

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; 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 Keisha Lipe

Absent: Vice-Mayor Diana Hollis Jones and Councilwoman Robin L. Cape

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Newman gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

Councilman Mumpower moved to continue approval of the minutes of the June 19, 2007, meeting until July 10, 2007. This motion was seconded by Councilman Davis and carried unanimously.

At the request of Councilman Mumpower, Consent Agenda Items "G," "H," "I," and "J" were removed from the Consent Agenda for individual votes.

At the request of Councilman Freeborn, Consent Agenda Item "K" was removed from the Consent Agenda for an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 19, 2007**

This item was continued until July 10, 2007.

**B. RESOLUTION NO. 07-123- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER FOR HOBSON CONSTRUCTION COMPANY FOR THE HOMINY CREEK CROSSING**

Summary: The consideration of a resolution authorizing the City Manager to sign a change order for Hobson Construction Company for the Hominy Creek Crossing, in the amount of \$160,000.00, and the associated budget amendment.

A bid was received and awarded to Hobson Construction Company in the amount of \$224,300.00 to install a new 24-inch waterline under Hominy Creek at Brevard Road. During the installation of the new waterline, Hobson Construction encountered rock that would require blasting in order to proceed with the project. The NCDOT would not allow blasting for this project due to the proximity of the I-40 and Brevard Road bridges, thus requiring the waterline to be moved outside the blasting zone. Hobson Construction would be required to install 840 additional linear feet of 24" ductile iron pipe, 40 additional linear feet of paving, and other associated costs for an additional cost of \$160,000.00. The total project cost is \$384,300.00.

These plans have been reviewed by McGill Associates, the engineer for the project, and McGill has recommended the change in project scope.

Pros:

- This project will enhance water flow and pressure on Brevard Road from I-40 to I-26 including fire flow requirements for new commercial businesses along this corridor.
- This water line will enable future system looping to supply water to the western part of the Buncombe County.

Con:

- The additional cost was not programmed for this project. Funds are being reprogrammed primarily from other end

of year projects that were held when this stream crossing issue became known, including purchase of flow meters which will be addressed in a future fiscal year.

City staff recommends City Council approve a resolution authorizing the City Manager to sign a change order for Hobson Construction Company for the Hominy Creek Crossing, in the amount of \$160,000.00, and the associated budget amendment.

**RESOLUTION BOOK NO. 30 - PAGE**

**C. ORDINANCE NO. 3494 - BUDGET AMENDMENT FOR HOBSON CONSTRUCTION COMPANY FOR THE HOMINY CREEK CROSSING PROJECT**

Summary: See Consent Agenda "B" above.

**ORDINANCE BOOK NO. 23 - PAGE**

**D. RESOLUTION NO. 07-124- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC. (F.I.R.S.T.)**

Summary: The consideration of a resolution authorizing the City Manager to enter into a temporary services agreement with the City of Asheville and Forsyth Initiative for Residential self-help treatment, Inc. (F.I.R.S.T.).

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T. staff for the past three years with excellent results.

Benefits to contracting with F.I.R.S.T., Inc. include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all F.I.R.S.T. personnel requested enabling operations to be fully productive at all times.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into a temporary services agreement with the City of Asheville and Forsyth Initiative for Residential self-help treatment, Inc. (F.I.R.S.T.).

**RESOLUTION BOOK NO. 30 - PAGE**

**E. RESOLUTION NO. 07-125 - RESOLUTION FIXING THE DATE OF A PUBLIC HEARING ON JULY 10, 2007, FOR VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 2345 HENDERSONVILLE ROAD**

Summary: Sywall Properties, L.P. has petitioned the City of Asheville for the annexation of one lot located at 2345 Hendersonville Road in South Buncombe County containing a total of approximately one (1) acre. The area is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

Pursuant to NCGS 160A-58.2, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be July 31st of 2007.

Pro:

- .. Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.

Con:

- .. Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Staff recommends City Council approve a resolution fixing the date of a public hearing on July 10, 2007, for voluntary annexation of property located at 2345 Hendersonville Road.

**RESOLUTION BOOK NO. 30 - PAGE**

- F. RESOLUTION NO. 07-126- RESOLUTION APPOINTING RODERICK SIMMONS TO THE BOARD OF DIRECTORS OF PINE PROPERTIES INC.**

**RESOLUTION BOOK NO. 30 - PAGE**

- G. BUDGET AMENDMENT FOR THE FINAL PAYMENT OF A GRANT FROM THE STATE OF NORTH CAROLINA FOR THE WESTERN NORTH CAROLINA NATURE CENTER**

This item was removed from the Consent Agenda for an individual vote.

- H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO PROFESSIONAL SERVICE CONTRACTS WITH MCGILL ASSOCIATES; CAMP, DRESSER AND MCKEE; CAVANAUGH & ASSOCIATES; AND BROWN AND CALDWELL FOR THE PROJECTS KNOWN AS WATER REVENUE BOND PROJECTS**

This item was removed from the Consent Agenda for an individual vote.

- I. BUDGET AMENDMENT FOR WATER REVENUE BOND PROJECTS**

This item was removed from the Consent Agenda for an individual vote.

- J. RESOLUTION DECLARING THE INTENT OF THE CITY OF ASHEVILLE TO REIMBURSE THE WATER RESOURCES FUND FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE IMPROVEMENT OF THE CITY'S WATER SYSTEM FROM THE PROCEEDS OF TAX EXEMPT BONDS TO BE ISSUED IN FISCAL YEAR 2008**

This item was removed from the Consent Agenda for an individual vote.

- K. BUDGET AMENDMENT TO SUPPORT THE INCURRED COST ASSOCIATED WITH THE PARKING LOT AND ENVIRONMENTAL SAFEGUARDS IN THE DISC GOLF COURSE AT RICHMOND HILL PARK, WHICH WILL COMPLETE PHASE I OF THIS PROJECT**

This item was removed from the Consent Agenda for an individual vote.

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

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

**ITEMS PULLED OFF THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

- G. ORDINANCE NO. 3495 - BUDGET AMENDMENT FOR THE FINAL PAYMENT OF A GRANT FROM THE STATE OF NORTH CAROLINA FOR THE WESTERN NORTH CAROLINA NATURE CENTER**

Summary: The consideration of a budget amendment in the amount of \$28,220 for the final payment of a grant from the State of North Carolina, Department of Environment and Natural Resources, via the Grassroots Science Museums Collaborative for the Western North Carolina Nature Center.

Grant contract number Q07032 for \$112,000 was entered into by the Nature Center with grant funds held by the Friends of the Nature Center to support general operating and program cost at the Nature Center during FY 2006-2007. To date during the contract period, funds have been held and managed by the Friends of the Nature Center, a non-profit organization.

It is recommended to bring grant management at the Nature Center into full compliance with the City of Asheville grant management and administration procedures beginning with the final grant payment of the current fiscal year.

\$15,138 of the final grant payment will be used to support program cost for the upcoming Beauty of Butterflies Exhibit. The balance will be applied to the cost to purchase software to support cash collection procedures to account for Nature Center admissions and reconcile attendance records to daily cash collection.

Pros:

- Provide funds to support program cost of the Beauty of the Butterflies Exhibit.
- Provide funds to purchase attendance and cash tracking software to enhance cash collection management and accountability.

-

Cons:

- None

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The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of \$28,220 to increase the Nature Center budget for Beauty of Butterflies programming cost, and to purchase attendance and cash tracking software.

Councilman Mumpower was not able to support the acceptance of \$15,000 in state tax dollars to apply to the "Beauty of the Butterflies" exhibit at the Nature Center in that we have continued difficulties in taking care of our essential issues.

In response to Councilman Davis, Parks & Recreation Director Roderick Simmons said that this is money allocated from the state and if we don't accept it, we will have to fund it through our operating budget.

Mayor Bellamy noted that the Friends of the Nature Center had applied for the grant while the Nature Center was under the control of Buncombe County. Now the City has oversight over the Nature Center.

Councilman Freeborn moved for the adoption of Ordinance No. 3495. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 23 - PAGE**

#### **H. RESOLUTION NO. 07-127 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO PROFESSIONAL SERVICE CONTRACTS WITH MCGILL ASSOCIATES; CAMP, DRESSER AND MCKEE; CAVANAUGH & ASSOCIATES; AND BROWN AND CALDWELL FOR THE PROJECTS KNOWN AS WATER REVENUE BOND PROJECTS**

Summary: The consideration of a resolution authorizing the City Manager to enter into Professional Service Contracts with McGill Associates; Camp, Dresser and McKee; Cavanaugh and Associates; and Brown and Caldwell in the amount totaling \$4,898,686 for the projects known as Water Revenue Bond Projects, and associated budget amendment.

The Water Resources Department requested through a request for qualifications (RFQ) professional engineering services for design and bidding of various water infrastructure projects for a \$40 million water revenue bond. Approximately 40 RFQ's were sent out to local and regional engineering firms and posted on the City and State web sites for proposal solicitations.

