

Tuesday – January 28, 2014- 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Marc W. Hunt; Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; Councilwoman Gwen C. Wisler; City Manager Gary W. Jackson; Interim City Attorney Martha Walker-McGlohon; and City Clerk Magdalen Burleson

Absent: Councilman Cecil Bothwell (weather related)

**PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 14, 2014**
- B. RESOLUTION NO. 14-16 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH COOPER CONSTRUCTION COMPANY INC. FOR THE HENDERSONVILLE ROAD WATERLINE PROJECT**

**ORDINANCE NO. 4271 - BUDGET AMENDMENT FOR THE HENDERSONVILLE ROAD WATERLINE PROJECT**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into a construction agreement with Cooper Construction Company, Inc., for the bid amount of \$441,266 plus a contingency amount of \$44,127 for a total project budget of \$485,393 for the Hendersonville Road Water Line Consolidation project; and a budget amendment in the amount of \$185,393 from savings in another capital project.

On June 12, 2013, the Water Resources Department issued an Invitation for Bids for the Hendersonville Road Water Line Consolidation project. The project location is on Hendersonville Road from 1378 Hendersonville Road to Mills Gap Road. The scope of the project consists of abandonment of a problematic 6-inch cast iron water line located on the east side of Hendersonville Road. Water services attached to the 6-inch water line will be transferred to the 24-inch ductile iron water line located on the west side of Hendersonville Road. Abandonment and removal of existing vacant services are also a part of the project scope. In response to the Invitation for Bids, no bids were received.

On July 16, 2013, the department issued another Invitation for Bids for the project. No bids were received in response to the second bid.

On December 4, 2013, the department issued another Invitation for Bids for the project. Two (2) bids were received for the project on January 7, 2014. Companies responding were:

- 1. Cooper Construction Company, Inc. – Hendersonville, NC; \$441,266
- 2. Buckeye Bridge, LLC – Canton, NC; \$948,648

A review team comprised of City staff reviewed these bids and selected Cooper Construction Company, Inc., as the lowest responsible responsive bidder in the amount of \$441,266. A contingency amount of \$44,127 has been added total project budget of \$485,393.

The Water Resources Department currently has \$300,000 budgeted for this project. The remaining funds of \$185,393 needed for the contract will be transferred from the Monte Vista / Sand Hill Road Master Plan capital project. The Monte Vista project has been reduced in scope, allowing funds to be transferred out to other projects as needed. In order to use the funds in the Monte Vista project, a budget amendment is necessary.

Amount in Hendersonville Road WL Project	\$300,000
<u>Amount Needed for Construction Contract</u>	<u>\$185,393</u>
Total Amount for Project	\$485,393

The amount remaining in the Monte Vista / Sand Hill Road Master Plan capital project will remain in the project budget to complete the project.

City staff recommends City Council approval of the City Manager to enter into a construction agreement with Cooper Construction Company, Inc., for the bid amount of \$441,266 plus a contingency amount of \$44,127 for a total project budget of \$485,393 for the Hendersonville Road Water Line Consolidation project; and a budget amendment in the amount of \$185,393 from savings in another capital project.

**RESOLUTION BOOK NO. 36 - PAGE 59  
ORDINANCE BOOK NO. 28 - PAGE 440**

**C. RESOLUTION NO. 14-17 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT CONVEYANCE OF A N.C. DEPT. OF TRANSPORTATION REMNANT PROPERTY ON SWEETEN CREEK INDUSTRIAL PARK TO FACILITATE IMPROVED ACCESS TO THE GE AVIATION FACILITY**

Summary: The consideration of a resolution authorizing the Mayor to accept the conveyance of a N.C. Dept. of Transportation (NCDOT) remnant property on Sweeten Creek Industrial Park in order to assemble the property into existing City right-of-way and facilitate improved access to the GE Aviation facility.

