

Tuesday – January 13, 2015 - 5:00 p.m.  
US Cellular Center - Banquet Hall

Regular Meeting

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

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

At the request of Councilwoman Wisler, Consent Agenda Item "B" was removed from the Consent Agenda for discussion and/or individual votes.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 9, 2014**
- B. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGRICULTURAL LEASE WITH BALSAM GARDENS, LLC, ON A PORTION OF CITY-OWNED REAL PROPERTY OFF OF HARDESTY LANE AT AZALEA PARK**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

- C. RESOLUTION NO. 15-2 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MICHELIN NORTH AMERICA, INC. FOR THE LEASE OF TIRES TO THE ASHEVILLE TRANSIT SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Michelin North America, Inc. for the lease of tires to the Asheville Transit System.

The City of Asheville released a RFP for transit bus tire lease on September 25, 2014. The City received two bids on November 7, 2014, Michelin North America, Inc., and Bridgestone Americas Tire Operations, LLC. The only responsive bid was from Michelin North America, Inc. (Greenville, South Carolina) which fulfilled the bid requirements. After a thorough review, City staff is recommending signing a contract for three years with Michelin North America, Inc. retroactive January 1<sup>st</sup> 2015.

The City of Asheville Transit System has been leasing tires for the buses since 2000. The cost for leasing the tires is about \$4,700 per month and is based on actual mileage per tire (6 tires per bus). The rate per mile in a three year period is as follows:

Michelin Tires Cost					
Tire size	Miles/year/ bus	# buses in fleet	# of tires/bus	Cost per tire	Cost
Year 1					
12r	39,388	2	6	\$0.00927	\$4,381.47
305r	33,735	5	6	\$0.01019	\$10,312.79
275r	42,848	16	6	\$0.01019	\$41,915.32
Cost/year					\$56,609.58
Year 2					
12r	39,388	2	6	\$0.00983	\$4,646.15
305r	33,735	5	6	\$0.01080	\$10,930.14
275r	42,848	16	6	\$0.01080	\$44,424.48
Cost/year					\$60,000.77
Year 3					
12r	39,388	2	6	\$0.01042	\$4,925.01
305r	33,735	5	6	\$0.01145	\$11,587.98
275r	42,848	16	6	\$0.01145	\$47,098.17
Cost/year					\$63,611.16
<b>Three year cost</b>					<b>\$180,221.51</b>

The Asheville Transit System uses about 15 tires per month and if the City bought them, it would cost about \$400 per tire or \$6,000 per month plus the cost of shipping. In addition, the City would have to pay a disposal fee to get rid of the old tires. The total cost of the contract for three years is approximately \$180,300.

The subject lease is part of the current operational budget and is recorded as an operational expense.

The Transit Committee supports the subject project.

Pros:

- Leasing the tires generates savings thereby using resources and staff in a more efficient way.
- The company provides technical assistance and equipment.
- The contract is based on tires per mile and the price is "locked" for three years.
- The company takes care of tire disposal.

Con:

- The total three-year cost of the contract is \$180,300.

As noted above, the total three-year fiscal impact for the contract is \$180,300. The annual budget is included in the Transit Services Fund operational budget. There is a net annual savings of approximately \$15,000+ per year, not including shipping costs or tire disposal fees.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into a contract with Michelin North America, Inc. for the lease of tires to the Asheville Redefines Transit System.

**RESOLUTION BOOK NO. 37 - PAGE 2**

**D. RESOLUTION NO. 15-3 - RESOLUTION OPPOSING HYDRAULIC FRACTURING**

Summary: The Sustainable Advisory Committee on Energy & the Environment (SACEE) recommended a resolution concerning opposing hydraulic fracturing of natural gas, or “fracking”, for City Council to consider.

SACEE deliberated the resolution at their September and October meetings. Members were tasked with educating themselves on the subject, and listened to a presentation from Clean Water for NC. SACEE voted on the current draft and unanimously approved it to recommend to City Council.

Some notes about this resolution:

- This is a statement of leadership on the issue, rather than any kind of legally binding resolution for the City – it expresses the will of the people of Asheville that they do not support fracking in Asheville, Buncombe County, or WNC
- While Asheville and Buncombe County are not likely to face fracking pressure, this is still a relevant issue to Asheville. There is a possible shale gas resource covering parts of all of the counties to the west of Buncombe. Also, while the wells would not be drilled in Asheville, there are no limits to where the toxic fracking wastewater can be stored.
- Over 20 other NC counties and municipalities have approved similar resolutions

Two residents thanked Council for their support of this resolution.

**RESOLUTION BOOK NO. 37 - PAGE 3**

**E. MOTION TO APPROVE THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE CONDITIONAL USE PERMIT FOR RIVER MILLS LOFT LOCATED OFF OF THOMPSON STREET**

**F. RESOLUTION NO. 15-4 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 27, 2015, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR TUTCO FARNAM**

Summary: The consideration of a resolution authorizing a public hearing to be held on January 27, 2015, to consider an economic development incentive grant for Tutco Farnam.

Tutco Farnam is an existing manufacturing company located in South Asheville. The company produces a variety of air and surface heating units used in industrial applications. The company has been in Asheville for 30 years, starting in 1982. The company leases space and has outgrown the current building. The building owner has agreed to construct a new building addition and in return, the company will sign a new lease for the property.

The company is planning a \$2.5 Million expansion in its South Asheville campus and has requested consideration for a performance based incentive grant under the City of Asheville Economic Development policy. The company will retain 63 current employees and will create 50 new jobs within three years. Employees are provided comprehensive benefits by the company. The City of Asheville is considering offering a performance-based grant totaling \$30,380.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in existing industry in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Cons:

- Grant is formulated based on use of 45% of value of property tax revenue for a 7 year period.

The project has an overall positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive approximately 55% of the new incremental property tax revenues from the project. After 7 years, the City will henceforth receive 100% capture of new city taxes.

The economic development incentive grant for Tutco Farnam supports the City Council's Strategic Operating Plan as it addresses multiple focus areas. Under the Job Growth and Community Development focus area, the project supports the Goal of creating more collaborative and effective working partnerships between the COA, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals by meeting the objective to support diversified job growth and small business development. It supports the goal of supporting a strong local economy by continuing to implement sustainable growth and development policies by promoting sustainable, high density infill development that makes efficient use of existing resources.

City staff recommends Council approve a resolution authorizing a public hearing to be held on January 27, 2015, on an economic development incentive grant agreement to support the expansion of Tutco Farnam.

#### **RESOLUTION BOOK NO. 37 - PAGE 5**

#### **G. RESOLUTION NO. 15-5 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 27, 2015, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR EXPANSION OF HIGHLAND BREWING**

Summary: The consideration of a resolution authorizing a public hearing to be held on January 27, 2015, to consider an economic development incentive grant for Highland Brewing.

Highland Brewing, a pioneer in the Asheville craft brewery industry is considering expansion. Highland Brewing began in Asheville 20 years ago. Today it is considered one of the region's premier breweries. Demand for Highland product continues to grow and the company, with second generation leadership is considering expansion in the City. Capital investment in M/E etc. will be at least \$3.8 Million, and improvements to existing real property/real estate will be at least \$1.2 Million. Additionally the company will create 15 new jobs over a period of 3 years with average annual wage rate of \$42,016. These jobs would offer comprehensive benefits to employees.