The Water Resources Department requires a professional engineering firm to handle the project management, design and bid phase of the water infrastructure revenue bond projects. The RFQ's were broken out in to four (4) separate projects based upon project scope and location. Projects include water line replacement, storage tank and pump station replacements and installations throughout the water system, including Town Mountain service area, Fairview area, Central Business District, Tunnel Road, Hendersonville Road, West Asheville Neighborhood upgrades, removal of large lines on top of tunnel, Clayton Road to Brevard Road, and installation of propane or natural gas back up power at pump stations. Engineering firms will design construction projects and request construction bids for the projects. This design and bid cost is required for the North Carolina Local Government Commission prior to request and issuance of revenue bonds.

Staff reviewed qualifications for each project and selected the following engineering firms:

- o Project One: McGill and Associates – negotiated cost \$1,011,450.00 plus 10 % contingency \$101,145 = \$1,112,595
- o Project Two: Camp, Dresser, & McKee – negotiated cost \$1,606,000 plus 10 % contingency \$160,600 = \$1,766,600
- o Project Three: Cavanaugh and Associates – negotiated cost \$751,075 plus 10 % contingency \$75,107 = \$826,183

- o Project Four: Brown & Caldwell – negotiated cost \$1,084,825 plus 10 % contingency \$104,482 = \$1,193,308

Total cost is not to exceed \$4,898,686 which is not allocated in the current FY 2006/07 budget and must come from the water appropriated fund balance.

PROS:

- These revenue bond projects will enhance the water system and improve customer reliability, fire protection, and ensure we continue to meet all federal and state mandated clean water regulations.
- These funds can be reimbursed from the water revenue bonds to the water fund.

CON: Requires funds to be reallocated from the Water Appropriated Fund Balance.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into Professional Service Contracts with McGill Associates; Camp, Dresser and McKee; Cavanaugh and Associates; and Brown and Caldwell in the amount totaling \$4,898,686 for the projects known as Water Revenue Bond Project, and associated budget amendment.

Councilman Mumpower's position is that we should not be pursuing primary capital water system improvement projects involving revenue bonds prior to resolution of our legal issues with the City and County.

Mayor Bellamy felt that these are needed improvements to all areas of the City, including the Town Mountain service area, Fairview area, Central Business District, Tunnel Road, Hendersonville Road, and West Asheville.

Councilman Freeborn moved for the adoption of Resolution No. 07-127. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 30 - PAGE**

**I. ORDINANCE NO. 3496 - BUDGET AMENDMENT FOR WATER REVENUE BOND PROJECTS**

Summary: See Consent Agenda "H" above.

Councilman Freeborn moved for the adoption of Ordinance No. 3496. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 23 - PAGE**

**J. RESOLUTION NO. 07-128- RESOLUTION DECLARING THE INTENT OF THE CITY OF ASHEVILLE TO REIMBURSE THE WATER RESOURCES FUND FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE IMPROVEMENT OF THE CITY'S WATER SYSTEM FROM THE PROCEEDS OF TAX EXEMPT BONDS TO BE ISSUED IN FISCAL YEAR 2008**

Summary: See Consent Agenda "H" above.

Councilman Freeborn moved for the adoption of Resolution No. 07-128. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 30 - PAGE**

**K. ORDINANCE NO. 3497 - BUDGET AMENDMENT TO SUPPORT THE INCURRED COST ASSOCIATED WITH THE PARKING LOT AND ENVIRONMENTAL SAFEGUARDS IN THE DISC GOLF COURSE AT RICHMOND HILL PARK, WHICH WILL COMPLETE PHASE I OF THIS PROJECT**

Summary: The consideration of a budget amendment in the amount of \$111,500 to support the incurred cost associated with the parking lot and environmental safeguards in the disc golf course at Richmond Hill Park, which will complete Phase I of this project.

Richmond Hill Park construction began in 2006 to develop an 18-hole disc golf course, parking area and driveway. Funds for construction were appropriated at intervals beginning in 2004 for project start up, and again in 2006 for funds to support clean up of sedimentation run off at the construction site, and to further support construction cost of the park features. The total project

budget appropriated to date is \$244,300. The chart below provides detail on the current budget and expenditures to date.

	<b>Budget</b>	<b>Actuals</b>
<b><u>Revenue</u></b>		
Transfer from General Fund	215,000	215,000
Timber Sales	29,300	29,300
<b>Total</b>	<b>244,300</b>	<b>244,300</b>
<b><u>Expenditures</u></b>		
Construction	134,827	133,450
Professional Services	37,900	37,296
Departmental Supplies	70,267	66,848
Other	1,306	1,305
<b>Total</b>	<b>244,300</b>	<b>238,899</b>
<b>Rev. over Expenses</b>		<b>5,401</b>

The current phase of work is virtually complete although the amount of available funds has not kept up with actual construction cost. \$111,500 is needed to pay outstanding expenses associated with the parking lot and environmental safeguards in the disc golf course. Upon review by the Finance Department, staff recommends appropriating the additional \$111,500 needed to complete the current phase of this project from fund balance.

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Pro:

Y Funds will be available in the Richmond Hill Park budget to support existing project cost.

-  
Con:

Y The City of Asheville will spend \$111,500 for the construction of Richmond Hill Park beyond the current capital improvement budget.

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of \$111,500 to support the incurred cost associated with the parking lot and environmental safeguards in the disc golf course at Richmond Hill Park, which will complete Phase I of this project.

In response to Councilman Freeborn, City Manager Jackson said the total amount that has been spent on this project to date is \$238,000, not including this budget amendment request of \$111,500. He said the estimated project costs and construction requirements in the field were higher than anticipated.

Councilman Freeborn felt that the approximately \$350,000 spent on this project was one of the worst decisions the City has made in terms of parks and recreation facilities over the last 10 years. That money could have gone to fix up community centers, pool repairs, etc. He expressed his dissatisfaction on how the project was handled.

In response to Councilman Newman, City Manager Jackson said that City staff has nearly completed a report to Council concerning questions raised, when environmental violations occurred, regarding contract obligations with the National Guard.

In response to Councilman Mumpower, Superintendent of Parks Jim Orr explained what lead to the increase in funds.

When Councilman Mumpower asked if there will be some method for compensation by the National Guard if the City has had to pay for something resulting from their delay, City Attorney Oast said that there will be a method for that, but they have not reached a point of settlement yet.

Councilman Mumpower moved for the adoption of Ordinance No. 3497. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilman Freeborn voting "no."

#### **ORDINANCE BOOK NO. 23 - PAGE**

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

#### **A. N.C. DEPT. OF TRANSPORTATION I-26 CONNECTOR PRESENTATION**

Mr. Alan Thornburg was pleased to be able to update City Council on the I-26 Connector project. This is a regional project and will greatly benefit the City of Asheville. We have unprecedented public collaboration for project design alternatives. The Asheville Design Center (ADC) has worked with the N.C. Dept. of Transportation (NCDOT) to supply some details of their design so that a preliminary analysis of the ADC alignment might be conducted. The NCDOT staff and members of our legislative delegation and the N.C. Secretary of Transportation has come to Asheville to review the ADC alternative and generally supported a feasibility review of this plan. As a result, the NCDOT design engineers as well as two private consulting firms have reviewed the ADC proposal and are grateful for the opportunity to bring the results of their review before City Council.

Ms. Debbie Barber, NCDOT Director of Pre-Construction, presented City Council with the I-26 Connector project status (Transportation Improvement Project No. I-2513). The purpose of the presentation is to explain the transportation decision-making process; show where we are now and the remaining steps in the process; and present the Federal Highway Administration's (FHWA) role in the process.

The goal of the transportation decision-making process is to ensure transportation improvement meets the need in the least environmentally damaging practical way. Using a flowchart, she explained how the process is very complex. Some of the agencies involved in this project include the Federal Highway Administration, the US Army Corps of Engineers, US Fish and Wildlife Service, US Environmental Protection Agency, NC DENR Division of Water Quality, NC Wildlife Resources Commission, NC Division of Cultural Resources, National Park Service, Tennessee Valley Authority, Eastern Band of Cherokee Indians and Metropolitan Planning Organization. They must have the Federal Highway Administration (FHWA) approval of the draft and the final EIS prior to purchasing any right-of-way needed for the project. In addition, towards the end of the project, they need approval for the issuance of environmental permits. She pointed out that the project is somewhat dependent upon others and not in total control of the NCDOT.

Using the flow-chart, she showed Council where we are in the decision-making process (completing the draft of the Environmental Impact Statement (EIS)), again noting the areas where there is partial control by others, total control by others, and total control by NCDOT.

She said their target to complete the draft EIS by this fall. After they complete the draft they will hold a public hearing (probably towards the end of this year) and then they come to milestone of selecting a preferred alternative. We are targeting that timeframe to be early 2008. We are on schedule and the entire project is currently funded for right-of-way acquisition and construction. The right-of-way acquisition will start as early as Fiscal Year 2009 and construction starts as early as Fiscal Year 2012.

