

Tuesday – June 11, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith (excused at 8:00 p.m.); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Esther E. Manheimer

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JUNE 8-22, 2013, AS "POLLINATION CELEBRATION DAYS" IN THE CITY OF ASHEVILLE

Councilman Smith read the proclamation proclaiming June 8-22, 2013, as "Pollination Celebration Days" in the City of Asheville. He presented the proclamation to Ms. Phyllis Stiles, Director of Bee City USA, who briefed City Council on some activities taking place during the week. She then was pleased to show the first new City road sign - Bee City USA.

B. PROCLAMATION PROCLAIMING JUNE 16-22, 2013, AS "AUTISM PRIDE WEEK" IN THE CITY OF ASHEVILLE

Councilman Davis read the proclamation proclaiming June 16-22, 2013, as "Autism Pride Week" in the City of Asheville. He presented the proclamation to Ms. Julia Bramsen, organizer of Autism Pride Week, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of City staff, Consent Agenda Item "C" was removed from consideration.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 28, 2013

B. RESOLUTION NO. 13-115 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY 2.8 ACRES OF REAL PROPERTY LOCATED OFF WEST CHAPEL ROAD TO BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing the Mayor to convey 2.8 acres of real property located off West Chapel Road, portion of PIN 9657-51-1778-00000, to Buncombe County.

The City of Asheville owns approximately 37 acres of real property located at 70 West Chapel Road, utilized as the Ray Kisiah Park. Of the 37 acres, approximately 9.5 acres have been developed into baseball fields and parking. The balance of the acreage is held as wooded open space. The Park borders existing industry to the West, single family residential properties to the East and the Extraterritorial Jurisdiction (ETJ) to the North and South.

At this time, Buncombe County has requested that the City transfer a 2.8 acre portion of the unused area of Ray Kisiah Park to support local economic development. The area of interest is roughly 200 yards from the edge of the closest baseball field, and this transfer does not impact the use of the fields. From time to time, the City and County have utilized land transfers to support economic development. Earlier this year, Buncombe County donated a 3.33 acre property at the intersection of Emma Road and Craven Street to the City of Asheville in order to support the Craven Street Transportation Improvement Project.

The Parks, Recreation and Cultural Arts Department has verified that this 2.8 acre parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville. Nor does this transfer impact future park uses associated with recreation programming at Ray Kisiah Park.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through transfer of surplus real property for supporting economic development.

Pro:

- The transfer of 2.8 acres of property will support economic development.

Con:

- There is no negative impact.

This is a no cost transfer of land to Buncombe County, therefore no revenue will be generated off of this transfer. The City will have minimal legal and closing costs associated with this transfer; those expenses will be absorbed into the existing operating budget.

Economic Development staff recommends City Council adopt the resolution to convey 2.8 acres of real property off West Chapel Road to Buncombe County.

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C. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A UNIT PRICE CONTRACT WITH LAND OF THE SUN INC. D/B/A FLETCHER GRADING CONTRACTORS FOR THE OVERLOOK ROAD SIDEWALK CONSTRUCTION PROJECT

BUDGET AMENDMENT FOR THE OVERLOOK ROAD SIDEWALK CONSTRUCTION PROJECT

These item were removed from consideration.

D. RESOLUTION NO. 13-117 - RESOLUTION AUTHORIZING REQUEST TO FEDERAL AVIATION ADMINISTRATION FOR APPROVAL OF TRANSFER OF WNC AGRICULTURAL CENTER PROPERTY TO THE STATE OF NORTH CAROLINA

Summary: The consideration of a resolution authorizing a request to the Federal Aviation Administration (FAA) to approve the transfer of the WNC Agricultural Center property to the State of North Carolina.

The WNC Agricultural Center is located on 50 acres of property situated to the south and east of the Asheville Airport, and cross Airport Road (NC Highway 280) from the airport terminal

and runway facilities. The property is owned by the City of Asheville, and was acquired as part of the original purchase of property for the airport back in 1958. The property was acquired with FAA financial assistance

In 1985, the City entered into a lease for this property with the State. With renewal options, the term of the Lease is 100 years. The State has used the property for the WNC Agricultural Center since then, and has continued to expand its facilities.

In 2012, the NC General Assembly enacted, N.C. Sess. Law 2012-121, which provides for the transfer of the WNC Agricultural Center property to the State by “warranty or quitclaim deed.” Because the property was acquired with FAA funds, however, certain conditions must be met, and the FAA must approve the transfer. Those conditions include a determination that the property is no longer needed for aeronautical purposes, reimbursement to the FAA of its *pro rata* share of the fair market value of the property, and certain restrictions on the use of the property.

In order to get the FAA approval process started, the “sponsor” of the Airport must make the request. The City and Buncombe County are the recognized cosponsors of the Airport. The County has already agreed to support the request. The resolution would authorize the request to be made on behalf of the City.

