

Tuesday – September 11, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer (excused from meeting at 5:45 p.m.); 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: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy asked for a moment of silence to remember those who lost their lives on September 11.

Councilman Hunt gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 15-OCTOBER 15, 2012, AS “HISPANIC HERITAGE MONTH”

Mayor Bellamy read the proclamation proclaiming September 15-October 15, 2012, as "Hispanic Heritage Month" in the City of Asheville. She presented the proclamation to Ms. Sarah Nunez who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING SEPTEMBER 17-21, 2012, AS “MINORITY ENTERPRISE DEVELOPMENT WEEK”

Mayor Bellamy read the proclamation proclaiming September 17-21, 2012, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. James Lee who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING SEPTEMBER 21, 2012, AS “DAY OF PEACE”

Mayor Bellamy read the proclamation proclaiming September 21, 2012, as "Day of Peace" in the City of Asheville. She presented the proclamation to Ms. Rachael Bliss and others who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the request of City staff, (1) Consent Agenda Item “C” was removed from the Consent Agenda for consideration on October 23, 2012; and (2) Consent Agenda Item “F” was removed from the Consent Agenda for consideration on October 9, 2012.

At the request of Councilman Davis, Consent Agenda Item “B” was removed from the Consent Agenda for discussion and vote.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 28, 2012**
- B. RESOLUTION TO FUND LOCAL ORGANIZATIONS WITH 2011 AND 2012 EMERGENCY SOLUTIONS GRANT FUNDS**

This item was pulled from the Consent Agenda for discussion and vote.

- C. RESOLUTION ENDORSING THE BUNCOMBE COUNTY GREENWAYS AND TRAILS MASTER PLAN**

This item was pulled from consideration and will be rescheduled on October 23, 2012.

- D. RESOLUTION NO. 12-212 - RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO USE ELECTRONIC SIGNATURES IN ELECTRONIC COMMERCE WITH THIRD PARTIES AND TO ALLOW THE CHIEF FINANCIAL OFFICER TO USE ANY DEVICE SET FORTH IN N.C. GEN. STAT. SEC. 159-28 TO SIGN ANY CHECK, DRAFT, PRE-AUDIT STATEMENT OR PURCHASE ORDER**

Summary: The consideration of a resolution authorizing the City Manager, and/or his or her designees, to electronically sign City disbursements by check, draft, pre-audit statement, purchase order or any other means on behalf of the City and the finance officer or some other bonded officer or employee maintain the custody of the necessary devices to process such disbursements in accordance to N.C. Gen. Stat. 159-28.1.

The City of Asheville processes hundreds of disbursements in any given week. In an effort to streamline the process, the City has installed computer software that allows City disbursements to be approved electronically. Under North Carolina law, as delegated by City Council, the City Manager, and/or his or her designees, is authorized to sign disbursements on behalf of the City. In addition, North Carolina law requires the finance officer or some other bonded officer or employee to maintain custody of the necessary devices utilized for processing these electronically signed disbursements. In order to work within a paperless system, it is necessary for the City Manager, and/or his or her designees, to sign disbursements electronically.

N.C. Gen. Stat. 159-28.1 states that the governing board of a local government or public authority may provide by appropriate resolution or ordinance for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders.

Asheville City Council approved a resolution authorizing electronic signatures in 2009. However, although the title of the resolution includes checks and drafts, the concluding paragraph does not specifically include "disbursements by check, draft or any other means." The resolution corrects this exclusion and is intended to supersede the original resolution that was passed.

Regarding City Council's Strategic Operating Plan, this action complies with Affordable and Green in that the City will be reducing the amount of paper needed to process disbursements.

Pros:

- Reduce the amount of paper used by the City
- Reduce the amount of time approval forms travel through interoffice mail
- Increase turn around times for check order approvals
- Improve customer service

Con:

- None noted

No direct fiscal impact. Use of electronic signatures will improve efficiency of system processes.

City staff recommends City Council adopt a resolution authorizing the City Manager, and/or his or her designees, to electronically sign City disbursements by check, draft, pre-audit statement, purchase order or any other means on behalf of the City and the finance officer or some other bonded officer or employee maintain the custody of the necessary devices to process such disbursements in accordance to N.C. Gen. Stat. 159-28.1.

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E. RESOLUTION NO. 12-213 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH MOTOROLA INC. TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S RADIO SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2012, through July 31, 2013, has remained the same as last year's cost. Funding for this contract was appropriated in the FY 12/13 budget process.

The renewal agreement reflects an annual charge of \$147,163.92 and covers additional equipment purchased by the City to equip new vehicles and replace broken equipment.

This action complies with City Council's Strategic Operating Plan in that it ties back to Council's goal of partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Pros:

- The primary benefit of this contract is to keep the City's radio system reliable and operational for public safety officers.
- By keeping the radio system in optimal condition the City is also able to provide communication services to several outside agencies, thereby improving interagency communications.

Cons:

- None noted.

As noted above, the funding for this contract is included in the FY 2012-13 Information Technology Services adopted budget.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2012, through July 31, 2013.

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F. BUDGET AMENDMENT TO AUTHORIZE THE USE OF N.C. STATE DRUG SEIZURE FUNDS

This item was pulled from consideration and will be rescheduled on October 9, 2012.

G. ORDINANCE NO. 4117 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL DRUG SEIZURE FUNDS

Summary: The consideration of a budget amendment, in the amount of \$59,000 to authorize the use of Federal Drug Seizure Funds to purchase equipment and Community Policing training for the Asheville Police Department.

The federal drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the federal 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 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure. The City of Asheville Police Department has received \$59,000 in federal drug seizure funding. This proposed budget amendment would authorize the use of this funding for departmental wide Community Policing training, Community Policing Essentials 8 hour training through Virginia Center for Policing Innovation (VCPI) and equipment purchases of X2 TASERS to enhance officer safety for the Asheville Police Department. These are items which are 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:

- Federal seizure revenues to cover the cost of equipment and training related community policing activities without impacting the general fund

Con:

- None noted

The fiscal impact would be the increase of \$59,000 for training and equipment. Accepting these funds is a significant financial benefit to the APD allowing us to better train and equip our employees. There is no impact to the General Fund budget.

City staff recommends City Council adopt the budget amendment in the amount of \$59,000 to authorize the use of Federal Drug Seizure Funds to purchase equipment and training for the Asheville Police Department.

ORDINANCE BOOK NO. 27 – PAGE

H. ORDINANCE NO. 4118 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL HIGH INTENSITY DRUG TRAFFICKING AREA FUNDS

Summary: The consideration of a budget amendment, in the amount of \$15,000, to authorize the use of Federal High Intensity Drug Trafficking Area (HIDTA) Funds to provide overtime for members of the Asheville HIDTA for domestic highway enforcement.

The High Intensity Drug Trafficking Areas (HIDTA) program was authorized by the Anti-Drug Abuse Act of 1988 and is administered by the Office of National Drug Control Policy. The original designation of five HIDTA sites in 1990 has expanded into more than thirty areas around the country. The HIDTA's mission is to reduce drug trafficking in the most critical areas of the

country, thereby reducing the impact of illegal drugs in other areas. The Asheville HIDTA will serve as a key drug trafficking reduction effort, critically positioned between the Atlanta HIDTA and the Appalachia HIDTA. The Asheville HIDTA is comprised of members of the United States Drug Enforcement Administration (DEA), Asheville Police Department, Buncombe County Sheriffs Office, Henderson County Sheriffs Office and McDowell County Sheriffs Office. The Asheville HIDTA has received an ongoing \$150,000 annual funding after more than four years of competitive process for the HIDTA designation. The Asheville HIDTA is a component of the Asheville DEA Task Force. The City of Asheville serves as the fiscal agent for the Asheville HIDTA. The Asheville HIDTA has received authorization for an additional \$15,000 in federal HIDTA funding. This proposed budget amendment would authorize the use of this funding to provide overtime for members of the Asheville HIDTA for domestic highway enforcement.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using federal HIDTA monies to enhance the Asheville HIDTA's to provide overtime for members of the Asheville HIDTA for domestic highway enforcement, and 2) Safe City in that providing the various equipment and training allows the Asheville HIDTA to provide overtime for members of the Asheville HIDTA for domestic highway enforcement in our region.

