

Tuesday – October 26, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer (arrived in meeting at 5:47 p.m.); Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Miss North Carolina Kristian Tobias led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 2010 AS “ADOPTION AWARENESS MONTH”

Vice-Mayor Newman read the proclamation proclaiming November, 2010, as "Adoption Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Tara Foster, who briefed City Council on some activities taking place during the month

B. PROCLAMATION PROCLAIMING NOVEMBER 6, 2010 AS “AIDS AWARENESS WALK 2010 DAY”

Mayor Bellamy read the proclamation proclaiming November 6, 2010, as "AIDS Awareness Walk 2010 Day" in the City of Asheville. She presented the proclamation to Ms. Peggy Weil, Advocacy Coordinator for WNC AIDS Project and Kristian Tobias, Miss North Carolina International, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF CAPITAL IMPROVEMENT PLAN WORKSESSION HELD ON OCTOBER 8, 2010; AND THE REGULAR MEETING HELD ON OCTOBER 26, 2010

B. RESOLUTION NO. 10-226 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH CORT ARCHITECTURAL GROUP, P.A., FOR THE CIVIC CENTER ROOF REPLACEMENT

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Cort Architectural Group, PA, for the Civic Center Roof Replacement in the amount of \$91,512.43 for a total contract amount of \$223,611.43.

On July 22, 2008, City Council authorized a contract with Cort Architectural Group in the amount of \$132,099 to design, provide construction documents and contract administration for the Civic Center Roof Replacement. The City contracted with Owens Roofing to replace the roof in August 2009. The construction was anticipated to take five months to complete. Due to bad weather, change orders and exceeding amount of time on the part of the contractor, the project

took an additional six months for substantial completion and another three months for final completion for a total construction time of 14 months.

As a result of this increase in time, the construction administration cost for Cort Architectural Group, PA, increased an additional amount of \$91,512.43. The Contractor will be penalized for liquidated damages in the amount of \$31,000 for exceeding the time limit to help offset this cost.

Processing this change order was delayed because of the uncertainty of when the project would be completed, given the excessive additional amount of time it took to complete the project. Staff wanted to make sure that the overall project would not be exceeded as a result of the excessive time to complete the project. As noted above, the contractor will be required to pay liquidated damages in the amount of \$31,000.

The final contract amount with Owens Roofing including six change orders is \$1,513,452.42. The budgeted amount allowed for the construction was \$1,647,982.00 for a difference of \$134,529.58. This amount will cover the change order request from Cort Architectural Group, PA. No additional funds will be required on the project.

The total savings on the project, if this change order is approved will be \$43,017.15.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute a change order with Cort Architectural Group, PA, for the Civic Center Roof Replacement in the amount of \$91,512.43 for a total contract amount of \$223,611.43.

RESOLUTION BOOK NO. 33 – PAGE 234

C. RESOLUTION NO. 10-227 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH T&K UTILITIES INC. FOR THE RICEVILLE FOREST TANK REPLACEMENT AND WATER SYSTEM IMPROVEMENTS PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with T&K Utilities, Inc., in the amount of \$289,535.06, for the Riceville Forest Tank Replacement and Water System Improvements project.

The Riceville Forest tank, located in the Riceville Forest Subdivision in East Asheville off of Riceville Road, is in need of replacement. The work consists of the demolition and disposal of the existing 19,000 gallon steel ground storage reservoir, construction of a new 97,000 gallon glass fused to steel reservoir, installation and operation of a 21,000 gallon temporary water storage tank with temporary booster pumping system for 3 existing residences, and construction and installation of approximately 370 linear feet of 6-inch ductile iron pipe with related appurtenances. In response to the Advertisement for Bids, Water Resources received five (5) bids.

Companies responding were:

1. Blitheco Construction, LLC. – Penrose, NC
2. Bryant's Land Development Industries, Inc. – Burnsville, NC
3. Spur Construction – Waynesville, NC
4. T & K Utilities, Inc. – Asheville, NC
5. Turner & Murphy Company, Inc – Rock Hill, SC

A review team comprised of City staff reviewed these bids and selected T & K Utilities, Inc., as the lowest responsible bidder in the amount of \$289,535.06.

The Water Resources Department has a Riceville Forest Tank capital project in which funds are specifically reserved for this project. To date, there is a balance of \$320,000.00 in this project.

Riceville Forest Tank Project	\$320,000.00
<u>Actual Bid for Project</u>	<u>\$289,535.06</u>
Amount Remaining After Contract Award	\$ 30,464.94

City staff recommends City Council approval of the City Manager to enter into an agreement with T & K Utilities, Inc., in the amount of \$289,535.06 for the Riceville Forest Tank Replacement and Water System Improvements project.

RESOLUTION BOOK NO. 33 – PAGE 235

D. RESOLUTION NO. 10-228 - RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE AUTOMATED GARBAGE CANS FROM SCHAEFER SYSTEMS INC.

Summary: The consideration of a resolution waiving the formal bid process and authorizing the City Manager to enter into a contract with Schaefer Systems Inc. to purchase automated garbage cans.

The Sanitation Division requires new automated garbage cans on a continuous basis for replacement of damaged, existing, out of warranty automatic garbage cans, for new customers and additional garbage cans as requested by residents.

Pursuant to N.C.G.S. 143-29(g) when in the best interest of a local municipality, the formal bid process may be waived for the purchase of apparatus, supplies, materials or equipment from a vendor after the vendor has participated in a formal bid process substantially similar to the need of the municipality with another local government within the last twelve (12) months.

On January 26, 2010, the Township of Brick, County of Ocean and State of New Jersey, after completing a formal bidding process, awarded a contract to Schaefer Systems International Inc., 10021 Westlake Drive, Charlotte, NC, for the supply of automated trash cans of the same make, models, size and markings satisfactory for the City's needs. Comparing our 2009-2010 automated garbage can pricing structure to the Township of Brick's contract with Schaefer Systems Inc. an estimated savings of approximately \$9,720.00 can be realized FY 2010-11.

The Public Works Department budgeted \$65,000 in its FY 2010-11 operating budget for the purchase of automated garbage cans. Based on the pricing structure above, the department will realize an estimated savings of \$9,720.00 FY 2010-11.

City staff recommends City Council adopt a resolution waiving the formal bid process and authorizing the City Manager to enter into a contract with Schaefer Systems Inc. to purchase automated garbage cans.

RESOLUTION BOOK NO. 33 – PAGE 237

E. RESOLUTION NO. 10-229 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE BLACK MOUNTAIN ROUTE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to accept State Funds for the operating expenses of the transit service route to and from the Town of Black Mountain.

The NCDOT has agreed to contribute funds to be used for the operating expenses of transit service to and from Black Mountain and the Asheville Transit System has agreed to operate the subject service.

Route # 28 and the Black Mountain Trailblazer Route were established in 2002 following a collaborative effort between NCDOT and the Land-of-Sky Regional Council as a result of a number of the region's counties and municipalities who passed resolutions in 2000 asserting the need for fixed route bus service connecting urban areas not in close proximity to each other.

