**ORDINANCE NO. 4154 - BUDGET AMENDMENT TO PROVIDE SUFFICIENT BUDGET AUTHORIZATION FOR ALL LOAN DISBURSEMENTS**

Community Development Analyst Randy Stallings said that this is the consideration of a resolution authorizing approval of Housing Trust Fund loans to Beaucatcher Properties, LLC (Scattered Site) and Givens Estates, Inc. (Givens Park Apartments); and a budget amendment in the amount of \$330,000 from Housing Trust Fund reserves to provide sufficient budget authorization for all loan disbursements anticipated to occur prior to June 30, 2013.

Staff received two (2) applications for HTF funding totaling \$420,000. These applications were presented to the Housing and Community Development Committee (HCD) on December 13<sup>th</sup> and each was evaluated on its own merit. Including projected income from regularly scheduled payments to the Housing Trust Fund expected prior to fiscal year-end, resources are sufficient to approve both applications at the amounts requested. The total amount of fund resources, including the current cash balance and projected revenues thru June 30, 2013, is \$436,890.90.

The following applications have been recommended by the HCD for approval:

- 1) Beaucatcher Properties LLC for the construction of an 8-unit scattered site rental development in the Shiloh neighborhood in South Asheville, \$150,000.
- 2) Givens Estates, Inc. for construction of 120 units of multifamily housing for seniors on Gerber Rd, \$270,000.

Beaucatcher Properties, LLC – Shiloh Scattered Site \$150,000.

Mr. Kirk Booth, representing Beaucatcher Properties, has proposed an 8-unit single family rental development project in the Shiloh neighborhood in South Asheville. The developer will be purchasing two lots, one at 9 Marigold Street (PIN no. 964793621700000) and another on Chapel Park Place (PIN no. 964794966500000). Each of the lots will be subdivided into two (2) lots. Each of the four (4) new lots will contain a 2-bedroom single family home with a 1-bedroom accessory apartment over a rear garage. Both parcels are currently zoned Residential (RS-8). The single family homes will be rented at 80% of the Area Median Income and the 1-bedroom accessory units will be rented at 60% of the Area Median Income. The total land acquisition cost is \$39,500.

The developer is seeking \$150,000 with 50% of the Note (\$75,000) due as an amortizing loan over 30 years at 4.5% interest. In recognition of the four (4) units serving populations at or below 60% of the Area Median Income, the developer is requesting that the remaining 50% of the Note (\$75,000) be financed as interest-only at 2% interest with principal deferred for 20 years.

The site is infill development in an older established neighborhood with water and sewer access available. The proposed project meets the stated priorities in that 50% of the units will be

1-bedroom. Due to the small development size, no TRC or P&Z review will be required. The developer is ready to proceed immediately. The developer indicates a total projected development cost of \$637,500, which includes the projected future value of the lots as developed.

The loan request represents 24% of the total development costs. The per-unit subsidy is \$18,750. The total per-unit development cost as submitted by the applicant is \$79,688 per unit. The cost per square foot is \$97.32. The project is within 1/4 mile of transit. None of the units will be ADA accessible. The project will not be Energy Star certified but does incorporate many of the desired elements such as energy star appliances, low-e windows, and low-flow water systems. The developer has agreed to reserve two (2) of the eight (8) units for persons transitioning from homelessness.

Pros:

- Infill development supports strategic planning goals.
- The developer has completed other local projects in a timely manner.
- Developer is pledging 30 years of affordability.
- Units will serve families transitioning from homelessness.

Cons:

- The City financing when combined with the proposed senior bank lien provides 100% financing with no cash investment from the developer.
- Staff's analysis of the financial statements suggests that the project can absorb fully performing debt. Interest-only payments do not appear necessary for project viability.

Givens Estates, Inc. – Givens Park Apartments \$270,000

Givens Estates has proposed a 120-unit multifamily rental development for seniors ages 55 and over in South Asheville. The proposed site is located directly behind Gerber Village, just east of Hendersonville Road (PIN no. 965526468400000). The 6.0 acre parcel received a conditional zoning to Highway Business in April of this year. An additional 120 units are planned for a future phase but are not under consideration at the present time. The proposed project will consist of 94 1-bedroom units and 26 2-bedroom units. The developer has noted that 30 of the units will be reserved for persons at or below 30% of the Area Median Income. The remaining 90 units will be rented to persons at or below 60% of the Area Median Income. Transit is available within ¼ mile. The total projected development cost is \$14,043,335

The developer has requested \$270,000 at 2.00% interest, fully amortizing for 30 years. The developer is applying for Low Income Housing Tax Credits which will significantly leverage the City investment. The land acquisition cost is \$1.3 million. The per-unit development cost is \$117,027. The cost per square foot is projected at \$147.13. The requested per-unit subsidy is very low at \$2,250. The loan request represents only 1.9% of the total development costs. The project will be Energy-Star certified. All units will be ADA compliant.