The City's incentive policy would justify an incentive grant of \$60,000 to the company. The grant would be subject to a performance agreement with the City, and would be paid in five annual installments, \$12,000 a year, after the conditions of the performance agreement are met and the annual property taxes are paid by the company and verified by the City that company has made the required investment and that investment goes on the tax rolls.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in existing industry in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Cons:

- Grant is formulated based on use of a portion of property tax revenue for a five year period.

The project has an overall positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive approximately 48% of the new incremental property tax revenues from the project. After five years, the City will henceforth receive 100% capture of new city taxes. The company is also planning new retail and tourism product development that is not a part of this project that will generate sales and hotel tax.

The economic development incentive grant for Highland Brewing supports the City Council's Strategic Operating Plan as it addresses multiple focus areas. Under the Job Growth and Community Development focus area, the project supports the Goal of creating more collaborative and effective working partnerships between the COA, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals by meeting the objective to support diversified job growth and small business development. It supports the goal of supporting a strong local economy by continuing to implement sustainable growth and development policies by promoting sustainable, high density infill development that makes efficient use of existing resources.

City staff recommends Council approve a resolution authorizing a public hearing to be held on January 27, 2015, on an economic development incentive grant agreement to support the expansion of Highland Brewing.

**RESOLUTION BOOK NO. 37 - PAGE 6**

**H. RESOLUTION NO. 15-6 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 27, 2015, TO CONSIDER A ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT INVOLVING A LEASE AND OPTION TO PURCHASE OF CITY-OWNED PROPERTY FOR PROJECT LAB**

Summary: The consideration of a resolution authorizing a public hearing to be held on January 27, 2015, to consider an economic development incentive for Project Lab.

City of Asheville has been requested by Buncombe EDC to consider a performance based incentive under the City of Asheville Economic Development policy to a company known herein as Project Lab. The purpose of the City's participation would be to induce Project Lab to make investments in the City and Buncombe County for expenditures to acquire and install machinery and equipment and make improvements to city-owned real estate which may increase the tax value as determined by the Buncombe County Tax Department, regardless of funding sources for said property, in the amount of \$8,100,000. Project Lab also proposes to create 65 new jobs with an average annual wage of \$35,818. The City of Asheville is considering offering a lease of property to Project Lab for up to five years at \$1/year (and Project Lab to pay taxes on improved property) and an option to purchase the improved property, for economic development purposes, at 80% of FMV (land only) or approximately \$1,600,000 at or before the end of the five year period. Should Project Lab choose not to exercise the option to purchase, they could

continue to lease the property for an additional period of up to five (5) years at the fair market value rental rate. In addition, Project Lab will be granted an exclusive option to purchase the adjacent (1.67 acre) city owned parcel within the first year of the initial lease term for 80% of FMV (land only) if additional improvements and jobs are committed to or for FMV if no additional economic benefits are committed. Project Lab shall have the right to renew this option for one (1) additional year for a non-refundable fee of ten thousand dollars (\$10,000.00). If Project Lab does not exercise its option to purchase the adjacent lot at the end of the second year, the City shall be free to market the property, subject only to a 30 day right of first refusal granted to Project Lab during the remainder of the initial lease term.

The lease and purchase would be subject to a performance agreement with the City, and would be governed through the conditions of the lease, economic development performance agreement and option(s) to purchase. North Carolina state law requires a public hearing be held before an economic incentive can be officially awarded.

Pros:

- Creates technology driven private sector use for Charlotte Street Corridor;
- Supports job creation and capital investment in Asheville;
- Activates an underperforming asset and places city owned property on the tax rolls;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Con:

- During the five year lease period, the city will lease the property below FMV, however, the property is currently providing no income to the City.

The project has an overall positive fiscal impact on tax revenues received by the city since the property improvements made by Project Lab will be valued at over \$8 million dollars. Additionally, if Project Lab exercises its option to purchase the property, the city will receive approximately \$1,600,000 at the end of the lease. No cash payments will be provided by the City. The city will begin accruing M/E tax payments in year one estimated at \$6200. After five years, the City will henceforth receive 100% capture of new city taxes for all investment valued at \$8,100,000.

The economic development incentive for Project Lab supports the City Council's Strategic Operating Plan as it addresses multiple focus areas. Under the Job Growth and Community Development focus area, the project supports the Goal of creating more collaborative and effective working partnerships between the COA, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals by meeting the objective to support diversified job growth and small business development. It supports the goal of supporting a strong local economy by continuing to implement sustainable growth and development policies by promoting sustainable, high density infill development that makes efficient use of existing resources.

City staff recommends Council approve a resolution authorizing a public hearing to be held on January 27, 2015, on an economic development incentive agreement, lease, and option agreement to support the location of Project Lab.

#### **RESOLUTION BOOK NO. 37 - PAGE 7**

- I. RESOLUTION NO. 15-7 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR THE SALE OF 0.03 ACRES OF REAL PROPERTY LOCATED AT TUSKEEGEE STREET AND MARTIN LUTHER KING JR. DRIVE TO RUSS STALLINGS**

Summary: The consideration of a resolution directing the City Clerk to advertise for upset bids for the sale of 0.03 acres (approx. 1306.8 square feet) of real property located at Tuskegee St. and Martin Luther King, Jr. Drive to Russ Stallings.

The City of Asheville owns a remnant parcel of property located at Tuskegee Street and Martin Luther King Jr. Drive (PIN # 964960632200000). The property was transferred from the Housing Authority to the City of Asheville in 1995 as a disposal parcel after the Urban Renewal program concluded. This lot is unbuildable due to the small size and shape of this parcel, and it would appear that it is a remnant of the right-of-way of Tuskegee Street. The adjacent homeowner, Russ Stallings, at 128 Pine Street has approached the City with an offer to buy the land for \$1,000. There are few comparables in the area for this type of property however; a recent sale on Hazzard Street of similar size and utility was valued at \$1500.00.

The Parks Department and Transportation Department have confirmed that this property is not needed for future park infrastructure or multi-modal transportation infrastructure.

The method chosen to establish fair market value is the upset bid process set forth in NCGS 160A-269. If City Council approves the following resolution, the City Clerk will be directed to publish an advertisement for upset bids for a period of 10 days, in which any interested party may upset the bid of \$1,000. The statutes require that a qualifying bid must increase the current offer by 10% of the first \$1,000 and 5% of the remainder (i.e. \$1,010 or higher). Since the function of the upset bid process is to confirm fair market value, the attached resolution provides that if no qualifying, competing bid is received, then the City Council agrees to convey the parcel to Russ Stallings for \$1,000.

This action complies with the City Council Strategic Operating Plan by supporting Focus Area 1: Economic Growth & Financial Sustainability through the conveyance of real property at fair market value.

Pros:

- Private sale will convert public land into taxable real property and will relieve the City of Asheville of ongoing maintenance responsibility.