Mr. Don Volker, Assistant Division Administrator for the FHWA in Raleigh, explained that the role of the FHWA in this project. They work in a federally assisted state administered partnership. In other words, they provide the funds and the program is administered by the NCDOT. The FHWA does not select, design, build, maintain or operate highways or highway projects. Those are all done by the NCDOT. The FHWA just makes sure that if they want federal highway funds for a project that all the federal rules and regulations are followed. The National System of Interstate and Defense Highways is the most important in the United States. The highways of this system must be designed in keeping with their importance as the backbone of the nation's highway systems. To this end, they must be designed to ensure safety, permanence, utility, and flexibility to provide for the predicted growth in traffic.

He said that there are many design standards that the NCDOT must follow: lane width; shoulder width; normal cross slope; horizontal curvature; super-elevation; tangent grade; vertical curvature; vertical clearance; stopping sight distance; bridge width; horizontal clearance; structural capacity; and design speed. He said that they do not ask the NCDOT to spend tax-payer dollars to develop alternatives that we know will not meet these standards. Their review to date indicates that the design standards cannot be met with the Asheville Design Center (ADC) alternative.

Mr. Charlie Flow, Manager of Design for TGS Engineers, reviewed the ADC Alternative. On May 7, 2007, the NCDOT received conceptual alignment of ADC alternative. General engineering assumptions were needed that would allow the alternative to be evaluated in the most favorable manner. NCDOT directed TGS Engineering to provide and evaluate functional design of the ADC alternative alignment. Several steps in engineering and design were needed to evaluate the ADC alternative.

He explained in detail the design issues for the ADC's alternative alignment of (1) clearances (a) shoulders; and (b) over and under streets and railroads; (2) horizontal alignment (a) curvature; and (b) spirals; and (3) vertical alignment (a) grades; (b) vertical curves; and (c) super-elevation.

He explained in detail the environmental concerns, which consist of (1) historic property impacts - Montford/Riverside Cemetery; (2) stream and wetlands impacts - Smith Mill Creek; (3) air and noise impacts - Montford area; and (4) construction

impacts - temporary detours.

Operational issues consist of (1) I-240 Eastbound Exit ramp to Patton Avenue (Plan vs. Model). If yes, that would equal relocations. If no, that would equal weave concerns at Exit East of French Broad River; (2) I-240 Eastbound Entrance loop from Patton Avenue. Including I-26 Northbound traffic would equal a short weave. Without I-26 Northbound traffic would equal (a) routes Patton Avenue Eastbound traffic to the east side of the French Broad River and adds 2 left turns; (b) increases Eastbound traffic on Smoky Park Bridges; and (c) short entrance ramp to US 19-23-70; (3) I-240 Westbound Exit loop to Patton Avenue - Short ramp would equal queue storage concerns. Including I-26 Southbound traffic would equal (a) short available weaving distance and (b) more traffic making a longer queue. Without I-26 Southbound traffic would equal (a) routes to east side of the French Broad River; and (b) increase to Westbound traffic on Smoky Park Bridges; (4) I-240 Westbound Exit to Hill Street - Short ramp would equal storage concerns. The longer ramp yields a shorter weave created by Montford entrance; (5) I-240 Westbound Entrance from Hill Street - Short ramp would equal sight distance concerns. The longer ramp creates a shorter weave across US 19-23-70 to I-240; and (6) Hill Street Corridor - Storage concerns.

The following are updated construction costs for Alternate 2 - \$144,300,000; Alternate 3 - \$199,300,000; Alternate 4 - \$313,200,000; Alternate 5 - \$249,900,000; and ADC Alternate (which does not include Riverside/Railroad relocation) - \$260,000,000.

Ms. Barber said that we have done a review of the ADC alternative and we did try to make it work. Unfortunately, as Mr. Flow presented, we found design, operational and environmental concerns. Based on our review, we are not recommending that the alternative be carried forward for further study in the draft EIS. We will, however, as part of the draft EIS document our review of the ADC alternative. Therefore, the NCDOT is recommending to move forward to complete the draft EIS and in moving forward we would like to continue to work closely with the City, the Metropolitan Planning Organization, the ADC and the aesthetics committee with a goal of selecting an alternative that would have the least impact possible and provide a safe and efficient transportation facility for this area.

When Councilman Mumpower asked if there are any components of the ADC alternative that might be incorporated into some of the other design alternatives, Mr. Flow said there may be but they have not gone into a deep evaluation yet but as the design develops input will be sought by many groups.

When Councilman Mumpower asked about a trademark bridge, Ms. Barber said that they would want to work with the City and identify a funding source for that. Mr. Thornburg also noted that they do plan to look at design alternatives in terms of aesthetics for the existing bridge and the new bridge(s) that go across the French Broad River. They are aware that this is important not only to the City of Asheville but to Western North Carolina that this project needs to reflect Western North Carolina. He imagined they will look at increased partnership between the state, federal, city and private entities.

In response to Councilman Newman, Mr. Flow said that the updated cost estimates of the alternatives do not include right-of-way costs, only construction costs.

Councilman Newman said that the basic design concepts developed by the ADC means a great deal to the community for a lot of reasons, e.g., how it fits into the community, the economic development opportunities for Asheville, and for our overall growth management strategy. However, no one wants to support an alternative that has flaws that cannot meet the minimum design issues of the FHWA. He asked Mr. Flow, as a registered engineer, if he is telling us that the basic design concepts developed by the ADC cannot be made to work.

Mr. Flow was not prepared to say that, but they have used the same minimum federal criteria that was used for the other alternatives on the ADC alternative. One thing that will happen is by the time they spread the project out enough to get the grades and separations they need, etc., it's going to begin to look like some of the other alternatives. It will spread out. You won't get that tight, concise footprint and meet the design criteria. While it does have appeal for small compact, we can't meet the design standards that small and compact and as it grows, it starts to look like Alternate 4.

Councilman Newman asked if it would be possible to find an engineering solution to the double-decker bridge concept and still meet the standards. Mr. Flow responded that it will be a very difficult to get through the historic district, Riverside, railroad and the landfill. The skew of the project will change and again, it will start to look like Alternate 4.

Councilman Freeborn said that we have the bulk of the community excited about this project (ADC alternative) in a positive manner. He understands the engineering concerns, but with today's technology and innovations in the industry, he hoped that we could find some way to bridge the ADC alternative with the other alternatives. He supported giving the ADC some resources to get a product everyone will feel good about.



Mayor Bellamy asked when the NCDOT will fix the I-26/I-40 interchange. Mr. Thornburg responded that all the funding is not in place for that but they should know this year if they can overcome the funding hurdles. He understands that it is a priority for the community. Mayor Bellamy stressed the need to let the community know as soon as possible what they can expect as far as improvements to that intersection.

Mayor Bellamy said that we are having issues of getting people from north and downtown Asheville to south Asheville. She asked if we could expand Sweeten Creek Road from 2 lanes to 4 lanes to Airport Road. She noted that the project is on the future Transportation Improvement Plan but funding is not available. She asked if it was possible to consider that as part of some improvements to our roadway system. Mr. Thornburg responded that Councilman Newman, member of the Metropolitan Planning Organization, has brought that issue to their attention and they are looking at how to prioritize that.

Mayor Bellamy noted that there is no access to the Emma District in the NCDOT alternatives. Mr. Ken Burleson from TGS Engineering, said that improvements to the access to the Emma area is a separate NCDOT project and they did not take that into consideration nor did they do a cost analysis for it. He did note that they will not be deleting any access that currently exists.

Mayor Bellamy said that the ADC put forward an alternative that could move our community forward. Asheville relies heavily on its beauty to survive and the NCDOT alternatives put forward are not supportive of that. We would like a trademark bridge recognizing that tourism is a big industry for our community. Having a highway through our community is huge and although she appreciates the work of the NCDOT, it's the Asheville citizens that have to live with it after it is built. She also asked that the I-26/I-40 interchange project and the Sweeten Creek Road widening project be designed in a way that will compliment our community. She doesn't want to stop any progress being made, but wants the projects to be attractive and completed in a timely manner. She felt that if those critical issues are handled correctly, that will give other engineering professionals the opportunity to look at the potential problems with the ADC alternative to see if the issues can be worked out.

Councilman Davis fully supported the trademark bridge for Asheville and hoped there is an opportunity for partnership with the City, County and region to have that built.

Mr. Alan McGuinn, representing the ADC, said that they would like the opportunity to study the NCDOT's concerns because it sounds like the ADC Alternative is doable with more engineering. He addressed some of the concerns regarding the grades and weaving; clearance issue; costs; stacking distance; and the ADC alternative looking like Alternative 4. He was encouraged that the NCDOT spent a lot of time and effort in this review because it showed that a lot of their concepts do work.