The subject service operates seven times a day, six days a week. All funding is provided by the State of North Carolina (maximum of \$141,667), and Fare Box Revenue (\$7,084) for a total budget of \$148,751.

This route's ridership grew considerably since 2007. However, during FY2010 ridership decreased significantly due to the changes the city had to make to comply with the Intercity regulations.

Route 28		
Year	Total Ridership	Change
FY2010	33,240	-40%
FY2009	55,038	44%
FY2008	38,216	9%
FY2007	35,140	78%
FY2006	19,727	

This funding is vital to keep the route operating. NCDOT is funding the route from August 1, 2010 to December 31, 2010 and funding will be discontinued after that date. These funds are programmed in the current transit operating budget, with no City funds being spent. The City of Asheville has been awarded a Job Access and Reverse Commute Grant that is in process of being approved by the Federal Transit Administration. If approved, this grant will guarantee continuation of this service for two more years.

The City of Asheville will receive State Funds in the maximum amount of \$141,667 to cover operating expenses of the transit service route to and from the Town of Black Mountain for total budget of 148,751. These funds are already programmed in the current transit operating budget, with no City of Asheville funds being spent. As such, no budget amendment is required.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with the NCDOT for the acceptance of funds to be expended for service to and from Black Mountain.

RESOLUTION BOOK NO. 33 – PAGE 238

F. RESOLUTION NO. 10-230 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM SECTION 5303 PLANNING GRANT OF THE FEDERAL TRANSIT ADMINISTRATION METROPOLITAN PLANNING ORGANIZATION

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to fund the transit planning program, Section 5303 Planning Grant of the Federal Transit Administration (FTA) Metropolitan Planning Organization (MPO).

The FTA MPO Section 5303 Planning Grant is an annual grant designated exclusively for transit planning. The funds are currently administered by the City of Asheville as a direct recipient of Federal Transit Funds. The funds are primarily used to pay the Transit Projects Coordinator position (90% of the grant) and a portion of the Transportation Manager position (the remaining 10%) for time spent on transit planning. In addition, the funds support grants administration and reporting activities, short range and long range transit planning, transportation improvement program preparation, Title VI and DBE programs, and planning and operational analyses.

Fiscal Year 2010-11 anticipated funding totals \$63,390. The grant will fund 80% of the anticipated funding, which equals \$50,712, the City will fund 10% local match, which equals \$6,339. The North Carolina Department of Transportation will provide the additional 10% local match.

The anticipated grant funding and the City's local match in the amount of \$6,339 are currently budgeted in the Transportation Department's approved budget.

The total anticipated grant funding for Fiscal Year 2010-11 is \$63,390. The City is required to provide a 10% local match in the amount of \$6,339. The anticipated grant funding and the City's local match in the amount of \$6,339 are currently budgeted in the Transportation Department's approved budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the NCDOT to fund the transit planning program, Section 5303 Planning Grant of the FTA MPO.

RESOLUTION BOOK NO. 33 – PAGE 239

G. RESOLUTION NO. 10-231 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE EXISTING CONTRACT WITH KIMLEY-HORN AND ASSOCIATES TO UPDATE THE DOWNTOWN PARKING STUDY

Summary: The consideration of a resolution authorizing the City Manager to amend the existing contract with Kimley-Horn and Associates, Inc. in an amount not exceed \$38,000, to update the downtown parking study that was completed during May 2008.

City Council authorized the City Manager to execute a contract (PO # 81138) with Kimley-Horn and Associates, Inc. for the feasibility study of a parking garage on Rankin Avenue during June 2007 (Resolution # 07-117) at a cost not to exceed \$154,100. The subject contract was amended during July 2007 (Resolution # 07-142) to include a downtown parking study for all of the Central Business District (CBD) at a cost not to exceed \$97,500. With the amendment, the total contract equaled \$251,600. At this time, all of the agreed upon work has been completed at a total cost of \$221,485 which leaves an encumbered balance of \$30,115.

Since the downtown parking study was completed, economic conditions have drastically changed. As a result, staff believes that it would be a good idea to update the downtown parking study and the modeling tool to be sure that the data is still valid and/or to update the data based on current conditions. Kimley-Horn and Associates, Inc. has submitted a proposal to accomplish the work for an amount not to exceed \$38,000. Since the existing contract has an encumbered balance of \$30,115, it only needs to be increased by \$7,885 for a total contract amount of \$259,485. All funds would come from the Parking Enterprise Fund and are currently budgeted.

The total maximum cost of the subject supplement is \$38,000 and it is already budgeted in the FY 2010-11 Parking Enterprise Fund Operating Budget.

Staff recommends that City Council adopt a resolution authorizing the City Manager to amend the existing contract with Kimley-Horn and Associates, Inc. in an amount not to exceed \$38,000 to update the downtown parking study that was completed during May 2008.

RESOLUTION BOOK NO. 33 – PAGE 240

H. ORDINANCE NO. 3909 - ORDINANCE AUTHORIZING PARTIAL REFUND OF PRIVILEGE LICENSE TAXES FOR OPERATIONS THAT CEASE BY OPERATION OF LAW

ORDINANCE NO. 3910 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO ESTABLISH A NEW PRIVILEGE LICENSE FEE FOR ELECTRONIC GAMING OPERATIONS

Summary: The consideration of ordinances amending the privilege license tax for electronic gaming operations, and authorizing partial refunds.

The State has attempted for years to prohibit and/or regulate electronic gaming operations (herein "EGOs"). The most recent attempt was challenged in the courts by the EGO industry and the court enjoined enforcement of the law. While this was a Superior Court decision and its applicability is limited, many localities suspended their efforts to enforce the law, which made unauthorized operation a criminal offense.

In response to the uncertain status of the State law, many localities began regulating EGOs through their ordinances, primarily zoning ordinances and privilege license taxes.

In May, Council amended the zoning ordinance to regulate the location of EGO's, and some aspects of their operation. At the same time, Council adopted a license tax of \$2,500 per location, and \$500 per machine. These fees were effective for the fiscal year beginning July 1. While high, the fees are within the range of what other cities across the State have done.

In July, the N.C. General Assembly again adopted legislation to prohibit EGOs. This legislation is effective as of December 1, 2010. Several EGO operators have asked staff whether partial refunds of the tax, to reflect partial year operation, are possible. Individual refunds are not possible because taxes must be uniform, and because the constitution prohibits "exclusive emoluments." However, an ordinance that amends the previous fee and provides for a reduced fee to reflect the reduced period of legality, with provision for partial refund of tax already paid, is possible. In the interest of observing the requirement for uniformity, the authorization for the refund has been drafted to apply to any business whose operating year is cut short because the legislature prohibits the activity. As a practical matter, however, this is not likely to affect any business other than EGOs or affect any year but this one. Also, in order to address pending court actions (in other counties) the refund is only authorized for businesses that actually cease operations.

