

Tuesday – February 12, 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 Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Manheimer gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 12, 2013, AS "DARWIN DAY"

Councilman Bothwell read the proclamation proclaiming February 12, 2013, as "Darwin Day" in the City of Asheville. He presented the proclamation to Ms. Jennifer Lovejoy.

B. AWARD FROM UNITED STATES CONFERENCE OF MAYORS

Mayor Bellamy was pleased to present Police Chief Anderson with a check, in the amount of \$5,000, from the United States Conference of Mayors and Purdue Pharma LP. The City of Asheville won second place in the small city category of the 2013 Prescription Drug Abuse Recognition Program. She thanked Chief Anderson for his leadership in helping keep our children safe. Police Chief Anderson said that there will be another medicine drop-off scheduled soon.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JANUARY 22, 2013; AND THE COMMUNITY MEETING HELD ON JANUARY 29, 2013

B. RESOLUTION NO. 13-23 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONTRACT WITH BRANTLEY CONSTRUCTION CO. LLC FOR PHASE III RENOVATIONS OF THE U.S. CELLULAR CENTER

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Brantley Construction Co., LLC in the amount of \$1,876,000 for Phase III renovations of the U.S. Cellular Center.

This contract incorporates major components of the overall renovation of the ticket office, the main lobby, the outside plaza, the loading dock storage and ramp improvements. These renovations are a continuation of those that were started in preparation to host the Southern Conference Basketball Tournament through March 2014. These renovations will give patrons, entertainers, athletes and promoters a much improved experience when attending or scheduling

concerts, sporting events, major city wide conventions and other special events throughout the years to come.

The following bids (Base amount + 10 Alternates) were received on January 31, 2013:

- | | |
|----------------------------------|--------------|
| 1. Brantley Construction C., LLC | \$ 2,336,000 |
| 2. H&M Constructors | \$ 2,592,000 |

We have elected to accept the Base Bid plus Alternates 1, 2 & 7. The following shows the totals for both prospective bidders:

- | | |
|-----------------------------------|--------------|
| 1. Brantley Construction Co., LLC | \$ 1,876,000 |
| 2. H&M Constructors | \$ 2,110,300 |

Funding for this portion of the contract was addressed with a budget amendment in the amount of \$1,889,518 approved by City Council on December 11, 2012.

Staff is actively seeking grant opportunities to fund additional renovations to the facility in the next fiscal year.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Improved flow of patron traffic to and from the Explore Asheville.com arena and Thomas Wolfe auditorium.
- Much needed improvements to the ticket office and main lobby area.
- Increase in useable storage space with the added enclosed areas in the loading dock area.
- Enhancements to safety such as more exit doors, fires sprinklers in lobby and improved exiting flow.
- Project bid is below budget.

Con:

- None.

As noted above, the budget for this next phase of renovations was approved by City Council on December 11, 2012. Funding is coming from a variety of sources including, the City of Asheville, Buncombe County and the Tourism Development Authority (TDA).

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Brantley Construction Co., LLC for \$ 1,876,000 for the Phase III renovations of the U.S. Cellular Center.

Councilman Davis was pleased to see this phase of the renovations and urged the public to attend the Southern Conference on March 8-11, 2013.

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- C. RESOLUTION NO. 13-24 - RESOLUTION AUTHORIZING THE EXCHANGE OF CITY-OWNED REAL PROPERTY LOCATED AT 166 RESERVOIR ROAD FOR PROPERTY OWNED BY THE BEAUCATCHER PURCHASE GROUP, LLC ALSO LOCATED OFF OF RESERVOIR ROAD**

Summary: The consideration of a resolution authorizing the exchange of City-owned real property at 166 Reservoir Road for property owned by the Beaucatcher Purchase Group, LLC also located off of Reservoir Road.

The City of Asheville is in need of property owned by the Beaucatcher Purchase Group, LLC in order to assemble the land necessary for the Beaucatcher Greenway. Accordingly, the City of Asheville and the Beaucatcher Purchase Group, LLC have negotiated an exchange of real property based on the terms outlined below. Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on February 1, 2013 describing the exchange of properties.

The property owned by the Beaucatcher Purchase Group, LLC is located off Reservoir Road and measures in total approximately 1.5 acres (PIN 9648-56-9395-00000). This undeveloped, wooded parcel serves as a natural buffer for the Wind in the Oaks community. The City seeks to construct a portion of the Beaucatcher Greenway within this parcel and has surveyed a 0.67 acre portion of the area to accommodate the future path.

In exchange for this property, the Beaucatcher Purchase Group requests that the City convey a 0.67 acre portion of property it owns at 166 Reservoir Road (PIN 9648-56-7084-00000). The City maintains two telecommunications towers at the 7.42 acre property, and the Beaucatcher Purchase Group would like to own a portion of this property to provide a Western buffer for the Wind in the Oaks community. The area of interest to the Beaucatcher Purchase Group will have no impact on the existing operations and does not appear to have any negative impact on any future development of the acreage. The Beaucatcher Purchase Group requests that the City's Arborist remove any and all dead trees from the property prior to the exchange. The value of the exchange of property is based on the following criteria: (1) Equivalent land area, (2) Proximate location, (3) Similar parcel configuration, (4) Identical highest and best use for each property – assemblage to adjoining tracts and (5) based on a 2009 appraisal of the City's property, relative market value of each parcel is approximately \$3 per square foot or \$87,500 for each 0.67 acre tract (unadjusted). Based on these factors, the exchange of property will be considered full and fair.

Assembling land needed for the Beaucatcher Greenway complies with City Council's Strategic Operating Plan in the area of Multimodal Transportation - to promote the development of pedestrian and bicycle infrastructure. Also, this action complies with the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

Pro:

- Assemblage of land necessary for the implementation of the Beaucatcher Greenway.

Con:

- There is no negative impact.

The land exchange requires no additional compensation in that the parcels are of equivalent value. The City's legal office will perform the closing, therefore no additional costs are anticipated for this transaction.

City staff recommends City Council adopt a resolution authorizing the exchange of real properties located off of Reservoir Road.

Real Estate Manager Nikki Reid used a map of the land exchange to respond to various questions from Councilman Hunt, noting that both parcels are zoned RS-2.

D. RESOLUTION NO. 13-25 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY REAL PROPERTY OFF HAZZARD STREET TO RICKY BRIGGS

Summary: The consideration of a resolution authorizing the City Manager to convey real property off Hazzard Street, PIN 964960134900000.

