

Tuesday – April 26, 2011 – 4:00 p.m.
First Floor North Conference Room

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; 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

Recycling

Public Works Director Cathy Ball said that the purpose of this report is to provide City Council with additional information regarding an enhanced residential recycling program.

At the April 12, 2011, City Council meeting, staff recommended an increase in the recycling fee of \$0.65 per month or \$7.80 per year. The current fee is \$2.95 per month. Staff proposed that the additional fee would cover the following:

- o Allowing, but not requiring, residents to select a larger (95 gallon) recycling container; and,
- o Providing a marketing and rewards program, such as Recyclebank, for residents who participate in the recycling program.

Currently, residents can put all of their recyclables in one container. This process is known as “single stream recycling”. Additionally the City is working with our vendor to add materials like yogurt containers to the accepted materials list. Neither of these two enhancements requires a fee increase.

Council requested additional information regarding the options of offering residents a 95 gallon recycling container and/or a rewards program. Staff evaluated these two options separately (with the third option of proceeding as we are now) and determined the cost for the programs shown in the table below.

Option	Description	Cost Increase per year	City Savings per year	Net per year	Rate Increase per month	Rate Increase per year
1	95 gallon container	\$220 K	\$105 K	(\$115 K)	\$0.35	\$4.20
2	95 gallon container + Recycling rewards program	\$343 K	\$130 K	(\$213 K)	\$0.65	\$7.80

The recycling rewards program currently being evaluated by the City is Recyclebank. Based on Recyclebank’s evaluation of Asheville, residents who participate in the recycling program could be eligible for a discount on local and national business in the amount of \$90 to \$130 per year.

In April 2007, Asheville City Council passed a resolution committing to reduce the municipal carbon footprint 80% by the year 2050. To lead this strategic effort, Asheville developed a Sustainability Management Plan that was adopted by City Council. Solid waste was included as a focus area in the plan, along with a series of programmatic recommendations to reduce waste generation in Asheville in its FY 2010-11 strategic plan, Council specifically identified the reduction of solid waste as a top priority.

At the April 20, 2011, SACEE recommended approval of the 95 gallon containers with the recycling rewards program or Option 2 above.

If approved, staff would need six months before full implementation could take place. During those six months, the City would procure bins and all necessary equipment, finalize changes to the existing recycling contract and implement a community education initiative.

This action aligns with Council's Green and sustainable goal: Asheville will be the southeastern leader in clean energy and environmental sustainability by expanding community education programs and implementing ways to reduce city-wide solid waste.

Pros:

- Reduction of land filled solid waste
- Increased awareness of recycled material for residents
- Supports Council's sustainability goals

Con:

- Cost per month per household will increase if either of the options is selected.

She provided some information provided by Recyclebank regarding their point redemption.

Ms. Ball, Solid Waste Manager Wendy Simmons and a representative from Recyclebank responded to various questions/comments from Council, some being, but are not limited to: in the pilot program, what are the percentages for (1) participation; (2) recycled materials; and (3) drop in waste to the landfill; could the 7% increase from the pilot program be due to the citizen awareness of the larger 95 gallons containers; do all residents on a route have to participate in the program to obtain points; how are the points determined per route; difference between coupons and point redemption; will enough people use the point reward program to make it financially beneficial for them; what percentage increase in recycling is anticipated with the Recyclebank proposal; is there an opportunity for an escape clause in the contract if certain targets are not met; can the points be donated for a cause and if so, how would that program work; does it cost businesses to participate in the reward program;

After discussion, it was the majority of Council's consensus to proceed with Option 1 and have staff bring the proposal forward for a formal vote.

Action Items from April 12, 2011, Budget Briefing

Director of Administrative Services Lauren Bradley said that she provided Council a memorandum to respond to action items that were identified by City Council during the April 12, 2011 budget work session.

- (1) Grove Arcade Capital Plan** – How does the City's current arrangement with the Grove Arcade contemplate capital improvements at the facility? The City of Asheville currently receives \$50,000 per year, due each June 1, from the Grove Arcade Public Market foundation, as repayment for its portion of the 1998 COPS loan. The city can expect to receive this payment as outlined by June 1 of this year. Regarding capital improvements, the city of Asheville is not contractually obligated to participate in any necessary capital improvements to the Grove Arcade. Currently, Historic Grove Arcade (HGA) LLC. (Progress Energy) is responsible for 66% of the total costs for capital improvements in the building and Grove Arcade Public Market Foundation (GAR) is responsible for 34% as its cost share. In addition, GAR has \$300,000 budgeted in this current budget year for on-going operational maintenance items in the building, and currently has \$100,000 in capital reserves.

(2) Transit Deviations – Provide an update on the transit route deviations that have been addressed as part of the Transit Master Plan.

Planning to add
Zillicoa St

Removed September 20, 2010

Farmers Market, Woodridge Apartments, Dial-a-ride Discount Shoes, Dial-a-ride Ridge & Grail

Planning to Keep

Medical Park, Goodwill, Golden Living Center, Grove Park Inn , Airport, Klondyke Apartments, VA Hospital , Warren Wilson College, UNCA

Planning to Remove

Canterbury Apartments, Dial-a-ride Care Partners, Overlook Shopping Center, Hospital, Innsbruck Mall, Overlook Shopping Center , Dial - a - ride Reuters Center, Dial-a-ride Midland, Dial-a-ride Kimberly, Eliada Home, Ledgewood Apt, Spruce Hill Apts., Meadow Apts., Overlook Apartments, Deaverview Apartments, Laurel Wood Apartments, Biltmore Square Mall, Sulpher Springs Rd., Caledonia Rd., Rock Hill Rd. east, Courtland Rd, Sante & Watauga, Liberty & Raleigh Rd.& Oakley, Baker Dr. & Rash Dr. & Oakmont Terrace, Hazel Mill Rd, Mt Clare & Hillside, Dial-a-ride NC Voc Rehab, Peachtree Rd., Erskine Apartments, River Ridge Shopping Center, West Gate, Regent Park, Target (route deviation), Pine Grove St.

Planning to Shorten Deviation

Hillcrest Apartments, AB Tech, Pisgah View Apartments

Mayor Bellamy said that she would contact Director of Transportation Ken Putnam for some questions regarding the deviations.

(3) Golf Course Irrigation System – How much would the golf course save annually by having the irrigation system installed on the back nine? What was the total estimated capital cost for the project? A memorandum from Parks, Recreation and Cultural Arts Director Roderick Simmons was provided.

Mr. Simmons responded to questions from Council regarding the Golf Course irrigation system.

(4) Operational Savings – Highlight other operational savings the City has realized as a result of past capital projects. Staff will provide this information in a follow-up memorandum.

(5) Montford Avenue Street Rebuild – Provide a map of the proposed Montford Avenue street rebuild project. Maps were attached.

(6) Greenway Construction Program – Provide maps of the proposed Beaucatcher/Overlook Greenway and the Town Branch Greenway. Provide a projected timeframe for the construction of both greenways. Maps were attached.

Pack Place Board

After a short discussion initiated by Councilman Russell regarding whether an elected official should be a voting member on the Pack Place Board, City Attorney Oast said that he would address the issue at the Boards & Commissions Committee meeting on May 10.

At 4:50 p.m., Mayor Bellamy adjourned the worksession.

Tuesday – April 26, 2011 - 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; 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

The For Girls Only Club led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY AS “MOTORCYCLE AWARENESS MONTH”

Mayor Bellamy read the proclamation proclaiming May, 2011, as "Motorcycle Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Steve Ensley who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING MAY AS “FOSTER CARE MONTH MONTH”

Mayor Bellamy read the proclamation proclaiming May, 2011, as "Foster Care Month" in the City of Asheville. She presented the proclamation to Ms. Heather Reardon, Foster Care Supervisor, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING MAY 1-7, 2011, AS “ARSON AWARENESS WEEK”

Mayor Bellamy read the proclamation proclaiming May 1-7, 2011, as "Arson Awareness Week" in the City of Asheville. She presented the proclamation to Fire Chief Scott Burnette, who introduced other fire and law enforcement personnel who represent the Asheville-Buncombe Arson Task Force. Chief Burnette also briefed City Council on some activities taking place during the week.

D. PROCLAMATION PROCLAIMING MAY 1-7, 2011, AS “DRINKING WATER WEEK”

Mayor Bellamy read the proclamation proclaiming May 1-7, 2011, as "Drinking Water Week" in the City of Asheville. She presented the proclamation to Water Resource Department employees Leslie Carreiro, Florie Presnell, Brandon Buckner, Chad Pierce, Ivan Thomas, Audran Stevens and Steve Shoaf. Water Resources Director Shoaf briefed Council on some activities taking place during the week.

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 12, 2011**
- B. MOTION SETTING A PUBLIC HEARING ON MAY 10, 2011, TO ADOPT THE FISCAL YEAR 2011-12 ANNUAL OPERATING BUDGET**
- C. ORDINANCE NO. 3962 - ORDINANCE TO REDUCE THE SPEED LIMIT ON RUMBOUGH PLACE AND SALOLA STREET IN WEST ASHEVILLE FROM 35 MPH TO 25 MPH**

Summary: The consideration of an ordinance to reduce the speed limit on Rumbough Place and Salola Street in West Asheville from 35 mph to 25 mph.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed an engineering and traffic investigation and determined that a 25 mph speed limit would be reasonable and safe on Rumbough Place from US 19-23 (Patton Avenue) to Salola Street and on Salola Street from Rumbough Place to Sand Hill Road. The subject streets primarily serve residential properties in a well established neighborhood. Daily traffic volumes are less than 1,000 vehicles per day and the 85th percentile speed ranges from 28.7 mph to 32.9 mph.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to a citizen's request.
- Based on the 85th percentile speed, most drivers would adhere to a 25 mph posted speed limit.