Councilman Mumpower asked if any of the solutions presented by Mr. McGuinn had merit for the NCDOT to reassess the ADC Alternative. Mr. Flow said that the ADC Alternative doesn't have sufficient advantages above the other alternatives to stop the process and carry it forward as a detail design. He was not saying that elements couldn't be incorporated in the final design, though.

Ms. Barber reiterated that we have to address the design, environmental and operational concerns in order to get the FHWA criteria to be met. When we try to achieve the design criteria, it spreads the project out and it almost goes back to Alternative 4. She said that based on the review, the NCDOT recommends that we proceed with the draft EIS and not carry forward the ADC as a further detailed study. They will document the ADC Alternative in the draft EIS but not carry it forward as an alternative that would be potentially selected.

Mr. Volker said that the NCDOT people said that based on the work done so far, they would have a very difficult time meeting the 13 controlling design criteria with the ADC Alternative. With limited federal funds that go to North Carolina, he was sure that the NCDOT would not want to continue to spend money on an alternative that cannot meet the minimum design criteria set by the FHWA.

Councilman Newman felt that the ADC Alternative has significant potential benefits and he didn't want to give up on the design or parts of it. He wished that Council would have talked about this earlier and had gotten additional engineering expertise. He suggested Council look at the idea of investing resources to the ADC so that they can hire professional engineers to look at the specific concerns outlined by the NCDOT to see if there is a way to meet the federal minimum design guidelines and so as not to lose the positive benefits of the ADC design.

Mr. Thornburg stated that the people who have reviewed the ADC Alternative are all well respected and trained professionals who have come to this conclusion.

Mr. Jeff Weisner, planner with URS which is one of the two private companies that helped with the plan adoption and preliminary design information, said that their engineers looked at the ADC Alternative as well. They quickly found out how complex the project was. His firm's engineers discovered that it would be very difficult to meet all the design standards. He said

some of the standards are very difficult and complex to overcome.

Councilman Freeborn felt the community has put forth their design choice and we need to fully explore that. He was willing to support putting additional resources in to hire a professional engineer to explore the concerns outlined by NCDOT and look for solutions since Asheville is going to be the biggest municipality that will be affected by this project.

In response to Mayor Bellamy, Mr. Weisner said that their contract with the NC DOT is approximately \$235,000 to assist with the completion of the draft EIS.

In response to Mayor Bellamy, Mr. Burleson said that TGS Engineer's contract with the NC DOT has been supplemented many times and is approximately \$2 Million, but he has been working on this project for 12 years. He would hate to see the project delayed for another 3 or more years because the ADC Alternative has so many flaws.

Mayor Bellamy asked Mr. Thornburg if they would consider the ADC Alternative as part of the draft EIS if Council is willing to spend between \$235,000 to \$2 Million to look for solutions. Mr. Thornburg responded that for the last 7 years, 4 Alternatives were evaluated for the draft EIS. He explained that this is not an insignificant process. He couldn't predict the time and financial impact that would be added to add the ADC Alternative because the process would have to start close to the beginning again. The delay would be significant along with significant inflationary costs on the project as well.

Mr. Derek Weaver, with the project development branch of NCDOT, said that they were hoping to select a preferred alternative in January and they cannot select a preferred alternative if there is another alternative present without evaluating that alternative at the same level of detail and design that the other 4 alternatives received. If another alternative is brought forward, there has to be enough time for us to evaluate that and the project will be delayed. They will, however, look at all alternates, but they have looked at the ADC Alternative, evaluated it to a point where they felt it's not worth moving forward. They evaluated Alternative 1 and decided that was not worth carrying forward as well. At this point, he believed the NCDOT will continue forward to complete the draft EIS and if another alternative is brought forward at the hearing after the draft is complete, it can be considered in the final EIS. That may delay their schedule, but it doesn't mean it can't be done.

Councilman Newman wondered if we could ask our staff to bring us some information about investing resources to have some engineers work with the ADC and to provide any other feedback to them or Council about the concerns raised. He has heard some interest expressed by the County Commissioners about that same idea, so if we move in that direction, that is something that we could ask them to participate with us on.

Mayor Bellamy was concerned that if Asheville invested resources into a plan there is no guarantee that the plan would move forward. She wondered if we should send people to Raleigh and lobby NCDOT to make sure what is built keeps the sensitive nature of the area and that the aesthetics are included. Realistically we need to work with the Aesthetics Committee to make sure the project blends in with the City of Asheville. She would have to make sure that any investment will be used and the product is actually honored.

Councilman Newman supported giving our City Manager direction to bring back a couple of different options for Council to look at in terms of investing some resources to the ADC to see if we can solve some of these problems. There are two members of Council not at this meeting and because this is such an important issue perhaps we should discuss this at the next meeting.

Mr. McGuinn said that they believe the engineering evaluation costs to correct some of the concerns would be in the range of \$50-70,000 and would love to see if the ADC could participate as well, in addition to the City and County. He would hate to see the City made a hasty decision without fully investigating the concerns, however, did didn't want to slow down the process.

Councilman Mumpower is not supportive of more delays and additional costs.

Mayor Bellamy said that when a Council member asks for additional information, we normally adhere to it.

Councilman Davis understands that the NCDOT has identified flaws with the ADC Alternative and he didn't hear that they have a real willingness to wait for us to determine if solutions could be found to meet the federal minimum design standards. He felt we are just spinning our wheels.

Councilman Mumpower asked if the information presented by the NCDOT contains all the information the ADC needs to address the flaws in their plan. Mr. Flow said that their timeframe was one month to do a high level overview to look for large flaws. To say that they have given Council every design problem would be ridiculous. They have not had that level of time to do that and it will take time.

Mayor Bellamy said that Councilman Newman has requested additional information from our City Manager.

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

**A. PUBLIC HEARING TO CONSIDER A RESOLUTION TO AMEND THE CITY'S 2007 CONSOLIDATED ACTION PLAN TO PROVIDE FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO WORLD CHANGERS INC.**

**RESOLUTION NO. 07-129- RESOLUTION AMENDING THE CITY'S 2007 CONSOLIDATED ACTION PLAN TO PROVIDE FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO WORLD CHANGERS INC.**

**ORDINANCE NO. 3498 - BUDGET AMENDMENT TO PROVIDE FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO WORLD CHANGERS INC.**

Mayor Bellamy opened the public hearing at 7:06 p.m.

Community Development Analyst Angie Cullen said that this is the consideration of a resolution and budget amendment to amend the City's 2007 Consolidated Action Plan to provide for a Community Development Block Grant (CDBG) to World Changers Inc. This public hearing was advertised on June 15 and 22, 2007.

World Changers, Inc. is a national, faith-based, non-profit organization which organizes summer youth missions to carry out community projects around the nation. They will bring about 400 youth to Asheville the week of July 8-14. Among other assignments they will work on two projects in the West Riverside Weed & Seed area: they will make repairs to about 13 homes in the Burton Street neighborhood and also renovate vacant units at Pisgah View Apartments for re-leasing. The homes in need of repair in the Burton Street area were identified by the neighborhood association and are primarily homes of the elderly. Repairs will run the gamut from new roofs to fixing leaking faucets. World Changers has asked the City to fund the cost of materials for the Burton Street homes at an estimated cost of about \$1,600 per home. The Housing Authority will provide materials for Pisgah View.

A public hearing is required before approval of this amendment to the City's Annual Action Plan. Hearing notices were published on June 15 and June 22, 2007.

Staff has identified two sources of additional CDBG program income which can be used to fund this project: (1) approximately \$10,000 from a rent increase on City-owned property on Biltmore Avenue, and (2) \$11,165 in deposits released from escrow on completed sales of City-owned property.

Pros:

- Contributes significantly to the Weed and Seed initiative
- Has enthusiastic neighborhood support
- World Changers has long experience in managing this type of project.

Cons:

- World Changers uses only outside volunteers, not local youth.

Staff recommends City Council approve a resolution to amend the City's 2007 Consolidated Action Plan to provide for a CDBG in the amount of \$21,165 to World Changers, Inc. and the associated budget amendment.

Ms. Annie Davidson, member of the Burton Street community, supported these actions.

Mayor Bellamy closed the public hearing at 7:11 p.m.

Councilman Mumpower felt the City should not be taking money from our federal government with our huge national debt, however, since we have already received the money we need to be thoughtful on how we spend it.

Councilman Davis hoped that we might consider this as a model on a local level using local youth to carry out local projects.

Mayor Bellamy said that we are working with Biltmore Baptist, a local church, to help coordinate this effort.

Mayor Bellamy said that members of Council have previously received copies of the resolution and ordinance and they would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-129, to amend the City's 2007 Consolidated Action Plan to provide for a CDBG to World Changers Inc. in an amount not to exceed \$31,000. This motion was seconded by Councilman Mumpower and carried unanimously.

