

Special Meeting

Present: City of Asheville: 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 Keisha Lipe

State Delegation: Senator Martin Nesbitt, Representative Susan Fisher and Representative Bruce Goforth

Mayor Bellamy opened the meeting and thanked the State delegation for attending. She said the purpose of this meeting would be to begin dialogue about the City's interest in pursuing options for voluntary annexation while discussing thoughts and concerns about annexation in our City.

Interim Planning & Development Director Shannon Tuch reviewed with Council the following PowerPoint presentation: "We are here (1) to discuss what Asheville needs to be the healthy hub of our region; (2) to discuss what Asheville needs to manage development in a way that is proven to work; and (3) to discuss what Asheville needs to have sufficient resources to sustain our assets.

This is important because (1) a fiscally-strong Asheville is important for the region's economy; and (2) North Carolina's policy is that urban development is best served by cities.

There are three types of annexation - (1) voluntary - the property owner petitions to join the city or town; (2) involuntary - the city or town extends its boundaries unilaterally; and (3) legislative - the state legislature adds land to a city or town.

Cities annex for social and fiscal equity. Citizens living on the city's periphery enjoy many benefits offered by the city without paying for those benefits. Citizens living on the city's periphery cannot participate in the city's decisions that ultimately affect them.

Asheville's population grows by 50% during the day. This is the highest ratio of daytime population to residential population in the state for cities greater than 50,000. Asheville has the 15th highest ratio in the nation for cities 50,000-99,000 residents.

Fiscal arguments for why cities annex include (1) North Carolina's annexation law supports the state's prudent fiscal policies; and (2) the ability of North Carolina cities to annex is one reason why the state's municipal bond ratings have traditionally led the nation.

The following is Asheville's annexation history: 1797 - Town of Asheville; 1822 - 1/2 mile radius; 1850 - 1 mile radius; 1883 - City of Asheville; 1917 - Added West Asheville; 1959 - Large expansion by General Assembly; 1973 - First voluntary annexation; 1979 - Asheville Airport; 1980-1994 - 20 involuntary annexations; 2000-2003 - 20 involuntary annexations; and 1956-2003 - 65 voluntary annexations.

Annexation statistics of Asheville compared to Charlotte, Raleigh and Winston-Salem, North Carolina.

Challenges with current legislation: (1) eliminates incentive to voluntarily annex when property is in development stage (Asheville relies on involuntary annexation to grow); and (2) involuntary annexation requires urban development - occupied homes and businesses (when property is annexed during development, people know what to expect when they purchase a home or business).

The challenge with one-mile limit is that the majority of developable land within a one-mile radius of Asheville already has water service.

Concerns about satellite annexations (1) NC State Statute requires that all voluntary annexations: (a) be within 3 miles of the city's corporate limits; and (b) receive the same level of service as the rest of the city; and (2) NC State Statute also states that a city's non-contiguous areas shall not exceed 10% of the city's contiguous area (a) there are more than 50 cities exempted from this requirement including Waynesville and Maggie Valley.

In summary, (1) voluntary annexation as a condition of water service provides for the incorporation of property during the development phase; (2) recent growth and development precludes the benefit of a half-mile or one-mile limit on annexation as a condition of water service; (3) North Carolina's policy is that urban development is best served by cities; (4) cities need annexation

tools for fiscal health; (5) Asheville has used the annexation "tool" prudently, avoiding aggressive annexation; and (6) a fiscally-strong Asheville is important for the region's economy."

Chief Financial Officer Ben Durant reviewed the following in a PowerPoint presentation: "Asheville is Western North Carolina's regional hub city with a vibrant economy - (1) daytime population jump is the highest in the state; (2) city is center for government, commercial, financial, medical, and entertainment activity; (3) Asheville's unemployment 3.8% in 2006 vs. 5.7% North Carolina average; and (4) Asheville's water system continues to facilitate regional growth and development.

He reviewed the customer growth of the Asheville water system from 2003 - 2007.

Asheville's water system 2005-07 water system improvements include (1) asset management excellence; (2) environmental performance standards: ISO 14001 (first utility in the nation); (3) computerized maintenance system; and (4) Capital Improvements Plan (CIP Fee) - Plan generates \$6 Million per year to allow for neighborhood improvements, replacement of old lines, and Water Treatment Plant improvements.

