

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Present: Buncombe County Chairman Nathan Ramsey, Presiding; Vice-Chair Bill Stanley; Commissioner David Gantt; County Manager Wanda Greene; County Attorney Joe Connolly; and County Clerk Kathy Hughes (Absent: Commissioner Carol Peterson and Commissioner David Young).

Present: Senator Tom Apodaca; Senator Martin L. Nesbitt, Jr.; Representative D. Bruce Goforth; Representative Susan C. Fisher; and Representative Wilma M. Sherrill

Mayor Bellamy called the meeting to order at 9:00 a.m. in the Laurel Forum at UNC-Asheville. Councilman Freeborn then moved to adjourn the meeting to Conference Room 110 in order to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 9:50 a.m. Councilman Davis moved to come out of closed session and reconvene the meeting in the Laurel Forum. This motion was seconded by Councilwoman Cape and carried unanimously.

At 10:00 a.m. Mayor Bellamy and Chairman Ramsey called their respective boards to order to discuss water-related issues.

Mayor Bellamy outlined some issues that are important in impacting our area. Looking at the issue of water, the City is looking at a governance structure that will be a municipal-run system. The City has done a great deal to improve our system and we want to outline a couple things: (1) Asheville is the first city to have an active asset management program and it's structured to approach is to optimize the life-cycle costs of asset ownership necessary for providing reliable and dependable service to our customers; (2) we have environmental management standards for the ISO 14001 Certification; (3) we have computerized our maintenance system; (4) we have a capital improvement program in which we have over \$6 Million that we are investing back into the system; and (5) we had an excellent peer review by QualServe. She felt it was important for individuals to know what we have done in the past 6-12 months regarding our system.

Regarding rate differentials, Mayor Bellamy said that when you look at differentials across the State of North Carolina, the average differential is 85% (they use that to offset costs). City Council is willing to give up our rate differential ability (which is about 85%) and for that 85%, it would cost us over \$6 Million. Today we would like to see a tax equity payment of \$6 Million for us to give up the rate differential ability. We are willing to talk about how we can get there.

Mayor Bellamy said another issue that has been important to the City is the Joint Planning Area (JPA). The City of Asheville is open to look at new approaches and alternatives to the JPA, especially since we are now we are looking at extending some of our services that we currently provide into the County.

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Mayor Bellamy said the last issue is the Civic Center. The last proposal that we submitted to the County talked about support for our Civic Center. We are looking to get support for our Civic Center from Buncombe County and our legislative delegation. We do, however, want to express our reservations using sales tax for this support.

Commissioner Gantt said that throughout the whole discussions they have had four guiding principles. The County has presented the City with 9 separate offers, all that have been unanimous decisions, and they have all been rejected by the City. Eight offers were rejected and one offer accepted by then Councilman Joe Dunn. The most guiding principles for us is an independent Water Authority. Every time a city runs a water department they have to pay betterment costs to the N.C. Dept. of Transportation. The number we have is \$4 Million. That is \$4 Million right off the top. The repairs needs are around \$350 Million that need to be put into the system. If we had an independent authority, we could put the money towards fixing the system since everyone wants to fix the system and make sure it doesn't get run down again. We always thought the MSD type model would be best. The money they receive is put right back into repairs and they have a capital plan to put \$260 Million in over the next 20 years. The County is so insistent on an independent board because we have seen how well MSD works and the results to the

rate-payers.

Commissioner Gantt said that another guiding principle for the County is no differential rates. The Sullivan Act has been law since the 1930's. We don't feel that for a necessary service that people should pay differential rates. There is no utility, except for a government run utility, that pays differential rates for services. Based on the history of our County, who paid for the system to begin with, there should be no differential rates.

Commissioner Gantt said their third guiding principle is that there be no forced annexation to receive water services. Water is a basic necessity and everyone should be entitled to it.