A bid has been received from Ricky Briggs in the amount of \$1,000 for the purchase of 0.03 acres of City-owned land off Hazzard Street. This land parcel is one of three parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plisco. The parcels were remnants from Department of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a rectangular shaped fragment lot comprising 0.03 acre±. It is zoned RM8, and it is not suitable to build on without additional land combination. The bid from Ricky Briggs is in the amount of \$1,000 and an advertisement for upset bids was published in the paper on January 11, 2013. Within the 10 day notice period, no upset bids were received.

The Parks, Recreation and Cultural Arts Department has verified that this parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through disposition of surplus real property at market value.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund and will be designated for future economic and community development projects,

Economic Development staff recommends adoption of the resolution to convey real property off Hazzard Street to Ricky Briggs.

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E. RESOLUTION NO. 13-26 - RESOLUTION TO SUPPORT THE 2013-2015 FUNDING FOR CLEAN WATER MANAGEMENT TRUST FUND

Summary: The consideration of a resolution in support of continued state funding of the Clean Water Management Trust Fund to fund current and future projects to protect our water supply.

The Clean Water Management Trust Fund (CWMTF) was established in 1996 by the General Assembly to address the growing concerns about the health of our rivers, streams, and other surface water in the state. The Clean Water Management Trust Fund is a non-regulatory, community focused program to protect and restore surface waters across the state. This non-regulatory program has provided more than 1500 grants to help meet the infrastructure needs of

municipalities, increased recreational opportunities, and enhance quality of life in this state. Meeting these needs helps the state obtain a competitive edge in economic development.

The City of Asheville has been the recipient of several CWMTF grants. Some of which include the Dingle Creek stream restoration and wetland construction, Ross Creek Watershed improvements, and most recently, regional stream mitigation improvements at the New Belgium Brewery site.

This action meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pro:

- The CWMTF provides funds for water quality improvements in the state, including the City of Asheville

Con:

- None

The CWMTF provides financial assistance for water quality improvements in the City. Without these funds, the City would be required to provide the funds or not complete projects that improve water quality in urbanized areas.

Staff requests that City Council adopt a resolution in support of continued state funding of the Clean Water Management Trust Fund to fund current and future projects to protect our water supply.

Mayor Bellamy spoke in support of this very important issue and of the many communities that need those additional dollars.

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F. RESOLUTION NO. 13-27 - RESOLUTION AUTHORIZING THE PURCHASE OF AN APOLLO 4 GENERATION VIDEO CAMERA SYSTEM TO UPDATE AND STANDARDIZE THE EXISTING TRANSIT FLEET VIDEO CAMERA SYSTEM

Summary: The consideration of a resolution authorizing staff to purchase an Apollo 4 Generation video camera system from Apollo Video Technology in order to update and standardize the existing transit fleet video camera system.

The current transit fleet video camera system is from Apollo Video Technology. Due to its age, many cameras and readers have malfunctioned and been replaced through the years. As a result, the fleet has four different generations of Apollo cameras on the buses and two different readers, which are used to review the videos. Some of the older readers have become unreliable, and in some cases operations has not been able to retrieve information due to system malfunction.

During the recent bus procurement process, all the new buses were equipped with an Apollo 4 generation video camera system and now, the other 14 buses need to be upgraded.

The Apollo 4 generation video camera system has the following features:

- 1) Larger removable hard drive for video storage.
- 2) Higher resolution on camera video.
- 3) More cameras can be added to the system for future expansion to improve video data collection (i.e. expand from our current 4-camera system to a 6-camera system).

- 4) Ability to add GPS data to the video including location and speed data.
- 5) Ability to add a device to automatically bookmark video when certain G-forces are applied, and allowing monitoring driver's driving habits, such as hard braking, quick lane change, going around curves too fast, etc.
- 6) "Heart beat" monitor to show that the system is fully functional. This indicator light will be used during vehicle pre-trips multiple times a day to assure the system is working properly.
- 7) Ability to wirelessly download video clips without having to pull the hard drive from the DVR and make this secure watermarked data easily available to our Risk Department and Law enforcement agencies in a seamless manner all without the need of special licensed software.
- 8) Automatically download video clips associated with events that the driver determines or events that the system determines needs to be reviewed by a supervisor.
- 9) When reviewing the videos GPS data including location, time, direction of travel and speed will be displayed.
- 10) Non-proprietary information that can be read in any computer.

Operations rely on a camera system to ensure safety and security on the buses, and to investigate customer complaints and accidents. The video camera system has also been vital in investigations conducted by Asheville Police Department. The new system will improve safety and security providing accurate and timely data.

The total project cost is about \$90,000 and will be funded with a Federal grant at 80% and a local match at 20%.

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

The Transit Commission supports the subject project.

Pros:

- Standardization of the video camera system will improve transit daily operations.
- Standardization of the video camera system will improve reliability, safety and security, by providing accurate and timely data.
- Standardization of the video camera system can help with APD investigations.
- A Federal grant will provide 80% (\$72,000) of the total project cost.

Con:

- A 20% local match in the amount of \$18,000 is required.

The total project cost is about \$90,000 and a Federal grant will provide 80% (\$72,000) of the cost and the city will provide 20% (\$18,000) of the cost. The project, including the local match, is already budgeted in the Transit Capital fund.

City staff recommends that City Council adopt a resolution authorizing staff to purchase an Apollo 4 Generation video camera system from Apollo Video Technology in order to update and standardize the existing transit fleet video camera system.

RESOLUTION BOOK NO. 35 - PAGE 178

G. ORDINANCE NO. 4162 - BUDGET AMENDMENT FOR BICYCLE DESTINATION (WAYFINDING) SIGNS

Summary: The consideration of a budget amendment in the amount of \$1,050 to accept a privately-funded grant to be used for bicycle destination (wayfinding) signs.

The Bicycle and Pedestrian Task Force, interested community members, and City staff have completed plans to implement the first phase of a bicycle wayfinding project. The project includes 21 signs that will include destination, direction, and distance information. The chosen destinations include downtown, West Asheville, and UNC-Asheville. These destinations were chosen based on facilities, cyclist demand for the destinations, and the opportunity to highlight better route choices. Directing cyclists to Broadway rather than Merrimon Avenue to access UNC-Asheville from downtown Asheville is an example of a better route choice.

The Blue Ridge Bicycle Club has awarded the City a grant to help pay for the project.

City Council's Public Safety Committee reviewed the project at their meeting on January 28, 2013, and unanimously recommended the budget amendment be forwarded to the full City Council for review and approval.

This action complies with the City Council's Strategic Operating Plan in the Multimodal Transportation Area by continuing construction and maintenance of bicycle infrastructure and by leveraging funds for bicycle-friendly opportunities.

