

Tuesday – September 18, 2012 - 1:00 p.m.
US Cellular Center – Banquet Hall

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; 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: Councilman Marc W. Hunt)

Present: Representative Susan C. Fisher and Representative Chuck McGrady (Absent: Senator Tom Apodaca; Senator Martin L. Nesbitt Jr.; Representative Patsy Kever; and Representative Tim D. Moffitt)

Mayor Bellamy called the meeting to order at 1:00 p.m. in the Banquet Room of the US Cellular Center and invited the public to view the renovations of the US Cellular Center. She thanked Representatives Fisher and McGrady for attending. She said that the purpose of this meeting will be to hear our legislator's expectations of good faith negotiations arising out of the Legislative Study Committee recommendations.

Water Resources Director Steve Shoaf gave a brief informational update on the progress relating to the recommendations of the Legislative Study Committee ("Committee") as follows:

A. Background. The Legislative Research Commission is the general purpose study group in the Legislative Branch of North Carolina State Government. In September 2011, the Commission received authorization to appoint subcommittees to study various matters. Among these committees was the Metropolitan Sewerage/Water System Committee, which was tasked to study "whether requiring large cities that have a municipal water system and that are located entirely within a Metropolitan Sewerage District to convey that water system to the district will improve the efficiency of providing public services".

During the winter and early spring of 2012, the Metropolitan Sewerage/Water System Committee held four public hearings to consider issues regarding water and sewer services in Buncombe and Henderson Counties. At their April 19, 2012 meeting, the Committee adopted a final report and recommendations.

B. Recommendations and Related Actions. Since the finalization and submission of the Committee report, the City of Asheville has undertaken several actions pursuant to the Report's recommendations. The Report's recommendations and related actions are listed below. In addition to this brief report, staff will present on this topic in further detail.

Recommendation 1

The Committee recommends the Metropolitan Sewerage District Act be amended to: (1) Reflect population shifts in single-county districts; (2) Modify representation in multicounty districts; and (3) Allow metropolitan sewerage districts to exercise the same authority as metropolitan water districts.

Recommendation 1 Actions:

- House Bill 1009, MSD Amendments, became law on August 03, 2012.

Recommendation 2

After careful consideration of the information presented, the Committee recommends merging the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County. The benefits of combining the two utilities are undeniable. The benefits include, among numerous others, the following: (1) Each utility essentially serves the same residential, commercial and industrial customers; (2)

Wastewater volumetric charges are directly linked to domestic water metered consumption; (3) Treatment of raw potable water and wastewater requires similar expertise, and similar interaction with Federal and State Authorities; (4) Economies of scale can be achieved in the areas of administration, planning and engineering; and (5) Single location for water and wastewater availability and planning.

The Committee recommends that the 2013 Session of the North Carolina General Assembly consolidate the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County. Should the interested governments craft their own solution for consolidation, which achieves all the objectives of the Committee, before the 2013 North Carolina General Assembly convenes, due consideration would be given to the local plan. Action will not be taken if the parties are engaged in good-faith negotiations on this matter.

Recommendation 2 Actions:

Since the finalization and submission of the Committee report, the City of Asheville has undertaken several actions pursuant to the Report's recommendations.

- The City has extended the time for fulfilling the condition on the 137 acre property on Brevard Road conveyed to Henderson County pursuant to the 1995 Water Agreement, such that the reversion of the property will not occur until 2014.
- The City Manager has met with the Henderson County Manager to initiate discussions regarding continuation and expansion of water service in Henderson County.
- The City has been working with MSD and on its own to gather and analyze information on the two systems and on other public utility systems within the respective service areas of each, and to review and analyze various models for consolidation or merged operation of a regional system.
- The City has established various work groups to ensure these negotiations continue in an effective manner. These workgroups include:
 - i. Oversight Committee: executive-level meetings to oversee and coordinate the progress of workgroups.
 - ii. Financial Analysis: to study the financial impact to the City of Asheville under various merger scenarios.
 - iii. Internal and External Communications: to ensure transparency and public availability of information throughout the study process.
 - iv. Asset Value/Fair Compensation and Governance Models: contracting with Raftelis Financial Consultants to review methods of valuing applicable City assets and governance options for a merger.
 - v. MSD Merger Study Relations: to track progress of the merger study
- The City has sought guidance from state legislators on how best to fulfill the expectations of the Study Committee.
- The City has extended an invitation to local governments in and around Buncombe County regarding participating in the review process for a regional water system.