Commissioner Gantt said that finally, we want everyone to be treated equal. Someone is going to have to pay for this big mess we're in and we want everyone to be treated fairly. We will have to work together to do this. The offers we have made in the past have included taking over the Civic Center. Some of the offer packages were up to \$50 Million and the County Manager has a copy of the eight specific proposals we have given and the one we accepted from then Councilman Joe Dunn. We have talked dozens of times because we want to work this out. As far as the specific proposal, basically if \$6 Million is desired to be paid up front, that money would be paid by people that will probably never have water service and never got a benefit from it. We already have 3 other water systems within the City and we represent those people too. To say that we're going to give a whole lot of money from their coffers didn't seem right to us. We want everyone to be treated equally and fair and we are very interested in an independent board because that is the way we see the opportunity to fix up what we have. We are, however, interested in continuing talking.

Senator Nesbitt said that their position is well-known in that they put it into legislation. He said we do have a unique history in that in the 1930's our founding fathers made a deal. When everyone went broke they put all the water systems together. Prior to that time the City charged differential rates. When they pooled their reasons, they decided not to do that. The County residents gave up their water systems (he believed there were five) and gave them to the City. When the County residents gave up their ability to have their own water system based on that commitment, it seems unfair that 70 years later to say we are now going to increase your rates. That is where we were coming from. It's all about how you treat people. We did what we thought was best for the community. Asheville is not the only city in the state where this occurs. The City of Charlotte in Mecklenburg County have gone through a number of voluntary agreements to take over other people's water system for the agreement that they would phase out differential rates

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and they did it over a 10-year period. At the end of that time, Charlotte will not be charging differential rates.

Representative Goforth was concerned about the negative attitude from Council toward the legislators. He felt it was the City's poor planning when they terminated the water agreement, knowing there would be an upfront loss of \$2.5 Million. In addition, we are now in a lawsuit costing everyone money. He urged the City and the County to go back to the table and work out something fair for everyone.

Mayor Bellamy said that this meeting is a point to move forward. The City does have a shortfall in our budget, but we were not anticipating Sullivan Acts II and III taking away \$1.1 Million. We have recently paid for and received completed a study that said the City needs to put \$59 Million back into our system, not \$300 Million inaccurately quoted. She hoped that as we move forward that accurate information is given. She requested a copy of the 9 proposals the County offered.

Senator Apodaca felt we need to look at the way the whole process started when the City gave notice of the termination of the water agreement and the way the legislators were kept out of it. He hoped everyone could put that behind them and move forward.

Representative Sherrill agreed that the biggest disappointment is the negative attitude the legislators have received from Councilman Mumpower, which is a bad reflection on all of City Council. She was totally against using water for forced annexation. She hoped we can move forward. We would all like to see something happen with the Civic Center and they have been begging for years for the figures and plans on what the City as a whole wants to do with the Civic Center.

Representative Fisher felt that we have the potential to get along and supported moving forward.

Councilman Mumpower passed out information on his position on the water issues. He said that he intends to continue insulting the actions of our legislative body against the citizens of Asheville. Our state legislators got involved in a local matter. Had they not trumped the process we would be at a much different place today in treating people in a fair and responsible manner. He said a few cities in North Carolina own and don't manage their own assets. Regarding the City of Charlotte, Charlotte

is taking over the County of Mecklenburg. There is one in Chapel Hill which is a University owned system. Aside from those two, every other city in North Carolina of any size, including Hendersonville, Weaverville and Canton, own and manage their assets and it works. He stressed that Asheville is being treated differently and that is not fair. He said that he has never made a public personal attack on anyone. When our legislators passed Sullivan Acts II and III, they created a permanent division between the City and the County. He didn't create that, the legislators did and all he has done is to shine a light on it.

Commissioner Gantt said that 44% of the water ratepayers live outside the City limits. He agreed that this issue is not City vs. County, but is a matter of politics and control over the water facilities. He hoped we can get beyond the control issue.

