

Tuesday – June 12, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; 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 Burleson

Absent: Vice-Mayor Esther E. Manheimer

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Hunt gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of City staff, it was the consensus of Council to add the following on the Consent Agenda: "Resolution amending Resolution No. 12-107 allowing for the provisions of malt beverages and/or unfortified wine at the Asheville Grizzlies football game to change the date from June 18 to June 16, 2012.

- A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON MAY 22, 2012; THE MAY 29, 2012, COMMUNITY MEETING; THE BUDGET WORKSESSION ON JUNE 5, 2012**
- B. RESOLUTION NO. 12-124 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH PATTON CONSTRUCTION GROUP INC. FOR THE CHALLEDON SUBDIVISION WATERLINE REPLACEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with Patton Construction Group, Inc., in the amount of \$314,360.00 for the Challedon Subdivision Waterline Replacement Project.

This project consists of the installation of approximately 5,300 Linear Feet (LF) of new 6-inch Ductile Iron Pipe (DIP) along with all associated valves, hydrants, and services to provide fire protection and domestic water service to the Challedon Subdivision located in Candler, NC. The proposed waterline will replace an existing 6-inch Polyvinyl Chloride (PVC/plastic) line that will be abandoned once construction of the new line is complete. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction project. In response to the Advertisement For Bids, the WRD received seven (7) proposals.

Companies responding were:

1. Patton Construction Group, Inc.– Arden, NC
2. Cooper Construction Company Inc. – Flat Rock, NC
3. Huntley Construction Company, Inc. – Asheville, NC
4. Cana Construction – Waynesville, NC
5. Carolina Specialties Construction, LLC – Hendersonville, NC

6. Steppe Construction, Inc – Mill Spring, NC
7. T & K Utilities, Inc. – Asheville, NC

The bids were reviewed by City Staff and selected Patton Construction Group, Inc., as the lowest responsible bidder at a bid of \$314,360.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- This project will replace an existing waterline that ruptures often, causing costly repairs for the City and Water Resources Department and frequent outages for the customers, with a durable, reliable, sustainable water system for the Challedon Neighborhood.
- This project is aligned with the City and Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects, in order to provide safe and reliable service.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would prevent the completion of this high-priority waterline replacement project and maintenance issues with the existing line would continue.

The Water Resources Department currently has the funds needed for this project budgeted in the Water Resources' Capital Improvement Projects Fund.

City staff recommends City Council approval of the City Manager to enter into an agreement with Patton Construction Group, Inc. in the amount of \$314,360.00 for the Challedon Subdivision Waterline Replacement Project.

RESOLUTION BOOK NO. 34 – PAGE 402

C. RESOLUTION NO. 12-125 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 26, 2012, FOR THE ADOPTION OF AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF 44 LINDEN AVENUE

Summary: The consideration of a resolution calling for a public hearing on June 26, 2012, for the adoption of an ordinance ordering the demolition and removal of the dwelling located at 44 Linden Avenue.

This property first came to the attention of the Building Safety Department in the summer of 2009, having been the scene of a fire several years earlier. Numerous efforts were made to locate the whereabouts of the property owner to no avail. Additionally, the owner was in default of a deed of trust and the lender had instituted foreclosure proceedings. Upon the lender's failure to follow through with the foreclosure sale, the City after giving notice, held an administrative hearing, ordering the demolition of the dwelling. The owner has voiced no opposition to the order of demolition. The dwelling is in a severely dilapidated condition in that the fire has substantially impacted the structural integrity of the foundation of the dwelling, no windows, gutters are missing, the eaves are burned and failing with the interior of the dwelling severely smoke damaged throughout.

This action supports the city's strategic goal of implementing strategies to significantly improve public safety in neighborhoods.

Pro:

- Eliminates a health and safety hazard and contributes to the City's tax value

Con:

- There is a \$113,750 Deed of Trust along with a \$21,340.00 line of credit against the property in favor of Bank of America. To protect the City's demolition lien, the City, maybe forced to litigate the superiority of its lien over Bank of America's liens.

City Council authorized the use of fund balance for demolitions on March 13, 2012. The demolition is expected to cost \$8,750.

City staff recommends that City Council adopt the resolution setting the date of public hearing on June 26, 2012, to consider an ordinance to order the demolition of the dwelling located at 44 Linden Avenue.

RESOLUTION BOOK NO. 34 – PAGE 404

D. ORDINANCE NO. 4086 - ORDINANCE ENACTING AND/OR CHANGING THE SPEED LIMIT TO 25 MPH ON BORIS STREET, COMPTON DRIVE, EVELAKE DRIVE, GALAHAD PLACE, GAWAIN STREET, GUINEVERE COURT, KING ARTHUR PLACE, LANCELOT LANE, LIONEL PLACE, MERLIN WAY, PERCIVAL COURT, CAMPGROUND ROAD, DILLINGHAM ROAD, EDGELAWN ROAD, HERON AVENUE, MILDRED AVENUE, TRACEY DRIVE AND SCHENCK PARKWAY

Summary: The consideration of an ordinance to enact and/or change the speed limit on Boris Street, Compton Drive, Evelake Drive, Galahad Place, Gawain Street, Guinevere Court, King Arthur Place, Lancelot Lane, Lionel Place, Merlin Way, and Percivale Court in the Camelot Subdivision to 25 mph; and enact/change a 25 mph speed limit on Campground Road, Dillingham Road, Edgelawn Road, Herron Avenue, Mildred Avenue, Tracey Drive, and Schenck Parkway.

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 traffic engineering investigations and determined that a 25 mph speed limit would be reasonable and safe on the following streets in the Camelot Subdivision. The subject streets primarily serve residential areas in this subdivision. They are Boris Street from King Arthur Place to Lancelot Lane, Compton Place from NC 63 New Leicester Highway to the end of City maintenance, Evelake Drive in its entirety, Galahad Place in its entirety, Gawain Street from King Arthur Place to Lancelot Lane, Guinevere Court in its entirety, King Arthur Place in its entirety, Lancelot Lane in its entirety, Lionel Place from Guinevere Court to the end of City Maintenance, Merlin Way from Compton Place to the end of City Maintenance, and Percivale Court from Evelake Drive to the end of City Maintenance.

Additional traffic engineering investigations were conducted by City staff that indicated that a 25 mph speed limit would be reasonable and safe on Campground Road from Maple Springs Road to Bull Mountain Road, Dillingham Road from New Haw Creek Road to Old Haw Creek Road, Edgelawn Road from Midland Drive to Stratford Road, Herron Avenue from Haywood Road to Craggy Avenue, Mildred Avenue from Haywood Road to Herron Avenue, Tracey Drive from Hazel Mill Road to Skyview Terrace, Schenck Parkway from NC 146 Long Shoals Road to its southern intersection with East Schenck Crescent, and Schenck Parkway from its northern intersection with East Schenck Crescent to the end of City maintenance.

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 citizen’s requests.
- The new speed limit will be consistent with roads of like character and design.
- This action will “clean up” some roads where the signs do not reflect the ordinance.
- This action will also bring some of the roads into line with our speed limit policies.
- Based on the 85th percentile speeds, most drivers would adhere to a 25 mph posted speed limits on these roads.

Cons:

- The initial cost to install the appropriate speed limit signs is about \$1,200.00.
- 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 \$1,200.00 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 Boris Street from King Arthur Place to Lancelot Lane, Compton Place from NC 63 New Leicester Highway to the end of City maintenance, Evelake Drive in its entirety, Galahad Place in its entirety, Gawain Street from King Arthur Place to Lancelot Lane, Guinevere Court in its entirety, King Arthur Place in its entirety, Lancelot Lane in its entirety, Lionel Place from Guinevere Court to the end of City Maintenance, Merlin Way from Compton Place to the end of City Maintenance, Percivale Court from Evelake Drive to the end of City Maintenance, Campground Road from Maple Springs Road to Bull Mountain Road, Dillingham Road from New Haw Creek Road to Old Haw Creek Road, Edgelawn Road from Midland Drive to Stratford Road, Herron Avenue from Haywood Road to Craggy Avenue, Mildred Avenue from Haywood Road to Herron Avenue, Tracey Drive from Hazel Mill Road to Skyview Terrace, Schenck Parkway from NC 146 Long Shoals Road to its southern intersection with East Schenck Crescent, and Schenck Parkway from its northern intersection with East Schenck Crescent to the end of City maintenance.

ORDINANCE BOOK NO. 27 – PAGE

E. RESOLUTION NO. 12-126 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LICENSE AGREEMENT WITH DUKENET COMMUNICATIONS LLC FOR INSTALLING, OPERATING AND MAINTAINING FIBER OPTIC EQUIPMENT AT 166 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute a License Agreement with DukeNet Communications, LLC for the purposes of installing, operating and maintaining fiber optic equipment at 166 Reservoir Road.

The property at 166 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

DukeNet Communications, LLC provides fiber optic service to many of the telecommunications tenants at the site. In order to facilitate greater service to their clients, DukeNet requests to lease approximately 6,480 square feet in order to install fiber optic cable to connect the two towers on the premises. This license area measures 10 feet in width and is

approximately 648 feet long. DukeNet intends to use this license area for fiber optic communications between the two towers. The proposed term of the License Agreement will be five (5) years with one renewal period of five (5) years.

As consideration for the license agreement, DukeNet has agreed to grant the City the right to use twelve (12) designated dark fibers or unlit fibers along S. Charlotte Street to Reservoir Road for the same term of 10 years total. These dark fibers are bundled within DukeNet's existing fiber optic network, yet are not currently utilized by DukeNet (unlit). Through this value exchange, the City is seeking to create a no-cost link that will increase public safety network reliability for the City of Asheville's radio system. This link would cost approximately \$45,000 if constructed separately.

In the coming years, the property at 166 Reservoir will be utilized as part of the Beaucatcher Greenway for potential parking, overlook areas, trail areas, etc. In order to minimize any impact to the future park development or the Beaucatcher Greenway development, DukeNet has agreed relocate the fiber optic line within City property if a portion of the designated license area is needed for Park or greenway development.

The Notice of Intent to enter into a License Agreement with DukeNet Communications, LLC was published on June 1, 2012, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action aligns with City Council's Strategic Operating Plan in that strategic agreements that enable the City to improve telecommunications infrastructure in exchange for use of City real property complies with the City's commitment to Fiscal Responsibility.

Pros:

- Maximize the value of this license agreement through the access to the DukeNet fibers
- Adds a link that will contribute to the City of Asheville's public safety radio reliability
- DukeNet agrees to relocate fiber optic line if in conflict with the future greenway or park

Con:

- None.

Under the License Agreement, the City will not receive any revenue from DukeNet; however the City will receive the right to use twelve (12) designated dark or unlit fibers along S. Charlotte Street to Reservoir Road which will save the City an estimated \$45,000 in fiber optic installation costs.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the license agreement with DukeNet Communications, LLC on behalf of the City of Asheville.

RESOLUTION BOOK NO. 34 – PAGE 406

F. RESOLUTION NO. 12-127 - RESOLUTION AUTHORIZING CITY STAFF TO APPLY FOR A FEDERAL TRANSIT ADMINISTRATION GRANT TO HELP PAY CURRENT TRANSIT SYSTEM FUEL COSTS AS CAPITAL MAINTENANCE EXPENSES AND IF AWARDED, AUTHORIZING THE MAYOR TO EXECUTE THE APPROPRIATE DOCUMENTS TO ACCEPT THE GRANT

Summary: The consideration of a resolution authorizing City staff to apply for a Federal Transit Administration (FTA) grant to help pay current transit system fuel costs as a capital maintenance expense instead of an operating expense and if the grant is awarded, authorizing the Mayor to execute the appropriate documents to accept the grant.

The 2012 Consolidated and Further Continuing Appropriations Act permits the Federal Transit Administration (FTA) to treat fuel costs for vehicle operations as a capital maintenance item for grants made in FY 2012 under the Urbanized Area Formula Program up to a total of \$100,000,000. Typically, fuel costs are treated as an operating expense. Since the funds were capped, FTA is limiting the use of the funds for the subject purpose to recipients that responded to an announcement that was posted on January 25, 2012 and closed on February 29, 2012.

City staff submitted a letter of interest within the specified timeframe and as a result, we are approved to use \$175,182 for fuel costs in an 80/20 ratio instead of the 50/50 ratio that is used when fuel costs are considered an operating expense. This grant does **not** constitute additional funding; it is part of the annual Section 5307 allocation.

