

Tuesday – April 23, 2013- 3:00 p.m.
First Floor North Conference Room

Budget Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; 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

Executive Director of Finance and Strategic Planning Lauren Bradley said that since City staff is recommending the budget schedule be extended to (1) add an additional worksession on May 14; (2) present the recommended budget to City Council on May 28; (3) hold the budget public hearing on June 11; and (4) ask for Council to vote on the proposed budget on June 25, she provided City Council with an update on where we are, along with an opportunity for additional feedback.

She reviewed the proposed legislation as of April 2013; budget balancing strategies; and budget balancing considerations (1) financial impact of various items remain uncertain (a) revenue reform proposed by the N.C. General Assembly; (b) disposition of the City's water system; (c) Cultural and Recreation Authority; and (d) impact of property tax rate adjustments to sales tax distribution; and (2) implementing permanent service reductions and re-engineering is challenging when timing and full impact is unclear.

The proposed budget assumptions of the Operating Budget (1) budget Water Fund contribution to central services (a) offset potential loss of contributions by (i) capturing current year savings for fund balance contingency and (ii) deferring expenses until later in the year; and (b) this approach gives the City flexibility to adapt to changing conditions; permanent reductions would have to be considered if the water system is transferred; and (2) reduce revenue projections - offset loss with property tax increase; alternative is to consider additional service reductions.

The proposed Fiscal Year 2014 continuation of the Capital Improvement Program (CIP) (1) the continuation pay-as-you-go CIP is insufficient to meet the City's basic capital maintenance needs (a) assumes reduction in Water Fund's \$1.5 million contribution to infrastructure improvements associated with water lines (b) 50% reduction in facility maintenance and roof replacements; and (c); unable to fund basic replacements like traffic controllers and traffic signal poles; (2) the continuation budget for debt-funded projects allows limited ability to invest in infrastructure and strategic economic development projects (a) \$10 million in debt capacity is allocated to Hendersonville Road sidewalk project (\$825,000) to leverage N.C. Dept. of Transportation funds, Public Safety Radio Infrastructure Replacement Project \$6 million), vehicle replacements (\$2.4 million) and bridge repair (\$500,000), and other infrastructure (\$1 million); and (3) targeted investments in infrastructure and capital improvements could help address the revenue side of the City's structural imbalance.

The proposed Fiscal Year 2014 enhanced Capital Improvement Program (1) implementation of enhanced capital improvements and economic development investments will require additional revenue (a) an additional \$3 million in the CIP would increase capital maintenance, infrastructure projects and fund economic development CIP including RADTIP and downtown projects; and (b) funding sources could come from a combination of City revenues and other sources; and (2) staff would recommend considering a minimum of an additional \$2 million in capital improvements. She then reviewed the tax rate impacts.

The following is policy direction needed: (1) extending the schedule with the proposed budget being presented on May 28; regarding the General Fund Operating Budget, feedback on current assumptions and plans (a) balance initial difference between revenues and expenditures with changes to services, fees and WNC Nature Center partnership; (b) decrease revenue projections by \$1 million; offset with property tax increase of 1 penny (alternative to consider service reductions); and (c) maintain Water Fund budget and central service contribution; defer targeted expenses should disposition change; and (3) Regarding the General Fund Capital Improvement Program, further discussion about the Capital Improvement Program at the May 14 worksession.

After discussion about when the next budget worksession would be held, it was the consensus of Council to add a budget worksession on Friday, May 17, 2013, (not on May 14) at 10:00 a.m. in the First Floor North Conference Room of City Hall in order to provide further direction to City staff on building the budget. Each Council member voiced their opinion on some of the balancing strategies, along with requests for further information, i.e., what an across-the-board cut of 4-5% of all City departments would look like, and a broader range of additional options for cost savings.

It was the consensus of Council to extend the budget schedule as outlined above by Ms. Bradley, with replacing the suggested May 14 budget worksession with the budget worksession being held on May 17.

At 4:27 p.m., Mayor Bellamy recessed the meeting until the 5:00 p.m. formal meeting.

Tuesday – April 23, 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, and the Song O'Sky Chorus of Sweet Adelines International sang God Bless America.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL AS "PARKINSON'S DISEASE AWARENESS MONTH"

Councilman Bothwell read the proclamation proclaiming April, 2013, as "Parkinson's Disease Awareness Month" in the City of Asheville. He presented the proclamation to Nancy and Jim Hall who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING APRIL 21-27, 2013, AS "ADMINISTRATIVE PROFESSIONALS WEEK"

Mayor Bellamy read the proclamation proclaiming April 21-27, 2013, as "Administrative Professionals Day" in the City of Asheville. She presented the proclamation to Ms. Mary Ann Schiller, President of the Land of the Sky Chapter of the International Association of Administrative Professionals, who briefed City Council on some activities taking place during the day.

C. PROCLAMATION PROCLAIMING MAY AS "FOSTER CARE APPRECIATION MONTH"

Councilman Smith read the proclamation proclaiming May, 2013, as "Foster Care Appreciation Month" in the City of Asheville. He presented the proclamation to Ms. Tara Foster, representing the Buncombe County Dept. of Human Services, who briefed City Council on some activities taking place during the month.

D. PROCLAMATION PROCLAIMING APRIL AS "FAIR HOUSING MONTH"

Councilman Davis read the proclamation proclaiming April, 2013, as "Fair Housing Month" in the City of Asheville. He presented the proclamation to Mr. Richard Boulden, representing the NCHRC Agency Council, Ms. Sarah Nunez, ABCRC Executive Director, and Ms. Robin Merrell, Managing Attorney at Pisgah Legal Service, who briefed City Council on some activities taking place during the month.

E. PROCLAMATION PROCLAIMING MAY AS "MOTORCYCLE AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming May, 2012, as "Motorcycle Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Roger Coleman, representing the Concerned Bikers Association, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of City staff, it was the consensus of Council to add a resolution amending the City Council 2013 meeting schedule to add a budget worksession on May 17, 2013, at 10:00 a.m. in the First Floor North Conference Room in City Hall.

A. APPROVAL OF THE MINUTES OF THE BUDGET WORKSESSION/TOWN HALL MEETING HELD ON APRIL 3, 2013, AND THE REGULAR MEETING HELD ON APRIL 9, 2013

B. RESOLUTION NO. 13-78 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CANA CONSTRUCTION FOR THE WATER SERVICE RENEWALS PROJECT NORTH/EAST

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into an agreement with CANA Construction for the bid amount of \$212,375 plus a contingency amount of \$21,240 for a total in the amount of \$233,615 for the Water Service Renewals Project North/East.

On March 1, 2013, the Water Resources Department issued a Request for Bids for the Water Service Renewals Project North/East. The scope of the project is to renew existing water services that have been identified as sub-standard as part of the department's ongoing

Automated Meter Reading (AMR) project in the North and East parts of the Water Distribution system. There will be 161 water services renewed as part of this project, including new meter boxes, new meter setters, new connections to the existing house lines, and approximately 2,850 Linear Feet of copper line.

