

Worksession

Present: Vice-Mayor R. Carl Mumpower, Presiding; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Charles R. Worley and Councilman Brownie W. Newman

**CONSENT AGENDA:**

**Re-Roofing Reid Community Center**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the Reid Recreation Center on Livingston Street and an associated budget amendment from the contingency fund, in the amount of \$77,377.

The current roof at the Reid Recreation Center is well over 25 years old. Over the past three years, requests have been made in the Capital Improvement budget to re-roof this facility. We are currently spending in excess of \$10,000 each year on repairs to the existing roof. Bids were solicited from six roofing companies with two being certified Minority Businesses. The following bids were received and include an additional 10% contingency to cover any excess cost that may occur when the existing roof is removed.

Carolina Mountain Roofing and Construction Company	\$77,377
Stroup Sheet Metal Works	\$78,605
Service One Inc.	\$124,043
Carolina Cornerstone Construction (MB)	Did not Bid
LCM Builders, Inc. (MB)	Non-responsive
McElrath Roofing	Not Licensed in NC

Through the generosity of the Junior League, \$95,000 has been appropriated to make improvements to the interior of the Reid Recreation Center over the next three years. However, due to the extensive problems with the roof, work in the interior of the building should not occur until a new roof has been completed. As stated above, staff continues to address a number of issues at the Reid Recreation Center including the development of a master plan for the facility that will be used as the framework for additional work to occur based upon community and departmental needs. Without the necessary roof repairs none of this work can progress.

Pros:

- Current funding from the Junior League will address much-needed interior needs.
- Extensive water damage has occurred in the facility due to the deteriorated roof. A new roof will eliminate further damage.
- Support of this initiative has been given by the Reid Center Advisory Board and the Parks and Recreation Advisory Board.
- Use of contingency funds will allow this work to occur as soon as possible.

Cons:

- None

The Parks and Recreation Department recommends City Council authorize the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the

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Reid Recreation Center on Livingston Street and to approve a budget amendment, in the amount of \$77,377.

**Request to NC DOT for Traffic Signal at the Intersection of Hendersonville Road and Yorkshire Street**

Summary: The consideration of a resolution requesting the N. C. Dept. of Transportation (NC DOT) to install a traffic signal at the intersection of Hendersonville Road and Yorkshire Street.

The City of Asheville has been working with some property owners, as well as the Biltmore Methodist Church, to reduce

traffic accidents and delays at the intersection of Biltmore Avenue and Yorkshire Street. Some of the property owners hired a traffic consultant to prepare a traffic impact analysis of the intersection. The traffic engineer determined that installing a traffic signal at the intersection of Hendersonville Road and Yorkshire Street would allow vehicles to make the left turn onto Hendersonville Road safely. Additionally, the consultant recommended other improvements such as widening Yorkshire Street.

The NC DOT staff has indicated that the City's support for the installation of the traffic signal may expedite the request.

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Pros:

- Provide improved safety for vehicles using the intersection of Hendersonville Road and Yorkshire Road.
- Reduce congestion on Yorkshire Street during the afternoon peak travel period.
- Reduce cut-through traffic on adjacent residential streets.

Cons:

- This change will have a minor increase in congestion to traffic traveling Hendersonville Road.
- The proposed traffic signal must be coordinated with the traffic signal at I-40 and Hendersonville Road. This is initially a technically difficult task to accomplish.
- NC DOT will be responsible for the installation and maintenance cost of the traffic signal.

This request meets the City of Asheville Strategic Operating Plan focus area of Planning Goal #2 Task #1, which states:

*"Determine opportunities for managing traffic demand through changes to community patterns and transportation modes, land use patterns, signalization improvements, etc."*

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City staff requests City Council adopt a resolution supporting the installation of a traffic signal at the intersection of Hendersonville Road and Yorkshire Street and requests NC DOT to consider implementation of this recommendation as soon as is reasonable and feasible.