For grant purposes, Henderson County is considered a sub-recipient and therefore is eligible to share in the grant. Based on the approved formula apportionment, their share is estimated to be about \$41,294 leaving a balance of \$133,888 for the City of Asheville. The total project cost equals \$218,978 (\$175,182 divided by 80%) which means the 20% local match equals \$43,796. Asheville is responsible for \$33,472 of the local match and Henderson County is responsible for \$10,324.

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

The Transit Commission supports the subject action.

Pro:

- Enables the City to leverage operating funding and use it as a capital expense, in a ratio of 80/20 instead of the typical 50/50 ratio allowed for operating assistance.

Con:

- A 20% local match is required which equals \$33,472 (City of Asheville).
- Reduces the amount of FTA funding available for future capital improvements.

This FTA grant revenue and the City's local match are already included in the Proposed Transit Fund budget for the next fiscal year.

City staff recommends that City Council adopt a resolution authorizing City staff to apply for a Federal Transit Administration grant to help pay current transit system fuel costs as a capital maintenance expense instead of an operating expense and if the grant is awarded, authorizing the Mayor to execute the appropriate documents to accept the grant.

RESOLUTION BOOK NO. 34 – PAGE 407

G. RESOLUTION NO. 12-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE THROUGH THE BULLETPROOF VEST PARTNERSHIP PROGRAM 2011

ORDINANCE NO. 4087 - BUDGET AMENDMENT FOR THE BULLETPROOF VEST PARTNERSHIP PROGRAM 2011

Summary: The consideration of (1) a resolution authorizing the City Manager to accept grant funds through the Bulletproof Vest Partnership Program; and (2) an associated budget amendment, in the amount of \$32,056 with half the proceeds coming from the grant and the other half (City match) coming from the Police Department's FY 2011-12 budget.

The City of Asheville Police Department currently participates in the US Department of Justice BVP program. The funds allocated through this program are designed to offset

departmental cost associated with purchasing bulletproof vests. The City of Asheville has been awarded \$16,028 from the grant. The grant does require a 50% match from the City, which will come from the Police Department's existing FY 2011-12 General Fund budget. These funds, along with the City match, will enable the Police Department to purchase 54 bulletproof vests. APD would have to purchase these vests at full replacement costs if the grant award had not been received.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities and Fiscal Responsibility – The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.

Pros:

- Reduction in cost to the City of Asheville for the purchase of bulletproof vest
- Increase in officer safety by providing crucial safety equipment

Con:

- Requires 50% City match

There is a 50% match required by the City of Asheville in the amount of \$16,028. As noted above, the match will come from the Police Department's existing FY 2011-12 budget.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept funds through US Department of Justice for grant monies; and (2) the associated budget amendment, in the amount of \$32,056 with half the proceeds coming from the grant and the other half (City match) coming from the Police Department's FY 2011-12 budget.

**RESOLUTION BOOK NO. 34 – PAGE 408
ORDINANCE NO. 27 - PAGE**

H. ORDINANCE NO. 4088 - BUDGET AMENDMENT TO USE NORTH CAROLINA STATE DRUG SEIZURE FUNDS

Summary: The consideration of a budget amendment, in the amount of \$10,000, to authorize the use of North Carolina State Drug Seizure Funds to fund office space improvements for the Asheville Police Department.

The North Carolina State drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

The City of Asheville Police Department has received \$10,000 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to partially fund office space improvements at the old NC Guard Armory not covered by the APD operating budget.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities and Fiscal Responsibility – The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.

Pro:

- North Carolina State drug seizure revenue used to fund office space improvements at no cost to city taxpayers.

Con:

- None noted

The increase of \$10,000 for construction improvements. Accepting and allocating these funds is a financial benefit to the APD allowing us to better equip our employees. There is no impact to the General Fund budget.

City Staff recommends City Council adopt a budget amendment in the amount of \$10,000 authorizing the use of North Carolina State Drug Seizure Funds to fund office space improvements for the Asheville Police Department.

ORDINANCE BOOK NO. 27 – PAGE

I. RESOLUTION NO. 12-129 - RESOLUTION CANCELLING THE JULY 31, 2012, COMMUNITY MEETING

RESOLUTION BOOK NO. 34 – PAGE 409

J. RESOLUTION NO. 12-130 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH OTIS ELEVATOR TO PROVIDE ELEVATOR MAINTENANCE AND REPAIR SERVICE FOR MULTIPLE MUNICIPAL BUILDINGS

Summary; The consideration of a resolution authorizing the City Manager to enter into a contract with Otis Elevator to provide elevator maintenance and repair service for multiple municipal buildings.

The City of Asheville currently has a service contract with Otis Elevator, located at 203 Elk park Drive, Asheville, NC. This contract is renewable. Otis Elevator has proposed to renew and extend the contract to include a 7% discount for the next year and capping all future year increases at 5% per year in a five-year contract. The service contract is a predictive, preventative maintenance system for the Otis elevators at City Hall, Municipal Building, Stephens Lee Recreation Center, and Asheville Fire Station 11. The total contract amount for Fiscal Year 2013 is \$64,433.71.

This contract supports the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pros:

- Provides a contract to maintain and provide repair service to the elevators at City Hall, Municipal Building, Stephens Lee Recreation Center, and Fire Station 11;
- Provides a discount in cost for the next two fiscal years with fixed increases the following three years;

Cons:

- Maintenance cost to the elevators at City Hall will continue to increase due to the age of the elevators increasing the annual service contract.
- Some repair costs may still be incurred for repairs beyond the scope of this contract.

The \$64,433.71 for contracted elevator services is budgeted in the City's Fiscal Year 2012-13 operating budget for facilities maintenance.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign the contract with Otis Elevator to provide elevator maintenance and repair services for multiple municipal buildings in the amount of \$64,433.71.

RESOLUTION BOOK NO. 34 – PAGE 410

- K. RESOLUTION NO. 12-131 – RESOLUTION AMENDING RESOLUTION NO. 12-107 ALLOWING FOR THE PROVISIONS OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAME FROM JUNE 18, 2012, TO JUNE 16, 2012**

RESOLUTION BOOK NO. 34 – PAGE 411

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 Davis moved for the adoption of the amended Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. UPDATE ON STATE LEGISLATIVE ISSUES

Asheville Airport

Mayor Bellamy said that the City needs to take a formal position on the Airport legislation (House Bill 552) which was introduced on March 30, 2011, to establish the Greater Asheville Regional Airport Authority as an independent authority.

Councilman Smith restated the motion which carried unanimously on April 26, 2011, and moved to communicate to our legislators that the Asheville City Council is opposed to HB 552 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; (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; and (4) over the make-up of the board in terms of the number of people from each jurisdiction who can serve on the Board. The motion emphasized 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. The motion also formally requested an opportunity to dialogue further regarding the proposal. This motion, as restated to Councilman Smith was seconded by Councilman Bothwell and carried unanimously.

City Attorney Oast said that a letter was prepared and sent to all our legislators last year with Council's concerns.

Mayor Bellamy noted that the Airport was clearly paid for by Asheville taxpayers.

Mayor Bellamy urged Council to call on each of our legislators and reaffirm our commitment to keep the Airport. Also she asked that our legislative liaison relay Council's opposition to our legislators as well.

It was the consensus of Council to instruct the City Attorney to prepare another letter to our legislators expressing Council's continued opposition and concerns regarding HB 552.

Legislative Study Committee on Water

Mayor Bellamy said that the Committee on Metropolitan Sewerage/Water System of the Legislative Research Commission has recommended that the 2013 Session of the North Carolina General Assembly consolidate the City of Asheville's water system with the Metropolitan Sewerage District. The Committee also recommended an option for the "interested governments" to "craft their own solution for consolidation." Mr. Steven Aceto, Chairman of the Metropolitan Sewerage District (MSD) sent a letter to her asking the City to be part of the process where MSD will study the impact of a possible consolidation of the water and sewer systems on MSD ratepayers. She responded to him stating that the Council will deliberate on the best course of action moving forward.

Mayor Bellamy said that recently she travelled to Raleigh and spoke with our legislators and at that time Representative Tim Moffitt offered to come talk to City Council about this issue. She felt it would be good to have all our legislators come to ask them what their expectations are for the City and MSD to craft their own consolidation solution.

Councilman Smith said that it was his understanding the MSD was looking to have a solution crafted by November, but based on the timetable provided by the Legislative Research Commission, the November date seems rushed and we should approach this as deliberately as we can.

After a brief discussion, it was the consensus of Council to (1) instruct City Attorney Oast to draft a letter for the Mayor's signature inviting our legislators to meet with City Council to provide clarity on what their expectations are for the City and MSD to craft a consolidation solution; (2) participate in the MSD process going forward (noting that Raftelis will be able to provide MSD facts and craft information needed to support a regional scope more than just having Asheville turn over its assets) – Councilman Pelly is on the MSD Planning Committee and Vice-Mayor Manheimer is also on the MSD Board; and (3) since MSD is only looking at one part of this, that the City Manager be instructed to draft a letter to other local officials from area municipalities (or their designees) and service providers to also be a part of the process. That way we will have all the leaders that provide water in Buncombe County as well as our neighboring counties (if they are really talking about a regional authority).

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE

Project Manager for the Asheville Downtown Master Plan Sasha Vrtunski said that this is the consideration of a resolution creating a downtown Municipal Service District, also known as a Business Improvement District (BID), in downtown Asheville. This public hearing was advertised on June 1, 2012.

She said that the Downtown Master Plan, adopted by City Council in June 2009, strongly recommended a downtown management entity for Downtown Asheville. A subcommittee was formed by the Downtown Commission to explore this idea, and began meeting in December 2009. The Management committee worked for two years exploring a district for downtown Asheville. This included a needs survey, an Economic Benefits Study (which also included a business survey), a public forum at the Civic Center, and a series of seven meetings with business and property owners.

In December 2011, an Interim Board was formed as the Management Committee recognized that it did not have enough property owners to finalize a plan. The Interim Board was

composed of some of the larger property owners, whom also have a long history with Asheville's downtown revitalization.

The Interim Board has worked over the past six months to develop a proposal for the business improvement district, and presented it at five open meetings, and numerous smaller meetings with property owners.

City Attorney Oast said the statute that governs the establishment of municipal service districts has certain requirements and City Clerk Bureson has provided that certification into the record.

Ms. Susan Griffin, property owner and resident in downtown, past Secretary and Vice-President of the Asheville Downtown Association and former Chair of DARN, provided Council with the history of the downtown area. Sixty years ago the downtown was the place to be, but in the 1970's the area rapidly declined. In 1977 City Council took the lead in getting downtown back on track, working closely with the private sector to revitalize and rehabilitate downtown. One of the most effective tools it had was the Downtown Development Department. In 1991 the Downtown Development Department lost its focus and no one was directly managing downtown. About 12 years later the Downtown Commission recognized the need to refocus on downtown. They urged Council to fund the Downtown Master Plan, which they adopted in 2009. Action committees were formed to implement each of the 7 strategies in the Plan. The Downtown Management Committee, which she Chairs, was appointed in 2009 to study Strategy 7 – Downtown Management. Goals were to ensure that downtown stayed clean, green and safe and to empower stakeholders to collaborate in decisions and investments that support mutual downtown interests. Action items were (1) study current conditions and services in the Central Business District (CBD) and develop a baseline of services; and (2) researched BIDs in North Carolina and all around the country to see how they worked, problems they faced and how they overcame them. They researched several different models, i.e., volunteers, lobbying, etc. Since North Carolina legislation was enacted in 1973 there have been 50 BIDs formed in North Carolina. The oldest was formed in Hendersonville in the early 1980's and it is still existing today. There are over 1,000 BIDS across the United States and many of them are formed in culturally and politically progressive cities. Many are formed to revitalize a dying downtown area, but many others are formed to manage, maintain and capture the unique vibe of their districts. Research shows that BIDS have had a positive impact wherever they are implemented. The Downtown Management Committee commissioned an economic benefit study to find out the impact on Asheville. The study showed a downtown BID would have a positive impact on the retail sales, on property values and on creation of jobs in the BID increased. This would be increased revenues for property owners downtown and also to City and County coffers, thereby benefitting all citizens of the area. The Downtown Management Committee formed an interim Board – 13 members who are all property owners, representing different types of stakeholders in the downtown area. They were charged with four things – to come up with a proposal that included the boundaries, services, assessment and the board make-up. She urged Council to support the BID.