Cons:

- The initial cost to install the appropriate speed limit signs is about \$600.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about \$600 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on Rumbough Place from US 19-23 (Patton Avenue) to Salola Street and on Salola Street from Rumbough Place to Sand Hill Road in West Asheville.

ORDINANCE BOOK NO. 27 – PAGE 1

- D. RESOLUTION NO. 11-81 - RESOLUTION ACCEPTING TRELIS AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Trellis Court as a city-maintained street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer submitted a written request on January 27, 2011, asking the City to accept the subject street as a city-maintained street.

Trellis Court from Brotherton Avenue to its dead-end is a developer-constructed street that has an average width of 18 feet with 24-inch curb and gutter, a length of 0.09 mile, and a right-of-way width of 50 feet.

Transportation Department staff and Public Works Department staff inspected the subject street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. In addition, the developer's engineer has furnished a signed and sealed letter verifying that the subject street was constructed to current City of Asheville standards.

Following City Council's approval of this resolution, the subject streets will be added to the official Powell Bill List.

This action complies with the City Council 2010-11 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the street.
- The street provides access and connectivity in a residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street.

Staff recommends that City Council accept Trellis Court as a city-maintained street.

RESOLUTION BOOK NO. 33 – PAGE 443

E. RESOLUTION NO. 11-82 - RESOLUTION THE CITY MANAGER TO SIGN A CHANGE ORDER FOR PHYSICIAN SERVICES PROVIDED THROUGH THE CITY'S HEALTH SERVICES DIVISION

Summary: The consideration of a change order for physician services provided through the City's Health Services Division.

In January 1995, Council authorized the City Manager to enter into an agreement for part-time physician services in the Health Services Division. Dr. Paul Martin entered into a contractual agreement with the City of Asheville to provide three clinic days to City employees and their families. These clinic days have been very successful for Health Services.

Due to the ongoing need to Dr. Martin's services to employees, change order action is needed to continue his assistance to employees in the Health Services facility.

This action complies with the Fiscal Responsibility prong of the City of Asheville's Strategic Operating Plan for 2010-11. By offering city employees clinic hours and complimentary health services for non-critical issues, Health Care funds are saved in unnecessary doctor and emergency room visits, maintaining the city's long term financial commitment to high levels of fiscal responsibility.

Pros:

- The Health Services Clinic and Health Services Satellite Clinic provides on-site care for non-critical health needs
- Onsite care and services for employees saves the City of Asheville money in expenses that are not paid in unnecessary doctor and emergency room visits
- Dr. Martin is a trusted member of the Health Services staff team

Con:

- There are no foreseen cons for these services

This change order would be a one-time increase of \$20,000 to the existing \$100,000 contract. Funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of the change order to the contract amount.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a change order for physician services with Dr. Paul Martin, MD to continue to provide physician services to employees and their families.

RESOLUTION BOOK NO. 33 – PAGE 445

F. RESOLUTION NO. 11-83 - RESOLUTION AMENDING THE 2005 LEASE WITH DEWINE SEEDS – SILVER DOLLAR BASEBALL, LLC, REGARDING THE USE OF MCCORMICK FIELD FOR THE OPERATION OF THE ASHEVILLE TOURISTS

Summary: The consideration of a resolution authorizing the City Manager to amend the 2005 lease with DeWine Seeds to adjust the 2011 lease payments owed to the City by DeWine Seeds, contingent upon successful negotiations of a new lease for the use of McCormick Field for the operation of the Asheville Tourists.

DeWine Seeds –Silver Dollar Baseball, L.L.C. (herein "DeWine Seeds") wishes to re-negotiate the terms of the lease for the use of McCormick Field for the continued operation of the Asheville Tourists, to adjust 2011 lease payments, contingent upon a successful lease negotiation.

On July 1, 2005, the City entered into a 10-year lease with Asheville Tourist Baseball Club, Inc. for the use of McCormick Field to operate a minor league baseball program within the city limits of Asheville; and on October 25, 2005, City Council approved the assignment of lease for use from Asheville Tourist Baseball Club, Inc. to Palace Baseball, LLC.

On January 26, 2010 City Council approved the assignment of lease for use from Palace Baseball, L.L.C. to DeWine Seeds for the continued operation of minor league baseball in Asheville.

DeWine Seeds has been operating the under the original 2005 lease agreement and now wishes to re-negotiate the terms of the original 2005 agreement.

The current lease agreement calls for annual lease payments to be paid in three equal payments of \$33,333.33 on June 1st, August 1st, and September 1st for years 2010-2012 for a yearly total amount of \$100,000.00.

In order to plan for the take over of operational functions that could potentially be part of the new lease agreement, DeWine Seeds is requesting an amendment to the 2005 lease as follows: 1) adjust the June 1 and August 1 payments owed to the City by DeWine Seeds to \$32,517.00 for each monthly payment; and 2) forgo the September 1 payment in the amount of \$34,966.00, contingent upon successful re-negotiating a new lease by December 1, 2011. If terms for a new lease cannot be finalized by December 1, 2011, DeWine Seeds will be required to pay the City the September 1st payment in the amount of \$34,966.00 and the terms and conditions of the 2005 lease will continue to be in effect until the expiration of the term of the 2005 lease.

This action meets Council's Strategic Operating Plan in the area of Fiscal Responsibility. By working with the DeWine Seeds –Silver Dollar Baseball, L.L.C. to re-negotiate the terms of the 2005 lease for the use of McCormick Field we are achieve the Fiscal Responsibility Goal of Operate the City of Asheville to the highest levels of fiscal responsibility by Identifying resources for strategic initiatives.

Pros

- DeWine Seeds is committed to keeping minor league baseball in Asheville.
- With the change in the economic climate, this gives the Asheville Tourists and the City an opportunity to make possible changes to a 10-year old lease developed by the previous owner of the Asheville Tourists.

Con

- None

If staff and DeWine Seeds are successful in re-negotiating the lease, the changes could potentially impact the FY 2011-12 McCormick Field revenue and expense budget. If terms for a new lease can not be finalize by December 1, 2011, DeWine Seeds will pay the City the September 1st payment in the amount of \$34,966.00 and there will be no impact on the FY 2011-12 budget.

Staff recommends City Council adopt a resolution authorizing the City Manager to amend the 2005 lease with DeWine Seeds to adjust the 2011 lease payments owed to the City by DeWine Seeds, contingent upon successful negotiations of a new lease for the use of McCormick Field for the operation of the Asheville Tourists.

RESOLUTION BOOK NO. 33 – PAGE 446

G. RESOLUTION NO. 11-84 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BOLTON CONSTRUCTION AND SERVICE OF WNC, INC. FOR THE PURPOSE OF RETROFITTING THE CIVIC CENTER BANQUET HALL HVAC SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Bolton Construction and Service of WNC, Inc. not to exceed \$112,000 for the purpose of retrofitting the Civic Center Banquet Hall HVAC system.

City Council previously approved using grant funds approved through the Energy Efficiency and Conversation Block Grant (EECBG) for the retrofitting of the Civic Center Banquet Hall HVAC. The purpose of the grant is to reduce energy consumption, increase energy efficiency and reduce carbon footprint.

This contract was bid out on March 10, 2011. Bids were received on April 5, 2011, and Bolton Construction and Service of WNC, Inc., Asheville, N.C., was selected as the most responsive responsible bidder.

This action complies with City Council's Strategic Operating Plan goal to become the southeastern leader in clean energy and environmental sustainability as well as the objective to look for grant opportunities to enhance investment in infrastructure maintenance.

Pros:

- This retrofit will establish a separate heating and cooling zone for the banquet hall so that the large system for the rest of the facility does not need to run when using the banquet hall.
- This improvement will support the upgrade of the banquet hall space to provide an improved meeting facility for the public.

Con:

- None noted.

The project will use \$66,000 previously accepted EECBG grant funds and \$46,000 previously budgeted capital dollars from the Civic Center Fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Bolton Construction and Service of WNC, Inc. not to exceed \$112,000.

RESOLUTION BOOK NO. 33 – PAGE 447

H. RESOLUTION NO. 11-85 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL'S 2010-11 OUTSIDE AGENCY AGREEMENT

Summary: Asheville Buncombe Community Relations Council (ABCRC) requests the amendment of their 2010-2011 Outside Agency agreement to allow for the use of \$18,000 to pay for prior year tax obligations, interest charges and other prior bills.

ABCRC has requested that the City and County each agree to allocate \$18,000 from their existing general fund agreements to enable the organization to pay the owed interest and enable negotiations with the IRS to commence. A copy of the letter from ABCRC associated with this request was provided to Council. The Buncombe County Commissioners have approved payment of these funds. The request to use 2010-11 Outside Agency funds allocated to ABCRC for this purpose has also been recommended for approval by the City Council Housing and Community Development Committee, pending staff review of the legality of this action.

Pros:

- Approval of this request enables the organization to begin the process of seeking to negotiate settlement of repayment of past taxes;
- Fair housing compliance and enforcement activity will continue to be provided by the organization.

Cons:

- Use of these funds for this purpose will mean that these funds are not available to pay for other expenses of the organization during the remainder of this fiscal year;
- The outcome of the investigations and negotiations is not known; therefore, the organization cannot predict how these conditions will affect its future viability.