Upon inquiry of Councilwoman Jones, City Engineer Ball said that she would provide data regarding the intersection to City Council.

### **Local Law Enforcement Block Grant and Crowd Control Equipment**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount \$71,211, to appropriate the block grant funding; and a budget amendment to the City's

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general fund, in the amount of \$20,079, to provide grant matching funds and purchase crowd control equipment.

The City of Asheville has been awarded a grant in the amount of \$71,201 under the 2003 Local Law Enforcement Block Grant Program. The City is required to match this grant with \$7,911 of its own funds, which will result in a total block grant budget of \$79,112. The Asheville Police Department will use this grant funding to purchase 20 In-Car Video Camera Systems. In addition to recording traffic stops, drug interdiction efforts and police pursuits, this equipment will improve the quality of evidence obtained by police officers while documenting their daily interaction with the public.

To provide the required grant matching funds and also to provide additional funds for equipment, staff is requesting the appropriation of \$20,087 in Drug Tax Revenue that has been received from the North Carolina Department of Revenue but that is currently unbudgeted. The Department of Revenue assesses the Drug Tax on persons convicted of possessing drugs for sale. The City of Asheville Police Department has used Drug Tax Revenue over the past several years to provide matching funds for grants, as well as for other special projects. Of the \$20,079 amount, \$7,911 will be used as the local match for the aforementioned 2003 Local Law Enforcement Block, and the remaining \$12,168 will be used to purchase crowd control equipment. These items include personal protective equipment for Police Officers as well as communications equipment needed to coordinate public safety operations during public demonstrations.

Pros: The use of drug tax money for the purchase of crucial public safety equipment improves the Police Departments ability to carry out its mission.

Cons: When the purchased equipment requires maintenance or must be replaced, the expectation is created that the general fund will pay for it.

Strategic Operating Plan and Focus Area: The acquisition of this equipment will enhance the focus area, "Critical Services & Infrastructure" and to a large degree, goal #4, *Develop programs and policies to defeat street level drug problems and crime.*

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount \$71,211, to appropriate the block grant funding; and (2) a budget amendment to the City's general fund, in the amount of \$20,079, to provide grant matching funds and purchase crowd control equipment.

### **Stradley Mountain Booster Pump Station**

Summary: The Regional Water Authority of Asheville, Buncombe and Henderson at its May 18, 2004, meeting approved the bid award to Hobson Construction Company to replace an old pump station on Stradley Mountain.

Bids were received for the Stradley Mountain Booster Pump Station project on May 6, 2004. Three bids were received with Hobson Construction Company submitting a low bid of \$143,485.00. The project includes the installation of small water booster pumping station on Lower Stradley Mountain Road to replace an existing, old, non-standard pumping station. The project also includes the installation of approximately 560 linear feet of 6-inch waterline to replace old two (2) inch galvanized pipe.

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Engineer's Estimate:     \$ 175,000

<u>COMPANY</u>	<u>BID</u>
Hobson Construction Company Arden, North Carolina	\$143,485.00
Shoreline Enterprises	\$163,360.00
Buckeye Construction Company Canton, North Carolina	\$233,265.00

The bids were reviewed by the engineer for the project, McGill Associates, which recommended awarding the project to Hobson Construction Company. The bids were also reviewed by the Office of Minority Affairs and Brenda Mills, Director, approved the award of the contract to Hobson Construction Company.

Construction is expected to be completed within 45 – 90 days, which will increase pressure and flow in the Stradley Mountain service area.

This is for informational purposes only to keep City Council informed of construction projects within the water system and does not require any action by City Council.

### **Street Paving Contract**

Summary: The Regional Water Authority of Asheville, Buncombe and Henderson at its May 18, 2004, meeting approved the bid award to Tarheel Paving Company, Inc. to complete street repaving for Critical Needs Phase III water line replacement projects.

