

Tuesday – January 10, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burseson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING JANUARY 23-27, 2012, AS “NO NAME CALLING WEEK”**

Mayor Bellamy read the proclamation proclaiming January 23-27, 2012, as "No Name Calling Week" in the City of Asheville. She presented the proclamation to Ms. Debbie Bryant and Ms. Michele Lemelle with the Safe and Drug Free Schools Coordinators for the Asheville City Schools and Buncombe County Schools, who briefed City Council on some activities taking place during the week.

**B. RESOLUTION NO. 12-1 - RESOLUTION SUPPORTING THE RENAMING THE SMOKY PARK BRIDGES ALONG I-240 IN ASHEVILLE IN MEMORY OF FIRE CAPTAIN JEFFREY BOWEN**

Fire Chief Scott Burnette said that the Commissioner of Insurance had an idea to honor Fire Captain Jeffrey Bowen. As the North Carolina State Fire Marshal, Mr. Wayne Goowin has contacted the N.C. Dept. of Transportation Board for the Western District requesting that the Smoky Park Bridge located in the City of Asheville be renamed in honor of Fire Captain Jeff Bowen. This bridge was selected due to its proximity to Capt. Bowen's Fire Station and it is the bridge Capt. Bowen used to travel every day going to and from his Fire Station. Mr. Goowin has asked the City Council and the Buncombe County Board of Commissions to pass a resolution in support of the renaming of the Smoky Park Bridges (Bridge # 322 and # 323) along I-240 in Asheville to "Captain Jeffrey Bowen Bridges".

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

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

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-1. This motion was seconded by Councilman Davis and carried unanimously.

Captain Bowen's mother Laurel, his wife Stacy and his son C.J. thanked City Council for this honor.

**RESOLUTION BOOK NO. 34– PAGE 227**

**II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 13, 2011**
  
- B. RESOLUTION NO. 12-2 - RESOLUTION APPOINTING CHRIS PELLY AS AN EX-OFFICIO, NON-VOTING MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE**  
  
**RESOLUTION BOOK NO. 34 – PAGE 228**
  
- C. RESOLUTION NO. 12-3 - RESOLUTION APPOINTING MARC HUNT AS A MEMBER TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE**  
  
**RESOLUTION BOOK NO. 34 – PAGE 229**
  
- D. RESOLUTION NO. 12-4 - RESOLUTION APPOINTING CHRIS PELLY AS A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS**  
  
**RESOLUTION BOOK NO. 34 – PAGE 230**
  
- E. RESOLUTION NO. 12-5 - RESOLUTION APPOINTING VICE-MAYOR ESTER MANHEIMER AS CHAIRMAN TO THE POLICE OFFICERS & FIREFIGHTERS DISABILITY REVIEW BOARD**  
  
**RESOLUTION BOOK NO. 34 – PAGE 231**
  
- F. RESOLUTION NO. 12-6 - RESOLUTION APPOINTING GORDON SMITH AS AN EX-OFFICIO, NON-VOTING MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY**  
  
**RESOLUTION BOOK NO. 34 – PAGE 232**
  
- G. RESOLUTION NO. 12-7 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ASSIGNMENT AND ASSUMPTION OF THE CITYWIDE RECYCLING CONTRACT**

Summary: The consideration of a resolution authorizing the City Manager to enter into an assignment and assumption of the citywide recycling contract.

The City of Asheville has contracted with Curbside Management, Inc. for citywide recycling services since prior to 2009. To provide the City with more effective, efficient and innovative future services, Curbside Management has partnered with Recycling Partners, LLC. to form Curbside Recycling, LLC., (d/b/a "Curbie"). Curbie is a North Carolina company and will remain at the facilities currently occupied by Curbside Management. The terms and conditions of the current contract with Curbside Management will remain valid and effective.

Consent to the Assignment and Assumption of the Curbside Management Recycling Contract will allow continuation and expansion of Council's goals, specifically with regard to the implementation of single stream recycling collection, which will significantly divert waste previously destined for the landfill.

Pros:

- Continue existing contract, with no additional costs or terms
- Services and new single-stream project would continue unimpeded

Con:

- If not reassigned, entire recycling program would have to be rebid

No additional fiscal impact as current contract and terms would continue as previously agreed.

City staff recommends City Council consent to the Assignment and Assumption of the Curbside Management Recycling Contract to Curbside Recycling, LLC.

In response to Mayor Bellamy, City Manager Jackson said that technically, Council is not being asked to assign the recycling contract but to consent to and authorize the City Manager to sign an assignment and assumption agreement. This assignment will not jeopardize the recycling program but, instead will enhance and improve the program.

### **RESOLUTION BOOK NO. 34 – PAGE 233**

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

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

#### **A. BASILICA OF ST. LAWRENCE PROPOSAL TO PURCHASE CITY PROPERTY**

City Manager Gary Jackson said that on December 20, 2011, the City received a proposal from the Basilica of St. Lawrence to purchase the city-owned land on Haywood Street, directly across from the Basilica of St. Lawrence. In order to be responsive to the proposal, City Council may wish to provide direction on the process regarding the plan for the Haywood Street site prior to responding to this specific proposal. An additional letter was sent on December 30, 2011, extending the time to consider this proposal to January 31, 2012.

City Council has previously explored options for developing underperforming City assets, to include the Haywood Street site. The City engaged in an extensive Request for Qualifications process in the fall of 2007 to prequalify a short list of developers for the Haywood Street site. In April 2008, Council directed staff to negotiate with the McKibbon Hotel Group for purchase of the Haywood Street site for redevelopment. To date, no agreement has been concluded, but the McKibbon Hotel Group is still interested in the site.

He recommended Council hear the proposal, consider previous policy direction and advise staff on Council's desired process. Given the seriousness and value of this property, it was his recommendation for Council to delegate this to the Planning & Economic Development Committee to revisit the history and background related to this property, to consider what Council's goals and interest are for this property, the financial investment already made in this property, review the proposal in depth, revisit the proposal on the table from McKibbon Hotel Group, and provide a full report to the Council.

Mr. Matt Morris, representing Basilica of St. Lawrence, understood that this Haywood Street site has been trying to be developed by the City over the last 10 years. He provided Council with the following background information “(1) The Basilica is one of the oldest and most historical structures in Asheville with a very high interest environmentally and economically as an adjoining neighbor to this Haywood site on what will be development on this site in the future. Our position is to protect and preserve the Basilica. Over 300,000 tourists visit the Basilica each year. The Basilica carries National Significance within the National Register of Historic Places; (2) The dome of the Basilica is unique in the history of the American building arts. It is the final great work of Rafael Guastavino Sr., and is one of the very few buildings in which he served as both architect and builder. It is an irreplaceable work of construction and art; (3) As the owners of the Basilica of St. Lawrence, the Bishop of the Roman Catholic Diocese of Charlotte approved to acquire this site with the basis that they are in the best position to control future development in front of the Basilica and protect the dome at the same time; and (4) The Basilica understands it must work with the City to balance being fiscally responsible on this site with any future development while at the same time waiting for the best time to deliver the right developer under the right economic conditions. The Basilica understands that doing nothing on this site is not an option. We will address this in a Purchase and Sale Agreement; (5) Through the Basilica, we will propose something that will be compatible to the Asheville Downtown National Register District in terms of scale and design; (6) Under the umbrella of the Basilica controlling this site, there is a higher probability that a developer (or philanthropic type developer) will come forward to construct something of significant architectural relevance that compliments this area and the history of the Basilica, Grove Arcade and surrounding buildings; and (7) The future development vision: Architectural relevance to enhance tourism to the area / open plaza / square urban designs, with fountains, hardscape, artist area, etc. Something developed of great value to our history and tourism and delivers a “sense of place” for Asheville.” He then showed some renderings and photos that will be their guidance to the developer.