On March 26, 2013, Water Resources received five (5) bids for the project. Companies responding were:

1. CANA Construction – Waynesville, NC; \$212,375.00
2. Buckeye Construction Company, Inc. – Canton, NC; \$299,034.00
3. Patton Construction Group, Inc. – Asheville, NC; \$299,330.00
4. Huntley Construction Co. – Asheville, NC; \$329,213.00
5. T & K Utilities, Inc. – Asheville, NC; \$345,825.00

A review team comprised of City staff reviewed these bids and selected CANA Construction as the lowest responsible bidder in the amount of \$212,375.00. A contingency amount of \$21,240.00 has been added for a project amount of \$233,615.00.

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

Pros:

- Approval of the project will allow Water Resources to renew existing, sub-standard water services to residential houses.
- The project will provide a local company with work for several months.

Con:

- None.

As part of the Automated Meter Reading (AMR) Project, the Water Resources Department has allocated the funds needed for this construction project in the Capital Projects Fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with CANA Construction for the bid amount of \$212,375 plus a contingency amount of \$21,240 for a total in the amount of \$233,615 for the Water Service Renewals Project North/East.

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C. RESOLUTION NO. 13-79 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO AN AGREEMENT WITH HENDERSON COUNTY TO LEASE ONE TRANSIT VEHICLE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease one transit vehicle.

As a result of the 2000 Census, the French Broad Metropolitan Area was reclassified from a non-urbanized area to an urbanized area with a population greater than 200,000 persons and now includes municipalities in Buncombe, Haywood, and Henderson counties. After the reclassification, Henderson County's transit system became part of the transit systems operating in the overall urbanized area. The Federal Transit Administration (FTA) named the City of Asheville the designated recipient and as a result, the City of Asheville oversees all of the FTA funding, including reporting, administration and procurement of goods. The City of Asheville and Henderson County have signed a sub-recipient agreement that specifies how the funds are

disbursed. The City of Asheville is accountable to the FTA regarding the use of all FTA funds and owns all the capital items that Henderson County purchases with these funds.

As per Henderson County's request, the City of Asheville ordered a van from a State contract to serve Henderson County's paratransit system, operated by Apple Country Transit. The vehicle is paid with the American Reinvestment and Recovery Act funding.

In order for the County to receive the van, a lease agreement, stipulating the terms and conditions to operate this vehicle, must be signed by both parties as required by FTA.

There is no cost obligation for the City with this action other than staff time to accomplish the task.

This action complies with the current City Council 2011-12 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- The lease agreement is an administrative step required by the FTA that protects the City's interests as designated recipient of Federal funds.
- There is **no** cost obligation for the City of Asheville other than administrative expenses.

Con:

- The City of Asheville is responsible for administrative expenses including staff time to oversee the project for the duration of such, approximately seven years.

There is no direct fiscal impact to the City of Asheville, however the City's cost of administering the project is not recovered.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease one transit vehicle.

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D. RESOLUTION NO. 13-80 - RESOLUTION AUTHORIZING NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT FOR THE FINANCING OF FISCAL YEAR 2013 GREEN CAPITAL IMPROVEMENT PLAN PROJECTS AND CALLING FOR A PUBLIC HEARING ON MAY 14, 2013

Summary: The consideration of an initial resolution authorizing negotiation of an installment financing contract for the financing of Fiscal Year 2013 Green Capital Improvement Plan (CIP) Projects and calling for a public hearing on May 14, 2013.

The current capital improvement plan includes funds previously appropriated by City Council to finance Green CIP Projects, such as LED Streetlight upgrades, a boiler replacement at the Stephens Lee Recreation Center, a boiler replacement at Fire Station #2 and window replacements at Fire Station #7.

The proposed initial resolution asks Council to confirm that it is in the City's best interest to enter into an installment purchase contract with a financial institution to fund these aforementioned Green CIP projects and to provide for a public hearing on these matters. This resolution is a legal formality required by North Carolina General Statutes before the process of securing financing can officially begin.

This action supports the City of Asheville's goal to operate the City to the highest level of fiscal responsibility by enhancing its commitment to infrastructure maintenance and capital improvements.

Pro:

- Allows the City to comply with the legal requirements of the Local Government Commission regarding installment financing and NC General Statutes.

Con:

- There are no cons associated with ensuring that legal requirements have been met before securing financing for the Green CIP projects.

The City will seek to borrow no more than \$1,100,000 to finance these projects. The projected annual debt service costs for this will range from \$131,450 in Fiscal Year 2014 to \$111,650 in Fiscal Year 2023; however, the City will not know the exact interest costs until it receives bids from the lenders. Staff will include funding for the projected debt service in the managers Fiscal Year 2013-14 proposed budget that is being presented to City Council in May.

City staff recommends City Council adopt an initial resolution authorizing negotiation of an installment financing contract and calling for a public hearing on May 14, 2013.

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E. RESOLUTION NO. 13-81 - RESOLUTION WAIVING ALL THE PERMIT FEES ASSOCIATED WITH THE INSTALLATION OF A CANOPY AT PACK SQUARE PARK AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE TOURISM DEVELOPMENT AUTHORITY AGREEMENT GRANT TO ACCEPT THE CANOPY FOLLOWING INSTALLATION, INSPECTION AND ACCEPTANCE

Summary: The consideration of a resolution waiving all the permit fees associated with the installation of a canopy at Pack Square Park and authorizing the City Manager to execute the Tourism Development Authority (TDA) Agreement Grant to accept the canopy following installation, inspection and acceptance.

The Asheville Downtown Association (ADA) was awarded a grant from the Tourism Development Authority to construct and install a canopy over the stage in Pack Square Park. The amount of the grant is \$50,000. The ADA will be responsible for constructing and installing the canopy. Additionally, the ADA must obtain all necessary permits prior to the installation.

Staff is requesting that all the permit fees be waived due given that the City will own the canopy after it is properly installed and inspected. Prior to installation, the design of the canopy will be reviewed by the Downtown Design Review Sub-Committee of the Downtown Commission.

TDA requires the City to sign the award documents stating that they will accept the canopy after it is properly installed and inspected.

This action complies with one of Council's Strategic Goals by encouraging public/private partnerships to provide infrastructure.

Pros:

- The addition of the canopy to the stage provides for more opportunities to have performances in the Park.
- The canopy is not costing the City any capital money.

Con:

- The City will be responsible for the maintenance of the canopy following installation.

The maximum cost of the permits to perform this work is \$1,000.

City staff recommends City Council waive all the permit fees associated with the installation of a canopy at Pack Square Park and authorizing the City Manager to execute the TDA Agreement Grant to accept the canopy following installation, inspection and acceptance.

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F. RESOLUTION NO. 13-82 - RESOLUTION SUPPORTING THE ASHEVILLE-BUNCOMBE REGIONAL SPORTS COMMISSION'S EFFORTS TO HOST THE IRON TRIATHLON IN SEPTEMBER 2014

Summary: The consideration of a resolution supporting the Asheville-Buncombe Regional Sports Commission's efforts to host the Ironman Triathlon in September 2014.