Council may provide for a "straight" proration of the refund, based on the number of months during the tax year that the business was not prohibited. Fees collected so far from EGO's come to approximately \$192,000. Adjusting the tax to reflect five months of operation would reduce that amount to \$80,000; this would also reduce the expected stream of revenue from those businesses that have not yet paid. The refund ordinance as proposed uses the "straight" proration formula.

There is the possibility that, due to court cases pending in other jurisdictions, enforcement of the law banning EGO's could once again be enjoined. City Code Sec. 9-30 provides for some privilege license taxes to be for periods of "less than a full license year." In order to avoid a confusing "full payment/partial refund" process for those establishments that have not yet paid, but to authorize a full year's tax in cases EGO's are allowed to continue

operation, a second ordinance is attached that amends the license fee to make it apply one monthly basis for the period of operation. Again, this only affects EGO's, and only for this year. The fee is payable at the start of the license year, or the commencement of operation.

As noted above, revenue from this source has not been programmed yet, so no City programs would be affected.

Adoption of the proposed ordinances is recommended.

ORDINANCE NO. 3909 - ORDINANCE BOOK NO. 26 – PAGE
ORDINANCE NO. 3910 - ORDINANCE BOOK NO. 26 - PAGE

I. UPDATE FROM THE BLUE RIBBON HEALTHCARE TASK FORCE

Summary: In late July 2010, City Council appointed four (4) members of the community to serve on the Healthcare Task Force. Council directed the group to provide final health fund recommendations by the onset of the FY 11–12 budget process (January – February, 2011). The Task Force was initially charged with:

- Evaluating best practices to determine the optimal range of health insurance-related benefits afforded to employees
- Cost-for-service comparisons
- Employer-employee cost-share analysis
- Review of the Asheville Project Disease Management Program
- Other areas of interest

Since its inception, there has been one (1) additional Task Force member appointed: Mr. Marty Stamey, Assistant Manger for Haywood County. As with the other members, Mr. Stamey has a background in Human Resources and health insurance management in a medium to large organization.

The Task Force convened once in September to receive a comprehensive review of the City's benefits package, risk structure, healthcare funding and the Asheville Project. At this meeting, the Task Force directed staff to provide more detailed information in a number of areas, to include:

- Health and Wellness initiatives related to the strategic plan
- Health claim costs
- Medical and dental administrative costs
- Current health clinic costs
- Wellness Health Incentive/Employee Benefit Committee

The next Task Force meeting will take place on November 2, 2010.

This information is to update City Council on the progress of the Healthcare Task Force. No action is necessary at this time.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

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 Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously (Councilwoman Manheimer was not present).

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE SCHOOL BOARD UPDATE

Mr. Gene Bell, Chairman of the Asheville School Board, briefly updated City Council on the activities and mission of the Board. He provided Council with the School system configuration, a 6-year look at district membership (noting that they are up 121 students from 2009/10), the 2010-11 budget by revenue source, and the 2010-11 budget by object of expenditure.

Mr. Allen Johnson, Superintendent of Asheville City Schools, said that regarding academic performance, using charts he explained the Scholastic Assessment Test Report, and the NC's STAT gap vs. the USA (math & reading). He provided statistics on out of the 50 goals of the District AYP goals, 42 were achieved.

Mr. Johnson and Mr. Bell then reviewed in detail the following challenges: (1) budget; (2) facility needs; (3) achievement gap; and (4) dropout rates/graduation rates. They will continue to protect their classrooms, streamline Central Services, implement energy efficiency plans, sustain reductions in professional development, and do "more with less".

They then explained the new and innovative programs of (1) In Real Life; (2) Single-Gender Classrooms; (3) Uniform/Standardized Dress; (4) Teaching Artists Presentations in Asheville Schools (TAPAS); and (5) Fit2Learn.

Mr. Johnson responded to Mayor Bellamy when she questioned what was causing the decrease in scores in math and reading in the 3rd grade, and what caused the dramatic increase in the Asheville High scores.

Mr. Johnson also responded to Councilman Bothwell regarding the cost of computers vs. textbooks.

On behalf of City Council, Mayor Bellamy thanked Mr. Bell and the entire Board for their hard work and efforts on this Board, pointing out several achievements, including their participation in the City of Asheville Youth Leadership Academy.

B. ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL UPDATE

Mayor Bellamy said that due to a conflict, this update would be held at a later date.

C. UPDATE ON HANDICAPPED ON-STREET METERED PARKING IN DOWNTOWN ASHEVILLE

Transportation Director Ken Putnam said that the purpose of this report is to update City Council on the recent action that was taken regarding handicapped on-street metered parking in downtown Asheville.

A motion was adopted unanimously on October 12, 2010, to require meter activation by **all** on-street metered parking users within 30 days. In addition, City Council directed staff to research and suggest various options to "soften the blow" for people with disabilities. It should be pointed out that the subject action only affects on-street metered parking which includes about 743 on-street parking spaces in the Central Business District of downtown Asheville. It does **not** affect designated on-street handicapped parking spaces.

Staff met on Thursday, October 14, 2010, to brainstorm and formulate an action plan to implement the subject action. The following action items are suggested in order to educate the public regarding the subject action assuming an effective date of November 12, 2010:

1. The Public Information Office will prepare comprehensive communication plan.
2. The Parking Enforcement Officers will place informational flyers on the windshields of vehicles parked in on-street metered parking spaces displaying a handicapped placard and/or license tag on October 27, 2010, and November 5, 2010.
3. The Parking Enforcement Officers will begin issuing warning citations on November 12, 2010, for a period of seven calendar days. In addition, an informational flyer will be included with the warning citation.
4. The Parking Enforcement Officers will begin issuing overtime parking citations on November 19, 2010. Informational flyers will continue to be included with parking citations.

Staff met with the Battery Park Apartment management team on Thursday, October 14, 2010, to discuss the subject action. The complex has a total of 122 residential units that are currently fully occupied with a waiting list. They do provide parking for up to 24 vehicles in a private surface lot that is located between Haywood Street and I-240. Residents use the parking lot on a first-come basis at no cost.

Various options to “soften the blow” for people with disabilities include the following items:

1. Provide Battery Park Apartment residents a discounted monthly parking rate at the Civic Center Parking Garage (\$35 per month instead of \$70 per month).
2. Provide a prepaid metered parking option to users that have a valid handicapped placard and/or license tag (modeled after the City of Boulder, Colorado).
3. Provide Battery Park Apartment residents a discounted monthly parking rate in the upper end of the Handi-Park surface lot (\$27.50 per month instead of \$55 per month). Staff is currently studying the possibility of a demolition project on the subject property to remove a couple of old structures so this option probably would not be available until mid-2011.
4. Consider providing monthly on-street parking permits along the area immediately adjacent to the Battery Park Apartment building (includes 13 on-street metered parking spaces). Current monthly on-street parking permits range from \$30 per month to \$45 per month. We would recommend half-price on these on-street parking permits.