Precision Contracting Company defaulted on their Critical Needs Phase 3 – Contract 3 contract. Precision Contracting completed the waterline and appurtenances installation, but did not complete the street repair component of the project. To complete this component of the project, bids were received for the Street Pavement Repairs Project on May 11, 2004. Despite having two pre-bid conferences where multiple local and out of town contractors were personally invited, only one bid was received at the bid opening. Since the amount of this bid made it informal (\$300,000 or less), and because of the effort made to attract additional bidders, and the desire to complete this work which has been pending for nearly two years, the bid from Tarheel Paving Company, Inc. (Hendersonville, N.C.) was opened and read. Tarheel's low bid of \$ 185,408.27 was less than the engineer's estimate of \$210,651 and is within budget for fund reimbursement.

The bid has been reviewed by the engineer for the project, W K Dickson, who recommended award of the project to Tarheel Paving Company, Inc. The bid was also reviewed by the Office of Minority Affairs with recommendation of award to

Tarheel by Ms. Leronica Casey, Certification Coordinator.

Funds for this project are through a State of North Carolina grant for \$3,000,000.00, which was obtained in 2002.

Completion of the street repaving which includes streets in West Asheville, South Asheville and South Buncombe County should be completed with 30 – 60 days.

This is for informational purposes only to keep City Council informed of construction projects within the water system and does not require any action by City Council.

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**Mills River Water Treatment Plant Intake Expansion**

Summary: The Regional Water Authority of Asheville, Buncombe and Henderson at its April 20, 2004, meeting approved the bid award to Turner Murphy Company for building a new water intake at the Mills River Water Treatment Plant in to the French Broad River.

This project was approved as part of the Brown and Caldwell engineering study for the Regional Water Authority of Asheville, Buncombe and Henderson and was requested to be fast tracked by the NCDENR Water Quality Division. Bids were received from three contractors with Turner Murphy Company being the low bid at \$486,858.00. The project includes the installation of a new water intake on the French Broad River. This intake will only be used during drought conditions when the Mills River cannot adequately supply the required water needed by the water plant for distribution through the water system.

Engineer's Estimate:     \$ 550,000

<u>COMPANY</u>	<u>BID</u>
Turner Murphy Company	\$486,858.00
Buckeye Construction	\$519,030.66
Cooper Construction	\$1,014,900.00

The bids were reviewed by the engineer for the project, Brown and Caldwell, which recommended awarding the project to Turner Murphy Company. The bids were also reviewed by the Office of Minority Affairs and Brenda Mills, Director, approved the award of the contract to Turner Murphy Company.

Construction is expected to be completed within 90 – 120 days.

This is for informational purposes only to keep City Council informed of construction projects within the water system and does not require any action by City Council.

Interim Water Resources Director David Hanks responded to various questions from Councilwoman Bellamy.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

**AMENDMENT ONE, SELF-FINANCING BONDS REFERENDUM**

Mr. Mac Williams, Co-Chair of the North Carolinians for Jobs and Progress, said that this is the consideration of a resolution of support for Amendment One – Self-Financing Bonds Referendum which will appear on the ballot November.

North Carolina communities need every available tool at their disposal to help develop new jobs and tax base. Self-financing bonds are a proven mechanism whereby local governments may finance public infrastructure improvements in support of related private sector development within their communities. As this approach represents another way local governments can approve bonds, a statewide referendum is required.

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Mr. Williams said self-financing bonds is a mechanism for financing local public infrastructure associated with private investment, to revitalize communities, attract new development opportunities and to create new jobs. He then said the bonds are repaid from the revenues off the incremental increase in property values generated by private development supported by the infrastructure paid for by the bonds. Thus, the bonds are self-financing. A private, taxpaying project is required. Only revenue from the increment is dedicated to pay off the bonds. Once bonds are paid, all revenue goes to the general fund. Allows local governments to be more timely in responding to development opportunities. There is a stringent project approval process. He then explained how self-financing bonds can be used. He said that self-financing bonds are fiscally conservative: (1) There is a limit on the types and amount of projects the bonds can support; (2) The bonds must be accompanied by a commitment of private investment; (3) Those who benefit most directly from use of the bonds pay them off; (4) The public is at less risk with these bonds than with general obligation bonds; and (5) Requires approval from the N.C. Local Government Commission.