**RESOLUTION BOOK NO. 23 - PAGE**

Councilman Freeborn moved for the adoption of Ordinance No. 3498. This motion was seconded by Councilman Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 23 - PAGE**

**B. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF 341 ROCKWOOD ROAD TO HIGHWAY BUSINESS DISTRICT**

**ORDINANCE NO. 3499 - ORDINANCE TO INITIALLY ZONE 341 ROCKWOOD ROAD TO HIGHWAY BUSINESS DISTRICT**

Mayor Bellamy opened the public hearing at 7:17 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone 341 Rockwood Road to Highway Business District. This public hearing was advertised on June 15 and 22, 2007.

The City of Asheville has recently completed (effective April 30, 2007) the voluntary annexation of a 1.93 acre tract located on Rockwood Road in South Buncombe County. A restaurant building is close to completion on the property. The parcel was zoned Employment under Limestone Township zoning in Buncombe County.

Other properties in the Airport Road/Rockwood Road area that are within the City's jurisdiction are zoned Highway Business. Staff proposes, at the request of the property owner, the same zoning for this parcel. At their meeting on May 2, 2007, the Asheville Planning and Zoning Commission unanimously recommended this initial zoning to the Asheville City Council.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

Con:

- Some might be concerned with additional HB zoning in the area.

Based on the above findings and the analyses provided in the report, staff finds this request to be reasonable. At their meeting on May 2, 2007, the Asheville Planning and Zoning Commission unanimously recommended this initial zoning to the Asheville City Council.

Mayor Bellamy closed the public hearing at 7:18 p.m.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3499 and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilman Freeborn voting "no."

**ORDINANCE BOOK NO. 23 - PAGE**

At 7:18 p.m., Mayor Bellamy announced a short recess.

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE STORMWATER EROSION CONTROL ORDINANCE**

Mayor Bellamy opened the public hearing at 7:26 p.m.

Stormwater Services Manager Chad Pierce said that this is the consideration of an ordinance amending the Unified

Development Ordinance "UDO" relating to revisions to the stormwater erosion control ordinance. This public hearing was advertised on June 15 and 22, 2007.

As part of the Environmental Protection Agency's Federal Stormwater Regulations, the City of Asheville is required to meet six minimum measures in efforts to improve water quality from stormwater runoff. These measures include public education, public involvement, illicit discharge regulations, construction site and post-construction site measures and good housekeeping measures. In order to be in compliance with the Federal regulations, the City of Asheville must revise the Stormwater and Erosion Control Ordinance in the Unified Development Ordinance.

In an effort to make the ordinance more consistent and user-friendly, we recommend combining the Stormwater Ordinance and Erosion Control Ordinance into one ordinance.

A stakeholders group was formed called the Watershed Policy Committee to review and evaluate the proposed ordinance. Several members were invited to participate in this process. Due to scheduling conflicts not all members were able to attend. The active group consisted of the following people:

- Barber Melton                      Coalition of Asheville Neighborhoods
- Starr Silvis                        NC DENR
- David Herbert                    Property Owner
- Jeff Van Hartesfeld              Crowfields Condominiums
- John Broadbrooks               Landscape Architect
- Jeff Slosman                       Manufactures Association
- Bruce Tompkins                 Biltmore Village
- Hartwell Carson                 RiverLink
- Mike Goodson                    Buncombe County

The group reviewed thirteen decision points and made recommendations for each. The group had full consensus on all issues with the exception of buffers. The group was equally split on the required width of the buffers.

At the June 6, 2007, Planning and Zoning Commission Meeting, the Commission approved the recommended changes, with a recommended buffer width of 50 feet on all jurisdictional waters.

Staff met with the Council of Independent Business Owners on June 8, 2007, the Coalition of Asheville Neighborhoods on June 11 and a joint group of the North Carolina Home Builders Association and the Asheville Board of Realtors on June 21, 2007.

Pros:

- The implementation of these regulations will improve water quality.
- The Stormwater and Erosion Control Ordinances have been consolidated. This should make the ordinance more user-friendly.
- These changes meet the goals and objectives of the 2025 plan.
- The City of Asheville will be in compliance with the Federal Stormwater Mandate and the North Carolina Sediment and Erosion Control Law.

Pro and Con:

- Ordinance provides for increased fines and penalties.

Con:

- In some cases, these changes will increase development costs.

Staff recommends that the City Council review and take public comment on the Stormwater and Erosion Control Ordinance and continue the public hearing on this item to July 24, 2007.

Mr. Pierce said that the NPDES Phase II requirements are that the City of Asheville must revise its stormwater and erosion control ordinances and adopt an illicit discharge ordinance by July 1, 2007, to comply with federal and state regulations. The NPDES Phase II goals are to improve water quality by reducing amount of pollution that is transported to our streams by stormwater run-off.

He said this ordinance meets the 2025 City Development Plan.

City staff teamed with consultants to research and analyze concepts from State's Minimum Model Ordinance, other communities ordinances and existing City ordinances as a baseline for comparisons. The staff and consultant team qualified each concept by using goals from the City's 2025 plan and a working knowledge of development issues in Asheville's mountainous terrain. The team compiled 13 decision elements, which were not adequately addressed in the State's minimum requirements or the City's current ordinance. These items are critical for future protection of public safety, quality of life, environmental resources and sustainable development.

A stakeholders group, called the Watershed Policy Committee, was formed to review each of the 13 critical decision elements and make recommendations. Several members were invited to participate in this process; however, due to scheduling conflicts not all members were able to attend. The active group consisted of the following people: Barber Melton (Coalition of Asheville Neighborhoods), Bruce Tompkins, Co-Chair (Biltmore Village), David Herbert (Kenilworth Community), Hartwell Carson (RiverLink), Jeff Slosman (Manufactures Association), Jeff Van Hartesveldt (Crowfields Condominiums), John Broadbooks (Landscape Architect), Mike Goodson (Buncombe County) and Starr Silvis (Division of Water Quality).

He reviewed the stakeholder decision elements as follows:

#### Item 1 - Aquatic Buffers.

Stakeholder recommendations:

- o Zone A - No land disturbance or impervious surface allowed, unless hardship is proven.
- o Zone B - Allow impervious pedestrian and non-motorized vehicle paths and trails, utilities and maximum of a 10% encroachment for all other construction. Land disturbance within Zone B is limited to the construction of the allowances.
- o For redevelopment, requirements for aquatic buffers must be met, only if project qualifies as a substantial improvement. For projects qualifying as substantial improvements, if the required aquatic buffer has been encroached and/or disturbed it must be re-established.
- o For redevelopment projects that do not qualify as a substantial improvement. Staff shall research and determine if incentives for re-establishing aquatic buffers, such as credits for stormwater utility fees, can be applied. However, the scope of this process is outside this ordinance revision.

Mr. Pierce then reviewed the minimum aquatic buffer width recommended options.

#### Item 2 - Constructed Slopes.

Stakeholder recommendations:

Definitions

- o Define constructed severe slopes as a constructed slope with a grade of 50% (2:1) or greater.
- o Define constructed moderate slopes as a constructed slope with a grade of 25% (4:1) but less than 50%.

Certification of Slopes

- o Require design, inspection and stability certificate by NC registered professional engineer with geotechnical expertise for constructed severe slopes greater than 8' in height. Stability certificates shall verify slopes compaction and ability to maintain soil and vegetation.
- o Request that NC registered professional engineer with geotechnical expertise provide periodic inspections and compaction reports for all constructed severe slopes within existing or future public rights-of-way.

Slope Setback Requirements

- Require setback from existing adjacent property and right-of-way lines for retaining walls and constructed moderate and severe slopes as indicated in a picture which will be set forth. The constructed moderate and severe slopes shall include those created for the construction of retaining walls. The setback shall be measured from and applied for both the head and the toe of the slope.
- For slopes with a maximum height of 5' or less the setback shall be equal to the height of the slope.
- For slopes greater than 5' in height with a grade of 45 degrees, (1:1) or less the setback shall be 5'.
- For slopes greater than 5' in height with a grade greater than 45 degrees, (1:1) the setback will increase based on height and grade.
- Slope setback exemption: Where requirement will present a hardship, the required setback may be reduced if a subsurface exploration analysis of the area is completed by a NC registered professional engineer with geotechnical expertise and it is determined that a reduction in the setback will not cause greater risk of damage to adjacent public and private properties.

#### Item 3 - Requirements for Land Disturbances Allowances

Stakeholder recommendations:

- Security for re-vegetation - For all property, disturbance limits may exceed 1 acre, only if construction bond or letter of credit is provided. Bond shall be sufficient to re-vegetate proposed disturbed area and must be valid for 1 year from

the issuance of the permit and if land disturbing activity exceeds one year in time, the bond or letter of credit must be updated.

- Maximum limits of disturbance at one time
  - Require grading on all property with 15% or greater natural average slope to be limited to disturbing 5 acres or less at a time
  - For a development, an increase in the limits of disturbance allowed at one time may be granted by the Stormwater Administrator if it can be demonstrated that public benefit is provided.
- Requirements for developments that have total allowable disturbance restrictions
  - Prior to final inspection approval for any phase of grading for developments with restrictions on total amount of disturbance, require "stamped" as-built drawings of disturbed areas to verify compliance.
  - Require deed restrictions for allowable disturbance areas within hillside and ridge top subdivisions.