Pro:

- Federal HIDTA monies to cover the cost of equipment, personnel and training related to reducing illegal drug trafficking in our region.

Con:

- None noted

There is no impact to the City's General Fund budget. As the project fiduciary the Asheville PD manages the grant which allows these funds to operate as a pass-through to the deputies working overtime related to domestic highway enforcement.

City staff recommends City Council adopt the budget amendment in the amount of \$15,000, to authorize the use of Federal HIDTA funds to provide overtime for members of the Asheville HIDTA for domestic highway enforcement.

ORDINANCE BOOK NO. 27 - PAGE

I. ORDINANCE NO. 4119 - BUDGET AMENDMENT FOR FIREFIGHTER RECOGNITION PROGRAMS

Summary: The consideration of a budget amendment, in the amount of \$15,803 to appropriate donated funds received from citizens, for procurement of supplies for the purpose of firefighter recognition.

The Asheville Fire Department has received donations from private citizens for the purpose of firefighter recognition. These donations were received throughout fiscal year 2011/2012. The department would like to use these funds to purchase supplies for the annual 9/11 Memorial and Recognition program, supplies for the Pipes and Drum Corp, equipment for the Fire Explorer program and Firefighter Combat Challenge Team, as well as to purchase holiday meals for on duty firefighters this fall and winter. The fire department's annual program allows employees to be recognized for professional accomplishments throughout the year. The meal purchases allow on duty firefighters to prepare a meal in their stations without securing these supplies on their own when many restaurants and stores are closed for the holiday.

This action complies with the City Council Strategic Operating Plan in that it helps to attract and retain quality employees and to ensure operational effectiveness by paying sound

wages and benefits. This action has been reviewed by the Asheville City Council Public Safety Committee with the Committee's recommendation to move to the full Council for consideration.

Pro:

- This action allows for recognition of firefighters without utilizing city tax funds. This action also provides for utilization of these funds as the donating citizens intended.

Con:

- None identified

These funds have been obtained through donations from private citizens for the purpose of firefighter recognition. No city tax funds will be utilized.

City staff recommends City Council approve the budget amendment to receive donated money from citizens.

ORDINANCE BOOK NO. 27 – PAGE

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

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

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

ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 12-211 - RESOLUTION TO FUND LOCAL ORGANIZATIONS WITH 2011 AND 2012 EMERGENCY SOLUTIONS GRANT FUNDS

Summary: The consideration of a resolution to fund local organizations with 2011 and 2012 Emergency Solutions Grant funds.

In the process approved by Council at the July 24, 2012, Council meeting, the City submitted a timely application to the State of North Carolina Division of Aging and Adult Services (DAAS), Housing and Homeless Unit for Emergency Solutions Grant funding. Funding recommendations were made to the Housing and Community Development Committee by the Homeless Initiative Advisory Committee. These recommendations followed a process that included submittal of letters of intent from eligible agencies, review and preliminary selection by the ESG Subcommittee of the Advisory Committee, and endorsement of those recommendations by the Asheville Homeless Coalition and the Homeless Initiative Advisory Committee.

We have been informed that our application has been approved, with the following agency awards:

	Emergency Response	Housing Stabilization	Total
Organization			
ABCCM (Steadfast House)	\$ 12,445	\$ 23,112	\$ 35,557
Helpmate	\$ 15,000	\$ -	\$ 15,000
Homeward Bound	\$ 10,000	\$ 80,360	\$ 90,360
Salvation Army	\$ 23,527		\$ 23,527

TOTAL REQUESTS	\$ 60,972	\$ 103,472	\$ 164,444
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We have been additionally awarded \$4,914 for use in Emergency Services and/or Housing Stability as well as \$50,000 for use in Housing Stability and/or HMIS. Staff will consult with the State about the eligible uses for these additional funds.

These awards are conditional on providing to the State additional information needed and/or assurances that must be provided. These conditions will include, but are not limited, to adequate documentation of required matching funds. These matching funds are provided by the individual agencies (and not the City).

The project directly supports the City's Strategic Operating Goal of *Affordable*: The funded projects support the City's goal for all citizens to have access to safe, sufficient and affordable housing, by addressing homelessness with an emphasis on Housing First.

Pro:

- ESG funding is a key funding resource for emergency shelter, and is now becoming an important resource for rapid rehousing of persons experiencing homelessness;

Con:

- None

Program funding is entirely from the US Department of Housing and Urban Development, through the State of North Carolina. Existing community development division staff will administer the program. No general funds are requested to support this program.

Staff recommends that Council approve the resolution authorizing the City to accept ESG funding, and to provide those funds to the agencies for the programs approved by the State Division of Aging and Adult Services (DAAS), Housing and Homeless Unit.

Two women thanked City Council for seriously considering the ABCCM discrimination complaint made to the US Dept. of Labor against women veterans in their job training program.

Councilman Davis, Chairman of the Housing & Community Development Committee, said this grant is very important to the community. The Committee feels there may be a stoppage in service if this is not moved forward. The Committee recognizes the concern against the ABCCM Steadfast House. He reiterated that these recommendations have been reviewed by the ESG Subcommittee of the Advisory Committee, and endorsement of those recommendations by the Asheville Homeless Coalition and the Homeless Initiative Advisory Committee. At this point, they feel it is still important to move this forward so we can take advantage of these funds.

Community Development Director Jeff Staudinger said that this is the first year the cities have been asked to take over these funds. Previously these funds have been granted directly to the individual agencies, but now the cities are responsible for taking on the responsibility to put the applications forward and help with administration. We are very concerned about a gap of services and we want to make sure as much as possible that persons who are experiencing homelessness can be served as quickly and immediately as possible.

Mayor Bellamy said after talking with the City Attorney's Office, she will invite representatives from ABCCM, a representative from the Dept. of Labor, a representative from Southern Poverty Law Center and a representative of the women veterans to a meeting regarding allegations in order for us to understand the issues brought forward and get those addressed locally, opposed through the Dept. of Labor. The City Attorney's Office is looking for a meeting date. In addition, the Housing & Community Development Committee will be looking at this issue as well.

Mr. Bothwell responded to Councilman Bothwell when he asked who did the apportionment of funding between the different agencies.

Councilman Davis moved for the adoption of Resolution No. 12-211. This motion was seconded by Councilman Hunt and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 82

III. PRESENTATIONS & REPORTS:

A. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the process from August 28 – September 11 by stating (1) Phase I of the internal financial analysis is being completed and beginning Phase 2; (2) regarding communications, (a) internally there have been small and large staff meetings, and (b) externally there have been neighborhood association meetings along with the Project Webpage: www.ashevillenc.gov/projects; (3) regarding governance models, they are continuing to work with Raftelis Financial Consultants (which contract was approved on 8-28-12), and the progress report at the October 16 City Council worksession; (4) regarding asset value there was a conference call with Raftelis; and (5) the joint meeting with the legislators is still scheduled for September 18 at 1:00 p.m. in the U.S. Cellular Center Banquet Hall. As Representative Keever, Senator Nesbitt and Senator Apodaca have scheduling conflicts, they all would like to be kept updated and would be open to trying to find another suitable time and date for a meeting. There has been no response from Representative Moffitt

Mayor Bellamy noted that only Representatives Fisher and McGrady would be able to attend the September 18 meeting and wanted to confirm with Council that the joint meeting will still be held with only two representatives present. She would be willing to meet with Senator Apodaca at home if that would be something he would be interested in due to his recent medical condition. She again stressed that it's important that we hear from our legislators on this issue.