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

The current balance in the Trust Fund is \$359,700.90. If the regularly scheduled loan repayments of \$77,190 are received as expected, then there will be no adverse fiscal impact. Although highly unlikely, if future revenue projections prove incorrect then funds may not be available for disbursement until the fund has been replenished; either through a new

appropriation or the receipt of future program revenue beyond July 1, 2013. As noted above, a budget amendment in the amount of \$330,000 from Housing Trust Fund reserves is included to provide sufficient budget authorization for all loan disbursements anticipated to occur prior to June 30, 2013

The Housing and Community Development Committee recommends City Council approve a resolution approving the following loans subject to the developers meeting all program requirements for loan closing:

1. \$150,000 to Beaucatcher Properties, LLC for the development of Eight (8) single-family rental units on Marigold St and Chapel Park Place; conditioned on obtaining site control at Chapel Park Place; to be made immediately available for disbursement following loan closing.

- a. \$75,000 to be repaid as a fully amortizing loan at 4.5% interest for 30 years.
- b. \$75,000 to be repaid in annual interest-only payments at 2.00% interest with principal deferred for a term of 20 years.

2. \$270,000 to Givens Estates, Inc. for the development of One Hundred and Twenty (120) multifamily rental units for seniors on Gerber Road, amortized at 2.00% interest for 30 years; to be made immediately available for disbursement following loan closing.

When Mayor Bellamy felt that local people should have the opportunity to take advantage of the units in Givens Estates, Mr. Ken Parton, representing Givens Estates, said that he could say that all admissions will come from people in this community; however, they only advertise up to 30 miles from Asheville. From their market research, they anticipate this project being filled from people in the Buncombe County area. He also noted that they hope to build common space and make it available to people in the community.

Mayor Bellamy asked Council to support her request, especially since there are local tax dollars in the project, that local people have the opportunity to avail themselves of this top notch facility, knowing that it already has a long waiting list. She was concerned that once it is constructed it will already be filled up. Mr. Stallings noted that the low income housing tax credit prohibits discrimination in the leasing process.

On behalf of City Council, Mayor Bellamy thanked Mr. Stallings for his work with the City of Asheville as he continues on with his career.

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

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and the ordinance and they would not be read.

Councilman Smith moved for the adoption of Resolution No. 13-6. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 154**

Councilman Smith moved for the adoption of Ordinance No. 4154. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE**

- D. RESOLUTION NO. 13-7 - RESOLUTION ALLOCATING FAIR HOUSING ASSISTANCE PROGRAM FUNDS TO THE ASHEVILLE BUNCOMBE COMMUNITY RELATIONS COUNCIL**

City Manager Jackson said that this is the consideration of a resolution approving \$15,000 in federal Fair Housing Assistance Program funds to the Asheville Buncombe Community Relations Council to continue to implement fair housing research, outreach and training.

The Asheville Buncombe Community Relations Council requests \$15,000 in Fair Housing Assistance Program funding to continue to perform fair housing research, training and outreach.

In July of 2012, Council provided \$15,000 of HUD Fair Housing Assistance Program funds to ABCRC. ABCRC has used these funds to reinstate its position as the first agency point of contact for Asheville residents who have fair housing concerns, and to lead the community work to educate and inform Asheville residents about their fair housing rights and recourse if those rights have been violated. After completing Phase I of their Fair Housing Outreach program, they would now like to initiate Phase II. During this next phase they would continue to employ a contract worker to implement and facilitate their outreach plan, facilitate and recruit volunteers for trainings and events, provide fair housing client intake and referral, provide conflict resolution services, continue to network with community organizations, and provide outreach and community engagement. They wish to attend at least one National or State training, research fair housing compliance recertification options with HUD and work closely with NC Human Relations Commission on referral of cases.

The organization has made significant progress in restructuring its Board of Directors and Committees, has begun work on a new strategic plan, and has created new fair housing outreach materials. It has not yet reached a resolution with the IRS regarding penalties due to late payment of withholding taxes and interest, but is making all required payments. It is current on all day-to-day obligations.