City Council approved \$50,000 in Outside Agency funding for ABCRC as a part of the FY 2010-11 budget. A portion of that existing funding will be used by ABCRC to pay for the prior year tax obligations, interest charges and other prior bills. No new funds are being requested.

As recommended by the HCD Committee, the staff recommends approval of the resolution authorizing the amendment of the Outside Agency grant for the requested purpose.

RESOLUTION BOOK NO. 33 – PAGE 448

I. ORDINANCE NO. 3963 - BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER FUND TO REFLECT UPDATED FISCAL YEAR 2010-11 REVENUE AND EXPENDITURE PROJECTIONS

Summary: The consideration of a budget amendment, in the amount of \$170,000, from the Civic Center operating revenue, to increase the Civic Center Fund budget to reflect updated Fiscal Year 2010-11 revenue and expenditure projections.

The Civic Center has exceeded budgeted revenues due to several sold-out events in the 2010-11 Fiscal Year. Expenditures are also proportionately expected to exceed budget by the end of the Fiscal Year. As a result, staff has calculated an updated estimate of the expected revenues and expenses in the Civic Center Fund. In order to fund anticipated expenses over the last quarter of the current fiscal year, staff is recommending that the Civic Center Fund budget be increased by \$170,000. The additional revenue generated by concessions will cover the cost of the budget amendment; therefore, no transfer from the General Fund is required.

This amendment has been presented to the Civic Center Commission and recommended to City Council.

This action supports the City Council Strategic Plan by supporting the Civic Center as a regional entertainment destination and improving the Civic Center customer experience.

Pro:

- Provides sufficient budget authorization for anticipated revenues and expenditures in the Civic Center Fund without increasing the General Fund transfer.

Con:

- None.

As noted above, this budget amendment is funded with Civic Center operating revenue that has exceeded original budget estimates. Therefore, there is no impact to the City's General Fund budget.

Civic Center staff and Commission recommend City Council approve a budget amendment to increase the Civic Center Fund budget by \$170,000 to reflect updated Fiscal Year 2010-11 revenue and expenditure projections.

ORDINANCE BOOK NO. 27 – PAGE 2

J. ORDINANCE NO. 3964 - BUDGET AMENDMENT TO COVER THE COSTS FOR MILLING AND RESURFACING SOUTH LEXINGTON AVENUE

Summary: The consideration of a budget amendment, in the amount of \$35,000 from existing Sullivan Act proceeds, to cover the costs for milling and resurfacing South Lexington Avenue in conjunction with a water improvement project.

The City of Asheville Water Department has completed construction on a waterline replacement project on South Lexington Avenue. This project was not initially budgeted for resurfacing by Public Works; however, it is advantageous to complete the infrastructure repairs in the current fiscal year.

In the FY 2010-11 Budget Ordinance, Council approved a project budget of \$1,710,000 for Azalea Road Improvements with funding coming from Sullivan Act proceeds. In September of this fiscal year, Council approved moving \$225,000 from the Azalea Road project to fund the Northwood Road street improvement project, which left a budget of \$1,485,000 for Azalea Road. During this fiscal year, the City will be paying for the design of the Azalea Road project out of this money but the construction is not anticipated to occur until FY 2011-12.

This request is to move \$35,000 (the cost of milling and paving South Lexington Ave.) in this fiscal year from the Azalea Road project to pay for these costs, and then restore the \$35,000 in funding to Azalea Road in next year's budget. This change will not impact the schedule for the Azalea Road project

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Will allow Public Works to make improvements to South Lexington Ave. following the waterline replacement, consistent with Sullivan Act(s).
- Provides long term investment in the City's infrastructure.

Con:

- None noted.

This budget amendment is a request to move \$35,000 from one project to another in this fiscal year. It has no other fiscal impact.

City staff recommends City Council adopt the budget amendment for South Lexington Ave. improvements in the amount of \$35,000 from the five percent Water Department Sullivan Act Funds.

ORDINANCE BOOK NO. 27 – PAGE 4

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.

III. PRESENTATIONS & REPORTS: None.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A LAND USE INCENTIVE GRANT FOR WEIRBRIDGE VILLAGE

RESOLUTION NO. 11-86 - RESOLUTION ADOPTING THE TERMS FOR A LAND USE INCENTIVE GRANT AGREEMENT FOR WEIRBRIDGE VILLAGE APARTMENTS

Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Bothwell and carried unanimously.

Mayor Bellamy opened the public hearing at 5:28 p.m.

Community Development Director Jeff Staudinger said that this is the consideration of a resolution approving a land use incentive (LUI) grant for Weirbridge Village. This public hearing was advertised on April 15, 2011.

Mr. Staudinger said that the Weirbridge Village project entails the development of 280 units of rental housing located at the intersection of Hendersonville Road and Racquet Club Road in the City of Asheville. No commercial or other mixed use development is cited in the proposal.

The project, as presented to staff, appears to meet the Eligibility Requirements,

- Equity: A 20% equity contribution is required. The project developers indicate they have contributed 20.67% equity to the project. This includes unreimbursed expenses from the original PUD process.
- Energy Star Certification: The developers indicate the project will achieve Energy Star certification.
- Inside city limits, within ¼ mile of designated major highways: The project is located in an eligible location.
- Legal Costs; the developer must agree to assume all legal costs if the LUI is challenged: The developer has agreed to assume all legal costs if the Land Use Incentive policy is challenged.

The project proposes the following Public Benefit Elements:

- Workforce Housing units with assured affordability at that rent level for a minimum of ten years: *50% of total units* (10 points)
- Green Building/Energy: *Energy Star certified* (5 points)
- Located within the Sustainability Bonus Area: *Yes* (5 points)

The project therefore scores 20 points. Based on this score, the project would be eligible for a two year Land Use Incentive Grant.

The project meets the following 2010-11 Strategic Plan Goals: (1) *Affordable*: Create and preserve affordable rental and homeownership opportunities in Asheville. The project is directly related to the opportunity for public/private partnerships and innovative financing to incentivize affordable housing development; and (2) *Green and Sustainable*: Set and develop a plan for implementing a community reduction goal. The project is being built to Energy Star standards, and will be certified by Energy Star.

The project meets applicable Master Plans in the following ways: (1) The project supports the goals of the *2009 City Transit Master Plan* by its location “along major transit corridors...” ; and (2) The project supports the goals of the *2009 Sustainability Management Plan*, which calls for the City to encourage Transit Oriented Development. According to sources cited by the developer, “the minimum density at which rapid transit can operate efficiently is approximately 12 units per acre. The Weirbridge Village development is 17 units per acre.” The development is recycling during construction, and post construction will offer both recycling and composting available for residents. Weirbridge Village also will employ “best management practices” stormwater measures.

The developer has requested an exemption from the requirement that a project not have yet received building permits.

Weirbridge Village requests an additional 20 points for “extenuating circumstances surrounding the 25 year stormwater design at Weirbridge Village.” Staff has no recommendation as this is a policy decision.

The current assessed value of the property is \$1,171,500. The developer’s estimate of completed project taxable value is \$19,600,000. The current annual city tax, based on current assessed value, is \$4,920. The annual estimated city tax post completion, based on the developer’s estimate, is \$82,320. Thus, the estimated annual Land Use Incentive Grant would be \$77,400, the exact amount to be determined by the length, in years, of the grant award, and the actual assessed value of the development upon completion.

The amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is \$207,572. The value of each 10% of the fee rebate would be \$20,752. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant.

If Council decides to honor the developers request for an exemption to the building permit condition, the project as proposed appears eligible for a Land Use Incentive Grant. Per policy, Council must determine whether to award such a grant, and if so, for what time period. Based on the information submitted to date, staff finds that the project is eligible for a two-year award.

Mr. Richard Dirks said that the developer is proposing to designate 50% of their units as workforce housing but in their presentations to the neighbors they emphasized this would be market-rate housing, except for 5%. He was also concerned about the order in which this process came about.

Mayor Bellamy closed the public hearing at 5:31 p.m.

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

Vice-Mayor Newman moved to approve a land use incentive grant for Weirbridge Village for a two-year grant, not including the 25-year stormwater design request for additional points. This motion was seconded by Councilman Smith.

Vice-Mayor Newman said that the goal of the Land Use Incentive Grant is to encourage infill developments that meet City’s goals and typically all those important decisions are made before the permit applications start. However, in this case the developer has made some changes to the project and will meet some specific criteria outlined in the policy. He was hesitant to grant the exemption due to the fact that the timing is occurring after the permits have been applied for, but he didn’t think there will be many other projects that fall into this category. Also, staff will be monitoring the project to ensure that the developer meets the criteria.

Councilman Bothwell was pleased to see the attempted compliance with our policy rules for these type of grants. However, to be consistent with his philosophy, he will vote against the motion, not because of this project, but he didn’t believe shifting the tax burden to existing taxpayers to help developers develop.

Mayor Bellamy explained how the developer has saved the City money for putting in the 25-year stormwater design and urged Council to consider supporting their request for additional points.

Vice-Mayor Newman could not support amending his motion in that it was his opinion that when the developer was before Council to rezone the RS-4 property, it was his understanding that the higher 25-year stormwater design was part of the consideration for the higher intensity of development.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith carried on a 5-1 vote, with Councilman Bothwell voting “no” (Councilwoman Manheimer recused).

RESOLUTION BOOK NO. 33– PAGE 449

B. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2011 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS

RESOLUTION NO. 11-87 - RESOLUTION ADOPTING THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2011 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS

Mayor Bellamy opened the public hearing at 5:42 p.m.