The Asheville-Buncombe Regional Sports Commission (ABRSC) was established through a partnership between Buncombe County, Buncombe County Tourism Development Authority (TDA), and the City of Asheville, with the goal of securing sports related events that provide specific positive financial economic impact to the community. The ABRSC has been contacted by World Triathlon Corporation, the producer of the famous Ironman Triathlon, to gauge interest in the Commission's submittal of a bid to host the Ironman beginning in fall 2014, with the potential for a five year commitment.

The Ironman competition has 2,500 participants engaging in a 2.4 mile swim, a 112 mile bike race, and a 26.2 mile marathon run. Additional activities include an Expo for participants, spectators and the community; a banquet with speaker and awards; and other potential community activities.

The TDA, Buncombe County Commission, and Town of Lake Lure (swimming competition) have passed resolutions of support to be included in the ABRSC Bid Package which must be submitted by April 28th. Several other North Carolina, South Carolina and Virginia communities are expected to submit competing proposals. The Ironman organizers have indicated that communities that are short-listed would receive site visits in May 2013, with contract negotiations in June and an award announcement in July 2013.

In addition to being a substantial room-night and retail sales generator, the demographic profile of an Ironman participant overwhelmingly matches the entrepreneurial target profile of the community.

This action meets numerous City Strategic Plan goals, including creation of collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations; partnerships in regional economic development strategies; and expansion of partnerships with organizations to achieve common goals, including health and wellness, workforce development, and sustainable Economic Development.

Pros:

- Allows the ABRSC to continue to pursue the award of the Ironman competition
- Provides International promotion of Asheville to a target market segment
- Provides national media coverage of the competition and surrounding events
- Provides a strong connection to the most prominent brand in adventure racing
- Meets the Target Market for Outdoor Sports
- Creates over 10,000-12,000 room nights
- Up to 50% of participants visit the community in advance of the event to train

Cons:

- Requires road and street closures for up to 12 hours in certain locations

- Requires Public Safety support for which the details are still being discussed by staff
- Requires significant volunteer support by ABRSC volunteers

The Buncombe County Tourism Development Authority has pledged \$75,000 in financial support and an additional \$75,000 in matching funds. Buncombe County has pledged \$40,000. Lake Lure has pledged \$30,000. The Ironman Triathlon would require significant City Public Safety overtime, which is expected to be approximately \$35,000 based on ABRSC's pro forma. City staff has met with ABRSC and continues to review possible ways to assist with the project, potentially through a defined contribution which would be used in the overall Ironman project budget, and then the ABRSC would pay for Public Safety costs with a cap. City funding would be included in the city's 2014-15 budget process. No funding is required now or in the 2013-14 budget.

Staff recommends that City Council pass a resolution supporting the Asheville-Buncombe Regional Sports Commission's efforts to host the Ironman Triathlon in September 2014.

Councilman Davis felt this is a huge economic development initiative and will be a tremendous partnership.

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G. RESOLUTION NO. 13-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A UNIT PRICE CONTRACT WITH LAND OF THE SUN INC. D/B/A FLETCHER GRADING CONTRACTORS, FOR THE CHERRY STREET/PEARL STREET/STARNES AVENUE SIDEWALK CONSTRUCTION PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute a unit price contract in the amount of \$169,313 with Land of the Sun, Inc. d/b/a Fletcher Grading Contractors along with contingency funds to cover any change orders up to the total contract amount of \$195,000, for the Cherry Street/Pearl Street/Starnes Avenue Sidewalk Construction Project.

An informal request for bids was issued on March 14, 2013. One proposal was received on April 14, 2013, from Land of the Sun, Inc. d/b/a Fletcher Grading Contractors. They were deemed to have presented a responsive and responsible bid that was within the amount budgeted in the 2012/13 Streets and Sidewalk Maintenance Operating Budget.

The sidewalks to be repaired on Cherry Street and Starnes Avenue were required to obtain a Certificate of Appropriateness from the Historic Resource Commission which was granted earlier this year.

The project generally consists of removal of deteriorated existing sidewalks and installing new ADA compliant sidewalks along with associated apparatuses.

This action complies with the City Council Strategic Operating Plan in that will be a step in fulfilling Objective 1 of the Multimodal Transportation Plan in maintaining pedestrian infrastructure.

Pros:

- Updating deteriorated infrastructure.
- Improve multimodal transportation.

Cons:

- Will have some impact on automobile and pedestrian traffic due to lane and sidewalk closures.

- Project management and contract administration will consume staff time and City funds.

Funding for this contract is already included in the Fiscal Year 2012-13 Public Works sidewalk maintenance budget.

Staff recommends City Council to authorize the City Manager to execute a unit price contract with Land of the Sun, Inc. d/b/a Fletcher Grading Contractors in the amount of \$195,000 which includes a 15% contingency amount to cover any changes or unexpected occurrences, for the Cherry Street/Pearl Street/Starnes Avenue Sidewalk Construction Project.

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H. RESOLUTION NO. 13-86 - RESOLUTION AMENDING THE CITY COUNCIL 2013 MEETING SCHEDULE TO ADD A BUDGET WORKSESSION ON FRIDAY, MAY 17, 2013, AT 10:00 A.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL

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

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

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

III. PRESENTATIONS & REPORTS:

A. SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT UPDATE

Mr. Duncan McPherson, Chair of the Sustainable Advisory Committee on Energy & the Environment, briefed Council on their activities of the past year and goals for the upcoming year.

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

B. LEGISLATIVE & WATER UPDATE

RESOLUTION NO. 13-85 - RESOLUTION IN SUPPORT OF EARLY VOTING AND COLLEGE STUDENTS' RIGHT TO VOTE AND PARTICIPATE IN OUR COMMUNITY

RESOLUTION NO. 13-87 - RESOLUTION IN SUPPORT OF SENATE BILL 724 AND HOUSE BILL 685 PROHIBITING IMITATION CONTROLLED SUBSTANCES

Deputy City Manager Jeff Richardson highlighted for Council the following legislative issues of interest: House Bill 488 - Regionalization of Public Utilities; House Bill 252 - Asheville Transfers; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation (ratified); House Bill 568 - Asheville Deannexation; Senate Bill 363 - Business Tax Reduction and Reform; Senate Bill 394 - Lower Tax Rates for a Stronger North Carolina Economy; House Bill 962 - Municipal Sales Tax; Senate Bill 952 - Delay Sales Tax Distribution Change Effective Date; House Bill 428 -

Park Authority; Senate Bill 612 - Regulatory Reform Act of 2013; House Bill 664 - Cell Tower Deployment Act; and House Bill 659 - County and City Ethics.

Mr. Richardson read a resolution in support of Senate Bill 724 and House Bill 685 prohibiting imitation controlled substances. He explained that Senate Bill 724 and House Bill 685 would make the manufacture, possession, sale use, and delivery of certain limitation controlled substances unlawful and urges the members of the General Assembly to support this legislation.

Mayor Bellamy thanked Representative Moffitt for his assistance with House Bill 685.

Councilman Smith moved for the adoption of Resolution No. 13-87. This motion was seconded by Councilman Bothwell and carried unanimously.