He said that the first step should be to have the City reach public and procedural approval to have their Letter of Intent accepted so that they can then move forward in committee to Purchase and Sale Agreement approval and funding. During the Purchase and Sale Agreement, they will work towards approved terms that will spell out coordinated efforts with the City and Basilica for future development timeframes.

He felt the first stage they are looking at is creating a parking lot for a period of time.

It was the consensus of Council to refer this proposal to the Planning & Economic Development Committee to revisit the history and background related to this property, to consider what Council’s goals and interest are for this property, the financial investment already made in this property, review the proposal in depth, revisit the proposal on the table from McKibbon Hotel Group, and provide a full report to the Council.

Mayor Bellamy said that the Planning & Economic Development Committee will be meeting on Tuesday, January 17, at 3:30 p.m. in the First Floor North Conference Room of City Hall. The public is invited to attend.

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

##### **A. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF A RIGHT-OF-WAY ON COLLEGE STREET**

##### **RESOLUTION NO. 12-8 - RESOLUTION TO PERMANENTLY CLOSE A RIGHT-OF-WAY ON COLLEGE STREET**

Assistant Director of Public Works David Foster said that this is the consideration of a resolution to permanently close an 80-foot right-of-way on College Street. This public hearing was advertised on December 18 and 25, 2011, and January 1 and 8, 2012.

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

Pursuant to this statute, adjacent property owner Buncombe County has requested the City of Asheville to permanently close a right-of-way of College Street, being a portion of College Street running with the Buncombe County property line on the Southern sidewalk of College Street beginning in the front of the existing Buncombe County Courthouse and toward the old Biltmore Press Building. He explained it's not an elimination of the right-of-way, but a narrowing of it.

The Greenway Commission met on December 8, 2011, and approved the closure unanimously.

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
- Buncombe County will be installing the sidewalk within the remaining College Street right of way.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close a portion of College Street.

Mayor Bellamy opened the public hearing at 5:24 p.m.

When someone asked if the closure would affect the bicycle lanes, Mr. Foster said that the closure will not change or alter significantly the existing public infrastructure. The sidewalk, parking and bicycle lane will remain.

Mayor Bellamy closed the public hearing at 5:25 p.m.

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

Councilman Smith moved for the adoption of Resolution No. 12-8. This motion was seconded by Councilman Hunt and carried unanimously.

#### **RESOLUTION BOOK NO. 34– PAGE 234**

#### **B. PUBLIC HEARING ON THE PROPOSED EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT FOR VARIOUS CAPITAL PROJECTS AND ACQUISITIONS TO BE DELIVERED IN FISCAL YEAR 2012 AS WELL AS THE REFINANCING OF EXISTING DEBT**

Director of Finance and Management Services Lauren Bradley said that this is the public hearing to receive public comments on the proposed execution and delivery of an installment financing contract for various capital projects and acquisitions to be delivered in FY 2012 as well as the refinancing of existing debt.

Under the provisions of Section 160A-20 of the General Statutes of North Carolina, installment financing contracts involving real property require a public hearing in which the public may comment on the proposed financing. On December 13, 2011, City Council approved a resolution authorizing the negotiation of an installment financing contract and setting the public hearing for: (1) \$20.1 million in "new money" for Council approved capital projects authorized as part of the FY 2012 and FY 2011 Budgets, (2) \$14.1 million for the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) \$10.8 million for the refinancing of some existing debt to achieve financial savings.

After the public hearing, staff anticipates returning to City Council for final consideration of the installment financing contract on February 28, 2012, and closing on the transaction in late March 2012.

Staff recommends that City Council receive public comment regarding the financing and the project during the public hearing.

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

When Mr. Don Lilenfeld asked if it will cost the City more since we are refinancing, Ms. Bradley replied no.

Mayor Bellamy closed the public hearing at 5:29 p.m.

Mayor Bellamy said that this will be returning to City Council for final consideration of the installment financing contract on February 28, 2012, and closing on the transaction in late March 2012.

**C. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING CHANGES TO THE STANDARDS REGULATING TEMPORARY USES**

**ORDINANCE NO. 4043 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING CHANGES TO THE STANDARDS REGULATING TEMPORARY USES**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance concerning changes to the standards regulating temporary uses. This public hearing was advertised on December 30, 2011, and January 6, 2012.

Over the last several months, interest in a collection of amendments has grown and been intermittently discussed amongst staff and the Planning & Economic Development Committee. One of the amendments discussed were some changes to **Article XIV – Accessory and Temporary Uses and Structures**, to provide greater flexibility in some instances, and improved enforcement in others.

Recent changes in the economy have resulted in new practices and warrant a reexamination of applicable standards. Specifically, interest in temporary uses has increased over the last several years to include a growing interest in new large temporary (special) events that can have a positive effect on the local economy, as well as smaller temporary uses that wish to locate in residential areas. Additionally, on-going challenges related to enforcement of portable

on-demand storage containers (PODS) has led stakeholders in the community to request an application process associated with this temporary use to ensure that they do not exceed their maximum allowable time frames and that they do not enjoy an unfair advertising advantage.

There are three issues being addressed through this amendment:

**1. Temporary Use Thresholds** - Temporary uses can range in character, duration and size. Some temporary uses are on-going, recurring uses such as the local tailgate markets; others are seasonal and intended to last only a short designated period of time, typically 30-60 days. Growing in popularity, however, have been temporary uses that may be better classified as temporary “events” that last only 1-2 days. These events vary significantly in size and the larger the event, the greater the need for identification as well as greater the need for review. This amendment proposes to break special short-term events into three thresholds and adjust the review accordingly.

**2. Temporary Uses in Residential Districts** - Temporary uses have not been permitted in residential districts unless a function of a legal and conforming, non-residential use such as a fundraiser held to support a local school or charitable organization. These legal, non-residential uses often include large surface parking lots and there has been an emerging interest in being able to use these areas for privately managed (or supported by the non-residential use) farmers/tailgate markets or produce stands that may benefit the community in which it is located. The most likely sites for these would be the parking areas of churches or schools.