Cons:

- None

Because this property is associated with Federal Funds via Urban Renewal, the financial proceeds are to benefit the Community Development Block Grant fund.

City staff recommends City Council adopt a resolution directing the City Clerk to advertise for upset bids for a property located at Tuskegee St. and Martin Luther King, Jr. Drive.

**RESOLUTION BOOK NO. 37 - PAGE 8**

**J. RESOLUTION NO. 15-9 - RESOLUTION FINDING THAT AN UNOPENED 40-FOOT RIGHT-OF-WAY OFF BAKER DRIVE, KNOWN AS SHAMBY DRIVE, IS NOT PART OF AN ADOPTED STREET PLAN**

Summary: The consideration of a resolution finding that an unopened forty (40) feet wide right of way off of Baker Drive, known as Shamby Drive, is not part of an adopted street plan.

Mr. Ronald Czecholinski has filed a Declaration of Withdrawal, withdrawing the offer of public dedication of the unopened five-foot wide strip off Fairmont Road. The purpose of the request is to make the property more useful as the 40-ft strip is between two parcels to the north and one to the south that Mr. Czecholinski now owns. The forty foot right of way is not used as an

ingress or egress nor has it ever been used as such. Additionally, the 40-ft. strip is not part of any City street plan, particularly not any City street plan adopted under 136-66.2. N. C. Gen. Stat. sec. 136-96 permits the filing of a Declaration of Withdrawal of any strip, piece or parcel of land which shall have been at any time been dedicated to public use as a street and which shall not have been actually opened and used by the public within 15 years from and after dedication. The 40-ft. strip was dedicated to the public in 1953.

In order to withdraw an offer of dedication, N.C.G.S. §136-96 requires:(1) that the strip, piece or parcel of land dedicated as a street shall not have been actually opened and used by the public within 15 years from and after the dedication; and (2) the person desiring to withdraw, must be the original dedicator or someone claiming under the original dedicator. Mr. Czecholinski along with his attorney contends both requirements are satisfied, as reflected in the attached letter from Attorney William T. Biggers. The City is being requested to adopt a resolution because the statute states that upon request, the City shall adopt a resolution stating whether the street is or is not part of the street plan adopted under G. S. 136-66.2.

Public Works Department staff has consulted with all appropriate City departments and determined that the unopened forty foot right of way off Baker Drive as set forth is not part of an adopted street plan and is not a City maintained right-of-way.

A withdrawal of dedication is not identified as a subject area in the Strategic Operating Plan.

Pros:

- Adoption of the Resolution eliminates any concerns about the 40-ft strip being part of a City Street Plan and does not compromise ingress/regress to other properties.

Con:

- None.

There is no fiscal impact.

City staff recommends City Council adopt the Resolution finding that the unopened forty foot right of way, off Baker Dr., between parcels PIN#s 9628696038/9628698020 and 9628687788 as shown on the exhibit A is not part of any City Adopted Street Plan.

#### **RESOLUTION BOOK NO. 37 - PAGE 9**

#### **K. RESOLUTION NO. 15-9 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY A SANITARY SEWER EASEMENT TO THE METROPOLITAN SEWERAGE DISTRICT FOR THE HILLIARD AVENUE AT ASTON PARK GENERAL SEWER REHABILITATION PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to convey a sanitary sewer easement to the Metropolitan Sewerage District of Buncombe County (MSD) for the Hilliard Ave. @ Aston Park General Sewer Rehabilitation Project.

The City of Asheville owns and operates the Aston Park Tennis Facility and the Parks Maintenance Facility at 336 and 338 Hilliard Avenue (PIN #9648183942 and PIN #9648187790). Aston Park is improved with tennis courts, the tennis center and associated parking. The Parks Maintenance facility is improved with offices, storage areas, equipment and vehicle parking, a welding shop and woodworking shop to provide a base of operations for maintaining the City's park system. A map of the area is attached.

MSD is working on a rehabilitation project for the sewer line that currently runs along Hilliard Avenue and then crosses through city property next to the Parks Maintenance buildings.

MSD will be replacing an existing vitreous clay pipe that is approximately 8-inches in diameter with ductile iron pipe. Starting at the entrance to the Parks Maintenance facility, the alignment of the sewer line runs perpendicular to Hilliard Avenue, continues along the facility driveway and exits City property in a T-joint at Merritt Street. At this time, MSD is requesting a permanent easement from the City that measures approximately ten feet on either side of the sewer line and a temporary easement approximately 15 additional feet on either side of the line. The easement being requested consists of 0.177 acres of permanent easement and 0.186 acres of temporary easement on the Parks Maintenance site. The easement also involves 0.007 acres of permanent easement and 0.062 acres of temporary easement on the Aston Park parcel. MSD agrees to repair and replace any disturbance that is caused by the replacement of this line, with minimal impact to the Park and most disturbance occurring in the driveway to the Parks Maintenance facility. In consideration of any future redevelopment of the Maintenance facility, the easement was located within the existing driveway in order to provide a maximum contiguous development area at the corner of Clingman and Hilliard.

This MSD rehabilitation project overlaps with the future Clingman Forest Greenway in certain areas and staff from both the City and MSD have met to attempt to coordinate schedules and encourage efficiency. Both parties agree that the sewer replacement project should be constructed before the greenway, if possible. MSD has agreed to move this sewer rehabilitation project to FY 15-16 budget cycle. The granting of this easement will assist MSD in going ahead with their project as soon as possible.

Pros:

- Granting of the easement will allow MSD to upgrade sewer infrastructure to provide improved service to the neighborhood adjacent to Hilliard Avenue.
- Granting of the easement will not affect the long range use of the park for public recreation or the future use at the Parks Maintenance facility.

Cons:

- None noted.

No monetary consideration involved in this conveyance.

City staff recommends City Council approve a resolution authorizing the City Manager to convey an 8,015.16 square foot permanent easement and a 10,814.22 square feet temporary easement over a portion of City-owned property at 336-338 Hilliard Avenue.

#### **RESOLUTION BOOK NO. 37 - PAGE 11**

#### **L. ORDINANCE NO. 4376 - BUDGET AMENDMENT TO PURCHASE TWO ADDITIONAL SHELTERS UNDER THE STIMULUS FUNDING GRANT**

Summary: The consideration of a budget amendment in the amount of \$5,863 to add funds to a project in the City's Special Revenue Fund to purchase two additional shelters under the stimulus funding grant.

The City of Asheville was awarded \$2,590,439 under the economic stimulus funding, as published in the Federal Register Volume 74, No. 42, page 9675 on March 5, 2009.

The city used those funds to purchase five diesel buses, ten shelters, and three CNG buses and one van for Henderson County. All of the projects were finished before the deadline of September 30, 2013.

After finishing the projects, \$60,662 of ARRA funds were left unspent. The Federal Transit Administration issued a waiver to all grantees that had still funds left in ARRA and asked

for all the funds to be spent by September 30, 2015. \$35,902 of those funds are part of the City's apportionment, the rest are part of Henderson County's apportionment.

The only project that could be accomplished by the deadline was the acquisition of additional shelters. The City issued a bid and was able to order 10 shelters, six for the city and four for the county instead of the five originally planned. There are still funds remaining in the grant in the amount of \$5,262 and in order to maximize them local funds from both, the county and the city, need to be transferred to the project.