Mr. Peter Alberice, property owner and resident in downtown, past President of the Asheville Downtown Association, past Chair of the Downtown Commission, and chair of the Asheville Area Chamber of Commerce, explained the proposal in depth. The interim BID Board generated the Business Improvement District Formation Report, which has been on the City's website since May 10, 2012. He explained how they determined the BID boundary which is to match the CBD. He explained how the assessment of 7-cents per \$100 was arrived at – noting that the state average is 15-cents. For 67% of downtown property owners, their daily assessment would be 96-cents. Major property owners' daily assessment would be approximately \$1.92. Regarding the proposed budget, 77% (613,865) would be budgeted for clean & safe; 13% (\$103,937) would be for advocacy & coordination; and 10% (\$82,187) would be for administration – totally \$800,000. The clean and safe program would consist of regular sweeping/washing of sidewalks, litter/trash pick-up, graffiti removal, snow removal, landscaping/amenities

maintenance, and ambassador program. He was clear that the ambassador program is not going to be a police force – they will be unarmed and have a two-way radio or cell phone and if there is a problem, they will call the Police Department. The advocacy & coordination program would be to (1) bring downtown folks together to talk about issues; (2) work with City and County officials; (3) give district property owners a “point person” for problem solving; and (4) ensure all downtown voices have a forum. The Board of Directors proportionately represents different types of property owners, will prepare an annual work plan, will have financial oversight, will have program and staff oversight, and will represent property owners’ interest. He said there is a 3-year sunset clause. In summary, he said this is a great opportunity for the City that it will help address issues such as revenue generation within downtown, help increase the tax base of the downtown and to provide another feature for people who are interested in coming to Asheville whether they want to start a business, build a project, renovate an old building, or live here. He urged Council to support the BID.

Mayor Bellamy opened the public hearing at 5:40 p.m.

The following individuals spoke in support of the BID for several reasons, some being, but are not limited to: positive impacts a BID can have on a community; important to put an infrastructure in place to protect the investment made years ago to keep our vibrant downtown; with a BID, those that decide to assess themselves also make the decisions about where the money will be spent; a BID will promote infill development; a BID provides a return on investment; a BID increases services to downtown; cities that currently have BIDs renew them over and over again because they have been successful; an important role of the BID is advocacy where there will be a central point of information; some have noted that their savings alone on graffiti would accommodate the assessment; the City can’t pay for all the solutions needed for downtown, i.e., remove graffiti on private property; a BID will keep the sidewalks clean from dirt, cigarette butts, dog excrement, overgrown weeds, graffiti, sidewalk stains etc; reasons why volunteers cannot manage the BID; each state has different legislation regarding BIDs and each BID is tailored for each individual city; BIDs are for cities that are revitalized; now is the time to make downtown sustainable in an insecure time and create a funding source for downtown improvement that can weather the winds of political change; there will be an increase in retail sales and property values; the interim BID Board is a cross-section of downtown property owners from small entrepreneurs to residents of small, medium and large property owners; the BID will not create a gated community or mall atmosphere; BID concept is to make Asheville cleaner and safer for everyone; if people are unhappy with the BID, it can be altered or discontinued after three years; support for the BID will bring in a \$700,000 overture to make our downtown neighborhood cleaner, safer and more prosperous; a BID has been suggested back in 1988; a BID will provide a consistency of service so that all of downtown will be safer and look its best with all of us determining the needs and sharing the cost; and lack of existing police services:

Ms. Kit Kramer, downtown resident, President of the Asheville Area Chamber of Commerce, past President of the International Downtown Association, and former Downtown Manager

Mr. Bob Barringer, Asheville resident

Ms. Kim MacQueen, property owner and business owner of a business downtown, member of the Downtown Management Committee, former Chair of the Downtown Commission, former Chair of the Downtown Association, etc.

Mr. Tom Gallagher, Asheville resident and local consultant who drafted the Downtown Master Plan

Mr. Adrian Vassallo, President of the Asheville Downtown Association

Mr. Joe Minicozzi

Mr. Andy Brockmyer, downtown resident

A north Asheville resident

Mr. Dwight Butner, former President of the Asheville Downtown Association, former Chair of the Downtown Commission, downtown resident and business owner
Owner of two downtown businesses and Director of the Asheville Grown Business

Alliance

Ms. Rebecca Hecht, member of the Downtown Master Plan Committee, member of the Asheville Downtown Commission, Board member of the Asheville Downtown Association, and owner of two downtown businesses

Mr. Buck Bragg, downtown property owner

Mr. Barry Olen, downtown property owner

Mr. David Quinn, planner focused on downtown and member of Asheville Downtown Association

Mr. Pat Whalen, downtown property owner and resident

Mr. Larry Holt, downtown property owner

Ms. Kim McGuire, downtown property owner

Ms. Judy Swan, downtown property owner

Mr. David Nutter

Property owner on Pearl Street

Downtown business and property owner

Business owner downtown

The following individuals spoke in opposition to the BID for several reasons, some being, but are not limited to: concern of make-up of BID Board of Directors; raising taxes in downtown will divide our community; the BID will impose of the will of a certain group of people on everyone; other citizens of Asheville work, eat and attend events downtown and just the property owners in downtown should have to pay for its upkeep; there is little evidence to support the financial claims that a BID brings to the community; there is no way of knowing whether residential property values would increase or decrease as a result of this added BID tax; higher taxes might deter buyers from living downtown and encourage them to buy less expensive property outside of the CBD while still have access to City amenities; the BID structure is not fair or democratic; the BID Board of Directors are an elite group; some businesses hire employees to pick-up trash in front of their buildings, shovel snow and clean their sidewalks and the BID will not be providing any services for them; it should be the responsibility of the downtown property owners to keep the front of their business neat and clean; some people feel overly-taxed and are already having a difficult time paying taxes; many downtown property owners feel unrepresented and abandoned by the BID Board; the BID tax will cost larger property owners much more and it will be passed down to tenants; if you keep taxing downtown businesses, you will see chain stores because small businesses won't be able to afford staying there; we elected City Council to run the City, not the BID Board of Directors; suggestion for the two opposing sides to meet and come back to Council in six months; and question if hotels in the downtown area should be considered in the BID because they already pay a hotel/motel tax:

Mr. Scott Owen, farmer and struggling artist

Property owner at 61 N. Market Street

Mr. Fred Guggenheim, downtown property owner

Mr. Liberty Valance, downtown business owner

Mr. Hunt Mallet, downtown property owner

Mr. Russell Thomas, managing partner for the Flat Iron Building

Mr. Martin Ramsey

Mr. Clayton Ludeman, property owner at 52 Biltmore Avenue – presented

Council with a petition containing 25 signatures from the Oxford Place

Condominiums that are opposed to the BID

Mr. Wes Rhinehart, representing FIRC Group

Mr. Chris Peterson, downtown property owner

Mr. Steve Lansford, downtown property owner

Mr. Denny Pearson, owner of Hotel Indigo on Haywood Street

Mr. Steve Rasmussen, worked on the Downtown Master Plan

Representative of WNK Asheville LLC (major property hotel owner in downtown)

The following individuals asked that Council delay any decision on the BID until issues have been addressed, some being, but are not limited to: The Ambassador program has no mention of the Asheville Police Department along with minimal oversight by the City of Asheville; BID will make life harder for the homeless; there is no representation on the BID Board of Directors from the social service community; this is a complex situation and even though a lot of good information has been presented, more information needs to be; surveys were sent to 369 residential condos in 17 buildings and out of those 369 surveys sent - 108 responses were received of which 101 were opposed to the BID; and most of the support heard today was from those involved in the process:

Mr. Karl Katterjohn, Asheville resident
Mr. John Spitzberg, Veteran for Peace and member of the Asheville Homeless Network
Mr. William Wilcox, owner and operator of the BB&T Building in downtown Asheville
A lady
Mr. Timothy Sadler

Mayor Bellamy closed the public hearing at 7:44 p.m.

Councilman Hunt acknowledged the enormous amount of hard work by a lot of people who have worked on this. He believed the downtown is a key part of the economic engine for this community and is very supportive of a BID. He felt that everyone in the community will benefit from the well-led BID effort. There are very few things in our political toolbox that will allow a local government to progressively and creatively reinforce its own vibrancy. Enthusiastic as he is of the BID, he believed more work is required. The additional work with a better focus will help satisfy some unsettled views and ultimately will improve the likelihood that we will have a great BID. He felt more time would allow for a better definition of the structure of the corporation the City would be contracting with for the BID services, the governance of it, what kind of oversight the City Council might have over that, a draft contract between the City and the BID corporation, the budget taken to a more refined level, etc. He believed the City Manager and the City Attorney are prepared to support a process to add the kind of definition needed. It will mean a year delay in implementation. He then moved to continue the public hearing to September 25, 2012, and direct the City Manager and City Attorney to work toward refinement with the understanding of how this might play out so Council will benefit from information when it comes back to Council. This motion was seconded by Councilman Bothwell.

Councilman Bothwell said that the economic impact study has so many qualifications that it renders it meaningless. He said we recently have a legal decision that said property owners cannot be the only voters on annexation and he would trust that the courts would say the same thing about expenditure of taxpayer funds. He felt the 7-cent tax raise is good for downtown and felt it would be good City-wide as there are all kinds of needs across the City. He didn't like carving out one section of the City for a tax increase and possibly coming back to the downtown property owners next year with another tax increase depending on the revaluation. He was also concerned about a non-elected board handing money in the City, citing the Pack Square Conservancy and the Grove Arcade. He felt the elected officials should be accountable.

Councilman Pelly was also concerned about the oversight, particularly when tax dollars are involved. In addition, he was not comfortable with the structure of the BID Board as proposed. However, he did support the BID in principle, but would like it refined.

In response to Councilman Smith, City Manager Jackson outlined several things to enhance service downtown, i.e., established a downtown police patrol, moved the police company storefront into the Haywood Street office, partnered with DARN to upgrade Pritchard Park, established the nuisance court and expanded the community services for graffiti cleanup and putting thousands of hours into those kinds of projects, increased the frequency of trash can pick-up; provided public restrooms on Haywood Street, and invested over \$200,000 in doing the

Downtown Master Plan which resulted in clearer standards and better processes for review of proposed developments downtown.

Councilman Smith said that while we are trying to respond to the needs of downtown, when you have this kind of concentration of people, those needs intensify. There are a lot of needs outpacing our ability to keep up. So, as we look at this BID, once we get to a place to move forward, this will be an ongoing collaborative process. He felt it will be important for people to understand the loss/retention around independent businesses in the downtown area. There will be actual benchmarks to measure whether this is working or not. He would like to see a City and County representative on the BID Board, making sure the meetings are open, ensuring that there is someone with homelessness or social work expertise on the BID Board, and making sure the City and County receive reports to make sure that we have the confidence of the taxpayers as far as the finances are being handled. He would also like more clarify on the role of the police department and the ambassadors. He also wanted to see the BID by-laws.

Councilman Davis, downtown property owner, is generally supportive of the BID, however, he does have some concerns. He would like to see the by-laws of the BID Board.

Mayor Bellamy thanked the members of the Downtown Management Committee who have worked for three years to implement what they through Council wanted when we adopted the Downtown Master Plan – to move the BID forward. She also thanked the Parks & Recreation Foundation for the hanging baskets; DARN residents who help maintain the planters in Pritchard Park along with other maintenance in Pritchard Park; the Asheville Downtown Association for their work with Downtown After Five; individuals who help with the Oktoberfest; individuals who help with the Spare Change for Real Change Program; etc. We don't have a staff person dedicated to make sure this happens. The success that we have on the Asheville Redefines Transit is because we have the Transportation Department making sure that the improvements are made that Council wants to see happen. Council is asking the volunteers (and Ms. Vrtunski) to provide all this additional information, without any guarantee Council will vote in favor of it. She didn't think it was fair to burden our volunteers with more work and ask that it be brought back in three months. If we really want our downtown to be improved, we need a staff person to be dedicated to this.

City Manager Jackson said that if it's Council's goal to dedicate a person on a specific job, Council can add a position to the budget. Or, if you would like to give him an opportunity to take the direction he has heard from Council at this meeting, he will get staff input and then report back with a plan to be submitted it to Council within the one week.

Mayor Bellamy felt it was important to have a staff person dedicated to make sure things are being addressed. For those that are opposed to the BID, she urged them to help find some solutions on how to address the cleanliness of downtown. She asked for the following items to be addressed: what will be the role of the police officers, would like to see the budget, there should be a voting member of City Council and County Commissioner, accountability does need to be clarified, make sure that downtown residents are represented on the BID Board in a way that is clear, the BID boundaries should not go all the way to the Tunnel (stop at Charlotte Street), and the need to have a homeless representative or a service provider on the BID Board. She did not think that all of this can be addressed in three months and hoped that Councilman Hunt would be willing to amend his motion to continue the public hearing for an additional three months.

In response to Councilman Hunt, Ms. Griffin felt that the entire interim board is very willing to work on some of these issues and compromise, but she couldn't speak for the entire board. She hoped that the timeframe would be one that the interim Board is also considered on what works for them. She felt three months is a much easier way for them to look at another time commitment than to extend this out for another six months.