Once the terms of the conveyance are agreed to and approved by the FAA, the process of completing the transfer is relatively straightforward.

This transfer will be consistent with the goal of promoting the partnerships with key organizations to support economic development.

Pros:

- Complete the process initiated years ago.
- State gains ownership of its facilities.

Con:

- Property will no longer be available for airport use.

Adoption of the resolution is recommended.

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E. RESOLUTION NO. 13-118 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 5 WALNUT ANNIVERSARY BLOCK PARTY ON JUNE 11, 2013

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 5 Walnut Anniversary Block Party on June 11, 2013.

- Green Opportunities has requested through the City of Asheville Development Services Department that City Council permit them to serve beer and/or unfortified wine at the 5 Walnut Anniversary Block Party and allow for consumption at this event.

The 5 Walnut Anniversary Block Party will be held on Wednesday, June 19, 2013, from 4:00 p.m. – 11:00 p.m. within the boundaries of Walnut Street between the intersections of Broadway and Carolina Lane, as referenced on the accompanying site map.

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 5 Walnut Anniversary Block Party.

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

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

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

III. PRESENTATIONS & REPORTS:

A. HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE UPDATE

Mr. David Brown, Chair of the HUB Community Economic Development Alliance, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Mr. Brown for his leadership and the entire Board for their dedication.

B. LEGISLATIVE & UPDATE

Deputy City Manager Jeff Richardson highlighted the following legislative issues of interest: House Bill 488 - Transfer Control of the City of Asheville's Water System to a Regional Entity (temporary restraining order has been extended to August 6, 2013); House Bill 252 - Asheville Transfers; House Bill 418 - Park Authority; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation; House Bill 568 - Asheville Deannexation; House Bill 708 - Study Public Enterprise Systems/Use of Funds; House Bill 998 - Tax Simplifications and Reduction Act; House Bill 94/Senate Bill 112 - Amend Environmental Laws 2013; Senate Bill 612 - Regulatory Reform Act of 2013; House Bill 664 - Cell Tower Deployment Act; Senate Bill 677 - Local Government Regulatory Reform; House Bill 937 - Amend Various Firearms Laws; and House Bill 714/Senate Bill 443 - Disposition of Abandoned Firearms.

C. UNC-ASHEVILLE ECONOMIC IMPACT STUDY

Mr. Greg Carter, Assistant Vice Chancellor for External Relations at UNC-Asheville, summarized the following finding highlights from the Economic Impact of the University of North Carolina at Asheville: (1) economic activity generated by UNC-Asheville supports 2,592 local jobs, adds \$105.5 Million in local economy, and raises total economic output in the Asheville area by \$268 Million; (2) for every dollar the state of North Carolina appropriates to UNC-Asheville (a) income increases by \$2.96 in the Asheville area; and (b) total economic output increases by \$7.57 in the Asheville area; (3) economic activity generated by UNC-Asheville increases annual tax revenues by more than \$35.8 Million; \$14.8 Million in state and local taxes, and \$21 Million in federal taxes; (4) on-campus employment accounts for less than one-third of the local jobs UNC-Asheville supports - more than 1,800 local supported jobs are off-campus in industries well-outside of education. For example, UNC-Asheville supports 442 jobs in Retail Trade, 266 jobs in Real Estate, 246 jobs in Accommodation & Food Services and 243 jobs in Health Care & Social Assistance; (5) UNC-Asheville students spend over \$30 Million annually in the local economy - student spending annually supports 506 local jobs, raises economic output by \$36.3 Million, and increases tax revenues by \$6.9 Million; (6) graduates of UNC-Asheville living in the Asheville area increase local earnings by \$85 Million on an account of having attained a Bachelor's or

Graduate's degree - the graduate education premium supports 588 local jobs by means of adding spending, raises economic output by \$64 Million, and increases tax revenues by \$8.6 Million; (7) UNC-Asheville attracts new residents to the Asheville area. Survey results from Osher Lifelong Learning Institute attribute the annual relocation of 100 new households, partially on account of the Institute's activities and introduction to the community - added local spending from new 100 households supports 69 local jobs, raises economic output by \$7.6 Million, and increases tax revenues by \$1 Million; and (8) visitors who traveled from outside the Asheville area to attend or participate in a UNC-Asheville event spend an estimated \$4.5 Million annually in the local economy - the visitor spending annually supports 95 local jobs, raises local economic output by \$6.4 Million, and increases tax revenues by \$1.1 Million.

On behalf of City Council, Mayor Bellamy thanked Mr. Carter for his striking highlights and was pleased with the partnership with UNC-Asheville.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE FISCAL YEAR 2013-14 ANNUAL OPERATING BUDGET

Budget Manager Tony McDowell said that this is the public hearing is to receive public input on the proposed Fiscal Year 2013-14 Annual Operating Budget. This public hearing was advertised on May 31 and June 7, 2013.