This project will be completed in approximately in March 2015.

Pros:

- All the funds allocated to the region will be used.
- Funds cover 50% approximately for two additional shelters.
- This project increases transit infrastructure and quality of service.

Con:

- Additional \$2,248 funds will need to be transferred to the project from the Transit Services operating fund.

The cost of acquiring 2 new shelters will be approximately \$11,125. The federal grant will cover \$5,262 already budgeted. The rest of the funds will come from Henderson County (\$3,615) and the city's Transit Services operating fund (\$2,248). The budget amendment will provide authorization to add local funds to the project and purchase two additional shelters.

City staff recommends that City Council adopts a budget amendment in the amount of \$5,863 to add funds to the project in the City's Special Revenue Fund to purchase two additional shelters under the stimulus funding grant.

#### **ORDINANCE BOOK NO. 29 - PAGE**

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.

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

#### **ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

##### **B. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGRICULTURAL LEASE WITH BALSAM GARDENS, LLC, ON A PORTION OF CITY-OWNED REAL PROPERTY OFF OF HARDESTY LANE AT AZALEA PARK**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Summary: The consideration of a potential agricultural lease with Balsam Gardens, LLC, a locally based certified organic farm, for 11 +/- acres of land for commercial agricultural production at Azalea Park.

Prior to the City's acquisition of the Azalea Park, the land was used as an agricultural farm. The former farmland has been converted to a state-of-the-art soccer and park facility,

however there is still potential for unused lands within the park to be utilized in farm production. For the past six years New Sprout Farms, LLC has leased 11+/- acres of Azalea Park for certified organic vegetable, fruit and hay production. This 11 +/- acre plot is located to the rear of Azalea Park, adjacent to the City's beneficial fill site and the leased site for Danny's Dumpster compost operation. At this time, New Sprout has moved to a permanent location in Buncombe County and the city property is available for a new agriculture lease. Balsam Gardens, LLC has expressed interest in leasing the property and has demonstrated the capacity and wherewithal to be a reliable tenant. Balsam Gardens intends to utilize the property for certified organic fruit and vegetable production for the local market.

Balsam Gardens has offered to enter into a three-year lease with option to renew for one additional three year term at a rent of \$3,300 per year, with an annual escalation of 3%. The rental rate was generated through input provided by the NC Cooperative Extension Service, and the WNC LandLink program, a service that connects emerging farmers to vacant agriculture lands.

Balsam Gardens sells to wholesale markets, local grocers, area restaurants and in local farmers markets, therefore no retail or U-pick operations would exist on the City Park property. The proposed lease will respect all stream buffers, conservation easements, wetlands and proposed greenway paths that exist at Azalea Park. Balsam Gardens will maintain all necessary liability insurance for the property as well as limit access to authorized personnel and representatives of Balsam Gardens. Only USDA organically certified fertilizers, pesticides and herbicides will be permitted at the property. The proposed agricultural use will have no impact on the recreational use of the Azalea Park or the soccer facility.

Pros:

- Supports Food Action Plan.
- Continues a successful use of city property with a new tenant.

Con:

- There is no negative impact.

The fiscal impact is \$3,300 per year beginning in January 2015, with 3% annual escalations thereafter.

The Community and Economic Development staff recommends adoption of this resolution.

Councilman Smith wondered how we can fold this in with the Food Action Plan and create the highest and best agricultural use on this land. Staff has requested a three-year lease; however, he suggested a one-year lease and find ways to open this up to a wider group in the community.

Councilman Smith moved to approve a one-year lease to Balsam Gardens and during that time for staff to look at other opportunities for the land, perhaps with partnerships with Manna Food Bank, ABCCM, etc. This motion was seconded by Councilwoman Wisler.

A representative of Balsam Gardens provided a brief background of his company. They wish to expand their production from 5 acres at their current location to this location of 11 acres and do more wholesaling. They are interested in a 3-year lease because of their capital outlay to purchase additional equipment.

After a brief discussion to postpone this matter until January 27, 2015, in order to allow staff to work with Balsam Gardens to see if they would be interested in a one-year lease, Councilman Smith and Councilwoman Wisler withdrew their motion.

Councilman Bothwell felt that it is unfair to the grower to lease agricultural land one season at a time.

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

#### **A. CITY HALL WATER LEAK UPDATE**

Mr. James Ayers, Director of General Services, updated City Council on the recent pipe fitting failure which closed City Hall for 1.5 days. He then spoke about steps to recovery and future actions to prevent future occurrences.

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

#### **A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNNAMED ALLEY OFF BROAD STREET**

##### **RESOLUTION NO. 15-10 - RESOLUTION TO PERMANENTLY CLOSE AN UNNAMED ALLEY OFF BROAD STREET**

Public Works Director Greg Shuler said that this is the consideration of a resolution to permanently close an unnamed alley off Broad Street. This public hearing was advertised on October 3, 10, 17 and 24, 2014. On October 28, 2014, the matter was continued to this date.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjoining property owners, Jim Hitt at 137 Broad Street and at 9999 Broad Street also known as 133 Broad Street, and Tom Leslie representing Charlotte Street Holding LCC at 130 Charlotte Street, have requested the City of Asheville to permanently close an unnamed alley off of Broad Street.

The Multimodal Transportation Commission met on August 27, 2014, and approved the closure of the unnamed alley off of Broad Street.

#### Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

#### Con:

- None

City staff recommends City Council adopt the resolution to permanently close an unnamed alley off of Broad Street.

Mayor Manheimer opened the public hearing at 5:23 p.m. and when no one spoke, she closed it at 5:23 p.m.

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

Councilman Bothwell moved for the adoption of Resolution No. 15-10. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 12**

**B. PUBLIC HEARING TO CONSIDER APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO LINAMAR CORPORATION**

**RESOLUTION NO. 15-11 - RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR THE EXPANSION OF LINAMAR CORPORATION**

Economic Development Director Sam Powers said that this is the consideration of a resolution approving a \$3,500,000 economic development incentive grant for Linamar Corporation. This public hearing was advertised on January 2, 2015.

This is the consideration for an economic development incentive grant under the City of Asheville Economic Development Incentive policy. Linamar Corporation is a world-class designer and diversified manufacturer of precision metallic components and systems for the automotive industry, energy and mobile industrial markets. The company is proposing one of the largest investments in new, taxable, capital investment of \$190,000,000 for additional production equipment and facility improvements at the local facility in South Asheville, and has requested consideration of a cash grant under the City of Asheville Economic Development Incentive policy. This project also includes the creation of 400 new manufacturing jobs with an average annual wage of \$39,000.

This new expansion commitment by Linamar replaces, and is an increase of the company's second expansion announcement in June of 2012, which encompassed a \$75,000,000 investment and 250 new employees. The purpose of this investment is to allow Linamar to expand its operations, to serve a major automotive supplier thus growing the automotive components cluster in Asheville, and is projected to result in the creation of a substantial number of jobs that pay at or above the median average wage for Buncombe County. No payments were made to Linamar on Phase II that this project replaces.