Staff does not recommend establishing any on-street metered parking spaces as “free” areas because it would be confusing to the actual users and could lead to more citations in the non-“free” areas.

Councilman Bothwell was uncomfortable with proceeding with the November 12 effective date without having the immediate option for a discounted monthly parking rate in the upper end of the Handi-Park surface lot.

Councilman Russell cautioned Council about Option 4 because we will be getting into the original problem of on-street parking access. He felt that whatever option Council proceeds with should contain an annual review. Mayor Bellamy felt the Finance Committee would be reviewing this annually as part of the Fees & Charges discussion.

At this time (5:47 p.m.), Councilwoman Manheimer arrived at the meeting.

Councilman Smith supported Option 1 and to be able to move to Option 3 when feasible.

After Mr. Putnam provided Council with an update from his meeting with the Battery Park Apartment management team on October 14, 2010, Councilman Davis felt it was prudent to get

additional information from them to determine how many residents have cars and how many have handicapped placards, especially since the Apartment complex does provide free parking to their residents in their private surface lot behind the building.

Vice-Mayor Newman agreed that we need to have the Battery Park Apartment management involved in working on solutions as well. Long term, he questioned charging only \$55 a month (market rate) for a parking space in the upper end of the Handi-Park surface lot when that parking area is probably the most prime parking in the downtown area. If we do maintain that surface lot for parking (which did not seem the highest and best use of that site), it might be a place for turn-over parking, opposed to long-term parking storage. Mr. Putnam said that once we made the investment in the surface lot (after demolition of the old structures), he felt it might be a good time to consider increasing that amount because the Parking Enterprise Fund is a self-sufficient fund.

In response to Mayor Bellamy, Mr. Putnam explained the on-going negotiations with AT&T for at least 50 parking spaces in their lot. He said that is still a viable option.

When Mayor Bellamy asked about the number of designated handicapped spaces in downtown, Mr. Putnam said that out of the 1200 spaces available on street, 50 are designated as handicapped, which is roughly 5-6%. Mayor Bellamy felt that the downtown area should have 10% of the parking designated for handicapped since there are a lot of service providers and non-profits in downtown.

Mayor Bellamy also asked that the City research our parking meters to make them more accessible height to drivers with disabilities. In addition, we need to look at our meters from a standpoint of people who are physically unable to physically hold a coin to put in the meter. She supported all four options.

Councilman Russell moved to (1) proceed with requiring meter activation by all on-street metered parking users effective November 12, 2010; (2) provide Battery Park Apartment residents a discounted monthly parking rate at the Civic Center Parking Garage (\$35 per month instead of \$70 per month); and (3) provide an update to City Council in January 2011 with feedback from residents and staff on how this is going. This motion was seconded by Vice-Mayor Newman.

Mayor Bellamy asked for a friendly amendment to include continued negotiations with AT&T to secure parking spaces in their lot and to direct staff to look at our parking meters for ADA compliance. Councilman Russell and Vice-Mayor Newman accepted the friendly amendment.

Mr. Bart Floyd explained that he cannot physically feed a coin-operated meter and this will require someone to be with him when parking downtown, robbing him of his independence. He supported the pre-paid option. He also noted that in the District of Columbia they replaced two accessible meters in each block. He offered his services to be a part of the solution.

Ms. Frances Moore, resident of Battery Park Apartments, said that management is changing and the residents were not allowed any input. She urged Council to find a solution prior to making any changes to on-street parking.

Mr. Clarence Gray, resident of Battery Park Apartments, said that they cannot afford to park, even at a reduced rate in the Parking Garages. Residents at the Battery Park live on a fixed income and he urged Council to be compassionate with them.

Ms. Bernadette Thompson, south Asheville resident who is wheelchair bound, said that she had trouble finding designated handicapped spaces downtown and when she parks at a

metered space she has problems with reaching the coin activation. She urged Council to take into account people with manual dexterity problems.

Ms. Raelin Hanson, speaking on behalf of residents at the Battery Park Apartments felt that the City should contact doctors to see why they are issuing handicapped placards so freely to people who don't need them. In addition, residents at the Battery Park Apartments and Vanderbilt Apartments were there longer than the businesses in the area and should be given due consideration. She said that residents in the Battery Park Apartments will either have to move out or sell their cars to afford the parking.

Ms. Rose Walker felt it was not fair to make elderly disabled people who have worked in the City their whole lives and can finally retire to have to move in order to pay for parking.

Councilman Bothwell was concerned of Battery Park residents parking in the Civic Center Garage and then having to traverse up the hill to their apartments.

In response to Councilman Bothwell, Mr. Putnam said that they can implement Option 1 immediately. In addition, once the environmental assessment is completed with the demolition of the Handi-Park building, they may be able to open more surface parking sooner than mid-2011.

Councilman Smith offered a friendly amendment to allow a one-month fee waiver for Battery Park Apartment residents to park free in the Civic Center Garage until December 19 in order to allow the continued discussions with the management of the Battery Park Apartments. Councilman Russell and Vice-Mayor Newman accepted the friendly amendment.

Mayor Bellamy doesn't want this policy to indicate that low income people can't live downtown because of parking. The apartments are now affordable, but when you add in the cost to park, it increases their affordable housing expenses. She felt Council supports affordable housing and we need to look at this in a holistic fashion, keeping in mind the people who live downtown.

Councilman Russell restated his motion to (1) proceed with requiring meter activation by all on-street metered parking users effective November 12, 2010; (2) provide Battery Park Apartment residents a discounted monthly parking rate at the Civic Center Parking Garage (\$35 per month instead of \$70 per month); (3) provide an update to City Council in January 2011 with feedback from residents and staff on how this is going; (4) continue negotiations with AT&T to secure parking spaces in their lot; (5) direct staff to look at our parking meters for ADA compliance; and (6) allow a one-month fee waiver for Battery Park Apartment residents to park free in the Civic Center Garage until December 19 in order to allow the continued discussions with the management of the Battery Park Apartments. This motion was seconded by Vice-Mayor Newman and carried unanimously.

D. 2010 COMMUNITY HEALTH ASSESSMENT

Ms. Jennifer Nelson-Weaver, Executive Director of Health Partners, briefly updated City Council on the Department of Health's 2010 Community Health Assessment, which is a community-wide strategic planning session to set health priorities for the next few years. One piece of this process is to ask community residents to vote on what they consider to be the top health priorities. She urged City Council and the community to participate by filling out a 3-minute survey by midnight on October 31st.

Mayor Bellamy felt it would be appropriate for the City to put this information in the City's next newsletter.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGULATING TELECOMMUNICATION TOWERS TO BE MORE CONSISTENT WITH CHANGES IN THE FEDERAL AND STATE LAWS

Mayor Bellamy opened the public hearing at 6:36 p.m.