He explained that more than 95% of self-financing bonds have succeeded across the country. In over 50 years of approving bond issues, no issue approved by the N.C. Local Government Commission has failed.

Support statements:

- NC has lost over 180,000 jobs in recent years – more than most other states. Every tool must be used to make our state and communities more competitive for development opportunities and the jobs they can create. Self-financing bonds are currently used in **48** other states.
- NO NEW TAXES or INCREASED TAXES are required to pay off bonds – they are self-financed from the incremental increase in revenue generated from the increased value resulting from the new private development.
- The tool allows local governments to be a more responsive and nimble partner with the private sector in undertaking catalytic projects resulting in higher quality communities.
- North Carolina's application of the mechanism has some of the strongest accountability safeguards in the country. Public input, local government approval, and Local Government Commission approval are all part of the project/district approval process.

Challenge statements:

- While statewide voter approval is needed to have the tool available as a local option, local voter approval is not required for each specific local application.
- Other means already exist for financing public infrastructure.

City staff and the Sustainable Economic Development Strategic Plan Implementation Task Force recommends Council approval of the resolution of support for Amendment One – Self-Financing Bonds Referendum to be on the ballot in November.

Upon inquiry of Councilman Davis, City Manager Westbrook said that he would check with the City Attorney whether the City could participate financially.

Mr. Williams responded to various questions from Council.

Councilwoman Bellamy felt this is an excellent tool for Asheville.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

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## **FOREST MANAGEMENT PLAN**

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Due to the absence of Mayor Worley and Councilman Newman and because of the importance of this issue, Councilwoman Bellamy moved to postpone this matter to the July 20, 2004, worksession. This motion was seconded by Councilwoman Jones and carried unanimously.

When Councilman Dunn asked what would happen if a Council Member was not present at the July 20 worksession, Vice-Mayor Mumpower said it would be Council's intent to press forward.

## **INTENT TO CLOSE BLANKENSHIP AVENUE**

Assistant Public Works Director David Cole said that this is the consideration of a resolution of intent to close Blankenship Avenue between Smoky Park Highway and Brookside Circle and setting a public hearing for July 27, 2004.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys without regard to whether

they have actually been accepted as city maintained streets.

Pursuant to this statute, the adjoining property owners have requested the City close Blankenship Avenue, extending north from its intersection with Smoky Park Highway to its intersection with Brookside Circle.

Public Works Department staff has researched and established that this portion of right-of-way is not a City maintained street and its closure will not deprive any property owner of a reasonable means of ingress or egress to their property. This portion of right-of-way is abutted by three lots, identified by PIN Nos. 9617.14-44-5768; 9617.14-44-3873; and 9617.14-44-3740.

However, the City's Traffic Engineer has determined that Blankenship Avenue provides an important connection between Brookside Circle and Smoky Park Highway. Though not a City maintained right-of-way, Blankenship Avenue is signed, has a gravel surface and is used by pedestrian and vehicular traffic. Consequently, City staff advises that closing Blankenship Avenue without any alternate provisions for a transportation connection would be contrary to the public interest.

On Thursday, May 27, 2004, the Traffic Engineer and Assistant Director of Public Works met with Patsy Meldrum, counsel for petitioner Teresa Cathey, to discuss staff concerns about closing Blankenship Avenue. Ms. Meldrum was vague about the needs underlying her client's request to close the street. Consequently, it was difficult to generate alternatives that might satisfy both Ms. Cathey's interests and the City's interests in preserving connectivity.