Linamar has requested consideration of a performance-based incentive grant under the City of Asheville Economic Development Incentive policy. The performance based grant for Linamar for this project is an amount not to exceed \$3,500,000, to be paid in annual installments in an amount equal to 95% of ad valorem City property tax paid by Linamar in the prior calendar year, for a period of up to seven years, with an additional two years if Linamar has achieved a benchmark of 85% of its investment; subject to compliance with an Economic Development Performance Agreement between the City and Linamar. Payments begin after the investment is made, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem property tax revenue attributable to the capital improvements, and each annual payment is projected to equal 95% of said estimated revenue. Any amounts paid to Linamar pursuant to the Agreement are subject to adjustment or recapture if the terms and conditions of the Agreement as to investment and job creation are not fulfilled.

The City will fund the payments from the general fund. The purpose of the proposed cash grant is to encourage Linamar to proceed with its proposed expansion. Staff believes that the project will further the economic interests of the area served by the City in several ways, including, but not limited to: (a) creating a substantial number of jobs having a wage at or above the median average wage for Buncombe County; (b) enhancing the City's tax base and the City's tax revenues; and (c) encouraging the retention and expansion of a major industrial operation in an existing facility.

**Pros:**

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in manufacturing in Asheville;

- Supports retention and expansion of existing industry in the City;
- Supports development of an identified economic cluster in the city; and,
- Supports regional and state cooperation in the project.

Cons:

- Grant is formulated based on use of approximately 95% of the value of new incremental tax revenue for a seven to nine year period.

The project has a positive fiscal impact on tax revenues received by the City. Linamar's capital investment is one of the largest single manufacturing investments in the city. The project has significant potential for additional expansion, as well as substantial generation of local and state taxes from job creation. Initially (during the grant period), the City will receive approximately 5% of the new incremental real estate and M/E tax revenues from the project. After the grant period concludes as noted above, the City will henceforth capture 100% of the new taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant for Linamar Corporation not to exceed \$3,500,000.

Mayor Manheimer opened the public hearing at 5:31 p.m.

The Director of Business Development for Linamar, thanked City Council for their support as they look forward to expanding and bringing new technology into Asheville.

Mayor Manheimer closed the public hearing at 5:34 p.m.

Mayor Manheimer explained how an economic development incentive grant works.

Councilman Pelly said that one of Council's goals is to bring living wage jobs into our community and appreciated Linamar's investment.

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

Vice-Mayor Hunt moved for the adoption of Resolution No. 15-11. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 14**

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CONDITIONAL ZONING GENERAL REQUIREMENTS TO CLARIFY THAT CONDITIONS IMPOSED MAY BE MORE OR LESS RESTRICTIVE THAN THE GENERAL USE STANDARDS OF THE UNDERLYING DISTRICT**

**ORDINANCE NO. 4377 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CONDITIONAL ZONING GENERAL REQUIREMENTS TO CLARIFY THAT CONDITIONS IMPOSED MAY BE MORE OR LESS RESTRICTIVE THAN THE GENERAL USE STANDARDS OF THE UNDERLYING DISTRICT**

Urban Planner Alan Glines said that this is the consideration of an ordinance amending the Unified Development Ordinance regarding conditional zoning general requirements to clarify that conditions imposed may be more or less restrictive than the general use standards of the underlying district. This public hearing was advertised on January 2 and 9, 2015.

He said that currently, Section 7-7-8(c)(3) of the UDO provides that:

*“All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning are more restrictive (emphasis added) than the general use standards, and/or where the requirements are modified in accordance with subsection 7-7-8(c)(6).”*

The North Carolina General Statutes and North Carolina case law allow greater flexibility in terms of conditions imposed and do not limit local governments to conditions which are “more restrictive” than the general use standards. NC General Statute sec. 160A-382(b), Zoning Districts, states that “*conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development of use of the site.*” The statute does not dictate whether the conditions imposed be more or less restrictive than the general use standards of the underlying district, only that whatever conditions are imposed be in compliance with the city’s ordinances and officially adopted plans. In the NC Appeals Court case of *Rakestraw v. Town of Knightdale* (2008), the court upheld the Town’s decision to approve a conditional zoning with conditions that had decreased standards from the general district requirements. The Court disagreed with the Plaintiff’s position that NCGS sec. 160A-382 did not permit exceptions or decreased standards and noted that the Town’s ordinance specifically provided that “*when a Conditional District is required...petitioners may also ask that certain standards identified be decreased.*”

While Planning staff has interpreted the UDO to allow conditions in accordance with the general statutes, we also believe an amendment is needed to make this clear.

Therefore, an amendment stating that conditions imposed may be more or less restrictive than the standards of the underlying district is recommended in order to clarify that the UDO allows the same level of flexibility allowed in this regard under the NCGS 160A-382 and to ensure that the UDO language in section 7-7-8(c)(3) clearly reflects the Planning Staff’s interpretation of the intent of this provision.

The proposed amendment complies with the Asheville City Development Plan 2025 in that it allows for increased flexibility in the application of zoning regulations in the case of conditional zoning (formerly known as conditional use zoning) and allows a rezoning request to be tied to a specific development plan (pg. 66) while ensuring the project is compatible with the neighborhood. The plan also encourages adaptive reuse of underutilized and vacant sites and recognizes the need to have some flexibility in the implementation of zoning and building codes (pg. 69) by maintaining a redevelopment ‘toolbox’. The plan also recognizes the need for compatible infill development with opportunities provided on a case-by-case basis (pg. 71) to encourage redevelopment using the conditional zoning tool. In this way this amendment is reasonable and in the public interest because it allows for projects which are more compatible with the surrounding area and which further comprehensive plan goals.

The proposed amendment - complies with the City Council’s Strategic Plan in that it allows for flexibility thus encouraging in-fill, mixed-use and redevelopment projects.

The Planning and Zoning Commission reviewed the wording amendment at their meeting on November 5, 2014, and voted to recommend approval unanimously.

Staff recommends approval of this proposed change as it clarifies that the UDO allows the same level of flexibility allowed in this regard under the N.C. Gen. Stat. sec. 160A-382 and ensures that the UDO language in section 7-7-8(c)(3) clearly reflects the Planning Staff’s interpretation of the intent of this provision.

Mayor Manheimer opened the public hearing at 5:42 p.m. and when no one spoke, she closed the public hearing at 5:42 p.m.

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

Councilman Bothwell moved to approve the proposed amendment to Section 7-7-8(c)(3)-3 as outlined in this report and find that the request is reasonable and is consistent with the Comprehensive Plan and other adopted plans, because it allows for greater flexibility in granting conditions which in turn, allows for projects that are more compatible with their surrounding area. This motion was seconded by Councilwoman Wisler and carried unanimously.