Community Development Director Jeff Staudinger said that this is a public hearing will be conducted on April 26, 2011 to receive comments regarding the proposed Consolidated Action Plan for Fiscal Year (FY) 2011-2012, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for the coming fiscal year. This will be followed immediately by Council’s consideration of a resolution authorizing submission of this Consolidated Action Plan to the US Department of Housing and Urban Development.

As of Monday, April 25, the City will have available an estimated \$1,216,671 in CDBG funds (18% reduction in CDBG Entitlement funding from last year). Last year, \$1,603,597 was available, for a reduction in funding of \$386,926. In HOME funds, \$1,425,526 funds are available in the fiscal year beginning July 1, 2011. This is a 12% reduction in HOME Entitlement funding. The funding total is similar to last year.

The City’s Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). He reviewed the total of 33 programs recommended for funding – 17 CDBG and 16 for HOME. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

HOME funds and CDBG funds will assist in creating or improving 182 housing units and helping an additional 179 households afford housing Consortium-wide. CDBG funds will also benefit more than 5,350 low-income City residents through homeless services, housing counseling, small business assistance, and other needed services. Our partner agencies will contribute almost \$24,000,000 of other funding to these programs, leveraging \$8.25 for every \$1 of HOME and CDBG funds.

Comments received at this public hearing will be incorporated into the Plan, as will comments submitted in writing. The plan is due to be submitted to HUD by May 15.

This Annual Action Plan directly supports Council’s Strategic Goals of: (1) Affordable: This plan directly supports the City’s affordable housing plan, uses innovative public-private partnerships to incentivize affordable housing development, and supports initiatives to end chronic homelessness emphasizing the Housing First model; (2) Green and Sustainable: works with regional partners creating green buildings and energy conservation; (3) Safe: Supports employment alternatives for youth at risk of gang exposure; and (4) Job Growth and Community

Development: Supports diversified job growth and small business development; promotes sustainable high-density infill growth; and attracts and retains quality employees.

Pros:

- Approval of the Action Plan paves the way for the receipts of over \$2,900,000 of HUD funding to the City, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage \$23,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment. New assisted housing units to be constructed in Asheville will add significantly to the City's tax base. Staff will bring the FY 2011-12 CDBG and HOME budgets to City Council for adoption in June along with the rest of the City's FY 2011-12 Operating Budget. Staff notes that the reduction in funding has resulted in the loss of one staff position, with no change in contract, technical assistance and compliance requirements.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2011-12 to the U. S. Dept. of Housing and Urban Development.

Mayor Bellamy closed the public hearing at 5:47 p.m.

In response to Mayor Bellamy, Mr. Staudinger said that every allocation has been reduced from prior years. He then explained the required contingency amount.

Vice-Mayor Newman was pleased to highlight that the HOME Consortium's number one project was to support funding for Mountain Housing Opportunities' Eagle Market Place project, which will benefit downtown neighborhoods.

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

Vice-Mayor Newman moved for the adoption of Resolution No. 11-87. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 450

C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE SWEET BISCUIT INN LOCATED AT 77 KENILWORTH ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND A REQUEST FOR MODIFICATIONS TO LANDSCAPING REQUIREMENTS

ORDINANCE NO. 3965 - ORDINANCE TO CONDITIONALLY ZONE THE SWEET BISCUIT INN LOCATED AT 77 KENILWORTH ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:55 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the Sweet Biscuit Inn located at 77 Kenilworth Road from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District to increase the number of guest rooms from 5 to 8 and a request for modifications to landscaping requirements. This public hearing was advertised on April 15 and 22, 2011.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning for one parcel in the Kenilworth neighborhood from RS-8 (Residential Single-Family Medium Density District) to RM-8 (Residential Multi-Family Medium Density District) in accordance with Section 7-7-8 of the UDO.

The project site consists of a single parcel located at 77 Kenilworth Road with an area of approximately 0.63 acres. The lot and adjacent parcels are currently zoned RS-8, in a predominantly single-family neighborhood.

The site contains an existing three-story residential structure (approximately 6,800 square feet) and one detached accessory structure (495 square foot carriage house). The structure was built circa 1924 as a single family house and was converted into a boarding house at some point (1970s). The current owners purchased the property in 1999 and converted it into a five-room bed and breakfast (five rooms being the maximum allowed under the current zoning designation).

The applicant is proposing to maintain the use as a bed and breakfast inn but the up-zoning would allow the use of all eight (8) existing guestrooms (seven rooms in the main house and one in the carriage house). This use is a "Use by Right, Subject to Special Requirements" in the RM-8 zoning district.

The proposal includes upgrades to the existing parking area to accommodate the number of parking spaces as required by the UDO (9 spaces, 1 Handicapped parking space). Access to the site will remain in the current location from Kenilworth Road.

Landscaping compliance is required on this site due to the rezoning and includes a Type A (20') property line buffer along the north, east and south boundaries adjacent to RS-8, street trees and parking lot landscaping. There is significant mature vegetation on the site that will be used as credits for much of the required landscaping around the perimeters and within the site. Aside from the expansion of the vehicular use area and the landscaping installation, no other physical improvements are proposed on the site. It should largely retain its existing visual character.

Modifications

- *Property line buffer reduction* – The site is already developed and one of the existing conditions of the residential appearance of the lot is that the driveway access to the rear parking is along the side property line, where a Type A property line buffer would be required. The applicant is requesting elimination of the property line buffer planting requirements along the southern boundary (but will plant several trees where there is room towards the southeastern corner of the site).
- *Driveway, parking space & structure encroachment into required buffer area* – Structures, parking spaces and driveways are prohibited in required property line buffers. Both the existing driveway and guest house encroach into the required buffer location along the southern property boundary as well as a small portion of the proposed ADA-accessible parking space.

This proposal was recommended for approval with conditions by the Technical Review Committee on March 7, 2011. Letters and a petition of support have been received from neighbors. At their meeting on April 6, 2011, the Planning & Zoning Commission recommended approval by a unanimous 6-0 vote.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The site has existed in its presently developed state for many years and the minor physical changes to delineate parking are proposed to preserve mature trees and accommodate the existing site layout. There are no significant natural or topographic features on the site or in the immediate vicinity.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposal is not expected to injure the value of adjoining or abutting properties. Since the physical changes to the site are minimal and because the site has been operating as a bed and breakfast for years, the impact to abutting properties should be negligible.

Although the requested modification to greatly reduce the property line buffer on the southern boundary will result in less than the ideal / required vegetated screen, the driveway and parking in this location is an existing circumstance and not a result of this proposal. Additionally, none of the parking spaces are immediately adjacent to the property line, none face the neighboring property, most spaces are screened by the carriage house and the layout of the parking area is such that headlights of parked or idling vehicles will not be directed at the adjacent property.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

This residential structure was built in the 1920s and is similar to the other houses in the immediate neighborhood. The gravel parking area and carriage house in the rear yard is similar to other larger single-family lot configurations in the area containing garages and accessory apartments. The bed and breakfast use has been operating for many years and has done so with little intrusion. Only very minimal physical changes are proposed on the site and it should remain in harmony with the scale, bulk, coverage, density and character of the area.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The *Asheville City Development Plan 2025* encourages mixed but compatible uses in residential areas, stating that adaptive reuse preserves architectural diversity and contributes to a healthy neighborhood (p.69), using bed and breakfasts as a specific example. A goal identified through the *Plan* relates to recognizing and developing the historic component of Asheville's tourist economy (p.95) and creating different accommodation opportunities for visitors to the area (p.195).

This proposal relates to City Council's goals on *job growth & community development* by supporting the local economy – in which tourism plays a major role.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project site is located on Kenilworth Road (transit Rte. 4) in an established residential neighborhood where adequate infrastructure exists. In addition, preliminary review by other service providers has not revealed any problems for continued service to the site.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

No traffic congestion or traffic hazard is anticipated. The use is existing and adequate off-street parking is provided on the site.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The conditional zoning allows an established bed and breakfast to utilize all existing guestrooms within the structure – supporting tourism opportunities.
- The addition of a handicapped parking space improves accessibility to the use.

Con:

- Due to existing site constraints, the required property line vegetation cannot be installed – reducing the visual buffer between the southern neighbor and the driveway and parking area.

Ms. Angela Maddix, owner of Sweet Biscuit Inn, said that the neighborhood has embraced their business and they enjoy being a part of Asheville's tourist and business community. She asked for Council's support of her conditional zoning request.

Mayor Bellamy closed the public hearing at 5:59 p.m.

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

Councilman Russell moved for the adoption of Ordinance No. 3965, to conditionally zone property the Sweet Biscuit Inn located at 77 Kenilworth Road from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District to increase the number of guest rooms from 5 to 8 with approval to the modifications to landscaping requirements, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in

reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE 6

D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE ASHEVILLE SURGERY CENTER LOCATED AT 5 MEDICAL PARK DRIVE FROM COMMERCIAL INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING

ORDINANCE NO. 3966 - ORDINANCE TO CONDITIONALLY ZONE THE ASHEVILLE SURGERY CENTER LOCATED AT 5 MEDICAL PARK DRIVE FROM COMMERCIAL INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING

Mayor Bellamy opened the public hearing at 6:01 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to conditionally zone the Asheville Surgery Center located at 5 Medical Park Drive from Commercial Industrial District to Commercial Industrial District/Conditional Zoning for the construction of an 8,203 square foot addition to the existing building and a 27 space expansion of the parking area. This public hearing was advertised on April 15 and 22, 2011.