NCDOT owns a 2.79 acre remnant property identified by PIN 965742089400000 along the Sweeten Creek Industrial Park roadway. This property runs between the Buncombe County owned property being developed for the GE Aviation facility and the City right of way. NCDOT has offered to convey the property to the City of Asheville at no charge. The City plans to assemble the property into the existing right-of-way at Sweeten Creek Industrial Park and thereby allow for improved access to the GE Aviation site.

No monetary consideration required for the conveyance. Deed recordation fees will be the responsibility of the City, which should not exceed \$100.00.

City staff recommends City Council to adopt a resolution accepting the conveyance of an NCDOT remnant property to assemble the property into existing right-of-way adjacent to the new GE Aviation site.

**RESOLUTION BOOK NO. 36 - PAGE 61**

**D. RESOLUTION NO. 14-18 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT ACROSS CITY-OWNED PROPERTY AT 166 RESERVOIR ROAD TO CHRIS AND JESSICA LARSEN**

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property at 166 Reservoir Road to Chris and Jessica Larsen for the purpose of creating a driveway to a residential lot.

The City of Asheville owns real property at 166 Reservoir Road and the parcel is currently used for telecommunications purposes. The parcel is approximately 7.42 acres in size and is improved with two telecommunications towers and related buildings. There is a significant grade change between the land area used for telecommunications and the area of the property that meets McCauley Drive.

Chris and Jessica Larsen have a contract to purchase on an adjoining vacant parcel that fronts McCauley Drive. The land area of their lot is too steep to accommodate a driveway within the existing lot footprint, and as such Chris and Jessica Larsen have approached City staff with a request to purchase an easement to create a driveway connection to McCauley Drive. City transportation and traffic staff have reviewed the easement request and have no concerns with the proposed easement. The area of the easement is not currently being utilized by the city, and presents no apparent conflict with future development of the Beaucatcher Greenway and/or development of the Reservoir Road property for a park purpose.

The proposed easement area is approximately 473 square feet and would service a new single family residence. To develop a price for the sale of this easement, City staff calculated a price per square foot value based on the contract price of the adjacent lot. In this instance, the residential lot has a contract price of \$199,000 and is 2.12 acres. This translates into a value of \$2.16 per square foot, yielding an easement price of \$1020.

The amount of revenue generated by the sale of the easement will be deposited into the General Fund.

Staff recommends that City Council approve a resolution authorizing the Mayor to convey a 473 square foot easement over a portion of City-owned property at Reservoir Road for the purchase price of \$1020 to Chris and Jessica Larsen.

#### **RESOLUTION BOOK NO. 36 - PAGE 62**

#### **E. RESOLUTION NO. 14-19 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD THE SALE OF SIDEWALK GARBAGE RECEPTACLES TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to award the sale (no compensation) of surplus sidewalk garbage receptacles no longer in use on public sidewalks to the Asheville Housing Authority (AHA) and to enter into a negotiated purchase agreement.

The AHA has demonstrated a long standing commitment to the environment including the reduction of litter on AHA property. Through the donation of goods from the City, the AHA would be able to significantly increase the amount of waste receptacles which will in turn reduce litter and improve cleanliness in AHA neighborhoods. The garbage receptacles are currently still installed on downtown sidewalks but will be replaced with upgraded waste stations this spring. NCGS 160A-280 authorizes a City to dispose of property to another governmental unit or an incorporated non-profit agency that is carrying out a public purpose. Providing waste collection infrastructure in AHA neighborhoods would provide a public purpose for the environment and public health.

The potential loss of resale revenue could be offset by the benefit of increasing cleanliness in Asheville Housing Authority neighborhoods.

Staff recommends City Council adopt a resolution authorizing the City Manager to award the sale (no compensation) of surplus sidewalk garbage receptacles no longer in use on public sidewalks to the Asheville Housing Authority and to enter into a negotiated purchase agreement.