**ORDINANCE BOOK NO. 29 – PAGE**

**D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FROM RM-8 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND OFFICE DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING WITH CHANGED CONDITIONS TO LANDSCAPE AND SETBACK REQUIREMENTS TO ALLOW THE USE OF AN EXISTING SINGLE-FAMILY RESIDENCE AS A LAW OFFICE AT 10 MADISON AVENUE AND 202 EAST CHESTNUT STREET**

**ORDINANCE NO. 4378 - ORDINANCE TO CONDITIONALLY ZONE 10 MADISON AVENUE AND 202 EAST CHESTNUT STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND OFFICE DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING WITH CHANGED CONDITIONS TO LANDSCAPE AND SETBACK REQUIREMENTS TO ALLOW THE USE OF AN EXISTING SINGLE-FAMILY RESIDENCE AS A LAW OFFICE**

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone 10 Madison Avenue and 202 East Chestnut Street from RM-8 Residential Multi-Family High Density District and Office District to Office District/Conditional Zoning with changed conditions to landscape and setback requirements to allow the use of an existing single-family residence as a law office. This public hearing was advertised on January 2 and 9, 2015.

The project area consists of two parcels that are proposed to be combined (total area 7,170 square feet or 0.164 acres according to plans), located in the National Register Chestnut Hills Historic District. The parcel currently zoned Office is located at the northeast corner of East Chestnut Street and Madison Avenue (202 East Chestnut Street). The parcel to the north is currently zoned RM-8 (10 Madison Avenue). Adjacent zoning includes Office to the west, south and east and RM-8 to the north. East Chestnut Street has primarily non-residential uses in this vicinity but starting with the property at 10 Madison Avenue, the use becomes residential in nature.

On each parcel sits a residential-style structure; however the 2-story building at 202 East Chestnut is already used as an office whereas 10 Madison is currently a residential dwelling. The proposal is to convert the 1-story, 961 square foot house at 10 Madison into office use and to expand an existing parking lot to create a shared parking area between the two buildings. The front porch on the structure will be enclosed and pedestrian access will be reconfigured to the south side (rather than from the front). Additionally, windows on the north side of the structure will be closed in.

Access and parking will remain in the same general location as the present configuration, between the two structures, with a looped driveway off of Madison Avenue to the parking in the rear of the 202 East Chestnut property. This parking lot is proposed to be enlarged to provide five

parking spaces (one HC accessible) and includes alterations to standards in the City's *Standards and Specifications Manual*, which have been approved by the City Traffic Engineer. The alterations are to provide a more narrow drive aisle (14 feet rather than 24 feet) as well as lessen the distance between driveways on the blockface (25 feet rather than 150 feet) and is justified based on the low intensity of use expected.

Per the UDO, between nine and twelve spaces are required for the increased office area and per the applicant, there is an existing shared parking agreement with the office use across Madison Avenue to accommodate three spaces, which will be revised to accommodate four total. The existing gravel driveway into the residential property at 10 Madison would be removed.

There are no sidewalks existing along this side of Madison Avenue, nor are sidewalks proposed (but will be handled through a fee-in-lieu). A bike rack has been included on site plans.

Landscaping is required for this project and includes a property line buffer, street trees and parking lot landscaping. There is existing mature landscaping onsite that will be retained and used for credits. The applicant is requesting a changed condition to the property line buffer due to the proximity of the existing structure to the northern property line adjacent to RM-8.

Open space is not required for this project because the size of the property is less than an acre.

The following conditions are granted by City Council with a recommendation from the Commission:

1. Setback - Side setbacks in the Office zoning district are 10 feet (on the east side – interior lot line) and 7.5 feet for the corner side (west side, along Madison Avenue). The existing structures are within one foot of the east property line and within 6 feet of the west side. Parking also is shown to encroach into the setback as well.
2. Landscaping - A 20 foot Type A property line buffer is required between the proposed Office-CZ parcels and the RM-8 zoning to the north. The existing structure is within 3 feet of the property line, leaving insufficient room for landscaping. The applicant is requesting to eliminate the buffer.

The applicant is proposing to conditionally rezone the site from RM-8 and Office to convert the residential dwelling into an office use, otherwise not permitted in a residential zone. The Planning Department has consistently responded to requests to convert residential uses to non-residential when they are at the edge of a residential neighborhood with a statement that this is generally not supportable due to City goals regarding protection of existing neighborhoods.

The proposal was approved with conditions by the Technical Review Committee at their meeting on October 20, 2014. The Planning & Zoning Commission reviewed this request at their meeting on November 5, 2014. There were two votes taken by the Commission, the first was to deny the application and that vote failed 2-5. The second vote included a condition that the property be used for office and residential use only and not any allowable use in the Office District and this vote passed 6-1.

Comments have been received from neighbors who are concerned about the conversion as a loss of residential fabric and the impact to the 24/7 quality of a neighborhood. Additional concerns mirror those of the Planning & Zoning Commission in that while the current owner is seen as a good neighbor and is generally supported by folks on the block, the rezoning would open office uses to any future owner who may not have as much of a dedication or commitment to the area.

The East Chestnut Street corridor (from Merrimon Avenue to Charlotte Street) contains a mix of uses (office, medical, lodging facilities, religious institutions, retail, limited residential) and

is zoned Office, Community Business I & II. To the north of this corridor is a residential neighborhood zoned RM-8 and RM-16. This proximity is not considered to be incompatible from a zoning perspective, although it would be preferable to see more of a mix of residential and non-residential within the structures themselves to create a more consistent 24-hour presence within the area for the residential neighbors.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

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

The proposed project has been reviewed by City staff and appears to meet or have the ability 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* (with conditions granted as identified previously in this report) 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 proposal is to retain the existing structures (which are contributing structures in the Chestnut Hills National Register Historic District) and to expand an existing parking area. Plans have been developed in a way to preserve as much existing mature vegetation as possible.

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

The properties to the east, west and south are similarly zoned for office uses and should not be negatively impacted. The proposed development of the land may impact the value of adjoining property to the north. The historic development pattern of the Chestnut Hill neighborhood has a series of single-story bungalows in close proximity on this block, which is expected in a circa 1920 residential area. However, the UDO places protections in the form of required landscape buffers between dissimilar zoning districts and because of this development pattern, there is insufficient room to adequately buffer between the office use and the residential dwelling to the north.

Additionally, with respect to the proposed use, the City has recognized a shortage of housing stock especially close to downtown and while this is not an affordable unit, it is operating as a small-sized residential rental unit in a walkable neighborhood close to business and transit – something the City is trying to create and preserve whenever possible. Expansion of the non-residential uses into the residential neighborhoods may be said to pose a negative impact on the existing neighborhood.

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.*

As stated above, the proposed physical development on the site is primarily the expansion of the existing parking area, which is not considered out of character with the layouts seen all along the East Chestnut Street corridor where historic structures face the street and parking for the uses is located to the rear. There is a long history of adaptive reuse of the structures in this National Register historic district for office use and this has been recognized as a positive tool for historic preservation.

However, staff believes that to support and strengthen Asheville's residential neighborhoods existing housing stock should generally be preserved for residential uses. Also, the incursion of non-residential uses into a neighborhood can erode the character and quality of a typical residential community where there is expected to be a more regular "24/7" presence rather than typical business hours where there is no presence or activity during nights and weekends.

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.*

While the proposed adaptive reuse of the residential structure at 10 Madison Avenue is supported by City policies and plans regarding historic preservation and smart growth; staff feels that the potential impact to the residential neighborhood and loss of an ideally-situated residential unit when housing availability is a priority for the City is concerning.