Recommendation 3

The Committee recognizes the efforts of the Conservation Trust for North Carolina in protecting the drinking water in and around Asheville. It recommends that the Conservation Trust for North Carolina continue to work with the City Asheville as the parties consider clarifying the 1996 Asheville Watershed Conservation Easement

Recommendation 3 Actions:

- City staff have undertaken a review of the 1996 conservation easement that is currently in place with respect to the North Fork and Bee Tree Watershed property, and have met with a representative of the Southern Appalachian Highlands Conservancy to identify ways in which the easement may be clarified and amended in the interests of all parties.

- The City has engaged outside counsel to review the conservation easement to address policy and legal issues related to implementation of the easement.

Vice-Mayor Manheimer said that she and Councilman Pelly serve on the Metropolitan Sewerage District so they hear MSD's progress. The MSD Board has appointed Mr. Al Root (Mayor of Weaverville) as the City/MSD liaison for purposes of engaging in the negotiations, noting that Mr. Root is also Chair of the MSD Planning Board that oversees MSD's study. She has met with Mr. Root to talk about their expectations and plans to meet with him again in the near future.

Representative Fisher said that Representative McGrady is a member of the Legislative Study Committee and may speak out of turn if she gave any information based on what their work is.

Representative McGrady said that the Legislative Study Committee has ended. It has finalized its report and won't meet again until January of 2013. Two of the three recommendations have been taken care of - Recommendations 1 and 3. The heart of the Committee's Report is Recommendation 2 and understands there continues to be a difference of opinion as to whether there should be a combination of our water and sewer infrastructure and governance. The Committee came to the conclusion that it did. When we heard from a wide range of officials from cities, towns and counties that they were not excited about the combination but they consistently asked that if the Committee was going make that recommendation to not impose it but to give them an opportunity first to talk amongst themselves to see if they can work this out. The Committee took that request from local governments and said they wouldn't do anything this year. It sounds like the City of Asheville, MSD and other local entities are proceeding in those discussions. He was glad the studies are occurring because if one of them concludes that it would be a wildly expensive undertaking, then the next General Assembly can take that into account and look at the issue again, taking into account what the logic is, the economic impact, the environmental impact, and a host of other issues. He was particularly interested in the ongoing discussions with other local government entities, since a lot of the public discussion is focused on the water system run by the City of Asheville, but there are other water systems in the larger area. We have a consolidated sewer system but it a multi-county entity. He said some of that discussion will wait until the ongoing studies have been completed. The bottom line is that if there isn't a massive change in personnel on the General Assembly or something that turns up in these studies that suggests that the conclusion of the Committee was wrong, his expectation would be that a bill would be introduced to accomplish what was recommended by the Committee.

Representative Fisher understood that the only part of the study that is going on between MSD and the other area water systems, the only area that this will affect is Asheville. She understood that if the studies don't result in a City/MSD merger, then the legislature would introduce a bill that would dictate a merger. Representative McGrady said that there will likely be a bill if there were no solutions put forward by local governments. The Committee anticipates a bill that would combine water and sewer.

Representative Fisher's concern is that the City and MSD are concerned that they are exhibiting these good faith negotiations and it almost sounds like it doesn't matter how much good faith there is around all of these activities, there will probably still be a bill introduced, depending on the make-up of the legislature, that would merge the systems. Representative McGrady said he thought there will be a bill introduced (if only a placeholder), but didn't anticipate being the legislator that introduces it to effect what the Committee set forth. The fact is that the water system run by the City of Asheville is the predominant water system and that is why it's natural that the City of Asheville and MSD are negotiating. He expected that other municipalities that are connected to the City of Asheville are using that same water should be part of whatever discussions are going forward.