**RESOLUTION BOOK NO. 36 - PAGE 63**

**F. RESOLUTION NO. 14-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AGREEMENTS WITH Z SMITH REYNOLDS FOUNDATION AND THE DYNAMIC GOVERNANCE INSTITUTE TO DEVELOP A PROGRAM TO STRENGTHEN NEIGHBORHOOD PARTNERSHIPS**

**ORDINANCE NO. 4272 - BUDGET AMENDMENT TO ACCEPT THE Z SMITH REYNOLDS FOUNDATION GRANT FUNDING**

Summary: The consideration of a resolution authorizing the City Manager to sign agreements with Z Smith Reynolds Foundation and Dynamic Governance Institute to facilitate the development of training materials and process to enhance partnerships to build neighborhood capacity; and the associated budget amendment in the amount of \$30,000 from the Z Smith Reynolds Foundation.

The project to be funded by this grant is a collaborative effort of the City's Communication and Public Engagement Division, the Dynamic Governance Institute, and residents of public housing communities in the South French Broad neighborhood and was developed to strengthen effective neighborhood participation in policy and planning decisions.

The pilot program will employ an alternative group facilitation method called Dynamic Governance to provide a common framework for effective meetings, shared leadership, and structures for cooperation in the South French Broad neighborhood. The Dynamic Governance model is used locally by many non-profits and initiatives to self-organize and engage participants in cooperative decision-making. Examples of organizations currently using Dynamic Governance are the East West Asheville Neighborhood Association, the YWCA, the Food Policy Council, Handmade in America, and Rosetta's Kitchen.

The pilot will involve the creation of a team consisting of public housing resident leadership, community members familiar with Dynamic Governance, and city staff. This team will begin by training members of the Aston Park Towers and Garden Apartments Resident Association and Housing Authority Residents' Council and expand to include all residents of the South French Broad neighborhood. Public Housing residents have identified the capacity-building tools offered by the method as a means of bridging racial, class and education diversity. While these barriers are addressed, staff will facilitate ways for community members to engage with government. The project will also serve to strength existing public-private partnerships initiated by the East of the Riverway initiative and the Neighborhood Advisory Committee.

Grant revenue of \$30,000 will be administered by the Dynamic Governance Institute through a sub-award agreement at no cost to the City. Funding will be used to administer the grant, oversee the development of materials, and coordinate and facilitate meetings and training sessions, including providing support services like babysitting and transportation to enable residents to participate in the free training. In addition, the grant provides opportunities for residents who assume key leadership roles to receive stipends for activities aimed at making the program sustainable over time and available to all Asheville neighborhoods.

Staff recommends that City Council adopt the resolution authorizing the City Manager to sign the grant agreement with the Z Smith Reynolds Foundation and the Sub-Award Agreement with the Dynamic Governance Institute; and the associated budget amendment.

**RESOLUTION BOOK NO. 36 - PAGE 64  
ORDINANCE BOOK NO. 28 - PAGE 442**

**G. RESOLUTION NO. 14-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A GENERAL SERVICES CONTRACT WITH TYLER TECHNOLOGIES FOR MAINTENANCE AND SUPPORT OF THE CITY'S MUNIS ENTERPRISE SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to execute a general services agreement with Tyler Technologies for the estimated amount of \$144,000 per year plus a maximum of 5% escalation in subsequent years for maximum of (5) five fiscal years with the understanding that funding is project-specific and subject to the appropriation of funds.

The City of Asheville Information Technology Services is seeking to extend our current maintenance agreement for the estimated amount of \$144,000 per year plus a maximum of 5% escalation in subsequent years for maximum of (5) five fiscal years

The funding needed for this agreement is currently allocated within IT Services Business & Public Technology Division's maintenance budget.

City staff recommends City Council approval of a resolution authorizing the City Manager to execute a general services agreement with Tyler Technologies, for the estimated amount of \$144,000 per year plus a maximum of 5% escalation in subsequent years for maximum of (5) five fiscal years with the understanding that funding is project-specific and subject to the appropriation of funds.

**RESOLUTION BOOK NO. 36 - PAGE 65**

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

Mayor Manheimer 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.

Councilwoman Wisler moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Pelly and carried unanimously.