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City Attorney Oast then read the resolution in support of early voting and college students' right to vote and participate in our community; and, to urge the North Carolina General Assembly to vote against Senate Bills 666 and 667, to oppose measures that would limit early voting.

Councilman Bothwell moved for the adoption of Resolution No. 13-85. This motion was seconded by Councilman Smith and carried unanimously.

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IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2013 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS

RESOLUTION NO. 13-84 - RESOLUTION ADOPTING THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2013 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS

Community Development Director Jeff Staudinger said that this is a public hearing to receive comments regarding the proposed Consolidated Action Plan for Fiscal Year (FY) 2013-2014, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for the coming fiscal year; followed immediately by Council's consideration of a resolution authorizing submission of this Consolidated Action Plan to the US Department of Housing and Urban Development. This public hearing was advertised on April 12 and 19, 2013.

The City will have available an estimated \$1,056,386 in CDBG funds and \$1,393,962 in HOME funds in the fiscal year beginning July 1, 2013. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 19 CDBG and 12 HOME programs are recommended for funding. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

The proposed allocations are estimates, based upon a 10% reduction from last year's entitlement grants due to Sequestration. A final allocation has not yet been released by HUD. Both the HCD Committee and HOME Consortium agreed that if the allocation is no more than 10% different than the estimates, pro-rata adjustments would be made without additional deliberations. If either the CDBG or HOME program allocation to Asheville was greater or less than 10%, the respective recommending bodies would reconvene to make allocation adjustments. Information provided by HUD to date suggests that the HOME allocation will fall within the 10% estimate; but that the CDBG funds may be more than 10% greater than estimated. The HCD Committee is prepared to hold a special meeting if needed.

The CDBG cuts were buffered slightly by the receipt of Program Income, and by the decision to reallocate funds from prior year projects which for various reasons either did not occur or needed less than the originally allocated amount. The estimated CDBG total fund available this year is \$157,500 less than last year.

The total estimated HOME funds available this year are \$354,823 more than last year. This is primarily because one of the funded projects last year did not come to fruition, and those funds were available this year for reallocation.

Both the Consortium and HCD Committee have recommended that the City retain some program funds for project delivery cost- \$26,136 of HOME funds and \$15,000 in CDBG funds. This, combined with reserved prior year HOME funds, will enable the Community Development Division to maintain its staffing this year.

If the funded projects receive the funding from other sources necessary to make them possible, HOME funds and CDBG funds will assist in creating or improving 198 housing units and helping an additional 125 households afford housing Consortium-wide. CDBG funds will also benefit almost 2,700 low-income City residents through homeless services, financial counseling, small business assistance, and other needed services. Our CDBG partner agencies leverage \$4.00 of other funding for every \$1.00 of CDBG funding. Our HOME partners will raise over \$20.00 for every \$1.00 of HOME funds invested in their projects.

After the public hearing, any comments received will be incorporated into the Plan, as will comments submitted in writing. The plan is due to be submitted to HUD by May 15.

This Annual Action Plan directly supports Council's Strategic Goals of: (1) Affordable: This plan directly supports the City's affordable housing plan, uses innovative public-private partnerships to incentivize affordable housing development, and supports initiatives to end chronic homelessness emphasizing the Housing First model; (2) Green and Sustainable: works with regional partners creating green buildings and energy conservation; (3) Safe: Supports employment and education alternatives for youth from low-wealth neighborhoods; and (4) Job Growth and Community Development: Supports diversified job growth and small business development; promotes sustainable high-density infill growth; and attracts and retains quality employees.

Pros:

- Approval of the Action Plan paves the way for the receipts of over \$2,450,000 of HUD funding to the City and region, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage \$25,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2013-14 to the U. S. Dept. of Housing and Urban Development.

Mayor Bellamy opened the public hearing at 6:16 p.m. and when no one spoke, she closed the public hearing at 6:16 p.m.

Councilman Davis, Chairman of the Housing & Community Development Committee, spoke in support of the recommendations.

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

Councilman Davis moved for the adoption of Resolution No. 13-84. This motion was seconded by Councilman Bothwell and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PALISADES OF ASHEVILLE, LOCATED AT MILLS GAP ROAD, FOR THE CONSTRUCTION OF A 224 UNIT APARTMENT COMPLEX

ORDINANCE NO. 4179 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PALISADES OF ASHEVILLE, LOCATED AT MILLS GAP ROAD, FOR THE CONSTRUCTION OF A 224 UNIT APARTMENT COMPLEX

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.

Mayor Bellamy disclosed that she was a Council member during several configurations of the property. City Attorney Oast said that that was not a disqualifying issue.

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 6:18 p.m.

Urban Planner Jessica Bernstein 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 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit Palisades of Asheville, located on Mills Gap Road, for the construction of a 224 unit apartment complex.

She said that the applicant is requesting review of site plans for the construction of a 224-unit multi-family apartment complex. This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for residential projects with more than 50 units. Level III projects are reviewed as Conditional Use Permits in the Commercial Industrial District.

The site consists of a 14-acre parcel located on Mills Gap Road, between Hendersonville and Sweeten Creek Roads in South Asheville. The parcel is zoned Commercial Industrial (CI) and is currently vacant. The site is bordered by the Norfolk-Southern Railroad to the east; Community Business II (CBII) and CI-zoned parcels to the west (Earth Fare and retail shopping); Gerber Road and CBII / CI zoning to the north (Gerber Village) and Highway Business zoning to the south (retail uses).

The proposal is to develop a multi-family apartment complex with a total of 224 units. Plans propose a mix of 1-bedroom (72 units), 2-bedroom (108 units) and 3-bedroom (44 units) configurations. There are 10 residential buildings on the site, with a maximum building height of 36 feet. Nine of the ten residential buildings are three-stories and one is two levels. Additional structures proposed include a single-story clubhouse building located at the entrance to the development and three 1-story garages within the site.

Vehicles will access the site from two driveway cuts, both off of Mills Gap Road, on either side of the clubhouse. There is also an interior connection through the western boundary of the site with a deeded easement, into the adjacent commercial development. The applicant is adding a deceleration lane into the site from Mills Gap Road, heading west (right turn in).

As proposed, 26 foot wide two-way private drives circle and bisect the development and include parking on both sides. There are a total of 408 parking spaces (not including spaces within the covered garages). This parking count includes 13 HC-accessible spaces dispersed throughout the site and a small 20 space parking area on pervious pavers. Also, 22 bike parking spaces are distributed among the buildings.

A six-foot sidewalk is provided along the frontage of the property (Mills Gap Road) as well as pedestrian pathways (five feet wide) into and throughout the site.

Landscaping is required for this project and includes street trees, parking lot landscaping, building impact landscaping and tree save area. The applicant is proposing to preserve existing vegetation around the north and eastern perimeters of the site and to apply those as credits for some of the required landscaping.

Fifteen percent of the total lot area is required to be dedicated as open space, which would be 2.1 acres for this site. More than the minimum is provided, with 3.6 acres shown on the plans.