After a brief discussion of whether to offer another meeting date for the joint meeting, it ultimately was the consensus of Council to move forward with the September 18 meeting date with Representatives Fisher and McGrady and updating those that cannot attend.

Councilman Hunt said that he was unable to attend the meeting; however, he felt it was appropriate for Council to move forward with that meeting.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING REGARDING THE SALE OF REAL PROPERTY LOCATED AT HAYWOOD STREET AND PAGE AVENUE TO MCKIBBON HOTEL GROUP INC. FOR ECONOMIC DEVELOPMENT PURPOSES

RESOLUTION NO. 12-214 - RESOLUTION APPROVING THE SALE OF REAL PROPERTY LOCATED AT HAYWOOD STREET AND PAGE AVENUE TO MCKIBBON HOTEL GROUP INC. FOR ECONOMIC DEVELOPMENT PURPOSES

Due to a conflict of interest, Councilman Davis moved to recuse Vice-Mayor Manheimer from participating in this matter. This motion was seconded by Councilman Hunt and carried unanimously.

At 5:45 p.m., Councilman Hunt moved excuse Vice-Mayor Manheimer from the remainder of this meeting. This motion was seconded by Councilman Bothwell and carried unanimously. At this time, Vice-Mayor Manheimer left the room for the remainder of the meeting.

City Attorney Oast said that this is the consideration of a resolution approving the sale of real property located at Haywood Street and Page Avenue to McKibbon Hotel Group, Inc., for economic development purposes. This public hearing was advertised on August 31, 2012. He provided Council with the following staff report:

A. Background. The Subject Property consists of approximately 3/4 of an acre located on the southern side of the intersection of Page Avenue and Haywood Street in downtown Asheville. The U.S. Cellular Center, Vanderbilt Apartments, and Pack Memorial Library are across Haywood Street to the east. Property owned by the Catholic Church, currently vacant, is located immediately across Page Avenue to the North, slightly beyond that, and across Haywood Street, as it curves to the west is St. Lawrence Basilica. The Battery Park Apartments are across Page Avenue to the west. Immediately adjacent to the South are building in various commercial and office uses. The Grove Arcade is located to the south and west. The property is traversed by Battery Park Alley, running north to south.

The City acquired this property in several transactions occurring during 2001 to 2004 in connection with a parking facility that was planned but not built. The property was to be used initially for staging for the parking deck construction. Upon completion of the parking deck, the property was to be developed for commercial or mixed use purposes. Some conceptual plans for this area were prepared with such uses in mind.

In 2007 – 2008, the City solicited proposals from developers for the development of the Subject Property. In February of 2008, the City selected the proposal submitted by McKibbon Hotel Group (“MHG”) as the one it wished to proceed with. The proposal was revised at the request of the City and resubmitted in September of 2008. The timeline since then, including development of conceptual plans for the project was reviewed in detail in a report provided to City Council on August 14.

B. Legal considerations. The statute pursuant to which the City proposes to sell the Subject Property to MHG is N.C.G.S. 158-7.1, which authorizes the sale of property by private negotiation and sale for economic development purposes. In order to dispose of property pursuant to this provision, the City must first hold a public hearing with advertised public notice. By resolution adopted on August 28, the public hearing was set for September 11. Notice of this public hearing was published on August 31.

Another requirement of the statute is that the consideration for the property cannot be less than the fair market value, subject to the conditions placed on the property. An appraisal prepared by Francis Naeger dated March 9, 2012, establishes the value of the property at \$2,526,000. This appraisal assumes that the existing parking garage (68 Haywood Street), a restaurant building (76 Haywood Street), and office building (33 Page Avenue) have been demolished and removed. The appraisal also assumed certain limitations as to the use of the property and the height of the building. MHG has offered \$2,526,000 for the Subject Property, subject to a capped reimbursement from the City for the expense of the demolition and removal work that the appraisal assumes has been done.

Another requirement of the statute is that the conveyance of the property must be consistent with the economic development purposes of the statute, which specifically include commercial and business uses, or otherwise in the public interest. To this end, the City is required, before selling the property, to determine the “probable average hourly wage to be paid to workers as to business to be located on the property.”

C. Public hearing. With the above statutory considerations in mind, the main purpose of the public hearing is to receive information regarding the economic aspects of the

proposed development, including consistency with the City's economic development goals and objectives, the number of jobs, anticipated wages for those jobs, tax impact, and business activity impact. While information regarding the design of the project is relevant to a certain extent, it is important to remember that the design of the project has not progressed beyond the conceptual stage yet, and detailed plans will not be prepared until MHG has a contract for the property. Like any other project in downtown, this project will undergo extensive design review as prescribed in the UDO and the Downtown Master Plan, adopted in 2010.

D. Economic development/planning considerations.

1. *Consistency with economic plans.* The development of a hotel on the Subject Property is consistent with the City's economic development plans and the economic development purposes of the statute.

City's 2025 Plan states (p.71) that promotion of infill development ...is absolutely essential in addressing the tax equity, tax base enhancement, and Smart Growth development goals of the City.

Goal VIII of the Economic Development Chapter of the City 2025 Plan (p. 203): Create an inventory of property suitable for development or redevelopment for targeted industrial and commercial uses and implement a program to encourage development or conversion to these uses.

City Council in Nov 2006 agreed to make clearly known and that responders clearly understand that their opportunity to obtain City-owned property for development is dependent on their prior experience and success in meeting similar goals in other situations:

- Potential to promote new or revitalized entertainment venues
- Consistency with City Plans or policies, including Smart Growth and environmentally friendly/green building development practices
- Place-making design that complements our unique downtown business and residential communities and takes constructive public input into consideration
- Provision of strategically sited public parking
- Ability to accommodate all modes of transportation
- Potential for significant tax base enhancement

2. *Wages/tax impacts.* The number of persons expected to be employed at the hotel during normal operations is 36 full-time and 25 part-time. Of the full-time positions, six will be salaried management positions paying an average of \$50,000 per year. The probable average hourly wage to be paid to hourly workers at the proposed hotel is \$10.00 per hour. This does not include workers employed in other businesses that may locate on the property. In addition, during construction, there will be 400 jobs, paying at or above the average wage for jobs in the construction sector in the area. Upon completion of the project, the City would receive taxes based on the tax-assessed value. Although no value has been assessed yet, recently completed hotels in the City have ranged from \$10 million to \$16 million in assessed value, with ad valorem tax revenue ranging from \$42,000 to \$67,000 annually, based on current tax rates.
3. *Consistency with downtown master plan.* The project is a Level II project and must follow all development review procedures specified in the zoning ordinance, including review by the Downtown Commission and Planning & Zoning Commission, before approval.

The Downtown Master Plan indicates a need for new development downtown, stating (p. 19) that "...excellent compatible infill projects within the historic fabric must be a high priority," and that "there is a need for a new focus on larger, more complex projects targeted to sites in the traditional Downtown...". The Plan places this site in the "Traditional Downtown District." It states (p. 68) that in this area "thoughtfully designed new buildings are appropriate..." and that "continued investment in existing and new buildings is necessary for the District to continue to thrive." It further states that "Adding appropriate new development on Haywood can help existing properties - historic or not - gain value."