Regarding differential rates, Councilman Newman said that is a core issue because we need some kind of rate structure to fix the system. Everyone is interested in treating the customers fairly, although we may have different opinions about what that fairness is. He shared Asheville's prospective on the rate structure. He said that when the various systems were combined, the basic understanding at that time was that on the lines that had been built and were being paid for by the bonds for the old water districts, the agreement was that the City could never charge differential rates on those lines (because there had been specific bond issue for

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those specific lines). But Asheville's prospective is that there was never necessarily an agreement that on any future lines – 100 years in the future – that they couldn't start charging differential rates. Not that everyone will agree with that, but that is the other prospective. When the Regional Water Authority was created there was an administrative agreement between the different local governments not to charge differential rates. We feel the City's offer today is a big concession on our part. He said that City Council is willing to not challenge that legal question if we can work out an overall agreement that is fair. (At this time – 10:37 p.m. Councilman Freeborn left the meeting).

Mayor Bellamy said that other municipalities in Buncombe County charge differential rates. So, if you want no differential rates in Buncombe County then it should be across the board for every municipality in Buncombe County.

Senator Nesbitt felt that every place where they have a differential, the people know it. What we have here is 70 years of history where people built lines and joined the system with no differential rates and now the City wants to charge differential rates.

Councilman Mumpower explained that was why City Council's position is for incremental increases.

Councilwoman Cape said that we have an unusual situation in Asheville in that 50% of our daytime visitors don't live in the City and rely on City services, which are paid for by the Asheville taxpayers. We have to figure out a way to be fair and water is one of those pieces.

Vice-Mayor Gantt said that the County did a study of dollars into the County from City residents and County residents and dollars out. He thinks because of the services, it's a basic wash-out because the County does welfare, schools, general health and well-being and more money goes back to the City residents when they pay taxes. He lives outside the City limits, but has his office in the City and School District and receives services. And, actually there is a net increase return on the dollar spent by City taxpayers to the County. Maybe we should jointly study that issue. Mayor Bellamy felt it would be good to furnish the City the County's study so we can look at not only the City and County dollars, but where the State dollars go, because when we look at our infrastructure, that is where we are missing support.

Representative Goforth said that since the City took over the Golf Course we have differential rates. The City owns the property and County is paying the note on it for \$2.5 Million. Mayor Bellamy responded that was the bonds are for McCormick Field. She said that the County was leasing the property from the City of Asheville and the County paid for the upfit. Any building that someone leases, the owner keeps the upfit when the tenant moves out.

Ms. Greene responded to Commissioner Gantt when he asked what the amount is that the County pays for debt service on bonds that the City has ownership of.

Vice-Chair Stanley wondered what the numbers are between City/County residents who go through the Department of Social Services and the Health Department.

Mayor Bellamy noted that we are all partners and despite of what it looks like, there are several ventures the City and County are collaborating successfully.

Senator Nesbitt felt that the City and Council can get over the differential rates hurdle after we solve some of these other

problems. He suggested as a starting point that the City and County sit down and determine what is an equity. A lot of the things went away with the water agreement. The legislators don't have any role in that and it's not for us to decide what the

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equities are. Once that is determined and we can help in some way, we will be willing to do that. The legislator's prospective is that we may be able to help with the Civic Center, golf course, McCormick Field, Nature Center, et al. He suggested putting all of those things together to be dealt with since they are County-wide services to where everyone can look at it. Maybe in that process we can find a way to help you with some of that and that will relieve the \$6 Million problem. If you can solve some of it in another way, it is the same thing as giving you money. We need to help you find some money for the Civic Center or the County has to help you. He said they need a good plan on what to do about the Civic Center. We never had one, but he's not sure Council has reached consensus much less the community. If we are going to do something, we need to do what is right for this community for the next 30-40 years. He would like an expert from the outside to come in and tell us what this region needs. We are ready, willing and able to help in some way and we will try to help you out in that area.