The Fiscal 2013/2014 Proposed Annual Operating Budget was presented to City Council on May 28, 2013. The Fiscal Year 2013/2014 Proposed Budget is balanced with a revenue-neutral Ad Valorem tax rate of \$0.43 per \$100 of assessed value. All essential City services are continued in the Proposed Budget. A copy of the Proposed Budget is available for public inspection in the City Clerk's office. The Proposed Budget is also available for viewing on the City's website (www.ashevilenc.gov).

In addition to this Public Hearing, Council also received public input during this year's budget process at the Town Hall Budget Meeting which was held on April 3, 2013, and at the Community Budget Workshop which was held on April 18, 2013.

In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 31 and June 7, 2013. Adoption of the Fiscal 2013/2014 Budget Ordinance is scheduled for June 25, 2013, at the regularly scheduled City Council meeting. The Proposed Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption, with the only exception being the Ad Valorem Tax rate, which cannot be changed once the Budget is adopted.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2013/2014 Proposed Annual Operating Budget and include public input in its consideration of the Budget.

Mr. McDowell then reviewed the proposed Fiscal Year 2014 budget assumptions regarding the Culture & Recreation Authority (CRA). If there is no CRA for Asheville, policy decisions include (1) Fiscal Year 2014 proposed operating budget (a) \$1.5 Million budget gap (i) 1-cent tax rate increase and (ii) service reductions; and (2) Fiscal Year 2014-2018 Capital Improvement Program (a) implementation of community & economic development capital improvement plan would require 2-cent tax rate increase in Fiscal Year 2015; and (b) enhancing pay-go capital improvement plan would require a 1-cent tax increase.

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

The following individuals commented about the City's proposed budget, with some comments being, but are not limited to: budget is not revenue neutral; opposed to \$2 Million for Asheville Art Museum; new taxes seem to go to downtown projects; use the allocation proposed for the Asheville Art Museum and downtown parking decks for street & sidewalk infrastructure; support for location, staff and resources to support the Memorial Day event; support transit system with its current routes; support for Affordable Housing Trust Fund; work with non-profits in future years to meet the needs of children and families; too much money is spent on traffic calming; if the City funds non-profits then Planned Parenthood should be funded; and the proposed budget stretches the limits of residents and we need to re-frame thinking into sustainability:

Mr. John Miall
Mr. Saul Chase
Mr. Timothy Sadler
Mr. Ron Kennedy
Mr. Greg Borom
Mr. Alan Ditmore
Dr. Milton Byrd

At 5:57 p.m., Mayor Bellamy closed the public hearing.

There was considerable discussion by Council regarding the budget and the Plan B Council might need to be prepared for if the CRA doesn't happen. Some Council members felt it was unlikely that the CRA impact on our budget will happen, and since the City Manager's budget is built around that impact, that Council should direct the City Manager to prepare a different alternative (Option 2 - no CRA impact in Fiscal Year 2014 budget with a penny for operating (or service reductions) and 3 pennies for the Capital Improvement Plan).

In response to Councilman Bothwell, City Attorney Oast said that he did not believe that Council could adopt two different budgets, depending on whether the CRA would be enacted or not. He said that Council may know more about the CRA by June 25, at which time Council will need to adopt the budget and set the tax rate.

In response to Councilman Smith, Mr. McDowell said that the last property tax increase was in the late 1990's - 4-cent increase for street, sidewalk and park improvements and it also established the Affordable Housing Trust Fund.

Mayor Bellamy strongly supported the CRA because the City residents are paying for facilities like the WNC Nature Center, John B. Lewis Soccer Field and McCormick Field, but they are truly regional in nature. It's not fair to our residents to shoulder the entire burden.

At Mayor Bellamy's request, City staff addressed the items brought up during public comment.

When Mayor Bellamy urged Council to include funds for a Memorial Day event, City Manager Jackson said that a Memorial Day event can still happen without festival event staff.

Mayor Bellamy said that adoption of the Fiscal Year 2013-14 Annual Operating Budget would occur on June 25, 2013.

B. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNOPENED RIGHT-OF-WAY BETWEEN TARPON AND CRAGGY AVENUES

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close an unopened right-of-way between Tarpon and Craggy Avenues. This public hearing was advertised on May 17, 24, 31 and June 7, 2013.

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

Pursuant to this statute, the adjoining property owner's (Bob and Caryn Hanna, Jody Guokas, Isaac Savage, Jim and Nancy Herrig, James and Martha Roberson, and Michael Kohnle and Deidre Duffy) have requested the City of Asheville to permanently close an unopened Right-of-way between Tarpon and Craggy Avenues.

The Planning Department recommends that the owner(s) offer some type of future pedestrian connection, or "shared use agreement" for future pedestrian amenities.

The Metropolitan Sewer District has identified a sewer line crossing mid-way in the right-of-way. An approved easement would need to be included in the revised property configuration.