E. Conditions/Development Agreement. Assuming that Council approves the sale of the Subject Property to MHG, it may direct that certain conditions be placed on the property intended to ensure that the project meets the economic development purposes for which it is being sold. These could include use of the property for a hotel, as well as some broad design criteria (i.e., number of rooms, height/number of stories). The contract to be signed by the parties will require that MHG prepare and submit a development schedule, to include the process for performing due diligence work, getting zoning and building approvals, and obtaining financing. This will be followed by a development agreement, which will incorporate the zoning approvals, and contain more details about the operation of the hotel.

F. Other Issues. Other issues that have arisen include the following:

1. *Design Control:* The proposed project is a Level II project and is not a project for which a conditional use permit is required under the zoning ordinance, and the usual mechanisms for exercising design control are not available. No zoning change is necessary in order to develop the property for a hotel, and no special zoning allowances are being sought for which conditional zoning might be appropriate. Nevertheless, the City owns the property, and may exercise design control through restrictions or covenants in connection with the sale of the property.

There are two main vehicles for doing this: (a) deed restrictions; and (b) contractual provisions. Deed restrictions should include conditions, such as the use of the property and broad dimensional restrictions, that are not likely to change, and may be necessary to ensure that the property is used for the purposes for which it is sold. The contract for the purchase and sale of the property covers such basic terms as price, description, and due diligence requirements. It will also specify a design preparation and review process - - following the UDO - - that will result in an approved final design for the project. The final design approval will be incorporated into a development agreement for the property. The property will then be conveyed for development in accordance with the agreement.

With this sequence in mind, the proposal submitted by MHG in 2008, as revised in 2012, and as will be presented by MHG at the public hearing, may be incorporated by reference into the contract. Because the project must still undergo the detailed review and approval process specified in the UDO, however, these plans are necessarily conceptual, and are subject to adjustment and refinement through the review process. To the extent that such adjustments are a matter of concern to Council, Council may specify that any substantial deviation from the conceptual plan may subject the project to further review. "Substantial" would need to be defined.

2. *Financial Assurance.* It is difficult and prohibitively expensive to procure a guarantee of completion in a project of this size and nature. Commercially reasonable practices include (a) obtaining a list of similar completed projects (this was done in the RFP process); (b) a requirement for a commitment for financing from a recognized financial institution prior to closing; (c) evidence of satisfaction of financing conditions;

(d) a requirement that construction be started by a certain date and completed by a certain date; (e) regular construction progress reports; (f) a right to repurchase the property if the project stalls or is abandoned. It would be appropriate to include some combination of these provisions in the development agreement.

3. *Commencing/Completing Construction/Removal of Existing Buildings.* The contract will specify a time for obtaining completion of detailed design work and commencement of construction (12 months) and the time within which construction must be complete (24 months after commencement). If these deadlines are not met, the City would be able to invoke the right to repurchase. With these time constraints, the removal of the buildings would likely occur as the first step in the construction process, but could be one of the construction progress benchmarks in a development agreement.
4. *No Damage to Surrounding Buildings.* The Subject Property is near or adjacent to several historically significant and structurally sensitive buildings, notably St. Lawrence Basilica, the Grove Arcade, and the Battery Park Hotel, all of which are on the National Register of Historic Places. The development agreement could include requirements for seismic monitoring and consultation with a geotechnical engineer.
5. *Compatibility with Potential Public Space.* There is significant community interest in some public space being located on the land directly adjacent to the north of the Subject Property, between the Subject Property and St. Lawrence Basilica. This area includes Page Avenue and Haywood Street. Parks and piazzas are among the ideas that have been discussed. However, nothing has been planned yet, and the City does not own or otherwise control all of the property that would be needed for such a project. The conceptual designs presented by MHG are adaptable to a park or other public space in that area, and it is in MHG's interest to anticipate this in its design, without depending on it. Inclusion of the conceptual plans and approved plans in the contract and development agreement are indications that MHG's design will not preclude or limit the use of the adjacent property for a park or open space.
6. *Appraised Value.* Pursuant to the statute, N.C.G.S. 158-7.1, the Subject Property may not be sold for less than fair market value. The appraisal for the property was prepared by a State-certified, MAI appraiser, and is available for review.

It is recommended that Council hold the public hearing. At the end of the public hearing, or at any subsequent meeting, if Council approves of the conveyance of the property to MHG, Council may adopt a resolution directing the sale of the property upon such terms as it specifies, including conditions regarding the use of the property.”

City Attorney Oast oriented Council to the .77 acre site using a picture and survey of the property.

Economic Development /Civic Center Director Sam Powers provided Council with a brief review of the timeline concentrating primarily on the RFQ/RFP process review. He also reviewed the RFQ/RFP criteria of land use(s), community, economic and timing of development. He outlined the developer pre-qualifications desired and the developers who met those qualifications.

City Attorney Oast then briefed Council on the law and legal requirements pursuant to which we are pursuing this transaction. The issue is whether to approve the sale of property at Haywood Street and Page Avenue to McKibbon Hotel Group. He said the applicable law is N.C. Gen. Stat. sec. 158-7.1 which allowed a city to convey property by private negotiation and using that process we can impose conditions. Some statutory requirements we must follow include (1) we must post notice of the public hearing and hold the public hearing; (2) we may not sell for less than fair market value; and (3) determine probable average hourly wage to be paid to the workers

at the business to be located on the property that you are planning to sell. We had an appraisal completed on March 9, 2012, that appraised the value of the property at \$2,526,000. The interest being conveyed is a fee simply (by special warranty deed) which may be subject to conditions, such as the type of a hotel, and fairly broad dimensional criteria such as height. The consideration for the City to be paid is \$2,536,000 at closing. There is no other consideration. We are required to make certain determinations regarding the probably average hourly wage. There will be 30 full-time hourly; 25 part-time hourly – with average wage of \$10.00/hour. There will be 6 full-time salaried positions - \$50,000/year (that is for the hotel only and does not include other businesses on the site).

City Attorney Oast then briefed Council on the contract: (1) the basic terms (location, price, interest to be conveyed (including conditions, noting the McKibbon proposal at this meeting will be incorporated); (2) process to closing (a) due diligence by McKibbon; and (b) permits/approvals (technical review, Downtown Commission, Planning & Zoning Commission, one additional community meeting which can be facilitated by the Asheville Design Center) – Level II project; (3) would not close until financing/construction commitments in place (City to review); and (4) one year to close.

Mr. Powers then discussed with Council the consistency of the project with the economic development goals of the City, as outlined in the staff report provided to Council.

In response to Councilman Hunt, City Attorney Oast said that the .77 acre tract being discussed is the McKibbon proposal presented at this meeting, which will be incorporated into the contract.

At 6:17 p.m., Mayor Bellamy opened the public hearing.

Mr. Wyatt Stevens, attorney representing the McKibbon Hotel Group, introduced Mr. John McKibbon, Chairman of the McKibbon Hotel Group, and Mr. Chad Robertson, Project Architect, and asked that after the public hearing that he be allowed 10 minutes for response. He provided Council with a copy of the PowerPoint presentation, along with several letters supporting the McKibbon Hotel Group proposal.