Councilman Davis, Chair of the Civic Center Task Force, explained in detail the exhaustive process used to gather information from the community, culminating in a final report. He noted that they did not look at it from a regional approach. He explained the following two options that were presented to City Council by the Task Force: (1) Build a new arena, build Performing Arts Center and Media Center inside the existing arena, make Thomas Wolfe a flat floor facility; and (2) Renovate the arena, build a new performing arts center on the lot next to City Hall (Parkside) and make Thomas Wolfe a flat floor facility. A third option was to refurbish what we have. He then explained the rough cost estimates. In addition, the City has just had a study completed by Dr. Ha from Western Carolina University, which said that the Civic Center is currently operating at a deficit of about \$400,000 a year, but generates ten times more in visitor spending dollars than it costs to operate the Center (\$19 Million in money generated vs. \$1.9 Million in operating expenditures). In addition to the economic impact of the Civic Center, it also generates over \$4 Million a year in federal, state and local taxes.

Senator Nesbitt felt that the City has done a great job in studying the Civic Center, but to some extent the City has been laboring under what the City could do. What he is proposing is what the state legislators, the County Commissioners, and private sector can do to help. But, before they commit, they want to look at it from that prospective because we are the hub of this region.

Representative Goforth felt that we can lower the rates if we do what is best for the people. If you can get \$5-6 Million from someone who will lease the water system, that makes sense to him.

Senator Apodaca feels that the City and County should concentrate on the water issue by separating out all the other facilities. Then find out where the true costs come and figure out a way to pay for those services but not on the back of water users.

Councilman Newman said that we have to address some of these tax equity issues and if we don't have any rate differentials, it's hard to see how it's fair to Asheville residents.

Vice-Mayor Jones voted to give notice to terminate the water agreement because she didn't feel like the water pipes were getting fixed (3 different governmental bodies were needed to approve the budget) and Asheville City rate-payers pay the highest water rates in the state. She said those two things were why she wanted to renegotiate the water agreement. She said that the City has made a capital improvement commitment of \$6 Million this year to fix those pipes. She feels that the City-run system gives accountability to the voter. She said that the City is offering no rate differentials for a tax equity arrangement. This is a big movement since June of 2005. She felt the City has moved forward and hoped the County would move forward too.

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Upon inquiry of Commissioner Gantt, Water Resources Director David Hanks felt that the City should be investing \$6-8 Million every year for maintenance. Mr. Hanks said that if we have the resources and the ability, we probably have approximately \$200-300 Million of real live needs out there as far as system-wide replacements, which is not uncommon of a water system our size. It's not feasible to do the projects at one time. Our CIP over the next seven years will go for maintenance.

Upon inquiry of Representative Sherrill, Mr. Hanks said that the annual raters pay about \$20 Million per year, plus an additional \$2 Million from development.

Upon inquiry of Representative Goforth, Mayor Bellamy said that we want to keep the water system because it is a City

asset and that is one source that Asheville residents have direct accountability for. Over the last year, we have shown Asheville residents that we can be good stewards of our resources.

Chairman Ramsey said that City Council was extremely unwise not to take the offer of the County to take all the recreation facilities (including the Civic Center) so they could be paid for by the taxpayers throughout the County. Then we could come up with a plan on the Civic Center and go to the local delegation and others to come up with additional funding streams. The only thing they asked for in exchange was a true independent authority and that recreation facilities be governed jointly with the City and the County. The assets would still be owned by the City of Asheville.

Putting aside the non-betterment costs issue, Mayor Bellamy asked why the City shouldn't be allowed to run their own water system.

Chairman Ramsey felt that the City has every right to run their own water system, but when the City gave notice to terminate the water agreement, they faced certain consequences. (At 11:30 p.m., Senator Apodaca left the meeting.)

Vice-Chair Stanley said that we have a new Mayor and a new City Manager. He felt that the City and County Managers and the Mayor and Chairman they should be given an opportunity to work this out and bring to the respective bodies a proposed plan.