Pros:

- Encourages bicycling in general by improving the existing infrastructure.
- Encourages the use of available marked on-street bicycle facilities.
- Discourages the use of less desirable routes.
- Recommended as an action step in the approved Bicycle Master Plan (Action 1.8, page 71).
- Recommended as an additional measure to further promote bicycling by the League of American Bicyclists when designating Asheville as a Bronze Level Bicycle Friendly Community.
- Funded by private sources (great partnership opportunity).

Con:

- City is responsible for part of the installation cost and all of the maintenance cost.

The total estimated cost of the project is \$1,800. The \$1,050 grant will fully pay the material and fabrication cost of the signs and the City will pay for the installation cost, which is estimated to be about \$750. The installation and ongoing maintenance costs are already budgeted in the Transportation Department's (Traffic Engineering Division) operating budget.

Staff recommends that City Council approve a budget amendment in the amount of \$1,050 to accept a privately-funded grant to be used for bicycle destination (wayfinding) signs.

Ms. Claudia Nix said she was extremely happy for this grant to put in the bicycle wayfinding signs.

ORDINANCE BOOK NO. 28 - PAGE

H. ORDINANCE NO. 4163 - BUDGET AMENDMENT FOR THE JOB ACCESS AND RESERVE COMMUTE AND NEW FREEDOM FEDERAL GRANTS

Summary: The consideration of a budget ordinance amendment in the amount of \$227,068 and \$283,317 to set up the project budgets for the Job Access and Reverse Commute (JARC) and the New Freedom (NF) projects, respectively.

The City of Asheville is the designated recipient of the Job Access and Reverse Commute (JARC) and New Freedom grant funds, which are programs of the Federal Transit Administration (FTA). JARC is a formula grant program oriented to provide job access in the urbanized and suburbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas.

The projects to be funded include: the Black Mountain Trailblazer route, which is operated by Mountain Mobility (JARC grant), pedestrian improvements along US 64 in Henderson County, which is the City of Hendersonville's project (NF grant), van purchasing and rehabilitation and daily operations, which is for Customer Inspired Services (NF grant), and the City of Asheville's administrative costs for both programs.

The job access refers to projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment.

The reverse commute refers to a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities.

New Freedom is also a FTA formula grant program for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990. These funds are intended to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

To be eligible, the programs require an intensive planning process and the development of a Coordinated Public Transportation and Human Services Transportation Plan or CTP-HSTP based on community participation. The CTP-HSTP was developed in conjunction with the French Broad Metropolitan Planning Organization, Buncombe, Henderson and Haywood Counties, human services agencies, public and private transportation providers, the North Carolina Department of Transportation and the general public to assess current transportation needs, identify gaps and to set goals. The plan was approved on March 29, 2012 by the French Broad River MPO's governing body (the Transportation Advisory Committee), which includes elected representatives from each of the eighteen local governments which make up the MPO. The CTP-HSTP set the rules to apply for projects and the projects were selected in a competitive process that was approved by the TAC.

In September 2012, Buncombe County's Mountain Mobility, the City of Hendersonville and Customer Inspired services were selected as sub-recipients of the JARC grant and NF grant. The projects are listed as follows:

Sub-Recipient	Project	Program	Amount funded	Sub-Recipient's match
Buncombe County	Black Mountain Trailblazer	JARC	\$102,181	\$102,181
City of Asheville	Program Administration	JARC	\$22,706	N/A
City of Hendersonville	Pedestrian improvements along US 64	NF	\$197,116	\$37,000
Customer Inspired Services	Van purchasing and rehab	NF	\$18,700	\$2,300
Customer Inspired Services	Operations	NF	\$2,000	\$2,000
City of Asheville	Program	NF	\$24,201	N/A

	Administration			
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The city needs to set up project budgets in order to pass through the funds and will seek reimbursement directly from the FTA. The sub-recipients will be responsible for the match.

The City will be responsible for the Program Management and, as designated recipient, to oversee the use of the funds according to FTA regulations. The program management will require the use of city resources, mainly staff. As a designated recipient the city will use \$22,706 and \$24,201 of JARC and NF funds, respectively, for administration purposes, which will cover the program management expenses for a period of two years.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Project funding is provided by the FTA, 50% for operating projects and 80% of capital projects. The sub-recipients are responsible for the local match.
- The city can use \$46,907 for administration purposes.

Con:

- None.

The total financial impact for the subject projects is \$510,385 and it will be funded with Federal Funds and matched by the sub-recipients. \$46,907 will be reimbursed to the city for administrative costs. There is no impact on the City's General Fund budget.

Staff recommends that City Council adopt a budget ordinance amendment in the amount of \$227,068 from Federal Funds to setup the project budget for Job Access and Reverse Commute project, and \$283,317 to setup the project budget for the New Freedom projects, including the administrative costs.

ORDINANCE BOOK NO. 28 - PAGE

I. ORDINANCE NO. 4164 - BUDGET AMENDMENT FROM THE US DEPT. OF HOUSING & URBAN DEVELOPMENT TO ACCEPT EMERGENCY SOLUTIONS GRANT FUNDS

Summary: The consideration of a budget amendment, in the amount of \$451,256, from the US Dept. of Housing & Urban Development, to accept Emergency Solutions Grant funds.

In September, 2012, Council approved the execution of a grant agreement with the State of North Carolina for Emergency Solutions Grant funding. A contract and additional revised award has now been received. The following shows the final award totals:

	Award Amount
Organization	
ABCCM (Steadfast House)	\$ 35,557
Helpmate	\$ 15,000
Homeward Bound	\$ 90,360
Salvation Army	\$ 28,441
City of Asheville, HMIS and Coordination	\$ 50,000
City of Asheville, Admin	\$ 6,270

TOTAL REQUESTS	\$ 225,628
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These funds must be matched 1:1 from other sources, resulting in a total contract amount of \$451,256. Matching funds will come from the participating agencies, not the City of Asheville.

The proposed budget amendment will account for all funds awarded, plus the matching funds.

The project directly supports the City's Strategic Operating Goal of *Affordable*: The funded projects support the City's goal for all citizens to have access to safe, sufficient and affordable housing, by addressing homelessness with an emphasis on Housing First.

Pros:

- ESG funding is a key funding resource for emergency shelter, and is now becoming an important resource for rapid rehousing of persons experiencing homelessness.

Con:

- None

Program funding is entirely from the US Dept. of Housing and Urban Development, through the State of North Carolina. Existing community development division staff will administer the program. No general funds are requested to support this program. The City will receive funds for administration and coordination through the grant.