In response to Councilman Hunt, City Attorney Oast said that if the information cannot be produced in the three-month timeframe, the public hearing can then be continued again.

At 8:30 p.m., Councilman Smith called the question. This motion was seconded by Councilman Davis and carried unanimously.

The motion made by Councilman Hunt and seconded by Councilman Bothwell to continue the public hearing to September 25, 2012, carried unanimously.

At 8:30 p.m., Mayor Bellamy announced a short break.

B. PUBLIC HEARING TO CONSIDER A LAND USE INCENTIVE GRANT APPLICATION FOR 155 GLENN BRIDGE ROAD

RESOLUTION NO. 12-132 - RESOLUTION APPROVING A LAND USE INCENTIVE GRANT APPLICATION FOR 155 GLENN BRIDGE ROAD

Community Development Director Jeff Staudinger said that this is the consideration of a resolution approving a land use incentive grant application for 155 Glenn Bridge Road. This public hearing was advertised on June 1, 2012.

Mr. Staudinger said that the owners/developers of 155 Glenn Bridge Road have applied for a Land Use Incentive Grant per the policy adopted by Council on March 8, 2011. This report summarizes their application and reports on eligibility and points.

The 155 Glenn Bridge Road project entails the development of 176 units of rental housing located at the indicated project address 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 following Eligibility Requirements,

- Equity: A 20% equity contribution is required. The project developers indicate they will contribute 20.4% equity to the project. This includes unreimbursed value of the land, and other expenses.
- Energy Star Certification: The developers indicate the project will achieve Energy Star certification.
- Legal Costs; the developer must agree to assume all legal costs if the Land Use Incentive policy is challenged: The developer has agreed to assume all legal costs if the Land Use Incentive policy is challenged.

The project does not meet the following eligibility criteria:

- Inside city limits, within ¼ mile of designated major highways: The project is located approximately .6 mile from Hendersonville Road, and therefore about ¼ mile outside of the eligible area. The developer has requested a waiver of this eligibility criteria.

Public Benefit

The project proposes the following Public Benefit Elements:

- Affordable Housing units with assured affordability at that rent level for a minimum of ten years: 40% of total units (40 points)
- 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)

The project therefore scores 55 points. Based on this score, the project would be eligible for a 5.5 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.

Exemption Request

The developer has requested an exemption from the eligibility requirement that a project be located within ¼ mile of identified major highways. The project is located .6 miles from an eligible transit route, so slightly more than ¼ mile from the eligible area boundary. It is, however, in an area identified as "Location Efficient" in the Center for Neighborhood Technology study of location efficiencies in Asheville; although public transportation at or closer to this location is not in the Transit Master Plan. The developer notes that the project is located close to retail employment opportunities.

Fiscal Impact: Estimated maximum value of Land Use Incentive: The current assessed value of the property is \$1,062,500. The developer's estimate of completed project taxable value is \$23,881,118. The current annual city tax, based on current assessed value, is \$4,462.50. The annual estimated city tax post completion, based on the developer's estimate is \$100,300.70. Thus, the estimated annual Land Use Incentive Grant would be \$95,838.20, 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. If approved for 5.5 years, the estimated Grant would be \$527,110.10. The estimated annual value of direct services provided by the City to the development (primarily police and fire response) is approximately \$100,000.

The estimated amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is \$108,632. The value of each 10% of the fee rebate would be \$10,863.20. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant. If approved at the 55 point level, the fee rebate would be \$59,747.60.

The Housing and Community Development Committee has reviewed this application and recommends that Council act upon it.

Mayor Bellamy opened the public hearing at 8:57 p.m.

Mr. Morosani clarified that the project will be 40% affordable housing and 60% workforce housing.

Mayor Bellamy closed the public hearing at 8:58 p.m.

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

Councilman Hunt moved for the adoption of Resolution No. 12-132, waiving the requirement that the project be within ¼ mile of a major transportation corridor. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34– PAGE 412

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL USE PERMIT FOR HARMONY VILLAGE, LOCATED AT MYRA PLACE

ORDINANCE NO. 4089 - ORDINANCE AMENDING A PREVIOUSLY APPROVED CONDITIONAL USE PERMIT FOR HARMONY VILLAGE, LOCATED AT MYRA PLACE, FOR A REDUCTION TO THE NUMBER OF APPROVED UNITS, A REDESIGN OF THE SITE, AND PROPOSAL OF THREE NEW SINGLE-FAMILY LOTS, AND A REQUEST FOR A MODIFICATION TO ALLOW ENCROACHMENTS INTO A SETBACK

City Clerk Burlison administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

Mayor Bellamy and Councilman Davis disclosed that they were on City Council when this project was first before Council and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 9:01 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of an amendment to the approved Conditional Use Permit for Harmony Village, located at Myra Place, for a reduction to the number of approved units, a redesign of the site, and proposal of 3 new single-family lots, and a request for a modification to allow encroachments into a setback.

The applicant is requesting an amendment to the previously approved plan (CUP # 07-6306) to reduce the number of units and alter the number of lots / building configuration on an existing site (City Exhibit 3 – Location Map and Site Plan).

The project site consists of a 1.89 acre parcel located at Myra Place, Old Haywood Road and East Starnes Cove Road and is zoned RS-4. Surrounding properties are zoned RS-4 with Highway Business (HB) adjacent to the south. This site has been partially developed according to the previous approval.

The project, previously known as Myra Place, was approved by City Council on March 25, 2008, under density bonus provisions which allowed for additional units when a proposal incorporated exceptional development features and affordability. The proposal included 12 units throughout four buildings all centered around a common open space, site landscaping, a 5 foot sidewalk along Old Haywood Road, individual driveways and a common parking area. Twenty percent of the units were to be dedicated as affordable, allowing for a 150% density bonus above the base zoning (8 units).

The site plan was slightly modified after Council approval to rearrange the building placement, reduce the number of driveway openings and provide two common parking areas.

Construction started on this site but stalled. Two duplex structures exist at about 90 percent completion.

The current owner (First Bank) is proposing to reconfigure the site with the total number of units reduced from twelve to seven. The partially-built duplexes (and associated parking areas) will be completed with each building on its own separate parcel. There are no plans for additional building construction with this proposal. Three additional single-family lots would be created and made available for sale - one of which fronts only on Old Haywood Road. The other parcels are all through-lots with additional frontage on Myra Place.

- Reduction from one parcel containing multi-family development to five individual parcels
- Change from a mix of duplexes and triplexes to duplexes and single-family on their own individual lots
- Reduction from 12 units to seven
- Change from individual driveways and common parking lots to primarily individual parking
- Significant reduction in required landscaping (property line buffer, building impact, parking lot landscaping, street trees and open space are no longer required – however some has been included).

Parking and Access - The proposal includes an individual driveway into each of the five lots. There will be a small, four-space parking area for each duplex constructed at this time (two spaces for each unit) and the single-family access will be established at a later date by the subsequent property owners.

Sidewalks - Old Haywood Road is identified as a needed linkage; however, sidewalk construction would not be required for a development with this reduced number of units. An easement for future construction will be provided. No sidewalks are provided or required along Myra Place.

Landscaping – Landscaping requirements from the previous multi-family approval would not be applicable under this revised proposal due to the reduced scale; however some minimal landscaping will be included. Duplexes in the RS-4 zoning district are considered to be a Use By Right, Subject to Special Requirements and one of those requirements is screening the parking area from adjacent single-family uses (Type A 20' buffer). Since this proposal is amending a previous approval, the USSR standards are not necessarily applicable however this screening will be provided. Additionally, street trees along Old Haywood Road will be included.

Modification – Parking is not permitted within any required setback but the plan shows a small portion of both parking areas encroaching. This modification will need to be approved by City Council.

This project was approved with conditions by the Technical Review Committee on April 16, 2012. No opposition has been received. As an amendment to a previously approved Conditional Use Permit, review by the Planning & Zoning Commission is not required.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

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 proposed use and development of the land is compatible with the natural features and topography of the site. The parcel was graded with the (stalled) construction and this proposal will complete the work at either end of the site and return the rest of the area to a re-graded, seeded/mulched status until further developed. There are no significant topographic features on the site.

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

The proposed residential use is compatible with the surrounding residential neighborhood and should not injure the value of nearby properties. Completing the construction and closing out a stalled construction site should benefit the neighborhood.

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 duplexes and single-family lots may be more compatible with the surrounding neighborhood than the original, higher-density development planned for this site.

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.

This downsized proposal does not conflict with any policies held by the City. The original plan may have been more aligned with objectives adopted by City Council which encourage higher-density and affordable residential projects, however, this proposal provides infill residential development and closes out a stalled construction site – both of which are benefits to the City.

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

This site is located just off I-240/Patton Avenue, which places the project in an easily accessible location by car and Asheville transit (old rt. 15 – new W3). The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

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

There is no traffic congestion or traffic hazard anticipated as a part of this proposal.

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

Pros:

- This action will allow for an open, stalled construction site to be closed-out.
- The proposed development will complement the existing residential fabric of the neighborhood.

Cons:

- The amendment does not include any of the affordable or exceptional design characteristics in the original, higher-density proposal.

Staff recommends approval of this amendment to the previously approved Conditional Use Permit, reducing the scale and configuration of the previous development. This recommendation includes approval of the proposed modification to allow parking within required setbacks as shown on the plans.

After rebuttal, Mayor Bellamy closed the public hearing at 9:03 p.m.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4089, amending the approved Conditional Use Permit for Harmony Village, located at Myra Place, for a reduction to the number of approved units, a redesign of the site, and proposal of 3 new single-family lots, and approval of the requested modification to allow encroachments into a setback, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) 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; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) 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. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE WITH A MODIFICATION REQUEST

PUBLIC HEARING TO CONSIDER THE REZONING OF AN AREA IN THE VICINITY OF 55 HUNT HILL PLACE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 4090 - ORDINANCE TO AMEND THE CONDITIONAL ZONING TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE WITH A MODIFICATION REQUEST

ORDINANCE NO. 4091 - ORDINANCE TO REZONE AN AREA IN THE VICINITY OF 55 HUNT HILL PLACE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO INSTITUTIONAL DISTRICT

Regarding the public hearing on the conditional zoning amendment, Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, for a redesign of the site and buildings and also a new pool and clubhouse addition with a modification request to the setback. This public hearing was advertised on June 1 and 8, 2012.

Ms. Fields said on June 24, 2008, the Asheville City Council reviewed and approved the conditional zoning of 9.58 acres of property (from RM8 and Institutional to RM16CZ) located off of Hunt Hill Place and Ardmion Drive in order to allow for the construction of a 180-unit multi-family development, to be named Hunt Hill Place. The subject property for this development was primarily the former location of the McCormick Heights Apartments which were demolished prior to the adoption of the original 2008 Conditional Zoning. The project site also included a small portion (1.06 acres) of City of Asheville property. At that time a land exchange with the City was anticipated with the 1.06 acres of City property becoming part of the Hunt Hill development in exchange for the City receiving .85 acres for future park development along with additional consideration. The development received permits but was never completed.

A new developer, Hunt Hill Holdings, LLC (Chip Kassinger), has obtained the property and wishes to develop Hunt Hill Apartments with the same number of dwelling units (180) but with revisions to the circulation/access patterns, the location/placement/number of buildings on the property, the addition of a new .85 acre property, and an adjustment deleting the land exchange with the city. The buildings are to be stick-built as opposed to the modular construction proposed in the former development.

The previously approved land exchange will not be necessary under the new proposal as the developer plans to reconfigure the location of buildings and access points so only the two parcels owned now by Hunt Hill Holdings, LLC will be needed. The 1.06 acres of City-owned property made a part of the original conditional zoning approval is the subject of a separate rezoning process. The new proposal includes the .85 acres that were originally proposed to be given to the City.

A small portion of the property is in Zone A subject to the City's Steep Slope regulations. Under the regulations, the allowable number of units in the Zone A portion zoned RM16CZ is 30 units. The allowable density for the remainder of the project, again if zoned RM16CZ, is 117 units – a total of 147 units. Both the previous development plan and the current proposal show 180 units, a number that will necessitate an exceptional development density bonus for the 33 additional units. This is an 18.3% bonus. The previous approval was for a 17% bonus. To receive this density bonus, the developer proposes that ten percent (10%) of the development (18 units) be affordable, meeting the City's standards.

The developer also proposes a number of "green" features in the development. Construction, appliances, etc. will be Energy-Star certified. They are also looking at providing car charging stations and utilizing rain gardens as possible.