This proposal was approved with conditions by the Technical Review Committee on March 18, 2013. The primary concern discussed pertains to providing an additional emergency

access point, other than the entrances from Mill Gap Road. The existing interior access to the Earth Fare shopping center would suffice if an easement was dedicated. An alternative option would be an easement at the existing driveway (not shown to continue on site plans) through the adjacent property to Gerber Road. The applicant has provided information that an easement exists at that drive connection to the Earth Fare shopping center. Community concern has been expressed about the increased traffic on Mills Gap Road.

The Planning & Zoning Commission discussed this proposal at their meeting on April 3, 2013, and recommended approval (5-0). Several members expressed a desire for the project to align more directly with City goals on incorporating dedicated affordable units.

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.

This site has been previously graded through its past use and has rubble from demolitions of past buildings as well as fill dirt in areas across the acreage. The subject property is mostly flat with areas of existing vegetation and grades climbing 15-30 feet at the north and northeast edges. The proposed development of the land is compatible with these features in that the buildings and parking areas are focused in the center of the site and those steeper areas around the perimeter incorporate and retain landscaping materials.

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

The proposed use and development of the land is not expected to injure the value of abutting property. The residential use should complement the commercial activity along Hendersonville Road, which is within a walkable distance and will be an amenity to the residents with many shops and restaurants.

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.

While there are numerous residential developments existing in the general proximity (west of Hendersonville Road and east of Sweeten Creek Road), the immediate area surrounding this site is primarily commercial. However, as mentioned in the "Recent Zoning Actions" section of this report, there is a similarly-sized residential project approved for development across Gerber Road to the north. The multi-building, multi-family site design is appropriate for this type of location off of a high-volume corridor.

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.

Elements of the project align with the City's goals and objectives including siting development in an infill location, proposing a density that supports transit and offering rentals as a "workforce" rate.

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

The site is located in an area supported by transit (S3) and accessible by vehicle. Adequate water supply, police protection, waste disposal and similar facilities are verified during the TRC review process. Associated infrastructure improvements will enhance multi-modal access, emergency protection, waste disposal and water supply.

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

Based on the results of a Traffic Impact Study, performed by Mattern and Craig Engineering, this project should not cause an undue burden on the surrounding transportation infrastructure. The project includes a deceleration lane which was recommended by the TIS.

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

Pros:

- Proposes a density that supports transit (S3 line runs down Hendersonville Road) and is walkable to the bus line (within a tenth of a mile).
- Project location is walkable to commercial retail uses that will be supported by the residents
- Existing vegetation around the perimeter of the site will be preserved.
- Project incorporates pervious pavers into one of the parking areas.

Con:

- Applicant does not propose to dedicate any units for affordable housing.

Staff recommends approval of the project as shown on submitted site plans as it appears to comply with the City's goals and objectives, subject to the Technical Review Committee conditions.

Mr. William Ratchford, owner, briefly spoke in support of the conditional use permit in that the site is perfect for walkability.

Mr. Tom Jones, engineer for the project, showed the existing conditions of the property (Applicant Exhibit 1). He then talked about the master plan of the project (Applicant Exhibit 2), along with showing the landscaping and planned clubhouse (Applicant Exhibit 3) and elevations of a similar project of the owners in Hendersonville (Applicant Exhibit 4). He explained some of the green building techniques, noting that they will keep the existing vegetation where possible, and may even incorporate some of the construction debris into the project. He noted they are not seeking any variances or alternative compliances and urged Council to support this nice project.

In response to Councilman Smith, Mr. Ratchford said that their price point for a one-bedroom is \$720, for a two-bedroom \$900, and for a three-bedroom \$1,000.

After rebuttal, Mayor Bellamy closed the public hearing at 6:29 p.m.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4179, granting a conditional use permit for Palisades of Asheville, located on Mills Gap Road, for a 224 unit apartment complex, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; 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 Hunt and carried unanimously.

ORDINANCE BOOK NO. 28 - PAGE

C. PUBLIC HEARING TO CONSIDER THE REZONING OF 10 OLD SHOALS ROAD FROM HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 4180 - ORDINANCE TO REZONE 10 OLD SHOALS ROAD FROM HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 10 Old Shoals Road from Highway Business District to Commercial Industrial District. This public hearing was advertised on April 12 and 19, 2013.

He said the subject area for this rezoning petition is about one-sixth of the entire parcel as shown in the Buncombe County Land Records. The portion of the parcel which is proposed for rezoning has dissimilar zoning from the rest of the parcel; in fact the parcel has three separate zoning designations. The zoning district boundaries correspond to tract boundaries shown in recent plats, but recent recombinations of property have assembled what were separate tracts under one PIN, partly zoned RM-16, partly zoned CI, and partly zoned HB. By rezoning the HB portion to CI, the proposed rezoning would (at least partly) be addressing the less than ideal split-zoning situation.

The subject area, roughly quadrilateral in shape, has four zoning districts on its four sides: RM-16(CZ), HB, CI, and Industrial. The proposed rezoning would make the property consistent with the zoning to the north rather than that to the south.

This area was initially zoned by the City in 2009. At that time, the applicant requested HB zoning to allow for a projected retail development on the site. As was acknowledged in the recent conditional zoning to the south (also noted above), the applicant has since decided not to pursue such a development, and instead to add manufactured home sites there and seek new tenants for the building at 10 Old Shoals Road. Had it not been for this request in 2009, the subject area might well have been initially zoned CI.

The HB and CI districts are both considered high impact zoning districts, but there are a handful of uses permitted in CI which would not be permitted in HB which are of interest to the applicant. The likely candidates at this location are light industrial uses, industrial uses, warehousing and storage, and possibly a recycling operation. The applicant has stated: "This is a purely industrial building. It has no heat nor air except in the office/restroom area and really could not be retrofitted for any other purpose. There is also very limited parking."

The most obvious concern with a CI zoning designation would be incompatibility with the residential area to the south, especially since the location of the building leaves limited space available for a landscape buffer. Both the Planning and Zoning Commission and City Council, however, supported the recent conditional zoning of the residential area, knowing there was a high-impact zoning area to the east (under the same ownership), and allowed reduced setbacks and no additional buffering as part of the approval.

Further, the vast majority of the Wellington Estates Park perimeter is already adjacent to CI zoning, so the proposed zoning designation would not be creating an exceptional conflict. In addition, if the facility is occupied by a higher-impact use than the current storage/warehousing use, such as manufacturing, assembly, or processing, such a change would trigger compliance with landscaping standards, including buffers – though alternative compliance would likely be sought, owing to the narrow area between the building's south side and the property line.

At their March 6, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the request.

As of this writing, staff has received no communications from the public regarding the petition in question.

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

Pros:

- Is suitable for the subject area and consistent with other adjacent and nearby zoning.
- Would resolve a split-zoning situation.

Con:

- Space available for buffer from adjacent residential area is less than required in UDO.

Staff recommends approval, noting that the difference between the existing zoning district and the proposed district is relatively minor, especially given that the most dissimilar nearby use is already largely surrounded by the proposed district. Additionally, the rezoning would add possible uses for the site, which, if introduced onto it, would require bringing currently non-compliant aspects of the development into compliance.

Mayor Bellamy opened the public hearing at 6:34 p.m. and when no one spoke, she closed the public hearing at 6:34 p.m.