Unique financial constraints in Asheville include (1) other cities have diversified revenue streams granted through the General Assembly; (2) Asheville has no ability to maximize revenues as a "destination city"; and (3) area growth has detrimental effect on City's long-term ability to plan for future infrastructure needs.

Asheville water utility vs. other North Carolina cities include (1) state average differential is 85%; (2) Black Mountain and Weaverville is 80%; (3) no differential costs Asheville \$6.2 Million per year in lost revenue (based on the state average); and (4) tax equity issue is 'should Asheville taxpayers shoulder future capital infrastructure costs improvements that serve the entire region'?

In summary, (1) Asheville needs resources to manager projected future growth; (2) a healthy Asheville economy drives a healthy regional economy; and (3) we need your help to do this.

The legislative proposal is to (1) grant the City of Asheville the authority to require voluntarily annexation of new development as a condition of water service for the area identified in the City's Resolution Identifying Areas Under Consideration for future annexation. Asheville would not seek exemption from the State's 10% rule regarding non-contiguous incorporated areas; and (2) grant the city a revenue source to adequately maintain and improve regional assets."

Using a large map of Asheville and the surrounding area, Mayor Bellamy outlined the various areas and asked that we focus on how Asheville can grow. Asheville has already talked to the Town of Woodfin about the annexation line and Woodfin has talked to the Town of Weaverville. In Mecklenburg County, all the townships came together and decided how big they were going to grow. What the Metropolitan Sewerage District (MSD) has decided was they don't want to extend sewer to Fairview. They made their decision based upon the zoning maps that Buncombe County adopted. In Asheville, there is already a growth pattern going south. We need to be realistic about how we are going to grow and where we are going to grow. As part of that growth management, we need to be realistic about the tools we are asking for. Leicester is asking to incorporate their township and Swannanoa is doing the same thing. We need to talk about these issues in an open forum. A lot of growth and development has occurred in the 1/2 mile and the 1 mile already and in order to be realistic about Asheville's future we need to look at not only the 1/2 mile or the 1 mile, but look at the area as a whole.

When Councilwoman Cape asked what our legislature sees as the future plan of regional development in the area and what role Asheville plays (as the water server) in that plan, Representative Goforth said that he agreed with Councilman Mumpower in that it's time we look at consolidation. He felt that Leicester and Swannanoa are organizing out of fear. He felt Leicester and Swannanoa are organizing out of fear, and we need to look at what we can do best for the whole county.

Representative Fisher said that in order for the City to be able to provide things that we enjoy and provide services that we count and depend on, isn't it just a foregone conclusion that the City must grow and must be able to bring in dollars in order to meet their expenses and in order to keep up with inflation. They cannot stand still. That doesn't mean that Asheville will take over Buncombe County. It means that in order to adjust for costs over time, Asheville has to grow. The way she sees it is that we already have laws in place for all other cities that allow for a particular amount of growth for cities. For Asheville that has been stifled. What has to happen is we have to think of ourselves as not only citizens of Buncombe County, but citizens of Asheville. Asheville is the economic driver and hub of the region. We have to look after the Mission Hospitals campus, several schools in our City, and small businesses - all within the City limits. We need to continue to grow. We need to give Asheville the same tools as every other city in this state in order to help them to grow.

Senator Nesbitt felt Asheville does have the tools that other cities have, except for the water system and that agreement was made in the 1930's. There are different types of growth. For instance, he said that 10 years ago Asheville wasn't selling condos in the old JC Penney building for \$1,000 sq. ft. That's growth. If Asheville wasn't the hub of WNC for services, you

wouldn't have buildings that have the value that they do in downtown Asheville. His point is that as a regional hub, Asheville needs people coming to Asheville in the daytime. That is giving Asheville tremendous growth in its tax base. Annexation is different. From all the studies that he has seen, annexation is not an economic boom to the City. The truth is that it costs as much to service as you get in tax revenue. The reason there is annexation is for planned, orderly, urban growth, and the City should grow where people need city services. He is familiar with a study that outlines mistakes that cities make when they annex, i.e., they say they are going to annex because they need their taxes. The city should annex because the people need their services. He said there is no government right giving a governmental entity the right to impose themselves on people who can't vote for them. Unfortunately when you extend that power with extraterritorial jurisdiction zoning and annexation, people start thinking that is a city right, but nothing is further from the truth. You have to treat people with respect, dignity and fairness when they outside the city limits. They come into the City and spend their money and help the tax base. When they need the city's services and when they become urban, then the City should annex them.