The new proposal would contain five buildings instead of four with a new mix of 107 studio or one-bedroom units and 73 two-bedroom units (previously there were 22 three-bedroom units and 168 one and two-bedroom units proposed).

The other significant change concerns access. The previous plan showed access only as it now exists off Hunt Hill Place and Ardmion Drive, but the amended proposal shows additional access from Carroll Drive. Additionally, circulation is now to be throughout the

development; whereas previously two buildings were accessed off of Ardmion Drive and two were accessed off of Hunt Hill Place. With these changes land disturbance is decreased under the new proposal from 7.48 acres to 7.04 acres.

A modification is needed for the side setback for Building 2. At one small point this building encroaches approximately 10 feet into the required 40 foot setback.

At a meeting on April 16, 2012, the Technical Review Committee approved this conditional zoning amendment with conditions. Since that time the applicant has submitted revisions addressing many of the concerns.

At a meeting on May 2, 2012, the Planning and Zoning Commission voted 6-1 to recommend approval to the Asheville City Council with the conditions as proposed in the staff report and with the following additional conditions:

- That the dumpster(s) will be distributed across the site looking at better access and with attention to the distance from Ardmion Drive and with attempt to direct away from Hunt Hill Place.
- That the green features as listed/provided by the developer be provided.
- That a 20 foot buffer be provided behind the RM8 zoned properties containing single-family homes along Edgehill Road and Carroll Avenue.
- That a signal warrant analysis be conducted for the intersection of South Charlotte Street and Martin Luther King, Jr. Drive assessing current conditions. This study shall be completed prior to review at City Council.
- That 12 months from the issuance of the last building certificate of occupancy on the project, but before the final site certificate of occupancy, that a second signal warrant analysis be completed. If the first traffic impact study determines that a traffic signal is warranted at the intersection of South Charlotte Street and Martin Luther King, Jr. Drive, this second study would not be needed. If however, the first study does not show such a signal is warranted but the second study shows that the signal is warranted, then the developer will pay for the signal at that intersection if approved by NCDOT.

The developer met with residents of the East End/Valley Street Neighborhood Association following the Planning and Zoning Commission meeting to address their concerns. He has agreed to an additional compactor location behind the clubhouse parking area and is meeting with residents to show them how the compactors operate. He has agreed to the buffer behind the properties along Edgehill and Carroll Avenue.

The signal warrant analysis requested by the Planning and Zoning Commission has been completed and indicates that the signal at Charlotte Street and Martin Luther King, Jr. Drive is warranted at present. This information will be presented to NCDOT and means that, under the Planning and Zoning Commission recommendation, this signal should not be the responsibility of the developer of the apartments.

Confirmation concerning the entrance on Carroll Avenue is pending with Tried Stone Missionary Baptist Church. Staff recommends that the project be approved with an additional condition that either the Carroll Avenue access be completed as shown or that a new traffic impact analysis be conducted and brought back for review by staff and the Asheville City Council.

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 project, if approved, must meet all the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The developer has been working closely with City staff to ensure compliance.

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 developer is working with the existing condition of the site, siting the buildings utilizing the existing impervious area. They are in compliance with the City's steep slope regulations.

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

The project site abuts institutional facilities and parkland and should provide an appropriate transition to the also adjacent single-family homes. They are proposing buffering and other enhanced landscaping which should improve the site which has little significant vegetation now.

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 project does show a residential development with greater density than is found in the surrounding area. However, its proximity to an active recreation facility and central location in the City makes this an appropriate transition to less dense housing found in the area. The project site previously served as a 100 unit housing community of seventeen (17) two-story buildings.

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 use supports the 2025 goals and Council vision as follows:

1. Supports the goal of pursuing compatible infill development.
2. Supports the goal of promoting the use of green building techniques.
3. Supports the goal of permitting more intense development and density in areas with appropriate infrastructure.
4. Supports the goal of providing affordable housing.

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 use as proposed has three means of access to the project which make the traffic less concentrated than previously proposed as it disseminates through the surrounding neighborhood. Transit access is only a block away on Martin Luther King, Jr. Drive. TRC raised no concerns over the provision of services.

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

The traffic engineer has reviewed the project and all concerns have been or are being addressed.

Pros:

- This project supports the City of Asheville's goal of pursuing higher density infill development.
- This project proposes a minimum affordable housing component of ten percent (18 units).
- This project incorporates green building strategies in construction.

Cons:

- The project has a greater density than the surrounding residential development.
- Access to the project is via small residential streets.

In addition to the Standard Conditions, the following additional Conditions Suggested by Staff: (1) That 10% (18) of the units be affordable meeting City standards; (2) That the Carroll Avenue access is completed as shown or that a new traffic impact analysis is conducted and brought back for review by staff and the Asheville City Council; and (3) that the developer work with City staff to iron out the issues with respect to the access to the City's park property through the developer's property and grant an easement is necessitated.

Additional Conditions Suggested by the Planning and Zoning Commission: (1) That the dumpster(s) will be distributed across the site looking at better access and with attention to the distance from Ardmion Drive and with attempt to direct away from Hunt Hill Place; (2) That the green features as listed/provided by the developer be provided; (3) That a 20 foot buffer be provided behind the RM8 zoned properties containing single-family homes along Edgehill Road and Carroll Avenue; (4) That a signal warrant analysis be conducted for the intersection of South Charlotte Street and Martin Luther King, Jr. Drive assessing current conditions. This study shall be completed prior to review at City Council; and (5) That 12 months from the issuance of the last building certificate of occupancy on the project, but before the final site certificate of occupancy, that a second signal warrant analysis be completed. If the first traffic impact study determines that a traffic signal is warranted at the intersection of South Charlotte Street and Martin Luther King, Jr. Drive, this second study would not be needed. If however, the first study does not show such a signal is warranted but the second study shows that the signal is warranted, then the developer will pay for the signal at that intersection if approved by NCDOT.

She reiterated that the signal warrant analysis requested by the Planning and Zoning Commission has been completed and indicates that the signal at Charlotte Street and Martin Luther King, Jr. Drive is warranted at present. This information will be presented to NCDOT and means that, under the Planning and Zoning Commission recommendation, this signal should not be the responsibility of the developer of the apartments. Conditions 4 and 5 by the Planning & Zoning Commission do not need to be listed as conditions.

Regarding the public hearing on the rezoning of 55 Hunt Hill Place, Urban Planner Julia Fields said that this is the consideration of an ordinance to rezone an area in the vicinity of 55 Hunt Hill Place from RM-16 Residential Multi-Family High Density District/Conditional Zoning to Institutional District. This public hearing was advertised on June 1 and 8, 2012.

Ms. Fields said that on June 24, 2008, the Asheville City Council reviewed and approved the conditional zoning of 9.58 acres of property (from RM8 and Institutional to RM16 CZ) located off of Hunt Hill Place and Ardmion Drive in order to allow for the construction of a 180-unit multi-family development, to be named Hunt Hill Place. The development received permits but was never completed.

A new developer, Hunt Hill Holdings, LLC (Chip Kassinger), has obtained the property and wishes to develop Hunt Hill Apartments with the same number of dwelling units (180) but with revisions to the circulation/access patterns and the location/placement/number of buildings on the property.

As part of the original development proposal a land swap was approved but never carried out between the City and the original developer. The developer was to receive 1.06 acres of currently unused park property (part of Mountainside Park, zoned Institutional) and the City would receive .85 acres for future park development. The new developer plans to use only property that is owned by Hunt Hill Holdings, LLC and the proposed amended conditional zoning approval shows no development involving the 1.06 acres still owned by the City but zoned RM16CZ.

The City wishes to have this City-owned property revert back to the previous zoning of Institutional and staff is bringing forward this rezoning application in order to effectuate this rezoning. The property that is the subject of this rezoning request is located just south of the proposed Hunt Hill Apartments development site and is vacant except for a small portion which contains a drive entrance to Mountainside Park.

At a meeting on May 2, 2012, the Asheville Planning and Zoning Commission reviewed and unanimously recommended approval of this rezoning to Asheville City Council. No one spoke on this matter.

Pro:

- Zones a piece of City-owned property with the same zoning designation as the remainder of the property.

Con:

- None noted.

The staff finds the request to be reasonable and recommends approval of this rezoning request. At a meeting on May 2, 2012, the Asheville Planning and Zoning Commission reviewed and unanimously recommended approval of this rezoning to Asheville City Council.

Mayor Bellamy opened the public hearing at 9:17 p.m.

Mr. Chip Kassinger, developer, spoke in support of the project stating that they are really focused on energy efficiency and noise. They are saving a lot of trees. He said that they are continuing to work with Mr. Proctor at Tried Stone Missionary Baptist Church for an agreement; however, the Church needs to approve the agreement as a body. He said they have been very good to work with and hoped to be able to work out the agreement soon.

Ms. Mandy Broderick, resident on Hunt Hill Place, felt this is a good space for a development like this and the developer has been open to discussions about any issues the neighbors have. However, there is already a tremendous amount of traffic on Hunt Hill and the traffic study showed that 30% of the traffic would be on Ardmon, 40% on the access through the Church parking lot (Carroll Avenue access), and then 30% on Hunt Hill. She was concerned if the access point on Carroll Avenue is not worked out, then 70% of the traffic will be on Hunt Hill.

Ms. Carmen Ramos-Kennedy hoped that the traffic signal at the intersection of Martin Luther King Jr. Drive and Charlotte Street can be installed quickly.

Mayor Bellamy closed the public hearing at 9:22 p.m.

Traffic Engineer Jeff Moore reiterated that the signal warrant analysis does indicate that a traffic signal at Charlotte Street and Martin Luther King, Jr. Drive is warranted at present. He has forwarded that information to the NCDOT. The NCDOT process takes approximately 6-8 weeks after they do their independent count.

Mayor Bellamy asked that the City draft a letter to the NCDOT to expedite the traffic signal installation at Charlotte Street and Martin Luther King Jr. Drive and that the City's members on the Transportation Advisory Committee urge the NCDOT to make this intersection a top priority as well.

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

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master

plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4090, to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, for a redesign of the site and buildings and also a new pool and clubhouse addition with a modification request to the setback, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) 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; (6) That 10% (18) of the units be affordable meeting City standards; (7) That the Carroll Avenue access is completed as shown or that a new traffic impact analysis is conducted and brought back for review by staff and the Asheville City Council; (8)) that the developer work with City staff to iron out the issues with respect to the access to the City's park property through the developer's property and grant an easement is necessitated; (9) That the dumpster(s) will be distributed across the site looking at better access and with attention to the distance from Ardmion Drive and with attempt to direct away from Hunt Hill Place; (10) That the green features as listed/provided by the developer be provided: (11) That a 20 foot buffer be provided behind the RM8 zoned properties containing single-family homes along Edgehill Road and Carroll Avenue; and (12) That the City communicate with the NCDOT about the need for the traffic signal at the intersection of Martin Luther King Jr. Drive and Charlotte Street. This motion was seconded by Councilman Davis.

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Mr. Kassinger responded to Councilman Hunt regarding the location of the proposed greenway, noting there is no need for public access across the developer's property to get to the proposed greenway.

There was considerable discussion regarding the third access on Carroll Avenue. Ms. Fields noted that the current approval that is in place only has two access points (180 condominium units). The traffic impact study that has been performed included the Carroll Avenue access. If the agreement with the Church is not reached, a new traffic impact analysis would need to be conducted and brought back for review by staff and the Asheville City Council, knowing that the current approval only had two access points.

Mayor Bellamy was concerned that the Church is not represented at this meeting and she felt it was unfair to pressure the Church to enter into an agreement with the developer. She felt Council would be setting a precedent making the developer have a third party approval for his project to be approved. She felt Council should either approve the project or not, but not make it contingent upon a third party agreement.

City Attorney Oast said that an option would be to approve the project without the Carroll Avenue access, and if the developer does work out that access, the third access would not require an amendment to the conditional zoning thus not requiring the project to come back to Council.

Mr. Kassinger felt the third access is important as that is the best way to access the property. He did not want to pressure the Church, and noted that they do plan on improving the Church's parking lot. He understood that if the third access is not worked out that they will have to do an additional traffic impact analysis.

Mayor Bellamy reiterated that she did not want it to look like we are forcing the Church to make that access happen. She felt this project should stand on its own. She was opposed to setting this kind of precedence, but supported the project because it is a good project, with two or three accesses.

The motion made by Councilman Smith to adopt Ordinance No. 4090 with conditions outlined above and seconded by Councilman Davis carried unanimously.

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Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4091. This motion was seconded by Councilman Bothwell and carried unanimously.