**3. Permitting for Portable On Demand Storage containers (PODS)** – PODS are currently allowed without permit in both commercial and residential areas. In residential areas, they are limited to 14 consecutive days, two times a year; and in commercial areas for 60 days, two times a year. There have been on-going enforcement issues related to such containers exceeding their allotted time periods in commercial areas. In addition, concerns have been received that these same containers are being used as off-premise advertising. As a result the staff is proposing requiring permits for containers in commercial areas that are in front of the principle structure or visible from public thoroughfares and in prohibiting signage on the containers, similar to the prohibition for signs on vehicles when not located on the business property.

Also included in this ordinance is a small housekeeping amendment intended to clarify that temporary mobile food vehicles must leave a site every night or be parked away from the public thoroughfare.

The Planning & Zoning Commission reviewed this ordinance at their December 7, 2011, meeting and voted unanimously to approve the amendment.

This proposal does not directly relate to the goals outlined in the Strategic Operating Plan but is most closely aligned with the goal for “job growth and community development” by balancing business needs with community needs and concerns.

Pros:

- Provides additional identification for larger temporary events.
- Provides opportunity for temporary events in residential areas.
- Addresses an on-going enforcement issue and disparate enforcement of off-premise signage/advertising.

Cons:

- Contributes to the complexity of a permit review.
- Increases the need for permit review.

Increased review times and permit coordination is likely. A separate fee proposal, which will attempt to mitigate the additional costs, will be brought forward for consideration as part of the FY 2012-13 budget process. Costs associated with enforcement are expected to neither increase nor decrease.

Ms. Tuch recommended some changes to the ordinance before the Council. In summary, (1) in Section 7-14-2 (c) (9), the words “when not visible from public areas” be removed; (2) in Section 7-12-2 (d) (3), the addition of the words “and not include signage” be added at the end of the paragraph; and (3) in Section 7-14-2 (d) (3) (f), the addition of the words “... permit for review and approval at the discretion of the Planning director with input from appointed officials.”

She recommended approval of this wording amendment, as amended

At 5:38 p.m., Mayor Bellamy opened the public hearing.

Mr. Jay Clarkson, speaking on behalf of Manna Food Bank, supported the ordinance amendment to allow fruit & vegetable markets in residential areas as it will be a way to get fresh fruits and vegetables to those in need and who have no transportation.

Mr. George Morosani, owner of 9 self-storage facilities in Asheville, spoke in support of the ordinance amendment regarding PODS and agreed that all permits should be posted on the exterior of the container and visible to the public. He felt this is a good way to straighten out the rules for outdoor advertising,

Mr. Matthew Byrd felt the main issue is the free advertising and it should be allowed in all districts. In addition, since the issue seems to be signs and not actual storage, he felt having a separate ordinance that prevents any form of storage should not be adopted.

At 5:46 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Hunt, Ms. Tuch said that there is a definition for a fruit and vegetable market. It covers a wide range of food products, like meats and eggs. What we do limit the amount of non-food items, like handmade candles and jewelry, to not more than 25% so it does not turn into a flea market condition.

There was a brief discussion, initiated by Councilman Smith, about not overlapping the fruit and vegetable markets during the regular business hours for the primary use. He felt that in order to maximize the community benefit of the market, it would be beneficial to have the market open when the people where there for the primary use, such as before and after church or dropping off and picking up children at school. Ms. Tuch explained that the smaller churches and schools don't have a large parking lot (most don't have enough parking to begin with) and most rely on off-street parking. We would not want to displace the parking in the neighborhood to allow for the market in the parking lot. She noted that drop off and pick-up at school is the greatest congestion hours and after the church service is also very congested. To add another use, which could potentially attract others not already on the property, is a concern. Ms. Tuch said that a compromise might be that the market only take up a small space and staff perform a parking analysis. If there is enough parking to cover the use, then the market could also be allowed.

Mayor Bellamy suggested the ordinance be in place for 6 months and staff report back after that time period. She was glad that we are expanding the markets into more locations, but felt we need to do a small step at a time. She agreed that at schools, there is a lot of congestion with parents picking up the children, buses, children walking and biking. There might be a possibility for the schools to work with the markets to allow them to be in their lots at perhaps 4:00 instead of 2:30.



Councilman Smith moved for the adoption of Ordinance No. 4043, with the amendments outlined by Ms. Tuch, with staff reporting back to Council in six months on an update and a possible compromise for the markets to be on the property during the regular business hours of the primary use. This motion was seconded by Councilman Davis and carried unanimously.

At the request of Mayor Bellamy, it was the consensus of Council to have the Planning & Economic Development Committee review the possibility of increased signage on mobile food trucks.

## **ORDINANCE BOOK NO. 27 – PAGE**

### **V. UNFINISHED BUSINESS:**

#### **A. REGULATING THE USE OF CITY PROPERTY**

Councilman Bothwell, Chair of the Public Safety Committee, said that the Public Safety Committee met on January 3 and briefly discussed the three ordinances presented by City Attorney Oast on December 31, 2011. After public comment, the Committee voted 2-1 to set the three ordinances aside and look into the possibility of a camping permit process. They recommended the following proposal, crafted by Councilman Smith, for City Council consideration:

- Permitted activity is for purposes of “speech”
- Register individual campers
- Maintain cleanliness standards (garbage removal, store items in tents)
- Move tents with regularity (every 48 hours?) to maintain grounds
- True cost pricing for camping permits – by the person, not the tent.
- One tent or less per person, with storage allowed only inside tents.
- No open fires/flame
- Reapply every 7 days
- Provide for use by all
- Port-a-johns permitted using standards for other outdoor event permits
- Port-a-johns available to the public
- Port-a-johns not subsidized by city taxpayers
- Permitted only in specific area(s) - utilize current property only - add other properties as appropriate
- Does not include parks pending further review by Recreation Board and Parks, Recreation & Cultural Arts Department
- Consequences of violation could be:
  - rescinding permit for individuals in violation
  - fines (up to \$25) for safety violations (fire, sanitation, other)
  - fines (up to \$100 or eviction and referral to Homeless Service Provider) for camping without permit
  - notify homeless service providers if violator requests it
- Speech allowed 24 hours – these rules apply only to camping/sleeping

Councilman Smith said that in his conversations with staff, they don't have ready language for an ordinance to be considered at this meeting. He understood that staff is seeking general Council direction on whether there is sufficient Council interest to proceed in the direction of a camping permit process. He said that staff would be prepared to report back to Council in two weeks with a draft ordinance for consideration.

It was the consensus of Council to direct staff to craft an ordinance regarding a camping permit process for Council consideration on January 24, 2012.

## **VI. NEW BUSINESS:**

### **A. RESOLUTION NO. 12-9 - RESOLUTION AMENDING THE TRANSFORMATIONAL PROJECTS POLICY TO EXPAND THE AREA OF ELIGIBILITY TO INCLUDE THOSE SECTIONS OF SCHENCK PARKWAY AND LONG SHOALS ROAD (FROM THE INTERSECTION WITH HENDERSONVILLE ROAD TO THE INTERSECTION OF CLAYTON ROAD) POLICY**

City Manager Jackson said that this is the consideration of a resolution amending the Transformational Projects Policy to include those sections of Schenck Parkway and Long Shoals Road (from the intersection with Hendersonville Road to the Intersection of Clayton Road) within the City of Asheville to the areas eligible for incentives.