In response to Councilwoman Cape, Senator Nesbitt said that his vision of a regional plan is organized growth.

Councilman Newman agreed that we need to have conversation around consolidation, tax revenue, etc., but for today, it was his hope that conversation be focused on the question of voluntary annexation. For developments on the immediate periphery of the city (when there are new developments proposed that want connections to the water system), under what circumstances can the City require them to go ahead and come into the City on the front end. It was the staff's presentation to Council that persuaded most members of Council to agree that while a 1/2 mile is certainly better than nothing, there is a really strong case that it should be more than that. As long as we are not treading on parts of the county that we all envision being a part of some future other municipality that might be incorporated or is already incorporated, he asked why should Asheville, within those areas, not be able to operate under the same voluntary annexation mechanisms that most other cities in the state are working under.

Representative Fisher said that she would like to hear the staff perspective on how the City is hampered with the way annexation is set up under the current law.

Senator Nesbitt said that the legislature proposed that the City could do what Councilman Newman suggested within a 1/2 mile of the City, plus they exempted Asheville from the 10% requirement on satellite annexations. His concern was that Asheville will annex people in little satellites all over the County and leave them stranded. Even within Asheville's staff there are concerns about rolling services and the cost of those to those people. There is no way you can have a little subdivision one mile from the City limits and it in any way be equal and part of the City of Asheville. In fact, every commercial piece of property within one mile of the City would be stranded. The legislature earlier agreed to let Asheville strand them within 1/2 mile of the City because they think Asheville will grow to them under normal annexation. And after Asheville grows to them, then Asheville can go another 1/2 mile, then another 1/2 mile, etc. They put no limitation on that.

Councilman Newman said that if we were operating under the rules as the rest of the state does, when a new big development is built 1.5 miles from the City, the way that it would play out would be that we would not incorporate them now, because it wouldn't be cost effective for us to provide them city services. But, we would be able to go ahead and sign an agreement with them basically saying that we will provide them with City water and when the City does grow out to them, then the City will annex them - so everyone who lives there knows that at some point in the future they will be residents of Asheville. We wouldn't have a bunch of satellite places that we would be trying to provide services to, but we would have an understanding with them so in 10 years from now, or whenever the City has grown to that area, there is not some ugly involuntary annexation battle that everyone has to go through.

Senator Nesbitt said what the City asked for and what the legislature gave Asheville wasn't an agreement to annex in the future. Asheville asked for the ability to annex, because they wanted the tax base. He felt all the people in the isolated islands would be paying Asheville taxes. That was their concern. He wanted Asheville not to be able to annex people until they were contiguous and the delegation compromised to a 1/2 mile because it's better to tell people in the subdivision that they are going to be annexed up front than to find out after they buy the houses.

Councilman Freeborn said that the problem is that a good number of people are concerned about overall growth in the county. When municipal services, such as water and sewer, have to be given to anyone who requests them, that does not give any municipality or county government the ability to have any real planning for growth. As long as the Asheville water system is forced to give water to whoever requests it, then our conversations about other issues regarding annexation is moot. While annexation is a good tool and can be used extremely effectively, annexation is not going to solve our growth issues when we are looking at the overall picture. It would be nice if we did not have to give water to every new subdivision that requests it.

Councilman Davis said that revenue is important to all but we need to look at growth on a regional basis. One of the problems we are looking at is new subdivisions building just over the line and Asheville doesn't have any say in it because sewer and water are given. He would like to see us grow, but if we are not careful, we will end up with a big ring of population in the City

of the very rich and very poor, and the middle class living outside the City limits. We need a healthy growth.

Water Resources Director David Hanks responded to Representative Goforth regarding developers coming to the City for water availability letters and why the City can't turn them down, even when they have safety concerns. Representative Goforth was hard pressed to believe that the City would lose money based on multiple pump stations for higher elevations and asked to see the costs associated with that statement.

Vice-Mayor Jones felt that conversation about regional growth is good but other people need to be at the table as well. She explained how the tool of water service is not an enhancement to annexation, but a very important part of it. She stressed that Council doesn't want to do involuntary annexations so they are asking our legislators to help us find ways to encourage voluntary annexation. She noted that for each involuntary annexation, staff provides a very detailed financial breakdown and she would be happy to provide the legislators with a sample of this very planned out and thoughtful document.