#### Item 4 - Ground Cover

Stakeholder recommendations:

- Sufficient permanent or temporary ground cover must be provided within 14 calendar days of completion of approved construction activity.

#### Item 5 - Borrow and Waste Areas

Stakeholder recommendations:

- Require borrow/waste calculations for all developments with 10,000 s.f. or greater land disturbance and require proof of approved borrow/waste site prior to issuance of permit, if site is not excluded by mining or landfill act.

#### Item 6 - Design Storms for Erosion Control

Stakeholder recommendations:

- Require erosion control measures to be designed for 10-year storm event as per existing ordinance
- Allowance for staff to require erosion control measures for sites or specific measures on a site to be designed for 25-year storm if deemed necessary due to critical downstream areas, areas identified within watershed master plans and time of year construction.

#### Item 7 - Application and Exemptions for Stormwater Management

Stakeholder recommendations:

- Require application of the stormwater management ordinance to development and redevelopment that: cumulatively disturbs one acre or more; and/or
  - Will have 50% or more total impervious surface on a parcel, independent of disturbance amount, excluding 1-2 family home structures.
  - For redevelopment, only the addition of impervious and/or built upon area shall comply with the stormwater ordinance
  - An exemption shall be granted for redevelopment with disturbance less than 1 acre, if reduction in impervious surface on parcel is achieved.

#### Item 8 - Post-Construction Stormwater Quality Control

Stakeholder recommendations:

##### Peak Flow Reduction

- Require PEAK FLOW control (retention) to pre-development rates for the 2-year, 24-hour and the 10-year, 24-hour storm and pass the 50-year, 24-hour storm event, per existing ordinance
- Allow Stormwater Administrator to require control to pre-development rates for the 25-year, 24-hour storm if by using existing watershed engineering analysis it is determined that downstream systems would fail due to the additional peak flows from the 25-year, 24-hour storm event.

##### Volume Reduction

- Require VOLUME control: extended detention, 24-hour to 120-hour drawdown, for the 2-year, 24-hour storm to protect downstream channels.
- Allow Stormwater Administrator to require volume control up to the 25-year, 6-hour storm if by using existing watershed engineering analysis it is determined that downstream systems would fail due to the additional flows from the 25-year, 6-hour storm event.

##### Exemptions

- Stormwater peak and volume control may not be required if the applicant can demonstrate through engineering analysis that the proposed development has no negative impact on downstream property, infrastructure and natural systems. The Stormwater Administrator will determine if requirements for stormwater peak and volume control are waived.

#### Item 9 - Post-Construction Stormwater Quality Control for Low Density Development

##### Stakeholder recommendations:

- Require same requirements as for high density developments.
- Provide incentives for low impact development projects with other tools

#### Item 10 - Post-Construction Stormwater Quality Control for High Density Development

##### Stakeholder recommendations:

- Require structural stormwater systems for the control and treatment of the first 1" of rainfall on the developed site.
- Require a runoff volume drawdown 24 - 120 hours.
- Discharge the storage volume at a rate less than or equal to the pre-development rate.
- Require average annual TSS removal of 85%.

#### Item 11 - Regional Stormwater Management Facilities

##### Stakeholder recommendations:

- Do not allow provisions for development to provide fee in lieu of constructing on-site stormwater management systems for regional systems.

#### Item 12 - Maintenance and Inspection Requirements

##### Stakeholder recommendations:

##### Maintenance and inspection for erosion control requirements

- Require that for sites with 10,000 s.f. of disturbance or greater a during construction contract with a licensed professional for erosion and sediment control plan compliance checks be in place prior to issuance of permits.
- Licensed professional shall perform weekly inspections and file reports for all sites regulated by steep slope standards and bi-weekly for all other sites.

##### Maintenance and inspection for stormwater compliance

- Require a during construction contract with person of equivalent licensure to that of designer for stormwater plan compliance for sites requiring a stormwater drainage system, prior to issuance of permit.
- The licensed professional shall perform weekly inspections and file reports for all sites regulated by steep slope standards and bi-weekly for all other sites and must inspect all stormwater control systems as installed. Installation of all BMPs must be inspected.
- Require record drawings to be recorded and clearly identified all stormwater control systems, which must also be indicated on the inspection and maintenance agreement.
- Require that all stormwater control systems be located outside of public rights-of-way unless public benefit can be proven and Stormwater Administrator approves.

#### Item 13 - Enforcement

##### Stakeholder recommendations:

- Adopt penalty schedule.

Mr. Mark Hunt, Vice-Chair of the Asheville Greenway Commission, said the Greenway Commission endorses the recommendation as outlined in Option 2 - the 30 plus 20 foot buffer in all cases; (2) request that greenways be specifically allowed in B buffer zone without condition; (3) ordinance should allow for hardship exceptions to be made and ask council indicate support for greenways be generally allowed as an exception; (4) ordinance should be clear how such hardship exceptions would be allowed and who would have the authority to grant those.

Mr. Joe Ferikes, a major stakeholder along the French Broad River, was concerned about the aquatic buffer requirements. He said that people along the River area are already highly regulated by State and FEMA regulations and they don't need another level of regulation regarding aquatic buffers. Since the new FEMA maps will be out soon, he suggested Council wait on this portion of the ordinance.

Mr. Alan Shepherd, owner of property on the River, urged Council to wait until the FEMA maps are out because they will tell people where they cannot build.

Ms. Patti Beaver, representing the Council of Independent Business Owners, requested this matter be continued in order to give Council and staff further opportunity to study the full impact of some of the items that do go above and beyond the federal mandates, especially in the buffer areas.

Mr. Joe Bassett supported the revisions to the ordinance.



In response to Mayor Bellamy, City Engineer Cathy Ball said that we anticipate receiving the draft FEMA maps in the July or August timeframe.

Councilman Newman suggested maybe having larger buffer areas that are more environmentally sensitive in areas where we don't want to foster intense development, but in areas where we want to encourage intense quality infill development, to have different standards.

Councilman Mumpower requested information on the number of abuses we have encountered using the standards of development in the past ten years.

In response to Councilman Freeborn, Ms. Ball said that the FEMA maps relate to flooding and these buffers relate to water quality.

Councilman Davis hoped that we will consider what effect these new regulations will have on secondary streams and lakes.

Mayor Bellamy felt it was important to look at impacts on tributaries and creeks. She suggested reviewing the regulations in those areas where the topography and grade is higher, e.g., having two silt fences instead of one silt fence. She also questioned how we will deal with failures other than fines. She suggested a meeting be held specifically in the French Broad River area, including the River District Design Review Committee and property owners to explain in detail the maps and how their properties are impacted so they are clear on what they can do with their property. Also, when staff comes back to Council, she requested some maps to show the buffer areas, etc. She also said it was important that the existing ponds that we have in place are kept clean from trash and litter.

Councilman Newman questioned if there was a mechanism to disclose chronic violators for public awareness.

Councilman Freeborn moved to continue this public hearing until July 24, 2007. This motion was seconded by Councilman Davis and carried unanimously.

## V. UNFINISHED BUSINESS:

### **A. HEALTH CARE BILLS OF INTEREST TO MISSION HOSPITALS**

City Manager Jackson said that Mission Hospitals has asked for Council to vote in support of Healthcare Bills 265 and 1512.

Mr. John Ferguson of The Ferguson Employee Benefits Agency provided Council with an analysis of House Bill 265 - A proposal to establish a high risk pool to provide health insurance to those currently unable to access coverage due to health conditions - as follows:

#### The problem:

- **15.6% of NC population is without health insurance (1.3 million residents).**
- Health expenses are the leading cause of bankruptcy in the US.

#### The current system:

- Medicaid and NC Health Choice are two programs designed to help this population, but most of the uninsured do not qualify for either program. Sadly, many that do qualify are not enrolled.
- The majority of uninsured pay for physician and drug claims out of their own pocket, or avoid treatment altogether due to the cost. They are generally unable to pay large hospital claims, but still receive the care. The cost of hospital claims for the uninsured is **spread out among those with insurance in the form of inflated charges**. Most estimates are in the 10% range (of all healthcare dollars), but some claim it to be as high as 33%.

#### The cost of the current system to the City of Asheville:

- Using the generally accepted estimate of 10%, and assuming the claims for The City of Asheville for 2007 approximate the estimate of \$6,082,531, The City's claims will be inflated by **\$608,253** due to this problem.
- The cost is inflated by the lack of preventive and well care received by this population. They generally get care only when the condition has reached the point of a hospitalization. Earlier and lower cost care could have prevented the higher cost claim.