**III. PRESENTATIONS & REPORTS: None.**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 291 EAST CHESTNUT STREET LOCATED AT 287 AND 291 EAST CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT/CONDITIONAL ZONING WITH A MODIFICATION REQUEST TO THE SETBACK AND LANDSCAPE BUFFER REQUIREMENTS**

Mayor Manheimer announced that on January 20, 2014, Planning & Development Director Judy Daniel received a letter withdrawing their rezoning application.

**B. PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING CHANGES TO CONDITIONAL ZONING APPLICATIONS AND CONDITIONAL USE PERMITS TO REQUIRE THAT**

**ANY APPROVED ORDINANCES BE RECORDED WITH THE BUNCOMBE COUNTY REGISTER OF DEEDS**

**ORDINANCE NO. 4273 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING CHANGES TO CONDITIONAL ZONING APPLICATIONS AND CONDITIONAL USE PERMITS TO REQUIRE THAT ANY APPROVED ORDINANCES BE RECORDED WITH THE BUNCOMBE COUNTY REGISTER OF DEEDS**

Director of Planning & Development Judy Daniel said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding changes to conditional zoning applications and conditional use permits to require that any approved ordinances be recorded with the Buncombe County Register of Deeds.. This public hearing was advertised on January 17 and 24, 2014.

The UDO currently requires that upon adoption, the Planning Department will keep records of all adopted ordinances modifying the UDO. For conditional zoning ordinances, the UDO also requires that the city zoning map will be amended. For Conditional Use Permits and Conditional Zonings, ordinances that impose specific limits on individual properties, these changes and conditions are currently not easy to find for the general public. The proposed change will add a requirement that the property owner will record the ordinance and conditions of the approval at the Buncombe County Register of Deeds, cross-referencing the applicable property deed. This change will allow those who are seeking information on a specific property to easily see the limits imposed on the property.

The Planning Department will continue to keep records of the ordinances, but this action will provide the public with an easily accessible means to determine what requirements and restrictions are tied to any approved conditional zoning in the city.

This has been an issue of concern to the public as, due to space constraints, the Planning Department records usually do not include the full contents of the approved plans attached to the ordinance records, which are filed sequentially. Such files are eventually moved to long term storage which may take some time to retrieve. While this situation may be relieved over time as use of more advanced software will allow improved access, it will be helpful to have a backup means of access to this information in the county records; which are already accessible online. A parallel action is nearing completion to provide easier means to locate pertinent ordinances and conditions of approval from past approved CUPs and CZs through creation of a cross-referenced file kept in the Planning Department.

This action will not create a substantial expense for the property owner, and will provide greater transparency to the general public. Staff research with the Register of Deeds has revealed that most actions will cost less than \$50 to file (a small percentage will be higher depending on the complexity of the conditions). Further, a review of other cities in North Carolina has revealed that this is not an uncommon requirement. Real estate professionals are among those who most frequently ask for this information as they need to understand any limiting requirements on properties they are working with to buy or sell. Nearby residents are also among those interested in this information, as the zoning maps only say that the property has this zoning, and do not provide the limiting conditions.

These changes affect Section 7-5-5(c)(3) (Information Required for Conditional Use Plan Submittal), Section 7-5-5(e)(3)(b) (Formal review by City Council for Conditional Use Approvals), and Sections 7-7-8(d) (1) and (8) (Application procedures for Conditional Zoning).

Since this change increases transparency regarding regulatory limits on specific properties, staff believes the proposal to comply with the Asheville City Development Plan 2025 in that it works toward Goal IV of the Economic Development section related to insuring

compatibility between local infrastructure and regulatory environment and the needs of business and industry.

The Planning and Zoning Commission reviewed this proposal at their December 4, 2013, meeting, and with limited discussion it was approved 5-1 (with one absent). Commissioner Edmunds voted against the change citing concern over added complexities for property owners. No members of the public spoke about the proposal.