Assuming that setbacks from Blankenship Avenue's right-of-way could be a concern, staff offered two potential alternative solutions: 1) to relax setback requirements from Blankenship Avenue or 2) to support closure of the right-of-way under an agreement that the petitioners provide a 20-foot public access easement in its place. Either alternative would have the same effect on setback requirements as closing the street, but would preserve the public's right to use the right-of-way for travel. However, Ms. Meldrum has indicated that her client is not amenable to either of these alternatives and wishes to pursue the petition to close Blankenship Avenue over staff objections.

Though intent to close Blankenship Avenue has not yet been advertised or posted, the Public Works office has received three telephone calls from local residents objecting to the closure. The primary concern voiced was that the street is used as a pedestrian access for

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people walking to and from Brookside Circle and The Lunch Box, a restaurant on Smoky Park Highway. Closing this right-of-way would require that these people walk along Brookside Circle and Smoky Park Highway, neither of which have sidewalks.

Progress Energy, BellSouth Telephone, and Charter Communications (cable television) all have aerial lines on Blankenship Avenue. Additionally, BellSouth has underground conduit (approximately 4-feet wide) along the eastern margin of right-of-way. Easements must be provided or arrangements made by the petitioners to relocate these utilities in order to close Blankenship Avenue.

Based on its importance as a connection between Brookside Circle and Smoky Park Highway, it is the opinion of City staff that closing Blankenship Avenue is contrary to the public interest. Therefore staff recommends against adoption of a resolution to permanently close Blankenship Avenue.

City staff recommends that Blankenship Avenue not be closed. However, consistent with the petitioner's request, staff request that City Council adopt the resolution of intent to close Blankenship Avenue between Smoky Park Highway and Brookside Circle and set the public hearing for July 27, 2004.

Upon inquiry of Councilman Davis, Ms. Patsy Brison Meldrum, representing petitioners, said the alley is not maintained by the City of Asheville.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

#### **UPDATE ON CHANGES TO THE MINIMUM HOUSING CODE**

Director of Building Safety Terry Summey said that this is a review of the status of the implementation of the Minimum Housing Code.

Mr. Summey reviewed the Housing Division Report, which has been operating since its adoption by Council on October 14,

2003. He explained the publicity and education surrounding the changes: (1) distribution of 850 copies of the easy to use reference guide along with informational brochures; (2) 48,000 water bill inserts distributed during January and February, 2004; (3) 3,000 door hangers printed and being distributed to multi-family companies; (4) Housing Code Coordinator has been a guest on call-in program; (5) there have been presentations to 15 realty organizations with over 800 realtors in attendance; and (6) Housing Code website has been established.

Mr. Summey then reviewed in detail the complaint and inspection activities, staffing and recordkeeping.

Mr. Summey explained that City staff will work on more consistency and training for independent inspectors. He also said that there may be possible Code changes presented to City Council in the fall of 2004.

Mr. Summey and Housing Code Coordinator Jeff Baker responded to various questions/comments from Council, some being, but are not limited to: why is there a big increase with third-party inspector inconsistencies; what was the number of annual complaints prior to adoption of the new Minimum Housing Code changes; are complaint originations about the same; is the number of life safety letters higher than anticipated; what are the percentages of owner-occupied homes and rentals being inspected; are the overall units in our City safer; how many

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eviction-retribution cases are there now compared to the prior Code; how many rental units are there in Asheville; do we have any tools we can implement if there is a clear sense of retribution-related cases; can the City increase the accountability of the inspectors by some policy that says dramatic failures to perform can result in reimbursement to the homeowner or something similar; and does the same inspector perform the repeat inspection.

Councilwoman Jones asked that Mr. Summey track inconsistencies of third-party inspectors and institute a process, if there is not one already, to take them off the list.