Mr. McKibbon, developer and operator of the proposed hotel, used a PowerPoint to explain a brief history of McKibbon, their local connections, their community involvement, and what McKibbon brings. He showed various projects of McKibbon, noting that hotels make great neighbors. He provided statistics on hotel occupancies and rate trends. He said that McKibbon Hotel Group has 3 hotels currently under construction (and 2 recently opened). All have received financing and they have raised equity for them. They are in a strong situation to build, even in this challenging economic environment. They are experienced in management and mixed-use, urban development. They have equity on hand and the ability to finance this project today. They would be ready to open in 2014. He provided the following economic impact estimate;

Purchase Price - \$2,526,000 (demolition costs up to \$224,000 to be reimbursed)

Hotel-Only Employees	Salaried Management	6
	Other Full-Time	30
	Part-Time	25
Restaurant/Retail Employees		50
Annual Sales Tax		\$400,000
Annual Hotel Tax		\$200,000
Annual Property Tax		\$200,000
GC Hard Construction Cost Only		\$19,000,000

Total Development Cost	\$25,000,000
Appropriate Wages from Construction	\$ 7,000,000
Jobs from Construction	400

Additional (1) impact on neighboring properties (sales, taxes, employment); (2) support for tourism industry; and (3) impact on US Cellular Center operations.

Mr. Robertson showed various conceptual renderings of the area, before and after the hotel. The proposed plan would construct a building that would house approximately 140 hotel rooms, a parking deck, and retail space along Haywood Street and Page Avenue and as part of this proposal a plaza space of approximately 5,000 square feet. One of the primary goals of the project is to increase pedestrian activity along Page and Haywood. The project could include a much larger plaza area and to be clear, this space cannot occur without a partnership between the City and the Basilica. McKibbin is ready and willing, and has participated in design meetings to discuss a plan that would enable this project to take place. He said the view corridors along Haywood Street have been a concern. He showed drawings of how their proposal is sensitive to Asheville's downtown, noting that the views of the Basilica remain obstructed as you look north towards Haywood Street. The proposed height of the building on Haywood Street is no more than 90 feet and well below adjacent buildings. On Page Avenue the building will be no more than 75 feet. From the face of the guest areas to the face of the Basilica will be at least 170 feet separation between the two faces. He also provided Council with a height comparison of major buildings in our traditional downtown core, demonstrating that their proposal would be very comfortable with its neighbors. He provided Council with conceptual renderings which reflect the architectural vision and their materials will reflect those of the neighbors and even if Page Avenue remains unchanged, their building will incorporate an outdoor plaza space. As the design is viewed from the steps of the Basilica the building will be scaled appropriately for the traditional downtown core and a catalyst for development of an area currently devoid of any activity.

Ms. Alice Cella, representing the Roman Catholic Parish of the Basilica of St. Lawrence, said that as Council considers placing a hotel or an open plaza in the .77 acres, she brought to their attention an important factor in the whole decision is the Basilica of St. Lawrence itself. It's not just a beautiful old church in downtown Asheville. It is an unparalleled structure in the City, not only for its antiquity but for its classic artistic form. The irreplaceable brick work is a display of excellent craftsmanship no longer available and it is crowned by the largest unsupported elliptical dome in this continent. The building has been on the list of National Historic Sites for years and was recently elevated to National Historic Sites of Distinction. We expect within the near future to have the Basilica honored with the title "National Historic Landmark." The Basilica enjoys worldwide recognition. She outlined the world-wide fame of architect and designer of the Basilica Rafael Guastavino. Such a beautiful jewel as the Basilica in the heart of the City deserves an open environment to compliment it, rather than a building to over-power it. Another consideration is the shadow factor. She said the Basilica will stand in the shadow of that hotel. She felt there are many other suitable hotel locations in Asheville. The City has one opportunity here to establish a graceful welcoming space that will compliment the Basilica and the US Cellular Center. She said that the Catholic community and Basilica representatives bring experts to the table, like exporters in Guastavino architecture and engineering, the latest seismic monitoring to protect the Basilica, patrons of the arts to make this more than commercial project financially feasible, a first-class developer with sensitivity to Asheville's historic image, and a 147 year history of partnering with the City and the community (mentioning several partnership). She said Council has a choice between a landmark plaza or another hotel project. This is a once in a lifetime decision and no developer has what the Basilica represents for this community. She felt what seems to be ignored is the history the Basilica has brought to this community and the services they deliver to this community for the past 147 years. That will continue for centuries to come, when all the developers have long gone. Having the Kessler Development Group deliver the plans on the St. Lawrence Plaza without interference is simply the right thing to do.

Mr. Matt Mores, real estate consultant to the Basilica, said that he met with two Council members earlier who both felt the RFP had expired. He said that the City's income would be the same where the City goes with the McKibbon proposal or the Basilica proposal. The difference would be that one group delivers a known developer partner the Basilica can trust will deliver the plan they envision and that the majority of citizens want with proven confidence he will protect the history of the area and Basilica. They know this plan will guarantee a large open plaza with line of sites to surrounding buildings and enhancement forever the area. He said a world class plaza delivered on this property could attract developers all over the world to come to Asheville and have a much larger impact for money coming into our City. That will definitely not happen with just another hotel. He suggested Council review the Plazas of the World study and study the commerce impact that plazas have on a city. Over the next 7 months instead of the City looking for reasons to work with the 147 year Basilica partner and historical landmark, the people surrounding the RFQ spent all their time discrediting their plans and his company with Council, prompting Council to question who would develop the site for the Basilica and build this plaza. Then when they announced in June one of the most qualified developers that has come to this City in over 40 years, Richard Kessler, there was a full court press to further discredit his company and move the RFQ agenda forward quickly, along with rushing to open the Aloft Hotel before it was fully completed. Richard Kessler then received an interference letter from John McKibbon forcing Richard to respond. The City is now asking the Basilica to compromise themselves to approve a hotel product that we are all against on this site and to choose a less qualified developer over the Basilica partner Kessler, who is the most qualified today for this plaza and will have the Basilica's best interest from day one, and not continually evolve only because of public pressure. This RFQ has changed from 2007 to 2012 because of the pressure the Basilica to request excellence for the site. More hotel rooms have been built in this City in the past three years than in the past 25 years. There are 3-4 other hotels that will naturally come into the market in the next few years, with the potential for over 700 rooms added to the economy in just 3-4 years. The Basilica should be allowed some private non-interference period to allow Kessler to step forward and deliver his architectural drawings and designs for the St. Lawrence Plaza. He asked Council to erase their minds and start as if this was the first time the plaza development from the Basilica was being proposed. He provided Council with a copy of a letter dated August 31, 2012, from Mr. Richard Kessler.

The following individuals spoke in support of the McKibbon proposal:

Ms. Kim MacQueen, residential/retail property owner on Haywood Street
Mr. David Madden, Co-Chair of the Rafael Guastavino Museum Project
Mr. Mike Burke, Chairman of the Civic Center Commission
An instructor in the Hospitality Education Department at A-B Technical Community
College
Mr. Pat Whalen
Ms. Suzanne Hudson, representative of the Caddick Foundation
Ms. Liz Barr, resident of Asheville

The following individuals spoke in opposition of the McKibbon proposal and in support of the Basilica proposal:

Mr. Mack Cox
Mr. Derek Allen, attorney representing Hotel Indigo, Four Points by Sheraton and the
Renaissance Hotel
Mr. Lyons
Ms. Donna Bollinger, volunteer gardener at the Basilica
Mr. Scott Hollowell, not a City resident
Ms. Anne Fitzgerald Smith
Ms. Alisha McNabb, resident of Asheville
Property Manager at the Basilica
Ms. Ellen Lyle, resident of Asheville

Mr. Jack Thompson, Executive Director of the Preservation Society of Asheville & Buncombe County, asked that Council empower the Downtown Commission process by ensuring that design recommendations for this development made by the Commission, regardless of the developer, be mandated as a directive of the development agreement. They strongly recommend utilization of the Asheville Design Center as a consultant to the design process. Serious consideration of a downtown local historic district is far overdue. This process calls for the most stringent monitoring of the seismic effects of any construction that occurs.