The Greenway Commission reviewed this closure request at their meeting on May 9, 2013, and concurred with the request based on the inclusion of the future pedestrian connection provision.

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

Pros:

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

Con:

- None

City staff recommends City Council adopt the resolution to permanently close the unopened right-of-way between Tarpon and Craggy Avenues.

In Mayor Bellamy's absence from the meeting room, Councilman Davis opened the public hearing at 6:47 p.m.

Ms. Caryn Hanna, property owner, urged Council to permanently close the wooded area, noting that all the adjoining property owners supported the closing.

In Mayor Bellamy's absence from the meeting room, Councilman Davis closed the public hearing at 6:49 p.m.

When Councilman Hunt asked if the property owners are amenable to placing some type of future pedestrian connection, or "shared use agreement" for future pedestrian amenities on the right-of-way, Ms. Hanna felt she should contact the other property owners as she was the only one present at the meeting

In response to Councilman Davis, City Attorney Oast said that the statute authorizes Council to reserve an easement for utility purposes only. It does not authorize Council to address an easement for pedestrian access.

Councilman Smith moved to continue this matter until June 25, 2013, in order to allow Ms. Hanna to contact her neighbors to see if they are willing to place an easement on the right-of-way for pedestrian access. This motion was seconded by Councilman Hunt and carried unanimously.

C. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH RESPECT TO AN ECONOMIC DEVELOPMENT PROJECT KNOWN AS PROJECT X

RESOLUTION NO. 13-120 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH RESPECT TO AN ECONOMIC DEVELOPMENT PROJECT KNOWN AS PROJECT X

Economic Development Director Sam Powers said that this is the consideration of a resolution approving a \$1,568,000 performance based economic development incentive grant for a company known herein as Project X. This public hearing was advertised on May 31, 2013.

This is the consideration for a performance-based economic development incentive grant under the City of Asheville Economic Development Incentive policy. Project X proposes to make investments to make improvements to facilities, and make expenditures to acquire and install machinery, equipment and other property which may increase the tax value as determined by the Buncombe County Tax Department, in the amount of \$126,620,000. These significant investments, which will be at facilities located in the City of Asheville, will also allow Project X to create and maintain in the City for a ten (10) year period, from and after December 31, 2017, positions for at least 52 new full-time employees who will be employed in the City of Asheville and to retain all current full-time employees it has employed in the City of Asheville. The average median wage of the current full-time employees in the company is \$57,000. The median average wage to be paid to the employees in the new full-time jobs would be approximately \$40,000 per year, which is higher than the County's median average wage of \$36,296. Further, the annual total labor income impact for Asheville and Buncombe County due to these jobs is more than \$34,000,000 per year.

The City proposes to appropriate and spend from the City's general fund, pursuant to NCGS § 158-7.1, amounts to make certain cash grants not to exceed \$1,568,000 over a period of seven years and distributed after job creation and investment is achieved, or mutually agreed performance benchmarks are established. The purpose of these grants would be to induce Project X to make these investments in its facilities in the City of Asheville. The City of Asheville and Project X shall enter into an economic development agreement that will clearly state their respective responsibilities under the agreement, including provisions regarding remedies for a breach requiring the recapture of sums appropriated or expended by the City upon the occurrence of events specified in the agreement. Events that would require the City to recapture funds would include the creation of fewer jobs than specified in the agreement, a lower capital investment than specified in the agreement, and failing to maintain operations at a specified level for a period of time specified in the agreement.

Project X's operations in the City of Asheville at the levels of employment indicated would further the economic interests of the City in numerous ways, including through the following specific benefits: (a) by creating a substantial number of new full time jobs with an average wage greater than the median average wage in the County; (b) by enhancing the City's property tax base and increasing the City's property tax revenues; and (c) by locating in the City a manufacturing facility. In addition to holding the public hearing, the Council intends to take action during the meeting in connection with these matters, including authorizing final negotiation of the terms and conditions of an economic development agreement with Project X, and may approve the making of cash grants to Project X.

The economic development incentive grant ties into City Council's Strategic Operating Plan as it addresses multiple focus areas of the Plan.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;

- Supports job creation and capital investment in manufacturing in Asheville;
- Supports retention and expansion of existing industry in the City;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of a portion of new incremental tax revenue for a seven year period.

The City of Asheville proposes to offer Project X a performance-based grant not to exceed \$1,568,000. The performance-based grant will be paid over a 7 year period and distributed after job creation and investment is achieved or mutually agreed performance benchmarks are established, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem tax revenue attributable to the capital improvements, and any annual payment will not exceed \$224,000. It is anticipated that the first annual payment will occur in FY 2014-15.

The project has an overall positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive approximately 50% of the new incremental property tax revenues from the project. After 7 years, the City will henceforth receive 100% capture of new city taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant for Project X not to exceed \$1,568,000.

Mr. Powers responded to Councilman Smith when he asked for clarification of medium and average wages.