F. PUBLIC HEARING REGARDING THE NEW BELGIUM BREWERY/ECONOMIC DEVELOPMENT

RESOLUTION NO. 12-133 - RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH NEW BELGIUM BREWING COMPANY INC.

RESOLUTION NO. 12-134 – RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH NEW BELGIUM BREWING COMPANY INC. REGARDING CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS

City Attorney Oast said that this is the consideration of (1) resolution authorizing an economic development incentive agreement with New Belgium Brewing Company, Inc. (herein “New Belgium”), and (2) resolution authorizing certain infrastructure improvements in connection with New Belgium’s location in the City of Asheville. This public hearing was advertised on June 1, 2012.

New Belgium is a Colorado corporation that brews and distributes beer. New Belgium proposes to locate a major brewing facility on approximately 20 acres along Craven Street on the west side of the French Broad River, between the Smith-Carrier Bridge on the north, and the West Asheville RiverLink Bridge on the south. The property is currently occupied by a self-storage facility, and was formerly used as the WNC Stockyard, among other uses.

New Belgium is the third largest craft brewer in the United States. The City of Asheville is one of several locations under consideration for New Belgium’s east coast facility. In order to encourage New Belgium to choose Asheville, the City staff, working with the State of North Carolina, Buncombe County, and the Chamber of Commerce, assembled a package of economic development incentives and other incentives. The City’s incentive package consists of two components: economic development cash grants, and in-kind improvements to public infrastructure on or near the proposed location for New Belgium.

Economic Development Incentives: New Belgium is already engaged in design and planning for the proposed Craven Street facility. New Belgium proposes to begin construction in early 2013, to begin production on site in early 2015, and to complete construction and be in full operation by early 2022. The total investment (real property and personal property) is anticipated to be \$175 million. The total number of jobs at full production is anticipated to be 130. A substantial number of the jobs will pay at or above the average wage for Buncombe County. The cash grants will be in an amount equal to 80 percent of the taxes paid on the eligible improvements, and will not be made until taxes have been paid. Eligible improvements include real and personal property subject to *ad valorem* tax and located in the City.

The incentive is weighted equally to job creation and investment. To allow for unplanned delays in construction and economic fluctuation, there is a two-year “extended deadline” by which New Belgium must achieve 80 percent of the investment and job creation benchmarks, or the grant amounts are subject to adjustment or “clawbacks” on the basis of the percentage of the jobs or investment benchmark that New Belgium does not achieve. Some of the New Belgium facilities, such as the warehouse and distribution facility, may be located somewhere other than Craven Street, but must be located in the City of Asheville to qualify for the incentive. The total amount of cash grants is anticipated to be \$2.1 million over seven years.

Public Infrastructure: In addition to the economic development incentive agreement, the City has agreed to make some improvements to the infrastructure in the area of New Belgium’s proposed Craven Street location, and on the property itself. The improvements include widening Craven Street and improving some of the intersections approaching the proposed location of the brewery, replacing and enlarging waterlines, and constructing and improving some storm-water facilities. The improvements also include construction of a greenway on New Belgium’s property.

The City and New Belgium propose to enter a memorandum of understanding (herein “MOU”) outlining responsibility for particular improvements. The improvements and the estimated cost of them are set out in detail in the schedule provided to Council, and will be attached to the MOU and resolution. The City’s share of the cost of these improvements is estimated at \$2.3 million. Under the MOU, the City will be responsible for funding the improvements it agrees to make. To reduce these costs, the City is seeking grants and other assistance. The City has obtained one grant in the amount of \$500,000 from the Golden Leaf Foundation, and has applied for another grant in the amount of \$1.1 million from the Economic Development Administration to assist with these improvements, and the State will undertake some of the roadway improvements.

In connection with the public infrastructure improvements, Council is being requested to approve a specific contract for professional services for design work being undertaken for the City and New Belgium in connection with the project. The Staff Report for that contract approval follows this Staff Report. Assuming Council authorizes the expenditures for the infrastructure improvements, consideration and adoption of the resolution for that contract would be appropriate.

This project is consistent with several officially adopted plans for the City. (a) Strategic Operating Plan (2011-12 and 2012-13) supports diversified job growth and business development, partnering in regional economic development strategy, practice sustainable high density infill growth. (b) The project is also consistent with plans for redevelopment of the riverfront.

Pros:

- Potential for \$175 million investment and addition to the tax base.
- Potential for creation of 130 jobs, with a substantial number of them at above average wage.
- Capitalizes on the City’s growing reputation as a center for craft brewing in the United States.

Con:

- Requires some reprogramming of City’s funds.

Adoption of the resolutions authorizing the City to enter into the economic incentive development agreement and the memorandum of understanding regarding the public infrastructure improvements is recommended.

Mayor Bellamy and Council members welcomed New Belgium to the City and thanked them for their investment in our community.

Mayor Bellamy opened the public hearing at 9:56 p.m.

A representative of New Belgium expressed their appreciation for the work of the Economic Development Coalition and City staff on this project. They were happy to be here in Asheville and looked forward to moving forward.

Mayor Bellamy closed the public hearing at 9:57 p.m.

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

Councilman Bothwell moved for the adoption of Resolution No. 12-133. This motion was seconded by Councilman Chris and carried unanimously.

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Councilman Pelly moved for the adoption of Resolution No. 12-134. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 414

RESOLUTION NO. 12-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COLEJENEST & STONE TO PROVIDE DESIGN SERVICES FOR THE CRAVEN STREET IMPROVEMENTS

ORDINANCE NO. 4092 - BUDGET AMENDMENT FOR THE CRAVEN STREET IMPROVEMENTS

Public Works Director Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute a contract with ColeJenest and Stone in the amount of \$514,221 (and authorization to cover any amendments in the contract not to exceed 10% or \$51,422) for the purpose of completing professional design services for the Craven Street Improvements; and the associated budget amendment in the amount of \$565,643 to cover the cost of the project.

The City of Asheville is proposing to improve Craven Street from Haywood Road to the Craven Street Bridge. These improvements will include two way vehicular traffic, bike lanes, sidewalk, greenway and regional storm water improvements. Additionally, the City is proposing to improve the intersection at Roberts, Lyman, Depot and Clingman Avenue to allow larger truck vehicles while maintaining or improving pedestrian and bike traffic.

The City solicited proposals from qualified design professionals to perform this work. On April 25, 2012, the City received fourteen proposals. A selection committee consisting of five staff members from the City of Asheville and two from New Belgium Brewery reviewed the proposals and requested interviews with the five most qualified teams.

The selection committee interviewed the five teams on May 7th and May 8th and determined based on qualifications that ColeJenest and Stone was the most qualified to perform the work. ColeJenest and Stone is partnering with several local firms to complete the work. Over 90% of the fee will go to local professionals.

This action complies with the City Council Strategic Operating Plan of Multimodal Transportation in that it will meet the need of increasing the output of sidewalk construction and provide sidewalk in an area that is in need of sidewalk linkage.

Pros:

- Improves a currently narrow roadway into a complete street with bike lanes and sidewalk.
- Provides a new greenway linkage.
- Adds much needed public parking with a low impact development design.
- Improves urban storm water runoff for the watershed.

Cons:

- Project management and contract administration will consume staff time and City funds.

This design cost is estimated at \$514,221. The estimated total cost of the project is approximately \$2.3 million. The City received a \$300,000 grant from the Golden Leaf Foundation and is in the process of applying for an Economic Development Grant from the Department of Commerce in the amount of \$1.1 million. The remaining cost of the project will be paid through the Stormwater, Water, and Parking Fund operating funds and General Fund debt proceeds.

Staff recommends City Council (1) authorize the City Manager to execute a contract with ColeJenest and Stone in the amount of \$514,221 for the purpose of completing professional design services for the Craven Street Improvements including authorization to cover any amendments in the contract not to exceed 10% or \$51,422; and (2) adopt a budget amendment in the amount of \$565,643 to cover the cost of the project.

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

Councilman Bothwell moved for the adoption of Resolution No. 12-135. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 434

Councilman Smith moved for the adoption of Ordinance No. 4092. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

- G. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING HUNTER APARTMENTS, LOCATED AT 25 & 27 WASHINGTON ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE REMODEL OF TWO EXISTING RESIDENTIAL STRUCTURES INTO TWO DUPLEX STRUCTURES FOR A TOTAL OF FOUR APARTMENTS**

At the applicant's request, Councilman Smith moved to continue this public hearing until July 24, 2012. This motion was seconded by Councilman Davis and carried unanimously.

V. UNFINISHED BUSINESS:

- A. ORDINANCE NO. 4093 - ORDINANCE ADOPTING THE 2012-13 ANNUAL OPERATING BUDGET**

Director of Finance and Management Services Lauren Bradley said that this report presents the Fiscal Year 2012/2013 Annual Budget for adoption by City Council.

The Fiscal 2012/2013 Proposed Annual Operating Budget was presented to City Council on April 24, 2012. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 11 and May 18, 2012. City Council conducted a public hearing on the Proposed Budget on May 22, 2012. The Fiscal Year 2012/2013 Budget is balanced with an Ad Valorem tax rate of \$0.42 per \$100 of assessed value, which represents no change from the current year tax rate. The General Fund budget also includes no appropriation from the City's fund balance. All essential City services are continued in the Budget.

Technical Budget Adjustments

The net proposed FY 2012/2013 operating budget presented to City Council on April 24th was set at **\$134,113,810**, including a General Fund appropriation of **\$89,318,377**. Since the Proposed Budget was presented to City Council, there were three technical adjustments that have altered the total of the budget that is presented tonight for Council adoption.

- 1) **Changing Together:** After the Proposed Budget was presented to Council, the City received notification that Buncombe County would be renewing the contract with the City of Asheville to act as the coordinating agency for Changing Together, an initiative funded by the North Carolina Governor's Crime Commission. The partnership assists the Asheville Police Department in its work to improve safety in neighborhoods with high crime. Contracts for the Project Director and Project Assistant, in the amounts of \$51,060 and \$28,000 respectively, will be managed by the City of Asheville and reimbursed by Buncombe County. The total revenue to the City of Asheville will be **\$79,060**, with Buncombe County providing \$26,665 of that amount as part of the local match for the grant.
- 2) **Funding for Outside Agencies:** The FY 2012/2013 Outside Agency funding levels that were approved by Council at the May 22, 2012 meeting exceeded the fiscal limits included in the FY 2012-2013 Proposed Budget by **\$5,000**. This additional funding was accommodated by increasing the budget for electronic gaming revenue.
- 3) **Market Based Salary Analysis:** During Council deliberations on the FY 2012/2013 employee salary adjustments, staff proposed the inclusion of **\$60,000** in the budget to fund a market based salary study to be completed during the first half of FY 2012/2013. Funding for this one-time expense will come from unexpended capital funds that have accumulated in the General Capital Projects Fund as projects have been completed and come in under budget.

Budget Adjustments for Salary Options

Early in the budget process, City Council indicated that its highest priority was investing in employee compensation. The FY 2012/2013 proposed budget that staff brought forward to Council on April 24 included a 1% cost of living adjustment (COLA) for all city employees that would become effective July 2012. Staff also proposed that if the General Fund achieved better than budget performance in the current fiscal year, Council consider a one-time bonus for employees in November 2012 after completion of the annual financial audit. During budget deliberations, Council directed staff to provide options for additional investments in employee compensation. Staff outlined two options for Council at the June 5th budget worksession. Those two options are presented for Council's consideration tonight as part of budget adoption. The financial impact of each option is discussed below. Staff has prepared two budget ordinances that reflect these salary options.

- 1) **Additional 1% COLA (2% Total) effective July 2012 with possible one-time bonus after audit completion:** The cost in the General Fund of an additional 1% COLA for all employees is approximately **\$460,000**. To fund this expenditure, staff is proposing to 1) increase the FY 2011/2012 sales tax projection, which provides another \$300,000 in revenue; and 2) appropriate an additional \$160,000 from unexpended capital funds to fund two projects that were previously funded with General Fund recurring revenue. As noted above, under this option, staff would recommend that Council revisit employee compensation after the annual audit is completed in November and consider a one-time bonus to employees based on FY 2011/2012 fund balance results. However, the one-time bonus would be considered as a mid-year budget amendment and would not be adopted as part of the budget ordinance currently under consideration.
- 2) **Additional 2% COLA (3% Total) effective July 2012:** The cost in the General Fund of an additional 2% COLA for all employees is approximately **\$920,000**. To fund this expenditure, staff is proposing the following budget changes: 1) increase the FY 2011/2012 sales tax projection which provides another \$300,000 in revenue; 2) appropriate an additional \$260,000 from unexpended capital funds to fund three projects that were previously funded with General Fund recurring revenue; 3) assume an attrition level of 1.25% as opposed to the 1.00% attrition level that was included in the Proposed Budget; and 4) reduce planned expenditures for the Housing Trust Fund, form based planning, and the Economic Development Coalition by a total of \$320,000. Staff is recommending that funding for these three programs be revisited after the annual audit is completed in November and possibly restored with a fund balance allocation. However, the one-time allocation would be considered as a mid-year budget amendment and would not be adopted as part of the budget ordinance currently under consideration.