Mr. Tom Gallaher, Secretary and Board Member of the Asheville Design Center, said that they met with the City, the Basilica and McKibbon and proposed that the Asheville Design Center act as a referee to the various interests. The three meetings held yielded a great deal of success. He then read the 6 points of agreement that all three bodies agreed upon: (1) a plaza must frame and enhance the Basilica while uniting it with adjacent historic structures, such as the Grove Arcade and other sites in downtown's National Register of Historic District; (2) site use will include the plaza, retail along Haywood and Page, the proposed hotel and parking; (3) site control allows transactions between and among the City, the Basilica and McKibbon; (4) design of all elements must respect an honor the Basilica as well as other notable uses and buildings nearby; (5) massing of the hotel must help contain the site and unify all surrounding elements; and (6) master plan and UDO regulations apply as do suitable variances. He said the Asheville Design Center does not specifically endorse a park, a hotel or the Basilica proposal. They seek to work with all the parties.

Ms. Elaine Lite favored a community green space and park or a plan for a combined living and retail green space that will be far less massing in design and scale than the McKibbon Plan.

Mr. Joe Cauble, downtown resident, spoke in support of a park on the .77 acre tract.

Mr. William Robertson, downtown resident, felt Council should reject both proposals and take their time to build something worthy on that property that will last forever.

Rev. Lisa Landis supported going through another RFP process.

Mr. Stevens said the attorney that represented other hotels downtown argued that the RFP process was stale or fatally flawed, but it is not. City Attorney Oast and Mr. Powers both explained why it took so long to get to this point. It was not anything that McKibbon did or failed to do. Everyone loves the Basilica and it is a special religious place. Nothing that McKibbon is trying to do with this proposal will change that. Nothing in this proposal will affect the view of the Basilica at any angle and nothing from the 90 foot high building is going to cast such a massive shadow 170 feet away. The Basilica's plan is to pay \$1 Million upfront and then pay \$1 when they get a development agreement, that they don't even have yet with Mr. Kessler. How do we know that Mr. Kessler can secure the financing and build the plan that they propose for him to build. We don't know that. He said that his office did not send any threatening letter to Mr. Kessler and he was not aware of any threatening letter sent to Mr. Kessler. He was welcome to be here and articulated his position. The plan that McKibbon proposes will compliment the Basilica because Mr. McKibbon has worked with folks from the Basilica and listened to them and proposed a plan that calls for a plaza, when that was not originally intended. McKibbon would love to build a full 18,000 square foot plaza and that could still be done, but it will involve cooperation by the Basilica. To deny this process and open up the RFQ/RFQ process back up would be wrong. He encouraged Council not to do that. Mr. McKibbon has earned the right to build this project and he has the integrity to deliver a high quality project that will be good for the City and the Basilica and we will all be proud of for decades to come.

In response to Ms. Bollinger, Mayor Bellamy said that the McKibbon Hotel Group did not donate any money to the City of Asheville. If received, the donation would have been accepted by City Council via a budget amendment.

At 7:50 p.m., Mayor Bellamy closed the public hearing and announced a short recess.

Councilman Hunt said that he will make a motion to approve the sale to McKibbon and would be open to conditions by Council to assure the performance of McKibbon. He believed we have followed through and met the goals of the RFP process started several years ago. He believed the project as presented by McKibbon will also fulfill a number of community goals. He felt that the evolution of the design and the adaptation of the McKibbon to community needs around the Basilica is good and felt the Basilica will be honored by the project. He believed the project will increase downtown vibrancy in that area of downtown. His greatest concern about the environmental integrity of our region has to do with sprawl development and fragmentation of the rural landscape. In development is a very important step. He feels this project will meet the goals of the 2025 Plan. He emphasized that the component of this project is the plaza between the hotel and the Basilica is a separate project and he will work to see that happen. He believed that due to the integrity of the McKibbon Hotel Group and that we have well-developed plans he felt we can execute a project in a controlled intentional way for a good outcome. He felt that as divisive and contentious as the discussions sometimes have been, the engagement by advocates of the Basilica have helped improve this design. Partnering with the Asheville Design Center was also important to that. Council has been well aware that if they felt that the McKibbon proposal was not going to meet their goals they could have stepped aside. It was pointed out that hopes and dreams were expressed by the Basilica about a great development that might be able to occur given a chance for fund-raising and developing partnerships. Over the past 16 years in his professional career in grants, it is very difficult to get that from a dream to reality. The City has had significant projects get started that were not able to ultimately take root. Addressing a public park on that property, City Council is committed to developing public parks in places where there is a high priority and we have a limited budget to do that. To those that are concerned if another hotel is needed, he said there a lot of different ways to look at occupancy rates and economic impact. He felt the trend for hotel demand in downtown is plenty strong to support this project. He appreciated Mr. McKibbon's transparency and pragmatism involving his design to be something of real quality. He appealed to Mr. McKibbon to follow through with promises made.

Councilman Hunt then moved to adopt Resolution No. 12-214 approving the sale of property located at Haywood Street and Page Avenue in downtown Asheville to McKibbon Hotel Group for economic development purposes. This motion was seconded by Councilman Smith.

Councilman Smith said that the original intent of the city-owned land sale process when this first came forward was to figure out how to make sure there is affordable housing in the City. It is very difficult to get affordable housing built in downtown. He does feel that this is an opportunity for the City to return to the original intent of this process and say that the funds from this land sale can go to support the Affordable Housing Trust Fund and to support more other affordable housing efforts in coming years. The public purpose served by the economic development land sale would be not only for tourism development downtown but also for the future development of a plaza in cooperation between the Basilica, McKibbon, the City and others. He would like to see the proceeds from the .77 acre go to affordable housing. That site is now dead space and the City will not support urban blight in its downtown core. This process has been going on for a decade and we now have a developer who is willing to work within the downtown design guidelines and go above and beyond that with a development agreement with the City. We have the opportunity to enliven that area of downtown. He was pleased to hear from the man who is doing the Rafael Guastavino speak about the possibility of some sort of homage within the building itself. He expected McKibbon's best work and that they work toward paying their employees living wages.

In response to Councilman Bothwell, City Manager Jackson said that this property was purchased with Parking Funds. Council has the ability to evaluate the condition of the Parking Fund and if it's meeting its obligations, Council then has the ability to reprogram funds as Council has in the past for transit and other purposes.

Councilman Bothwell opposed the motion in that he felt the RFP has expired in terms of the original contract. Immediate implementation was part of the contract. To have the reputation that Asheville is good to do business with means not only do we honor our side, we insist people who sign contracts with the City honor their side. He felt the overall impact of the development has been very poorly thought out. We now have a much better Planning Department than we did 10 years ago and the advantage of the Asheville Design Center. He felt we need to re-think the intersection in front of the US Cellular Center first and then decide what property we really have to sell. A number of different proposals have come forward over the years. He felt the people of Asheville seem overwhelming against the development of a hotel on this site. Many favor a park but Council is resistant to ask our residents if they would be willing to pay another ¼ cent on their taxes in order to fund a park. He felt Council should listen to the people. He felt the selling price is too low for a premier undeveloped parcel in the City. The appraisal is deeply flawed in that the comparables used are not appropriate. He suggested waiting a couple of years until the real estate market has rebounded.

Councilman Pelly said that having participated in this process for almost nine months, he believed the McKibbon proposal is the right path for the City at this time.