Senator Nesbitt said that the City is the one holding the problems. You have a water system you need to repair and civic center, et al. we need to do something with. Those are things as the County Commissioners and legislators have an interest in and we need to turn our attention to these problems. He said that in some reasonable way, under some reasonable plan, the legislators are willing to come to the table and help. In addition to the City and County being able to work it out, there will be help from your legislative delegation to do that. He thinks the City and County need to get together on the Civic Center issue and figure out what needs to be fixed and quantify it for the legislative delegation. We will then be ready to try to help, if that's possible. He said that this session is almost over and the City and Council will have some time to work on it before the next session, which starts in January of 2007

Commissioner Gantt suggested the City and County Managers get the income and expenses (including betterments) and the repair needs for the water system. Then the bodies can talk about the best way to manage it. He said he didn't care that much about how it's managed, but just that it gets fixed for the next 30-40 years.

Councilman Newman said that if we want to try to work this out locally, then we need to stay ahead of the judicial process. We may a little more time on the Civic Center, but some of the core water utility issues, we do need to try to work out as quick as we can. He felt that the City and County Managers need some direction on what each of the bodies can live with. The City

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has come in and said we are committed to fixing the system. We are also willing to have no rate differentials going forward (with a tax equity payment of \$6 Million/year) and will drop our legal challenge around that issue. He asked if any of the proposals that the County made in the past are still alive and what is on the table for negotiations.

Representative Sherrill said that if there is some agreement between the City and County, there may be something small we can find to do in the legislature before we adjourn this year. (At 11:39 p.m., Representatives Goforth and Sherrill left the meeting.)

Vice-Chair Stanley said that he didn't have a problem with the City running the water system, but just wanted to make sure where the money was going.

In response to Councilman Newman's question if any County proposals were still on the table, Commissioner Gantt said that unlike the negotiations, the County has made a conscious effort to not answer unless all five Commissioners agree. He said they would be willing to keep talking but all five Commissioners would need to agree on any proposals.

Chairman Ramsey said that he would not support a \$6 Million tax equity payment unless they can come up with money which they don't have. He would support the water system being a City-run system but that all water revenue must stay in the system with no differential rates. He personally would be willing to compromise on some issues, but not others. Certainly he did not want to necessarily compromise on the one point that within ½ mile of the City limits future developments of a certain size would have to agree to be voluntarily annexed before they receive water service. We were on the record at the time accepting that. He is still willing to go in that direction and still willing to go the direction of the independent authority.

Councilman Mumpower said that all the County proposals ask Asheville to perform differently than Canton, Hendersonville, Waynesville, Weaverville, and all the other cities that own their assets in our area. He is not personally willing to support any agreement that says the City of Asheville has to behave differently than everybody else does.

Councilman Davis said that the City does have the tool to annex, if the area meets certain criteria, however, if the City and the County work together, we can have a place where people would want to build new development in the City.

Mayor Bellamy said the next step will be for the two Managers to circulate some dates for the next open meeting with all three bodies, at which meeting the report can be reviewed and we can see what needs to be done next and how we are going to get there.

Senator Nesbitt said that someone has to quantify the amount of the City's recreation facilities (that were transferred back after termination of the water agreement) and have that taken out of the equation before the legislators will know what they can do. We wouldn't just be helping the City with the Civic Center but around the corner we will be helping the City with the water system. If we take the burden off the City on the other facilities it will leave you with money to fix the water system.

Senator Nesbitt suggested the City and County Managers work together on coming up with a consensus group of things that could be put in an authority and how much money that will save the City if you do that. With all due respect, he thinks he would want an independent assessment on what we need to do regionally with the Civic Center.

Upon inquiry of Councilman Mumpower about the cost of the study, Senator Nesbitt said that the County would pay for it. And, it would need to be a new person not used before.

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At 11:51 a.m., Mayor Bellamy and Chairman Ramsey adjourned their respective meetings.

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CITY CLERK

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MAYOR