The project directly supports the City's Strategic Operating Goal of *Affordable*: The project proposal is supportive of the City's goal for all citizens to have access to safe, sufficient and affordable housing.

Pros:

- ABCRC is reestablishing a local point of contact for fair housing information for consumers and agencies.
- Fair housing training will assist private and public sector landlords comply with the law.
- ABCRC has developed a collaborative working relationship with the NC Human Relations Commission, Pisgah Legal Services, and other key community service agencies.

Cons:

- Role for local agency dedicated to fair housing not yet clear, and recertification does not appear to be a HUD priority in the short term;
- Agency relies almost exclusively on public sector financial support.
- Tax liability remains unresolved.

The federal FHAP funds must be allocated to affirmatively further fair housing. The use of the funds for the proposed purpose meets that requirement. The funding will come from the FHAP budget that was approved in FY11-12. If this allocation is approved, \$2,316 of FHAP funding will remain to be allocated. No additional FHAP funds will be received by the City of Asheville from HUD. There is no impact to the General Fund.

The Housing and Community Development Committee recommends the approval of \$15,000 in federal Fair Housing Assistance Program funds to ABCRC to continue to implement fair housing marketing, outreach and training, as proposed.

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 Davis moved for the adoption of Resolution No. 13-7. This motion was seconded by Councilman Gordon and carried unanimously.

## **RESOLUTION BOOK NO. 35 – PAGE 155**

### **BOARDS & COMMISSIONS**

Regarding the Downtown Commission, the following individuals have applied for the vacancies: Edward Loewe, Patric Mullen, Karl Katterjohn, Dean Pistor, Laurie Miller, Andrew Montrie, Adam Bowers, Luther Smith, Dane Barrager and Larry Holt. It was the consensus of Council to reappoint Bruce Hazzard, Rebecca Hecht and Matthew Sprouse and postpone the final vacancy for further clarification.

Regarding the Greenway Commission, the following individuals have applied for the vacancies: Stuart Smith, Bryan Mitchell, Forrest Patrick Merithew, Adam Bowers and Luther Smith. It was the consensus of Council to reappoint James Grode and postpone the final vacancy for further information.

Regarding the Sustainable Advisory Committee on Energy & the Environment, the following individuals have applied for the vacancies: Peter Brezny, Marcus Renner, Lawrence Pittman, Alan Watts, Brandee Boggs, Melita Kyriakou, Stuart Smith, Timothy Sadler, Josh O'Conner, Forrest Patrick Merithew, Sabrina Wells, Christine Laporte and Robert Brady. It was the consensus of Council to reappoint Torin Kexel and interview Marcus Renner, Brandee Boggs, Lawrence Pittman and Josh O'Conner.

Regarding the Transit Commission, the following individuals have applied for the vacancies: Bruce Emory, George E. Keller, Itiyopia Ewart and Bryan Mitchell. It was the consensus of Council to (1) reappoint Julie Mayfield and Tom Tomlin; (2) appoint Bruce Emory; and (3) interview Itiyopia Ewart and George Keller. The Boards & Commissions Committee did not recommend reappointment of Ms. Georgia Shannon due to the failure to meet attendance requirements.

Regarding the Tree Commission, it was the consensus of Council to re-advertise due to the lack of applicants for available seats.

### **RESOLUTION NO. 13-9 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing alternate members to the Board of Adjustment.

The terms of Richard Fort (Alternate) and Phillip Hardin (Alternate) expire on January 21, 2013.

The following individuals have applied for the vacancies: Derek Weekley, Jay Marino and Mary Jean Burgin.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Fort (Alternate) and Mr. Hardin (Alternate).

Councilman Smith moved to reappoint Richard Fort (Alternate) and Phillip Hardin (Alternate) to the Board of Adjustment to each serve an additional three-year term, terms to

expire January 21, 2016, or until their successors are appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 157**

**RESOLUTION NO. 13-10 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Metropolitan Sewerage District Board of Directors.

The term of Councilman Chris Pelly expired on January 19, 2013.

No following individual applied for the vacancy.

It was the consensus of the Boards & Commissions Committee to reappoint Councilman Pelly.

Councilman Smith moved to reappoint Councilman Chris Pelly to the Metropolitan Sewerage District Board of Directors to serve a three-year term, terms to expire January 19, 2016, or until his successors is appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 158**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Timothy Sadler commented on the energy costs that our City is facing. He urged Council to adopt a resolution stating it's the City's intention to become energy independent.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:27 p.m.

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CITY CLERK

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MAYOR