In response to Councilman Davis, City Attorney Oast said that if Council has any conditions they would like to insert, now is the time to bring those up. There are some things we don't and can't know until the project gets further into the process, e.g., things that will come out of the technical and design reviews that are conditions on any project. The conceptual plans seen by Council at this meeting are incorporated into the contract. He said conditions regarding the height and setback are already incorporated into the resolution. We will, through the contracting process do what we can to ensure that our advisors take a look at the financial commitments that McKibbon receives and the construction contracts.

Councilman Davis asked if there is opportunity to mention concerns in general about the protection of the Basilica, the distance from the Basilica, the site lines, traffic management plan, height of the buildings, etc. and come back with a more defined document. City Attorney Oast said we have a pretty straightforward contract as to which there are still some details to work out. These are the kinds of details we will know more about as the project goes through the approval process. He would be happy to brief Council on those at any time.

Councilman Smith offered the following friendly amendments to the motion: (1) the height of the structure not be higher than 90 feet on the Haywood Street elevation and 75 feet on the Page Avenue elevation; (2) the hotel tower must be set back at least 170 feet from the front or southern face of St. Lawrence Basilica; (3) traffic management plan; (4) the structure will accommodate a future plaza and that the City cannot in any way prohibit the development of this future plaza; and (5) guarantees that this development will not injure the Basilica.

Councilman Smith also hoped that the demolition costs do not go as high as \$225,000 so the City will be able to recover more of that money.

In response to Councilman Smith regarding his request to ensure that the Basilica is not at any time shadowed by the structure, Mr. Robertson said he did a cursory review of what the shadows would be on the site based on the heights of the buildings now and the distance from the building to the face of the Basilica (based on the UDO guidelines – September 21 – March 21) and the Basilica would never be in the shadows from 10 a.m. to 2 p.m. City Attorney Oast felt that the shadow constraint is incorporated into McKibbon's design.

Councilman Bothwell said that from September 21 – March 21 is not the lowest part of the sun. He questioned if the hotel will shade the Basilica at Christmas, at which time the sun is much lower. Mr. Robertson said that he did not input December 25 into the software model because the UDO regulations were from September 21 – March 21.

When Councilman Hunt asked Mr. McKibbon if he was prepared to commit to a development that does not shadow the Basilica at any time of the year, Mr. McKibbon said he did not have an answer for that. He said they will do the study and staff can make a decision. He said they can't lower the building or it doesn't work economically.

In response to Councilman Smith, Ms. Jill Hamburg, geotechnical engineer, said that this team is committed to making the best design to limit vibrations from leaving the site. It is the intent of the design to use shallow foundations or non-vibration inducing construction techniques to limit vibrations from moving from the site. That is part of the design plan. As far as monitoring the vibrations, typically vibrations are monitored in a radius from the vibration-inducing activity. You can design construction solutions on a specified distance from the vibration-inducing activity. Also the design team is also considering the buildings that are about 10 feet directly adjacent to the new structure. Their design will also take into consideration any implements that would happen to those buildings as well. In summary, they will try to limit the vibrations and monitor the vibrations as they are produced at the edge of their site.

Councilman Smith hoped that the discussions can resume between the Basilica and McKibbon representatives with the Asheville Design Center so we can ensure the structural integrity of the Basilica and be able to move towards the future plaza.

Councilman Hunt noted that attached to the resolution is a conditions page which includes the height and distance conditions Councilman Smith mentioned. He accepted Councilman Smith's amendment to no shadow requirement.

Councilman Hunt amended his motion to require that the McKibbon Hotel Group entertain public input in at least one session, that includes the Asheville Design Center collaboratively and that McKibbon, in good faith, will entertain reasonable suggestions to improve the design of the hotel based on public input and that the City won't unreasonably withhold our agreement should there be reasonable design suggestions that seem viable. Councilman Smith accepted this amendment.

Regarding the amendment regarding seismic monitoring, Councilman Hunt suggested the condition be that McKibbon shall retain a qualified geotechnical engineer and that during construction McKibbon Hotel Group follow the directions of that engineer and use best practices to ensure no seismic damage to the surrounding properties. Councilman Smith accepted this amendment.

Regarding McKibbon's participation in an evolution of a plaza, Councilman Hunt suggested a condition that the McKibbon Hotel Group not only simply allow for a plaza to be built, but ensure that their design in their development and construction techniques actually facilitate in a positive way to ensure that a plaza can be built. Councilman Smith accepted this amendment.

Councilman Hunt accepted Councilman Smith's condition regarding a traffic management plan.

Councilman Hunt amended his motion to also include the following two conditions: (1) staff have another MAI appraisal by a different appraisal firm than the first one and based on the results of the second appraisal that the purchase price be set at the higher of the two appraisals; and (2) the design that the McKibbon Hotel Group would implement is the current drawings presented at this meeting, exclusive of the inclusion of the plaza. Councilman Smith accepted both of these two additional conditions.

Councilman Davis asked if, after the hotel is built, the streets will be able to handle the stormwater once it comes off the hotel site. Public Works Director Cathy Ball responded that most part of the area is impervious now and there will have to be some stipulation for how the roof drains go on the new building. That will be looked at during the plan review process. They will be required to not redirect the water into a street that it didn't go before.

Councilman Davis said that due to some construction at the US Cellular Center there will be some street realignment in front the US Cellular Center. He hoped that we can dovetail that discussion with McKibbon.

Councilman Davis reiterated that we identified underutilized property back in 2005 and we added this property to find a high and better use for it. He will trust McKibbon will be using quality materials, and that the fenestration and design of the building will be something the City of Asheville will be proud of.

Councilman Bothwell said that City Council has the authority to make downtown design review mandatory compliance, not optional. City Attorney Oast said that mandatory compliance is not what is provided for in the Code now. Since this is City-owned property, it is something that Council can do, but he felt Council should be cautious about doing it. The City has worked for a long time to get the processes in place to ensure that projects would turn out of the way Council wanted them to. During Downtown Commission meetings he has rarely seen a project that was reviewed by the Downtown Commission that did not come out better and get not get buy-in from the developer. Several are good suggestions that don't cost anything. Again, City Council can require mandatory compliance, but he felt the ordinances in this process allow you to put faith in the review processes City Council has already established. We also have some very detailed guidelines, including shadow studies in the UDO. Council spent a long time working on those and incorporating them into the ordinances.

When Councilman Hunt asked Mr. McKibbon if he would commit to mandatory compliance of the downtown design review, Mr. McKibbon said that he hoped Council has seen his projects before and what others have said about his projects. He said they do what they say they will do. If this is a condition, he would want to make sure that their due diligence period is extended until they can decide if this is too erroneous and if it is that they can drop the project.

Councilman Hunt was under the impression that the development agreement would be drafted after the downtown design process and it seemed to him that we have a sales contract now that will refer to the development agreement. He noted that the development agreement is subject to negotiation and approval by this Council. Relative to the mandatory compliance with the downtown design review, he suggested that we give general policy direction to staff that Council wants to see that reflected in the development agreement when it is drafted. He would be willing to see a negotiation of the development agreement ultimately handle that. It is a real goal of Councils to expect to see that compliance. Also, based on their shadow study that if there is one or two days that we defer that to the development agreement.

City Attorney Oast said that the way the process is structured, the development agreement will not come back to City Council for final approval. It will incorporate all the various approvals from the Downtown Commission, the Planning & Zoning Commission and the Technical Review Committee.

Councilman Hunt would be more comfortable if Council has the opportunity to approve the development agreement. City Attorney Oast said that we have a commitment to a particular kind of conceptual design and a commitment to follow Council's ordinances and processes in getting the project approved. Those approvals would then be incorporated into a development agreement that would bind the developer to build in accordance with the approvals and they would become contractual matters. The concern that he had about bringing the development

agreement back to Council is that it might not get approved. The developer would be a year in the process and then there is no basis to move forward. We do have built into the contract the ability to review all construction contracts and all financial commitments in order to verify to the extent that we can that the project will get done. And we have the ordinances to rely on to ensure that it will get done in the way that the project is presented to you tonight – they become contractual matters. If Council wants to see the development agreement once it's done, they can.