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

Councilman Hunt 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. 4180 to rezone 10 Old Shoals Road from Highway Business District to Commercial Industrial District. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE

ORDINANCE NO. 4181 - ORDINANCE TO AMEND THE CONDITIONAL ZONING TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE TO ELIMINATE THE CARROLL AVENUE ENTRANCE

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, to eliminate the Carroll Avenue entrance. This public hearing was advertised on April 12 and 19, 2013.

She said that this is the consideration of an ordinance amending a previously approved plan for apartments located off of Hunt Hill Place and Ardmion Drive, which said amendment reflects a change in access to the development with the elimination of one access point off of Carroll Avenue.

On June 12, 2012, the Asheville City Council approved an amendment to a previously approved (Hunt Hill Place – 2008) conditional zoning petition (to Residential Multi-Family High Density District/Conditional Zoning) for a 180 unit multi-family development. As approved, the development proposed three access points onto the site: Hunt Hill Place; Ardmion Drive and Carroll Avenue. The previously approved (2008) development only provided access off of Hunt Hill Place and Ardmion Drive.

At the time of Council approval the Carroll Avenue access was unconfirmed due to negotiations underway. Since that time, this access point (through a church parking lot) is no longer an option. Plans have been revised to indicate the removal of this access to the site. The revised plans also show a reconfiguration of the buildings in the area where the access point was deleted.

In granting approval for this development in June of 2012, the Asheville City Council placed a condition on the approval that read as follows:

Carroll Avenue access must be completed as shown on the site plan. If that Access cannot be provided, a new traffic impact analysis is conducted and brought back for review by Asheville City Council, prior to proceeding with construction.

An amended traffic impact analysis has been received, reviewed and accepted. This request is for approval of the site plan without the additional access point (Carroll Avenue) and with the reconfiguration to the buildings on the site.

Pros:

- The development that this amendment applies to addresses a number of City of Asheville goals including: pursuing higher density infill, green building, and the provision of affordable housing.
- The amended proposal for the development has been reviewed for traffic impact and safety.
- The amended proposal provides for the same access to the development as was approved in 2008 for the same site and number of units.

Con:

- Three access points would have allowed traffic to and from the site to be spread out a bit more.

Based on the analysis provided in the report, staff finds this request to be reasonable and recommends approval and recommends Council either approve or deny the amendment

requested for Hunt Hill Apartments and move to amend the conditional zoning ordinance for this project in accordance with the amendment presented.

Mayor Bellamy opened the public hearing at 6:36 p.m.

Mr. Chip Kassinger, developer, spoke in support of the project stating that they met with Progress Energy and they are going to do a new program for energy efficiency for apartments. They will also work with Progress Energy on a program for energy efficiency in the common areas.

Mayor Bellamy closed the public hearing at 6:38 p.m.

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

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4181, to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, to eliminate the Carroll Avenue entrance. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE

E. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MARKET, LOCATED AT 4 SOUTH TUNNEL ROAD TO REDEVELOP AN EXISTING RETAIL CENTER AND CONSTRUCTION OF A NEW BUILDING, AND A MODIFICATION REQUEST TO LANDSCAPE REQUIREMENTS

ORDINANCE NO. 4182 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MARKET, LOCATED AT 4 SOUTH TUNNEL ROAD

City Clerk Bureson 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 6:39 p.m.

Urban Planner Jessica Bernstein 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 (Staff Report).

Ms. Bernstein said that the applicant is requesting approval of site plans for the redevelopment of an existing retail center that will include new construction and partial demolition. This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for commercial uses of over 100,000 square feet. Level III projects are reviewed as Conditional Use Permits in the Regional Business District.

The site consists of a 13.13 acre parcel located at 4 South Tunnel Road (13.33 total project area – 0.20 acres on an adjacent leased parcel). The area is zoned Regional Business and is currently the location of a strip shopping center with various tenants, formerly anchored by Kmart (recently closed). The site is bordered by Interstate 240 to the east, similar strip retail centers to the north and south and the Asheville Mall is across Tunnel Road to the west.

The proposal is to redevelop an existing retail center with new construction, renovation and full parking lot and site compliance. Approximately 91,600 square feet of existing building will be demolished with approximately 80,104 square feet rebuilt for a proposed total of 136,566 square feet (*142,500 SF maximum*).

Overall, plans indicate 121,566 square feet designated for retail with 15,000 square feet dedicated to a restaurant use (also subject to change depending on final tenant mix). There are nine retail spaces designated on the plans (four new, five existing); however several of the larger spaces are flexible and could be broken down into smaller retail spaces as tenants and individual space needs are identified. All but one of the spaces are within the existing footprint(s) with only Building H proposed as new and standing separately, towards the street.

The structures are shown on plans as single-story, but conversations with the applicant indicate that there is interest in negotiation for an enhanced design with the anchor tenant that could include the possibility of a two-story portion being incorporated, depending on the final mix of uses and subtenants. Additionally, the size and layout shown for Building H could be slightly modified depending on the final use as well.

The existing Tunnel Vision building will be demolished but the business will be relocated within the site. The only other tenant identified at this time is a Whole Foods market.

New construction and the renovated structures will include aesthetic elements such as (but not limited to) brick masonry (both painted and unpainted), wood-lined façades, steel lintels and wood soffits creating open storefronts, covered canopies and other details to break up the façades and create visual interest. The Whole Foods will include an outdoor patio with seating and a fireplace.

The site is currently accessed in two locations from South Tunnel Road and these driveway cuts will remain. Each access point includes three travel lanes; one ingress into the site and two egress lanes with one right-turn only lane and a lane for both straight and left turning. The northernmost driveway will be re-oriented from its current interior layout.

The existing parking field will be reorganized and regraded to create more user-friendly slopes. There are a total of 576 spaces, including 20 handicapped-accessible spaces dispersed throughout the site. There are 30 bike parking spaces. Additionally, plans show two designated charging stations for electric cars.

Sidewalks are to be provided along the entire frontage of the property as well as pedestrian pathways into the site along each driveway and a pedestrian connection from Building H to the street. There is a transit shelter shown at the northernmost driveway.

Landscaping is required for this project and includes street trees, street buffer, parking lot landscaping, building impact landscaping and screening of dumpsters. *See below for landscaping modification request.*

Open space is not required for this proposal because the redevelopment does not result in additional square footage.

The application is requesting the following standards to be modified, based on the challenges of the site and upgrading an existing development:

1. *Landscape Island Width* – The applicant is requesting to reduce the average width of the landscape islands, creating some irregularly-shaped islands due to the challenges of working within an existing development. Some islands will be greater than the required minimum with while some are slightly below. In three locations, the narrowest width is 7 feet.
2. *Building Impact and Parking Lot Landscaping* – Because of the existing nature of this development, the applicant is requesting to include less than the required number of plantings that would be needed for a new development. This proposal shows significantly more than the required number of shrubs but fewer trees. The lot will be significantly shaded and landscaped.