In March of 2011, City Council adopted the Transformational Projects Policy. This policy makes grants available to developers who build affordable and workforce housing, or certified "green" commercial, residential or mixed use developments, in designated geographic areas in the City. The eligible geographic area generally coincide to those areas within one-quarter mile of existing Asheville Transit routes. The Policy guidelines allocate points for developments that meet certain housing affordability or green building criteria, and the points earned indicate the extent of the grant award available. The amount of the grant award available is equivalent to the difference between the City property tax on the existing property prior to the new development, and the City property tax on the property after the qualified development has taken place, for a specified time period based on points earned. The Incentive also allows for a percentage of fee rebate based upon earned points. All grant awards are subject to approval by City Council.

Biltmore Farms LLC has requested that the City extend its Transformational Projects Policy to the Biltmore Park Town Square area. The proposed expansion area includes Biltmore Park (which has remaining parcels on which approximately 100 to 165 additional multifamily units could be developed), Schenck Parkway, and Long Shoals Road (from the intersection with Hendersonville Road to the intersection of Clayton Road). The request is that the policy be the same as the current incentive policy, encompassing properties which are within one-quarter mile of the named roads.

Their rationale for this proposed expansion is to give equal access to incentives to developers in this area who can build energy efficient affordable and workforce housing. There are numerous parcels of developable land within the City limits that are very close to, or on a transportation corridor to, Biltmore Park and its high employment concentrations. Staff notes that the Land Use Incentive Grant is not applicable for the extraterritorial jurisdiction (ETJ), so those areas within the proposed boundaries but in the ETJ would not be eligible until or unless they were annexed.

When this proposal was reviewed by the Housing and Community Development Committee it was noted that the eligible geographic boundaries of the Land Use Incentive Policy as currently adopted align with City Transit routes. There is currently no bus service to Biltmore Park Town Square or on Long Shoals Road west of Hendersonville Road.

The Transit Master Plan does recommend bringing bus service to Biltmore Park Town Square "immediately," but that action is constrained by budget limitations. The Plan also recommends a Long Shoals Road express in the next two to five years with a freeway routing to downtown.

After discussion, the Housing and Community Development Committee recommended approval of this request.

The draft Action Plan Amendments directly relate to the Council's Strategic Goal of "Affordable."

Pros:

- The proposed expanded boundaries for the LUIG could encourage workforce and affordable housing development near a growing employment center;
- Biltmore Park is an example of planned mixed use development that encourages locating residential uses within walking and other alternative transportation access to employment, shopping and services;

Cons:

- There is no public transportation currently to Biltmore Park, although it is planned.
- Major transportation infrastructure (in the form of very wide roads) separates Biltmore Park from development on Long Shoals Road north, making walking and bicycling to the transit available on Hendersonville Road difficult.
- Some of the proposed expansion area is either in the ETJ or county, and would not be eligible for incentives until or unless annexed.

Land Use Incentive Grants are to be paid from City General Funds, and are based upon the difference in city property tax payable for a newly developed property versus an existing property, and a rebate of some building permit fees. The grants are to be made on a case-by-case basis.

Staff recommends that Council approve the proposed expansion of the area eligible for the Land Use Incentive Grant as it reflects the intent for future transit service to a substantially dense and mixed-use area of the city offering housing, shopping, services, and jobs.

Mr. Paul Szurek, representing Biltmore Farms, spoke in support of the resolution.

Mr. Matthew Byrd spoke in opposition of the resolution and felt that we should be creating incentives to restructure our buildings downtown.

In response to Councilman Davis, Community Development Director Jeff Staudinger said that this does not affect the recently adopted conditional use permit for The Aventine.

Councilman Hunt said that the incentives were initially created for transit routes and the Long Shoals Road corridor is becoming more developed and urbanized. In order to have a transit route there, we need to justify it by good smart development that is dense. He also acknowledged the good partnership that the City has with Biltmore Farms. He reiterated that this policy does not apply to property in the City's extraterritorial jurisdiction area, but he was interested in working with staff to consider incentives for voluntary annexation in places like further out Long Shoals Road.

Mayor Bellamy felt this is another item that the Planning & Development Committee should look at in the future.

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

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-9. This motion was seconded by Councilman Hunt and carried unanimously.

#### **RESOLUTION BOOK NO. 34 – PAGE 235**

#### **B. RESOLUTION NO. 12-10 - RESOLUTION APPROVING HOUSING TRUST FUND LOAN RECOMMENDATIONS**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing approval of Housing Trust Fund loans to Beaucatcher Properties, LLC (Johnston Blvd) and Mountain Housing Opportunities, LLC (Glen Rock Hotel).

Staff received three (3) applications for HTF funding totaling \$800,000. These applications were presented to the Housing and Community Development Committee (HCD) on December 1st and each was evaluated on its own merit. Resources were insufficient to approve all applications in the amounts requested. The total amount of fund resources, including the current cash balance, pending land sale, and projected revenues thru June 30, 2012, is \$665,646.

Two (2) applications have been recommended by the HCD for approval:

- 1) Beaucatcher Properties LLC for the construction of a cottage development on Johnston Boulevard in West Asheville, \$200,000.
- 2) Mountain Housing Opportunities, LLC (MHO) for rehabilitation of the historic Glen Rock Hotel building on Depot Street, \$220,000.

Beaucatcher Properties, LLC - Johnston Blvd \$200,000.

Mr. Kirk Booth, representing Beaucatcher Properties, has proposed an 18-unit family rental development project on Johnston Blvd in West Asheville. The site size is 1.1 acres. The property is currently zoned Residential (RS-8). The loan terms requested are \$200,000 at 3.00% interest, fully amortizing for 30 years. The total project development cost is \$1,610,000. The per-unit subsidy is \$11,111. The project is planned to be affordable to households earning 80% of area median income.

The project is designed as a cottage style development composed primarily of single-unit structures. No TRC or P&Z approval will be required. Units will be offered first to Section 8 Voucher holders. The project includes an existing 2-bedroom home on the site that will be remodeled and incorporated in the proposed development. The unit is currently unoccupied. The new units will consist of eleven (11) three-bedroom single family homes and six (6) one-bedroom apartments over garages. The site is infill development in an older established neighborhood with water and sewer access available.

The loan request represents 12.4% of the total development costs. The land is being purchased at \$120,000 and includes the existing 2-bedroom house. The land cost is \$6,666 per-unit. The total per-unit development cost is \$89,444 per unit.

The project is within 1/4 mile of transit. None of the units will be ADA accessible. The project will not be Energy Star certified but does incorporate many of the desired elements such as energy star appliances, low-e windows, and low-flow water systems.

Strengths:

- The cottage style development allows for added density as use by right.
- Infill development supports strategic planning goals.
- Construction ready to proceed immediately.
- The developer has completed other local projects in a timely manner. The four units supported in 2011 have been completed and leased.