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 proposal has been determined by the TRC to have adequate water supply, police protection, waste disposal and similar facilities. The site is approximately three-tenths of a mile from the nearest transit stops (N, N1 & N2).

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

The project is not expected to create a hazard or undue congestion based on the proposed plans. Modifications to standards for parking aisle width and distance between driveways have been approved by the City Traffic Engineer.

Adaptive reuse of historic structures is noted in the *Asheville City Development Plan 2025* as an effective smart growth tool as it does not consume new land. Also, preservation of historic structures is generally identified as a goal in the *Plan* (not that staff is aware of any impending threat to the structure at 10 Madison Avenue if this application is not supported or otherwise).

However, the *2025 Plan* notes the lack of (affordable) housing as the "number one economic development problem for the community" and as stated earlier in this report, this unit is not currently a dedicated affordable unit, however it is a 961-square foot dwelling that is ideally sized and located for an affordable or workforce rental (noting that rents would be at the discretion of the property owner).

City Council's adopted goals for 2014-2015 stress expanding Asheville supply of housing and maintaining a high quality of life for residents. This project results in the loss of an ideally situated residential unit close to downtown and there is concern about the further incursion of non-residential uses into the neighborhood.

Based on the above findings and the analysis provided in the report and as stated in the recommendation below, staff does not find this request to be reasonable or within the best public interest.

Considerations:

- Adaptive reuse of historic structures is supported by City plans.
- Mature landscaping on the site will be maintained and preserved.
- The change of use to office use is a loss of an ideally-situated, small-sized residential unit and housing supply is a noted concern for the City.
- Non-residential incursion into an established neighborhood can erode the residential quality.

While the proposal does preserve a contributing resource in a National Register Historic District through adaptive reuse, the change of use is a loss to the supply of housing close to downtown and impacts the residential quality of the neighborhood. Staff does not support the change of use to office and believes the residential structure should remain residential in use.

Should Council support this application, staff recommends inclusion of the condition as suggested by the Planning & Zoning Commission that the property be used for office and residential use only and not any allowable use in the Office District.

Ms. Bernstein said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

In response to Councilwoman Wisler, Ms. Bernstein said that there would be a recombination of property.

When Councilman Bothwell asked if the building was demolished could a larger office building be built on the property, Ms. Bernstein replied that they would have to comply with Office District standards.

In response to Councilman Pelly, Ms. Bernstein said that there would be no change to the law office; however, there would be changes to the house at 10 Madison Avenue. She said they would close in the porch (because of accessibility requirements), add parking to the right side of the house for accessible parking, and on the north side they propose to close in the windows.

Mayor Manheimer opened the public hearing at 5:54 p.m.

Mr. Jim Siemens, property owner, said that he would like to convert 10 Madison Avenue to perhaps a conference room area to enhance and expand his law office and at 202 E. Chestnut Street. He has no plans to demolish the house. He lives in the neighborhood and assured Council that the proposal will not be offensive to the neighborhood. He provided examples of renovations he has done in the past. He said that this is an adaptive re-use of a house and what will be lost in housing stock is only a one-bedroom bungalow. He is a small employer and a good neighbor in the community.

The architect on the project said that it is their intent to maintain the feel of a residential neighborhood. He said they will be enclosing the porch and add a door-like window on the front. They plan to maintain the mature trees. They will add additional vegetation and pervious pavers. He felt they are enhancing the residential area.

Mr. Timothy Sadler spoke in support of the project and felt it was a good example of adaptive reuse.

The following three individuals spoke in opposition of the conditional zoning for various reasons, with the main reason being that 10 Madison Avenue contributes to the neighborhood character of the area and to rezone it would irreparably alter the character and create erosion of the neighborhood. They presented Council with a petition containing 12 signatures asking Council to keep Madison Avenue residential.

Ms. Angela Scotchie, resident on Broad Street  
Ms. Kate Fisher, resident on Madison Avenue  
A gentleman on Madison Avenue

Mr. Siemens noted that the zoning is in line with the next door parking lot and he didn't think it would erode into the neighborhood.

Mayor Manheimer closed the public hearing at 6:17 p.m.

In response to Councilman Bothwell, Ms. Bernstein said that the development pattern along the Chestnut Street area was residential with larger homes with large backyards.

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

Councilwoman Wisler moved to deny the conditional zoning request for Siemens Law Offices at 202 East Chestnut Street and 10 Madison Avenue from Office and RM-8 to Office-CZ and find that the request is not reasonable, not within the public interest and is not consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) The proposed change of use would be a loss of a residential unit when maintaining and preserving the available housing supply is a goal of City Council; and (2) non-residential incursion into an established neighborhood can erode residential quality. This motion was seconded by Councilman Bothwell and carried unanimously.

**E. CONTINUATION OF PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF GREYMONT VILLAGE APARTMENTS LOCATED ON SARDIS ROAD FROM INDUSTRIAL DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE CONSTRUCTION FO A MULTI-FAMILY APARTMENT DEVELOPMENT**

Mayor Manheimer announced that the applicant has requested an additional continuance. Mr. Louis Bisette' e-mail on January 6, 2015, states that "The Developer and the City Planning staff are in the process of reviewing certain modifications to the proposed site plan and need additional time to determine the process for approval. The Developer has proposed a reduction in the size of the property to be rezoned and has also reached a written Agreement with Asheville Industries for the Blind to provide an unlimited number of "Blind Friendly" units to Employees of IFB at a discounted rental rate. This additional continuance should give both parties the opportunity to ascertain the most efficient way to proceed with this matter."

Vice-Mayor Hunt moved to continue this public hearing until February 24, 2015. This motion was seconded by Councilman Bothwell and carried unanimously.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. BOARDS & COMMISSIONS**

Regarding the Civil Service Board Chair position, in which current Chair Marvin Rosen asked to step down from, it was the consensus of Council to postpone action until February 10, 2015.

Regarding the Community Relations Council, the following individuals have applied for vacancies on the Community Relations Council: Kate Sampson, Sandra Houts, Roberto L. Hess, Dana Blake, Kelly Denson and Ben Scales. Councilman Smith moved to reappoint Rachael Tanksley-Russell and Mike Hahn and interview Sandra Houts and Kelly Denson. This motion was seconded by Councilman Davis and carried unanimously.

Regarding the Sustainable Advisory Committee on Energy & the Environment, the following individuals have applied for a vacancy on the Sustainable Advisory Committee on Energy & the Environment: Katie Bray, Philip H. Pritchard, Julie Loveless, Jackson Tierney, John Noor, Jeremiah Mattysse, Erin Singer McCombs, Hanna Furguele, Grant Millin, Sam McLamb

and Geoffrey Habron. Councilman Smith moved to reappoint Lael Gray, appoint Katie Bray, and interview Erin Singer McCombs and John Noor. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION NO. 15-1 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Hunt said that the terms of Nelda Holder (Alternate), James Sheeler (Regular), Daniel Summerlin (Alternate) and Janet Whitworth (Regular) as members on the Board of Adjustment expire on January 21, 2015.