This proposal was approved with conditions by the Technical Review Committee on February 4, 2013. The project received unanimous support (4-0) by the Planning & Zoning Commission at their meeting on March 6, 2013. There was discussion regarding the proposed development eliminating access from this site to the AT&T store but it was the ultimate decision of the Commission that since the owners of that site had not renewed their deeded cross-access (which had been in place from 1977 until it expired in 2008), the developers of the Asheville Market were not required to keep that access open.

Staff has been contacted by the owner of the AT&T store immediately adjacent to the south. Currently, there is shared internal access between the subject property and the AT&T parcel and the owner would like for that to be maintained. The applicant has eliminated that connection due to topographic challenges with reorganizing the parking fields. During the Level I review for the AT&T site in 2011, no shared access or parking agreements were required or maintained due to the fact that the AT&T site complies on its own parcel with respect to parking and maneuvering and also has its own driveway directly onto South Tunnel Road.

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 site is an existing retail shopping center and will not change significantly in terms of layout. The new development is in-line with the past building footprint so there is not a major change to the site in terms of grading or earth moving. There are a few small retaining walls needed due to the existing topography of the site, otherwise, the proposed use and development remains compatible with the site.

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

The overall proposal includes multiple upgrades and amenities that should improve the value of the area and should not injure the value of adjoining or abutting properties. Aesthetic improvements to existing structures that are aligned with the new development will create a visually cohesive retail center and the improvements to the parking field, including landscaping, will enhance the overall site.

Concern has been raised regarding the elimination of the cross-access with the AT&T property as a result of the proposed improvement as possibly being injurious to the adjacent property; however, the cross-easement expired in 2008 prior to the development of AT&T property which occurred in 2011 and the site can stand on its own regarding access to Tunnel Road. A real estate appraisal or other information demonstrating a loss in value has not been submitted.

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.**

Because this is an existing retail shopping center and since the new development and renovation is for the same or similar uses, the proposed use remains in harmony with the surrounding Tunnel Road retail corridor. The aesthetic upgrades to both building and site will enhance the character of the area and may encourage design or compliance improvements to other commercial developments in the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

Elements of the overall project are directly aligned with the City's goals and objectives including multi-modal transportation elements (sidewalks, bike racks, electric vehicle charging stations, transit shelter) and commercial investment in a location with existing infrastructure.

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

The site is located in an area supported by transit (E1 & E2) and easily accessible by vehicle. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process. Associated infrastructure improvements will enhance multi-modal access, emergency protection, waste disposal and water supply.

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

Existing infrastructure is adequate to handle traffic generated by this change of use. The project will create a reduction of 11,500 square feet of retail space. A traffic impact study is not required because the result of the project will be a net decrease in generated

traffic. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard.

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

Pros:

- The proposal revitalizes an existing commercial retail center with aesthetic improvements, creating a visually cohesive and updated appearance.
- Significant landscaping will be added to the large parking field, which is currently void of most vegetation.
- Sidewalks will be provided along the frontage and a transit shelter will be included.

Cons:

- Due to the challenges of working within an existing development, plans do not comply with parking lot landscaping and a modification is needed.
- Concern has been expressed regarding the elimination of a interior connection to an adjacent parcel.

Staff recommends approval of the Level III Conditional Use Permit for the Asheville Market and supports the request to modify landscaping standards based on the challenges inherent in working with a previously developed site.

In response to Vice-Mayor Manheimer, Ms. Bernstein said that at the top of the property (near the AT&T store) there will be a bus shelter and it will have a pedestrian pathway into the site. At this time they are not showing bike lanes into the project.

Mr. Lyle Darnall, representing Edens, the owner and developer, said that Edens owns 120 shopping centers (mostly grocery anchored) along the east coast and they build and develop to hold. He said they try to make sure they have some unique design elements in their developments, trying to stay focused on a unique tenant mix - they want to keep the community. They bought the shopping center back in 2004 and always thought it would be for redevelopment. They had a specific tenant (Whole Foods) in mind when the shopping center was purchased and they waited until K-Mart vacated the property. Using Applicant Exhibit 1, he showed what the location looks like currently and what their plans will be. He noted there is no landscaping on site now and not much retail mix. Since this is a good location and they have a good tenant, their goal will be to create a non-Tunnel Roadish redevelopment on Tunnel Road. They will demolish the K-Mart building and relocate Tunnel Vision into their space. They will create a whole new parking field and build all new buildings on the right side of the property. The left side of the property will be re-done with new retail. Among other things, they will construct wider sidewalks, add landscaping, include an electrical charging station and an outdoor dining area. There will be a good mix of local and regional tenants. Edens will invest \$17.5 Million in the redevelopment and there will be another \$12 Million invested by retailers themselves. He thought there will be an additional sales tax revenue of \$3.2 Billion and ad valorem taxes go up to \$180,000. There will be significant improvements to the site and the surrounding properties will see an increase in their property value as well.

In response to Councilman Pelly, Mr. Darnall spoke about the importance of the internal sidewalks for increased pedestrian activity to other retailers in the development, and the retail mix noting that they are not looking for any chain restaurants.

When Councilman Pelly asked about the lack of access to the AT&T store, Mr. Darnall said that the Planning & Zoning Commission did ask that they open up a conversation with AT&T which they did. The way the driveway is situated is purposeful because Whole Foods is particular about their parking field. Mr. Todd Simmons, civil engineer for the project, also responded to this

issue. He said they had to create a usable parking field for Whole Foods. The driveway now is steep and they had to cut it down to flatten the grade to get a more usable parking field. That is what necessitated the need to bring the driveway move over. The secondary benefit of moving the drive is that it will now align more with the driveway into the Asheville Mall across the street. The new drive created a 5-foot grade separation between existing AT&T store and the new driveway location. They looked at trying to put a driveway connection in near the AT&T store, but kept coming back to the same conclusion - they don't believe it is a safe maneuver due to the close proximity to the intersection of Tunnel Road and the very steep grade. In addition, he felt that the N.C. Dept. of Transportation would probably have a concern as well due to the limited cue to Tunnel Road. They also looked at a right turn out, but again due to the steep slope and limited cue to Tunnel Road, they felt that was unsafe as well. From an engineering standpoint, the grade differential is too much to overcome.

Mr. Lavoy Spooner, representing AT&T, felt this will be an excellent redevelopment of the property. However, their concern is that the AT&T store is an established business and their primary access is the cross-connection from the existing driveway. If that cross-connection is cut off, it will leave them only with the secondary access to the north of their building. That secondary access certainly will be a safety hazard for those people wishing to turn left out of the lot. That is a major safety concern. They are not concerned with the loss of parking, but losing the cross-access from the now K-Mart shopping center lot.

Mr. Jack Summers, owner of the AT&T building, agreed that their concern is the loss of access. They asked that that access be maintained. They had a deeded access from 1977 to 2008. They asked for continued deeded access, but were denied that access by the developer. He contacted the N.C. Dept. of Transportation and they encouraged connectivity. The regional Dept. of Transportation felt it is feasible to actually maintain that access, even if the developer had to drop down slightly as far as the slope. Their concern is the southbound access. Another concern is that Mr. Jeremy Goldstein (Vice-Chairman of the Planning & Zoning Commission) is also legal counsel for the developer. Even though he was recused from participating due to a conflict of interest, "we all know that it's a small community with a lot of friendships." Because of that, there could be a conflict of interest according to the American Bar Association. He requested the developer keep the access open, whether it be a right-turn out only or whatever it needs to be.