Ms. Tuch said that the applicant, Asheville Surgery Center, LLC, currently located at 5 Medical Park Drive in the Regional Medical Park located off of Sweeten Creek Road, is seeking conditional zoning approval to allow for an expansion. The property is currently zoned CI (Commercial Industrial). The applicant is seeking rezoning to CI/CZ (Commercial Industrial Conditional Zoning). The proposed expansion to the 30,632 square foot facility is for an additional 8,203 square feet to accommodate a Pediatric Acute Care Unit (at the front of the existing facility) and to provide for an uninterruptable power supply (UPS) to be housed at the rear of the existing facility. Additional parking, a total of 27 new spaces, is also proposed.

Due to the space limitations on the site the applicant is proposing to place this additional parking in the front setback on the property. The City's Unified Development Ordinance (UDO) at Section 7-8-20(f)(9) provides that in the Commercial Industrial District, "no parking shall be permitted in the required front setback." The applicant applied for a variance to the City's UDO Section 7-8-20(f)(9) but was denied in February of this year by the Board of Adjustment. The Board turned it down primarily because the hardship was a result of the applicant's own actions. The board recognized that the parameters under which they can grant relief are very limited while the parameters for Council are much broader. They felt this was a better CZ application than Board of Adjustment application and were pleased there was another option available as they recognized the reasonableness of the request. As a result, the applicant is now applying for a conditional zoning change to allow for a modification so that parking will be allowed in the front setback. The proposed additional spaces will be approximately 2.9 feet to 18.9 feet from the property line with an average distance of 10.4 feet from the property line. Along the front there is an additional (approximately) 13 feet in sidewalk and green space in the right-of-way.

In addition to the requested modification for the location of the parking the front setback, another modification will need to be granted to allow for a reduction in the width of the street tree/buffer area. This is required per Section 7-11-3(d)(3)d. of the UDO which states that the street tree/buffer area cannot be less than 7 feet in width. Staff is supportive of both modifications as we believe there are site constraints. Also, there is already additional green space in the right-of-way and the fact that the average width meets City standards.

To minimize the impact of the parking in the front, the applicant is proposing to screen the parking areas from the roadway with low, landscaped berms and screen walls approximately 30 inches high.

The Technical Review Committee (TRC) reviewed this proposal on March 7, 2011, and recommended approval with conditions. The applicant has subsequently resubmitted new plans addressing the vast majority of the conditions. The applicant is in the process of addressing the remaining minor conditions.

This conditional zoning request was recommended for approval (5-0 – one absent, one excused) by the Planning and Zoning Commission at its meeting on April 6, 2011. No additional conditions were added.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The applicant is not changing the use of the property. The site has been used for a medical facility for many years now and is surrounded by other medical facilities. The project, if approved must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The existing site plan shows compliance with the City's development standards except those for which a modification is sought.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

Most existing vegetation on the site is being maintained. Proposed plant materials exceed the requirements found in the UDO.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The use of the land is not changing. Enhanced landscaping and the provision of additional needed parking spaces should improve the value of the surrounding properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed expansion of the Asheville Surgery Center is moderate in size and the facility is surrounded by similar medical buildings/operations.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The proposed expansion of the Asheville Surgery Center supports the goal of enhancing the role of Asheville as Western North Carolina's regional medical center.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed use is located just off of a regional commercial corridor (Sweeten Creek Road) and transit Dial-a-Ride service is available from Transit Route 8 of the City's Transit System. The project has received approval from the City's Technical Review Committee concerning issues of water, fire and police protection, etc.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The use proposed is not changing and is only moderately expanding.

This conditional zoning request was recommended for approval (5-0 – one absent, one excused) by the Planning and Zoning Commission at its meeting on April 6, 2011. No one but the developer's representative spoke at the meeting.

Pros:

- Expansion of existing medical facility supports the City's goal of enhancing the role of Asheville as Western North Carolina's regional medical center.
- Additional needed parking for the facility will be provided with the modification.

Con:

- None noted.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable and recommends approval of the conditional zoning request with the modifications to the location of the parking and the width of the street buffer as requested and with the conditions set forth in the TRC and the standard conditions.

Mr. Bill Roark, project manager representing Mission Hospitals, said that this conditional zoning request is necessary to accommodate the needs of the patients. He urged Council to support this conditional zoning request.

Mayor Bellamy closed the public hearing at 6:05 p.m.

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

Councilman Russell moved for the adoption of Ordinance No. 3966, to conditionally zone property the Asheville Surgery Center located at 5 Medical Park Drive from Commercial Industrial District to Commercial Industrial District/Conditional Zoning, subject to the conditions recommended by staff and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 27 - PAGE

E. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN ALLEY OFF MADISON STREET

RESOLUTION NO. 11-88 - RESOLUTION TO PERMANENTLY CLOSE AN ALLEY OFF MADISON STREET

Mayor Bellamy opened the public hearing at 6:06 p.m.

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close an alley off Madison Street. This public hearing was advertised on February 25, March 4, 11 and 18, 2011.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owners, Andy Brokmeyer of Millagro LLC, Scott Blake, and Alison Blake, have requested the City of Asheville to permanently close an alley off of Madison Street.

The Greenway Commission met on March 10, 2011, and unanimously approved the closure. There are no utility conflicts with this closing.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close an alley off of Madison Street.

Mayor Bellamy closed the public hearing at 6:07 p.m.

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

Councilman Russell moved for the adoption of Resolution No. 11-88. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 451

V. UNFINISHED BUSINESS:

A. ORDINANCE AMENDING TO REQUIRE PAWNBROKERS AND SECOND-HAND DEALERS TO SUBMIT DAILY PAWN AND/OR PURCHASE TRANSACTIONS TO LAW ENFORCEMENT THROUGH ELECTRONIC MEANS

Police Chief Hogan provided Council the following memorandum: “On March 8, 2011, staff presented to City Council an amendment to the City’s pawnbroker ordinance which would require pawnbrokers and second-hand dealers to submit their daily pawn and/or purchase transactions of second-hand goods to APD electronically. Council continued the matter to April 26, 2011 in order for staff to host another public meeting and incorporate requested revisions by

City Council into the ordinance as follows: 1) exemption of consignment sales; 2) a \$25 threshold and 3) exemption of purchases from garage sales, estate sales and auctions.

“On April 7, 2011, APD held a public information session to give details about City Council’s requested revisions, explain the reporting process, and receive feedback from local businesses owners affected by the proposed amendments. At the meeting, staff received a significant amount of community resistance to the proposed amendments, most notably that the reporting requirements would put a significant hardship on local businesses during a difficult economic time.

“Therefore, it is my recommendation that the ordinance be pulled from Council’s agenda scheduled for April 26, 2011. At this time, I feel it is best not to move forward with the ordinance but continue analyze the issue over the next 12 months with the possibility of revisiting it in the future.

“I briefed the Public Safety Committee at their April 19, 2011, meeting about the concerns raised at the public information session and my subsequent recommendation. It was their unanimous recommendation to revisit the ordinance at the next Public Safety Committee meeting, which is scheduled for July.”

Councilman Russell, Chairman of the Public Safety Committee, said that the Public Safety Committee will revisit the ordinance in July.

B. MILLS RIVER WATERSHED PROTECTION REPORT

City Manager Jackson said that as the Mills River Watershed continues to develop, questions about management of the area comprising the watershed and protection of water quality need to be addressed.

The City of Asheville Water Resources Department recognizes the need for additional attention to the issues involving the development of the Mills River watershed. The department is interested in efforts to protect the water quality of the Mills River and strongly supports those efforts. This interest is linked to the inherent responsibility to protect a valuable natural resource and to protect one of the City of Asheville’s water sources.

A report (2002) prepared by the Mills River Partnership Planning Committee and the Land of Sky Regional Council addressed a watershed management strategy for the Mills River watershed. The City of Asheville was involved in this effort in a technical advisory role because we operate a water treatment facility on the Mills River.

There was discussion in 2010 about the watershed management strategy study and how to provide for the protection of the Mills River watershed. The City of Asheville and the City of Hendersonville were identified as funding sources for Mills River water quality protection based on the use water from the Mills River. The City of Asheville’s position is that the management strategy needs to be updated to include more recent initiatives, and the formation of agencies and governments with responsibilities in the watershed. After the management strategy is updated, an implementation plan for action items should be developed. Documentation of a timetable for implementation milestones and the cost of identified actions will be developed. Cost sharing arrangements will be sought with inter-local agreements between the various benefactors of the management initiatives.

There are currently expenditures for watershed protection of the North Fork and Bee Tree watersheds, but there are not currently expenditures for intervention in the Mills River watershed. It is anticipated that certain action items will require funding from multiple sources to include the City of Asheville Water Resources Department.

A “Mills River Partnership” organization is being formed independently to investigate and address water quality issues in the watershed. It is staff’s recommendation that Council continue to support their efforts as an advocacy and advisory group and that the City Council appoint a City Council liaison to serve as the liaison to this new organization, or to endorse Water Resources Director Steve Shoaf, as the City Manager’s designee” to monitor their formation.

In response to Mayor Bellamy, Water Resources Director Steve Shoaf explained how the City protects our existing watersheds and why it is important.

Mayor Bellamy noted that the membership of the proposed Partnership consists of a farmer and someone from the WNC Agricultural Center. She felt it was important for the Partnership to consist of not just people who are concerned about the environment and local elected officials, but also include people who own land.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Davis moved to support the watershed protection efforts and intergovernmental partnership and endorse the on-going partnership by appointing the City Manager, or his designee, to monitor the formation of the Partnership. This motion was seconded by Councilman Smith and carried unanimously.