The following individuals applied for vacancies on the Board of Adjustment: Pratik H. Bhakta and Christine Longoria.

Vice-Mayor Hunt said that the Boards & Commissions Committee recommended (1) reappointing Nelda Holder (Alternate) and Daniel Summerlin (Alternate); (2) appointing Richard Fort (current Alternate) to a Regular Member; (3) appointing Phillip Hardin (current Alternate) to a Regular member; and (4) appointing Pratik Bhakta and Christine Longoria as Alternate Members.

Vice-Mayor Hunt moved to (1) reappoint Nelda Holder (Alternate) and Daniel Summerlin (Alternate) to each serve an additional three-year term respectively, terms to expire January 21, 2018; (2) appoint Richard Fort (Regular) to serve a three-year term, term to expire January 21, 2018; (3) appoint Phillip Hardin (Regular) to serve a three-year term, term to expire January 21, 2018; and (4) appoint Pratik Bhakta and Christine Longoria (Alternates) to each serve a three-year term respectively, terms to expire January 21, 2018.. All terms are until their successors have been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 1**

**RESOLUTION NO. 15-12 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION**

Vice-Mayor Hunt said that the terms of Byron Greiner, Michael McDonough and Jimi Rentz, as members on the Asheville Downtown Commission, expired on December 31, 2014.

The following individuals have applied for a vacancy on the Downtown Commission: Keaton Edwards, Ryan Israel, Brent Campbell, Ruth Summers, John Menkes, Guillermo Rodriguez, Constance Richards and Drea Jackson.

Vice-Mayor Hunt said that the Boards & Commissions Committee recommended reappointing Michael McDonough, Byron Greiner and Jimi Rentz.

Vice-Mayor Hunt to reappoint Michael McDonough, Byron Greiner and Jimi Rentz to each serve an additional three-year term respectfully, terms to expire December 31, 2017, or until their successors have been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 15**

**RESOLUTION NO. 15-13 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Vice-Mayor Hunt said that the terms of Ryan Blau, Lael Gray and Matthew Raker, as members on the Sustainable Advisory Committee on Energy & the Environment expired on December 31, 2014.

The following individuals have applied for a vacancy on the Sustainable Advisory Committee on Energy & the Environment: Katie Bray, Philip H. Pritchard, Julie Loveless, Jackson Tierney, John Noor, Jeremiah Mattysse, Erin Singer McCombs, Hanna Furguele, Grant Millin, Sam McLamb and Geoffrey Habron.

Vice-Mayor Hunt said that the Boards & Commissions Committee recommended reappointing Lael Gray; appointing Katie Bray; and interviewing Erin Singer McCombs and John Noor.

Councilman Smith moved to (1) reappoint Lael Gray to serve an additional three-year term, term to expire December 31, 2017, or until her successor has been appointed; (2) appoint Katie Bray to serve a three-year term, term to expire December 31, 2017, or until her successor has been appointed; and (3) interview Erin Singer McCombs and John Noor. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 16**

**RESOLUTION NO. 15-14 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND**

Vice-Mayor Hunt said that the term of Leesa Gibbs, as a member on the Firemen's Relief Fund, expired on January 1, 2015.

No individuals have applied for a vacancy on the Firemen's Relief Fund.

Vice-Mayor Hunt said that the Boards & Commissions Committee recommended appointing Chief Financial Officer Barbara Whitehorn.

Vice-Mayor Hunt moved to appoint Chief Financial Officer Barbara Whitehorn to serve a two-year term, term to expire January 1, 2017, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 17**

**RESOLUTION NO. 15-15- RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD**

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that the term of Bill Russell, as a member on the Metropolitan Sewerage District Board, expire on January 19, 2015.

The following individuals have applied for a vacancy: John S. Brigham, Michael L. Holcombe and James Torpey.

The Boards & Commission Committee recommended appointing Councilwoman Gwen Wisler.

Vice-Mayor Hunt moved to appoint Councilwoman Gwen Wisler to serve a three-year term, term to expire January 19, 2018, or until her successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 18**

**RESOLUTION NO. 15-16- RESOLUTION APPOINTING A MEMBER TO THE NOISE ORDINANCE APPEALS BOARD**

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that there currently exists a vacancy left by John Hayes on the Noise Ordinance Appeals Board until July 1, 2015.

The following individuals have applied for a vacancy: Victor Fahrer and Robert Glenn.

The Boards & Commission Committee recommended appointing Victor Fahrer.

Councilman Smith moved to appoint Victor Fahrer to serve the unexpired term of Mr. Hayes, term to expire July 1, 2015, and then a full three-year term, term to expire July 1, 2018, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 19**

**RESOLUTION NO. 15-17 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TREE COMMISSION**

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that the terms of Brandee Boggs, Amy Kemp and Bob Gale, as members on the Tree Commission, expired on December 31, 2014. In addition, Jonathan Gach and Matthew Schlosser have resigned from the Commission, thus leaving two unexpired terms until December 31, 2015.

The following individuals have applied for a vacancy on the Tree Commission: Diane Hillgrove, Marc Williams, Carl Nyberg, Sara Surabian, Justin Price, Leslee Reiter and Stephen E. Hendricks.

The Boards & Commission Committee recommended appointing Justin Price, Marc Williams, Carl Nyberg, Stephen Hendricks and Leslee Reiter.

Vice-Mayor Hunt moved to (1) appoint Justin Price, Marc Williams and Carl Nyberg to each serve a three-year term respectively, terms to expire December 31, 2017, or until their successors have been appointed; and (2) appoint Leslee Reiter to serve the unexpired term of Mr. Gach, term to expire December 31, 2015, or until her successor has been appointed; and (3) appoint Stephen Hendricks to serve the unexpired term of Mr. Schlosser, term to expire December 31, 2015, or until his successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 37 – PAGE 20**

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

Mr. Lawrence Rice, business owner in west Asheville, spoke to Council about the graffiti problem he has encountered and felt there should be more Police Department presence. He felt the City is trying to make property owners responsible over something they have no control over. Director of Public Works Greg Shuler offered to meet with Mr. Rice to discuss his concerns.

Mr. Jeffrey DeCristofaro spoke about the need to pursue alternative energy awareness.

Mr. Rondell Lance, President of the local Fraternal Order of Police, spoke in opposition of City Council trying to disband the Civil Service Board, which is so important to City employees.

Ms. Clare Hanrahan spoke about the need to maintain sidewalks and add benches in the downtown area.

Mr. Timothy Sadler felt the City should appoint all members to the Civil Service Board. He also suggested Council support any "know your rights" trainings.

**Closed Session**

At 7:00 p.m., Councilwoman Wisler moved to go into closed session for the following reasons: (1) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C. Gen. Stat. § 143-318.10(3). The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(1); (2) 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, but not limited to, lawsuits involving the following parties: The City of Asheville v. Robert Frost, Butterworth, et al. v. City of Asheville, et al., and Gannett Pacific Corp. d/b/a Asheville Citizen Times Publishing Co. v. City of Asheville. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(3); and (3) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(5). This motion was seconded by Councilman Pelly and carried unanimously.

At 8:51 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 8:51 p.m.

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CITY CLERK

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MAYOR