Staff recommends that Council approve the budget amendment, in the amount of \$451,256, for the Emergency Solutions Grant.

ORDINANCE BOOK NO. 28 - PAGE

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. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources process update from January 23 - February 12, 2013. He then provided Council with the information sharing between the City and MSD.

B. LEGISLATIVE UPDATE

Deputy City Manager Jeff Richardson highlighted some of the information they received from the City/County Manager Winter Conference regarding tax reform; an annexation amendment introduced; motor vehicle tax collections threatened; operation of mopeds; and a new alliance formed as part of collaborative effort to promote economic growth/development in North Carolina cities and towns - alliance is made up of community leaders including former North Carolina Governors, former municipal leaders, etc. for serving as a voice for public policy issues effecting economic viability of cities and towns and the success of businesses and the quality of life of residents.

IV. PUBLIC HEARINGS:

A. CONTINUATION OF CONSIDERATION TO CONDITIONALLY ZONE HARRIS TEETER PHASE 2, LOCATED ON 17 AND 23 ELOISE STREET AND 136, 176 AND 180 MERRIMON AVENUE, FROM HIGHWAY BUSINESS DISTRICT, COMMERCIAL BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING IN ORDER TO FACILITATE ADDITIONAL OUTPARCEL DEVELOPMENT IN ADDITION TO THE HARRIS TEETER STORE, AND A MODIFICATION REQUEST TO THE LANDSCAPE BUFFER

ORDINANCE NO. 4165 - ORDINANCE TO CONDITIONALLY ZONE HARRIS TEETER PHASE 2, LOCATED ON 17 AND 23 ELOISE STREET AND 136, 176 AND 180 MERRIMON AVENUE, FROM HIGHWAY BUSINESS DISTRICT, COMMERCIAL BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING IN ORDER TO FACILITATE ADDITIONAL OUTPARCEL DEVELOPMENT IN ADDITION TO THE HARRIS TEETER STORE, AND A MODIFICATION REQUEST TO THE LANDSCAPE BUFFER

Mayor Bellamy said that the public hearing on this issue was held on January 22, 2013, and continued to this date in order for the City and developer to dialogue about options. City Council reserved the right to re-open the public hearing to receive new information only.

Assistant Planning & Development Director Shannon Tuch said that this is the continued consideration of a conditional zoning application for Harris Teeter Phase 2, located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue, from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning in order to facilitate additional outparcel development in addition to the Harris Teeter Store, and a modification request to the landscape buffer.

On January 22, 2013, the Council received a report and conducted a public hearing on the conditional zoning of approximately 8.45 acres located along Merrimon Avenue, Eloise Street, Holland Street and E. Chestnut Street.

At the request of the property owners and developers, a vote of the Asheville City Council on the application was postponed until February 12, 2013. Since the public hearing, City staff has worked with neighbors of the proposed development and with the developers/owners to come up with additional conditions for the rezoning that address concerns of residents and property owners in the area. She then reviewed in detail the the following new conditions agreed upon (previous listing plus new conditions), noting that the conditions added since the public hearing are listed below the dotted line.

- The conditions included in the Technical Review committee report and the standard conditions.
- That there are no more than four building pads in addition to the Harris Teeter (five total).
- Buildings other than Harris Teeter shall be no more than 32 feet in height.
- Buildings fronting on Merrimon shall be oriented to the street and placed as close to the street as is reasonably possible to maximize safe pedestrian interaction.
- The architectural design and building materials used for the buildings will be similar to those being utilized in the Harris Teeter construction.
- The developer is allowed no more than one drive thru operation.
- No more than a total (all building pads excluding Harris Teeter) of 25,000 square feet of building will be constructed on the building pads.

- As the uses are submitted for final review, if the traffic counts exceed those indicated in the originally submitted traffic study, a new traffic impact analysis would need to be conducted and approved including the traffic impact from the Trader Joe's development.
- There be sidewalk connectivity from Merrimon Avenue to all buildings as appropriate for pedestrian safety and convenience.
- The uses permitted on the site shall be limited to those HB uses listed on the chart provided to City Council.
- No dumpster will be located within 100 feet of residential properties.

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- If a drive thru facility is located on the site it shall be located to the south of the signalized access point and fronting on Merrimon Avenue.
 - Any window at a drive thru facility shall have hours of operation limited to between 6 AM and 12 Midnight.
 - That \$10,000 per building (not including Harris Teeter) will be provided to the City as the building permits are applied for. This money shall be used exclusively for pedestrian and traffic safety infrastructure in the vicinity of this project and tie in with existing road and pedestrian infrastructure. The first priority for these funds will be the construction of pedestrian improvements at the intersection of E. Chestnut, Holland, Maxwell, and Monroe, which she then used a drawing to describe.
 - A sign will be erected on the subject property at the exit onto East Chestnut Street that reads "No Right Turn for Delivery Trucks" (headed west).
 - Signage shall be limited to the submitted plans.
 - That there will be an anti-idling policy for delivery vehicles in the lease/sale documents for the building pads. Signage indicating "No-Idling" will be placed in all loading areas.

One of the agreed upon conditions provides that the developer will provide funding for pedestrian safety infrastructure in the vicinity of the project. Specifically targeted is the intersection of E. Chestnut, Holland, Monroe and Maxwell Streets. The pedestrian improvements at this intersection are needed to complement the new sidewalk that will be constructed along the property frontage. These improvements will better define the actual path that should be used by pedestrians and will clearly show drivers where to expect pedestrians. Once the development is completed and opened for business, pedestrian activity in the immediate area is expected to increase including crossing activity along East Chestnut Street. At this time, it is anticipated that the improvements would have a maximum total cost of \$30,000.

At 5:45 p.m., Mayor Bellamy opened the public hearing and restricted any public comments on the new conditions only.

Mr. Alan Ditmore felt the height condition is contrary to smart growth principles. He also did not support drive throughs because they discriminate to pedestrians.

A resident on Mt. Clare Avenue, representing the Five Point neighborhood, asked for the following five development mitigation plans that still need to be addressed: (1) establish a calm residential zoning (need speed limits lowered to 20 mph, pedestrian warning signs and no through traffic signs were applicable); (2) facilitate a calm residential zone (need commitment for funding for traffic calming); (3) intersection improvements at E. Chestnut/Monroe/Maxwell (need additional pedestrian improvements such as curb bump-out with pedestrian refuge, raised crosswalk and "stop for pedestrians in crosswalk" signage at both E. Chestnut and Maxwell crosswalks. These improvements will help driver and pedestrian visibility and safety and are in addition to those already proposed by City staff; (4) truck traffic restriction (needs to be included in any lease/sales agreements - in addition to sign requirement); and (5) emission/odor controls (need for fast food and/or other restaurants).