When Councilman Dunn asked what the policy was regarding complaints, Mr. Baker said that when the complaint is received, City staff asks the tenant if they have talked to the owner and given them a reasonable period of time to make the repair. They also suggest that the tenant put the complaint in writing. He said that they do have a complaint form on the new Housing Code website for tenants to use. Councilman Dunn felt it would be a good practice to obtain a copy of the complaint letter the tenant gave to the landlord.

Vice-Mayor Mumpower hoped that City staff will bring to the attention of Council any patterns of problems that affect either the tenants or the property owners for Council policy recommendations.

No action on the report required.

At 4:55 p.m., Vice-Mayor Mumpower announced a short break.

### **DOWNTOWN DEVELOPMENT AGREEMENT WITH THE GROVE PARK INN FOR DEVELOPMENT OF SITE #2 ON THE SOUTH SIDE OF THE CITY HALL BUILDING**

City Attorney Bob Oast said that this is the consideration of an amendment to the Downtown Development Agreement with Grove Park Inn (GPI) for Site #2.

Last year, the City entered into a Downtown Development Agreement with the Grove Park Inn for the potential development of public-private projects on two sites in downtown near City Hall. Site #1 was at the intersection of College Street, Spruce Street, Market Street and Patton Avenue extension. Site #2 was on the south side of the City Building, on property that is used by the City as a parking lot.

Pursuant to the Agreement, Council authorized the City to enter into an option of GPI for Site #1. After analyzing financial information and projections, however, GPI decided not to proceed with Site #1, and officially withdrew from consideration of Site #1 in December of 2003.

Since then, staff and representatives of GPI have continued to discuss possibilities for Site #2. Progress on this site was delayed while the City completed its acquisition of the "old jail site" from Buncombe County, which gave us ownership of the entire upper level. As noted below, some of the property in Site #2 is still in private hands.

The Amended Downtown Development Agreement under consideration is characterized as an amended agreement to

recognize that it involves the same parties and one of the same properties, and that the delay in proceeding with it was due to property acquisition issues. But it is really a new agreement dealing only with Site #2. In fact, the Agreement recites that Site #1 is no longer under consideration.

Proposed Uses: Design. As proposed, the building on Site #2 will include a mixture of commercial, office, and residential units (15% in the affordable range) in the private part of the development, and incorporating a substantial City employee/public parking facility as the public

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element, with the possibility of some City office or meeting space as well. The physical design of the building has not progressed beyond the conceptual stage at this point, but discussions with GPI have indicated that it will be multi-story, with a pedestrian-scaled and oriented street level appearance. It may be designed to be built in phases. The Agreement contains some height restrictions (no higher than the cornice of the City Building), and some other required considerations, but more details will depend on the actual design of the building, which must undergo an extensive public review process, and extensive review by the City

Design review. The Agreement provides for an extensive review process, including at least two public meetings coordinated by GPI. In addition, there are required reviews by the Downtown Commission, the Technical Review Committee, and the Pack Square Conservancy. The final design of the building is subject to approval by the City, which could take the form of a Conditional Use Permit, but in any case will involve a public hearing.

Process. Following the parties' entering into this Agreement, and subject to obtaining an appraisal, the parties would enter into an option (which requires a public hearing), that would secure the property while GPI goes through the design approval process, and investigates financing feasibility. During this time, the City would also be exploring the financial feasibility for its part of the project. Provided the design is approved, and financing secured, the property would be conveyed and construction would begin.

Time line. The tentative dates for these events are:

1. Enter Downtown Development Agreement – June 2004
2. Obtain appraisal – July 2004
3. Consideration of Option Agreement – August 2004
4. Option period – 1 year (with extension possible)
5. Completion of design review – prior to expiration of option
6. Conveyance of property (no date yet)
7. Construction (no date yet).

Amendment. It is anticipated that, once the decision is made to proceed with an approved project, further amendments to the Downtown Development Agreement, or additional agreements, will be needed to clarify the public / private roles in this project.

Other issues.