Councilman Mumpower shared Senator Nesbitt's concern of "giving Asheville too big a gun" because it worries him about what Asheville will do to their neighbors. That said, he disagrees with the legislators about Sullivan Acts II and III. He felt they have two options (1) to consolidate, or (2) to treat Asheville fairly like other cities are treated.

Mayor Bellamy summarized the topics of (1) 1/2 mile vs. 1 mile; (2) Asheville having the tools that other cities have; or (3) consolidation. She noted that staff has already articulated the concerns of using the 1/2 mile as it isn't realistic only because the area is built out.

In response to Senator Nesbitt, Ms. Tuch said that when they looked at the 1/2 mile consideration, they ideally wanted to map where the development was occurring within that 1/2 mile and look at the development permits. However, a good bit of that was outside our jurisdiction and we didn't have that information available, so we looked at the water meters. In addition, they also have an intuitive knowledge about what is going on because of their conversations with developers. One way to determine the development is to look at how much of that area is vacant. Using an aerial map, it shows there isn't a significant amount of land area that is not already developed within that 1/2 mile. It can, however, be developed heavier, but water service is already provided to that area, so the condition of water service wouldn't be helpful to encourage annexation. There are very few large land holdings (over 20 acres) in that 1/2 mile area so there is very little opportunity that would present itself for us to be able to grow our boundaries. Another concern with the 1/2 mile boundary is that it's an artificial boundary - it doesn't reflect where a lot of growth is occurring. If you look at the shape of Asheville's jurisdiction now, it's anything but geometric, so to say we are going to go 1/2 mile beyond and create an artificial boundary doesn't affect where growth is occurring.

In response to Mayor Bellamy, City Attorney Oast said that with respect to taxation, once the property is within the City, they will pay City property taxes just like everyone else in the City. In addition, they are entitled also to the same level of service as everyone else in the City. He also noted that in voluntary annexations, we are limited to a 3-mile radius from the City. He then explained the concern we have about phasing annexation, noting a provision in the statutes that states we can't annex anything less than a whole subdivision.

Councilman Newman said that if we just did the 1/2 mile with no ability to sign agreements with people outside that 1/2 mile area, in the short run, for the developments that are already built within the 1/2 mile (since the legislators won't allow Asheville to annex buildings that are already built) that process would have to be through involuntary annexation. If we just have the 1/2 mile as a voluntary annexation tool, the area within the 1/2 mile area is already so built out, the concern will be that by the time the City has grown out to that 1/2 mile, through an involuntary annexation process, the next 1/2 mile is largely going to be built out as well. So, to a large degree within that area in years to come it will continue to be an involuntary annexation process. If we just have the 1/2 mile we will be just behind the development curve and the reality will be that the overwhelming percentage of growth the City goes through will be through the involuntary annexation process, which we all agree is not healthy for anyone. One way to address the concern that there will be a lot of satellite annexations, is that Asheville can't actually bring developments into the City within a certain distance (perhaps 1/2 mile), but we could still sign a voluntary annexation agreement when new developments beyond the 1/2 mile. If someone is building a significant development 1 mile away today and they want to connect to the water system, we couldn't annex them now, but sign an agreement with them that when the City has grown out and they are actually within a 1/2 mile of the City's true primary boundaries, at that point they would be annexed. That would address the concern of many satellite annexations away from where the City's boundaries truly are. We would get ahead of the development curve instead of constantly being behind it and stuck with the reality of involuntary annexation being the norm, rather than the exception.

There was a brief discussion, initiated by Councilman Davis, regarding future discussion regarding a menu of options for revenue since Asheville is expected to provide more and greater services all the time.

Mayor Bellamy said her goal would be that we have another conversation about the 1/2 mile vs. 1 mile area and instructed staff to provide the legislators with additional information on the 1/2 mile, along with maps. She did, however, point out the

problem with the legislation that requires anyone to get City water without any question. She asked our legislators to take that into consideration in this annexation discussion. MSD has the authority to not grant sewer service and she hoped Asheville could have that tool for water service. There is also a desire by Council to get additional information about the various revenue tools that are available for other municipalities that the City of Asheville doesn't have. The consolidation issue can be further discussed as well.