Councilman Smith said that during Council's retreat, he asked that Council re-examine our economic development policies because we haven't done a great job to have meaningful incentives for our medium and small home grown businesses.

In response to Councilman Smith, Mr. Powers explained the interdepartmental team and their incentive update timeline which the City Council Planning & Economic Development (PED) Committee requested be organized. He said they will be reporting back regularly to the PED Committee

In Mayor Bellamy's absence from the meeting room, Councilman Davis opened the public hearing at 7:10 p.m.

When Ms. Gwen Wisler asked if the City follows up with companies to see if their employees are City or Buncombe County residents, Mr. Powers said that in the past we have not made it a requirement that jobs created are either for Asheville or Buncombe County residents, but we know from past work with companies that appropriately 65-70 people live in Buncombe County and 35% live within Asheville.

Mr. Jerry Rice felt the City should not be providing incentives for companies that are so large they could buy out the entire City and County. He felt that if the company fails, the taxpayers will be the ones who will be penalized. He felt that the company should be upfront with who they are so citizens can be well informed.

Mr. Alan Ditmore spoke in opposition of Project X if it is an aviation industry, as they are not making the world a better place.

Dr. Milton Byrd felt that the economic incentives are not benefiting the people of Asheville. The incentive policy needs to be re-visited.

Ms. Leslee Kulba urged Council not to subsidize large corporations.

At 7:23 p.m., Mayor Bellamy closed the public hearing.

Councilman Pelly felt that even though this is not the direction he felt we need to go, he reminded the public that we are not writing checks. The performance-based grant will be paid over a 7 year period and distributed after job creation and investment is achieved, taxes are paid and verified, and the company requests payment. During that time we are collecting all property and other taxes associated with the company.

Councilman Bothwell is troubled by the secrecy of this project. He felt that if the company was transparent from the beginning, he might feel differently about supporting the incentives.

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

Councilman Smith moved for the adoption of Resolution No. 13-120. This motion was seconded by Councilman Hunt and carried on a 5-1 vote, with Councilman Bothwell voting "no".

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Closed Session

At 7:32 p.m., Councilman Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina, City of Asheville; and Metropolitan Sewerage District. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory is contained in G.S. 143-318 (a) (1); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:11 p.m., Councilman Bothwell moved to recess the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Davis and carried unanimously.

D. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF PROPERTY OFF SWEETEN CREEK INDUSTRIAL PARK FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INDUSTRIAL DISTRICT

ORDINANCE NO. 4197 - ORDINANCE REZONING A PORTION OF PROPERTY LOCATED OFF SWEETEN CREEK INDUSTRIAL PARK FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INDUSTRIAL DISTRICT

Councilman Davis moved to excuse Councilman Smith from the remainder of the meeting. This motion was seconded by Councilman Pelly and carried unanimously.

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to rezone a portion of property located off Sweeten Creek Industrial Park from RS-8 Residential Single Family High Density District to Industrial District. This public hearing was advertised on May 31 and June 7, 2013.

She said that the subject area for this rezoning petition is about 7.5% of the entire parcel as shown in the Buncombe County Land Records. The parcel, owned by the City of Asheville, is on western edge of the Ray L. Kisiah Park, but the actively used amenities of the park consist only of the ballfields a significant distance from the site on the southern half of the parcel. The northern half is undeveloped woodland which shows little evidence of public use. There appear to be no trails in the area save a partially cleared path beneath power lines near the southern tip of the subject area.

The actual subject area for the rezoning is a triangle approximately 2.8 acres in size. Along the longest edge of the triangle, to the west, it is bordered by a business in the Sweeten Creek Industrial Park. The other two sides of the triangle abut the City-owned land described above, with the northern tip of the triangle adjacent to the backyards of two residential properties. This rezoning is being initiated by the City for future economic development purposes. It would make the subject area's zoning consistent with the zoning to the west (Industrial) rather than that to the east (RS8). The proposed rezoning would result in a split-zoned property for the short term, but the City has stated an intention to divide off the industrially-zoned portion so that the property lines would follow the zoning district boundaries.

The northern half of the City-owned parcel currently provides a buffer between the industrial park and the residential neighborhoods to the east, but even if the subject area were to be developed with any allowed use in the future, the subject area would be more than 250 feet from the Ashwood Drive subdivision. Furthermore, a 30-foot buffer would be required along the edge of the development bordering residential zoning, totaling two-thirds of an acre, or almost a quarter of the subject property.

"Realizing the importance of industrial uses to the economy of the City of Asheville," the UDO states, "it shall be the purpose of the Industrial District to reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities."

The intent of the RS-8 Residential Single-Family High Density District is "to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living. Non-single-family development normally required to provide the basic elements of a balanced and attractive residential area is also permitted."