Mayor Bellamy said that the City has reached out to the other municipalities to talk about the consolidation, but she didn't think the other municipalities realize that this is inclusive of all the systems. Some officials do not want to participate in these discussions. She said the City and MSD are doing its due diligence to see what this will look like on our budgets, our systems and our operations but she is concerned that the system will be consolidated regardless of the input of all the players at the table and regardless of the impact to our ratepayers, taxpayers and citizens of Asheville.

Representative McGrady said that if the other municipalities determine they don't want to be a part of discussions they are taking a risk because the Committee is recommending some sort of combined water and sewer. It is not absolutely clear in the report, and he didn't think there was any intention to be clear in the report, exactly what the parameters of that water/sewer system might be. Certainly the MSD model has worked on the sewer side. He reiterated that unless there is a significant change in personnel of the General Assembly (because the incoming General Assembly is not bound by the report issued by the last General Assembly) or some horrible impediment that wasn't anticipated, the Committee will introduce a bill.

Mayor Bellamy said that Asheville needs to try to continue to reach out and be more inclusive of our process. We will continue to do an analysis on the impact on the City, its citizens and rate payers.

Representative McGrady said that if the City can strike a deal with the adjoining local government entities and MSD that makes sense and is consistent with the report issued by the Committee, he assumed that any legislation that would be introduced would be consistent with an agreement that the City might reach.

When Mayor Bellamy noted that on the November ballot we are asking our citizens of whether we should lease or sale our water system, she asked for Representative McGrady's thoughts. Representative McGrady personally questioned the wisdom of the whole referendum. He said these are difficult issues with a lot of history and asking what seems to be a very simple question. No matter what answer you get to that question, he was not sure it gets to the fundamental recommendation being made by the Legislative Study Committee.

Councilman Pelly noted that when MSD was created there were failing sewer systems, raw sewage flowing into the French Broad River and a pressing need for a combination of the sewer systems. He asked Representative McGrady how that carried over to the City's water system. Representative McGrady responded that the report speaks to the fact that the recent management of the Asheville water system is generally very positive, but it wasn't long ago we were in a very different place. Perhaps this is a lull that seems to occur in 10-20 years where maybe we can affect a regional consolidation system at a point in time when there is nothing driving it. He did not take issue with the City's management of the water system in the last several years. In fact, he commended the City on the management of the water system. He was on the Asheville-Buncombe Water Authority when it was dissolved and he understood why the City did what they did at that point in time.

Mayor Bellamy said that the things Asheville is being penalized for, in her mind, are the things that have happened in the past. To her, the present and the immediate future dictates that is over and we are running the water system in an effective and efficient manner. We have made investments in the system, stopped leakages, have a long-term capital improvement plan, are transparency, have website updates, living within the Sullivan Acts, etc. She couldn't understand why Asheville is still being penalized for things that happened in the past. Our water system is recognized by the state as a leader ranking ISO 14000 and yet the law is taking our system away.

Councilman Davis said that after attending the Committee meetings, and in all due respect, he felt the report by the Committee was a disingenuous process. He felt that part of the reason we don't have the other municipalities at the table is that they are scared and want to stay as far away from this process as they can. When the legislature takes our water system from us, it will add an incredible layer of cost. We are fixing the system with a regular schedule of rate increase and felt that part of this was brought about we started talking about equities in water bills and today we don't have the huge water users. He felt the solution everyone is hunting is in front of us.

Representative Fisher understood Representative McGrady say that he would hope that whatever comes out of the study, if there is good faith, will be included in whatever bill is introduced. She offered that no matter what happens, she will watch the bill as it moves forward to see that it incorporates the good faith pieces of the study when all of this work is done.