- The Agreement requires that the design be sensitive to the Eagle/Market Street Area and Pack Square / City-County Plaza, and that area stakeholders are involved in the design review process.
- The City will have to acquire a piece of Site #2 that remains in private hands. GPI may have to acquire the Hayes & Hopson Building, also in private hands.

Considerations.

- The projected value of the structure will exceed \$40 million
- The project will help tie the South Pack Square area into the rest of downtown, economically and physically
- The project will provide a commercial / residential anchor for this end of town
- The Downtown Development Agreement enables the City to work with one developer, and does not require the City to use a competitive process to sell the land. This encourages the private sector to invest the time and resources necessary to design these complex projects, without fear that they might lose the property to another purchaser.

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- Despite this part of the project having been heavily publicized in connection with the public debate about Site #1, there has



been no other interest expressed in Site #2.

- Entering into the Downtown Development Agreement does not commit the City to anything but the process; no building is approved and no property is sold without further action by Council.
- This Agreement is heavy on process and public participation.

If the Council desires to pursue the development of Site #2, adoption of the resolution is recommended.

Discussion occurred, which was initiated by Councilwoman Bellamy, to request the Grove Park Inn include the South Pack Square Business Association in the required reviews at least for courtesy sake, since the design will be sensitive to the Eagle/Market Street Area. City Attorney Oast said that he would review the South Pack Square Redevelopment Plan to see if this Site #2 is in the area of that Plan. He said that there are a lot of stakeholders and interests in that area, e.g., Mt. Zion Church, YMI Cultural Center, Eagle/Market Streets Development Corporation, and he would be hesitant to list them for review in fear of leaving others out. It was his expectation that the Grove Park Inn would be well-advised to invite and seek input to all area stakeholders, without having to name any particular organization. However, he would be happy to amend the agreement in any fashion Council wished – to either give the South Pack Square Development Association the same ability to comment as the Pack Square Conservancy, or take out the Pack Square Conservancy.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that Site 2 is the City of Asheville's property and Council can place whatever restrictions they wish in the agreement.

Councilman Dunn felt that the City should give the Grove Park Inn more flexibility in the number of affordable units since it is so early in the project. City Attorney Oast said that 15% was based on what staff felt City Council would want in terms of the location of the project in the downtown area and Council's efforts to include affordable housing.

Mr. W. Louis Bissette, Jr., attorney representing the Grove Park Inn, said that they want affordable housing in this project and he felt that 15% of those units can be set aside for affordable housing.

Mr. Bissette said that the Grove Park Inn is very concerned about all the entities in this area and want them to be involved as much as possible. They will make an effort to bring them all into the process, however, they don't want every group to have veto over the project design.

A brief discussion occurred about the number of parking spaces is on Site 2 now and what will be planned for in the project. Mr. Bissette said at this time they can commit to 200 new parking spaces.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast assured her that no park space was in this Site, only parking.

City Attorney Oast suggested language in the agreement that requires the Grove Park Inn, in connection with public presentations, target solicitations to as many groups as he can think of and if Council wants to add more, they can.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

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**ORDINANCE NO. 3127 - ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO EDUCATIONAL RESEARCH CONSORTIUM OF THE WESTERN CAROLINAS LLC FOR INSTALLATION OF TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF ASHEVILLE**

City Attorney Bob Oast said that this is the consideration of an ordinance granting a franchise to the Educational Research Consortium of the Western Carolinas (ERC), pursuant to the City's Telecommunications Ordinance.

In September the City considered and adopted Ordinance No. 3056 to provide for the granting of non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Last year, the City had begun discussions with ERC for a fiber optic installation that lead to a limited area installation that was also limited as to time.

Since then, staff has studied ways to accommodate this emerging technology, and has developed a fee structure and installation guidelines that are now part of our analysis of these proposals and are incorporated into the franchise ordinances.