Concerns:

- Three bedroom rental units are not a Housing Trust Fund priority;
- Rent structure is set at the maximum of 80% AMI affordability level.

Mountain Housing Opportunities, LLC (MHO) - Glen Rock Hotel \$220,000

MHO has proposed a 22-unit multifamily rental development in the historic Glen Rock Hotel building on Depot Street. The site size is .66 acres and is currently zoned Urban Place with Conditional Use zoning. The proposed total project development cost is \$2,118,980. Through this project, 11 HOME units will be created, fulfilling the HOME unit commitment in the old East Riverside project. The amount of that grant (\$235,000) is included in the project's sources of funds.

The request has been approved by HCD as two separate loans, with the more favorable terms being offered for the units rented below 60% AMI. The first loan in the amount of \$165,500 will be structured as a deferred interest-only loan at 2.00% interest with principal deferred for 20 years. This represents 75% of the total loan request. Twelve (12) of the proposed units will be targeted to persons at or below 60% AMI. The second loan in the amount of \$55,000 will be amortized at 2.5% interest for 20 years. This represents 25% of the total loan request. Ten (10) of the proposed units will be targeted to persons at or below 80% AMI.

The project proposal meets the funds' stated priorities in that 100% of the units will be one-bedroom floor plans. The first floor of the hotel (12,600 SF) will be developed commercially at a later time. The second and third floors (15,306 SF including common areas) will be adapted to residential use. The upper floors include eight (8) rooms of 150 square feet (1200 SF total) that cannot be used as living space. These spaces are attributed to the live/work component of the project and residents will have the option to lease these additional spaces for \$150 per month for use as office or studio space which generates an additional \$14,400 in annual gross rents. The per-unit subsidy based on a total loan of \$220,000 is \$10,000. The total loan request represents 10.4% of the total development costs. The developer will also be applying for additional HOME funds and a request of \$200,000 is anticipated. The land and building cost is prorated at \$22,343 per unit. The total per-unit development cost is \$96,317.

The project is located in the East of the Riverway area, and is easily accessible to services, transit and employment. Two (2) of the units will be fully ADA accessible. The project will be LEED certified. Success of previous mixed-use developments demonstrates sufficient developer capacity for this type of project.

#### Strengths:

- Priority development area.
- Development team has been successful on similar projects.
- Financing commitments totaling \$398,500 have been received from Buncombe County and NeighborWorks America.
- Urban location with easy access to employment, transit, and services.
- Energy efficiency with LEED certification
- Addresses the need for additional one-bedroom and efficiency units.
- Rehab and adaptive reuse of existing building.
- Catalyst for continued revitalization of a formerly distressed area.

#### Concerns:

- Developer relying heavily on City subsidy.
- Increased competition for all resources makes finding the right mix of development sources challenging
- HOME funding cuts will mean increased competition for that resource
- The City has a significant prior investment in the Glen Rock Apartments representing a substantial concentration of capital.

The projects directly support the City's Strategic Operating Goals: (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed projects provide new housing units

located near transit lines, higher urban development densities, and encourage higher standards of energy efficiency. The projects also address the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

The current balance in the Trust Fund is \$292,211. The proposed projects are new construction and are anticipated to add \$3.7 million dollars in new development to the City tax base. If the projected program income of \$373,435 is received as expected, then there will be no adverse fiscal impact. Although highly unlikely, if future revenue projections prove incorrect then funds may not be available for disbursement until the fund has been replenished; either through a new appropriation or the receipt of future program revenue beyond July 1, 2012.

The Housing and Community Development Committee recommends City Council approve a resolution approving the following loans:

1. \$200,000 amortized at 3.00% interest for 30 years to Beucatcher Properties, LLC for the development of 18 single-family rental units on Johnston Boulevard; to be made immediately available for disbursement following loan closing.

2. \$165,000 at 2.00% interest-only with principal deferred 20 years to Mountain Housing Opportunities, LLC for the development of 12 multifamily units at the Glen Rock Hotel on Depot Street; all funds to be made immediately available for disbursement following loan closing. These 12 units to be restricted to families earning 60% or less of the area median income.

3. \$55,000 amortized at 2.5% interest for 20 years to Mountain Housing Opportunities, LLC for the development of 10 additional multifamily units at the Glen Rock Hotel on Depot Street; all funds to be made immediately available for disbursement following loan closing. These 10 units to be restricted to families earning 80% or less of the area median income.

Mr. Staudinger responded to several financial requests raised by Vice-Mayor Manheimer.

In response to Councilman Hunt, Mr. Staudinger said that there are multiple projects in the pipeline that would seek Housing Trust Fund resources. Every year we receive active interest from at least 3-4 developers (private sector, non-profits and partnerships) seeking resources, whether the resources are combined with HOME funds, or the Low Income Housing Tax Credit Program, or whether they are for projects that are developed privately or by non-profit developers. The demand far out cedes the funds available at any one time in the Housing Trust Fund. He explained that we do not release funds until a budget amendment has been approved by City Council and the cash is available to lend the applicants. We are expecting a receipt sometime in the next few months from the sale of land that is under contract with Habitat for Humanity that was purchased by the City as part of a foreclosure proceeding. We expect to have sufficient resources to meet the demand within this fiscal year for these loans and loans that have not closed. New commitments will always depend on whether an additional allocation is included by Council in the annual budget of the Housing Trust Fund.

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

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. 12-10. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 236**

**C. RESOLUTION NO. 12-11 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2010-2011**

**RESOLUTION NO. 12-12 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2011-2012**

Finance & Management Services Director Lauren Bradley said that this is the consideration of: (1) a resolution authorizing the Mayor to amend the contract to audit city accounts for fiscal year 2010-2011; and (2) next steps for awarding the auditing services contract for fiscal year 2011-2012.

North Carolina General Statute 159-34 requires that local governments have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission (LGC) and confers upon the LGC the authority to issue rules and regulations to ensure the quality and consistency of auditing services. The LGC has issued several rules in connection with the audit contract including amendments to the audit contract be approved by a vote of the governing board in a public meeting.

**(1) Contract Amendment for FY 2010-2011 Audit Services**

On May 24, 2011, City Council approved a contract with Dixon Hughes PLLC, in the amount of \$109,000 for auditing services for Fiscal Year 2010-2011. The contract did not include reporting changes related to GASB 54 implementation and major fund reclassification. In addition, the contract did not include the Energy Efficiency Conservation Block Grant to be audited as a major program.

Dixon Hughes has submitted an amendment to the contract in the amount of \$10,000 seeking additional compensation for required work not included in the original contract. If approved, the total amount of the 2010-2011 contract would increase from \$109,000 to \$119,000. Funds are available in the Accounting Division of the Finance Department to cover this additional expenditure. This supplemental billing is not unusual. Dixon Hughes requested and received an additional \$13,600 in connection with the 2010 contract and \$10,500 with the 2008 audit contract.