The City of Asheville Parks, Recreation, Cultural Arts and Greenways Master Plan from 2009 does not include any specific recommendations for changes to Kisiah Park; and more than 20 acres of unimproved parkland would remain available for future additions of facilities or programming. Staff feels the isolated position of the subject area, and the consistency of the proposed zoning with the area to the west, as well as the compliance with the comprehensive plan's goals regarding industrial land, are all factors in the petition's favor.

At their June 5th, 2013 meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

As of this writing, staff has received no communications from the public regarding the petition in question.

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

Pros:

- The change is suitable for the subject area and consistent with other adjacent and nearby land uses, taking into account required buffering for any future development.
- It complies with important goals of the comprehensive plan.
- It would increase capacity for economic development in the City.

Cons:

- Small loss of undeveloped land on the outer boundary of a park.
- Would create a (likely to be temporary) split-zoning situation.

In recent years, there have been numerous rezoning petitions resulting in the loss of industrially zoned land in the City's jurisdiction. This petition stands to add industrial capacity, and for the reasons stated above, staff recommends approval.

Mayor Bellamy opened the public hearing at 8:14 p.m. and when no one spoke, she closed the public hearing at 8:14 p.m.

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

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4197. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE

V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 4198 - ORDINANCE REPEALING THE GREENWAY COMMISSION

ORDINANCE NO. 4199 - ORDINANCE REPEALING THE TRANSIT COMMISSION

RESOLUTION NO. 13-121 - RESOLUTION APPOINTING MEMBERS TO THE MULTIMODAL TRANSPORTATION COMMISSION

Executive Director of Public Works and Multimodal Transportation Cathy Ball said that this is the consideration of ordinances repealing the Greenway Commission and the Transit Commission.

At the February 2013 Boards and Commissions meeting, staff presented a model for combining/augmenting various transportation and neighborhood related boards by forming a Multimodal Transportation Commission.

Staff and/or Council members have met with the various Boards and Commissions and have tweaked the initial recommendations. The total membership on the board is proposed to be nine voting and three non-voting members.

On May 14, 2013, City Council adopted an ordinance establishing the Multimodal Transportation Commission. The new Multimodal Transportation Commission includes members

from the Transit Commission, the Greenway Commission, and the Bicycle and Pedestrian Task Force. In the future, the Transit Commission and the Greenway Commission will serve as sub-committees to the Multimodal Transportation Commission.

This action will repeal the existing ordinances that created both the Transit Commission and the Greenway Commission.

This action complies with one of Council's Strategic Goals by supporting multimodal transportation planning.

Staff recommends that City Council repeal previous ordinances establishing the Transit and Greenway Commissions.

In response to Mr. Alan Ditmore about specific groups being represented on our boards and commissions, City Manager Jackson explained that the way to increase representation is to encourage those people to apply for boards so they can become eligible for future appointments.

In response to Dr. Milton Byrd, Mayor Bellamy explained that the Multimodal Transportation Commission is a Council-appointed Commission.

Councilman Bothwell moved for the adoption of Ordinance No. 4198. This motion was seconded by Councilman Hunt and carried unanimously.

ORDINANCE BOOK NO. 28 - PAGE

Councilman Bothwell moved for the adoption of Ordinance No. 4198. This motion was seconded by Councilman Hunt and carried unanimously.

ORDINANCE BOOK NO. 28 - PAGE

Mayor Bellamy read the following names of the individuals appointed to the Multimodal Transportation Commission: Itiyopia Ewart, Julie Mayfield and Bruce Emory (Transit Sub-Commission representatives); Marcia Bromberg, Mary Weber and Jim Grode (Greenway Sub-Commission representatives); Till Dhose, Don Kostelec and Terri March (Bike and Pedestrian Task Force representatives); Robert Roepnack (Neighborhood Advisory Committee non-voting ex-officio member); Kristy Carter (Planning & Zoning Commission non-voting ex-officio member); and Lael Gray (Sustainable Advisory Committee on Energy & the Environment non-voting ex-officio member).

Councilman Bothwell moved for the adoption of Resolution No. 13-121. This motion was seconded by Councilman Hunt and carried unanimously.

RESOLUTION BOOK NO. 35 - PAGE 322

B. RESOLUTION NO. 13-122 - RESOLUTION AUTHORIZING THE CITY MANAGER EXECUTE A CONTRACT WITH CODE STUDIO FOR PROFESSIONAL PLANNING SERVICES TO CREATE A FORM-BASED CODE FOR THE HAYWOOD ROAD CORRIDOR IN WEST ASHEVILLE

Planning & Development Director Judy Daniel said that this is the consideration of a resolution authorizing the City Manager to execute a contract with Code Studio for professional planning services to create a form-based code for the Haywood Road Corridor in west Asheville.

The City Council has long supported planning efforts that work toward the goals of the 2025 Comprehensive Plan, including small area plans. In recent years the Council has come to

support the gradual evolution toward regulatory code that is based in creating great places through defining the form of the built environment, rather than the regulation of uses.