Staff believes the proposal to comply with the City Council's Strategic Plan Focus Area 1: Economic Growth and Financial Sustainability in that it creates a more transparent regulatory environment for potential investors as noted in the "Job Growth" section which notes the need for UDO analysis and recommendations.

Considerations:

- The primary benefit will be increased transparency and access to this information by the public.
- A concern would be the increased cost of compliance (although minimal) for the property owner.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable. Staff recommends approval of this proposed change as it will provide the public with a more accessible means of determining the conditions imposed by the Council in granting approval of conditional use permits and conditional zonings.

City staff recommends City Council approve the proposed changes to Section 7-5-5(c)(3), Section 7-5-5(e)(3)(b), and Sections 7-7-8(d) (1) and (8) as outlined in this report and (if approving) find that the request is reasonable and is consistent with the Comprehensive Plan and other adopted plans, based on information provided in the staff report and as stated in the staff recommendation.

After Councilman Pelly spoke in support of this first step and questioned what the plan is to get the prior ordinances recorded, Ms. Daniels said that she would report back to Council with a cost estimate for recording those prior ordinances, working with the Register of Deeds Office.

Director of Development Services Shannon Tuch said that the City has launched a new permitting software program that has the capability to geographically assign documents. When the new program comes on-line, staff will attach all the former CUPs and CZs to the specific parcel.

In response to Councilwoman Wisler about how someone researches for that information now, Ms. Daniel said that most real estate professionals know to go to MapAsheville and/or the Planning Department.

Mayor Manheimer noted that she received an e-mail from the Coalition of Asheville Neighborhoods noting that they support this amendment.

Mayor Manheimer opened the public hearing at 5:06 p.m., and when no one spoke, she closed the public hearing at 5:06 p.m.

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

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. 4273. This motion was seconded by Councilwoman Wisler and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 444**

**C. PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING CHANGES TO OUTDOOR LIGHTING STANDARDS TO ALLOW FOR UPDATES TO STANDARDS REGULATING LED LIGHTS TO BETTER ALIGN THE GOALS OF REDUCED GLARE AND DARK SKY CONCERNS WITH ENERGY EFFICIENT LIGHTING GOALS**

**ORDINANCE NO. 4275 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING CHANGES TO OUTDOOR LIGHTING STANDARDS TO ALLOW FOR UPDATES TO STANDARDS REGULATING LED LIGHTS TO BETTER ALIGN THE GOALS OF REDUCED GLARE AND DARK SKY CONCERNS WITH ENERGY EFFICIENT LIGHTING GOALS**

Director of Development Services Shannon Tuch said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding changes to outdoor lighting standards to allow for updates to standards regulating LED lights for updates to standards regulating LED lights to better align the goals of reduced glare and dark sky concerns with energy efficient lighting goals. This public hearing was advertised on January 17 and 24, 2014.

In 2011, the Department of Public Works in support of the sustainability Master Plan, announced a multi-year plan to phase in new LED street lights. In order to support this change, a wording amendment was approved by the Planning & Zoning Commission in August 2012 stating that all new privately installed street lights would match the city's new LED street lighting standards as well as setting LED area lighting requirements.

At the December 4, 2013, Planning & Zoning Commission meeting, the Commission approved changes to the BUG rating requirement for area lighting, and to the lumen level requirements for area and street lighting. Since that time, staff has become aware of two more areas that need attention, specifically, the BUG ratings for 1) Lighting attached to structures or buildings, and 2) Street lighting.

Since the first meeting with the Commission, Buncombe County Schools has run into an obstacle with the section of the ordinance regulating lights attached to structures or buildings. They are attempting to replace wallpack fixtures and canopy lights for many of their schools, both within and outside the city's jurisdiction, and are hoping to replace them with efficient LED fixtures. However they are unable to find any products in the marketplace that meet our ordinance and their needs. Our current standard calls for a B-U-G rating of 0-0-0.