Pros:

- Complies with the requirements of the Local Government Commission in connection with amending the audit contract
- Conforms to the terms and conditions of the audit contract

Con:

- Requires additional funding (resources are available).

**(2) Next Steps for Awarding Audit Services for FY 2011-2012**

**Best Practices**

The Government Finance Officer's Association (GFOA) has made the following recommendations, among others, regarding the selection of auditing services:

- Governmental entities should enter into multiyear agreements of at least five years in duration when obtaining the services of independent auditors. Such multiyear agreements can take a variety of different forms (e.g., a series of single-year contracts) and allow for greater continuity and help minimize the potential for disruption in connection with the independent audit. Multiyear agreements can also help to reduce

audit costs by allowing auditors to recover certain "startup" costs over several years, rather than over a single year.

- Governmental entities should undertake a full-scale competitive process for the selection of independent auditors at the end of the term of each audit contract, consistent with applicable legal requirements. Ideally, auditor independence would be enhanced by a policy requiring that the independent auditor be replaced at the end of the audit contract, as is often the case in the private sector. Unfortunately, the frequent lack of competition among audit firms fully qualified to perform public-sector audits could make a policy of mandatory auditor rotation counterproductive. In such cases, it is recommended that a governmental entity actively seek the participation of all qualified firms, including the current auditors, assuming that the past performance of the current auditors has proven satisfactory.

### **History**

The City of Asheville has utilized Dixon Hughes for auditing services for the last six fiscal years under single-year contracts. The City retained the services of Martin Starnes & Associated for the FY 2004-2005 fiscal year audit and utilized Crisp Evans Hughes for several years prior to FY 2005.

The City's long term relationship with Dixon Hughes is likely related to several factors, including the fact that it is the largest CPA firm in the southeast with a local office in Asheville. During the last three years, Dixon Hughes worked with Asheville as the City transitioned to a more complex financial system through the implementation of the enterprise resource planning (ERP) software Munis. At the same time, the City's Finance Department experienced staff turnover in key positions, and continuity in the independent auditor's role has been essential to timely completion of the audit. As a result, Dixon Hughes has extensive experience auditing the City's financial systems, accounts and records, including valuable insight and understanding of the financial system's processes and controls.

Last year, City Council expressed an interest in pursuing a competitive process for the selection of independent auditors. Staff is prepared to launch a Request for Proposals (RFP) for these services if City Council maintains an interest in doing so; however, staff is requesting that the City delay the RFP process for an additional year to permit a relatively new team in the Finance Department the optimal opportunity to complete the audit by October 31, 2012, a deadline that was recently adopted by City Council as part of the City's Financial Policy. Transitioning to a new audit firm will require additional time to get the auditors familiar with Asheville's financial systems, processes and controls. As illustration, according to a survey of the public accounting firms and Fortune 1000 public companies (United States General Accounting Office 2003), auditors' initial year audit costs increase by more than 20 percent over subsequent year costs to acquire the necessary knowledge of the client. In addition, their marketing costs also increase by at least more than 1 percent. Additionally, the survey found that clients will incur additional auditor selection costs and auditor support costs of at least 17% of initial-year audit fees.

As such, staff recommends retaining the services of Dixon Hughes for a single, final year to conduct the audit of the city's accounts for the fiscal year ending June 30, 2012. Staff further recommends that the City issue an RFP in the November/December 2012 timeframe for audit services for FY 2013.

If City Council would prefer to issue an RFP for services for FY 2012, the process would need to begin immediately, with RFP development and release occurring in January 2012, and evaluations and award occurring in February. The timeline for the RFP would not provide an opportunity for Finance Committee participation, and a recommendation would be brought forward to the full Council instead. Staff would seek City Council direction on whether Dixon



Hughes should be invited to respond to the RFP or should be instructed not to participate in the process.

### **Contract Proposal**

Dixon Hughes has proposed an audit fee for fiscal year 2011-2012 of \$95,000. The original fee for last year's audit was \$109,000. The fee proposal of \$95,000 represents a reduction from the prior year's fee because of efficiencies gained in the audit performance over the last year. The proposed fee appears to be competitive when compared to similar sized municipal audit fees for FY 2010 based on information available from the North Carolina State Department of the State Treasurer.

This action complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility.

#### Pros:

- Contracting with the current external auditor will help ensure the timely and successful completion of the annual audit.
- Pursuing an RFP process may yield a more competitive fee; however, initial year costs may be higher to compensate the firm for the additional time it will take to acquire knowledge about the City's finances.

#### Cons:

- Contracting with Dixon Hughes delays a competitive process for selecting an independent audit firm for an additional year.
- Contracting with a new independent audit firm will require more time and resources to complete the audit by October 31, 2012.

The contract amendment with Dixon Hughes for FY 2010-2011 entails compensation in the amount of \$10,000 to cover additional required work not included in the original contract. This additional amount will be paid for with currently budgeted funds.

A fee of \$95,000 has been proposed for the FY 2011-2012 audit and is included in the Finance Department's portion of the annual operating budget. The total cost is less than FY 2011 by \$24,000.

City staff recommends adoption of the resolutions: (1) Authorizing the Mayor to amend the contract to audit accounts for fiscal year 2010-2011 in the amount of \$10,000 with Dixon Hughes, and; (2) Authorizing Mayor to execute a contract with Dixon Hughes Goodman LLP in the amount of \$95,000 for auditing services for fiscal year 2011-2012.

Councilman Hunt recommended we proceed with an RFP for the auditing services every five years and that the process be delayed until FY 12-13. In addition with receiving proposals, he suggested an internal review of our current auditors and their quality of service.

Mayor Bellamy asked for an amendment to the resolutions to reflect that the City Manager be authorized to sign the contracts.

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

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-11, as amended. This motion was seconded by Councilman Hunt and carried unanimously.

## **RESOLUTION BOOK NO. 34 – PAGE 237**

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-12, as amended. This motion was seconded by Councilman Hunt and carried unanimously.

## **RESOLUTION BOOK NO. 34 – PAGE 238**

### **C. BOARDS & COMMISSIONS**

Regarding the ABC Board, Vice-Mayor Manheimer, Chair to the Boards & Commissions Committee, said that she has received a letter from the Chairman Ellis of the ABC Board requesting further advertisement. The current applicants (Genny Beville and Tim Flora) will be considered for interviews. It was the consensus of the Committee, and of City Council, to re-advertise for the vacancy of Charles Worley.

Regarding the Affordable Housing Advisory Committee, Vice-Mayor Manheimer noted that City Council has earlier agreed to an interview of Jayden Gurney (representative of the Housing Authority) on January 24, 2012.