In support of this policy, City Council's adopted 2012-13 Annual Operating Budget included funding in the amount of \$100,000 for the creation of a "demonstration" form-based code project. Because of budget constraints the Council did not give final authorization for the project until early in 2013. The Council then considered two locations for the project and ultimately selected the Haywood Road corridor in West Asheville for this project.

The Planning and Development Department issued a Request for Proposals for Form-Based Code planning services in April. A selection committee comprised of planning staff, Planning Commissioners, and West Asheville residents evaluated the responses. Each firm was scored on a list of baseline criteria and the panel came to a consensus that Code Studio of Austin, Texas, was the best match for the City for this project.

Code Studio is a planning and design firm from Texas with national experience and expertise in this emerging field of planning. They are partnering with other firms and individuals with expertise in transportation, economic analysis, and project management. The project is to be completed before the end of 2013.

Therefore, the Planning Department seeks Council's approval for a contract between the City of Asheville and Code Studio in an amount not to exceed \$100,000. Because the funding for this contract was authorized within the adopted budget for 2012-2013 no budget amendment is required.

This action is in support of Goal #2/Objective #1 in the Council's Strategic Operating Plan in the Job Growth and Community Development area which states: Support a strong local economy by continuing to implement sustainable growth and development policies, by promoting sustainable, high-density, infill growth that makes efficient use of existing resources. A sub-objective of that goal is to work toward support for urban scale small area plans.

Pro:

- This contract will equal the approved budget amount of \$100,000.

Con:

- None noted.

As noted above, the FY 2012-13 Planning Department budget includes adequate funding for this contract.

City staff recommends that the City Council approve a resolution authorizing the City Manager to execute a contract with Code Studio in the amount of \$100,000 for professional planning services.

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

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

Councilman Davis moved for the adoption of Resolution No. 13-122. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 324

VI. NEW BUSINESS:

A. RESOLUTION NO. 13-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE ASHEVILLE CITY BOARD OF EDUCATION FOR A PORTION OF CITY-OWNED REAL PROPERTY AT 285 LIVINGSTON STREET

Parks, Recreation & Cultural Arts Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to execute a Lease Agreement with the Asheville City Board of Education for a portion of city-owned real property at 285 Livingston St., Asheville, N.C., known as the Dr. Wesley Grant Sr., Southside Center (Grant Center).

The Asheville City Schools (ACS) system is beginning the process of constructing two new schools including the new Isaac Dickson Elementary and new Asheville Middle School. ACS has requested the City's assistance by providing a lease of property in order for the school district to provide space for William Randolph School students who are being relocated due to Dickson students moving to the Randolph School campus during the construction period.

The property at 285 Livingston St. is approximately 9.37 acres in total and is improved with the Cultural Arts Phase of the Dr. Wesley Grant Sr, Southside Community Center. ACS desires to locate a modular unit containing 12 mobile classrooms on the Grant Center property for the operation school educational activities. The module unit is approximately 12,000 SF and with walkways, decks and ramps, will encompass approximately 1 acre. The classroom units will include bathrooms for students and staff. Lunch will be served in the modular unit and classrooms will include library space. Additionally, ACS requests to utilize the Grant Center auditorium and classroom space as supplementary space for students if needed; schedule to be mutually determined. The hours of operation are flexible and will be scheduled to minimize disruptions to the programs currently offered at the Grant Center.

Once the lease term has concluded, ACS agrees to remove the improvements and restore the premises to its original condition.

The City's Master Plan for the property includes the future development of specific community amenities, including (1) the Town Branch Greenway, (2) A splash-pad water park feature and playground, (3) a gymnasium and additional community center space. The proposed location of the ACS modular building does not impede the development of the next phase of improvements, specifically the splash pad and Town Branch Greenway.

The proposed lease terms are as follows:

- Lease Term: 2 Years from 7/1/13 to 6/30/15
- Rental Rate and Additional Consideration: \$1/Yr. and ACS agrees to use its best efforts to work with the City to identify an appropriate and mutually agreeable location for a future greenway easement area on its Asheville Middle School property in connection with the City's planned Clingman Forest Greenway.
- Tenant responsibilities:
 - a. Maintenance of modular unit, cleanliness of lease area
 - b. All utilities to be contracted for and paid by the tenant; tenant to use Grant Center water, but have flow meter installed and pay for water use
- Tenant use of parking lot during the day as available for cars and bus drop-off and pick up
- Tenant use of other spaces in Grant Center (i.e. auditorium) as available and mutually determined
- Mutual rights to terminate lease
- Standard provisions of all City leases (e.g. insurance, indemnity, etc.) will also apply

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the Asheville City Schools on behalf of the City of Asheville.

Ms. Jacquelyn Hallum, Chair of the Asheville City Board of Education, asked for Council's support to move forward with this lease.