The franchise ordinance is essentially identical to the DukeNet franchise in its terms and conditions. The most important difference is that ERC will be installing some facilities for use in connection with the City's institutional network, and the cost of this

installation and maintenance will be an offset from the franchise fee.

The main lines of the proposed installation are shown on Exhibit A<sup>[1]</sup>. Some of this proposed installation is within the "high density" areas, where the fees are highest, and some of it is not. The City has requested that some fiber optic lines be installed for its use along these routes, in connection with the existing Institutional Network installed pursuant to the cable TV franchise, and has proposed some connection points as well. The route and connection points are subject to change as conditions dictate, but these would be minor changes and would not need to come back to Council.

The proposed initial term of this franchise is 10 years, renewable for two 10-year terms, unless either party terminates. The franchise fee begins to escalate according to the Consumer Price Index after 5 years.

Considerations:

- (1) This is the City's second telecommunications franchise, and following closely on the heels of the first. We really have no local experience with such efforts, other than cable television, which is not directly relevant.
- (2) The City has the obligation to protect and preserve its right-of-way for public use, and the right to expect fair compensation for that use. The compensation that we receive should be fair and equitable, and we may not prefer one provider over another, so the compensation paid or in-kind services rendered by ERC will be a benchmark for future installations.
- (3) There is a significant public interest in enabling telecommunications providers to provide their service, and especially to enable, or at least not obstruct, provision of such service to less densely populated and underserved areas.

City Attorney Oast passed out some insignificant changes to the franchise ordinance.

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If Council wishes to grant a franchise to ERC, adoption of the ordinance, with revisions, is recommended. Council may suggest alternatives to the proposed fee schedule and the term, but most other substantive issues are already dealt with in the Telecommunications Ordinance adopted in September. Because this is a franchise ordinance, a second reading of it will be required. It is recommended that Council waive its rules and vote on this matter on first reading at the work session.

Councilwoman Bellamy moved to waive the rules and proceed to the first reading of Ordinance No. 3127. This motion was seconded by Councilwoman Jones and carried unanimously.

Vice-Mayor Mumpower said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3127, on its first reading with the revisions distributed by City Attorney Oast. This motion was seconded by Councilwoman Jones and carried unanimously.

**ORDINANCE BOOK NO. 21 – PAGE**

Vice-Mayor Mumpower said that the second and final reading of Ordinance No. 3127 would be held at the next formal City Council agenda.

**BOARDS/COMMISSIONS**

It was the consensus of City Council to instruct the City Clerk to arrange interviews of Lawrence Haas, Loyd Kirk and George Peery for a vacancy on the WNC Regional Air Quality Agency.

It was the consensus of City Council to have a City Council Member on the Airport Authority.

Councilwoman Jones felt that in the future Council needs to be consistent in that if a member of Council serves on a board and is no longer on Council, that either that person automatically resigns or there be a resignation request by Council. At Council's consensus, City Attorney Oast said that City Council can remove the person for cause and that cause could be if the person is no longer a Council Member. He said that he would structure future resolutions accordingly.

Councilwoman Bellamy said that a member on the Airport Authority asked her to request Council's support for an increase

in their stipend.

It was the consensus of City Council to instruct the City Clerk to readvertise vacancies on the Civic Center Commission.

It was the consensus of City Council to instruct the City Clerk to arrange interviews of Leesa Young and Leslie Yancey to the Downtown Commission. Pamela Myers will be a candidate, however, she did not need to be interviewed.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Keith Hargrove and readvertise for a vacancy on the Historic Resources Commission.

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It was the consensus of City Council to instruct the City Clerk to prepare the property paperwork to appoint Laura Williams to the Recreation Board.

**ADJOURNMENT:**

Vice-Mayor Mumpower adjourned the meeting at 6:15 p.m.

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CITY CLERK

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MAYOR

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[\[1\]](#) Exhibits are not available in electronic form, but will be available at work session.