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance regulating telecommunication towers to be more consistent with changes in the federal and state laws. This public hearing was advertised on October 15 and 22, 2010.

At its meeting on September 14, Council adopted all of the proposed revisions to the telecommunications ordinances except the revision described in subparagraph (f) of the proposed ordinance. That subparagraph and the Staff Report summary of it are reproduced below:

(a) By amending Sec. 7-16-2(d)(3) a. to read:

- Ordinance revision.

“a. Use districts: Office/Business, Community Business II, Resort, Institutional, Highway Business, Regional Business Commercial Industrial, River, Industrial, Light Industrial. In addition, telecommunication towers shall be allowed as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; provided: (i) said use is not otherwise non-conforming, (ii) the property is not subdivided for the purpose of accommodating a telecommunication tower and, (iii) the application meets the standards set forth in subsections 7-16-2(c) and (d) of this chapter.”

- Staff Report summary.

“3. The requirement for facilities in residential districts to be located only on publicly owned property is removed in order to comply with a prohibition in the State law. Location on publicly-owned property is encouraged, and facilities are still prohibited from locating on property that is in use for residential purposes.”

This proposed revision was referred to the Planning and Economic Development Committee of Council, which considered it at its meetings of September 21 and October 19. After further presentations from staff, which included a review of the applicable law and a review of ordinances from other cities, and further discussions, the PED Committee recommended against adopting this revision.

The PED Committee recommended further changes to the ordinance, including (1) prohibiting telecommunications towers from residential districts entirely, adding a set back from residentially zoned property, (2) establishing a minimum lot size for towers, and (3) requiring that towers be constructed to allow co-location. These are material changes to the ordinance, and are not encompassed within the revisions currently under consideration by Council. They should be handled as a new and separate amendment to the ordinance. In addition, staff requires time to research the suggested revisions, and prepare language for the ordinance.

If Council adopts the proposed ordinance revision, then Council should proceed with the application for a conditional use permit for a telecommunication tower to be located at 415 Beaverdam Road. If that is the route Council chooses, he felt Council may wish to continue the conditional use permit application public hearing because notice has not been circulated to Beaverdam residents that this issue would be considered at this time. If, however, the ordinance

revision is not adopted, the Beaverdam application is moot. He said this is an evolving technology situation and an evolving zoning situation and staff will continue to review the law and come back to Council with whatever they feel is appropriate.

Assistant Planning & Development Director Shannon Tuch said that a question raised at the PED Committee is what other cities do. They surveyed 19 municipalities in North Carolina and of those 19 surveyed, it appears that 13 did allow cell towers in residential districts with a conditional use or a special use permit. Similar to our conditional use permit process, they had a variety of special standards, particularly a proof of need standard that the applicant demonstrates there is no other way to achieve coverage. Out of the 19 cities surveyed, staff found 3 that do not allow cell towers in residential districts.

Ms. Patsy Brison, attorney representing U.S. Cellular and North Carolina RSA#4, urged Council to adopt the proposed wording amendment to allow telecommunication towers as conditional uses in residential districts on properties not used for residential purposes. She pointed out that the Planning & Zoning Commission unanimously recommended to Council that they adopt this amendment. Further, if the amendment is not adopted, it is her opinion that the City's failure to adopt it will prohibit or have the effect of prohibiting provision of personal wireless services within certain areas of the jurisdiction of the City of Asheville. As evidence of the prohibition of personal wireless services, she showed Council a copy of the City of Asheville zoning map which includes the location of the residential districts within the City's jurisdiction. In addition, she provided Council with a copy of a "City of Asheville Cellular Coverage Map" produced by her clients, showing that the coverage issues are coincidental with residential zoning districts, particularly in the Haw Creek and Beaverdam areas. Further, if the existing language regarding allowing telecommunication towers on certain properties in residential districts is also removed, that further prohibits the provision of personal wireless services within residential areas in the City's jurisdiction. If the provision of personal wireless services is prohibited, it most likely will have serious safety implications due to the wide-spread use of cellular phones and their specific use for access to 911 calls. She respectfully urged Council to allow the provision of these services in residential districts where the evidence documents lack of service.

Mayor Bellamy closed the public hearing at 6:51 p.m.

Councilwoman Manheimer said that the PED Committee did review this issue and their recommendation was that we ask staff to prepare an ordinance amendment that will bring us into compliance with state law. We have to expand the types of properties within a residential zoning districts that cell towers can be located on (with a conditional use permit) or we need to zone them out entirely of residential districts. The PED Committee recommended (1) prohibiting telecommunications towers from residential districts entirely; (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; and (4) requiring that towers be constructed to allow co-location. If Council agrees with the PED Committee recommendation, City Council would not need to act on this proposed amendment. City Attorney Oast felt the amendments to the ordinance recommended by the PED Committee would need to go back through the Planning & Zoning Commission process.

In response to Vice-Mayor Newman (who felt this is largely an aesthetic issue), City Attorney Oast said that if Council does allow cell towers in areas zoned residential, through the conditional use permit process Council can require that they look like a picture Ms. Brison provided to Council of a cell tower in Harrill Hills, Knoxville, Tennessee. Ms. Brison said that this would be on a case by case basis and with the 100-foot limit you already have some aesthetic values in the conditional use permit process. She noted that they have done a number of different kinds of design applications in various jurisdictions to comply with that jurisdictions interests and how it might look in a specific location.

Mayor Bellamy didn't think that all applications are created equal, because she noted that the cell tower disguised as a flag pole at our Fire Station on Louisiana blends in. She supported allowing cell towers in certain residential districts with the conditional use process. She felt that Council can legislate what the tower will look like and she felt that coverage is needed in our community. Councilman Russell agreed that we need to look at each application through the conditional use permit process on a case by case basis.

Councilman Bothwell moved to instruct City staff to research the suggested revisions recommended by the PED Committee.

It was the consensus of Council (Mayor Bellamy, Vice-Mayor Newman, Councilman Davis and Councilman Russell) to allow cell towers as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes. In addition, staff is to research (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; and (4) requiring that towers be constructed to allow co-location. The proposed wording amendment will come back to City Council for consideration of adoption.

In response to Vice-Mayor Newman, City Attorney Oast believed that staff previously researched city-owned properties looking for gaps that we could build the infrastructure for co-location. He would provide that research to Council.

Councilman Bothwell revised his motion to remand this issue to staff and the Planning & Zoning Commission to consider (1) allowing cell towers as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; and (4) requiring that towers be constructed to allow co-location. This motion was seconded by Councilman Russell.

Ms. Tuch said that staff prior to the PED Committee meeting, staff hadn't identified the requirement for co-location, but after subsequent review, they discovered that there is a requirement for co-location, but only one additional space for another provider. In most cases we do find two, sometimes three other spaces. The proposal that is before Council tonight (for a cell tower at 415 Beaverdam Road) that would extend service to those privately owned residential properties that are occupied by non-residential uses. If Council is interested in adopting that wording amendment, the application on the agenda could move forward and they could return to the Planning & Zoning Commission for an additional amendment for the PED items discussed earlier.