Regarding the Airport Authority, former Vice-Mayor Brownie Newman is currently serving until June 30, 2012, and would be willing to remain until his term ends. Mayor Bellamy said that several years ago it was the consensus of Council to have a seated member of City Council on all our authorities to make sure that Council's voice is heard. With our Airport and our water being discussed with our legislators to take them away from the City, she felt it was important that City Council is informed as possible. She felt it was important for a Council member to be at the table while those issues are being discussed. Councilman Smith felt Mr. Newman would convey that information thoroughly in a timely fashion to Council. Councilman Davis supported Mr. Newman remaining on the Authority due to his knowledge of the discussions of the joint fire station at the Airport; however, Mr. Newman did state to him that he would understand if Council preferred to have a seated member of Council on the Authority. Councilman Davis said that Vice-Mayor Manheimer might be interested in the position and he would support that as well. Vice-Mayor Manheimer asked that this item be revisited in one month.

Regarding the Asheville-Buncombe Community Relations Council, Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (and Council agreed) these vacancies be reviewed in one month since the City has not heard about the reorganization of the Community Relations Council. Mayor Bellamy said that the Community Relations Council Board is currently in the process of hiring an Executive Director and should be functioning shortly after the new Executive Director is hired.

Regarding the Asheville-Buncombe Fair Housing Commission, Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (and Council agreed) these seats be postponed for six months.

Regarding the Homeless Initiative Advisory Committee (HIAC), Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended, at the request of the HIAC, (and Council agreed) that these positions be re-advertised. During this re-advertisement time period, the HIAC will interview the applicants and per their charge, make a recommendation to City Council. Said charge reads "all members of the HIAC shall be recommended for appointment by the HIAC on the basis of their focus area or organization ..."

Regarding the HUB Community Economic Development Alliance, since no candidates applied, it was the recommendation of the Boards & Commissions Committee (and Council agreed) to re-advertise.

Due to a conflict with another board by Councilman Hunt, Vice-Mayor Manheimer was pleased to take over the liaison seat on the Asheville-Buncombe Historic Resources Commission. The Council concurred in this replacement.

For future consideration by the Boards & Commissions Committee, Councilman Hunt wondered if there was a need for all boards and commissions to play some kind of advocacy role in recruiting and promoting candidates for vacancies. Mayor Bellamy felt that as many people as possible should part of the process and encouraged the public to apply, even if there is not an existing vacancy on a board that they may be interested in.

### **RESOLUTION NO. 12-13 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Manheimer said that the terms of Nelda Holder (Alternate), James Sheeler (Alternate), Robert Middlemas (Regular) and Janet Whitworth (Regular) as members on the Board of Adjustment expire on January 21, 2012. In addition, there currently exists a vacancy, left by Kristy Carter (Regular), whose term will expire January 21, 2014.

The following individuals applied for vacancies on the Board of Adjustment: David Nutter and Dima Kulakov. In addition, the following Alternates are interested in a Regular seat: Richard Fort, Phillip Hardin, Douglas Hattaway, Nelda Holder and James Sheeler.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (1) reappointing Janet Whitworth (Regular) and Nelda Holder (Alternate); (2) appointing Douglas Hattaway (Regular) and Richard Fort (Regular); and (3) re-advertise for the two remaining alternate seats.

There was a brief discussion on filling the remaining two regular vacancies; therefore, each Council member voted their two choices, resulting in David Nutter receiving 2 votes, Dima Kulakov received no votes; James Sheeler receiving 4 votes; Nelda Holder receiving 2 votes, Philip Hardin receiving no votes, Richard Fort receiving 2 votes, and Douglas Hattaway receiving 4 votes. Therefore, James Sheeler was appointed as a regular to serve a three-year term, term to expire January 21, 2015, and Douglas Hattaway was appointed a regular member to serve the unexpired term of Ms. Carter, term to expire January 21, 2014.

Councilman Bothwell moved to reappoint Nelda Holder (Alternate) to serve an additional three-year term, term to expire January 21, 2015. This motion was seconded by Mayor Bellamy and carried unanimously.

Councilman Davis moved to reappoint Janet Whitworth (Regular) to serve an additional three-year term, term to expire January 21, 2015. This motion was seconded by Councilman Bothwell and carried unanimously.

When Councilman Hunt asked if there was a policy that no person can serve on more than one board or commission, Vice-Mayor Manheimer said that it is possible and the Committee did take that into consideration with Mr. Nutter, who currently serves on the Historic Resources Commission. She said that serving on one board does not prohibit someone from serving on another board. City Attorney Oast said that depending on the nature of the appointment, there may be limitations prescribed by the dual office holding provisions. The Historic Resources Commission and the Board of Adjustment are two positions which he thinks that law applies. He would research that if applicable at this meeting.

Mayor Bellamy moved to appoint David Nutter to the vacant Alternate seat left by Mr. Hattaway, term to expire January 21, 2014, subject to the City Attorney's review of the dual office holding provision. This motion was seconded by Councilman Bothwell and carried unanimously.

It was also the consensus of Council to re-advertise for the alternate vacant seat left by Mr. Sheeler.

Following the vote, Mr. Nutter advised the City Clerk, who in turn advised Council, that he was not interested in the Board of Adjustment Alternate seat, but he was interested in a seat on the Downtown Commission. Mr. Nutter said that he would resign from the Historic Resources Commission if appointed to the Downtown Commission. Therefore, Council instructed the Clerk to advertise for two alternate seats.

**RESOLUTION BOOK NO. 34 – PAGE 239**

**RESOLUTION NO. 12-14 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION**

Vice-Mayor Manheimer said that the terms of Kitty Love, Michael McDonough and Jimi Rentz, as members on the Asheville Downtown Commission, expired on December 31, 2011.

The following individuals have applied for a vacancy on the Downtown Commission: David Nutter, Edward Loewe and Patric Mullen.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (1) reappointing Michael McDonough and Jimi Rentz; and (2) re-advertising for the remaining vacancy.

Councilman Davis to (1) reappoint Michael McDonough and Jimi Rentz to each serve a three-year term respectfully, terms to expire December 31, 2014, or until their successors have been appointed. This motion was seconded by Councilman Smith and carried unanimously.

Regarding the remaining vacancy left by Ms. Love, it was the consensus of Council to re-advertise for the remaining vacancy on the Downtown Commission.

**RESOLUTION BOOK NO. 34 – PAGE 240**

**RESOLUTION NO. 12-15 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Vice-Mayor Manheimer said that the terms of Ryan Blau, Ashley Featherstone and Matthew Raker, as members on the Sustainable Advisory Committee on Energy & the Environment expired on December 31, 2011.

The following individuals have applied for a vacancy on the Sustainable Advisory Committee on Energy & the Environment: Jeremiah Smith, Hobie Orton IV, Michael Leahey, William Hutchings, Timothy Ballard, Charles Rosenblum and Lael Gray.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended reappointing Ryan Blau and Matthew Raker and appointing Lael Gray (as also recommended by the Sustainable Advisory Committee on Energy & the Environment).

Councilman Bothwell moved to reappoint Ryan Blau and Matthew Raker to each serve a three-year term respectfully, terms to expire December 31, 2014, or until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

Mayor Bellamy moved to appoint Lael Gray to serve a three-year term, term to expire December 31, 2014, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 241**

**RESOLUTION NO. 12-16 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND**

Vice-Mayor Manheimer said that the term of Pat Leckey, as a member on the Firemen's Relief Fund, expired on January 1, 2012.