It was the consensus of Council to instruct City Manager Jackson to develop an information action plan to keep City Council updated on this Partnership.

C. PRESENTATION OF THE CITY MANAGER’S RECOMMENDED BUDGET

Administrative Services Manager Lauren Bradley briefly reviewed the City Manager’s recommended budget.

She said the budget goals are as follows: (1) Maintain the current tax rate to support financial stability for Asheville families and businesses; (2) Continue to support our workforce as well as the stability of the region’s economy by avoiding layoffs, salary cuts, and furloughs; (3) Align resources with strategic planning and core services while minimizing service reductions to other areas; and (4) Develop a comprehensive capital improvement program that maximizes opportunities to address capital goals and Master Plan priorities.

General Fund overview: (1) Overall General Fund budget is decreasing by 0.61% compared to FY 2010-11 budget (a) Second consecutive year of overall decrease in budget; (2) Overall staffing level will decrease by 15 full-time positions (including frozen positions); and (3) Budget challenges have presented transformational opportunities – innovation, efficiency, strategic planning.

Revenues (1) No property tax increase; (2) Revenues projected to decrease by 0.6% (a) 1.2% growth projected in property tax revenue; (b) 3% growth projected in sales tax revenue; and (c) Decreases in investment earnings, grant funding, and development review fees; and (3) No fund balance appropriation.

Revenue Enhancements: (1) Council-approved fee adjustments: \$37,900; and (2) No adjustments to business license or development review fees.

Expenditure reductions: (1) Salaries and wages - \$1,200,000; and (2) Managed savings - \$800,000. Costs avoided: (1) Health Care fringe benefits -\$1,500,000-\$2,000,000.

Water Fund (1) Continued savings strategies including freezing three vacancies, modifications to take home vehicle policy, and implementation of energy efficiency projects; (2) Adjustments to commercial and multi-family volumetric water rates as well as the wholesale rate

to create more equitable cost recovery across customer classes; (3) No changes are proposed to the residential water rate; and (4) Capital budget includes \$6.2 million for water capital improvement projects.

Other Funds: (1) Transit Fund (a) Transit System revenues down \$600,000 due to decrease in State funding; partially off-set by decreases in expenditures (i) Increases General Fund transfer by \$350,000 for a total of approximately \$985,000; and (ii) \$500,000 transfer from Parking Fund; (2) Parking Fund (a) Parking revenues are projected to exceed expenses by \$358,740 in FY 11-12 (i) Includes partial debt service for 51 Biltmore parking deck; and (ii) Includes transfer of \$406,260 in operating funds to parking capital improvements; (3) Civic Center Fund (a) General Fund transfer to Civic Center fund unchanged (i) \$300,000 General Fund contribution for facility renovations; (4) Stormwater Fund (a) Stormwater fees remain unchanged (i) \$700,000 appropriated from Stormwater Fund balance for major project on Victoria Road; and (5) Golf Fund (a) Expenditure over revenue projections: \$150,000-\$200,000; and (b) Identifying opportunities for cost savings to minimize or avoid a Golf Fund transfer in FY 11-12 adopted budget.

She reviewed with Council the Capital Improvement Program 5-year projection (Fiscal Years 2012-2016) which totaled \$59.45 Million. She then reviewed the Capital Improvement Program for Fiscal Year 2011-12 which totaled \$17.55 Million.

Capital Improvement outcomes include (1) 30% increase in funding for street maintenance (a) 5.9 miles resurfaced; (2) Sidewalk program funding nearly doubled (a) 1.68 miles maintenance, 1.82 miles new sidewalk; (3) 1.5 miles of new greenway construction; (4) \$2 million for critical infrastructure (a) Bridge replacement, retaining wall work, etc.; and (5) \$7 million for facilities and deferred maintenance (a) \$5.5 million for exterior repairs to City Hall.

Next steps include the (1) Budget public hearing May 10; and (2) Budget adoption May 24.

Mayor Bellamy urged Council to e-mail any questions/comments to City Manager Jackson or Ms. Bradley prior to the public hearing on May 10 on items they would like addressed or highlighted at the public hearing.

City Manager Jackson complimented the thorough work of Budget Manager Tony McDowell, Budget Analyst John Sanchez, and especially Ms. Bradley for this excellent work to prepare this budget document. He also recognized the efforts of the entire management team along with the Employee Benefits Committee. This is a balanced budget with ½ million less dollars, no use of Fund Balance and no tax increase. The budget has been presented in a businesslike fashion.

D. STATE LEGISLATIVE UPDATE

City Attorney Oast said that this is a review of activity in the 2011 Session of the North Carolina General Assembly.

Council adopted its Legislative Agenda on January 25, 2011. The North Carolina General Assembly convened for the 2011 regular session on January 26. By letter dated February 21, 2011, the City transmitted its legislative agenda and supporting materials to the local delegation. The deadline for submitting local bills to bill drafting and for the introduction of local bills in either house has passed. The next significant deadline in the General Assembly is the May 12 "crossover" deadline, which is the date by which a bill needs to be adopted in one chamber of the General Assembly in order to "cross over" to the other chamber and remain eligible for consideration during this session.

I. Asheville Requests. The status of the specific requests made by Asheville is reported below.

- A. Woodfin/Asheville boundary adjustment. In the March 22 update, it was reported that this proposal appeared to be stalled because we had not received information about the boundary adjustment desired by Woodfin to accommodate the proposed roundabout on Merrimon Avenue near the entrance to the Reynolds Mountain subdivision. However, just prior to the March 30 local bill deadline for the House, Woodfin indicated that it was ready to proceed, and began to supply the necessary information. A bill has now been introduced (House Bill 562). We are contacting property owners in the area to advise them of the proposal, but also to advise that their particular properties will not be affected unless they “opt-in,” as the proposed legislation provides. We are also working to refine the descriptions of the property that will be affected, and have spoken with a surveyor about this.
- B. Clarification of the Video Service Competition Act. Our review of the summaries of bills that have been introduced (we receive the summaries daily) indicates that no bill has been introduced to amend or clarify the Video Service Competition Act, or to otherwise hold the useful internet facilities harmless when local cable t.v. franchises transition to the State cable franchise. We are aware that this, along with the use of municipal right of way for fiber-optic services in general, is an issue of concern in several communities in North Carolina, but all are affected in slightly different ways. We are sharing information with some other communities also seeking clarification of their rights and responsibilities.

On a related note, a bill has been introduced that would limit the ability of local governments to build and operate fiber-optic broadband networks within their community. On March 8, the City Council adopted a resolution expressing our concerns about this bill and limitations that it places on municipalities, and transmitted that bill to our delegation. In April, bills were introduced (HB 595, SB 511) that allow for public/private partnerships in the provision of communications services, including broadband and high speed internet. We will review those, and wait for more information.

- C. Clarify legislation regarding financing of energy improvements. We have seen no legislative proposal to clarify local authority regarding financing of energy improvements on individual properties. However, there has been interest in the North Carolina Save\$ Energy Program that Council supported by resolution. At the request of Senator Nesbitt’s office and the NC Saves Energy Alliance, we supplied Senator Nesbitt with additional information so that he could draft and support a bill. We have been asked also to help identify a sponsor in the House.

II. Other Legislative Matters Affecting Asheville.

- A. Annexation. Attempts to limit City initiated annexation continue, and many bills, local and general, have been introduced. Early in the session, bills were introduced in both houses of the legislature to impose a moratorium on annexation until July 1, 2012, and to stay annexations in process, including those that are in some stage of judicial review. This would affect the Biltmore Lake Annexation, and possibly the recently completed Coopers Hawk annexation. In addition, a bill has been introduced specifically to repeal the Biltmore Lake Annexation; this bill is similar in effect to bills that have been introduced regarding other cities in North Carolina, including a bill to repeal an annexation in one eastern North Carolina city that is no longer subject to judicial challenge. A bill has also been introduced to impose a five year moratorium on annexations by municipalities in Buncombe County.

Since the last report, bills have been introduced that are more comprehensive revisions of existing annexation law. A major (but by no means only) point of

contention in the bills is the requirement for a referendum in the area proposed for annexation. This provision has been modified in one of the bills into a “petition veto,” which is viewed as only slightly different from a referendum, but preferable to a moratorium of potentially indefinite duration. On April 19 a bill was introduced in the Senate that is a comprehensive revision of the annexation law, but does not include a referendum/veto provision. We will continue to monitor these bills. The North Carolina League of Municipalities has more comprehensive information on the various annexation reform proposals. The League is working on the state-wide annexation bills, and is tracking the local bills. However, they advise that communication from local elected officials about local bills such as Biltmore Lake is crucial. As Council knows, he has written to members of the House delegation expressing our opposition to the local bills affecting our recently completed annexations. While that is helpful, the League has stressed the importance of communications from local elected officials. Information is available from City staff to assist in that process.

- B. Greater Asheville Area Regional Airport Authority. On March 30, a bill (HB 552) was introduced to establish the Greater Asheville Regional Airport Authority as an independent authority. The City of Asheville did not request this bill, and had no input into the language of it. The proposal provides for Henderson County, Buncombe County, and Asheville each to have two seats, with the seventh seat to be appointed by the other six, and generally provides for the Authority to have some governmental powers, such as the ability to own real property.