This action complies with the Fiscal Responsibility focus area of City Council's Strategic Operation Plan: Operate the City of Asheville's organization to the highest levels of fiscal responsibility.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.
- General Fund Budget is balanced with no tax rate increase or fund balance appropriation and all essential City services are continued.

Cons:

- A revenue shortfall could occur in FY 2012/2013 if sales tax estimates in the current year are not realized.
- The FY 2012/2013 budget utilizes one-time unexpended capital funds that could be used for other projects.

As noted above, the Proposed FY 2012/2013 General Fund budget is balanced with no property tax rate change and no fund balance appropriation. The amount currently available in unexpended capital funds totals \$697,000. As part of the FY 2012/2013 Proposed Budget, staff recommended allocating \$275,000 in previously unexpended capital funds to the CIP budget, and those funds were allocated to the capital projects identified in the Proposed Budget. Depending on which salary option Council approves, the budget will include the appropriation of somewhere between \$220,000 and \$320,000 in unexpended capital funds above and beyond the \$275,000 that was already included in the Proposed CIP.

Staff requests that Council review the FY 2012/2013 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

City Manager Jackson clarified that Option 1 leaves the door open for Council to consider, after the audit is complete and revenue pictures are better understood, an increase to the COLA and a budget amendment at that time, rather than the one-time bonus. Ms. Bradley responded that is correct, if there is a recurring revenue sources to fund additional COLA's.

Councilman Smith hoped that we can find ways to recommit ourselves to various priorities, not only staff, but the Housing Trust Fund, expanding transit services, resurfacing streets, adding bike lanes, etc.

Councilman Smith moved for the adoption of Ordinance No. 4093, with Option 1, with the understanding that we further study staff compensation in an effort to achieve parity and as the audit is complete and revenue pictures are better understood, then further adjustment to staff salaries. This motion was seconded by Councilman Davis.

Councilman Bothwell supported Option 2.

Councilman Pelly's understanding of Option 1 was a 2% COLA July 1 and then at the end of the year in November we see what we have in the way of additional funds for either a one-time bonus or perhaps an additional 1% COLA. If the funds are available in November, he supported the additional 1% COLA for a total 3% COLA. If we don't have the \$460,000 for the additional 1% COLA, then he supported a one-time bonus for employees below the median income.

Councilman Hunt supported Option 1 as stated by Councilman Smith.

Councilman Davis supported Option 1 as well and hoped that we could add the additional 1% COLA near the end of the year.

Mayor Bellamy's preference was Option 2, but thanked the Council from moving from 1% to at least 2% with consideration of an additional 1% in November. She felt staff deserves 3%.

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

The motion made by Councilman Smith and seconded by Councilman Davis carried on a 5-1 vote, with Councilman Bothwell voting "no".

ORDINANCE BOOK NO. 27 – PAGE

B. MOTION ADOPTING THE PLANNING & ZONING COMMISSION APPOINTMENT PROCESS

Councilman Bothwell moved to approve the 2012 appointment process for the Planning & Zoning Commission, with a request that City Clerk Burleson provide Council the responses to the essay questions as soon as possible. This motion was seconded by Councilman Hunt and carried unanimously

Councilman Davis asked that City Clerk Burleson provide Council with the essay questions previously compiled by the Council for the last vacancies.

In response to Councilman Pelly, Councilman Smith said that the two seated members on the Planning & Zoning Commission will also be asked to complete the essay questions, but in honor of their current service to the Commission, they will have automatic interviews.

VI. NEW BUSINESS:

A. MOTION AUTHORIZING CITY STAFF TO PREPARE AND RELEASE A REQUEST FOR QUALIFICATIONS FOR A COMPREHENSIVE TRAFFIC ENGINEERING ANALYSIS ALONG THE CHARLOTTE STREET CORRIDOR

Councilman Bothwell moved to reschedule this item until June 26, 2012. This motion was seconded by Councilman Pelly and carried unanimously.

B. RESOLUTION NO. 12-136 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LICENSE AGREEMENT WITH USCOC OF GREATER NORTH CAROLINA, LLC FOR ANTENNAS AND RELATED EQUIPMENT AT 57 CRESTWOOD PLACE, ARDEN, N.C.

Director of Information Technology Services Jonathan Feldman said that this is the consideration of a resolution authorizing the Mayor to execute a License Agreement with USCOC of Greater North Carolina, LLC for antennas and related equipment at 57 Crestwood Drive, Arden, NC.

In 1987, the City of Asheville entered into a lease agreement with the United States Cellular Corporation of North Carolina for City owned property at 57 Crestwood. Under this lease agreement, the United States Cellular Corporation constructed a cellular tower on the premises in exchange for the right to operate antennas and related equipment on the tower and adjacent premises for a period of 20 years. At the end of the twenty year period in 2007, the lease allowed the tenant to extend the term for an additional 10 years for a rental of \$200 per month. The current lease has approximately five years remaining in its final term.

At this time, the surviving entity of the United States Cellular Corporation, known as USCOC of Greater North Carolina LLC, has requested an equipment upgrade for the antennas on the tower. Rather than perform an amendment to the lease agreement dated 1987, staff proposed that USCOC enter into a new agreement based on the following terms:

The new term of the License Agreement will be five (5) years with one renewal period of five (5) years. The annual License Fee is based on the initial rate of \$30,000 plus 3% annual increases. The proposed License Agreement will enable USCOC to install 3 additional panel antennas to the current loading with corresponding coaxial lines connecting to ground equipment. A tower analysis is required by the license agreement to assure that the new installation does not interfere with other tenants and that the tower can withstand the loading. These facilities are separately metered and the tenant will continue to pay for utility services.

The initial rate was determined by gathering and comparing rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were reviewed and endorsed by the Council's Planning and Economic Development Committee on August 20, 2008. Results indicate that base fee of \$30,000 per annum represents fair market value for this type of installation.

The Notice of Intent to enter into a License Agreement with USCOC of Greater North Carolina LLC was published on June 1, 2012, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action complies with the City Council Strategic Operating Plan in that strategic tower asset management, through the proper management of license agreements, presents the City with revenue enhancements. These revenue enhancements underwrite a cost savings plan for the City's own telecommunication operations and as such, promote fiscal responsibility.

Pros:

- Enhanced revenue through the license fee income to underwrite City's telecommunications operations

Cons:

- None

The City will receive \$30,000 in revenue under the first year of the agreement, with 3% increases each year thereafter.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the license agreement with USCOC of Greater North Carolina LLC on behalf of the City of Asheville.

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 Davis moved for the adoption of Resolution No. 12-136. This motion was seconded by Councilman Pelly and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 435

C. RESOLUTION NO. 12-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PARTNERSHIP AGREEMENT BETWEEN AC ENTERTAINMENT AND THE U.S. CELLULAR CENTER FOR 2012 MOOG FEST

Director of Finance and Management Services Lauren Bradley said that this is the consideration of a resolution authorizing the city manager to enter into a partnership agreement between AC Entertainment and the U.S. Cellular Center for 2012 Moog Fest.

AC Entertainment, in cooperation with the Moog Foundation and Moog Music, annually produces Moog Fest, a multiple-day festival featuring multi-faceted cultural experiences. Moog Fest has been hailed in national and international publications as a world-class destination event. A portion of the proceeds of Moog Fest benefit the Moog Foundation, which is developing a Bob Moog Museum dedicated to the work of the legendary visionary. The main venue for Moog Fest is the U.S. Cellular Center.

AC Entertainment has proposed that the U.S. Cellular Center, which has had a co-promotional agreement in place for the previous Moog Festivals, consider entering into a partnership agreement for the event. The terms of the agreement include:

- Net revenues (revenues less expenses) earned by the promoter, including ticket sales and sponsorship revenue, be split evenly with the U.S. Cellular Center, and;
- Net concessions revenue and all other gross revenues earned by the U.S. Cellular Center be split evenly with AC Entertainment.

The 2012 proposal is different from previous agreements in two ways. First, it proposes that the U.S. Cellular Center share all categories of revenue, including its facility fee and concessions recovery fee, which have not been shared before. Second, it proposes that the U.S. Cellular Center receive half of any net profit earned by AC Entertainment.

Ashley Capps, the President of AC Entertainment noted, "The principle behind the deal structure that we have proposed is important. By sharing 50/50 in all revenue streams, we align everyone's interests in the spirit of working together for a common goal and mutual success. This is the heart of our proposal." According to the promoter, the proposal is structured so that both parties have a financial incentive to manage the event as efficiently and profitably as possible.

Financial Analysis:

Moog Fest 2010

The U.S. Cellular Center had a net profit (revenues less direct expenditures) of \$105,719 for Moog Fest 2010. Under the terms of the 2010 agreement, the U.S. Cellular Center split half of its net concessions revenue with AC Entertainment. No other revenue streams were shared. AC Entertainment was responsible for reimbursing the U.S. Cellular Center for all direct expenses, which include building costs, labor, and other fees.

Moog Fest 2011

In 2011, the U.S. Cellular Center did not split concessions revenue with AC Entertainment, and AC Entertainment was not responsible for reimbursing the U.S. Cellular Center for direct expenses. The U.S. Cellular Center's financial performance for Moog Fest 2011 is summarized below:

U.S. Cellular Center Revenue	\$137,013
U.S. Cellular Center Direct Expenses	<u>(\$71,945)</u>
U.S. Cellular Center Net Profit (Loss)	\$65,069

Moog Fest 2012

AC Entertainment has proposed that net concessions revenue and all other sources of gross revenue collected by the U.S. Cellular Center be split in half with AC Entertainment. In return, AC Entertainment would split any net profit earned by the promoter on the event with the U.S. Cellular Center. AC Entertainment developed a revenue projection for the U.S. Cellular Center based on the terms of its partnership proposal, which is included below in the summary below:

U.S. Cellular Center Revenue (50%)	\$68,401
Promoter's Net Revenue (50%)	\$99,987
U.S. Cellular Center Direct Expenses	<u>(\$71,945)</u>
U.S. Cellular Center Projected Net Profit (Loss)	\$96,443

Using AC Entertainment's financial assumptions, and assuming the U.S. Cellular Center's expenditures are roughly the same as 2011, the Center would have a net profit of \$96,443 for the 2012 event. If the promoter does not experience positive net revenue, the U.S. Cellular Center will likely break even or experience a net loss on the event. This scenario is illustrated below.

U.S. Cellular Center Gross Revenue (50%)	\$68,401
Promoter's Net Revenue (50%)	\$0
U.S. Cellular Center Direct Expenses	<u>(\$71,945)</u>
U.S. Cellular Center Net Profit (Loss)	(\$3,544)

In conclusion, by agreeing to split all sources of revenue, the U.S. Cellular Center has the opportunity to participate in the promoter's potential positive financial performance; at the same time, should the promoter fail to generate a net profit, the U.S. Cellular Center could experience a loss. By entering into the partnership agreement, the Center is agreeing to assume a greater

financial risk in the event with the potential to realize a financial reward. However, if the promoter fails to achieve a net profit on the event, the U.S. Cellular Center will also experience a net loss. As a result, the Civic Center Fund would either have to exceed revenue projections for other events during the year or anticipate a greater financial subsidy from the General Fund at year end.

Pros:

- Structure of the agreement incentivizes both parties to maximize profitability of the event.
- Performance driven agreement that provides an opportunity to participate in the promoter's net profit for the event, if one is achieved.
- Potential to return the event to profitability experienced in 2010.
- The event supports economic impact in the form of hotel sales and occupancy taxes, retail and sales tax generation.

Cons:

- Requires the City to split all categories of revenue with the promoter; promoter is not required to pay for any of the U.S. Cellular Center's direct expenses.
- City staff does not have access to Moog Fest's financial information (budget to actuals) from past events to validate the projections included AC Entertainment's pro forma. In addition, other variables, like changes in the event structure year-over-year, make it difficult to project how likely the promoter will be in achieving forecast financial performance.
- The U.S. Cellular Center has limited influence on the promoter's revenue and expenses related to the event.
- If the promoter is unable to achieve a net profit on the event, the U.S. Cellular Center will likely experience a loss on the event.

The City Council's Strategic Operating Plan, Fiscal Responsibility Category, has a goal to review analysis of revenue streams to identify opportunities for revenue diversification.