It was the consensus of Council to not move forward with the application for a conditional use permit for a cell tower in Beaverdam at this meeting in order for the Beaverdam community an opportunity to speak at the public hearing. City Attorney Oast said that all of the items mentioned can be conditions on the pending application; however, he felt some separation of time between the wording amendment and the consideration of the application of the conditional use permit would be helpful.

In response to Mayor Bellamy, the main reason why he felt this wording amendment should be re-considered by the Planning & Zoning Commission was based on the PED Committee recommendation that cell towers not be allowed at all in residential areas. However, now that it is not the consensus of Council and Council is talking about incorporating these additional requirements on the conditional uses for allowing them in residential areas.

Ms. Brison noted that there is already a co-location requirement in the ordinance. She said there is a requirement in federal law and in the state law and that is if you fail to act in a

reasonable time period of the application being submitted then it can be challenged under federal law. Their application was submitted on July 27, 2010. She felt this is beyond a reasonable time period for action. She requested Council proceed with the proposed wording amendment and send the other PED items back to the Planning & Zoning Commission for review for inclusion on future applications, not this pending one.

A resident and homeowner in Beavertown understood that federal law requires equal access for towers and cellular use, but didn't believe it applies to every single telecommunication company. He was concerned that there will be a lot of other telecommunication companies to follow and if we acquiesce to this tower within Beavertown, will we have to give into those other telecommunication towers as well.

Mayor Bellamy closed the public hearing at 7:16 p.m.

In response to Councilman Russell when Ms. Tuch said that the next Planning & Zoning Commission meeting would be December 1, Vice-Mayor Newman felt this didn't need to go back to the Planning & Zoning Commission for review since they have already recommended approval of the cell towers being "allowed as a conditional use in residential districts ... not used for residential purposes," and staff could recommend some changes to the wording amendment as recommended by the PED Committee and bring those changes back to Council for review.

When Councilman Russell asked for a friendly amendment to continue this item to the November 9, 2010, agenda, Councilman Bothwell accepted the friendly amendment, with the amended motion to be to remand this issue to staff to consider (1) allowing cell towers as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; (4) increase the requirement for co-location; and (5) that this item be reconsidered by City Council on November 9, 2010. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilwoman Manheimer voting "no."

Councilman Russell moved to continue the public hearing to consider a conditional use permit for the project identified as a U.S. Cellular telecommunication tower, located at 415 Beavertown Road, for construction of an 80' monopole tower until November 23, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS US CELLULAR TELECOMMUNICATION TOWER, LOCATED AT 415 BEAVERDAM ROAD, FOR CONSTRUCTION OF AN 80' MONOPOLE TOWER

Councilman Russell moved to continue the public hearing to consider a conditional use permit for the project identified as a U.S. Cellular telecommunication tower, located at 415 Beavertown Road, for construction of an 80' monopole tower until November 23, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

Closed Session

At 7:21 p.m., Councilman Smith moved to go into closed session for the following Reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the properties is Eagle Street. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the

General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:40 p.m. Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

C. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT BETWEEN THE CITY OF ASHEVILLE AND FRONTIER SYNDICATE LLC FOR THE MONTFORD COMMONS DEVELOPMENT, PHASE I

RESOLUTION NO. 10-232 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT BETWEEN THE CITY OF ASHEVILLE AND FRONTIER SYNDICATE LLC FOR THE MONTFORD COMMONS DEVELOPMENT, PHASE I

Mayor Bellamy opened the public hearing at 7:45 p.m.

Planning and Development Director Judy Daniel said that this is the consideration of a resolution approving an economic development incentive grant between the City of Asheville and Frontier Syndicate LLC for the Montford Commons Development, Phase I. This public hearing was advertised on October 15, 2010.

In response to the directive of the City Council at their August 24 meeting, the following elements are proposed to be included in an Economic Incentive Grant (EIG) between the City and Frontier Syndicate, LLC. The City Council will need to vote to support the agreement. With that vote, the City Attorney will draw up the required documentation for approval by the City and Frontier Syndicate, once the City has received notice that the Buncombe County Commission has agreed to support the project as noted below.

The elements of the proposed agreement include:

The City of Asheville will make an Economic Incentive Grant (EIG) to Frontier Syndicate LLC that will support the installation of infrastructure necessary for the construction of Phase One of the Montford Commons development – consisting of a 250 unit apartment complex and attendant 390 space parking structure - contingent upon:

1. Agreement by Buncombe County to an equivalent or greater amount of support (which the Commissioners did agree to an equivalent level of support); and
2. Agreement that Frontier Syndicate will assume responsibility for any legal challenge to this interpretation of the EIG enabling statutes.

The extent of the grant is:

1. An amount equivalent to City property taxes (in excess of currently assessed taxes), annually applied, that will be generated by the project for the first five years of its operation after construction is complete;
2. Relief of 50% of any permitting fees (up to \$350 per unit constructed); representing approximately \$43,759;
3. Relief of 50% of water tap fees representing approximately \$51,506.

In return the developers will:

1. Guarantee that 100% of the apartments remain at workforce housing level rents for the first 15 years of rentals – this clause to apply to any future owners of the property during

those years. An annual report to be submitted to the City Manager during that term to verify the current rent levels.

2. Work with the Community Development staff to develop a “preference queue” for the apartments that will give first right of rental to civil service employees (City and County government employees, City and County school employees) who are earning workforce level family incomes.
3. Report the number of construction jobs that will be created by the project.

If the developer or other subsequent owner of the property fails to perform as required, any expended grant funds will be refunded to the City.

The strategic plan goals most closely aligned with this proposal are the: (1) Affordable Goal in that it expands opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development; and (2) Job Growth and Community Development Goal in that it will support diversified job growth and small business development; and will promote sustainable, high-density, infill growth that makes efficient use of existing resources.

Pros:

- Meets Council goal to expand opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development
- Meets Council goals to promote sustainable, high-density, infill growth that makes efficient use of existing resources

Cons:

- The City will not receive the full development permitting fees that are used to offset staff time required for reviews, but all required reviews will be needed.
- The City will not receive tax revenue for the improved property for the length of the incentive authorized; although City services will be provided.

The City will not receive standard development permitting fees (that fund staff time required for reviews), but all required reviews will be needed. The City will not receive additional taxes for the improved property for the length of the incentive authorized; although City services will need to be provided to the property.

City staff recommends City Council adopt an Economic Incentive Grant that will support the construction of the Montford Commons Development, Phase I to the extent noted within the staff report.

A representative of Frontier Syndicate LLC appreciated Council’s favorable consideration on this incentive grant.

Mayor Bellamy closed the public hearing at 7:49 p.m.

Councilman Bothwell noted that although this does provide workforce housing, this does not incentivize affordable housing per our definition.