Most if not all of the land on which the airport is situated is owned by the City of Asheville, and leased to the Airport Authority. Of particular concern to the City regarding the legislation is a provision that requires the City to convey its property to the Airport Authority, apparently without compensation. We are investigating what property would be involved, how the property was acquired, who paid for it, and the effect of FAA regulations on our ability to convey the property and receive compensation.

- C. Leicester Incorporation. Last month, a bill was introduced (HB 327) to incorporate the Town of Leicester. Several years ago, when a similar proposal was considered, the City Council expressed concern about the size of the area to be incorporated, and the lack of a referendum requirement. The 2011 Bill contains a provision making the incorporation subject to a referendum. As to the size of the proposed incorporation area, we have been supplied with a map, and are in the process of comparing it to the previous proposal to see how it differs. Of particular concern to us is the Erwin Hills/Lee’s Creek area, which was the subject of discussions with Woodfin regarding a proposed annexation agreement demarcation line. He provided Council with a comparison of the previous and current proposals.

III. Other Bills of Interest. Bill numbers and a brief summary are provided below. Please advise if more information is needed on any bill. To our knowledge, these bills have not been adopted yet.

- HB 417 – Extend the time period for tax-deferred holding of real property as a future site for housing for low or moderate income households from 5 to 10 years.
- HB 454 – Direct the Environment Resources Commission to study issues related to safe artificial slope construction in mountainous areas of the State.
- HB 572 – Provide greater accountability for non-profit entities that receive public funding. Requires disclosure of financial statements.

- HB 746 – Protect the constitutional right of citizens to participate in government proceedings. Discourage SLAPP tactics.
- HB 777 – Amend the State constitution to provide that marriage is the union of one man and one woman.
- HB 797 – Limit the extraterritorial jurisdiction of municipalities to urban purposes and to prohibit the inclusion of property in an extraterritorial jurisdiction area for environmental impact laws or regulations.
- HB 861 – Authorize additional revenue options for local governments (food and occupancy taxes, excise taxes, impact fees).
- HB 687 – Provide that when cities and counties enact ordinances or take administrative actions for which there is no statutory authority, and the ordinance or action is an abuse of authority, a successful plaintiff may recover attorney fees.
- HB 652 – Property Owners Protection Act. Award attorney fees to successful litigants in land use cases against local government.
- SB 386 – Repeal prohibition on local government contracts with labor unions.
- SB 412 – Make violations of the public records and open meetings laws a Class 3 misdemeanor.
- SB 515 – Authorizing the Joint Legislative Commission on municipal incorporations to study the procedure for incorporating municipalities.
- SB 601 – Revise statutes relating to regional public transportation and allow local governments to enter into funding agreements.

This is only a partial list, and we have probably not included some bills that would be of interest. As always, please let us know if you want more information on the bills listed above, or information on an item not covered in this report.

Regarding the Leicester incorporation, he showed a map of the area included in 2008. Council at that time was concerned with the large footprint and felt the incorporation should be subject to a referendum. The 2011 Bill contains a provision making the incorporation subject to a referendum. In addition, they have now come back to us with a significantly smaller footprint; however, it includes some additional area not included in the 2008 proposal. The additional area is $\frac{1}{4}$ square mile but the expansion of the boundary is closer to Asheville. In 2008 Council adopted a resolution approving incorporation of the Town of Leicester subject to certain concerns.

Mayor Bellamy said that the $\frac{1}{4}$ square mile addition was to include an entire subdivision.

In response to Councilman Russell, City Attorney Oast said that part of the statutory process, requires the legislature to seek our feedback since we are close to the proposed Leicester boundary line.

Vice-Mayor Newman asked if instead of endorsing or opposing Leicester's incorporation that Asheville state that it does not have a recommendation on creation or non-creation of this municipality. But, if the legislature decides to move forward and it is created, Asheville believes

there should be a referendum and that the step-back boundary on Leicester Highway would be our preference.

In response to Councilwoman Manheimer, City Attorney Oast said that the statute requires notification of proposed incorporation and we are qualified to express our approval of the proposed incorporation. If Council approves the incorporation it would be helpful to Leicester. If not approved, it is not the end of their effort. The statute has been satisfied by notifying us and giving us the opportunity to approve it or not.

Councilman Davis did not support the newly drawn lines.

Councilman Russell moved to approve Leicester's efforts, subject to the concerns of the additional area close to Asheville and a referendum. This motion was seconded by Councilwoman Manheimer.

In response to Councilman Bothwell, City Attorney Oast said that there is a menu of services that incorporated municipalities must provide.

Mayor Bellamy wondered by Council did not want to give comments to our legislatures on this incorporation when Council gave comments on the Mills River incorporation. She felt the people in favor of incorporation of Leicester reduced the boundary lines, but felt it was necessary to include the addition property in order to not split the subdivision. She supported Leicester's incorporation with no concerns.

In response to Councilman Smith, Urban Planner Blake Esselstyn said that the proposed Leicester incorporation is roughly 24 miles (in 2008 it was 37 miles). The City of Asheville is 44 square miles. The population for the proposed Leicester incorporation is approximately 11,000.

Vice-Mayor Newman would not support the motion as he felt it was bad land use policy to incorporate vast undeveloped rural land into municipalities.

The motion made by Councilman Russell and seconded by Councilwoman Manheimer carried on a 4-3 vote, with Vice-Mayor Newman, Councilman Bothwell and Councilman Davis voting "no."

In response to Councilwoman Manheimer's earlier question in the Leicester incorporation issue, City Attorney Oast clarified his statement in that if a proposed incorporation area fails to get the approval of a nearby adjacent city, then the Commission on Municipal Incorporations may not make a positive recommendation. But in this case, we have gotten a conditional approval. The last time this happened, the conditional approval was okay.

Regarding the bill to establish an independent Airport Authority, Councilman Davis was concerned that Asheville did not have any input into the language of the bill. He understands the regional approach, but the runways were built by Asheville taxpayers and there is property that we should enjoy some partnerships with the Airport Authority. He was also concerned with the reduction of Asheville's seats on the Authority being reduced to two.

In response to Vice-Mayor Newman, City Attorney Oast said that he did not recall the previous legislative proposal a couple of years ago to establish an independent Airport Authority having the property transfer provision.

Vice-Mayor Newman, member on the Regional Airport Authority, said that he is open to the idea of an independent Authority because in some ways it doesn't seem like a major change in terms of how the Airport operates. There are lots of federal funding that has gone into the development and operation of the Airport. Much of how airports are run in the United States is dictated by the Federal Aviation Administration (FAA), not at the local level. Even though there

has not been a requirement to appoint a representative from Henderson County, the Authority has done that because they felt they should be at the table. One of the major challenges for the Airport is a lot of residents who live in WNC who choose to fly drive to Charlotte or Greenville. We have been working hard to encourage people in WNC to fly local. He liked the idea to continue growing the regional support for the Airport; however, he is concerned about precedent of the title transfer issue. He questioned having the legislature essentially seize a local government's real estate and give it to someone else. The other concern the Airport Board members have is that the legislation is very specific in terms of the types of people that the different local governments can appoint to the Board. The Board felt there would be many excellent people who want to serve on the Board who would be excluded from serving because of the restrictions. The Board also took a position against the prohibition on elected officials serving on the Board. The Board feels there is a lot of benefit for having a combination of elected and unelected people serving together.

In response to Councilman Russell's shock that the bill has moved forward with no input from the City, Vice-Mayor Newman said that the Airport Authority has endorsed the concepts of an authority, but took specific positions against the Board appointment provisions in terms of elected officials and who can be appointed.

Councilman Russell felt it was important that the City express its position on this bill soon. He felt the legislature should not act on this bill until the City of Asheville has had an opportunity to do their due diligence on issues affecting City taxpayer dollars and land.

In response to Councilwoman Manheimer on whether the provision requiring the City to convey property within 90 days of enactment of the bill is challengeable, City Attorney Oast said that staff is researching the enforceability of that provision. He said that much, if not all, of the property was acquired with significant federal assistance. It may have been the initial acquisition was a higher percentage of City funds than the current 90% federal grant funds.

Vice-Mayor Newman questioned if they can enact the bill to create an independent authority without the conveyance of property provision. City Attorney Oast didn't think ownership of the property is a necessary element of an independent authority.

Vice-Mayor Newman moved to communicate to our legislators that the City of Asheville is concerned about the following provisions (from a substantive level as well as from a precedent prospective) that (1) dictate in great detail who can serve on the board; (2) prohibit elected officials being able to serve on the board; and (3) dictate transfer of real property of the taxpayers of Asheville to another entity. This motion was seconded by Councilman Russell.

Councilman Davis asked for a friendly amendment to consider a stronger term than "concern". Vice-Mayor Newman and Councilman Russell accepted the friendly amendment to rephrase the motion to "strong concern and objection based on the information we currently have."

Mayor Bellamy opposes the motion. She has not sat idly by on this issue and has asked City Attorney Oast many questions. She has a concern that this independent authority bill was introduced without any consideration or common courtesy of Asheville although Asheville invested in the Airport many years ago. That is wrong and if we show support, then it looks as though writing bills without any consideration of municipalities is okay. She is also concerned that we are losing one seat on the Board and prohibiting elected officials from serving. She has concerns about the bill itself and will not support the motion, unless it says we are opposed to the bill. This is a precedent that a group from Raleigh can create authorities without any input from cities.

Councilman Davis felt the motion should be that we completely reject the idea, but at least the motion on the floor is doing more than doing nothing.

City Attorney Oast said that he is glad to communicate to the legislature; however, he could not over-emphasize the importance of City Council contacting our legislators to express objections or approvals of anything that affects Asheville.