Mr. David Metz, resident on E. Chestnut Street, cited that there is already too much existing traffic on Chestnut Street, the need for emission/odor control, and traffic calming measures for the Five Points neighborhood.

Mr. Mario Hernandez, resident on Fulton Street, was uncomfortable with the zoning of Highway Business on the property.

Ms. Heather Rayburn, representing the Five Points Neighborhood, said that after analysis, the neighborhood decided to support the rezoning request in exchange for having them consider the five development mitigation plans outlined above, noting they were still disappointed that the developer is still considering a drive through. She hoped that the City would agree to the intersection improvements to W. Chestnut and Maxwell/Monroe by installing a curb bump-out, in addition to other traffic calming measures. She said the neighborhood is in the process of filling out the traffic calming petition and hoped to be placed at the top of the traffic calming list. They were counting on Council to fund the traffic calming needs for their neighborhood. Their main objective is for a healthy, walkable, safe, mixed-use neighborhood.

Mr. Greg McCoy, resident on Monroe Place, noted that the property was zoned improperly from the beginning. He hoped Council will fund the needed traffic calming measures for their neighborhood. He also asked for no through truck traffic signs.

Mr. Jesse James, resident on Spears Avenue, felt that they didn't need any more Highway Business zoning and did not support drive through development.

At 6:16 p.m., Mayor Bellamy closed the public hearing.

Director of Transportation Ken Putnam responded to Councilman Pelly about speed limits, no through truck traffic signs, and if the signs are not working at the intersection of W. Chestnut and Maxwell/Monroe that they would look for other solutions, such as the curb bump-out.

Councilman Pelly noted that traffic will have a significant impact on the neighborhood and we will need to work with them due to the cumulative traffic from the new development coming in the area. If improvements are needed from the traffic calming study, then Council needs to be prepared to provide the funding for those improvements.

Councilman Pelly 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. 4165 to conditionally zone Harris Teeter Phase 2, located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue, from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning in order to facilitate additional outparcel development in addition to the Harris Teeter Store, and approval of the modification request to the landscape buffer, subject to the following conditions: (1) The conditions included in the Technical Review committee report and the standard conditions; (2) That there are no more than four building pads in addition to the Harris Teeter (five total); (3) Buildings other than Harris Teeter shall be no more than 32 feet in height; (4) Buildings fronting on Merrimon shall be oriented to the street and placed as close to the street as is reasonably possible to maximize safe pedestrian interaction; (5) The architectural design and building materials used for the buildings will be similar to those being utilized in the Harris Teeter construction; (6) The developer is allowed no more than one drive thru operation; (7) No more than a total (all building pads excluding Harris Teeter) of 25,000 square feet of building will be constructed on the building pads; (8) As the uses are submitted for final review, if the traffic counts exceed those indicated in the originally submitted traffic study, a new traffic impact analysis would need to be conducted and approved including the traffic impact from the Trader Joe's development; (9) There be sidewalk connectivity from Merrimon Avenue to all buildings as

appropriate for pedestrian safety and convenience; (10) The uses permitted on the site shall be limited to those HB uses listed on the chart provided to City Council; (11) No dumpster will be located within 100 feet of residential properties; (12) If a drive thru facility is located on the site it shall be located to the south of the signalized access point and fronting on Merrimon Avenue; (13) Any window at a drive thru facility shall have hours of operation limited to between 6 AM and 12 Midnight; (14) That \$10,000 per building (not including Harris Teeter) will be provided to the City as the building permits are applied for. This money shall be used exclusively for pedestrian and traffic safety infrastructure in the vicinity of this project and tie in with existing road and pedestrian infrastructure. The first priority for these funds will be the construction of pedestrian improvements at the intersection of E. Chestnut, Holland, Maxwell, and Monroe, which she then used a drawing to describe; (15) A sign will be erected on the subject property at the exit onto East Chestnut Street that reads "No Right Turn for Delivery Trucks" (headed west); (16) Signage shall be limited to the submitted plans; and (7) That there will be an anti-idling policy for delivery vehicles in the lease/sale documents for the building pads. Signage indicating "No-Idling" will be placed in all loading areas. This motion was seconded by Vice-Mayor Manheimer.

Councilman Bothwell said that one of the principle owners of the property said that they contracted with Chick Fil A a long time ago because that was permitted under the zoning.

When Councilman Bothwell asked Mr. Putnam if the neighborhood has been looked at for one-way streets, Mr. Putnam said that they are open to put that discussion on the table for consideration.

Councilman Hunt appreciated the work between the developer and the neighborhood on the new conditions added. He agreed that the Highway Business zoning is a mistake, but the conditions layered on that zoning makes the property more restrictive than a commercial business zone.

In response to Councilman Hunt about the food odor concern, Mr. Steve Vermillion, developer, said that they have been talking with a local engineering firm who did some work on the building. That engineer felt that the type of filtering system at this location, given the distance from the residences, would not be effective. He wanted to make sure that if they spend the additional money for the filtering system that it will be effective.

The motion made by Councilman Pelly and seconded by Vice-Mayor Manheimer carried unanimously.

Councilman Pelly moved to direct the City Manager to cause a review of the traffic impact in the immediate area of the development and to bring to City Council recommendations emerging from that review. This motion was seconded by Councilman Bothwell.

There was brief discussion about whether Councilman Pelly's motion was to include the City funding more than the \$30,000 for traffic calming already agreed to by the developer. Councilman Pelly felt that the \$30,000 will be for the intersection improvements but the neighborhood will be impacted far beyond just the intersection from that development. Mayor Bellamy felt that traffic calming needs to be looked at as part of the budget process. It was determined that City staff is currently collecting traffic data on the roads (since the neighborhood has already brought the concerns to their attention). Mr. Putnam said that the concern is that when Harris Teeter and Trader Joe's are open for business there may be a further impact to the neighborhood. They really won't know that until they get to that point in time. He suggested that staff continue their dialogue with the community making sure that the City has all their concerns on the table. City staff will also continue with the collection of the data so that it becomes a baseline that they will be able to compare the impacts to and see what impact the new businesses have on the neighborhood streets. Councilman Pelly felt it was important for the community to continue with the petition process (which forces conversation within the community) and because the traffic study analysis is already in motion, he withdrew his motion.

Mayor Bellamy asked City Clerk Burleson to add a placeholder for an agenda to discuss the traffic calming measures in this neighborhood. Said placeholder will be after the Harris Teeter and the Trader Joe's developments are built and have been open for a few months.