No individuals have applied for a vacancy on the Firemen's Relief Fund.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended reappointing Pat Leckey.

Councilman Hunt moved to reappoint Pat Leckey to serve an additional two-year term, term to expire January 1, 2014, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 242**

**RESOLUTION NO. 12-17 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION**

Vice-Mayor Manheimer, Chairman of the Boards & Commissions Committee, said that the terms of Marc Hunt, Susan Barlow and Stephanie Pankiewicz, as members on the Greenway Commission expired on December 31, 2011.

The following individuals have applied for a vacancy on the Greenway Commission: Ally Donlan, Mary Weber, Charles Rosenblum and Tony Hauser.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (1) reappointing Susan Barlow; (2) appointing Ally Donlan; and (3) interviewing Mary Weber and Tony Hauser.

Councilman Smith moved to reappoint Susan Barlow to serve an additional three-year term, term to expire December 31, 2014, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

Councilman Bothwell moved to appoint Ally Donlan to serve a three-year term, term to expire December 31, 2014, or until her successors has been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

It was the consensus of Council to interview Mary Weber and Tony Hauser.

**RESOLUTION BOOK NO. 34 – PAGE 243**

**RESOLUTION NO. 12-18- RESOLUTION APPOINTING A MEMBERS TO THE METROPOLITAN SEWERAGE DISTRICT BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the term of Bill Russell, as a member on the Metropolitan Sewerage District Board, expires on January 19, 2012.

No individuals have applied for a vacancy on the Metropolitan Sewerage District Board.

The Boards & Commission Committee recommended reappointing Bill Russell.

Councilman Smith moved to reappoint Bill Russell to serve an additional three-year term, term to expire January 19, 2015, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 244**

**RESOLUTION NO. 12-19- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TREE COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the terms of Brandee Boggs, Amy Kemp and Bob Gale, as members on the Tree Commission, expired on December 31, 2011.

No individuals have applied for a vacancy on the Tree Commission.

The Boards & Commission Committee recommended reappointing Mr. Gale, Ms. Boggs and Ms. Kemp, as did the Tree Commission.

Councilman Bothwell moved to reappoint Bob Gale, Brandee Boggs and Amy Kemp to each serve a three-year term respectively, terms to expire December 31, 2014, or until their successors have been appoint. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 245**

**MOTION AMENDING THE CITY OF ASHEVILLE RULES ON BOARDS & COMMISSIONS REGARDING THE INCLEMENT WEATHER POLICY**

Vice-Mayor Manheimer said that Boards & Commissions Committee reviewed the Inclement Weather Policy for Boards & Commissions. It was the recommendation of the Boards & Commissions Committee that for City Council Committees (H&CD Committee; Planning & Economic Development Committee; Public Safety Committee; Finance Committee; and Boards & Commissions Committee), in the event of inclement weather, it shall be at the Chair's discretion whether or not the meeting is held that day.

Mayor Bellamy asked that the Chairs contact the City Clerk as soon as possible so she can post that information on the City's website and have a press release sent out.

Regarding the Inclement Weather Policy, Mayor Bellamy moved to amend the City of Asheville Rules on Boards and Commissions to include that for City Council Committees (H&CD Committee; Planning & Economic Development Committee; Public Safety Committee; Finance Committee; and Boards & Commissions Committee), in the event of inclement weather, it shall be at the Chair's discretion whether or not the meeting is held that day. This motion was seconded by Councilman Davis and carried unanimously.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Kitty Katherine Richards and Ms. Rachael Bliss encouraged Asheville to adopt a resolution to bring our war dollars home.

Brother Christopher Chiaronmonte urged Council to repeal the panhandling ordinance.

Mr. Alan Ditmore asked for some accounting of how Asheville is helping the homeless on a net basis.

Mr. Timothy Sadler spoke about a program in Chicago that is a mobile truck that goes into underserved communities that have difficulty in accessing local fresh food. On another matter, he urged Council to not privatize our water.

Mr. Matthew Byrd asked for clarification on which Council members were serving on the Metropolitan Sewerage Board.

Mr. Kayvon Kazemini felt that corporations have more rights than people as Occupy Asheville was told they were impeding traffic into the Merrill Lynch building; however, he showed pictures of where other cars and trucks were blocking traffic into that same building. He felt that showed selective policing. In addition, he showed Council a copy of the Occupy Asheville community meeting board. He felt that the space outside the City Hall Building is not large enough for Occupy Asheville.

A resident of Asheville felt there are gaps in the service continuum for programs that address the needs of the most vulnerable populations, such as in the areas of severe persistent mental illness as well as substance abuse challenges. There is a recovery model relatively embraced by the State of North Carolina and programs that can be financed through networks drawing on state funds to effectively meet the needs of vulnerable populations using evidence based practice. Mayor Bellamy suggested that she talk to the County Commissioners as health and human services is a function of County government. She did note that when Asheville saw the greatest need, the City contributed money to the County to fund beds.

Vice-Mayor Manheimer said that the Study Committee chaired by Rep. Moffitt will have its first of four meetings on January 23, 2012, at 2:00 in Raleigh. At that time, Rep. Moffitt has asked that the City, MSD and others make presentations to that Study Committee. City Council will be represented. The second meeting will take place in Buncombe County in February. The Study Committee meeting on January 23 will take place in a room in the legislature that you can listen to on your computer. If you to go to the legislative website at [ncleg.net](http://ncleg.net) you will be able to listen to the live feed. Mayor Bellamy asked the City Manager to see if that link can be placed on the City's website, if possible.

Councilman Bothwell reminded the public that this weekend is the celebration of the Dr. Martin Luther King Jr. On Monday, January 16, there will be conversations across the country sponsored by the American Dream Coalition to discuss rebuilding the American dream. He invited the public to attend that discussion at 271 Tunnel Road at 6:00 p.m.

### **Lawsuits**

The following civil action has been commenced in Superior Court on December 7, 2011, and the City was served via certified mail on December 9, 2011, generally described as follows: Charles Long and Nancy Long vs. City of Asheville. The nature of the proceeding is a complaint for negligence, trespass, nuisance and breach of contract – Waterline break at 147 White Pine Drive, property of Charles and Nancy Long. This will be handled by an attorney outside of the City Attorney's Office.

The following civil action has been commenced in Superior Court on December 18, 2011, and is generally described as follows: Jay Fiano and wife, Stacy Fiano vs. City of Asheville. This is a notice of appeal and petition for writ of certiorari as an appeal of the Council's decision to close Moody Alley. This matter will be handled in-house.

### **Closed Session**

At 7:28 p.m., Councilman Pelly 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 litigation

involving the following parties: Jensen, and others (Biltmore Lake Annexation), City of Asheville, Holly P. Oxner, Jr., Forrest Eugene Weaver, and similarly affected retired and/or active police officers of the City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and 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 Smith and carried unanimously.

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

**VIII. ADJOURNMENT:**

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

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CITY CLERK

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MAYOR