#### The proposed solution (house bill 265):

Provides coverage at **premiums equal to 175% of standard rated premiums** for high risk individuals who can prove they were unable to access affordable coverage through private insurance. Even this coverage would be cost prohibitive to many. The majority of the uninsured are not high risks and would not be participants in this program. 57% of those without coverage are between the ages of 18 and 34 and either assume they will be healthy and take the risk to save the premium, or are not yet in an employment situation that provides access to coverage.

- **Would address only a small portion of the uninsured population, about 8,000 of the 1.3 million NC uninsured.**
- Would cost \$40,000,000 to \$66,000,000 in 2008.
- **Would be funded by:**

- a. **A tax** on insurance premiums to be paid by
  - insurers
  - TPA's (Third Party Administrators)
  - excess loss insurers

Note: if added to the TPA tax, means that self funded employers would be taxed twice (hopefully corrected in final bill).

Tax would be as follows:

- \$ .70 per month per employee in 2008 and 2009
  - \$1.00 per month per employee in 2010
  - \$1.30 per month per employee in 2011
  - \$1.70 per month per employee in 2012
  - \$2.00 per month per employee in 2013
- b. A minimal federal contribution
  - c. Premiums paid by the high risk participants

#### **Cost of proposal to the City of Asheville:**

- Because the program proposes to cover only a small portion of the uninsured (albeit the higher risk uninsured), the impact on reducing hospital write offs of unpaid claims will be negligible and even that would be wholly dependent on the hospital actually passing on that savings.
- Assuming the final bill corrects the double taxation of self funded plans that appears to be unintentionally written into the current bill, and assuming no savings from reduced hospital charges, the annual cost to the City of Asheville would be as follows:

- 2008:  $1,230 \times \$ .70 \times 12 =$  **\$10,332**
- 2009:  $1,230 \times \$ .70 \times 12 =$  \$10,332
- 2010:  $1,230 \times \$1.00 \times 12 =$  \$14,760
- 2011:  $1,230 \times \$1.30 \times 12 =$  \$19,188
- 2012:  $1,230 \times \$1.70 \times 12 =$  \$25,092
- 2013:  $1,230 \times \$2.00 \times 12 =$  \$29,520

- The above reflects the cost of the program as currently written and designed to address only a small portion of the problem. **What if future legislation expanded this program to attempt to include all uninsured high risks?** Assuming statistical norms, 10% or 130,000 of the 1.3 million uninsured in NC have chronic conditions that would elevate them to the category of "high risk". The cost to the City of Asheville to expand the program to cover all of them would become significant:

- 2008:  $1,230 \times \$11.37 \times 12 =$  **\$167,821**
- 2009:  $1,230 \times \$11.37 \times 12 =$  \$167,821
- 2010:  $1,230 \times \$16.25 \times 12 =$  \$239,850
- 2011:  $1,230 \times \$21.12 \times 12 =$  \$311,731
- 2012:  $1,230 \times \$27.62 \times 12 =$  \$407,671
- 2013:  $1,230 \times \$32.50 \times 12 =$  \$479,700

At this level of expense, the question of whether or not the providers pass on the savings becomes quite critical. In theory our claims are inflated by approximately 10% (**\$608,253 in 2007**) to cover the claims the providers have to write off due to uninsured high risk patients. If charges are reduced by this amount to reflect the fact that the uninsured high risks are now insured, the above costs of the program make more sense. **This theory is dependent upon the providers passing on that savings.**

#### **Probability of passage:**

- Similar to legislation already in place in 33 other states.
- Similar bill passed last year by a vote of 95 to 10, but was not brought up by the senate before adjournment.
- Must be reconciled with senate version, but **eventual passage is probable.**

#### **Impact on future legislation:**

- Both proponents and opponents alike state that this is only a first step, and is designed to address only a small portion of

the problem. Opponents fear it will lead to a universal health structure. Some proponents hope that it will indeed lead us down the universal healthcare path, but many legislators support the bill based purely upon the impact on the current situation for high risk individuals.

#### **Impact on the City of Asheville:**

- The cost is minimal relative to the overall cost of the COA plan, but the ROI is even lower. The program would cost the COA \$10,332 in 2008 grading up to \$29,520 in 2013. In theory, that cost would be offset by reduced hospital charges since the hospital would write off fewer losses due to fewer uninsured high risk patients, but there is no guarantee this would occur, and it cannot be expected.

#### **Impact on the overall cost of healthcare:**

- The bill is not likely to have any impact on the overall cost of healthcare. Some proponents are claiming that the cost of healthcare in NC could remain flat or even be reduced if this bill passes and is expanded. Any impact would come from high risk patients who now have coverage getting preventive and well care that they would not have gotten without the coverage, thus avoiding a higher claim later on. However, while this strategy has proven very effective for individuals and even groups (The Asheville Project), it cannot be expected to reduce the overall cost of healthcare to the population as a whole. For example, if the hospital purchases a new piece of new technologically advanced but expensive equipment, the cost of that equipment must be passed on to those who fund healthcare (patients, employers, government, etc.). If half as many patients use the equipment because they are getting better preventive care and well care, it does not reduce the cost of the equipment, and the hospital must simply double the charge for those who do use the equipment.

#### **Impact on high risk individuals:**

- It is with individuals, specifically high risk individuals not covered by a pooled insurance plan, that the bill can have its greatest impact. The theory of insurance is that the healthy support the sick and risk is spread among the population as a whole. This system is not working for far too many high risk individuals. The bill could cap premium expense for such individuals at 175% of similar coverage for healthy individuals. Some high risk individuals currently pay as much as 700% or cannot get the coverage at all.

Mayor Bellamy said that if Council endorses House Bill 265, she would write a letter to Mission Hospitals stating that if the House Bill passes, as we go forward, we would hope that the Hospital would reduce their charges because of fewer less uninsured patients.

Councilman Freeborn moved to endorse House Bill 265. This motion died for a lack of a second.

Mayor Bellamy said that Senate Bill 1512 - An act to enact the "Healthy NC" program to facilitate the availability of affordable accident and health insurance coverage to small employers, self employed individuals, and uninsured workers; to create the North Carolina health insurance risk pool to help meet the health insurance coverage needs of individuals who cannot obtain affordable health insurance because of high risk health conditions and to appropriate funds for the implementation of this act - failed to meet the May 24 deadline and will no longer receive consideration during the 2007 Session.

Councilman Newman said that he didn't feel he had the expertise on this matter to weigh in.

Mayor Bellamy felt it was important to update City Council about health care/health insurance coverage issues. She said that in August or September she would set aside a worksession for this update.

## **VI. NEW BUSINESS:**

### **A. RESOLUTION ADDRESSING THE INCORPORATION OF THE TOWN OF LEICESTER**

Planning & Development Director Scott Shuford said that this is the consideration of a resolution addressing the incorporation of the Town of Leicester.

Citizens in the Leicester area of Buncombe County have petitioned the State Legislature to incorporate approximately 67.6 square miles of property containing about 16,800 residents and traversed by Highway 63, northwest of Asheville. The area proposed for incorporation constitutes the entire township of Leicester, as it currently exists. By contrast, the City of Asheville has an incorporated area of approximately 44 square miles and a population of 73,000 residents. The approximate respective densities are 250 (Leicester) and 1700 (Asheville) persons per square mile.

According to the petition filed with the State, the Town proposes a tax rate of .05 cents per \$100 valuation, which is the minimum required by statute. This is in addition to the fire district tax (10-12 cents, depending on district) that is already assessed.

This additional tax is anticipated to generate approximately \$200,000 in revenue. Four services are proposed to be provided by the Town:

- Fire protection through a contract with the rural fire districts that currently serve the area (there are four such districts).
- Police protection through a contract with the county sheriff department (2 additional deputies).
- A street lighting program.
- Planning services (continuation of Buncombe County zoning).

Under the proposed Charter of the Town of Leicester, a five-member Town Council will be created and will operate under the council-manager form of government.

Legal and Process Issues: Under the North Carolina Constitution, municipal incorporation requires an act of the legislature. Petitions for incorporation are filed with the Joint Legislative Commission on Municipal Incorporation. Upon receiving the petition, the Commission undertakes a "Phase 1" review, which is simply to determine the sufficiency of the petition, which must contain certain information. There follows a "Phase 2" review, which focuses on whether the area meets the criteria for incorporation (density, degree of development; but a lower threshold than for annexation), and whether the services promised can actually be delivered.

During this process, the incorporating municipality must notify all other cities in the county or counties wherein it is located, and must notify any city of 50,000 or more that is within 5 miles ("proximity test"). In the case of Leicester, Asheville is within 5 miles and has been notified. Under the law, if a petition is insufficient (Phase 1), it may not be processed; if the criteria are not met (Phase 2), the Commission must make a "negative recommendation" to the General Assembly. Similarly, if there is a city that meets the proximity test that does not express its approval of the proposed incorporation (part of Phase 2), the Commission may not make a positive recommendation. In the event of a negative recommendation, the Commission may hold a public hearing and may, in certain circumstances, require a referendum (presumably of the affected area). Even if the Commission makes a negative recommendation, the legislature may still incorporate. However, if there is a city of 50,000 or more within 5 miles, incorporation requires a three-fifths vote of the General Assembly, whether or not that city approves of the proposed incorporation.