Councilman Newman asked the legislation of they would be open to consider new developments that want to connect to the water system within 1/2 mile or 1 mile, that the City can require them to be annexed, but for some other area beyond that, we can sign annexation agreements - we wouldn't annex them until the City grows out either to them or very close to them - only then would they actually come into the City.

Senator Nesbitt's concern was annexing a satellite piece of commercial property 1/2 mile outside the City limits and taxing them until the City's boundaries actually are contiguous with them. He wants the properties to be contiguous with the City's boundaries before annexing.

In response to Councilman Freeborn, Senator Nesbitt said the purpose of saying Asheville has to provide water is to prohibit Asheville from refusing to give water and stopping growth in the county. And that is a very real possibility. If we stifle growth in the County, it will hurt Asheville as a city and hurt all of us as a regional leader.

Mayor Bellamy said that the reality is the original 1929 agreement is serviced. We are talking about those areas that are not serviced by the original 1929 agreement. We need to get out of the core area and extend lines. People are asking for water in places that were not impacted by the original Sullivan Act and we are trying to get past that to address growth management.

Senator Nesbitt felt the Sullivan Act encompasses the core of the entire system - it means all the lines.

Councilman Newman felt that everyone agrees that we want to see involuntary annexation to be as rare as possible and we all agree that when people move into new developments it's good for them to know that the area will probably at some point be a part of Asheville. Let's set aside the issue of satellite areas. Let's assume the properties would be contiguous, although he would like to keep the option open of talking about satellite areas more. If we did just have where the development had to be contiguous, would there then be any reason why we couldn't extend that boundary out a ways and that way we are not putting involuntary annexation battles in future Councils. As long as the property meets certain criteria (larger developments), areas that are within Asheville's zone of future growth that people would be required to sign an annexation agreement and then when Asheville has grown out to them they would be voluntarily annexed.

Senator Nesbitt said that they would need to talk about it as a group, since all the legislators were not present. He did, however, think that nothing could be done before 2 years - the next long session.

In response to Representative Goforth, Mayor Bellamy said that City Council would put their proposal in writing and on a City Council agenda for the public input.

Senator Nesbitt noted that we have not talked about the County's obligations in this and they were substantial. He said they aren't going to settle the water issue and then get hammered over a room tax and a mixed beverage tax to make up for not taking the County's deal. He felt that all of these things need to be dealt with together.

Mayor Bellamy asked how the legislators felt about giving Asheville the authority to deny water service. Senator Nesbitt didn't disagree if Asheville could come up with some good way to do it. He said Asheville may want to put the County in charge of that outside the City limits. They only get the water if the County approves it. The problem is there is a history of the City refusing to service the County. You will not get the County to agree to let the City to decide on their growth.

Mayor Bellamy felt that a policy could be developed outlining the times when it wouldn't be prudent to use City water as opposed to a well.

Councilman Freeborn said Asheville is responsible for the budget of the water system and for us to be forced to put new lines on the system, even if the developer is paying for it, we still have to manage the on-going costs of that. No one wants to stifle growth, but it's better for our system and all our water users. If we want to start reducing water rates, which is our goal, the only way to do that is to have an efficient system. And, putting on anyone who wants it no matter where they are is not creating an efficient system and not good government.

Senator Nesbitt said that in government there are winners and losers. Asheville is talking about things you lose money on, but there are things that Asheville makes a lot of money on, like the room tax and sales tax on tourism. Mayor Bellamy noted that it's important to realize that we are happy for that generated revenue, but when people come visit, Asheville taxpayers are the ones

who have to maintain the streets, sidewalks, litter control, street cleaning, etc.

Mayor Bellamy felt the only way we can move forward is small steps and thanked the legislators for their legislation for the Housing Authority.

Councilman Newman asked the legislators to keep an open mind on the satellite annexations. He said Swannanoa and Leicester will probably both be incorporated. When you think about those two new municipalities in the County, the overwhelming majority of the land that will be in those new municipalities would not, in the next century, meet the criteria for annexation.

Vice-Mayor Jones said that regarding the mechanism about sales tax, there is a choice to be made about how parts of the sales tax are allocated. The fair part is by population and not the current ad valorem. We will negatively be impacted financially by these new incorporations, because of the sales tax distribution. We have worked hard to reduce our tax base, but because of the way the ad valorem works, it has the mechanism that if we lower taxes on our residents, we are penalized from the sales tax.

Mayor Bellamy adjourned the meeting at 11:15 a.m.

CITY CLERK

MAYOR