City Manager Jackson will provide to Council a list of the traffic studies that have been done, their findings, and where we have found that their action plans would be appropriate. There is a list and there are neighborhoods that already qualify. We present that information to Council in the next 8 weeks during the budget process and Council can consider at that point in time what would be something to add to the capital improvement budget, reallocated from some other infrastructure improvement. Then the community would know that as risks are identified and they have gone through the process. They will be ranked in order of highest risk and they would know that they would be in line for funding. There will also be an opportunity for Council to talk about policies about where more affluent communities are in a position to contribute to those improvements because Council still would want to address the public safety needs regardless of the affluence of a neighborhood and their ability to share in the cost. We propose that the work of the staff continue in this neighborhood and other neighborhoods where people are concerned about their safety, and provide the kind of objective analysis as to what needs to be done. We will empower Council with that information and Council can consider the funding of what would put us on a track to reliably address this so that we show good faith with neighborhoods.

Councilman Smith noted that Council is in the process of reexamining the zoning designations to make sure they are in harmony with existing neighborhoods. We need to learn more about balancing density along side of safety concerns.

ORDINANCE BOOK NO. 28 - PAGE

B. PUBLIC HEARING TO CONSIDER AMENDING THE 2012-13 CONSOLIDATED ACTION PLAN

RESOLUTION NO. 13-28 - RESOLUTION AUTHORIZING SUBSTANTIAL AMENDMENT #2 OF THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR 2012-2013

Director of Community Development Jeff Staudinger said that this is the consideration of a resolution amending the 2012-2013 Consolidated Annual CDBG and HOME Action Plan to cancel HOME funding for OnTrack for the HomeBase program; and to allocate those funds to Homeward Bound for Tenant Based Rental Assistance. This public hearing was advertised on February 1 and 8, 2013.

OnTrack has discontinued its Home Base program, for which 2012-2013 CDBG and HOME funds had been allocated. CDBG funding cancellation was approved by Council in September of 2012.

HOME funding recommendations are made by the Asheville Regional Housing Consortium. The Consortium reviewed OnTrack's request for the cancellation of its HOME grant of \$20,000, as well as the return of \$2,767 of unused funds from 2011-2012, at its November, 2012 meeting. The Consortium also reviewed Homeward Bound's request for those funds to continue Tenant Based Rental Assistance for households who are currently homeless or in immediate danger of homelessness. Homeward Bound would use the additional \$22,767 exclusively for rapid re-housing, allowing the agency to house an additional 15 households by the end of the current fiscal year.

This action meets the Council Strategic Goals of Affordable by supporting initiatives to end homelessness in Asheville emphasizing the Housing First philosophy.

Pro:

- The proposed action will enable the City to allocate HOME funds for program that has proven effective in rapidly house households currently experiencing homelessness.

Con:

- None.

The proposed use of funds would grant federal funds already allocated to the City. No City general funds are affected.

The Asheville Regional Housing Consortium recommends that the 2012-2013 Action Plan be amended to allocate the \$22,767 of HOME funds originally allocated to OnTrack's HomeBase program to Homeward Bound, for use as Tenant Based Rental Assistance to rapidly re-house homeless households. This includes \$20,000 of FY 2012-2013 funds, and \$2,767 of 2011-2012 funds.

Mayor Bellamy opened the public hearing at 6:45 p.m.

Mr. Alan Ditmore felt that his decision not to be a parent has placed him at a greater risk of being homeless. He felt that parents are being priority over childless homeless people.

Brother Christopher Chiaronmonte said that he would be willing to give up his housing in exchange for a place to pitch his tent.

Mayor Bellamy closed the public hearing at 6:50 p.m.

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

Councilman Bothwell moved for the adoption of Resolution No. 13-28. This motion was seconded by Councilman Smith and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER REZONING 1.35 ACRES ON POSSUM TROT FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 4166 - ORDINANCE TO REZONE 1.35 ACRES ON POSSUM TROT FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Urban Planner Blake Esselstyn said that this is the consideration of rezoning 1.35 acres on Possum Trot from Commercial Industrial District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on February 1 and 8, 2013.

Mr. Esselstyn said that this parcel sits at the intersection of three zoning districts (CI, CBII, and RM8) without significant geographic features to separate them, and a case could be made that any of the three districts would suit the property. The current zoning designation (Commercial Industrial) maintains the mixed-use zoning at a consistent depth from Brevard Road (to the west).

The applicants, however, also own the adjacent parcel to the east, a residential parcel which neighbors other residential parcels also accessed by the private drive known as Possum Trot. The rezoning request would make the subject property's zoning consistent with these

properties. The applicants' intent is to preserve the subject lot as a wooded buffer in the near term, with the possibility of residential development in the future; they also specifically wanted to prevent further commercial development near these homes.

With a right-of-way only 16 feet wide and a gravel surface, albeit in excellent condition, Possum Trot would not meet the standards for commercial development on a landlocked parcel such as this. The right-of-way could not accommodate two lanes for ingress and egress of commercial traffic, and the topography would make it difficult for creation of a shared access with the parking lot entrance to the south. This limitation further supports the suitability of a residential zoning assignment.

At their January 2, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning request.

As of this writing, staff has received no communications from neighbors or other citizens regarding this item.

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

Pros:

- Proposed zoning is appropriate for the location.
- Sub-standard access road would be problematic for commercial development.

Con:

- None noted.

Staff feels only one possible scenario, the recombination of this property with the lot to the west, would create an arrangement that could support commercial development, and even that would present challenges. The proposed residential zoning is fitting for the infrastructure conditions, as well as for the other geographic context, and staff recommends approval.

Mayor Bellamy opened the public hearing at 6:53 p.m.

Mr. Steven Garrett, property owner, stated that he only wanted his property rezoned for a buffer between his home and the highway.

Mayor Bellamy closed the public hearing at 6:54 p.m.

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

Vice-Mayor Manheimer found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4166. This motion was seconded by Councilman Pelly and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE

V. UNFINISHED BUSINESS:

A. SECOND AND FINAL READING OF ORDINANCE NO. 4159 - ORDINANCE APPROVING A SIGNAGE PLAN FOR UNC-ASHEVILLE

Mayor Bellamy said that the public hearing and adoption of Ordinance No. 4159 was on January 8, 2013. City Attorney Oast said that because the ordinance failed to receive the 2/3

vote necessary to pass on the first reading, it was necessary to bring it back Council for adoption on the second reading.