Mr. Allen Johnson, Superintendent of City Schools, along with Mr. John Legerton, architect, and Mr. Dewayne Tillman, Assistant Principal of William Randolph Elementary School, reviewed with Council a PowerPoint which explained the move from Randolph School move to the Dr. Wesley Grant Sr. Southside Center; and the Dickson move to the William Randolph School site.

Mayor Bellamy was pleased about the partnership between the City and the City Board of Education. She was glad we can help meet their needs.

Mayor Bellamy asked for a programming update of the Dr. Wesley Grant Sr. Southside Center so people in the community will know they will still have access to the Center.

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

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

Councilman Bothwell moved for the adoption of Resolution No. 13-123. This motion was seconded by Councilman Hunt and carried unanimously.

RESOLUTION BOOK NO. 35 - PAGE 325

B. BOARDS & COMMISSIONS COMMITTEE

Regarding the Civil Service Board, the following individuals have applied for the vacancies: Carolyn Worthington, Elizabeth Franks and Lynn Moffa. It was the consensus of City Council to instruct the City Clerk to arrange interviews for those that applied.

Regarding the Public Art & Cultural Commission, the following individuals have applied for the vacancy: Charley Akers, Amy Huntsman, Wayne Wheeler, Jared Gold, Bryan Andrews, Victor Palomino and Kara Warren. It was the recommendation of the Public Art & Cultural Commission and the consensus of the Boards & Commissions Committee to re-advertise for the vacancy.

RESOLUTION NO. 13-116 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Councilman Davis, member of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Citizens-Police Advisory Committee.

Mr. Charlie Hume resigned on January 4, 2013, thus leaving an unexpired term until June 30, 2014.

The following individuals have applied for the vacancy: Karl Katterjohn, Fred Cooke, Scott Steele and Grant Osborne.

It was the consensus of the Boards & Commissions Committee to appoint Grant Osborne.

Councilman Bothwell moved to appoint Grant Osborne to the Citizens-Police Advisory Committee, to serve the unexpired term of Mr. Hume, term to expire June 30, 2014, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 315

RESOLUTION NO. 13-124 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Councilman Davis, member of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civic Center Commission.

The term of Bill Jones expires on June 30, 2013.

The following individuals have applied for the vacancy: Antonio Hinton, Arthur Ollendorff, Elizabeth Franks, Suzanne Rice, Sean McNeal, Steve Lockett, Yvonne Cook-Riley and Nick King.

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

Councilman Hunt moved to reappoint Bill Jones to serve an additional three-year term, term to expire June 30, 2016, or until his successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 326

RESOLUTION NO. 13-119 - RESOLUTION APPOINTING MEMBERS TO THE NEIGHBORHOOD ADVISORY COMMITTEE

Councilman Davis, member of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Neighborhood Advisory Committee.

Ms. Jean Boyd, representing the 28801 zip code, has resigned from the Committee, thus leaving an unexpired term until July 1, 2015. The following individuals with the 28801 zip code have applied for the vacancy: Grant Osborne, Joseph Fioccola, Elizabeth Frank, Carolyn Worthington and Nick King.

Ms. Peggy Dutton, representing the 28803 or 28704 zip code, has resigned from the Committee, thus leaving an unexpired term until July 1, 2015. The following individuals with the 28803 or 28704 zip code have applied for the vacancy: Spencer Hardaway, Neil Barrett and Amy Evans. On May 14, City Council interviewed Rev. Hardaway, but Ms. Evans did not show up for her interview.

In addition, the terms of DeWayne Barton (28806 or 28728 zip code), Carmen Ramos-Kennedy (at-large) and Alan Escovitz (at large) members terms expire on July 1, 2013. The following individuals have applied for the vacancies: Jessica Byrd and Rich Lee.

Councilman Bothwell moved to (1) reappoint DeWayne Barton (28806 or 28728 zip code), Ms. Carmen Ramos-Kennedy (at-large representative) and Alan Escovitz (at-large representative) to each serve a three-year term respectively, terms to expire July 1, 2016, or until their successors have been appointed; (2) appoint Joseph Fioccola (28801) to serve the unexpired term of Ms. Boyd, term to expire July 1, 2015, or until his successor has been appointed; and (3) appoint Spencer Hardaway (28803 or 28704) to serve the unexpired term of Ms. Dutton, term to expire July 1, 2015, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 320

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Timothy Sadler spoke to Council about the need to strive for an exceptional transit system and then riders of choice will come on board.

Dr. Milton Byrd spoke about the importance of public trust.

Mayor Bellamy thanked those who worked on the Memorial Day event.

The City was served with a Complaint on or about May 7, 2013, which is generally described as follows; Lisa J. Richmond (formerly Lisa Roth) vs. City of Asheville, et al. Complaint is for wrongful arrest and prosecution. This matter will be handled by an attorney outside the City Attorney's Office.

Closed Session Continued

At 8:53 p.m., Councilman Bothwell moved to go into closed session to continue discussion of the items previously announced. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:18 p.m.

CITY CLERK

MAYOR