Representative McGrady said the Committee report is what it is. He understands the City Council positions put forward, but the fact is the recommendation has been made and you've now begun to go through a process. He didn't know what the nature of a regional water/sewer authority might be. He felt the City needed to come forward with a proposal consistent with the results of the study that make sense. Personally, his way of operating is being as transparent as he can be. When we were dealing with the Airport issue, he went out of his way to make sure there was no financial impact on the City, which would have been a very easy thing to overlook. The bottom line is that we do need to do what is right for our citizens, noting there is more than just the citizens of the City of Asheville. He hoped the various local governments and MSD can be engaged in discussion that moves the ball forward. If while studying the issue you come across some massive impediment that wasn't anticipated by the Committee, next year is a new year. All the bills introduced this year are gone. This is just a Study Committee report and there are many reports issued by the General Assembly that don't get executed, but there are also a lot of them that are a multi-year process.

Councilman Bothwell said that Representative McGrady presents the information reasonably, but from our side of it, it seems we are told what the outcome of these discussions will be, which makes actual negotiations pretty hard. He noted that this has already imposed extra expense on the taxpayers of Asheville and the ratepayers of MSD in terms of their studies. The state has not talked about compensating us for the costs already incurred.

When Councilman Bothwell asked how many other systems across the state will be consolidated if moves bill forward, Representative McGrady said he was not aware of any other water and sewer consolidation that is being studied by the General Assembly at this time.

Councilman Smith said that the City has been asked to make these good faith efforts in response to a mechanism that we didn't necessary perceive as being in good faith in and of itself. It is a challenge for us. He verified (1) if facts emerge that there are prohibitive costs to a merger that the entire matter may be reconsidered; (2) the new General Assembly will not be bound by the last General Assembly; and (3) there aren't currently other municipal water systems that are under threat. He said that one of the reasons we have had a hard time operating with the sense that this was a fair process was that the original bill filed and the findings of the Study Committee were the same. It certainly seemed to be pre-determined.

When Councilman Smith asked if Representative McGrady could talk about the 2007 Superior Court ruling that explicitly discusses Asheville's ownership of the water system, he replied he was not prepared to talk about that at this time.

Representative McGrady said that the original Legislative Committee charge was actually larger than the City of Asheville and when the Committee was initially put together, the thought was we aren't just looking at the City of Asheville, but a broader set of issues. Because the City of Asheville's issues were so complex the Committee only looked at the City of Asheville. The discussion about how we manage our water is going to be the cutting edge issue for the state over the next 50 years, so he would expect the types of questions being asked here, with respect to this system, may well occur in other systems.

Councilman Smith asked Representative McGrady to further explain his statement that if the composition of the General Assembly is changed that he would not be the one to introduce the bill. Representative McGrady said he has not sat down with Senator Apodaca as they tend to work together because they have overlapping districts. He didn't introduce the bill that was originally introduced and he didn't anticipate introducing the bill that might accomplish what the Committee set forward. He hasn't seen any bill and was not aware of any bill that has been drawn up. His impression is that everything is currently on hold, allowing for the process to proceed, get past the next set of elections, and sometime early next year a legislator might seek to put together a bill. If a bill gets put together, and he is not the guy that anticipates doing that, if it's one that is acceptable to him, he might well co-sponsor it. He does not anticipate being the leader of the charge as he has other agenda items that are a little higher.

Mayor Bellamy said one of the reasons why she wanted to talk with our legislators in public is because this is a public process. It is a bill that has been adopted, but not signed into law. She wished other legislators could have attended. She felt it was important for the citizens to hear why our legislators felt like House Bill 1009 was moving forward and that it would impact not only the City of Asheville but other municipalities in our community. All the data on this process can be found on the City's website. She again thanked Representatives Fisher and McGrady for attending and hoped they would be willing to meet again as the process moves forward.

Representative McGrady appreciated the very public process as well. He explained why the other legislators were unable to attend this meeting. He wanted everyone to understand that he was speaking as only one member of the General Assembly.

Mayor Bellamy thanked Representative Fisher for her work on getting Session Law 2012-119 enacted which adjusted the boundaries of Woodfin and Asheville in the area of UNC-Asheville.

Representative Fisher appreciated Asheville's transparency and looked forward to hearing more as the process moves forward.

Mayor Bellamy adjourned the meeting at 2:05 p.m.

City Clerk

Mayor