Councilman Davis moved to adopt Ordinance No. 4159 on its second and final reading as follows: Approval of the UNC-A sign package as follows: (1) Gateway signs be limited to the following locations: (a) WT Weaver Blvd. & University Heights (round-about); (b) University Heights & Campus Drive (triangle intersection); (c) Broadway Ave. & Campus Dr; (d) Merrimon Ave. & WT Weaver Blvd.; and (e) Broadway Ave. & WT Weaver Blvd.; (2) All signs located within road rights-of-way shall obtain all necessary approvals or encroachments from the regulating agencies; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted (minor changes to sign location due to visibility or other site constraints may be permitted). This motion was seconded by Councilman Vice-Mayor Manheimer and carried on a 5-2 vote, with Councilman Bothwell and Councilman Pelly voting "no."

B. ORDINANCE NO. 4127 - ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR OFFICE TENANT AND RETAIL TENANT IDENTIFICATION SIGNAGE

Assistant Planning & Development Director Shannon Tuch said that in July 2007, City Council approved a signage plan for the Biltmore Park Town Square (BPTS) urban village project. Comprehensive signage plans are allowed by ordinance to enable larger development sites to develop a custom plan for signage that addresses unique needs and contexts in a comprehensive and harmonious manner.

On October 9, 2012, City Council approved the office tenant signs. A second amendment was initially proposed in October affecting retail and office tenants, but the developer was urged by the Council to consider alternatives. The revised proposal is before the Council today.

The applicant has revised their request to remove the tenant identification sign on the back of the movie theater where options for a painted mural are being considered. Murals that do not depict trademarked logos, products for sale, or services offered are not typically considered signage and would not normally be included in a signage plan request.

The applicant continues to request the tenant identification signage on the back of the parking of deck facing Interstate 26. The additional sign panel would be approximately 37'x26' or 962 square feet and would match the existing sign's vertical dimension and the text would be similar in design and character to the existing sign.

Analysis update: The use of a mural on the back of the theater in lieu of tenant identification would still serve to creatively draw attention to the site without providing advertising for any one retailer, thereby addressing the concern over excessive and off-site advertising at this location. The staff provisionally supports this request although the design has not yet been submitted.

The proposed tenant identification signage on the back of the parking deck remains unchanged although the rendering has been updated which shows a more balanced and harmonious relationship to the existing sign. The applicant has also supplied a photoshopped image of the existing and proposed sign as it would be seen from the interstate for better visualizing.

As an alternative, the applicant also explored a free-standing pylon sign with a height of 38' and overall size of 276 square feet but was not satisfied with its appearance or effectiveness.

Cons:

- The cumulative size of the existing sign when added to the proposed sign is approximately 2262 square feet, over six times the size of an average billboard.
- Approval of this much cumulative signage is likely to set a precedent that will be of interest to other large multi-tenant developments

City staff recommends City Council consider all information and approve the proposed signage plan amendment if it can be determined that the goals of the signage plan and/or other city adopted goals are satisfied.

At 6:59 p.m., Mayor Bellamy opened the public hearing.

Ms. Sarah Davis, representing Biltmore Farms, explained the purpose of an urban village, which is to create mixed use development that is economically vital, pedestrian oriented and also contributes to the placemaking character of the built environment. Biltmore Farms knows how important high density urban villages are to the smart growth of our city. She asked Council to consider allowing the expansion to our signage to address the inadequate retail signage. She reviewed with Council several slides of options they considered, but for several reasons they were not happy with them. The additional signage would be used to leverage additional retailers and drive more jobs to Asheville and Biltmore Park Town Square.

Ms. Patsy Brison, attorney representing a group of merchants in Biltmore Village area, said that they are strongly opposed to this proposal. She raised a procedural objection of whether Council can review the proposal; the proposal does not comply with the purposes set forth in Section 7-13-10 (1); this proposal is over seven times the size of an average billboard; and it is a prohibited off-premise sign; proposal is contrary to the Urban Village District description; terrible precedent; proposal is not in keeping with the Urban Village concept; and unfair competitive advantage to merchants in the Biltmore Village area and to merchants in the downtown area.

Ms. Kathy McCarten, resident in Biltmore Park, spoke against the proposal for several reasons. She said that variances are to be granted for extreme circumstances out of the control of the developer and this is not the case. The sign is seven times the size of a billboard and the signage is aesthetically unpleasing. She felt that the large sign will be an eyesore every day to the residents of Biltmore Park. Granting this proposal will make the area resemble a shopping center.

Brother Christopher Chiaronmonte spoke against the proposal.

Mr. Paul Szurek, Secretary to the Biltmore Park Town Square Condominium Association, provided Council with information regarding apartment, hotel and office occupancy rates for Biltmore Park compared to others in the area, showing that everything looks good in Biltmore Park, so the signs are not a negative. They not only have to think about the residents in the area, but also the people who have invested in their retail businesses, along with their employees in the stores. The visibility and the effectiveness of the concept has tremendous potential to achieve smart growth for Asheville and Biltmore Park. They looked at other signs and received a lot of feedback from the community. He said that the signage is bigger than a billboard, but it's also set off from the highway about 8 times of a standard billboard. He hoped Council would approve the signage package so the development can move forward in Biltmore Park and other areas of the City.

At 7:14 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Hunt regarding Ms. Brison's procedural question, City Attorney Oast advised Council that they can approve signs in urban village projects.

Councilman Hunt is not a fan of increased commercial signs in the community; however, the development is a smart growth development and has high density, mixed-used and is environmentally responsible. There is a 30% vacancy rate in retail and he felt it's in the community's interest to see developments like this succeed so that there can be more in the future.

Councilman Bothwell said his decision hinges on setting a precedent and the City has adopted a sign ordinance to generally tone down the signage. He could not support the proposal.

In response to Councilman Pelly, Mr. Szurek said that they don't use the interstate signs because they are limited to only lodging, gasoline and food businesses. He said they looked at the Staples sign on Merrimon Avenue under advisement and they had the black screen behind the letters with the letters more of a subdued red.

Councilman Smith said that the City has a special relationship with Biltmore Park as seen by their voluntary annexation into the City when phases were complete. He didn't see this as precedent setting.

Councilman Hunt moved for the adoption of Ordinance No. 4127, to approve (1) the office tenant signs; and (2) the tenant identification signs & panel, as proposed for Biltmore Park Town Center, and find that the request is reasonable and consistent with the economic development goal to, "Create more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals". This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Bothwell and Councilman Pelly voting "no".