Mr. Tikkun Gottschalk, attorney representing the developer, said that he examined the title to the AT&T property and offered that examination with the deeds (Applicant Exhibit 2). There was an easement granted for the predecessor in title to the AT&T property which has expired. It expired in 2008 and was not renewed. There is no legal right for the AT&T property owner to insist on access over this property. In fact, a key question is if this project is approved will it substantially injure a neighboring property owner. The AT&T owner has suggested that this will injure his property; however, traditionally an actual appraisal would have been done showing that injury to the value of the property which Council has not been shown. Council has heard that this project could very well increase the value of that property.

City Traffic Engineer Jeff Moore provided Council with a portion of the N.C. Dept. of Transportation Policy on Street and Driveway Access to North Carolina Highways (City Exhibit 4). Cross-connectivity of developers is definitely desired anytime it's possible. To say that the maneuver to leave the secondary access of AT&T going south on Tunnel Road is dangerous, he could not say that. He would say it is busy at times. If it is determined to be dangerous, then that should be visited and determined if that access should be allowed to stay open if it's dangerous.

Using a drawing showing the new drive (City Exhibit 5), Mr. Moore responded to Councilman Bothwell regarding the pedestrian phase of the sidewalks and crosswalks at the northern and southern access points on Tunnel Road from the property.

When Councilman Hunt asked if it was typical for a local government, through a zoning action, to impose the requirement for cross-connectivity, City Attorney Oast said it is difficult when you are dealing with owners of separate properties. The AT&T building was approved as a Level I stand-alone project and the access was nice to have, but it was not required. If the applicant has presented evidence that all seven conditions of the conditional use permit standards have been met, that the application cannot be denied. It is the opinion of our Traffic Engineer that the proposed project is not expected to cause undue traffic congestion or create a traffic hazard. The cross access can be encouraged, but in this case, he was not sure that requiring it would be appropriate.

Mayor Bellamy recalled the project on Hendersonville Road and the concerns of residents from Crowfields not having a safe left turn. She felt it is nearly impossible to make the left turn out of the secondary access of the AT&T lot. She did not feel that condition no. 1 has been met from a public safety standpoint if the current access is cut off. As wonderful as the project is, it will be hard for her to approve the project by cutting off access of a neighbor who has had access for years. If there is a motion to approve the project, she asked that a condition be placed on it to provide a new access on the new driveway for AT&T.

Councilman Bothwell suggested people park in the new Whole Foods lot near the new retail and walk across the new drive to the AT&T store.

Vice-Mayor Manheimer felt there were similar situations of people having to make left hand turns on Merrimon Avenue. She was concerned about forcing two property owners to wade out access issues.

After listening to Director of Transportation Ken Putnam about the access on the new drive being close to Tunnel Road, Councilman Hunt felt it was fair to say that there may be some increased safety concerns relating to traffic coming out of the AT&T access if the access were provided, but there would also be safety concerns going into the AT&T store if the access were provided.

In response to Mayor Bellamy, Mr. Putnam explained that the developer would have to re-design the new driveway to accommodate an access to the AT&T store.

Councilman Smith felt that a grocery store in that area is something that was missing and appreciated the work of the developer. He had sympathy for the representatives at the AT&T building, but he didn't think the no access from the new driveway rises to a safety issue that should stop the permit.

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. 4182, granting a conditional use permit for the Asheville Market, located at 4 S. Tunnel Road, and approval of the modification request to the landscape requirements, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; 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 Hunt.

Mayor Bellamy asked for a delay until the next Council meeting in order for the property owners to address the access issue. She does not want to stop the permit process, but felt that this important project and it should not hamper the existing business of AT&T.

Councilman Smith was not in favor of a delay since it would be perceived as an on-going perception that it's hard to build in Asheville. Vice-Mayor Manheimer was not in favor of a delay either.

Mr. Robert Deutsch, attorney representing Edens, said that after the Planning & Zoning meeting the parties had a meeting in the hall and Edens submitted all the elevations of their required area to the AT&T owner so that he could have his engineers submit a proposed solution to them. They have not received anything. He called the AT&T representative two times this week to see if they had any information and did not get a return call. The reason why this property works is because of Whole Foods and they lay down their requirements of what they have to have. The driveway must be moved to meet Whole Foods' requirements.

Mr. Summers said they are concerned about the southbound traffic from their secondary access. He asked Council take into account the expense of accidents and injury of those folks who have accidents at that intersection. As far as working with the developer, they did meet after the Planning & Zoning Commission and he signed a letter of authorization for their engineers and surveyors to go onto the AT&T property and find a solution that would be workable. They have not heard anything or received any response.

After rebuttal, Mayor Bellamy closed the public hearing at 7:41 p.m.

Councilman Davis moved to call the question. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

In response to Councilman Bothwell, Mr. Putnam said that there could be a no-left turn going out of the AT&T secondary access, or the N.C. Dept. of Transportation could make the drive-way right-in and right-out. The courts have held for years that no property is guaranteed full access. They are guaranteed access but it can be limited in nature. Those are two avenues for the N.C. Dept. of Transportation to pursue.

Councilman Pelly agreed with Councilman Hunt that there are safety concerns with a new access onto the new driveway. Ultimately, the AT&T property owners were aware that the deeded access had expired and because of the overall benefit of the redevelopment, he would support the conditional use permit.

Mayor Bellamy felt that this is a great project and she wished the Council would have asked the developer to work with the property owner to find a solution so that the redevelopment would not injure the existing AT&T property. She would support the conditional use permit, but asked for a six-month update on reported accidents at the intersection of S. Tunnel Road and the access point to the AT&T store. After hearing that update, she would want to see what we can do to mitigate this issue. She hoped that the two property owners will continue to discuss this so something positive can come out of this.

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

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V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Timothy Sadler (1) advocated not only for keeping Saturday transit service, but to increase the transit budget which has been flat for five years; (2) voiced opposition for an employee of the gas company being appointed to the Sustainable Advisory Committee on Energy & the Environment; and (3) request that the public comment portion of Council meetings be held at the beginning of the meetings.

Mr. Michael Palmer spoke about community being the common theme of people in Asheville.

Mayor Bellamy presented into the record a petition she received to continue bus route #51 to Biltmore.

Councilman Smith said that when Council passed the amended Fees and Charges in March, there was inadvertently an increase in the fees for the farmers' markets which goes against the spirit of the Food Action Plan. He moved to revisit on the May 14 agenda the fees & charges specifically for farmers' markets. This motion was seconded by Councilman Bothwell and carried unanimously.

Closed Session

At 7:54 p.m., Councilman Pelly moved to go into closed session 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 potential litigation. 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 8:36 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

VIII. ADJOURNMENT:

Vice-Mayor Manheimer adjourned the meeting at 8:36 p.m.

CITY CLERK

MAYOR