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

Councilwoman Manheimer moved for the adoption of Resolution No. 10-232. This motion was seconded by Councilman Davis and carried 4-3, with Councilman Bothwell, Councilman Russell and Councilman Smith voting “no.”

RESOLUTION BOOK NO. 33– PAGE 241

V. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3908 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD A NEW APPLICATION PROCESS TO ALLOW THE CONSIDERATION OF DEVELOPMENT INCENTIVES FOR PROJECTS MEETING KEY STRATEGIC CITY GOALS

Mayor Bellamy said that the public hearing on this issue was held on October 12, 2010, and due to the vote, it required a second reading.

Councilman Bothwell said that the first vote on this ordinance was very difficult. While he understood why people want public comment regarding changes to development in their neighborhoods, he now believes that this won't have nearly the impact that opponents are concerned about.

Vice-Mayor Newman moved to adopt Ordinance No. 3909 on its second and final reading. This motion was seconded by Councilman Smith carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting “no.”

ORDINANCE BOOK NO. 26 - PAGE

B. RESOLUTION NO. 10-233 - RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE COOPERS HAWK DRIVE AREA

At the request of Councilwoman Manheimer, Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter and the consideration of an ordinance extending the corporate limits of the City of Asheville to the Coopers Hawk Drive area, due to a conflict of interest. This motion was seconded by Councilman Bothwell and carried unanimously. Councilwoman Manheimer left the room and did not return until after the vote on the ordinance extending the corporate limits of the City of Asheville to the Coopers Hawk Drive area.

Urban Planner Julia Fields said that this is the consideration of a resolution amending the Annexation Services Plan for the Year 2011 Annexation Areas to reflect the removal of the Royal Pines Area from the plan.

In adopting an annexation ordinance, the City has the authority to annex all, some, or no portion of an area proposed for annexation, as long as any area being annexed qualifies for annexation. The City may also amend the services plan for the proposed annexation area or areas, as long as the requirements for providing service to the annexation areas continue to be met.

City staff presented the Annexation Services Plan for the Coopers Hawk Drive and Royal Pines Areas to City Council on August 10, 2010. The City Council approved the plan on this date.

Following the public hearing on these proposed annexation areas held on October 12, 2010, the City Council voted not to move forward with the annexation of the Royal Pines Area. This action necessitates an amendment to the approved Annexation Services Plan to reflect the removal of the Royal Pines Area from the plan. The amended Annexation Services Plan along with a resolution must be approved to effectuate this amendment.

The entirety of the approved plan has been reworked to delete all sections specifically addressing the annexation of the Royal Pines Area. Proposed capital expenditures for additional police patrol and solid waste vehicles/personnel have been removed (no longer needed) as have expenditures for the potential economic loss for the private waste haulers (no longer required per statute). The amended plan now only reflects the annexation of the Coopers Hawk Drive Area.

As long as the Annexation Services Plan does not show the annexation area as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

The fiscal impact of the remaining proposed annexation area is contained in detail on pages 23-27 of the Plan for Services.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan as presented.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy said that members of Council have previously been furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 10-233. This motion was seconded by Councilman Bothwell and carried on a 5-1 vote, with Councilman Russell voting "no" (Councilwoman Manheimer excused).

RESOLUTION BOOK NO. 33 – PAGE 242

C. ORDINANCE NO. 3911 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE COOPERS HAWK DRIVE AREA

Note: Councilwoman Manheimer was recused from participating in this matter due to a conflict of interest as noted by the motion in the prior item.

Urban Planner Julia Fields said that this is the consideration of an ordinance extending the Corporate Limits of the City of Asheville to include the Coopers Hawk Drive area.

On July 27, 2010, the City Council adopted a Resolution of Intent beginning the annexation process for the Coopers Hawk Drive Area. The Annexation Services Plan for this area was approved on August 10, 2010, and a public information meeting was held on September 13, 2010. A public hearing on the annexation was held on October 12, 2010. Adoption of the annexation ordinance is the final step in the annexation process should City Council want to continue to proceed. The proposed effective date for this annexation is June 30, 2011.

The ordinance sets forth this effective date and also reference a metes and bounds description attached to the ordinance.

The fiscal impact of the remaining proposed annexation area is contained in detail on pages 23-27 of the Plan for Services.

City staff recommends City Council adopt the annexation ordinance for the Coopers Hawk Drive Area with the effective date as established by ordinance.

Councilman Russell was disappointed that this annexation area was not withdrawn from consideration as was the Royal Pines area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy noted that she spoke with some residents of the Coopers Hawk Drive area and they asked if Council would be willing to extend the effective date in order for them to properly prepare for the annexation into the City.

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

Vice-Mayor Newman moved for the adoption of Ordinance No. 3911, with an effective date of November 30, 2011 (400 days from the date of adoption). This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Russell voting "no" (Councilwoman Manheimer excused).

ORDINANCE BOOK NO. 26 - PAGE

Councilwoman Manheimer returned to continue participation in the Council meeting.

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-234 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN DOCUMENTS RELATED TO AN AGREEMENT WITH NC GREENPOWER FOR ACCEPTING PAYMENT FOR RENEWABLE ENERGY GENERATED USING A HYDRO MICROTURBINE

Director of Water Resources Steve Shoaf said that this is the consideration of a resolution authorizing the City Manager to sign documents related to an agreement with NC GreenPower for accepting payment for renewable energy generated using a hydro microturbine.

The Water Resources Department is pursuing a grant from the Appalachian Regional Commission (ARC) for a pilot microturbine installation to capture renewable energy. As a first step, the City of Asheville Water Resources Department is applying to NC GreenPower for supplemental payments for renewable energy generated using a hydro microturbine. Payments for renewable energy through NC GreenPower would supplement energy buy-back payments from the electrical utility and would make payback calculations for the microturbine pilot project more favorable.

Due to the mountainous terrain, the City of Asheville has several locations in the water distribution system that requires a reduction of high water pressure to serve customers. Currently, pressure reducing valves are used to achieve this, but they waste available energy. Installation of turbines would capture that energy and generate electricity for sale back to the electric grid. This project would serve as a demonstration of feasibility and could be modeled in other areas of Appalachia. The impact of wide-spread implementation could reduce the need to construct new electric generating plants in the region. In January the ARC is entertaining proposals for grants for planning and implementation of community energy projects. The Water Resources Department has been working with the engineering firm WK Dickson to investigate the performance, logistics, and payback of the technology and the ARC application process.

The Water Resources Department is relying on a grant from ARC and payments for the electricity produced to provide a favorable payback for this project. The NC GreenPower payments would be combined with the actual purchase of kilowatt hours by the electrical utility and an "avoided cost of new construction" payment from the electrical utility.

This project is part of City Council's strategic plans to become more Green and Sustainable. It would make use of an existing resource (water energy) and convert it to a commodity.

Pros:

- Promotes the concept of green and sustainable.
- Could provide an alternate source of revenue for the Water Resources Department.
- May provide an example for other systems to model.