The financial performance of this event impacts the U.S. Cellular Center's ability to meet budgeted revenue projections for the year. The facility's financial performance for the year directly impacts the level to which the General Fund must support the U.S. Cellular Center's operations. Using AC Entertainment's revenue projections, the U.S. Cellular Center could experience a net profit as much as \$96,443 for Moog Fest 2012. Under the worst case scenario, if the promoter fails to achieve a net profit on the event, the U.S. Cellular Center would lose approximately \$3,544 on the event.

If City Council approves entering into this partnership agreement, staff would recommend that the 2012 financial results be presented to the City Council Finance Committee after the event to evaluate if this type of structure is a viable partnership model for future Moog Fest events. Staff also recommends that the U.S. Cellular Center be listed as an event partner in all promotional material and advertising for the event.

In response to Councilman Hunt, Councilman Davis said that the Civic Center Commission did review this request and acknowledged how AC Entertainment brings quality entertainment to the U.S. Cellular Center; however, they feel they would be stepping outside the guidelines that they normally work in.

In response to Councilman Hunt, Mr. Bryan Benson, representing AC Entertainment, said that keeping this agreement at a 50/50 partnership and throwing all the ancillary revenue streams into the pot, including the facility fee and the concessions recovery fee, is integral to keeping this as a complete partnership agreement between AC Entertainment and the U.S. Cellular Center. That is how they like to operate with all their partners across the country in all the buildings they do business in. They are not asking for anything different than they would normally get out of other buildings. Moog Fest is set up to being complete partners with the U.S. Cellular Center by

sharing all of their revenue streams as well as then having the U.S. Cellular Center share in all of their revenue streams.

When Councilman Hunt asked what would happen if the U.S. Cellular Center did not share in all of their revenue streams, Mr. Benson said they would continue to work with the staff of the U.S. Cellular Center, the Civic Center Commission and City Council to come up with alternative solutions to keep this as a 50/50 partnership agreement and keep the spirit of that agreement in place.

In response to Councilman Hunt, Ms. Bradley said that did believe this is a standard in the industry where co-promotional agreements are negotiated between buildings, facilities and promoters. However, the terms of those agreements might vary. She did think it is becoming more standard in the industry to have these types of co-promotional agreements.

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. 12-137 and that the 2012 financial results be presented to the City Council Finance Committee after the event to evaluate if this type of structure is a viable partnership model for future Moog Fest events, and that the U.S. Cellular Center be listed as an event partner in all promotional material and advertising for the event. This motion was seconded by Councilman Davis.

In response to Councilman Davis, Mr. Benson said it is agreeable with them to list the U.S. Cellular Center as an event partner in all promotional materials and advertising for the event.

Councilman Davis noted that this is certainly an exception for Council regarding sharing all their revenue streams.

Councilman Hunt asked for a friendly amendment for AC Entertainment to disclose their financials from 2010 and 2011, as well as transparency going forward.

Councilman Smith and Councilman Davis accepted Councilman Hunt's friendly amendment.

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.

The amended motion made by Councilman Smith and seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 436

D. RESOLUTION APPOINTING ALTERNATE MEMBERS TO THE BOARD OF ADJUSTMENT

Councilman Smith, member of the Boards & Commissions Committee, said that this is the consideration of appointing two alternate members to the Board of Adjustment.

There currently exists two alternate seats, left vacant by Mr. James Sheeler, term to expire January 21, 2015; and Mr. Douglas Hattaway, term to expire January 21, 2014.

The following individuals have applied for the vacancies: Dimi Kulakov, Daniel Summerlin, Robert M. Swicegood and Derek Weekley.

On May 22, 2012, City Council instructed the City Clerk to arrange interviews for all the candidates. Mr. Kulakov withdrew his application and Mr. Summerlin was unable for the interview.

After Council spoke highly of the candidates, Daniel Summerlin received 5 votes; Robert M. Swicegood received 4 votes; and Derek Weekley received 5 votes. **NOTE:** Because the City Clerk noted an error in the voting after the meeting, (all three candidates received 4 votes), the matter will be postponed until June 26, 2012, meeting.

E. RESOLUTION NO. 12-138 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Councilman Smith, member on the Boards & Commissions Committee, said that Isaac Savage, representing the seat for "expertise in the field of energy management" has resigned, thus leaving an unexpired term until December 31, 2013, on the Sustainable Advisory Committee on Energy & the Environment (SACEE).

The following individuals have applied for the vacancy: William Hutchings, Timothy Ballard, Charles Rosenblum, Stuart Smith, Peter Brezny, Marcus Renner, Lawrence Pittman, Alan Watts, Brandee Boggs and Melita Kyriakou.

Councilman Smith said that SACEE recommended Timothy Ballard or Brandee Boggs.

On May 22, 2012, City Council instructed the City Clerk to arrange interviews for Lawrence Pittman, Timothy Ballard and Brandee Boggs.

After Council spoke highly of the candidates, Timothy Ballard received 4 votes; Lawrence Pittman received 2 votes; and Brandee Boggs received no votes. Therefore, Timothy Ballard was appointed to the seat for expertise in the field of energy management to serve the unexpired term of Mr. Savage, term to expire December 31, 2013, or until his successor has been appointed

Councilman Smith noted that SACEE will be looking to expand their membership from 9 to 11 members and to alter some of the requirements for their seats.

RESOLUTION BOOK NO. 34 – PAGE 437

F. BOARDS & COMMISSIONS

Regarding the Airport Authority, the term of Vice-Mayor Manheimer expires on June 30, 2012. The following individuals have applied for the vacancy: Michael L. Hudkins, Albert Anderson, Tilt Thompkins, Bradley J. Cain, Julian D. Jones and Aixa Wilson. It was the consensus of the Boards & Commissions Committee, and of City Council, to allow Vice-Mayor Manheimer to remain on the Authority pending Airport legislation.

Regarding the Neighborhood Advisory Committee, the following individuals have applied for vacancies: Peggy Dutton, Alan Escovitz, Tikkun Gottschalk, Kathy Link, Grant Millin, Saul Chase, Teddy Jordan, Steven Stewart Cobb, Robert Roepnack, Steven Rasmussen, James A. Bond, Barber Melton, Carolyn Worthington, Elaine Poovey, DeWayne Barton, Mary Jean Burgin, Dwight Butner, Carmen Ramos-Kennedy, Aixa Wilson, Trina M. Mullen, Matt Pickett and Jean W. Boyd. After Council spoke highly of all the candidates, Council members first voted for one individual from each zip code, and then voted for 4 at-large members. In summary, it was the consensus of Council to appoint Carmen Ramos-Kennedy (at-large), Robert Roepnack (28804), Barber Melton (28805), Elaine Poovey (at large) and DeWayne Barton (28806). It was also the

consensus to interview Alan Escovitz, Saul Chase, Jean W. Boyd, Peggy Dutton, Teddy Jordan and Aixa Wilson.

RESOLUTION NO. 12-139 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS

Councilman Smith, member of the Boards & Commissions Committee, said that terms of Tommy Wilson, Phil Wilson, Fred Pratt, Gus Sims and Harold Garland, as members on the Board of Electrical Examiners, will expire on July 1, 2012.

The following individual applied for a vacancy: David Martin.

It was the consensus of the Boards & Commissions Committee to (1) reappoint Tommy Wilson (electrical contractor), Phil Wilson (journeyman electrician), Gus Sims (licensed engineer), and Harold Garland (layman); and (2) appoint David Martin (utility representative).

Councilman Bothwell moved to(1) reappoint Tommy Wilson (electrical contractor), Phil Wilson (journeyman electrician), Gus Sims (licensed engineer), and Harold Garland (layman); and (2) appoint David Martin (utility representative). All terms to expire July 1, 2015, or until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 438

RESOLUTION NO. 12-140 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Joel Storrow, George Kelley and J. Michael Burke expire on June 30, 2012.

The following individuals applied for a vacancy: Deanna Reeder, Saul Chase, Grant Millin, Beau Dean, Angela Rutledge and William Foley.

It was the consensus of the Boards & Commission Committee to (1) reappoint Mr. Storrow and Mr. Burke to each serve a three year term respectively, terms to expire June 30, 2015; and (2) re-advertise.

Councilman Pelly moved to (1) reappoint Mr. Storrow and Mr. Burke to each serve a three year term respectively, terms to expire June 30, 2015; and (2) re-advertise. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 439

RESOLUTION NO. 12-141 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Councilman Smith, member of the Boards & Commissions Committee, said that the term of Brian Cook will expire on July 1, 2012.

The following individuals applied for a vacancy: Deanna Reeder, Buck Bragg, Ronald Burgin and Aixa Wilson.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Cook.

Councilman Davis moved to reappoint Brian Cook as a member to the Asheville-Buncombe Historic Resources Commission to serve a three-year term, term to expire July 1,

2015, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 440

RESOLUTION NO. 12-142 – RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

Councilman Smith, member of the Boards & Commissions Committee, said that the term of Wanda Lanier expired on November 1, 2011, and there currently exists a vacancy left by the passing of Gerald Hixson until November 1, 2013.

The following individuals have applied for a vacancy: Debbie Metcalf, Timothy Sadler, Charles Rosenblum, John Spears, Charles Barber, Jay Lively and Hilliard Carlisle.

It was the consensus of the Boards & Commissions Committee to appoint Mr. Jay Lively to serve a three-year term, term to expire November 1, 2014 and to appoint Mr. Hilliard Carlisle to serve the unexpired term of Mr. Hixson, term to expire November 1, 2013.

Councilman Davis moved to (1) appoint Mr. Jay Lively to serve a three-year term, term to expire November 1, 2014; and (2) appoint Mr. Hilliard Carlisle to serve the unexpired term of Mr. Hixson, term to expire November 1, 2013. Both appointments will be until their successors have been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 441

RESOLUTION NO. 12-143 – RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Jim Fink (Regular member), Barbara Hodgson (Regular member) and John Hayes (Alternate member) expire on July 1, 2012.

The following individual has applied for a vacancy: Beau Dean.

It was the consensus of the Boards & Commissions Committee to appoint John Hayes and Beau Dean as Regular members and re-advertise for the Alternate seat.

Councilman Bothwell moved to (1) appoint Mr. John Hayes as a Regular member to serve a three-year term, term to expire July 1, 2015; and (2) appoint Mr. Beau Dean as a Regular member to serve a three-year term, term to expire July 1, 2015. Both appointments will be until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 442

RESOLUTION NO. 12-144 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART AND CULTURAL COMMISSION

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Sharon Trammel, Robert Todd and Honor Moor expire on June 30, 2012. In addition, there currently exists a vacancy until June 30, 2014.

The following individuals applied for a vacancy: Ami Worthen, Jessica McCuan, Leslie Klingner, Davyne Dial, John Spears, Grant Millin, Itiyopia Ewart, Laura Corte, Andrew Monte, Angela Rutledge, Bruce L. Waller Jr., Bryan Andrews and Melinda Tennison.

It was the consensus of the Boards & Commissions Committee to (1) reappoint Ms. Trammel, Mr. Todd and Ms. Moor to each serve an additional three-year term respectively; and (2) appoint Leslie Klingner to serve a three-year term.

Councilman Hunt moved to (1) reappoint Ms. Trammel, Mr. Todd and Ms. Moor to each serve an additional three-year term respectively, terms to expire June 30, 2015; and (2) appoint Leslie Klingner to serve a three-year term, term to expire June 30, 2015. All terms are until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 443

RESOLUTION NO. 12-145 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Wanda Hawthorne, Wayne Wheeler, John Parrish, Hutch Kerns and Mary Ann West expire on June 30, 2012.

The following individuals applied for a vacancy: Barry Mundt, Richard D. Warren, John A. Broadbooks, Beau Dean, Robert Pierce, Robert Roepnack, Mike Lovoy and Ashley Arrington.

It was the consensus of the Boards & Commissions Committee to (1) reappoint Mr. Wheeler, Mr. Parrish and Mr. Kerns to each serve an additional three-year term respectively; and (2) appoint Barry Mundt and Ashley Arrington to each serve a three-year term.

Councilman Pelly moved to 1) reappoint Mr. Wheeler, Mr. Parrish and Mr. Kerns to each serve an additional three-year term respectively, terms to expire June 30, 2015; and (2) appoint Barry Mundt and Ashley Arrington to each serve a three-year term, terms to expire June 30, 2015. All terms are until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 444

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Judy Strong commented on several budget line items, including asking middle and low income people to pay for employee pay raises, suggestion to decrease employee health benefits, and find other sources for the golf course and McCormick Field.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:56 p.m.

CITY CLERK

MAYOR