The City of Asheville has run into an obstacle when it comes to LED street lighting product availability. There are currently four manufacturers of LED street lighting approved by Asheville's electric utility, Duke Energy Progress. Under our current ordinance, 2 of those 4 do not meet our guidelines for street lights installed in residential areas because their products are ever so slightly above what we have specified. This is problematic because when making a large purchase of street lights, having adequate choice in manufacturers can have a significant financial impact to the City.

The recommended solution is to adjust the BUG rating standards for lighting attached to structures or buildings and for street lighting, and the lumen output for street lights in residential areas, thus giving developers and the City greater product choice. The proposed changes are still consistent with the National Dark Sky Model Lighting Ordinance recommendations for backlight, uplight, and glare as well as lumen output.



## Recommended Ordinance Language

1. The allowable backlight and glare ratings for LED lighting attached to structures or buildings should be raised from the current B0 and G0 to B2 and G2. This would bring the overall BUG rating to 2-0-2, which is still more conservative than what is allowed for area lights: 3-0-3.

Specifically, the text of section (j) 5. would read, "All LED lighting attached to buildings or structures shall comply with the standards in subsection (g)(8) and shall have a maximum BUG rating of ~~B0, U0, G0~~ B2, U0, G2, unless otherwise exempted or excepted."

2. The allowable backlight and glare ratings for new street lighting on residential streets should be raised from the current B1 and G1 to B2 and G2. This would bring the overall BUG rating to 2-1-2, which is still more conservative than what is allowed for commercial streets: 3-3-3. Additionally, the allowed luminance for residential districts should be raised from the current 6,000 lumens to 6,500 lumens. This is still well below what is allowed for commercial districts: 20,000 lumens.

Specifically, the text of section (g) 8 b. would read, "The maximum number of fixture lumens shall not exceed ~~6,000~~ 6,500 in residential districts and no more than 20,000 lumens in non-residential districts, unless otherwise allowed or exempted."

The text of section (h) 4 c (i). would read, "In residential districts - no greater than ~~6,000~~ 6,500 fixture lumens, with exceptions noted in subsection (5) below."

The text of section (h) 5. would read, "All LED street lighting shall comply with the standards in subsection (g)(8) and shall have a maximum BUG rating of B3, U3, G3 on commercial streets and major arterial DOT and City of Asheville roads, and a maximum of ~~B1, U1, G1~~ B2, U1, G2 on residential streets.

Exceptions:

- a. Use of LED street lights in residential areas over ~~6,000~~ 6,500 and up to 8,200 fixture lumens are allowed at intersections and safety sensitive locations, as deemed necessary by the director of public works."

The Planning & Zoning Commission considered the first amendment focusing on street and area lights at their December 4, 2013, meeting where the recommendation was unanimously supported.

Staff brought the matter back before the Commission on January 16, 2014, to consider expanding the changes to include an amendment to the BUG rating for wallpack and canopy lights, along with an adjustment to the lumen level for streetlights in residential areas. The Commissioners again unanimously recommended approval but requested that staff return in another 12 months for a report on the alignment of the city's ordinance with product availability in the marketplace. There was also a recommendation to review canopy lights separately from wall pack lights.

This amendment was also reviewed by the Sustainable Advisory Committee on Energy and the Environment (SACEE) at their November 20, 2013, meeting where the Committee voted to support the changes and on-going review.

The proposal complies with the Asheville City Development Plan 2025 in that it works toward balancing city goals for sustainability (carbon footprint) and safety (glare) with development options that encourage reinvestment in the community.

Pros:

- Adjusts standards to allow energy efficient options for developers, property owners and street lighting.
- Encourages the use of energy efficient fixtures.
- Maintains limits to discourage unsafe glare and support dark skies.

Con:

- Although still consistent with the National Dark Sky Model Ordinance, these changes do slightly relax the standards as it relates to public safety concerns regarding glare.

No direct municipal fiscal impact on the ordinance amendment itself.

Staff recommends approval of the proposed wording amendment and finds that it is consistent with the City's adopted plans and goals.