Residents of the proposed area of incorporation for Leicester have submitted their petition and satisfied the basic Phase 1 requirements. The Legislative Commission is waiting on Asheville to express its position on this incorporation before moving forward with the incorporation process.

#### Staff Comments:

A. Purposes of incorporation. The most obvious comment about this incorporation effort is that it appears to be primarily a "defensive" one, initiated to stop possible annexation by Asheville and the Town of Woodfin, rather than to create an urban area of enhanced public services. This is apparent from the proposed list of services which, with the exception of street lighting, are merely continuation of existing County and rural fire district services. Also, the density of the area exhibits much more of a rural character than is appropriate for the urban recognition that comes with being a town.

B. Conflicts with Asheville and other municipalities. Due to significant topographic and service delivery issues, the City of Asheville's annexations in this area have been slower than they have been in the south and west. A small portion of the proposed Town of Leicester overlaps with the City's extraterritorial jurisdiction area (ETJ) and with the area included in the City's resolution of consideration for annexation. Also of concern is that part of the proposed Town of Leicester would overlap part of the area that is of interest to the Town of Woodfin, and has been the subject of our annexation agreement discussions with Woodfin officials. Finally, Council should bear in mind that this incorporation would create a "town" that would be the sixth largest in N.C. in terms of land area, but only the 49th largest in population. The recent incorporation of Mills River also created a large town (the second largest in WNC in area) but it is only 1/3 the area of the proposed Town of Leicester; Mills River has approximately 6,150 residents (about 280 persons per square mile). Another fact of interest, the proposed size of the Town of Leicester is roughly the same as our nation's capital (Washington, DC, is about 68 square miles). Leicester's population is about 2.8% of DC's 581,500.

C. Service delivery issues. Even with the addition of 2 deputies, it is difficult to see how the proposed Town of Leicester could enjoy an enhanced level of service from incorporation over what it already has; the services it proposes to provide are primarily continuations of current arrangements. The sheer size of the proposed town represents a considerable obstacle to efficient and effective delivery of municipal services.

D. Planning and zoning issues. The Town of Leicester would remain subject to Buncombe County zoning. Under the recently-adopted Buncombe County zoning ordinance, the majority of the area is zoned OU (Open Use). The uses permitted in this classification are, as its title indicates, essentially unlimited, except for a few prohibited uses. There is a cluster of more specifically zoned property in the extreme southeastern corner of the area, where it begins to take on a more urban character.

From a land use planning perspective, it would appear to make more sense for the incorporation to be concentrated in a much smaller area, generally centering on the Highway 63 and Alexander Road / Old Newfound Road intersections. This location exhibits a more "urban" development pattern than the remainder of the proposed area of incorporation; it is already known and accepted as the "town center" of Leicester. The incorporation of this area would allow the "town center" of Leicester to be established now and perhaps expanded at a later date, while also allowing a more comprehensive planning program to be developed that would address the concerns of Asheville (and potentially Woodfin) about the scale of the proposed incorporation and the ultimate land use pattern. Additionally, such an approach would allow the Town of Woodfin to be consulted about the desired land use pattern and service delivery on its border with the Town of Leicester in much the same way as has occurred during the Asheville's negotiations with Woodfin regarding the proposed annexation agreement.

E. Financial Impact: The financial impact to the City of Asheville would be a loss of \$20,000 in sales tax revenue.

For the reasons noted above, staff does not recommend adoption of the resolution, but could support a resolution for incorporation of a smaller area.

Mr. Randy Teague, interim Council member for the Town of Leicester, explained their strong interest to incorporate began two years ago. The main reasons for their request for incorporation is (1) to elect people from their own community to govern their own town; (2) to benefit from the monies we are not receiving currently because we are unincorporated; (3) to build and/or improve community facilities for our town; and (4) to maintain the unique character of Leicester area including enacting ordinances to protect our way of life. He reviewed the staff report outlined by Mr. Shuford and countered staff's comments with reasons they want to incorporate.

Rev. Christopher Chiaromonte said the City of Asheville should be willing to give up their power and become a metropolis.

Ms. Leesa Kulba felt that this will only cost the City \$20,000 and felt it was a good investment to let people be self-determinating.

Mr. Joe Bassett felt the City isn't losing much, but the County may be losing.

Councilman Freeborn felt this issue should be left up between Leicester and the General Assembly.

Councilman Newman was open to the idea of the incorporation of Swannanoa and Leicester. However, we have to look at the future growth of our community and how we can work together. We have to be concerned about all the areas around the city becoming incorporated and boxing the city in. Most urban growth that occurs around Asheville should be incorporated in the urban area. If areas around Asheville incorporate, in the long run it could be damaging the economic health of Asheville and damaging Asheville's economic health is not in anyone's best interest that lives in Buncombe County. He could not support the resolution endorsing incorporation and wondered if Asheville and our neighbors in Buncombe County could set up a community process to look at these together and determine what would be the natural boundaries of these new communities, and come up with a vision for the future.

Mayor Bellamy said that those conversations have begun with the incorporated municipalities.

Councilman Mumpower felt that Leicester residents are afraid of policies and behaviors coming out of Asheville and want to preserve things and control their own future. He would support their effort as he did when Mills River came to Asheville requesting their support for incorporation.

Councilman Mumpower moved to adopt the resolution approving the effort of the Township of Leicester to obtain a greater degree of governance and control over its future through incorporation. This motion died for lack of a second.

## **VII. OTHER BUSINESS:**

## **VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaromonte spoke in opposition of partisan elections.

Because City Council wished to re-open positive communication with Mr. Teague regarding the Town of Leicester incorporation, at the suggestion of Councilman Davis, Mayor Bellamy said that she would write a letter to Mr. Teague and the General Assembly formally responding to the resolution request and inviting Mr. Teague back to another meeting in order to not

only comment on the proposal put forward but to talk about a process in general how we can work together. She stressed the importance of communication.

Mayor Bellamy explained City Council's public comment rules.

City Attorney Oast responded to Councilman Mumpower regarding the public comment period. It was City Attorney Oast's opinion that in view of our Charter, our public comment rules are reasonable.

Ms. Kyle Ross spoke to Council about dishonesty in the Asheville Police Department. She presented City Clerk Lipe with three documents which allegedly supports her allegations. Mayor Bellamy said that we will follow-up on her concerns.

Councilman Freeborn requested that in the near future an item be placed on the agenda regarding traffic calming measures relating to Greenlife Grocery on Maxwell Street.

Depending on the City Attorney's review, Councilman Mumpower requested that an item be placed on Council's July 10, 2007, agenda for Council to conduct a vote on supporting a city-wide referendum on the partisan election issue.

When Mayor Bellamy reminded Council of the process in place for requesting items to be placed on the agenda, Councilman Mumpower said that he would follow-up on his request with an e-mail.

Councilman Mumpower thanked Asheville Homebuilders for their work on building some Top-A-Stops. They completed the 15 they had committed to. That brings us up to 30 Top-A-Stops. He urged people who would like to see a Top-A-Stop on their streets, to get together 2-3 volunteers and they can make that happen. In addition, Top-A-Stops will be seen on major highways in Asheville soon. We aiming for another 25 on top of the 30 we already have.

### **Closed Session**

At 9:05 p.m., Councilman Mumpower moved to go into closed session in order 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, State of North Carolina and County of Buncombe. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn.

When Councilman Mumpower discovered that the closed session is on the same topic as last week, he withdrew his motion. He said that Council made a commitment to conduct water negotiations in open session. He understands that the County Commissioners and State legislators have not been receptive to this and that we are pursuing other options in closed session. He feels like that is a violation of our earlier commitment and he is not willing to discuss water issues behind closed doors.

Mayor Bellamy said that she has made repeated efforts for our County Commissioners to meet as a body with the City Council but was unsuccessful, except with Chairman Ramsey who said he would meet anytime. Our State delegation was willing to meet as well, and she did everything she could as Mayor to make that happen but it didn't happen. For the greater good of the community who said they wanted the water issue resolved, she said that she would meet with whatever Commissioner anytime. Council elected her and Councilman Newman to represent City Council in any meetings that would happen and as such we have been willing to meet anywhere at anytime to address the issue to get the issue closed. She has tried to do everything she could to bring this to the forefront as far as open door meetings, but she can't control other elected officials. She believes the citizens of Asheville want this issue resolved and she will work toward that end.

At 9:06 p.m., Councilman Davis moved to go into closed session in order 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, State of North Carolina and County of Buncombe. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried on a 4-1 vote, with Councilman Mumpower voting "no".

At 10:45 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

### **IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:45 p.m.

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CITY CLERK

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MAYOR