When Councilman Hunt asked the McKibbon Hotel Group if City Council approving the development would be reasonable to them, Mr. Wyatt Stevens, attorney representing McKibbon Hotel Group, said it sounds reasonable on its face and if they would be dealing with the same Council and it was 2 weeks from now, it would be no problem. However, if this comes back before a different Council it's open up for another entire public hearing and that is not something any developer wants to agree with. They would certainly prefer that the development agreement not have to come back before Council for that kind of approval. He believed that the process has been set up so that's not necessary. He felt Council's concerns can be addressed by the Downtown Commission and City staff to make sure the development is done correctly, taking the politics out of it.

Councilman Hunt said that he hoped to achieve as much compliance with the downtown design review guidelines and not subject the development agreement to another Council vote.

Mayor Bellamy said that if this was privately owned property this would have gone through with some conditions but basically without any problems. She recalled reviewing privately owned projects where we would go over stormwater, sustainability, fencing, trees, how many public meetings were held, what were the neighbors concerns, what the traffic count was, what the ingress and egress to the property is, light spill-over, etc. and that was the developer's own land. From her prospective, part of the problem with this project is this is public land. This process has eroded public trust and once public trust is eroded, it is very difficult to get back. She felt these items should have been covered in a staff report. This is the only time Council has to review the project. This project has been going on for years and there has been no Council update. In her opinion, it wasn't until the letter from the Basilica pushed it to this point. She did not believe that a park is the best use for the land. We cannot afford it, noting the years it has taken for the Reed Creek Greenway, our commitment to Overlook Park and the Wesley Grant Sr. Southside Center. We haven't really dealt with the reality that the downtown residents have complained about some the issues in this part of downtown dealing with homelessness, vagrancy, graffiti, etc. The reasons why we don't have benches in that area is shop owners have complained about people sleeping on sidewalks impeding the ability for people to walk. A park is not the best place for that area. She agrees that it's important that we get this right. She didn't believe we have got this right. We continue to go forward without the public being a key part. People say that the Downtown Master Plan was guiding this. If that was the case we should have set a plan in place that it was transparent that this is what is happening now and the community could speak. We would have told them what we are going to build on this property, how it will move forward, that the City was still in talks with McKibbon, and their deadline. That didn't happen. She felt we should have had a good timeline with an open process. For us to say the current drawings are what we are approving, is saying that we won't take into account any public comment out of the meeting with the Asheville Design Center. This is the only time City Council will see this project. Going forward, and hearing the comments, it looks as though this will pass, but she felt we did not do this right. She believes there are opportunities that we missed and staff did not let people know. She hoped for an update on the other projects that are City-owned. Contrary to what has been said that this money has to go directly to affordable housing, the way our current formula is for the Housing Trust Fund, 30-40% of that money goes to transit. She cannot support the motion.

Councilman Davis said that this is consistent with the Downtown Master Plan, which Council adopted. We all have apprehensions about this and are putting a lot of faith in the people

who serve on our advisory boards. He did not want to see mandatory compliance, especially at this late in the game.

The amended motion made by Councilman Hunt and seconded by Councilman Smith carried on a 4-2 vote, with Mayor Bellamy and Councilman Bothwell voting “no” and Vice-Mayor Manheimer being recused. Said adopted amended motion reads: Adoption of Resolution No. 12-214, approving the sale of property located at Haywood Street and Page Avenue in downtown Asheville to McKibbon Hotel Group for economic development purposes, with the three conditions currently listed in the resolution and the following conditions: (1) traffic management plan; (2) McKibbon Hotel Group entertain public input in at least one session, that includes the Asheville Design Center collaboratively and that McKibbon, in good faith, will entertain reasonable suggestions to improve the design of the hotel based on public input and that the City won’t unreasonably withhold our agreement should there be reasonable design suggestions that seem viable; (3) McKibbon shall retain a qualified geotechnical engineer and that during construction McKibbon Hotel Group follow the directions of that engineer and use best practices to ensure no seismic damage to the surrounding properties; (4) McKibbon Hotel Group not only simply allow for a plaza to be built, but ensure that their design in their development and construction techniques actually facilitate in a positive way to ensure that a plaza can be built. Councilman Smith accepted this amendment; (5) staff have another MAI appraisal by a different appraisal firm than the first one and based on the results of the second appraisal that the purchase price be set at the higher of the two appraisals; and (6) the design that the McKibbon Hotel Group would implement is the current drawings presented at this meeting, exclusive of the inclusion of the plaza.

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At 9:23 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. BOARDS & COMMISSION

Regarding a vacancy on the Americans with Disabilities Compliance Committee left by Ms. Teresa Foster-Moorefield, it was the recommendation of the Boards & Commissions Committee, and the consensus of Council, not to fill the vacancy due to the “inactive” status of the Committee.

RESOLUTION NO. 12-215 - RESOLUTION APPOINTING MEMBERS TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE

Councilman Davis, member on the Boards & Commissions Committee, said that this is the consideration of appointing members to the HUB Community Economic Development Alliance.

The terms of Cheryl McMurray and Scott Dedman, members of the Alliance expired on August 22, 2012.

The following individuals have applied for a vacancy: Antonio Hinton, Kelly Erin-Spinney, Grant Millin, Sarah Nunez, Kimberly McCall and C. Jerome Jones.

It was the consensus of the Boards & Commissions Committee to appoint Sarah Nunez (who the Alliance recommended) and C. Jerome Jones.

Councilman Pelly moved to appoint Sarah Nunez and C. Jerome Jones to each serve a three-year term respectively, terms to expire August 22, 2015, or until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

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RESOLUTION NO. 12-216 - RESOLUTION APPOINTING AN ALTERNATE TO THE NOISE ORDINANCE APPEALS BOARD

Councilman Davis, member on the Boards & Commissions Committee, said that this is the consideration of appointing an alternate to the Noise Ordinance Appeals Board.

The following individuals applied for the vacancy: James Reato, Jessica Byrd and Elizabeth Franks.

It was the recommendation of the Boards & Commissions Committee to appoint Elizabeth Franks.

Councilman Pelly moved to appoint Elizabeth Franks as the alternate to the Noise Ordinance Appeals Board to serve a three-year term, term to expire July 1, 2015, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy said that the Interim Business Improvement District (BID) Board has requested that the continuation of the public hearing on the BID scheduled for September 25, 2012, be continued to October 9, 2012, due to Vice-Mayor Manheimer's anticipated absence at the September 25 meeting. It was the consensus of Council to direct City Clerk Burleson to note on the September 25 agenda that Council expects to continue the public hearing until October 9, 2012.

Rev. Lisa Landis alleged (1) that Flag Code prohibits fringing on the US Flag hanging in the Council Chamber; and (2) that in May 24, 2011, minutes there is no mention that City Council granted District Attorney Ron Moore's special treatment to hire Blueline to perform the Asheville Police Department evidence room audit. Mayor Bellamy said that Mr. Moore did not ask the City to hire Blueline and will ask City Manager Jackson to respond to the flag allegation and City Clerk Burleson to research the Council minutes regarding Mr. Moore's comments on the contract, with both responses sent to City Council and Rev. Landis.

In response to Ms. Judy Strong, City Manager Jackson said that he would e-mail Ms. Strong information regarding the traffic study on Charlotte Street.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:36 p.m.

CITY CLERK

MAYOR