ORDINANCE BOOK NO. 28 - PAGE

C. CONFIRMATION OF ESSAY QUESTIONS TO ELIGIBLE ASHEVILLE CITY BOARD OF EDUCATION CANDIDATES

Vice-Mayor Manheimer said that the pursuant to the schedule which was adopted by City Council, the Boards & Commissions Committee reviewed all questions submitted by City Council and with Councilman Smith's help, narrowed them down to five final questions to ask the City Board of Education candidates to respond to in writing. At the request of Mayor Bellamy, and through consensus of Council, the five questions included one question raised by Mayor Bellamy.

It was the consensus of Council to wait until the deadline of February 25 before the essay questions are sent to all eligible candidates.

Mayor Bellamy announced that the deadline for Asheville City Board of Education applications is Monday, February 25, 2013, at 5:00 p.m. and to please contact City Clerk Burleson for an application form.

VI. NEW BUSINESS:

A. RESOLUTION NO. 13-29 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CHERRY BEKAERT & HOLLAND FOR AUDITING SERVICES FOR FISCAL YEAR 2012-13

Executive Director for Finance & Strategic Planning Lauren Bradley said that this is the consideration of a resolution authorizing the Mayor to execute a contract with Cherry Bekaert & Holland (hereinafter referred to as Cherry Bekaert) for auditing services for fiscal year 2012 - 2013.

North Carolina General Statute 159-34 requires that local governments have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission. In response to the aforementioned general statute, staff recommends retaining the services of Cherry Bekaert to conduct the audit of the city's accounts for the fiscal year ending June 30, 2013.

The City issued a Request for Proposal (RFP) for Auditing Services mid-November. Five bid submissions were received through December 17, 2012, and were subsequently reviewed by a select committee of staff members of the Finance and Management Services department. All proposals were scored and weighted on the same set of qualifying criteria as outlined in the RFP. Upon completion of the qualitative scoring each firm's cost was factored in and weighted to yield an overall score. The firm with the highest score is Cherry Bekaert.

Cherry Bekaert has extensive experience auditing North Carolina local governments of the size and complexity comparable to the City of Asheville's financial systems, accounts and records. This breadth and depth of experience will provide to City staff new perspectives and to City Council the assurances that an objective audit process demands.

The proposed fee for fiscal year 2012-2013 audit and financial statement preparation is \$85,000. Fees for those services for fiscal years 2010, 2011, and 2012, were \$153,500, 109,000, and 95,000, respectively.

As part of the engagement, Cherry Bekaert will provide a document required by the Auditing Standards Board that provides a framework for the auditor's communication with the Mayor and City Council and identifies some specific matters to be communicated. Pursuant to the Auditing Standards Board requirement, Cherry Bekaert will communicate timely and directly with the Mayor and City Council on matters related to the financial statement audit that are, in the auditor's professional judgment, significant and relevant to the responsibilities of those charged with governance in overseeing the financial reporting process.

Additionally, Cherry Bekaert will provide an audit schedule with milestones and timetables in an effort to improve audit planning and ensure that the audit report is delivered timely to the Local Government Commission.

Execution of this contract complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility, as well as the Audit Policy portion of City Council's Financial Policies.

Award of the contract was considered and unanimously approved by the City Council Finance Committee in January 2013.

Pro:

- Contracting with Cherry Bekaert aligns with City Council's financial policy, and will help ensure the timely and successful completion of the annual audit.

Con:

- None noted.

A fee of \$85,000 has been proposed for the audit and is included in the Finance Department's portion of the Fiscal Year 2012-2013 annual operating budget.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Cherry Bekaert & Holland in the amount of \$85,000 for auditing services for fiscal year 2012-2013. This fee is \$10,000 less than the audit fee incurred by the City of Asheville for Fiscal Year 2012.

Mr. Eddie Burke, Partner with Cherry Bekaert & Holland briefly reviewed his firm's profile, mid-carolina profile, client service team, government services group, and audit experience with government entities. He looked forward to have the opportunity to serve the City of Asheville.

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 Hunt moved for the adoption of Resolution No. 13-29. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 180

B. BOARDS & COMMISSIONS

Regarding the Citizens-Police Advisory Committee, the following individuals have applied for the vacancy: Karl Katterjohn and Fred Cooke. Because the vacancy is for a south representative and no one from the south applied, it was the consensus of Council to re-advertise for a south representative.

Regarding the Asheville-Buncombe Community Relations Council, the following individuals have applied for the vacancy: Melissa Blazen, George Pfeiffer, Christine Longoria, Jesse Andrews, Sandra Houts and Tracy Miles. It was the consensus of Council to postpone making the appointment for one month, at the request of the Community Relations Council

Regarding the Airport Authority, Vice-Mayor Manheimer said that even though City Council would enjoy having the Mayor's representation on the Airport Authority, because of the legislation that bars elected officials from serving on the new Airport Authority Board, she was concerned about having an empty seat. Currently David Hillier and Bob Roberts are also the City appointed representatives. The Boards & Commissions Committee met and felt that it might be prudent to move forward to appointing someone to the Mayor's seat (since the new Airport Authority refuses to acknowledge her appointment). Mayor Bellamy did not have any problem with appointing someone to serve in her seat; however, she could not support Mr. Hillier continuing to serve as he does not represent Council's views nor has he represented the views of our stakeholders. It was the consensus of Council to advertise for a seat on the new Airport Authority and give City Attorney Oast the opportunity to update the full Council on the appointment process at his earliest opportunity. In addition, upon inquiry of Councilman Bothwell about the FAA funding for major capital improvements, City Attorney Oast said that he will also provide Council with a report on that issue at his earliest opportunity.

RESOLUTION NO. 13-30 - RESOLUTION APPOINTING A MEMBER TO THE TREE COMMISSION

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Tree Commission.

The terms of Laura Yavelow and Bill Hascher expired on December 31, 2012.

The following individuals have applied for the vacancy: Matthew Eric Schlosser, Zoe Schumaker, Andy White, Mike Dale and Jonathan Gach.

It was the consensus of the Boards & Commissions Committee to appoint Matthew Schlosser and Jonathan Gach.

Councilman Bothwell moved to appoint Matthew Schlosser and Jonathan Gach, as members of the Tree Commission, to each serve a three-year term respectively, terms to expire December 31, 2015, or until their successors have been appointed.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Brother Christopher Chiaromonte spoke about selective police enforcement in the downtown area.

When Mr. Alan Ditmore spoke in support of funding Planned Parenthood, Mayor Bellamy responded that Mr. Ditmore may be confusing the City with Buncombe County as the County just talked about funding non-profits.

Mayor Bellamy announced that President Obama will be visiting Asheville on February 13 to talk about economic development opportunities.

Closed Session

At 7:53 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (6); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:15 p.m., Councilman Hunt moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:15 p.m.

CITY CLERK

MAYOR