When Councilwoman Wisler asked if staff has a sense that the industry is moving forward quickly enough for the City to create stronger standards, Ms. Tuch said yes, while some products that meet the standards are available, they fail to address other concerns

Mayor Manheimer opened the public hearing at 5:10 p.m.

Mr. Jason Walls, District Manager for Duke Energy Progress, spoke in support of the ordinance amendment.

Mayor Manheimer closed the public hearing at 5:11 p.m.

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

Vice-Mayor 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. 4275. This motion was seconded by Councilman Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 28 – PAGE 451**

#### **D. PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING STATUTORY CHANGES TO BOARD OF ADJUSTMENT PROCEDURES**

#### **ORDINANCE NO. 4274 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING STATUTORY CHANGES TO BOARD OF ADJUSTMENT PROCEDURES**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding statutory changes to Board of Adjustment procedures. This public hearing was advertised on January 17 and 24, 2014.

Ms. Daniel said that in this year's legislative session, the General Assembly passed session law 2013-126 entitled "An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment", effective October 1, 2013, which resulted in a number of modifications to N.C. G.S. sec. 160A-388, the statute which governs the composition, duties and procedures of Boards of Adjustment. This was the first major re-write of this statute since its original inception in the early 1920's and in Staff's opinion, the clarifications provided by this new law were necessary and should prove helpful to the administration of board of adjustment matters. The amendments are also applicable to other boards and commissions, such as Planning & Zoning

commission, when acting as a board of adjustment pursuant to section 7-5-9.1 of the UDO. Though many of the City's UDO provisions related to board of adjustment procedures, such as notification requirements and hearing conduct, are already consistent with the standards and procedures in this new law, some amendments do need to be made.

These changes affect **Section 7-3-3 Board of Adjustment**, subsection (c)(2) Meetings and Voting and subsection(e) Administering Oaths and Issuing Subpoenas; **Section 7-6-1 Variances**, subsection (a) Purpose, subsection (c) Applications, subsection (d) Action by the board of adjustment, and subsection (e) Standard of Review; **Section 7-6-2 Appeals of Administrative Decisions**, subsection (c) Persons who may file an appeal, subsection (d) Filing of an Appeal, and (e) Action by the board of adjustment; **Section 7-5-20 Notices and Public Hearings**, subsection (b) Notice procedure; and **Section 7-13-9 Sign Variances**.

The major modifications or clarifications of session law 2013-126 that have an impact on the current UDO provisions can be summarized as follows:

- Regarding Appeals Process (UDO sections 7-3-3 and 7-6-2):
  - Appeals of zoning decisions must be filed with the city clerk (currently file with planning director or board secretary)
  - Appeals must be taken within 30 days of date of decision (currently ordinance provides for appeal to be taken as required by the Board of Adjustment Rules of Procedures, which in turn, currently allows 60 days to appeal)
  - Appeal may be made by a person who has standing as defined by statute (previously appeal could be made by any "aggrieved party" which had no exact definition)
  - Clarification that only an appeal of a notice of violation or other enforcement order shall stay all proceedings in furtherance of the contested action. An appeal of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay further review of the application.
- Regarding Standards for Granting Variances (UDO section 7-6-1 and section 7-13-9):
  - Removes the requirement that variance may not be granted unless *no reasonable use* of the property without the variance
  - Removes the reference to consideration of *practical difficulties*
  - Provides that applicant may qualify for variance *even though applicant purchased property knowing of its limitations and possible need for a variance*
- Regarding Board Decisions and Voting Requirements (UDO sections 7-3-3 and 7-6-2):
  - Appeals of zoning decisions and special and conditional use permits are granted upon majority vote (previously, a 4/5 vote was required. 4/5 vote still required for granting of a variance)

This matter was presented to the Planning and Zoning Commission on December 4, 2013, which unanimously approved the proposed changes and directed that the proposed revisions be sent to Council for action.

Staff recommends approval of these proposed changes as they will make the UDO provisions regarding Board of Adjustment procedures consistent with the new State law.

Mayor Manheimer opened the public hearing at 5:13 p.m., and when no one spoke, she closed the public hearing at 5:13 p.m.