Cons:

- The ARC grant funds will not cover the total cost of the project and a NC GreenPower supplement is necessary to improve payback calculations.
- The installation of turbines may present challenges for our system operation.

There is no budgetary impact associated with the application for supplemental funds from NC GreenPower. Any funds needed for this project will be allocated in the Water Resources FY 2011-2012 CIP budget. There will be a payback calculated by the sale of energy back to the electrical utility.

City staff recommends City Council approval of the City Manager to sign documents related to an agreement with NC GreenPower for accepting payment for renewable energy generated using a hydro microturbine.

When Mayor Bellamy asked for public comments, none were received.

City Manager Jackson commended Mr. Shoaf for this kind of innovation and leadership.

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

Councilman Bothwell moved for the adoption of Resolution No. 10-234. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 243

B. ORDINANCE NO. 3912 - ORDINANCE AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES PERTAINING TO STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Director of Public Works Cathy Ball said that this is the consideration of an ordinance amending Chapter 16 of the Code of Ordinances that amends existing Section 16-3 relating to maintenance of sidewalks.

Section 16-3 of the City of Asheville Code of Ordinances currently states that “ *It shall be the duty of every occupant or tenant of improved property and of the owner of every vacant property within the city, in front of which the sidewalk has been paved, to keep such sidewalk clean and to do such sweeping and scraping as may be necessary to keep such sidewalk clean and free from snow, ice, dirt and trash and to render the sidewalk passable, comfortable and sightly and the gutter next to and along such sidewalk open and free from obstructions for the full width of the front.*” There is no other reference in the existing ordinance that clarifies these requirements and no direction, remedies or cures in the event the property owner does not correct the problem. She showed several pictures of overgrowth on streets and sidewalks, some which render the sidewalk non-Americans with Disabilities Act compliant.

Staff has revised the ordinance to make it clarify the responsibility of the adjacent property owner to maintain sidewalks, grass strips, drainage swales and gutters, clean and

unobstructed. The revised ordinance also provides for notice and enforcement of these requirements.

In summary, the purpose of the ordinance is twofold: (1) to make it easier to understand and (2) to be able to have some penalties to require property owners to take action. This ordinance clarifies what is required to keep sidewalks clear and free of overgrowth from adjacent properties as well as curb and gutter and to be able to create a civil penalty in the event the property owner does not comply. It also stipulates some requirements for when ice or snow is on streets, and it gives the City the ability to assess a criminal penalty if someone has deliberately piled snow upon the sidewalks or streets, or cleared off snow off their parking lots and piled it onto the sidewalks.

This recommendation complies with City Council's Strategic Plan by in the area of Fiscal Responsibility by improving the condition and safety of our sidewalks, grass strips, drainage swales and gutters.

Pros:

- Improve the condition of existing sidewalks, grass strips, drainage swales and gutters.
- Improve the safety and ADA compliance of existing infrastructure.
- Provides an enforcement arm to the existing ordinance.

Con:

- There are approximately 9.5 miles of sidewalks adjacent to City owned land that would need to be maintained by the City.

No fiscal impact but the City would need to reprioritize our resources to provide the maintenance for the 9.5 miles of sidewalk adjacent to City owned properties. We could utilize some of the nuisance court community service to accomplish some of this maintenance.

Staff recommends that City Council adopt an ordinance that amends existing ordinance 16-3 relating to maintenance of sidewalks.

After a short discussion, initiated by Mayor Bellamy, about an appeal process, it was the consensus of Council to amend the ordinance to include a provision for civil penalty appeals (including the penalty increases) similar to the street cut permit violations in Section 16-40 (appealed to Public Works Director and then to the City Manager).

Mayor Bellamy also felt it was necessary for the City to have a process for hardship cases for those that are unable to do the necessary maintenance.

In response to Mayor Bellamy, Ms. Ball said that the City will make sure we do our part on this ordinance as well. We determined that 9.5 miles of sidewalks are adjacent to City-owned property, so we have an obligation to maintain those sidewalks at the same level we are asking other property owners to maintain their property.

Councilman Bothwell felt it was important for the City to set a model on how sidewalks should be maintained.

When Councilman Bothwell asked whose responsibility is the sidewalk on the Flint Street bridge, Ms. Ball said that she would have to research that and report back.

Ms. McGlohon responded to Councilwoman Manheimer about the City's process now of when properties are not maintained.

Councilman Russell moved to adopt Ordinance No. 3912, to include a provision for civil penalty appeals (including the penalty increases) similar to the street cut permit violations in

Section 16-40 (appealed to Public Works Director and then to the City Manager). This motion was seconded by Councilman Bothwell.

When Mr. Dwight Butner asked if this ordinance has been reviewed by any other group, Ms. Ball responded that following the snow events last year, they worked with the Neighborhood Coordinator and sent out to all downtown residents a survey money asking them what would be the most important thing to improve. The result was a request for an ordinance on how to address snow removal from sidewalks. Even though we did not follow back up with them, we moved in the direction to clarify the responsibilities.

At the request of Mayor Bellamy, Ms. Ball said that they will develop a communications plan for educating property owners of their responsibilities regarding maintenance on sidewalks and suggested the ordinance not be effective until 60 days after adoption. In addition, she said they are working on a program so that property owners can purchase the necessary equipment at a cheaper rate to remove snow. She also noted that they are also looking at grants to make the equipment accessible as well. Mayor Bellamy wondered if there would be any Community Development Block Grant monies available to help on some level for those who can't afford to maintain their sidewalks.

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

The motion made by Councilman Russell and seconded by Councilman Bothwell, with an effective date of 60 days after adoption for educating the public, carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Leslee Kulba suggested the City review Governor Beverly Perdue's bureaucracy reduction initiative to review the counter-productive unfunded mandates. Mayor Bellamy said that the Finance Committee would be the appropriate body to review the unfunded mandates coming from the state.

Ms. Betty Jackson spoke against forced annexation and suggested a forum where retired city planners and others who have expertise can provide information on why forced annexation doesn't need to occur.

Ms. June Patterson, Arden resident, asked the City to investigate why snipe signs are allowed along Airport Road. Mayor Bellamy said that City Manager Jackson would investigate the matter.

Mr. John Kleckner, local artist, explained his frustration with working with the City on an art project.

A Buncombe County resident spoke in opposition to forced annexation.

The following claims were received by the City of Asheville during the period of October 1-21, 2010: Stefan Bonitz (Parks & Recreation), Steven Anderson (Sanitation), Arville Dale Jenkins (Police), Don Adams (Streets), Asheville Property Management (Streets), Douglas Miller (Police), Melinda Vetro (Water), Progress Energy (Water), Progress Energy (Water), NC Dept. of Transportation (Police), Veronica Crouch (Transit); Michele Davy (Sanitation) and Pulliam Properties (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:42 p.m.

CITY CLERK

MAYOR