Regarding compensation to Asheville, Vice-Mayor Newman felt that it's probably not possible to do some general sort of compensation to the City for its historic investments in the Airport. There is a lot of FAA funding tied up in the Airport. Basically, what the FAA says is if you want funding in the airport, then it all has to be used for aviation purposes. One place where it could be some potential would be if any of the properties at the Airport are ever developed for non-aviation purposes. Many years ago the City taxpayers helped with funding at the Airport to acquire a large piece of land, most of which is where the Airport is located and most is used for Airport purposes. But, there are some pieces of real estate around the fringes of the Airport that may not be needed now, or in the future, for more Airport purposes. If those properties are developed for commercial purposes and if they were acquired by City taxpayer funding, then we do have an historic equity interest in those properties. We could say that if there are any properties that are ever developed for non-aviation commercial purposes that were acquired with City funds, the City's equity interest in that property should be recognized and compensated.

Mayor Bellamy has a concern of transferring property that is not currently being used for aviation purposes. She has asked the City Attorney for information on what exactly what land is out there. Not everything was acquired with FAA dollars. We should not turn over every piece of land that was bought with the idea of the Airport, because some has commercial value and some is vacant property. There are opportunities for other uses besides aviation. She would not automatically title all that land over to the independent authority.

Vice-Mayor Newman felt his motion covered Mayor Bellamy's concern in that we are opposed to that. The second part would be if under whatever circumstances if they were every developed for non-aviation commercial purposes, by our consent or without our consent, that the City's historic equity investment in this property should be recognized and compensated.

Councilman Russell felt the City should state that they are opposed to this bill and the process should be very inclusive of Asheville, and any future use and major changes should be done in a more joint venture and collaborative manner. There has been a lot of things he has just learned from the discussion at this meeting. Mayor Bellamy supported this action.

Vice-Mayor Newman felt that the reality is that there is a cross-over deadline a couple of weeks away. He felt the legislators who are supporting this will say if we don't do something now, then the bill can't be re-introduced for two years. He is fine with us saying that until there is a better process and we don't want this bill enacted, but he also thinks there is value in outlining (based on the information we do have) what some of our really substantive concerns are, so that if something does get forwarded there may be ways to take those specific concerns into consideration.

Mayor Bellamy is not supportive with an independent Airport Authority as proposed unless there are significant changes. She had no problem for the bill to be delayed.

Councilwoman Manheimer said that she too is frustrated that there has been no collaborative process, but she is concerned the bill will pass. She felt this may be our only chance to say anything about the bill. She would at least like to convey that if this happens, we would at least like these components addressed.

Councilman Bothwell felt we should express our objection to the bill and then list our specific objections.

Councilman Smith would be comfortable in saying we oppose the bill based on these points. A precedent is being set and what's happening is the General Assembly is running rough-shot over municipal governments. To have representatives that don't represent all City residents making decisions for the entire City of Asheville without our input is inherently wrong. We are beginning to see a pattern develop with this and unless we begin to say we need to be included, if we are going to have good government that truly represents all the people of the City of Asheville, it is our responsibility to take that position.

Vice-Mayor Newman restated his motion as follows: Based on the information we have at this time and with the absence of the opportunity for the City Council and Asheville taxpayers (who have invested in the property to have meaningful input on it), we are opposed to the bill with the following specific concerns (1) provisions to restrict the types of citizens who can serve on the board, (2) proposal to transfer title away from the taxpayers of Asheville to another entity (also sets a precedent); and (3) if any properties are developed, under any circumstances where City tax-payer funding was used, for non-aviation purposes that the City's equity position be recognized and considered. This motion was seconded by Councilman Russell.

Councilman Russell asked for a friendly amendment that an additional concern is the make-up of the board in terms of the number of people from each jurisdiction who can serve on the Board. Vice-Mayor Newman accepted the friendly amendment.

Councilman Davis also asked for a friendly amendment that we emphasize that we are strongly opposed (especially strongly concerned regarding compensation) to this happening without our input and ask if this moves forward that the concerns outlined be taken into consideration. Vice-Mayor Newman and Councilman Russell accepted the friendly amendment.

Vice-Mayor Newman also amended his motion that we formally request an opportunity to dialogue further regarding the proposal. Councilman Russell agreed with the amendment.

Vice-Mayor Newman said that he felt there is a way this can be done right, but he is at least open to the idea of an independent authority. With federal regulations over the management of an airport, this is not a huge change.

Mayor Bellamy hoped our legislators and Airport Authority will give Council the opportunity to understand the changes proposed that impact our holdings and our partnerships. We need to be a part of the dialogue.

Vice-Mayor Newman's sense is that in terms of the Airport Authority, he was not sure they were aware of the title transfer issue.

When Mayor Bellamy asked for public comment, no one spoke.

The amended motion made by Vice-Mayor Newman and seconded by Councilman Russell carried unanimously.

Councilman Smith said that there are things moving in the state house that they are not asking for input when it will affect all the citizens of a city. It seems to him that we may be coming towards a time that it may be helpful to let Raleigh know what it is the sense of this Council that we would like to be included in conversations that affect the City of Asheville.

Mayor Bellamy said that she is traveling to Raleigh on May 4 and will most certainly bring up with issue with our legislators.

Councilman Smith moved that it is the sense of the Asheville City Council that good government that represents all the people takes into consideration the views of municipally elected officials. Recent moves to legislate without the courtesy of consultation or collaboration

and without the opportunity to deliberate are antithetical to principles of representative democracy and working towards the greater good. This motion was seconded by Councilman Bothwell.

Vice-Mayor Newman asked for time to think about the specific language before voting on the motion. Councilman Smith withdrew his motion.

It was the consensus of Council to ask City Attorney Oast to draft a letter for the Mayor expressing, on the City's behalf, the lack of opportunity to participate in the deliberative process on legislation that has substantial affect on the City of Asheville.

Councilman Bothwell hoped we are communicating to our legislators that we oppose HB 777.

Councilman Bothwell also asked Council to support the effort to legalize medical marijuana.

VI. NEW BUSINESS:

A. RESOLUTION NO. 11-89 - RESOLUTION ADOPTING THE CITY COUNCIL STRATEGIC OPERATING PLAN GOALS FOR 2011

Administrative Services Director Lauren Bradley said that this is the consideration of a resolution reaffirming City Council's Strategic Operating Plan for 2011.

2011 Strategic Operating Plan Update - At its February 2011 retreat, the Asheville City Council affirmed its commitment to six key focus areas that serve as the foundation for the City of Asheville's Strategic Operating Plan. These focus areas are:

- **Affordable** - *The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities.*
- **Fiscal Responsibility** - *The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.*
- **Green & Sustainable** - *Asheville will be the southeastern leader in clean energy and environmental sustainability.*
- **Job Growth and Community Development** – *Asheville will support a dynamic and robust local economy with balanced sustainable growth.*
- **Safe** - *Asheville will be one of the safest and most secure communities when compared to similar cities.*
- **Multimodal Transportation** – *Integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to river, and other system improvements resulting in a funding priority list.*

Performance Measurement and Reporting - During the 2010-2011 fiscal year, city staff continued to provide City Council with quarterly management reports in order to provide information about performance tied to the organization's adopted strategic goals and related initiatives.

Moving forward with the comprehensive quarterly management report, Council will continue to incorporate quarterly updates from each Council Committee Chair. Each Chair will present to the Council on policy initiatives designed to further achievement of the strategic goals.

Pros:

- Provide Council and city staff with an overall direction and goals of the organization
- Provide Council and city staff with a measure of success

Con:

- None-noted

The Strategic Operating Plan will provide direction for Council and the Executive Management Team throughout the budget process. Additionally, the estimated fiscal implications for the 2011-2012 fiscal year can be found in the report.

City staff recommends City Council adopt a resolution reaffirming Council's Strategic Operating Plan.

When Mayor Bellamy noted a change in the Juvenile Justice Program, Ms. Bradley said they will revise the funding notes; however, that the Strategic Operating Plan will be a put into a formal document without the progress notes or fiscal implications.

With Council's goal of 15% Fund Balance, Mayor Bellamy said that at the end of the audit year, we accounted for \$2 Million (that we had told the Local Government Commission that wasn't accounted for) in our budget which impacted the Fund Balance. That would have taken us over the 15% minimum threshold. She asked what happened. Ms. Bradley said that at that point the calculation was projecting that we might be somewhere around 14.8% when you took that into consideration. After we went back and worked through the numbers, in actual process we have seen this fiscal year the Fund Balance is at the 14.2% level and that is what we are projecting will end the fiscal year. With the proposed budget, there is no Fund Balance appropriation so we would expect that to remain constant through next year. What could affect that number is if revenues recover beyond what we have projected (although she felt that was unlikely next year). The following year there might be some potential for staff to make some formal recommendations to Council to address our Fund Balance level.

Mr. Mark Cates noted the big challenge facing the City is uncertainty but he was pleased that the City will be supporting businesses through the reduction of taxes, fees and regulations

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

Councilman Smith moved for the adoption of Resolution No. 11-89. This motion was seconded by Councilman Bothwell and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 7:39 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Caledonia, LLC, Frank Howington, III, and City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) 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 a contract for the acquisition of real property by purchase, option, exchange or lease. The property is located in the Cedar Hill Road area. The

statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) 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 Russell and carried unanimously.

At 7:50 p.m., Vice-Mayor Newman moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:50 p.m.

CITY CLERK

MAYOR