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

Vice-Mayor 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. 4274. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 446**

**V. UNFINISHED BUSINESS:** None.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 14-22 – RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Sustainable Advisory Committee on Energy & the Environment (SACEE).

The terms of Melanie Brethauer, Duncan McPherson and Tim Ballard expired on December 31, 2013. Ms. Brethauer is not eligible for reappointment and Mr. Ballard is not interested in reappointment.

The following individuals applied for the vacancies: Thomas Bryan Tompkins, Joyce Brown, Sonia Marcus, Parker Sloan, Mindy Fisher, Leslee Thornton, Philip Pritchard, Mary Ann Garwood, Sabrina Wells and Ulla Reeves.

The Boards & Commissions Committee recommended reappointment of Duncan McPherson and interviewing Sonia Marcus, Mindy Fisher and Mary Ann Garwood. The consensus of Council directed the City Clerk to arrange interviews for Sonia Marcus, Mindy Fisher, Mary Ann Garwood and Leslee Thornton. Due to adverse weather conditions, Ms. Thornton was unable to attend the interview.

On January 14, 2014, Councilman Bothwell moved to reappoint Duncan McPherson , to serve an additional three-year term, term to expire December 31, 2016, or until his successor has been appointed. This motion as seconded by Councilwoman Wisler and carried unanimously.

After Council spoke highly of the candidates, Sonia Marcus received 6 votes, Mindy Fisher received 6 votes, and Mary Ann Garwood received no votes. Therefore, Sonia Marcus (expertise in field of energy management), was appointed to serve a three-year term, term to expire December 31, 2016; and (2) Mindy Fisher was appointed to serve a three-year term, term to expire December 31, 2016. All appointments are until their successors are appointed.

**RESOLUTION BOOK NO. 36– PAGE 66**

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

Councilman Davis was pleased to note that Mr. Jack Ingram will be inducted into the National Hall of Fame in Charlotte on January 29, 2014, and will be recognized by this City Council at their February 11 meeting.

**Lawsuit Reports**

The City was served with a civil action on December 27, 2013, from Mark Eaton DeVerges vs. the Board of Adjustment of the City of Asheville. The nature of the proceeding is a

Board of Adjustment appeal regarding E. Chestnut Street in the Charlotte Street neighborhood. This matter will be handled by an attorney outside the City Attorney's Office.

The City was served with a civil action on January 21, 2014, from Mark Byrd vs. City of Asheville and Asheville Police Department. The nature of the proceedings is an EEOC lawsuit of discrimination in the form of discrimination. This matter will be handled by an attorney outside the City Attorney's Office.

The City was served with a civil action on January 23, 2014, from Timothy J. Fortenberry vs. City of Asheville. The nature of the proceedings is a petition for trial de novo for all matters that went before the Asheville Civil Service Board on December 17, 2013. This matter will be handled in-house.

### **Recess**

At 5:18 p.m. Councilwoman Wisler moved to recess the Tuesday, January 28, 2014, meeting of the Asheville City Council until Thursday, January 30, 2014, at 10:00 a.m. in the Council Chamber, located on the 2nd Floor of City Hall. At that time, it is anticipated that City Council will immediately go into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); 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)(1). This motion was seconded by Councilman Pelly and carried unanimously.

Thursday – January 30, 2014 - 10:00 a.m.

### **Recessed Meeting**

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Marc W. Hunt; Councilman Jan D. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; Councilwoman Gwen C. Wisler; City Manager Gary W. Jackson; Interim City Attorney Martha Walker-McGlohon; and City Clerk Magdalen Burleson

Absent: Councilman Cecil Bothwell

At 10:00 a.m. a.m., Councilwoman Wisler moved to go into closed session for the following reasons: (1) to consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); 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)(1). This motion was seconded by Councilman Pelly and carried unanimously.

At 4:15 p.m. Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

### **VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 4:15 p.m.

---

CITY CLERK

---

MAYOR